

Ryan Champagne v. Karen Love and LRBOI Election Board

21046EB

Summary: This case was heard by Judge Pro Tem Allie G. Maldonado. Plaintiff filed a complaint against Defendants, alleging that Defendant Love violated Election Board Regulations, Chapter 14, Ethical Standards, by making a defamatory statement against Plaintiff during a private phone call with a relative. Plaintiff also requested that the matter be remanded to the Election Board to start the removal process.

Decision and Order: The Court found that, to be in violation of the Election Board Ethical Standards, expression of views in support or against any candidate for office requires needs to occur in public. Because Defendant's conversation was a private one, the court found that Defendant Love was not in violation of the Ethical Standards and dismissed the complaint as it applied to her. Furthermore, because the complaint was dismissed as to Defendant Love, the Court found that the matter against the Election Board was also dismissed because without a cause of action, the Court cannot compel the Election Board to provide the relief requested

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

PLAINTIFF:

NITUMIGAABOW RYAN CHAMPAGNE

CASE NO. 21046EB

V.

HONORABLE ALLIE MALDONADO

DEFENDANT:

KAREN LOVE, ELECTION BOARD MEMBER and
LRBOI ELECTION BOARD

NITUMIGAABOW RYAN CHAMPAGNE

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History of the Case

This case was filed by the Plaintiff on February 23, 2021 with the Little River Band of Ottawa Indians ("LRBOI") Tribal Court alleging that Respondent Election Board member, Karen Love, violated Election Board Regulations, Chapter 14, titled Ethical Standards. The Plaintiff invoked Article IX Section 4(c) of the LRBOI Constitution which allows the Tribal Court to settle the matter. For relief, the Plaintiff requested the Court: make a finding of fact that Election Board member Karen Love willfully violated Election Board ethical standards; make a finding of fact that Defendant Karen Love made a defamatory statement against the Plaintiff and such action was done with malice; and remand the matter to the Election Board to start the removal process.

The Respondent 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 had jurisdiction to hear the case.

Next the Plaintiff made a motion on the record objecting to the Election Board attorney representing the Defendant Karen Love contending that it was a conflict of interest. After hearing arguments from both sides, the Court found that the Election Board is a necessary party under 4.205 of the Court Civil Rules of Procedure with aligned interests at this phase of the dispute, joined them to the litigation and denied the Plaintiff's motion.

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.

(A second case, 21047EB, was filed by the Plaintiff on February 25, 2021 challenging a decision by the Election Board to deny what the Plaintiff described as an "Election Challenge" seeking declaratory and injunctive relief.

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.)

JURISDICTION

At the outset of the hearing, the Plaintiff made a motion objecting to the jurisdiction of the LRBOI Trial Court to hear the matter. Whether a Court has jurisdiction to hear a case is a fundamental question that every court must answer at the outset of a proceeding. Therefore, the Court heard arguments from both parties on this important issue before considering the motion to dismiss.

The Plaintiff argued that the Tribal judiciary as a whole had the authority to hear allegations of impropriety by the Election Board and its members, not the LRBOI Trial Court alone. He anticipated a panel consisting of the judges of both the LRBOI Trial Court and the Appellate Court would be hearing his case. He based his assumption on the following language of the Constitution of the LRBOI in Article IX, Section 4(c):

"Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary."

The Plaintiff argued that the plain language meaning of "Tribal Judiciary" should be interpreted to require a panel including all members of the LRBOI judiciary. Furthermore, the Plaintiff argued that when the LRBOI judiciary handles ethics complaints against its own

members, those complaints are heard by a panel made up of all the members of the LRBOI judiciary.

The Defendant disagreed, pointing the Court to Article VI of the Constitution which establishes the Tribal Court. Section 1 reads as follows:

“The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish.”

Reading the language of Article IX, Section 4(c) in a vacuum, it is understandable that the Plaintiff believed that a panel should hear his case instead of the trial court. However, statutory construction requires that laws not be read in a vacuum, but rather the document containing laws must be read as a whole and similar language must be read consistently whenever possible. Statutory interpretation starts by examining the plain language of the statute and apply their usual and ordinary meanings.

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 first looks at the plain language of the LRBOI Constitution in forming the judiciary.

Webster’s online dictionary defines “consist” as follows:

“...lie, reside...or...to be composed or made up...”

Since the plain language of the LRBOI Constitution makes it clear that the Trial Court is within the Tribal judiciary, the Trial Court may hear a case of this nature under the authority of Article XI.

There is other support in the LRBOI Constitution for the LRBOI Trial Court hearing this case. 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.

This Court has jurisdiction as the Plaintiff is a Tribal citizen, the Defendant is the LRBOI Election Board, and an Election Board member and the matter involves the election for the LRBOI Tribal Council. **Therefore, the COURT FINDS that both Article IV, VI and IX of the LRBOI Constitution gives the LRBOI Trial Court jurisdiction to hear this case.**

As to the Plaintiff's comparison that the Tribal judiciary ethics complaints are heard by a full panel of all members of the Tribal judiciary that is based on language quite distinct from the language at issue here. Article VI, Section 6(b) of the LRBOI Constitution makes it clear that judicial removal is heard by a panel:

"A Tribal Judge may only be removed by a vote of seven (7) of the nine (9) Tribal Council members following recommendation of removal *by a majority of the remaining Tribal Judges.*" (Emphasis added.)

Here, this unambiguous language requires an ethics complaint regarding of a fellow member of the Tribal judiciary, to be heard by the full judiciary (minus only the member in question). Handling of an ethics complaint by a panel is undoubtedly how the LRBOI Constitution anticipates handling ethics complaints against the Tribal judiciary, but nothing suggests the same procedure controls how other ethics complaints should be handled in other branches of government.

