

Court of Appeals---Beccaria v LRBOI Election Board---Case #05094AP This appeal is based on Case Number: 04132GC

Summary: This matter is presented to the Court of Appeals by the Election Board raising the appeal solely on the Trial Court's jurisdiction. The Election Board argued that the Trial Court had no jurisdiction and exceeded its constitutional authority by issuing its order rescinding the fines imposed on Ms. Beccaria.

Decision and Order: The Court of Appeals **vacates** the order of the Tribal Court rescinding the fines levied by the Election Board against Ms. Beccaria and **dismisses** the present action.

Employment Grievance---Sam v Tom Celani and Little River Casino Resort---Case # 05043GC

Summary: Mr. Sam brings this employee grievance to the Trial Court asserting four (4) claims. First, he asserts capricious application of the Tribal preference ordinance. Second, he asserts a hostile work environment and harassment. Third, he asserts capricious compensation. Fourth, he asserts a breach of contract.

The Defendants disagree with the four claims. First, that the complaint fails to state any claim for relief under the Indian preference ordinance because nothing in the ordinance provides a cause of action or for any judicial review of employment decisions. Second, Mr. Sam has no cause of action under Tribal Law for a hostile work environment and harassment. Third, Mr. Sam's assertion of capricious compensation fails as a matter of law to state a cause of action. Fourth, Mr. Sam fails to assert a cognizable claim for breach of contract and even if Mr. Sam did the LRRCR would have sovereign immunity from suit. Defendants filed a motion to dismiss or for summary disposition in this matter.

Decision and Order: The Court heard the motion to dismiss and **ordered** the matter to be **dismissed** against the LRRCR without costs to either party.

Disenrollment---Robert Davis et al v LRBOI Enrollment Commission---Case # 05076EA

Summary: The Petitioners appealed the Enrollment Commission decision to decrease the blood quantum for certain relatives of the Petitioner group. The Petitioner group found new information which they believed would prove that the Enrollment Commission would come to a different conclusion and re-enroll the other family members. In this case the Petitioner group is asking for the Court to remand this case back to the Enrollment Commission so the petitioners can present the new found information.

The Respondents in this case argue that a remand would be inappropriate because the Petitioners are not submitting new evidence; they are submitting a new argument. The substance of that new argument was considered in the Commission's final decision and would not materially change the outcome of the matter in any case.

Decision and Order: After hearing Oral arguments in this matter the Court **ordered** the case be **remanded** back to the Enrollment Commission so the Petitioners have the chance to submit their new evidence for consideration and determination.

Restoration of Tribal Assistance Benefits---Davis et al v LRBOI Enrollment Commission---Case # 05076EA

Summary: The petitioners in this case motion the Court for the restoration of Tribal Assistance benefits. The petitioners were enrolled members of the Tribe. Later certain individuals from the petitioner group were then disenrolled. Only to be re-enrolled after presentation and acceptance of certain evidence that another ancestor was in fact Native American. The Petitioners in this matter are requesting the Court order restitution of Tribal Assistance Benefits during the time when certain individual petitioners were disenrolled.

Decision and Order: The Court **denied** the Petitioners' motion for restoration of Tribal Assistance Benefits.

Motion for Judicial Review Concerning Special Election---Crampton v LRBOI Election Board---Case # 05101EB

Summary: This matter comes to the Court as a motion for a judicial review concerning special election in order set forth an injunction concerning continuation of the special election for Tribal Council Position. Pleadings were heard and evidence presented by the parties.

Decision and Order: The Court **finds** that Ms. Crampton has failed to demonstrate that the Election Board regulations requiring nominating petitions violates any provision in the Tribal Constitution. She also has failed to demonstrate any evidence of impropriety by the Election Board.

The Court **denies** Ms. Crampton's request for injunction and **dismisses** the motion and complaint with prejudice but without costs to either party. **(Appealed)**

Court of Appeals---Crampton v LRBOI Election Board---Case # 05111AP

Summary: This matter comes to the Court of Appeals by Ms. Crampton appealing the ruling by the Trial Court alleging the Court erred when it denied her request for injunction and dismissed the action with prejudice.

Decision and Order: The Court of Appeals **remanded** this matter back to the Trial Court for a written opinion supporting its conclusion of its previous order.

Crampton v LRBOI Election Board---Remand to Trial Court Case # 05101EB

Summary: This case comes back to the Trial Court after a remand was ordered by the Court of Appeals. Court of Appeals has ordered the Trial Court to support the legal basis for the Court order issued on July 26, 2005.

Decision and Order: The Trial Court issued an amended order stating its legal basis for its ruling in this matter.

Disenrollment---Mary Samuelson v LRBOI Enrollment Commission---Case # 05131EA and Kenneth W. LaHaye---Case # 05134EA(Cases Enjoined) (Appealed)

Summary: This case comes to the Tribal Court by the Petitioners on appeal of an Enrollment Commission decision to disenroll a member descendant, lower the blood quantum of fourteen individuals, and not to permit forty-six others to enroll. The main issue in this matter is whether the Commission exceeded its authority by failing to follow an Enrollment Ordinance (Section 4.04).

Decision and Order: The Court **ordered** in favor of the Petitioners. The Enrollment Commission shall implement the above order within 30 days from the order date (05-15-2006).

Court of Appeals---Mary Samuelson / Kenneth LaHaye v LRBOI Enrollment Commission---Case #06113AP

Summary: This case was presented to the Court of Appeals by the Enrollment Commission with two issues at hand. First issue, did the Enrollment Commission have the authority to examine and use extrinsic evidence outside of the Durant Roll of 1910 and the Annuity Payrolls of 1870. Second issue, did the Trial Court have the authority to order the individual's membership status and the fixing of an individual's specific blood quantum for the purposes of determining eligibility for enrollment.

Decision and Order: The Court of Appeals **affirms** the Trial Court's decision.

Separation of Powers---Lee Sprague (Ogema) v LRBOI Tribal Council---Case #05133GC

Summary: This case comes to the Tribal Court by the Petitioner requesting an ex-parte petition declaratory judgment and a stay of execution of Resolution #05-0720-333. The Petitioner alleges that the resolution violates the separation of powers doctrine and if allowed to stand would set a dangerous precedent in the effect making every budgeted line item within the government subject to legislative action.

Decision and Order: The Court **ordered** the stay of resolution #05-0720-333 and the Travel Department are to process all travel and training with approval of the department heads; limited to the 2005 budget. The Court **further ordered** the stay will continue until a later hearing date.

Separation of Powers---Lee Sprague (Ogema) v LRBOI Tribal Council---Case #05133GC---September 30, 2005 hearing

Summary: This hearing was scheduled by the Court to hear issues stemming from the initial hearing in this matter. The first issue is the stay pending the execution of Resolution #05-0720-333. The second issue alleges the Ogema was in violation of the Legal Counsel Reform Act of 2005 when he retained his legal Counsel which creates a potential ethical problem for the Attorney.

Decision and Order: The Court **ordered** that the **temporary restraining order is dismissed** in regard to the enforcement of Resolution #05-0720-333. Attorney Sherigan will not be subject to potential ethics violations for a conflict with the Legal Counsel Reform Act of 2005. The Court **further ordered** that the matter be set for a pre-trial/scheduling conference.

Side Note:

On February 8, 2006 a Joint Request for Dismissal was received by the Court; dismissing this matter in its entirety. The request signed by Jo Anne House (Chief Legislative Counsel) and newly elected Ogema Patrick Wilson.

James Wabsis, Salli Wabis, and Catherine Wabsis v. Enrollment Commission, Appellate Case Number: 05-141-AP

Summary: The Enrollment Commission argues that the Tribal Court Erred when it "*exercised superintending control over the Enrollment Commission it modified and extended the effect of its initial Order of Remand*" and when the court "*ordered the*

immediate reinstatement of membership in LRBOI in its clarifying order entered on April 14, 2005." The petitioners argued that the Tribal Court did not make an error.

Decision and Order: The conclusion by the Court of Appeals is that the Petitioners remain enrolled and are entitled to all the rights, privileges and benefits of Tribal membership.

Special Election---Lucas, et al v LRBOI Election Board---Case # 05146EB / Ruiter v LRBOI Election Board---Case # 05147EB (Cases Enjoined)

(Case # 05146EB Appealed)

Summary: Both of the above cases arose after a Special Election held August 19, 2005 for a vacant Tribal Council seat. Both cases revolve around the issue of residential addresses and P.O. Box addresses used by Tribal Members. A registered Tribal voter is required to have a residential address on file for purposes of receiving ballots by mail.

Decision and Order: In the **Ruiter** case the Court ordered the case dismissed.

In the **Lucas et al** case, the Court ordered the

- 1). Ex-parte order of stay remains in effect.
- 2). The results of the Special Election held are to be voided.
- 3). The Election Board shall take all necessary steps to guarantee all registered voters are given the opportunity to participate in a new special election which is to be held within a reasonable time of the date of this order.

Court of Appeals---Lucas et al v LRBOI Election Board---Case # 05198AP

Summary:

This matter comes to the Court of Appeals by the LRBOI Election Board appealing the ruling by the Trial Court alleging the Court erred when it assumed jurisdiction over this matter.

Decision and Order: The Court of Appeals **affirmed in part**. The Court affirms that the Tribal Members who did not receive ballots shall be given ballots and be allowed to vote and that their votes be counted on top of those already cast. There is no need for an entirely new election.

TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

LITTLE RIVER BAND OF OTTAWA
INDIANS ELECTION BOARD,

Defendant-Appellant,

Case No. 05094-AP

v.