CONFLICT OF INTEREST AND JOINDER

Next the Plaintiff made a motion on the record objecting to the Election Board attorney representing the Plaintiff contending that it was a conflict of interest. He argued that since the Election Board is the same body that would be responsible for removing Ms. Love should she be guilty of violating Election Board Ethical standards, he objected to both their participation in the case and the use of the Board's attorney for Ms. Love's defense. Finally, the Plaintiff told of his personal knowledge of past practices in other types of litigation against individuals for ethics violations and he considered that as precedent for not allowing Defendant Karen Love the use of the Election Board attorney here. The Plaintiff was not able to offer the Court any support in law for his positions and the Court could find none.

The Defendant challenged the motion and asked the Court to consider the Election Board as a party to the litigation. The Defendant's first argument was that the Election Board thought the matter impugned their character as a body because only action taken by Election Board members in their official capacity could be heard by this court. The Defendant's second argument was that the Board voted to have their attorney represent both of them in the litigation. Finally, the Defendant's last argument was to concede that if the Court found Ms. Love guilty of violating the Election Board's Ethical Standards, the Election Board would be required to remove Ms. Love from the Board and would do their duty without hesitation.

The LRBOI Constitution gives the Election Board broad authority to, “issue such rules and procedures as may be necessary to carry out tribal elections...” Under this mandate, the Election Board created a set of ethical standards expected of both the Board and individual members. See The Little River Band of Ottawa Indians Election Board Regulations, Chapter 14, “Ethical Standards.” The important job of the Election Board in offering free and fair elections to the Tribal citizens is reflected in the high standards to which all Election Board members are held. Section 1 (B) of the rules reads:

“While acting in an official capacity as an Election Board they shall not engage in the following activities:

1. Shall not endorse any Candidate.
2. Announce views in support of or against any Candidate for Elected Office,
3. Participate in any Recall petition drive or Election.
4. Expressing views on behalf of the Election Board during a Membership Meeting
5. Endorsing a particular Candidate over another
6. Campaign for a particular Candidate.
7. Shall not except gifts or favors from any Candidate.
8. Serve as a Principal Sponsor for any petition.
9. Shall not solicit funds for any Candidate.
10. Shall recuse themselves from deliberations or voting on Election Matters:
 - a. Where such involvement may result in personal gain;
 - b. Where a personal bias or prejudice may exist; and
 - c. Where there is a reasonably close family relationship to the individual requesting action by the Election Board.”

(Emphasis added.)

Section 2, Allegations of Impropriety acknowledges that there are prohibited activities in Section 1(B) which could apply to individual members of the Board:

“Complaints. Allegations of Impropriety against any Election Board Member shall be settled by the Tribal Court as required under Tribal Constitution, Article IX, Section 4(c).” (Emphasis added.)

Read together, these two sections tell the Court that the only actions the regulations anticipate the Court will consider a violation of the ethical standards are actions taken by individual Election Board members or the Board as a whole *in their official capacity* as members of the Election Board. Thus, any violation by an individual election Board member can only stem from their service on the Board and not in a non-official or personal capacity. Accordingly, having the Election Board attorney represent an Election Board member is not only appropriate, but standard.

Furthermore, because the Plaintiff requested the Court to find Ms. Love willfully violated the ethical standards for members of the Election Board, the relief that he requested if granted

would have bound the Election Board under its regulations to remove her. See Section 3(A), Removal from Office:

“A member of the Election Board *shall be removed* from his or her office for one or more of the following reasons:

1. Willful violation of the ethical standards for Members of the Election Board as set forth under these Regulations...”
(Emphasis added.)

Therefore, the Court FINDS that ethical violations and complaints under Chapter 14 of the Election Board’s Regulations can only occur when the Board or an individual member is acting in their official capacity, making representation of the Board or individual Board Member defendants by the Election Board attorney appropriate. Furthermore, the Court FINDS that because the relief sought by the Plaintiff requires action by the Election Board if the Plaintiff prevails, the Election Board is a necessary party under 4.205 of the Court Civil Rules of Procedure with aligned interests at this phase of the dispute and the Court joins them to the litigation and denied the Plaintiff’s motion.

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.

The Plaintiff told the Court that an elder he respects said that Defendant Love made very serious allegations regarding the Plaintiff’s history in a personal telephone call to the elder. The Plaintiff understandably was concerned about the serious nature of the allegations and he worried that if the allegations were repeated to a large number of people the statements could hurt his career, his personal life, and his current bid for Tribal Council.

Defendant Love denied making the statements. Defendant Love added that even if the statements were made, the facts in the Plaintiff’s complaint show that the alleged conversation in question was a private conversation wherein she was acting in her personal capacity and not engaged in any kind of official Election Board activity.

For the purpose of a motion to dismiss for failure to state a claim upon which relief can be granted, in this case the Court has to ask this question:

“If at a trial the Plaintiff proves that the Defendant made the alleged damaging statements regarding the Plaintiff’s history, would he be entitled to the relief he is requesting?”

This is how the LRBOI Rules of Civil Procedure more formally describes the rule. Chapter 4.116 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:

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(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.

The Plaintiff’s complaint states that if the allegations are proven true, then Defendant Love is in violation of Election Board ethical standards outlined in Election Board Regulations at Chapter 14, Section 1(b)2. That regulation read as follows:

“While acting in an official capacity as an election board they shall not...Announce views in support of or against any Candidate for Elected Office...”

Under a motion to dismiss like this one, if Defendant Love is not in violation of the regulations cited in the complaint, it does not matter if the claim is true because the Court has no authority to offer relief. The relief the Plaintiff requested would require the Defendant Election Board to

remove Defendant Love. However, without a violation of the regulations there is no action the Court can impose upon Defendant Election Board either.

In analyzing this section of the regulations, the Court again must follow the rules of statutory construction. Therein, the Court consulted the Webster's dictionary online to determine the plain meaning of the regulation's language. Webster's dictionary defines an "official" as "one who holds or is invested with an office: OFFICER...government officials." Webster's defines "capacity" as "legal competency or fitness." Together, the Court reads acting in an "official capacity" as meaning, "while acting as a government official." **Therefore, the Court FINDS that in this case the language, "while acting in an official capacity" as meaning while acting as a member of the Election Board.**

Applying this meaning to the facts in hand, even if the Plaintiff could prove at trial that the Defendant Love made the statements in question, nothing in the Plaintiff's complaint suggests the Defendant Love was acting in an official capacity as a member of the Election Board during the call. On the contrary, the fact she was talking to a relative would undercut such an argument. The Court next looked at the meaning of "announced views."