LORETTA J. BECCARIA,

Plaintiff-Appellee.

Appearances: Tracey J. Andrews for Defendant-Appellant and
In Pro Per Plaintiff-Appellee.

Before: Michael Petoskey, Chief Justice, Stella Gibson, Associate Justice
and Ryan Champagne, Associate Justice.

By: Michael Petoskey, Chief Justice, for a unanimous Court.

I. Introduction

This matter comes to the Tribal Court of Appeals on an appeal by Defendant-Appellant, Little River Band of Ottawa Indians Election Board (hereinafter referred to as "Election Board"), raising an appeal which is solely about Tribal Court jurisdiction. The Tribal Court issued its final *Opinion and Order* on June 1, 2005 which rescinded fines imposed on Plaintiff-Appellee (hereinafter referred to as "Ms. Beccaria") by the Election Board. The Election Board then filed this appeal arguing that the Tribal Court has no jurisdiction in this election matter and that the Tribal Court exceeded its constitutional authority by issuing its order rescinding the fines that were imposed by the Election

Board on Ms. Beccaria. The Election Board requests that this Court of Appeals vacate the Tribal Court *Opinion and Order* in all respects, declare it of no precedential value, and dismiss this case with prejudice. This Court heard the oral arguments of the parties on October 31, 2005.

II. Factual Background

Tribal members have reserved the right to recall its elected officials. See *Constitution of the Little River Band of Ottawa Indians*, Article X, Section 2. That Section of the Constitution expressly provides a basic framework for the exercise of the right.

The Election Board has adopted *Recall Regulations* to implement the right, pursuant to its constitutional responsibility to carry out tribal elections. See *Constitution*, Article IX, Section 4 (e). The *Regulations* provide the procedures and standards for the recall of Tribal officials. Among the various provisions are the provisions for assessing fines against those who do not comply with the procedures and standards. It was pursuant to the above-mentioned provisions that the Election Board levied fines against Ms. Beccaria. Ms. Beccaria filed suit in the Tribal Court against the Election Board for its imposition of fines against her. The Election Board subsequently dismissed the fine levy against Ms. Beccaria. Thus, that matter is now moot.

III. Issue

Whether the Tribal Court had jurisdiction to rescind the fines levied by the Election Board against Ms. Beccaria?

IV. Analysis and Discussion

The Election Board argues that the Tribal Court has no jurisdiction over this matter because the Constitution reserves the settlement of election disputes, other than allegations of impropriety of the Election Board, to the Election Board exclusively. The Election Board further argues that this Court's earlier decisions confine Tribal Court jurisdiction to election matters only when there are allegations of impropriety by the Election Board.

On the other hand, Ms. Beccaria argues that everyone needs checks and balances and so does the Election Board. She argues that the *Constitution* and *Regulations* both need updating to make the process clear and fair.

The Tribal Court opined that the imposition of fines on those who attempt to exercise their right of recall against Tribal officials would have a severe, chilling effect on the exercise of the very right Tribal members had expressly reserved for themselves.

The written argument of the Election Board in this case provides a good narrative of the development of our tribal case law in regard to tribal elections. See *Appellant's Brief*. The principle that the judicial system has no role in tribal election challenges and election disputes is clearly established precedent. See *Crampton v. Sam*, Case No. 98/200-02/01-000846. Additionally, this Court has recognized that the *Constitution* provides that allegations of impropriety be settled by the Tribal Judiciary.

However, the argument of the Election Board goes too far in its assertion that there is no role for the Tribal courts when the Election Board adopts regulations which are not in conformity with the Constitution. There must be redress for procedures and standards that are unconstitutional. A good system of governmental checks and balances requires judicial review. Unconstitutional laws, procedures or standards must not be allowed to stand.

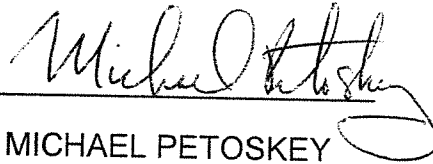
It is clear that the people in their delegation of powers intended that the Tribal courts have broad powers, including the power of judicial review. The judicial power extends “to all cases and matters in law and equity arising under this Constitution”. See Constitution, Article VI, Section 8 (a). Furthermore, the concern regarding the constitutionality of tribal enactments and resolutions is evident by the express delegation of review power to the Tribal Court. See Constitution, Article VI, Section 8 (a) 2.

V. Tribal Court Opinion

The Tribal Court finds in its *Opinion* that “... there are sufficient factual and legal issues to bring this matter ...” within the Court’s jurisdiction. The Court then lists the reasons, along with discussion, for its conclusion. There is no analysis of the constitutional interplay between established precedent, the constitutional role of the Election Board and that of the Tribal courts. **The Tribal Court did not clearly establish its legal authority to rescind the fines imposed by the Election Board on Ms. Beccaria. Jurisdiction is a threshold matter for the Court’s consideration.** However, it appeared at the Oral Argument conducted by this Court that the Election Board had addressed many of the concerns raised by this litigation and the Tribal Court’s *Opinion* by amending the *Recall Regulations*.

FOR ALL OF THE FOREGOING, this Court vacates the Order of the Tribal Court rescinding the fines levied by the Election Board against Ms. Beccaria and dismisses the present action.

IT IS SO ORDERED, this 8th day of February 2006.



A handwritten signature in cursive script, reading "Michael Petoskey", is written over a horizontal line.

MICHAEL PETOSKEY
CHIEF JUSTICE

Little River Band Of Ottawa Indian
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

JEFFERY L. SAM,
Plaintiff
818 Kosciusko Street
Manistee MI 49660

V.

Case Number: 05043GC

TOME CELANI – MANISTEE GAMING

And

LITTLE RIVER CASINO RESORT

Attorney for Defendant:
Kaign Smith
Drummond Woodsom & MacMahon
245 Commercial Street
Portland, ME 04104-5081

ORDER TO DISMISS

A Motion to Dismiss or for Summary Judgment of Defendant Little River Casino and Resort was heard on this date.

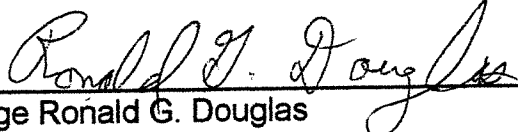
The court finds that the plaintiff presented no statement alleging a cause of action under Tribal Ordinance or Constitution where relief could be granted if all facts alleged were accepted as true.

The court finds that the Complaint seeks money damages from the Tribe where there has not been a waiver of sovereign immunity for such damages so that there is no subject matter jurisdiction for this court as it is barred by Sovereign Immunity of the tribe and the Little River Casino Resort.

The Plaintiff's Motion to adjourn is denied as it is untimely and no Appearance has been filed by an attorney at this time.

THEREFORE, this matter is dismissed against the Little River Casino and Resort, without costs to either party.

Dated: June 10, 2005



Judge Ronald G. Douglas

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Leigh Davis c/o Robert Davis
Kelsey Davis c/o Robert Davis
Ben Hamilton
Moses Hamilton
Stacy Connor
Rachael Leis
Martha Howell
(Robert Davis as contact person)
Plaintiffs

Case Number: 05076EA
Honorable Daniel Bailey

v.

Little River Band of Ottawa Indians
Enrollment Commission,
Defendants

Damian Fisher
Attorney at Law
P.O. Box 1065
Okemos, MI 48805-1065

OPINION AND ORDER

Petitioners' Motion for Restoration of Tribal Assistance Benefits was heard June 19, 2006. All parties present had an opportunity to be heard. For the reasons stated below, Petitioners motion is denied.

The Court will not review the entire history of this case here, but does recognize that Petitioners were at one time thought to be enrolled as members of the Little River Band of Ottawa Indians. After a routine file review conducted by the Enrollment Commission it was determined that Petitioners did not have the necessary blood quantum to be enrolled. They were subsequently removed from the membership roll, but later restored to the roll after presentation and acceptance of certain evidence that another ancestor was in fact Native American.

(Robert Davis as contact person)
Plaintiffs

Case Number: 05076EA
Honorable Daniel Bailey

v.

Little River Band of Ottawa Indians
Enrollment Commission,
Defendants

Because they were not on the membership roll at the end of the year 2005, Petitioners were not eligible to receive any Tribal Assistance Funds which might have been distributed. They now ask this court to order distribution of such funds as if they were on the roll at the appropriate time.

The Court does not have authority to order an executive branch department which is not a party to the underlying action to do anything. (Constitution, Article VI, Sec. 8, paragraph 1.) Here the Tribe is not a party to this action, nor were any department officials noticed of this hearing so they might properly respond to Petitioner's motion.

The action to remove Petitioners from the membership roll on May 5, 2005, was taken after the Enrollment Commission had properly conducted a routine file review as authorized in Section 15.01 of the Enrollment Ordinance. That the Court later remanded the matter to the Enrollment Commission to consider other evidence did not change the fact that at that time, Petitioners were not members of the Tribe.

The evidence which was later accepted by the Commission and thus led to the addition of Petitioner's names to the membership roll was information that had been available to Petitioners long before the file review. It was only presented as a result of their removal from the membership roll. The Court agrees with the contention of the Commission that Petitioners had ample opportunity to correct their enrollment files prior to the review and their subsequent removal. Because of their failure to act, they were not members of the Tribe at the end of 2005, and thus were not and are not entitled to any Assistance funds which were distributed.

IT IS THE ORDER OF THE COURT THAT PETITIONERS' MOTION IS DENIED.