The meaning of "announce views" provides further grounds for dismissal. Webster's online dictionary defines the word "announce" as meaning, "to make known publicly." Publicly is defined as, "in a manner observable by or in a place accessible to the public." It would be a very unique circumstance where a private telephone conversation could be considered as being made "in a manner observable by or in a place accessible to the public." **Therein, the Court FINDS that in order to be in violation of the language in the Election Board Ethical Standards "announce views," the expression of those views requires support for or against any candidate for office to occur in public.**

In total, the Court FINDS the rule to be as follows when applied to individual Board members: "While acting in their official capacity as a Member of the Election Board, the Board's members must not publicly announce their views in support of or against any candidate for elected office." This rule makes sense and does not in any way conflict with freedom of speech under the Indian Civil Rights Act because it is a narrowly tailored restriction on freedom of speech designed to further the LRBOI's compelling governmental interest in free and fair elections. In order for elections to be free and fair, Election Board members must be very careful not to put their thumb on the scale for or against any candidate in a way that might impact an election. Election board members vote, and certainly have opinions on candidates. Discussing those opinions privately amongst friends and relatives might influence a few votes but announcing those opinions publicly while in their role as an Election Board member could have a powerful impact on the outcome of the election. This is the outcome the regulations seek to avoid.

Now that the rule is clear, the Court must apply it to the facts of this case. The Plaintiff stated in his complaint that the damaging statements occurred on a private phone call between two relatives. The Plaintiff did argue that making private statements to an individual with a great deal of influence was equivalent to making a public statement. The Court did not find this argument persuasive. Furthermore, the Plaintiff's complaint does not allege any special

circumstances regarding the private phone call that could change the character of a private call to public. **With the definition above in mind, the Court FINDS it is impossible for Defendant LOVE to have "announced views" on any topic during this conversation which the Court found to be private. Therefore, even if everything the Plaintiff alleged is true because the law offers no relief for damaging statements made in a private conversation the Court cannot provide the Plaintiff with relief, therefore the Court must DISMISS the complaint as it applies to Defendant Love.**

As relief for his claim, the Plaintiff requested that the Court remand the case to the Election Board so the Board could start the removal process. As the Plaintiff's complaint as to Defendant Love is dismissed, so must the case against the Election Board because without a cause of action the Court cannot compel the Election Board to provide the relief requested. **Therefore, the Court FINDS the matter against the Election Board is also dismissed.**

SO ORDERED:



Judge Pro Tempore Allie Maldonado

4/2/21
Date

Ryan Champagne v. LRBOI Election Board**21047EB**

Summary: This case was head by Judge Pro Tem Allie G. Maldonado. Plaintiff filed a complaint against Defendant, alleging the following: 1) Defendant issued a decision for an “Election Dispute” when Plaintiff filed an “Election Challenge; 2) Defendant errored when it denied Plaintiff’s request to review candidate’s information on when they obtained their candidacy packets; 3) Defendant errored when it failed to adhere to Election Board Regulation Chapter 3, Section 2(c)5; 4) Defendant 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) Defendant errored when it possibly certified candidate(s) who were ineligible to serve in violation of Chapter 4, Section 7 of the Election Board Regulations.

At the outset of the hearing, Plaintiff made a motion on the record objecting to the jurisdiction of the LRBOI Trial Court to hear the matter.

Decision and Order: The Court found that Article VI of the Constitution gives the LRBOI Tribal Court jurisdiction to hear the case. Regarding Plaintiff’s other allegations, the Court found that: 1) Plaintiff undoubtedly filed an election dispute and therefore dismissed the allegation that for failure to state a claim upon which relief can be granted; 2) Plaintiff did not properly make a request to review existing public documents during normal office hours and therefore dismissed the allegation as it applies to the Defendant for failure to state a claim upon which relief may be granted under law; 3) Plaintiff failed to claim any violation of any Tribal law and that Plaintiff failed to state a claim upon which relief may be granted under the law; 4) Plaintiff failed to cite any authority in the Election Board Regulations or elsewhere to support this allegation, Plaintiff failed to claim any violation of any Tribal law, and Plaintiff failed to state a claim upon which relief may be granted under the law; and 5) Plaintiff would have had to at a minimum have prevailed on allegation (3) and/or (4) but because the Court found those claims meritless, this claim too must fail.

The Court found that Plaintiff failed to state a claim upon which relief may be granted in all his claims, and therefore all requests for relief by the Plaintiff were denied and the case was dismissed.

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

PLAINTIFF:

NITUMIGAABOW RYAN CHAMPAGNE

CASE NO. 21047EB

V.

HONORABLE ALLIE MALDONADO

DEFENDANT:

LRBOI ELECTION BOARD

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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:

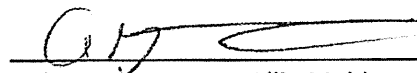
“Members of the Tribal Council and the Tribal Ogema shall be elected in the month of April, the date to be set by the election board. The conduct for all tribal elections, including registration requirements, shall be prescribed and provided for by the Election Board.”

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

Diane Lonn v. Julie Wolfe and LRBOI Election Board**21103EB**

Summary: This case was heard by Judge Daniel Bailey. Plaintiff filed a motion for Ex Parte Order requesting a temporary restraining order against certifying the final election results and swearing in of Julie Wolfe as at-large representative. Plaintiff alleged that Julie Wolfe was not a resident of the State of Michigan until August 14, 2020 and was therefore not an eligible candidate for the At-Large seat. Plaintiff alleged that the Election Board erred when it determined she should have filed her election challenge prior to the primary election.