Date: 5/10/06


Hon. Daniel Bailey
Chief Judge



(Robert Davis as contact person)
Plaintiffs

Case Number: 05076EA
Honorable Daniel Bailey

v.

Little River Band of Ottawa Indians
Enrollment Commission,
Defendants

CERTIFICATION OF SERVICE

I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed above.

Deborah Miller
Deborah Miller/Court Administrator

Date 7-10-06

Little River Band Of Ottawa India.
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Robert Davis, et al,
Petitioners

v.

Case Number: 05076EA

Enrollment Commission
Little River Band of Ottawa Indians
Respondent

Robert Davis
410 Cedar Street
Manistee, MI 49660

Attorney for Respondent
Damien Fisher
PO Box 1065
Okemos, MI 48805-1065

AMENDED ORDER AFTER MOTION FOR CLARIFICATION OF ORDER OF
REMAND

A *Motion for Clarification of Order of Remand* was received by the Court on February 16, 2006, pointing out a clerical error that transposed the names of **George Peters with William Peters and vice versa.**

The respondent did not ask for reconsideration of the *Order of Remand*...merely a correction of an obvious clerical error.

CORRECTED ORDER OF REMAND

On May 5, 2005, the Enrollment Commission held an appeal hearing regarding its intent to reduce the blood quantum of Esther Lorraine (Peters) Davis.

Robert Davis petitioned this court on June 3, 2005, appealing the Little River Band of Ottawa Indians Enrollment Commission decision to reduce the blood quantum of Esther Davis. This would reduce Mr. Davis's blood quantum, this sister's blood quantum and dis-enroll his children and five of his relatives. (The court file contains signed documents by Stella Davis, Ben Hamilton, Moses Hamilton, Stacy Connor, Rachel Leis, and Martha Howell requesting they be included in this appeal).

Oral Arguments were held in this matter on December 12, 2005, at approximately 10:00 a.m. The petitioners requested that the Tribal Court remand this matter

Robert Davis, et al,
Petitioners

v.

Case Number: 05076EA

Enrollment Commission
Little River Band of Ottawa Indians
Respondent

back to the Enrollment Commission for review of new documentation not considered by the Commission. The petitioners "feel that the records from 1916 were inaccurate. George Peters "may have been" or "could possibly have been the father" of Mr. Davis's mother. They believe Esther Peter's birth and death certificates are inaccurate.

There was no new evidence presented that suggests that George Peters was Esther's father. Mr. Davis then submitted argument that William Peters was not Hispanic as listed on the birth certificate, but full blooded Indian.

The attorney for the respondent Enrollment Commission contends that new evidence does exist regarding William Peters and that he may be an Indian (Gila River) from Arizona.

This relevant new documentary evidence may change the blood quantum in regard to the petitioners; particularly in the Robert Davis case. The Enrollment Commission (through Attorney Damien Fisher) suggested that even if the quantum would again be increased, (as in 2002) the total Grand River Michigan blood quantum would not be changed by the inclusion of the relationship to William Peters.

Under the Enrollment Ordinance 10.09 "b. To remand all cases where....
(2.) the Tribal Court determines that new evidence is being submitted, OR..."

It is ordered that this case be remanded back to the Enrollment Commission. The petitioner(s) shall have the chance to submit their new evidence for consideration and determination.

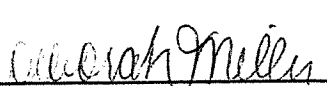
SO ORDERED:


Judge Daniel Bailey

2/17/06
Date

CERTIFICATION OF SERVICE

I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or their attorneys as listed above.


Deborah Miller Court Administrator

2.17.06
Date

**LITTLE RIVER BAND OF OTTAWA INDIANS OF THE
ANISHINAABE NATION
TRIBAL COURT
3031 Domres Road
Manistee, MI 49660
Telephone: (231) 398-3406
Facsimile: (231) 398-3404**

Bernadene Crampton,
Petitioner,

v.

Tribal Court Case No. 05101-EB

Election Board,
Defendant.

In Pro Per Plaintiff
Bernadene Crampton
480 First Street
Manistee, MI 49660

Tracy J. Andrews
OLSON, BZDOK & HOWARD, P.C.
Attorneys for Defendant
420 East Front Street
Traverse City, MI 49686
Telephone: (231) 946-0044

ORDER

At a session of the Little River Band of Ottawa
Indians Tribal Court held in Manistee, Michigan, on
the 25th day of July, 2005

Present: Judge Douglas, Tribal Judge
 Presiding.

On this day, the Court held a hearing on Petitioner Crampton's MOTION FOR A JUDICIAL REVIEW CONCERNING SPECIAL ELECTION IN ORDER SET FORTH AN INJUNCTION CONCERNING CONTINUATION OF THE SPECIAL ELECTION FOR TRIBAL COUNSEL POSITION. The Court has reviewed the pleadings filed by the parties, has received the evidence presented by the parties, and has heard the argument of the parties.

The Court finds that Petitioner Crampton has failed to demonstrate that the Election Board regulations requiring nominating petitions (Chapter 12 of the Election Board Regulations) violate any provision in the Tribal Constitution. Further, the Court finds that Petitioner Crampton has failed

to present any evidence of impropriety by the Election Board to bring this matter within the Tribal Court's subject matter jurisdiction.

Therefore, the Court hereby **denies** Petitioner Crampton's request for injunction and **dismisses** Petitioner Crampton's Motion and Complaint with prejudice, but without costs to either party.

Ronald L. Douglas
Judge Douglas
Tribal Judge
Little River Band of Ottawa Indians Tribal Court of Appeal

7-26-05
Date

Certificate of Service

I do hereby certify that a copy of the above order was placed in the Tribe's mail system for proper postage to be attached. The envelopes were addressed to the appellate judges and the attorneys for the parties as sited above. The appellee's was mailed directly to her.

Deborah A. Miller kap
Deborah A. Miller - Court Clerk

7.27.05
Date

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Bernadene Crampton, Petitioner

Case Number: 05101EB

v.
Election Board, Respondent

In Pro-Per Petitioner
Bernadene Crampton
480 First Street
Manistee Michigan 49660

Tracy J. Andrews,
Olson, Bzdok & Howard, P.C.
Attorneys for Respondent
420 East Front Street
Traverse City, MI 49686

=====

AMENDED ORDER OF SUMMARY DISPOSITION AND DISMISSAL

An Order was entered on July 26, 2005, dismissing the Motion for Injunctive Relief, which was appealed and remanded for clarification of the legal basis for the ruling on the issue of the contested Election Board Restriction not violating the Tribal Constitution. The legal basis is as follows:

1. The Petitioner alleged that the regulation requiring thirty signatures on a Nominating Petition was a violation of the Tribal Constitution and should be a bar to the holding of the scheduled election.
2. The Petitioner requested an Injunction delaying the election based upon the invalid regulation resulting in her petition being wrongfully denied.
3. There was no valid legal basis stated for the claim of violation of the Tribal Constitution other than it "changing qualification" for a candidate.
4. The Petition for Injunctive Relief requested a finding that the regulations were in violation of the Tribal Constitution.
5. The matter was dismissed and the Motion denied based upon a failure to show jurisdiction of the court when there was no allegation of impropriety.

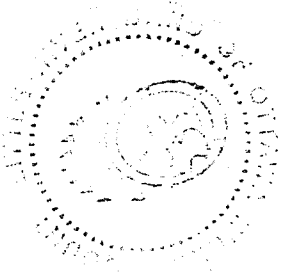
Legal Basis for the finding that there was no violation of the Tribal Constitution:

1. The Tribal Constitution, as amended, sets out in Article IV, Section 3, qualifications for tribal council membership, but does not limit Election Board regulations as to the number of signatures on a petition.
2. Article IX, Section 1 (g), sets out the right of the election Board to initiate reasonable regulations for the election process.
3. The Petitioner failed to state any legal arguments that the regulation was unreasonable in her Petition or at the hearing.
4. Since the Motion for Injunctive Relief clearly failed to state any other legal basis or factual situation that could allow a finding that the newly established regulations violated the Tribal Constitution, that statement or claim was also denied as a basis for the Injunctive Relief sought.

SO ORDERED:

Ronald D Douglas
Judge Ronald Douglas

May 1, 2006
Date



CERTIFICATION OF SERVICE

I certify that a copy of this hearing notice was placed in the US mail system with sufficient postage attached and mailed to the parties or their attorneys at the addresses on file with the Court.

Deborah A. Miller
Deborah A. Miller – Clerk

5-8-06
Date

TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

BERNADENE CRAMPTON,

Petitioner-Appellant,

Case No. 05111-AP

v.

LITTLE RIVER BAND OF OTTAWA
INDIANS ELECTION BOARD,

Respondent-Appellee.

Appearances: *In Pro Per* Petitioner-Appellant and
Tracey J. Andrews for Respondent-Appellee.

Before: Michael Petoskey, Chief Justice, and

Both: Kathleen Scotta, Chief Judge, Grand Traverse Band of
Ottawa & Chippewa Indians and Anna Guenthardt, Tribal Elder,
Sitting Upon Designation After Recusal of Associate Justices
Gibson and Champagne.

By: Michael Petoskey, Chief Justice, for a unanimous Court.

I. Introduction

This matter comes to the Tribal Court of Appeals on an appeal by Petitioner-Appellant, Bernadene Crampton, of the Tribal Court's July 26, 2005 ruling denying her request for an injunction and dismissing the action with prejudice.

II. Issue

Whether the Tribal Court erred in its determination that:

(1) the Petitioner failed to demonstrate that the Election Board regulations requiring nominating petitions violate any provision of the Tribal Constitution; and

(2) it lacked jurisdiction because Petitioner-Appellant failed to present any evidence of impropriety?

III. Analysis and Discussion

Ms. Crampton argues that the Tribal Election Board committed impropriety in its conduct of the August 19, 2005 Special Election to fill a vacant position for Tribal Council. Chief among her claims is that the newly-adopted requirement of nominating petitions from each of the candidates violates the Tribal Constitution. It was because of this requirement that Ms. Crampton's desire to become a candidate for the vacant Tribal Council position was thwarted.

The Tribal Court below correctly interpreted the existing law as it applied to this case when it entered its decision. Simply stated, the developing case law in this jurisdiction was that this Court's earlier decisions confine Tribal Court jurisdiction to election matters only when there are allegations of impropriety by the Election Board. See Crampton v. Sam, Case No. 98/200-02/01-000846. This Court agrees with the Tribal Court's conclusion that none of Ms. Crampton's claims, even if true, amount to being a violation of ethical standards.

However, the Tribal Court must have anticipated this Court's further development of tribal case law in tribal election matters because it specifically entered a finding regarding Petitioner's constitutional claim. That further development in case law occurred when this Court issued an opinion in an intervening case that recognizes a role for the Tribal courts when the Election Board adopts regulations which are not in conformity with the Constitution. See Little River Band of Ottawa Indians Election Board v. Beccaria, Case No. 05094-AP. In that case, this Court recognized that "[t]here must be redress for procedures and standards that are unconstitutional. A

good system of governmental checks and balances requires judicial review.

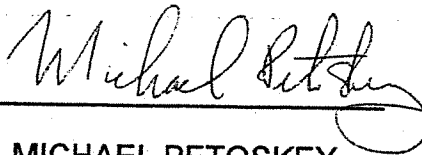
Unconstitutional laws, procedures or standards must not be allowed to stand.”

However, the Tribal Court's support for its "finding" or legal conclusion on this constitutional claim is not set forth in its written decision, probably because Petitioner's action was for an injunction to halt the election until her name could be placed on the ballot. It was sufficient for the Court to find that Petitioner failed to demonstrate that there was a substantial likelihood that she would prevail on the merits. The Petitioner merely, from the Court's perspective, failed to carry her burden of proof for receiving the injunction she desired.

The context for a decision from the Tribal courts regarding this Petitioner's constitutional claim now has added complexity because of the intervening development of case law. Issues of constitutional import must be grounded in written legal analysis and discussion. It is important that the parties, Tribal members, Tribal officials, the public and the courts of this Tribe understand the rationale for any conclusions made by the courts of this Tribe.

For this purpose and in deference to the Tribal Court, this matter is remanded back to the Tribal Court for a written opinion supporting its conclusion that the Petitioner failed to demonstrate that the regulations requiring nominating petitions do not violate any provision of the Tribal Constitution.

IT IS SO ORDERED, this 19th day of April 2006.



**MICHAEL PETOSKEY
CHIEF JUSTICE**

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

KENNETH W. LAHAYE vs. ENROLLMENT COMMISSION

Case No. 05-134-EA

MARY SAMUELSON vs. ENROLLMENT COMMISSION

Case No. 05-131-EA

Mark Quinn
Attorney for Plaintiffs
402 Maple Street
Manistee, MI 49660

Damian Fisher
Attorney for Enrollment Commission
P.O. Box 1065
Okemos, MI 48805

OPINION AND ORDER

The parties to this enrollment appeal were asked to brief the issues and have oral argument on April 3, 2006. Petitioners LaHaye were represented by counsel; Mary Samuelson was present in pro per; and Respondent Enrollment Commission was represented by its attorney. The case arises from an appeal of the determination of the Respondent Enrollment Commission (hereafter referred to as the "Commission") made July 14, 2005, to disenroll a member descendant of one Ephraim LaHaye, lower the blood quantum of fourteen individuals, and not permit the enrollment of forty-six others who trace to persons listed on the Durant Roll of 1908. The primary issue raised in the appeal is whether the Commission exceeded its authority by failing to follow the directive of the Enrollment Ordinance Section 4.04.

"4.04. Durant Roll of 1908—Presumption of 4/4 Blood Quantum. Where there is no other information within the Durant Roll of 1908, and its included supplementary information, indicating blood quantum other than of the Tribe or band identified, the person is presumed to be 4/4 blood quantum of that Tribe or band identified."

KENNETH W. LAHAYE vs. ENROLLMENT COMMISSION

Case No. 05-134-EA

MARY SAMUELSON vs. ENROLLMENT COMMISSION

Case No. 05-131-EA

The Commission reached a decision that Ephraim LaHaye was not an Indian or member of the Grand River band, by using information thought to be contained in at least three United States census reports and various field notes. Although Ephraim LaHaye was not alive at the time the Durant Roll was created, the Commission concluded that because he was not an Indian, his children, who did appear on the Roll, could not be Indian. Therefore, any present member tracing to those LaHaye children should have their blood quantum lowered, and any applicant for membership tracing to those LaHaye children should be denied admission to the membership roll if they did not have sufficient blood quantum from other ancestors..

For reasons stated below the Court finds Respondent Commission made an error of law, and orders that Petitioners who have been removed from the Little River Band of Ottawa Indians membership roll be restored to that roll; and that those applicants who have been denied membership based on the Commission's erroneous determination be placed on the membership roll, if they are otherwise qualified for membership in the Little River Band of Ottawa Indians.

Enrollment Ordinance, Section 4.04

The Court of Appeals of the Little River Band of Ottawa Indians has recently affirmed the authority of this court to order restoration of disenrolled individuals to the membership rolls of the Tribe. In fact, the Court of Appeals stated the effect of the Court's order is that those persons were never removed from the membership roll. *Wabsis vs. LRBOI—Enrollment Commission*, Case No. 05-141-AP, May 3, 2006.

Enrollment Ordinance # 04-200-01, Article IV. Persons Entitled to Membership, includes section 4.04, *Durant Roll of 1908—Presumption of 4/4 Blood Quantum*. The Durant Roll is referenced in each paragraph of Article IV. It, along with the 1870 Annuity Payroll, is the primary historical document in determinations of eligibility for membership in the Little River Band of Ottawa Indians. Article IV of the Enrollment Ordinance establishes a base from which the Commission may not deviate in its determinations of membership eligibility. In summary, if contrary information is not within the Durant Roll and its included supplementary information, 4/4 blood quantum of those persons on the Roll must be presumed.

According to briefs and arguments presented April 3, 2006, it is clear the Commission used other information to justify the disenrollment and denial of

KENNETH W. LAHAYE vs. ENROLLMENT COMMISSION

Case No. 05-134-EA

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Case No. 05-131-EA

membership to Petitioners. Much time was dedicated to explaining the relevance and reasoning supporting the use of the United States census reports of 1870 through 1930, and Durant field notes 6-61 and 8-61, and how the information contained in those documents was contradictory. It is sufficient to state that, based on this information, the Commission concluded Ephraim LaHaye was not Indian and contributed no Indian blood to his descendants. Therefore, the disenrollment and denial of membership to those descendants was right and justifiable. The Commission argues further that the presumption in section 4.04 is merely a tool to help the Commission reach the right decision on a person's membership application.

The Court notes that Article IV of the Enrollment Ordinance, Persons Entitled to Membership, mentions only two documents as reference points to membership—The Durant Roll and the 1870 Annuity Payroll. It further discusses and defines the “supplemental information” found in those documents and directs how that information is to be used. Finally, section 4.04 concludes with the directive that if no other blood quantum information is present within the two documents 4/4 is to be presumed for those persons whose names appear on the Durant Roll. It would appear our Tribal legislators intended to bring some certainty to enrollment issues by establishing a firm base from which those decisions are to be made. Nowhere in Article IV, nor in the rest of the Ordinance, is the Commission directed or authorized to bring in other extrinsic data to rebut the presumption created in section 4.04. To do so is to reintroduce the uncertainty and danger of arbitrariness the Ordinance apparently seeks to avoid.

ORDER

WHEREFORE, IT IS ORDERED:

- 1. The blood quantum of Petitioner Kenneth W. LaHaye shall be recorded as $\frac{1}{2}$ Grand River;**
- 2. Petitioners Samantha LaHaye and Thressa LaHaye meet the eligibility requirements for membership in the Little River Band of Ottawa Indians;**
- 3. Those persons listed in paragraph 8 of Petitioners' Complaint shall have their blood quantum restored to levels recorded prior to the Commissions decision on July 14, 2005;**

KENNETH W. LAHAYE vs. ENROLLMENT COMMISSION

Case No. 05-134-EA

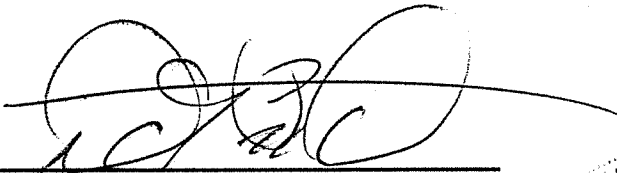
MARY SAMUELSON vs. ENROLLMENT COMMISSION

Case No. 05-131-EA

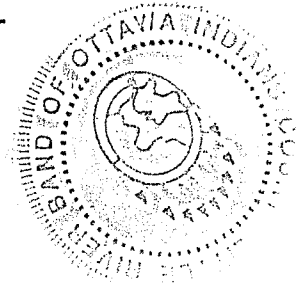
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4. Those persons listed in paragraph 10 of Petitioners' Complaint shall be added to the membership roll of the Little River Band of Ottawa Indians if otherwise qualified for membership;
 5. Jennifer James shall be restored to the membership roll of the Little River Band of Ottawa Indians.