Decision and Order: The Court found that the elements for an Ex Parte order were not met, but it did schedule an emergency hearing on the matter. The Court found that Petitioner should have filed an Election Dispute instead of an Election Challenge and that the Election Board exercised due diligence in determining Respondent Wolfe's residency and certifying her as a candidate. The Court dismissed Plaintiff's request for a temporary restraining order based on the preponderance of evidence presented by Respondents.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 DOMRES ROAD
MANISTEE MICHIGAN 49660
(231) 398-3406

PETITIONER:
DIANE LONN

Case Number: 21103EB
Judge Daniel Bailey

v.

RESPONDENTS:
JULIE WOLFE and
LITTLE RIVER BAND ELECTION BOARD

Petitioner:
Diane Lonn
1207 W. Merkey Road
Manistee, Michigan 49660

Respondents:
Julie Wolfe
217 Ninth Street
Manistee, Michigan 49660

Attorneys for the Election Board:
Steven Sandven
Jo Anne Ybabien
11294 Gold Mountain Loop
Hill City, South Dakota 57745

ORDER AFTER EMERGENCY HEARING HELD ON MAY 19, 2021

On May 13, 2021, the Petitioner filed a "*Motion for an Ex Parte Order requesting a Temporary Restraining Order against certifying the Final Election Results and swearing in of Julie Wolfe, as At Large Representative.*" Petitioner alleged that Respondent Wolfe was not a resident of Michigan for the six months prior to the start of the election and therefore did not meet the requirements of candidacy.

In order to issue an Ex Parte Order, the court must be satisfied by the specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued. Since none of those requirements were met, an emergency hearing was scheduled. Petitioner and respondents were served by mail

and email with a "read receipt." The Attorneys were notified by email with a "read receipt" since they would not have received the hearing notice in time if it were mailed.

The hearing was held with all parties present via Zoom. Both the parties relied on their written submissions to the Court and placed testimony on record.

The Election Board attests that the timing of the deadlines for residency is based on the Regular Election and not the Primary Election. In the Election Board Regulations, Chapter 3, Sec. 1, A. states "A Primary Election is designed to reduce the overall pool of Candidates for the Regular Election to a more manageable number for the Membership." It is plausible that there may not be the need for a Primary Election based on the number of candidates for the open positions.

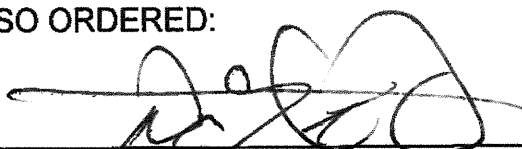
The Tribe's Constitution is the law of the land for the Tribe. Under Article IX – *Election* in the Constitution, "Section 2 – *Election Methods*: (a.) Regular Elections. Members of the Tribal Council and the Tribal Ogema shall be elected in the month of April, the date to be set by the Election Board. (b.) Special Elections. Special Elections shall be called by the Election Board, when appropriate or when required under this Constitution, to remove, recall, and fill vacancies of elected officials and to submit initiatives and referenda to the Tribal Membership." There is no mention of a Primary Election in the Constitution.

The Court agrees with the Election Board when they state that the Petitioner was mistaken when she filed a "challenge" to the Election. She should have followed the regulations for an "Election Dispute" instead. According to the Election Board Regulations, Chapter 12, Section 1(C), "the tribal member thereafter has five (5) business days to file an Election Dispute but in any case, no Election Dispute may be filed fewer than ten (10) business days prior to the Election." This did not happen.

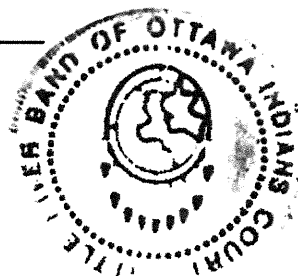
The Court finds that the Election Board exercised due diligence in determining Respondent Wolfe's residency and certifying her as a candidate. Furthermore, the Court finds the Motion by the Petitioner does not succeed and her request for a Temporary Restraining Order is hereby dismissed based on the preponderance of evidence presented by the Respondents in this matter.

This case is dismissed.

SO ORDERED:



Judge Daniel Bailey



May 19, 2021

Antonio Romanelli v. LRBOI Election Board

21-000503-EB

Summary: This case was heard by Judge Pro Tem Allie G. Maldonado. Plaintiff filed a complaint against Defendant, objecting to the Election Board's decision of his election challenge. Plaintiff's election challenge alleged that Ryan Champagne, a candidate for an outlying seat, had not provided notice of his prior conviction to the outlying membership. Mr. Champagne filed a motion to intervene in the case.

Decision and Order: The Court found that Article VI of the Constitution gives the LRBOI Tribal Court jurisdiction to hear the case. The Court granted Mr. Champagne's motion to intervene, finding that his intervention would not unduly delay or prejudice the adjudication of the rights of the original parties. The Court found that the Plaintiff failed to file his complaint with the Election Board within the deadlines provided for in the Regulations for filing election disputes and therefore, his complaint is time-barred. The Court found that the Election Board did not commit clear error in dismissing the Plaintiff's complaint because the Plaintiff filed an untimely election dispute, not a challenge. The case was dismissed with prejudice.



TRIBAL COURT

Little River Band of Ottawa Indians
3031 Domres Road
Manistee, MI 49660
Tel: (231) 398-3406
Fax: (231) 398-3404

ANTONIO ROMANELLI,
Plaintiff

Case No. 21-000503-EB

Honorable Allie Maldonado

v.

LRBOI ELECTION BOARD,
Defendant

Antonio Romanelli
Plaintiff, In Pro Per
2837 Romedius Street
Muskegon, MI 49444

LRBOI Election Board
Defendant
2608 Government Center Drive
Manistee, MI 49660

Law Office of Steven D. Sandven, PC
Jo Anne M. Ybablen
Attorney for Defendant
11294 Gold Mountain Loop
Hill City, SD 57745

ISSUE AND COURT'S RULING

The issue in this case for the Court is whether the Election Board made a clear error in dismissing the Plaintiff's complaint. The COURT **FINDS** that the Election Board did not commit a clear error in dismissing the Plaintiff's complaint. The Plaintiff's case is dismissed with prejudice.