IT IS FURTHER ORDERED Respondent Enrollment Commission shall take whatever steps necessary to implement the above order within 30 days of this date.

Date 5/15, 2006



Hon. Daniel Bailey, Chief Judge



CERTIFICATION OF SERVICE

I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed above.

Deborah Miller
Deborah Miller/Court Administrator

5-15-06
Date

TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

MARY SAMUELSON,
KENNETH LaHAYE, *et. al.*;
Plaintiffs-Appellees,

v.

Case No. 06-113-AP

LITTLE RIVER BAND OF OTTAWA
INDIANS – ENROLLMENT COMMISSION,
Respondent-Appellant.

Appearances: Kimberly G. McGrath for the Respondent-Appellant and
Mark Quinn for the Plaintiffs-Appellees.

Before: Michael Petoskey, Chief Justice; Stella Gibson, Appellate
Justice and Ryan L. Champagne, Appellate Justice.

By: Ryan L. Champagne, Appellate Justice, for a unanimous
Court.

I. Introduction

This matter comes to this Court on an appeal by the Respondent-Appellant, Enrollment Commission of the Little River Band of Ottawa Indians (Commission). The Commission argues that the Tribal Court erred when it did not “*determine that the presumption provided in Section 4.04 of the Constitution is a rebuttable presumption that is required to be considered in light of all available evidence*”; when the Tribal Court did not “*determine that the Standards of Evidence encompassed in the Enrollment Regulations require that the Enrollment Department use all reasonable efforts to collect evidence which would tend to prove that its decisions are accurate thereby requiring that extrinsic evidence be considered*”; and when the Tribal Court did not “*Determine that the*

Little River Band of Ottawa Indians Trial Court does not have the jurisdiction to order specific eligibility determinations in enrollment cases." On the other hand, Petitioners-Appellees, Mary Samuelson and Kenneth LaHaye (Petitioners), argue that Tribal Court did not err. They argue that the Tribal Court was correct when the Court found that *"the Enrollment Commission exceeded its authority by failing to follow the directives of the Enrollment Ordinance."* The Commission has failed to prove its arguments as presented before this Court.

II. Brief Factual Background

1. Certification of Audit Findings finds Kenneth LaHaye to be ½ Grand River and corrected previous blood quantum in December 2004.
2. Enrollment Officer presented findings to Enrollment Commission of what the Officer believed was mistake of fact regarding Ephraim LaHaye in April of 2005.
3. The Commission determined that Ephraim LaHaye was 4/4 non-Indian in May 2005.
4. The Enrollment Commission heard an appeal on determination of Ephraim LaHaye and upheld its previous findings in July of 2005.
5. The Petitioners filed an appeal of the Commission's disenrollment determination in the Tribal Court in August 2005.
6. The Tribal Court found that the Commission exceeded its authority by failing to follow the directives of the Enrollment Ordinance in May 2006.
7. The Enrollment Commission filed an appeal and the Tribal Court granted a full stay in May of 2006.
8. Descendants-Children of Ephraim LaHaye: George LaHaye, William LaHaye, Alice LaHaye, Francis LaHaye were alive during the Durant Roll.
9. The children of Ephraim LaHaye (mentioned above) were not designated with blood quantum amounts on the Durant Roll, only as being Grand River Ottawa.

III. Legal Analysis

There are two issues before this Court:

Issue 1 - Whether the Enrollment Commission has the authority to examine and use extrinsic evidence outside of the Durant Roll of 1910 and the Annuity Payrolls of 1870.

Issue 2 - Whether the Tribal Court has the authority to order the individual's membership status and the fixing of an individual's specific blood quantum for the purposes of determining eligibility for enrollment with the Little River Band of Ottawa Indians.

Tribal membership for Indian people is more than mere citizenship in an Indian tribe. It is the essence of one's identity, belonging to community, connection to one's heritage and an affirmation of their human being place in this life and world. In short, it is not an overstatement to say that it is everything. In fact, it would be an understatement to say anything less. Tribal membership completes the circle for the member's physical, mental, emotional and spiritual aspects of human life. Thus, to strip all of this away is indeed a very serious matter and therefore ought to withstand the highest level of scrutiny.

The Enrollment Commission contends that in order to determine eligibility for membership accurately they must use extrinsic evidence to verify blood quantum of individuals on the Durant Roll of 1910. The Commission argues that they can utilize Enrollment Ordinance Section 5.04 "Documentary evidence such as birth certificates, death certificates... may be used to **support** enrollment." 5.04 clearly identifies the clause is to support enrollment. This Court's understanding of 5.04 is that eligible members are allowed to utilize another

family member's lineage already accepted to support enrollment. Further, that this evidence is to support an eligible member's has descended from an individual on the Durant Roll of 1910 or the Annuity Payrolls of 1870. Nowhere does 5.04 imply that the Enrollment Commission may utilize extrinsic evidence to deny eligibility based on the premise that there may be conflicting historical documents to disprove the Durant Roll of 1910 or the Annuity Payrolls of 1870. The Constitution clearly states in Article II Section 1(a)(b) that the Durant Roll of 1910 or 1870 Annuity Payrolls of Chippewas and Ottawas of Michigan are the sole source to utilize in eligibility membership. One must be a direct lineal descendant from either document and the Enrollment Commission shall utilize these documents to determine lineage. **Thus, it is unconstitutional to use extrinsic evidence for the purpose of tribal member eligibility determination.** It is not up the Enrollment Commission or this Court to determine whether information listed in the Durant Roll or the Annuity Payrolls is accurate. Neither was present at the making of those documents so this Court must presume these documents to be accurate based off of the parameters set by the Little River Band of Ottawa Indians Constitution. Conflicting historical documents are prevalent in many situations, but it is not the duty of this Court to weigh which document may be more credible than the other. Enrollment Ordinance 4.04 sets that the Enrollment Commission shall presume that a person on the Durant Roll with no indications of blood quantum shall be presumed to be 4/4 blood quantum of that Tribe or band identified. This Court interprets presumption as definite, unless there is other information contained in

the Durant Roll to state otherwise. The Constitution clearly sets these two documents as the **sole authority** to be used to determine eligibility of membership. On another note, the Enrollment Commission contends that it opened this investigation of Ephraim LaHaye due to an investigation of mistake of fact raised by a new applicant's material submitted who was a descendant of Emphraim LaHaye. This Court agrees with the Appellees that the Enrollment Commission acted arbitrarily and capriciously and did not follow the Enrollment Ordinance 8.02. The Commission's presumption that all new applicants could potentially open investigation into the membership eligibility of members already enrolled is a dangerous and a slippery slope that this Court is not willing to go down. There were no allegations that were placed in writing and signed by the person making those allegations of the mistake of fact.

The Commission contends that the Tribal Court does not have the authority to order the individual's membership status and the fixing of an individual's specific blood quantum for the purposes of determining eligibility for enrollment with the Little River Band of Ottawa Indians. The Commission is wrong in assuming that their administrative body hearings are exempt from Tribal Court jurisdiction. The Tribal Court has final say over the Commission's decision. Further, Little River Band of Ottawa Indians Constitution Article II Section 5 states "Any person whose application for membership has been denied, or any member who has been disenrolled, shall have the right to appeal to the Tribal Court." This clearly allows Tribal Court to be the appropriate body to make the final decision once all options of appeal with the Commission have been


exhausted. Further, under Enrollment Ordinance #04-200-01 Article X section 10.01 states "all appeals from decisions of the Enrollment Commission shall be heard by the Tribal Court;" and 10.08 states "the sole issues on appeal will be determined if the Enrollment Commission made an error in rejecting the application for enrollment, disenrolling the applicant, or in calculation of an eligible applicant's degree of Indian, Grand River, or Michigan Ottawa blood." This means that the Commission under its own ordinance gives the membership appeal right to the Tribal Court and with that right, Tribal Court has the ultimate decision making power. The Tribal Court has remand as a possible option but can not be limited to just those means. However, Section 10.09(b)(1) states that "Tribal Courts shall have the jurisdiction to decide to remand all cases where the tribal court determines that the Enrollment Commission has incorrectly interpreted or applied this ordinance." As in the case at hand, the Tribal Court had ruled that the Commission has made an error of law on its interpretation and application of 4.04. With a remand, the Tribal Court can order Commission action consistent with its opinion/decision. Such is the basic principle of the rule of law, i.e. that everyone must abide by the law and that no one is above it.

IV. Conclusion

WHEREFORE, FOR ALL OF THE FOREGOING, this Court affirms the lower Court's decision: that Ephraim LaHaye's children were entitled to the presumption created by 4.04 of the Enrollment Ordinance; that the Commission could not bring in other extrinsic data to rebut presumption created in 4.04; that

the Durant Roll and the 1870 Annuity Payrolls are the reference points to membership and that 4.04 presumption flows from these two documents exclusively. This Court affirms that: Tribal Court has the ultimate decision making power to hear appeals if the Enrollment Commission has made an error in rejecting the application for enrollment, disenrolling the applicant, or in calculation of an eligible applicant's degree of Indian, Grand River, or Michigan Ottawa blood. The lower Court shall remand all cases back to the Enrollment Commission where there has been an error of law and the Commission has incorrectly interpreted or applied the enrollment ordinance. Tribal Court shall remand cases back to the Enrollment Commission with concise guidelines of the Court's interpretation of the law, thus allowing for the Commission to rectify the situation utilizing the correct interpretation of the law as defined by the Tribal Court.

IT IS SO ORDERED, this 24th day of June 2007.


RYAN L. CHAMPAGNE
APPELLATE JUSTICE

Little River Band Tribal Court
3031 Domres Road
Manistee MI 49660
231-398-3406

Ogema Lee Sprague, Petitioner

v.

Case Number: 05133GC
Petition for Declaratory Judgment and Stay of
Execution of Resolution 05-0720-333

Tribal Council, Respondent

Angela Sherigan, Attorney for Petitioner.
31912 Mound
Warren, MI 48092
(586) 822-4220

JoAnne House and William Brooks,
Attorneys for Respondent
375 River Street
Manistee, MI 49660
(231) 723-8288

=====

**ORDER DISMISSING TEMPORARY RESTRAINING ORDER
AND ALLOWING ATTORNEY FOR PETITIONER TO CONTINUE**

Upon a hearing with both parties and their counsel present, the following facts and findings of law are entered:

1. Tribal Law Legal Counsel Reform Act of 2005, Article VI, prohibits the Ogema from retaining legal counsel without the attorney being retained as full-time employment by the tribe and with a contract approved by the Tribal Council.
2. The Ogema has proffered a contract, but it has not been approved, which creates a potential ethical problem for Attorney Sherrigan.
3. Tribal Court Rules allows the presiding judge to enter an order under Section 2.304 for good cause.
4. Due to the complexity of this matter and its importance as a matter of first impression where the Constitutional validity of a tribal ordinance is being questioned, legal counsel is essential for its continuation, and whereas the attorney had represented the Ogema's office prior to this restriction, this is good cause for allowing the attorney to continue for a limited time; especially in light of her representation of that office prior to the enactment of the ordinance.
5. A temporary restraining order requires a finding of all of the following: an emergency, irreparable harm to the Petitioner, minor restrictions on the Respondent, a likelihood of success on the merits, and in cases involving the Tribal government, to consider its effects on an essential operation of the government.
6. There is a finding of great difficulty by many tribal programs in complying with the

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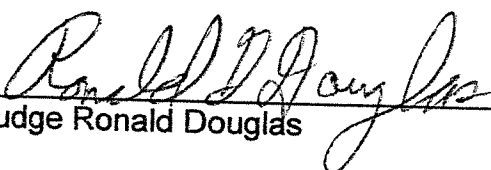
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- Ordinance and a potential for serious harm, but not irreparable harm in light of the requirements of administration of tribal financial matters allowing for some errors which can be corrected on an ongoing basis or at later training events.
7. There is a reasonable likelihood of success on the merits of the claim of interference with the Constitutional powers of the Ogema's management of the budget.

THEREFORE IT IS ORDERED:

- A. The Temporary Restraining Order restricting enforcement of the Ordinance 05-0720-333 is dismissed.
- B. Attorney Sherrigan will not be subject to potential ethics violations for a conflict with the Legal Counsel Reform Act of 2005 due to not having an approved contract for at least thirty days or upon further order of this court whereupon continuation, fees and any other issues involving representation may be resolved.
- C. This matter is to be set for a pre-trial to set discovery and a trial as soon as the parties request.

So Ordered:



Judge Ronald Douglas

September 30, 2005
Date

CERTIFICATION OF SERVICE

I certify this order was placed in the Tribal mail system today to be taken to the Manistee Post Office for mailing and sent via facsimile to all concerned parties in this matter.

Deborah Miller

Date

*mailed 9/3/05
The order faxed
to esby Judge D.*

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Lee Sprague, Tribal Ogema
Petitioner

V.

Case Number: 05133GC

Little River Band of Ottawa Indians
Tribal Council,
Respondents

ORDER GRANTING STAY OF ENFORCEMENT

The Ex-Parte, emergency petition for a Stay against the Tribal Administration from enforcing Resolution # 05-0720-333 of July 20, 2005, is granted. The basis for this order is that such an amendment of the Tribal Budget without approval of the Ogema is prohibited under Article IV, Section 7(i) (1) and (2) of the Tribal Constitution.. Further there is an emergency stated as the resolution will interfere with ongoing budgeted training and travel and will likely cause irreparable harm and that there is a likelihood that the Petitioner will prevail in this matter.

The Petitioner, Ogema Lee Sprague, further states that this is a violation of the separation of powers under the Tribal Constitution. The Council reserves the authority to make all decisions regarding further amendments of the 2005 Budget for Travel/Training for an unknown time frame to investigate possible wrongdoing which should be reserved to the Ogema. These issues can be later corrected through restitution or criminal complaints.

In Section 8 (a), 2., the Constitution of the Little River Band delineates the "*Powers of the Tribal Court*". "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."

THEREFORE IT IS ORDERED that

1. The Tribal administrator and specifically the Travel Department are to process all travel and training with approval of the department heads; limited to the amount from the 2005 budget, pending a hearing on this matter in spite of the resolution #05-0720-333 which is stayed until a later hearing.

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

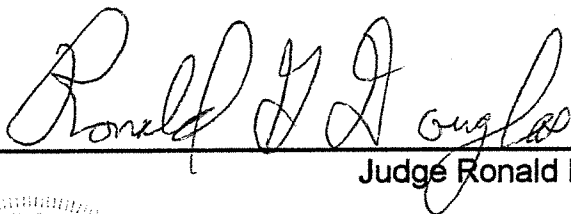
Lee Sprague, Tribal Ogema
Petitioner

V.

Case Number: 05133GC

Little River Band of Ottawa Indians
Tribal Council,
Respondents

2. A hearing has been scheduled for: **Wednesday, September 14, 2005**
At 10:30 a.m.



Judge Ronald Douglas

8-18-05

Date



TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

JAMES E. WABSIS, SALLI R. WABSIS
and CATHERINE WABSIS,
Petitioners-Appellees,

v.

Case No. 05-141-AP

LITTLE RIVER BAND OF OTTAWA
INDIANS – ENROLLMENT COMMISSION,
Respondent-Appellant.

Appearances: Damian Fisher for the Respondent-Appellant and
Jana M. Berger for the Defendants-Appellees.

Before: Michael Petoskey, Chief Justice; Stella Gibson, Associate
Justice and Ryan L. Champagne, Associate Justice.

By: Michael Petoskey, Chief Justice, for a unanimous Court.

I. Introduction

This matter comes to this Court on an appeal by the Respondent-Appellant, Enrollment Commission of the Little River Band of Ottawa Indians (Commission). The Commission argues that the Tribal Court erred when it “*exercised superintending control over the Enrollment Commission when it modified and extended the effect of its initial Order of Remand*” and when the Tribal Court “*ordered the immediate reinstatement of membership in LRBOI in its Clarifying Order entered on April 14, 2005.*” On the other hand, Petitioners-Appellees, James E. Wabsis, Salli R. Wabsis, and Catherine Wabsis (Petitioners), argue that Tribal Court did not err. They argue that the Tribal Court has the “*authority to schedule a hearing, upon the motion of aggrieved members*

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BY *[Signature]* DATE 5-4-04

in disenrollment proceedings, to enforce the Enrollment Commission's compliance with the Court's Remand Order", that the Tribal Court has the "authority to stay disenrollment proceedings so as to provide for the continued payment of membership benefits to members in disenrollment proceedings" and that the Tribal Court has the "authority to order on remand that the enrollment commission reinstate the membership of individuals when the Court determines that the disenrollment determination against them is erroneous and without merit."

II. Brief Factual Background

1. The Commission initially denied the Petitioners' applications for membership in 1996.
2. The Commission then approved the Petitioners for membership in 2000.
3. Subsequently, the Commission initiated disenrollment of the Petitioners in August of 2004.
4. The Petitioners filed an appeal of the Commission's disenrollment determination in the Tribal Court.
5. The Tribal Court found that the Commission made an error of law and not a mistake of fact when it made the disenrollment determination.
6. The Tribal Court entered its *Order Remanding for Reconsideration* on April 14, 2005.
7. When it appeared that the Commission was ignoring the remand order, Petitioners again petitioned the Tribal Court for relief.
8. The Commission was ordered to a show cause on July 22, 2005 to explain why the Commission had not followed the April 14, 2005 remand order.
9. After a hearing, the Tribal Court entered a *Clarifying Order* on July 28, 2005.

III. Legal Analysis

There are two arguments before this Court:

Argument 1 - Whether the Tribal Court has the authority to schedule a hearing, upon the motion of aggrieved members in disenrollment proceedings, to enforce the Enrollment Commission's compliance with a Remand Order issued by that Court?

Argument 2 - Whether the Tribal Court has the authority to order the immediate reinstatement of membership and all benefits that come with membership in Little River Band of Ottawa Indians?

It is important to notice at the outset that this is a disenrollment case, not an enrollment case. The two kinds of matters are not the same. In fact, they are very different.

Tribal membership for Indian people is more than mere citizenship in an Indian tribe. It is the essence of one's identity, belonging to community, connection to one's heritage and an affirmation of their human being place in this life and world. In short, it is not an overstatement to say that it is everything. In fact, it would be an understatement to say anything less. Tribal membership completes the circle for the member's physical, mental, emotional and spiritual aspects of human life. Thus, to strip all of this away is indeed a very serious matter.

Additionally, all of the rights, privileges and benefits of tribal membership are already vested. These are significant to Indian people. Stripping away these vested rights, privileges and benefits is also very serious matter and for this reason alone ought to withstand the highest level of scrutiny.