Please read the full opinion for the Court's analysis.¹

¹ The Court informed the parties on the record of how it intended to rule. Court Rule 4.602 states that judgments and orders must be in writing. Therefore, this written order is the final order of the Court.

HISTORY OF THE CASE

The Court FINDS the facts are not in dispute. On August 28, 2020, the Election Board declared the 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 slate of candidates, including Nitumigaabow "Ryan" Champagne ("Mr. Champagne"), was certified by the Election Board by December 4, 2020. The election took place on April 30, 2021. Unofficial results show Mr. Champagne won a seat on Tribal Council.

On May 7, 2021, Antonio Romanelli filed what he called an "election challenge" to the Election Board. His complaint alleged that the Election Board wrongfully certified Mr. Champagne as a candidate for office because, in his opinion, Mr. Champagne did not properly disclose to the membership a prior attempted fraud conviction against the Tribe as required by the LRBOI Constitution and Regulations. The record shows that Mr. Champagne made public disclosures on his Facebook page on October 9, 2020 and in the Ludington Daily News on October 13, 2020. The exact language contained in both public disclosures was this:

"Pursuant to Article IV Section 3b(1) of the Little River Band of Ottawa Indians Constitution, this notice shall suffice as a public disclosure to the membership of the tribe under said terms. Nitumigaabow "Ryan" Champagne is an interested candidate for Tribal Council and has previously had a conviction of attempted fraud, a misdemeanor offense in 2006 under LRBOI tribal jurisdiction."

On May, 11, 2021, after reviewing the Plaintiff's complaint, the Election Board dismissed it with a written opinion but without a hearing. See Election Board Finding the Fact and Conclusions of Law dated May 11, 2021. The Election Board found the complaint to be an election dispute,

not a challenge. The Election Board could have dismissed the complaint for being untimely and left it at that. Instead, they additionally based their dismissal on their conclusion that Mr. Champagne's notice met the requirements of the Constitution and Regulations. The Election Board denied a hearing because there were no facts in dispute, which they determined made a hearing irrelevant.

The Plaintiff filed for an appeal of the Election Board's denial of his complaint in this Court on May 20, 2021. The Plaintiff only requested that the Court review the Election Board's decision to certify Mr. Champagne as a proper candidate for office. He did not challenge the fact that the Election Board denied him a hearing; therefore, that issue is not properly before the Court.

The Court initially scheduled a hearing for June 3, 2021. On May 26, 2021, the Defendant made an ex parte motion requesting a new date for the hearing in order to accommodate an already-scheduled Election Board hearing on other pending complaints regarding the most recent election. It has been a long-standing practice of this Court to treat election hearings as a priority and schedule them as quickly as possible in order to avoid unnecessary delays in the election process. The Court found the reason for the request in line with supporting election expediency and therefore granted the request on May 27, 2021.

On May 27, 2001, this Court issued an order titled, "AMENDED NOTICE ON APPEAL OF ELECTION BOARD DECISION," wherein a new hearing was scheduled for June 7, 2021, and notice was provided to the parties by email and mail.

On June 4, 2021, Mr. Champagne filed a Motion to Intervene with the Court.

JURISDICTION OF THE COURT

Whether a Court has jurisdiction to hear a case is a fundamental question that every court must answer at the outset of a proceeding. Article VI of the Constitution establishes the Tribal Court. Section 1 reads as follows:

“The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish.”

Since the plain language of the LRBOI Constitution makes it clear that the Trial Court is within the Tribal judiciary, the Trial Court may hear a case of this nature under the authority of Article XI.

Furthermore, 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.”

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 and the interpretation of Tribal law.

Therefore, the COURT FINDS that both Article IV, VI and IX of the LRBOI Constitution give the LRBOI Trial Court jurisdiction to hear this case.

STANDARD OF REVIEW

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). In addition, LRBOI Election Ordinance #08-200-02 sets few limits on the Election Board’s authority when it comes to regulating elections as it states the following:

“Election Rules and Procedures. The Election Board shall issue such regulations consistent with the Constitution.”
Section 6.01.

Therefore, the Court’s authority to review Election Board decisions is limited by the Election Board regulations that do not conflict with the Constitution.

The Election Board Regulations state the following:

“Review Standard. All appeals of Final Election Board Decisions before the Tribal Court, must be reviewed on a clear error standard. Additionally, the Tribal Court shall be bound by the Election Board's findings of fact. There shall be deference given to the Election Board's determination as the government officials charged with the responsibility for interpreting their own regulations. The Tribal Court review of the Election Board's determinations is limited to interpretation and application of law or regulation. No new or additional evidence in support of or in opposition to the Election Board's decision shall be introduced to the Tribal Court. The decision of the Tribal Court shall be final.”
Chapter 12, Section 4(C).

Consequently, the only issue for the Court to decide in this matter was whether the Election Board made a clear error in dismissing the Plaintiff’s complaint. The answer to this question lies solely in the complaint, the answer and the oral arguments provided to the Court.

ANALYSIS

At the outset of the hearing on the appeal of the Election Board's decision, the Court heard Mr. Champagne's Motion to Intervene. The Plaintiff did not object. The Defendant objected on the basis that the intervention was unnecessary as the Election Board contended Mr. Champagne would not offer additional arguments to their defense.

The LRBOI Rules of Civil Procedure control how the Court must rule on this issue and they state the following:

"Rule 4.209 Intervention...

(B) Permissive Intervention. On timely application a person may intervene in an action

(1) when a tribal statute or court rule confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

The ruling of this Court will directly impact whether Mr. Champagne is sworn in as a member of Tribal Council. His defense and the defense of the Election Board have questions of law and fact in common. Therefore, **the Court FINDS that intervention by Mr. Champagne will not unduly delay or prejudice the adjudication of the rights of the original parties and therefore, Mr. Champagne is allowed to intervene.**

The Plaintiff opened his argument by asking the Court to review whether Mr. Champagne's notices on Facebook and in a newspaper properly notified the membership regarding a previous attempted fraud conviction against the Tribe. He stated he felt that the notices would not notify "all" members as "all members" do not subscribe to the Ludington

paper or have Facebook.² Therefore, he believes the Election Board committed a clear error when it certified Mr. Champagne as a candidate for office.

The Election Board stated that they found the notifications by Mr. Champagne to be sufficient. Furthermore, they argued that the Plaintiff's complaint was untimely because it was an election dispute, not an election challenge. Mr. Champagne questioned whether a disclosure is even necessary since more than 10 years have passed since the conviction occurred.

The LRBOI Tribal Court has determined, as a matter of law, that it is insufficient to merely check the box on the Candidacy Packet indicating a past conviction for fraud; a candidate must take affirmative steps to disclose to the membership any convictions as described in the LRBOI Constitution and Election Ordinance. However, the Court has not yet specified the exact nature of such affirmative steps. Nikki Nelson & Dave Corey v. Little River Band of Ottawa Indians Election Board, Case No. 17-113 GC. However, the Court can only determine whether Mr. Champagne properly disclosed his conviction if the Plaintiff filed a timely election challenge and not an untimely election dispute.

Under Chapter 12 of the Election Regulations, an election dispute is any dispute relating to the election process while an election challenge is any challenge to the results or outcome of an election. Typically, election disputes happen before the election takes place as the election

² An election dispute or challenge to the Election Board is a legal proceeding and parties must be prepared to provide evidence in support of their positions. For example, it is not enough to "feel" all members did not have notice in the case at issue. The burden on the person making the complaint is to prove all members did not have notice with evidence such as witnesses or affidavits. However, the Election Board only needs to consider the presentation of evidence if the election dispute or challenge is timely.

process moves forward. Examples given in the Regulations of election disputes specifically includes candidate eligibility:

“Election Dispute means a complaint the object of which is to affect how the Tribal election is conducted as the Election process moves forward. An Election Dispute can question the *candidate eligibility*, the voter eligibility, the ballot, and the vote count process.” [Emphasis added.]

Election Board Regulations, Chapter 12, Section 1 (A), August, 2020.

Chapter 12, Section 1 (C) addresses explicitly the proper timing of an election dispute:

“[for purposes of submitting a timely Election Dispute, the period of time runs from the date that the Tribal Member had actual or constructive knowledge of the act or event giving rise to the dispute. The date that the Tribal Member had actual or constructive knowledge of the act or event giving rise to the dispute is not included. The Tribal Member has five (5) business days to file an Election Dispute but in any case, no Election Dispute may be filed fewer than ten (10) business days prior to the Election.”

There is no doubt that the issue the Plaintiff raised of whether Mr. Champagne properly notified the membership of a previous attempted fraud conviction against the Tribe is a matter of candidate eligibility. Candidate eligibility must be challenged before the election takes place because it is an election dispute. See Chapter 12, Election Board Regulations. The Plaintiff had ample opportunity to file an election dispute based on the eligibility of a candidate who he believed was unqualified to run. The statutorily defined deadline for filing an election dispute based on candidate certification was December 11, 2020, or five business days after the candidate pool was certified. The deadline for Candidacy Packet submission was October 16, 2020. The Election Board formally certified the candidates who met the requirements for elected office on December 4, 2020. The Plaintiff sat on his rights, and therefore, **this Court FINDS that Plaintiff failed to file his complaint with the Election Board within the deadlines**

provided for in the Regulations for filing election disputes, and therefore, his complaint is time-barred. See David Corey and Nikki Nelson v. Little River Band of Ottawa Indians Election Board and Ryan Champagne, #17182AP (2018).

CONCLUSION

The Court made the following findings:

1. There are no facts in dispute before the Court;
2. Article IV, VI and IX of the LRBOI Constitution give the LRBOI Trial Court jurisdiction to hear this case;
3. The standard for review in this case is clear error;
4. The only issue for the Court to decide in the Plaintiff's original filing was whether the Election Board made a clear error in dismissing the Plaintiff's complaint;
5. The Election Board did not err in dismissing the Plaintiff's complaint because the Plaintiff filed an untimely election dispute, not a challenge; and
6. Latches attached to the Plaintiff's complaint.
7. Mr. Champagne withdrew his request for damages and costs against the Plaintiff.

The Plaintiff's case in full is dismissed with prejudice.

6-10-21

Date

Allie Maldonado, sm.
Honorable Allie Maldonado

Shannon Crampton v. LRBOI Election Board**21-000504-EB**

Summary: This case was heard by Judge Pro Tem Allie G. Maldonado. Plaintiff filed a complaint against Defendant, objecting to the Election Board's decision to not grant

Plaintiff a hearing on his complaints. Defendant also made two motions on record: 1) to find Administrative Order 21-002-AO issued by Tribal Court to be unlawful; and 2) to find that it is unlawful for the Defendant to issue a partial final report before swearing in candidates for election.

Decision and Order: Regarding the two motions, the Court found that 1) Administrative Order 21-002-AO was lawfully enacted and the relief requested by Plaintiff in his motion was denied; and 2) based upon the plain language in the Election Board regulations, issuing a partial report is allowable and the relief requested by Plaintiff in his motion was denied.

As to Defendant's original complaint, the Court found that Article VI of the Constitution gives the LRBOI Tribal Court jurisdiction to hear the case. The Court also found that the Election Board did not err in dismissing the Plaintiff's complaint without a hearing because the Plaintiff filed an untimely election dispute, not a challenge. Additionally, the Court found that the Election Board did not commit clear error in refusing to grant the Plaintiff a hearing because the Election Board is only required to hold a hearing if it determines that the request has been properly made. The Court ruled that Plaintiff failed to file his Complaint within the deadlines provided for in the Election Code for filing election disputes and is time-barred.