The Enrollment Commission argues that this case demonstrates that the system is working and that the system ought to be allowed to resolve this matter. We agree. The Enrollment Commission further argues that this matter began to go awry when the Tribal Court issued its clarifying order. **However, it is clear that this matter began to go wry when it was remanded back to the Enrollment Commission.**

The effect of the Tribal Court's initial findings is the attempted disenrollment was null and void. Thus, as a matter of law, the petitioners remain enrolled and are entitled to all the rights, privileges and benefits of tribal membership. Under such circumstances, the Tribal Court does not have to enter an order directing their re-enrollment. They are, and remain, members as a matter of law under the circumstances thus presented.

The Tribal Court's decision outlines the disenrollment possibilities that it thinks might be permissible then remands the matter back to the Enrollment Commission for action consistent with the Opinion. However, if the attempted disenrollment is null and void, there is nothing to remand back. The case is over. The Petitioners remain tribal members.

The Commission argues that the Tribal Court does not have the authority to compel the Commission to comply with the *Remand Order*, or give direct guidance to the Commission over its proceedings. The Commission argues that their administrative hearings are exempt from Tribal Court jurisdiction. However, the Tribal Constitution **clearly** states "*Any person whose application for membership has been denied, or any member who has been disenrolled, shall*

have the right to appeal to the Tribal Court.” See Constitution of the Little River Band of Ottawa Indians, Article II, Section 5. This clear constitutional delegation of authority **mandates** that the Tribal Court hear and decide such appeals once all options of appeal with the Commission have been exhausted. Persons so affected have a **right to appeal**. Furthermore, tribal legislative law states “*all appeals from decisions of the Enrollment Commission shall be heard by the Tribal Court*” and “*the sole issues on appeal will be determined if the Enrollment Commission made an error in rejecting the application for enrollment, disenrolling the applicant, or in calculation of an eligible applicant’s degree of Indian, Grand River, or Michigan Ottawa blood*”. That is exactly that the Tribal Court did in the instant matter. The Court determined that the Enrollment Commission made an error in disenrolling the Petitioners.

It is clear that the tribal membership through the development and adoption of the Tribal Constitution set up a system of checks and balances by reserving the right to appeal to the Tribal Court. Appellate review serves many appropriate purposes while reserving individual membership determinations to the Enrollment Commission. Importantly, one of those purposes deserves passing mention here. It is the functioning of what is commonly called the “rule of law”. Rule of law simply means that community standards, as expressed by the law, apply equally to everyone and that no one is above the law. Everyone is within its reach. The Enrollment Commission must abide by the rule of law like everyone else and is subject to the review powers of the Tribal Court to ensure abiding service to the community.

The Court's remand of the instant matter was prompted by *Enrollment Ordinance # 02-200-01* which purports to limit the remedies available to the Court. See *Enrollment Ordinance #02-200-01*, Article X, Section 10.09 (b). It is obvious that dismissal of a disenrollment action because it is "null and void" was not contemplated by the legislative drafters. However, the instant matter makes it clear that dismissal is the only practical remedy available for matters like the present one. The Tribal Constitution includes a due process protection for individuals. See *Constitution of the Little River Band of Ottawa*, Article III, Sec. 1 (h). Due process requires that the remedy of dismissal is available to the Tribal Court in the limited circumstances where it is appropriate and the only practical remedy.

Of course, nothing in declaring the specific action null and void prevents the Enrollment Commission from attempting a new disenrollment proceeding based upon different grounds. In fact, that is what has happened here and it explains why the Petitioners characterize the "new" disenrollment proceedings as the "second" disenrollment, while the Enrollment Commission characterizes it as a single continuing disenrollment. Since the legal effect of the Tribal Court's finding was to render the Enrollment Commission's original decision null and void, the current proceedings below are a second attempt.

IV. Conclusion


WHEREFORE, FOR ALL OF THE FOREGOING, this Court declares that the effect of the Tribal Court's initial findings is that the disenrollment

decision, which is the subject of this appeal, was null and void. Thus, as a matter of law under the circumstance presented by this appeal, the Petitioners remain enrolled and are entitled to all the rights, privileges and benefits of tribal membership.

V. Order

THE INSTANT MATTER IS HEREBY DISMISSED FOR ALL OF THE FOREGOING.

IT IS SO ORDERED, this 3RD day of May 2006.



MICHAEL PETOSKEY
CHIEF JUSTICE

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 DOMRES ROAD
MANISTEE MICHIGAN 49660

Lucas, et al
v. Case #: 05146EB
Election Board

Ruiter
v. Case #: 05147EB
Election Board

OPINION AND ORDER

These cases come before the court because of alleged errors and violations of constitutional rights arising out the Special Election held August 19, 2005 for a vacant Tribal Council seat. The **Lucas** case challenges the results of the Special Election because Lucas and approximately 144 other tribal members did not receive ballots.

The **Ruiter** complaint requests the Court to make a declaratory judgment that Election Board requirements that a voter is required to have a residential address, not just a P.O. Box, are discriminatory and unconstitutional. Hearing on Defendant Election Board's Motions to Dismiss was held September 12, 2005.

The Court was apprised that these similar issues were heard by the Election Board Hearings Officer at a hearing on September 8, 2005. During this special hearing the issues raised by the Lucas Complaint were considered. Out of deference to the process established by the Election Board, this court has withheld its decision until the Hearings Officer issued her opinion.

Both cases revolve around the issue of residential addresses and P.O. Box addresses used by Tribal members. For purposes of enrollment a member may have on file either or both a residential address and a postal box number. For purposes of being a registered Tribal voter, a residential address is required (Election Board Regulations, Chapter 1.4.1.a). Ballots are sent to the residential address maintained by the Enrollment Office (Chapter 1.4.1.c).

Defendant Election Board admitted during the court's hearing there was an apparent problem in the transmittal of the names of registered voters from the Tribal Enrollment Office to Automated Election Services (AES), a corporation hired by the Board to conduct the election. Apparently, AES procedures eliminated any member from the registered voter list whose address contained a P.O. Box address, whether or not a residential address was present. In addition, the Board was experiencing staffing problems and equipment malfunctions prior to the election date.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 DOMRES ROAD
MANISTEE MICHIGAN 49660

Testimony was also offered that some tribal members who had not received a ballot made telephone calls or visits to the Election Board office to secure a ballot, but that not all were successful in doing so. The net result of these combined problems was that approximately 145 fewer ballots were issued for this election than for prior elections, and that it would now be impossible to know who had voted and who had not. Plaintiffs in the Lucas case alleged violation of constitutional rights. Their requested relief was that the errors "should be fixed."

Defendants vowed to track down the cause of the problems, but nevertheless alleged the court has no jurisdiction and the case should be dismissed.

In Ruitter, Plaintiff seeks a declaratory judgment that the election ordinance was not properly adopted and therefore the ordinance, specifically that section which requires a residential address to be an eligible voter, should be declared unconstitutional. In addition, Plaintiff requested that all members with postal box addresses should be sent ballots and allowed to vote.

Defendant's Motion to Dismiss asserted the matter was subject to a pending election challenge filed by Plaintiff, which was to be heard by the Election Board Hearings Officer; and that the Complaint makes no allegations of "impropriety" by the Board.

While disagreeing with Defendant's assertions, nevertheless, **Case No. 05-147-EB is dismissed, for the following reasons:**

The Election Board is established by the Tribal Council under its Constitutional mandate (Constitution, Article IV, Section 7(a)). The Election Ordinance appoints an Election Board, whose responsibility is to conduct "elections under the Constitution." Ordinance #01-200-02, 1.01, 3.09. Section 5.01 of the Ordinance empowers the Board to "issue such regulations, consistent with the Constitution, as may be necessary to properly conduct an election."

Election Board Regulations 1-4-1 requires the name and residential address to be on file with the Enrollment office to be eligible to vote. Given that elections are conducted in various geographic districts, this requirement appears to be reasonable and necessary, and violates no constitutional protection. Nor did Plaintiff articulate any fact or principal which could be considered a violation of the Tribal Constitution.

THEREFORE, IT IS THE ORDER OF THE COURT that Case No. 05-147-EB is dismissed. The Court declines to issue any declaratory judgment in the matter.

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In Lucas et al, Case No. 05-146-EB, it is clear that many Tribal members were denied the constitutional right to vote in a special election for a seat on the Tribal Council, and that the loss of the vote was through no fault of their own. The Election Board Hearings Officer admitted the loss of the vote, but concluded the fault lay with AES, the contractor hired to conduct the election; and that the Election Board was not responsible for any errors which may have been made. The Court disagrees with this conclusion.

The Election Ordinance mandates that elections are the responsibility of the Election Board. Certainly, the Election Board may hire an outside contractor to conduct an election, but that does not relieve the Board of the responsibility to conduct the election in a manner "consistent with the Constitution." If the Board is not responsible then it has ceded its constitutional mandate, which it has no authority to do. Further, if the problem can be attributed to a difference between procedures or requirements in the Enrollment Office and the Election Board, it was incumbent upon the Board to know about such differences and work with the Enrollment Office and AES to avoid the problems those differences created.

Denial of the right to vote, for whatever reason, is a constitutional issue. On that basis alone, this court has jurisdiction in this case.