Shannon Crampton v. LRBOI Election Board**21-000540-AP**

*Appeal has been filed and is pending in the LRBOI Court of Appeals.



TRIBAL COURT

Little River Band of Ottawa Indians
3031 Domres Road
Manistee, MI 49660

SHANNON CRAMPTON,
Plaintiff

CASE NO. 21-000504-EB

Honorable Allie Maldonado

v.

LITTLE RIVER BAND OF OTTAWA
INDIANS ELECTION BOARD,
Defendant

Shannon Crampton
Plaintiff
6735 E. M-72
Williamsburg, MI 49690

LRBOI Election Board
Defendant
2608 Government Center Drive
Manistee, MI 49660

Law Office of Steven D. Sandven, PC
Jo Anne M. Ybabien
Attorney for Defendant
11294 Gold Mountain Loop
Hill City, SD 57745

ISSUE AND COURT'S RULING

The issue in this case for the Court to decide is whether the Election Board made a clear error in dismissing the Plaintiff's complaints. The COURT **FINDS** that the Election Board did not commit a clear error in dismissing the Plaintiff's complaints. The Plaintiff's case is dismissed with prejudice.

The Plaintiff made two motions on the record that the Court heard. On the first issue, the Court **FINDS** Administrative Order A-21-2001 was lawfully enacted, and the Plaintiff's motion on that matter is denied. On the second issue the Court **FINDS** that the Election Board Regulations allow the issuing a partial report. The Court denies the Plaintiff's motion requesting that the issuing of a partial report as unlawful.

Please read the full opinion for the Court's analysis.¹

HISTORY OF THE CASE

The Court finds the facts are not in dispute. On August 28, 2020, the Election Board declared the 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 was 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 was not posted and mailed to all citizens directly from the Election Board 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.

The election took place on April 30, 2021. Unofficial results report that the Plaintiff lost his bid for reelection. On May 7, 2021, the Plaintiff filed several complaints with the Election Board which he styled as "election challenges." On May 14, 2021, the Election Board denied all of the Plaintiff's complaints in three separate opinions without a hearing. See Election Board Finding the Facts 1, 2, and 3 dated May 14, 2021. The Election Board found the complaints to be election disputes (not challenges) which the Plaintiff had ample notice of prior to the election but failed to bring to the Election Board until he lost his bid for reelection, and therefore, the complaints were filed in an untimely manner. Furthermore, even if the complaints had been timely, the Election Board would still have dismissed the complaints because it found some of the complaints to be outside of their authority to hear because they were based on Michigan law that is not applicable to the Tribe. Therefore, they denied the Plaintiff a hearing under Chapter 12 of the Election Board Regulations. In denying the Plaintiff a hearing, the Election Board also found that in one of the three complaints, the Court had already ruled on the matter in another identical case, making the case moot. See *Nitumigaabow Ryan Champagne v. The Little River Band of Ottawa Indians Election Board*, # 21047EB (2021).

Finally, the Election Board denied the Plaintiff hearings because they found no facts to be in dispute and therefore determined it was appropriate to weigh the Plaintiff's complaints on

¹ The Court informed the parties on the record of how it intended to rule. Court Rule 4.602 states that judgments and orders must be in writing. Therefore, this written order is the final order of the Court.

their own merits as if all facts presented were true and nonetheless, they concluded the Plaintiff did not have a claim in the law so a hearing would be futile.

The Plaintiff filed for an appeal of the Election Board's denial of his complaints in this Court on May 21, 2021. The Court scheduled a hearing which it provided notice as "NOTICE OF HEARING ON APPEAL OF ELECTION BOARD DECISION" for June 3, 2021. On May 26, 2021, the Defendant made an ex parte motion requesting a new date for the hearing in order to accommodate an already scheduled Election Board hearing on other pending complaints regarding the most recent election. It has been a long-standing practice of this Court to treat election hearings as a priority and schedule them as quickly as possible in order to avoid unnecessary delay in the election process. The Court found the reason for the request in line with supporting election expediency and therefore granted the request on May 27, 2021.

On May 27, 2001, this Court issued an order titled, "AMENDED NOTICE ON APPEAL OF ELECTION BOARD DECISION," wherein a new hearing was scheduled for June 7, 2021, and notice was provided to the parties by email and mail.

Also, on May 27 (after the Court continued the hearing), the Court received by email a copy of the Court's new Administrative Order 21-002 AO. That order put into writing the long-standing practice of the Court regarding election disputes and challenges by requiring that appeals to the Tribal Court occurring no later than five days from the Election Board's decision. Further, it requires the Court to set a hearing within 10 days of receiving the complaint, and it disallows the Court to grant adjournments except for extreme situations. The order also requires the Court to render a decision within three days of the hearing. In addition, the Administrative Order allows and encourages filings by fax or email.

JURISDICTION OF THE COURT

Whether a Court has jurisdiction to hear a case is a fundamental question that every court must answer at the outset of a proceeding.

Article VI of the Constitution establishes the Tribal Court. Section 1 reads as follows:

"The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish."

Since the plain language of the LRBOI Constitution makes it clear that the Trial Court is within the Tribal judiciary, the Trial Court may hear a case of this nature under the authority of Article XI.

Furthermore, 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.”

This Court has jurisdiction as the Plaintiff is a Tribal citizen, the Defendant is the LRBOI Election Board, and the matter involves the election for the LRBOI. Therefore, the COURT FINDS that both Article IV, VI and IX of the LRBOI Constitution give the LRBOI Trial Court jurisdiction to hear this case.

STANDARD OF REVIEW

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).

In addition, LRBOI Election Ordinance #08-200-02 sets few limits on the Election Board’s authority when it comes to regulating elections as it states the following:

“Election Rules and Procedures. The Election Board shall issue such regulations consistent with the Constitution.”
Section 6.01.