What remedy is there for Plaintiff's loss? Because so many Tribal members were inadvertently denied the vote, and that it is impossible to determine how many members may have avoided the loss through extraordinary measures taken on their own, it appears to the Court the only proper way to guarantee the integrity of the special election is to void the results of the August 19, 2005 ballot, and hold a new election. The Election Board should promptly take whatever steps are necessary to guarantee all eligible members are given the opportunity to vote, and hold the special election within a reasonable time from the date of this order.

WHEREFORE, IT IS ORDERED that the Ex-Parte Order for Stay of Swearing in of Candidate, issued in Case No. 05-146-EB, shall remain in effect.

IT IS FURTHER ORDERED; the results of the Special Election held August 19, 2005, are void;

IT IS FURTHER ORDERED the Election Board shall take all necessary steps to guarantee all registered voters are given the opportunity to participate in a new special election, which is to be held within a reasonable time of the date of this order.

Date

10/13/05


DANIEL BAILEY, Chief Judge

**Little River Band of Ottawa Indians
Tribal Court
3031 Domres Rd.
Manistee, MI 49660
(231) 398-3406**

Michelle Lucas,
Sherman Moore,
Lindsay Austin, and
Linda Hoover

File # 05- 147EB

in pro per,

On behalf of themselves and all other Little River Band qualified electors
who did not receive ballots for the August 2005 election

v

Little River Band of Ottawa Indians Tribal Council and Election Board

Michelle Lucas, P.O. Box 35, Luther, MI 49656
Sherman Moore, P.O. Box 253, Bear Lake, MI 49614
Lindsay Austin, P.O. Box 34, Luther, MI 49656
Linda Hoover, Box 153, Luther, MI 49656

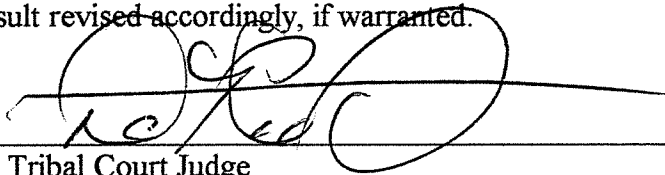
EX PARTE STAY OF SWEARING IN OF CANDIDATE

The Court, having reviewed Plaintiffs' Verified Motion for Entry of Ex Parte Stay of Swearing in of Candidate, and finding that Plaintiffs would be irreparably harmed unless a stay in this matter is entered;

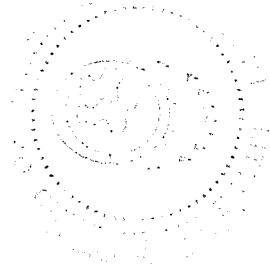
Therefore, the Little River Band of Ottawa Indians Tribal Council and Election Board are hereby stayed from authorizing the swearing in of a new Tribal Council member until the ballots of all qualified electors, including Plaintiffs, are distributed and counted for the August 19, 2005 election and the election result revised accordingly, if warranted.

8/25/05

Date



Tribal Court Judge



TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

MICHELLE LUCAS, SHERMAN MOORE,
LINDSAY AUSTIN and LINDA HOOVER,
Plaintiffs-Appellees,

v.

Case No. 05-198-AP

LITTLE RIVER BAND OF OTTAWA
INDIANS ELECTION BOARD,
Respondent-Appellant.

Appearances: Christopher M. Bzdok for the Respondent-Appellant and
In Pro Per Plaintiffs-Appellees.

Before: Michael Petoskey, Chief Justice; Stella Gibson, Associate
Justice and Ryan L. Champagne, Associate Justice.

By: Michael Petoskey, Chief Justice, for a unanimous Court.

I. Introduction

This matter comes to this Court on an appeal by the Respondent-Appellant, Election Board of the Little River Band of Ottawa Indians (Election Board). The Election Board argues that the Tribal Court erred when it assumed jurisdiction over this matter, when it issued an *ex parte* order and when it denied the Election Board's *Motion For Reconsideration*. On the other hand, Plaintiffs-Appellees, Michelle Lucas, Sherman Moore, Lindsay Austin and Linda Moore (Appellees) argue that Tribal Court is protecting their constitutional right to vote and did not err.

II. Brief Factual Background

1. The Little River Band of Ottawa Indians Election Board conducted a General Election on April 29, 2005.
2. Prior to that General Election, the Tribal Enrollment Office notified Tribal members with post office boxes that they would not receive a ballot unless they updated their addresses with a physical address.
3. Appellees did receive ballots to vote in that General Election.
4. Subsequently, the Election Board conducted a Special Election August 2005 to then fill a vacant Tribal Council position.
5. Appellees did not receive their ballots to vote in this subsequent Special Election.
6. Appellees became concerned when they did not receive their ballots and left voice mail messages on the Election Board's answering machine.
7. Appellees did not receive any kind of response from the Election Board.
8. The Election Board posted the results of the Special Election on August 19, 2005,
9. Appellees then filed a request with the Tribal Court to enter an *Ex Parte* Stay of the swearing in of candidate with the highest number of votes so that "wrongfully denied ballots could be distributed and counted before the actual candidate was declared".
10. The Tribal Court assumed jurisdiction, entered the requested stay, declared the results of the Special Election void and ordered the Election Board to take "all necessary steps to guarantee all registered voters are given the opportunity to participate in a new special election..." (underline provided for emphasis by this Court).

III. Legal Analysis

The issue before this Court is: Where to draw the line between the authority of the Election Board and that of the Tribal Court.

This issue arises again because of this Court's recent decision that the Tribal Constitution provides broad powers to the Tribal courts, including the

power of judicial review. See *Little River Band of Ottawa Indians Election Board v. Beccaria*, Case No. 05094-AP. The Election Board, at *Oral Argument* in this case, concedes that this Court correctly decided that case. However, the Election Board now asks this Court to clarify the scope of the Tribal Court's jurisdiction to review challenges and disputes alleging constitutional violations. The Election Board recognizes that the Tribal courts' jurisdiction may be construed either broadly or narrowly. Furthermore, the Election Board asks that this Court reverse the Tribal Court's decisions because the Tribal Court erred in issuing the *ex parte* order and in denying the remedy presented by the Board, even if the Tribal Court was correct under the holding in *Beccaria* to assume jurisdiction over this matter.

The Election Board concedes that Appellees did not receive their ballots. In fact, there were about forty other Tribal members in the Nine-County District who did not get a ballot to vote in the Special Election, despite of having updated their addresses of record with physical addresses. The Election Board used an independent Election Contractor to conduct the Special Election. Thus, it is not clear why these Tribal members did not receive ballots. In addition, contacts made by Appellees to rectify the failure were of no avail because of two other circumstances. First, there was a failure or malfunction of the answering machine that went unnoticed for some time. Second, there was an Election Board staff support position that was vacant during this critical time. The Election Board describes the context of this case as "a culmination of a series of bad circumstances". Context is everything to understanding and the development of

good law. It is sometimes said that “[b]ad facts make bad law”. Certainly, this Court wishes to avoid making bad law based upon bad facts. Nonetheless, context provides meaning for the development of good governmental systems because it shows what is really going on and what is needed.

A narrow construction of this Court’s decision in *Beccaria* would confine judicial power to review of the constitutionality of the Election Board regulations. On the other hand, a broad construction, *i.e.* to review any act or omission by the Election Board that infringes on a Tribal member’s constitutional rights, has the potential of giving the Tribal courts jurisdiction over almost all elections matters because Tribal elections touch upon so many constitutional rights.

This case demonstrates that there must be a way to correct errors, omissions and mistakes. It is not necessary in deciding this case to draw the line between Election Board authority and that of the Tribal courts. **However, it is clear that as Tribal election systems continue to develop that there must be a way to correct errors, omissions and mistakes.** We understand that the Election Board continues its work to refine its regulations. This Court respectfully gives them the opportunity to further develop their systems. If the Election Board provides its own hearing process for the correction of errors, omissions and mistakes, this Court will require an exhaustion of that administrative remedy.

This Court has been apprised that the identity of those Tribal members, situated as Appellees are, has been ascertained. Thus, the reason that the Tribal Court ordered an entirely “new” election is moot, *i.e.* it is now known who received ballots and who did not. Given that the General Election is now just

months away, the only practical remedy is that ballots be mailed to those Tribal members in the Nine-County District, who like Appellees, did not receive their ballots to vote in the Special Election.

IV. Attempted Intervention

After the *Oral Argument* in this matter, the top vote-getter mailed this Court a letter requesting dismissal based upon information she learned at *Oral Argument*. She is not a party to this action. Therefore, she has no legal standing to request dismissal.

V. Conclusion

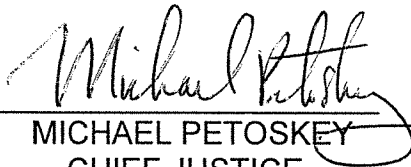
Tribal systems must be allowed the opportunity to continue to develop. Therefore, this Court respectfully declines to “draw the line in the sand” in regard to the intersection of authority between the Election Board and the Tribal courts because to do so would be to act prematurely.

VI. Order

WHEREFORE, FOR ALL OF THE FOREGOING, this Court orders that the Tribal members in the Nine-County District, who like Appellees, did not receive their ballots to vote in the Special Election be allowed to exercise their constitutional right to vote so that this Special Election can be concluded. Their votes should be counted on top of those already cast. There is no need for an entirely new election.

This Court understands that the delay in resolving this matter before this Court was maybe another example of the "culmination a series of bad circumstances", i.e. there was indecision of whether the Election Board's legal representation would continue. Thus, there was substantial delay in the briefing.

IT IS SO ORDERED, this 25th day of May 2006.


MICHAEL PETOSKEY
CHIEF JUSTICE