Therefore, the Court’s authority to review Election Board decisions is limited by the Election Board regulations that do not conflict with the Constitution. The Election Board Regulations state the following:

“Review Standard. All appeals of Final Election Board Decisions before the Tribal Court, must be reviewed on a clear error standard. Additionally, the Tribal Court shall be bound by the Election Board's findings of fact. There shall be deference given to the Election Board's determination as the government officials charged with the responsibility for interpreting their own regulations. The Tribal Court review of the Election Board's determinations is limited to interpretation and application of law or regulation. No new or additional evidence in support of or in opposition to the Election Board's decision shall be introduced to the Tribal Court. The decision of the Tribal Court shall be final.”
Chapter 12, Section 4(C).

Consequently, the only issue for the Court to decide in this matter was whether the Election Board made a clear error in dismissing the Plaintiff's complaint. The answer to this question lies solely in the complaint, the answer and the oral arguments provided to the Court.

ANALYSIS

At the hearing on the appeal of the Election Board's decisions, the Plaintiff opened his argument by bringing up an issue not in his complaint made to the Election Board or to the Court. He asked the Court to hear a motion finding the administrative order issued by the Court expediting election cases unlawful. The Defendant waived any objection to lack of notice on the issue; therefore, the Court agreed to hear the motion.

The Plaintiff argued that it was a conflict of interest for Judge Sherigan to issue the administrative order because of his concern that as a candidate for election, she benefits from election cases being handled quickly and not causing delays in the election process. The Defendant disagreed.

It is this Court's understanding that all election cases proceed on a fast track. Therefore, without the new administrative order, this Court would have handled the matter with the same speed regardless. In any event, this Court sees no conflict with Judge Sherigan issuing the order as it falls within the administrative duties of judges under the LRBOI Constitution, Art. VI, Section 8(f), which states:

"The jurisdiction and judicial powers of the Little River Band of Ottawa Indians shall extend to all cases and matters in law and equity arising under the Tribal Constitution or under the laws and ordinances applicable to the Little River Band of Ottawa Indians. Such powers shall include, but are not limited to grant warrants, writs, injunctions, *and orders not inconsistent with this constitution.*" [Emphasis added.]

Also, Art. VI Section 8(h) states judicial powers shall include, but are not limited to "establish[ing], by general rules, the practice and procedures for all courts" **Therefore, the Court FINDS Administrative Order A-21-2001 was lawfully enacted, and the relief requested by Plaintiff in his motion is denied.**

Next, the Plaintiff brought up another issue not in his initial complaint. He asked the Court to find that it is unlawful for the Defendant to issue a partial final report before swearing in candidates for election. The Election Board waived notice allowing the Court to hear the matter.

The Election Board Regulations make it clear that Election Board can vote to issue a partial final report regarding the election. The regulations read as follows:

"Approval. The Election Board shall vote on whether to approve the final report *or submit a partial final report* after the scheduled time for withdrawals, recount requests

and election challenges has lapsed, or after all recounts or challenges have been completed, whichever is later.” [Emphasis added.]
Election Board Regulations, Chapter 3, Section 11 (C).

The Election Ordinance states the following:

“Section 7. Swearing in New Officials

7.01. Conclusion of Election. The election shall be concluded upon submission by the Election Board of the Final Report to the Tribal Ogema, Tribal Council Speaker, and filing with the Tribal Court. Provided that, acceptance by the Tribal Council shall be by placement of the Final Report on the next available agenda of the Tribal Council, or by Special Meeting within five (5) days of receipt of the Final Report, whichever occurs earlier.

7.02. Swearing In. The newly elected Tribal Ogema or Tribal Councilor shall be sworn in at the Tribal Council meeting following receipt by the Tribal Council as set forth in section 6.01.”

At first glance, the ordinance and the regulations may seem in conflict with one another. However, under the statutory rules of construction, whenever possible, every word in a sentence and section must be given effect. K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 108 S. Ct. 1811, 1818 (1988); United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 371 (1988). Another basic principle of statutory construction is that the interpretation of statutes and rules of procedure should be done so that no part is rendered inoperative, superfluous, void, or insignificant. Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253 (1992).

Based on the plain language of the Election Board Regulations, **the Court FINDS that issuing a partial report is allowable and the relief requested by Plaintiff in his motion is denied.** This finding by the Court should not be construed as deciding whether or not candidates may be sworn in before a final report is issued as outlined in the Election Board Ordinance, as that issue was not properly before the Court.

Next, the Plaintiff asked the Court to issue an order continuing the hearing at a later date to give him additional time to prepare and to get an attorney. The Plaintiff stated that he had not had sufficient notice of the Defendant’s response to his complaint to proceed. Furthermore, he experienced technical difficulties in opening the attachments on his emails which contained the Defendant’s response to his complaint. Defendant objected on the record to continuing with the hearing.

The Court’s recent administrative order regarding election cases not only allows filings and notices by email, but it encourages it. Even prior to the Court’s recent administrative order, the Court has been using email service of process since the pandemic started. As stated above, under the Constitution, the Court is not restricted on how it may issue rules. In addition, Administrative Order 020-007 regarding Court operations was released in August of 2020. It

states, "Please provide an email address with your filing." The sentence immediately following states, "Your case is not deemed filed until you receive notice from the Court," making reasonable the inference that the Court intended to serve notice by email. **This Court FINDS that the practice of accepting and sending notifications and filings by email is consistent with its authority to make Court rules under the Constitution, especially under the extraordinary circumstances the worldwide pandemic has created.**

In order to try and address concerns regarding his email, the Court had staff resend the emails with the Defendant's response to two different email addresses provided by the Plaintiff. Once the Plaintiff verified he received them, the Court asked him how long he needed to read them. The Plaintiff asked for 20 minutes, which the Court gave him, and then proceeded to hear his oral argument on the issue of whether the Election Board was clearly in error when it dismissed without a hearing the Plaintiff's complaint about statements made by other candidates.

The Plaintiff's complaint to the Election Board concerned a variety of statements allegedly made against him by other candidates dating from March 7, 2021, and going back as far as 2017, which he claimed affected the outcome of the current election. In his original filings with the Election Board, he did not offer any proof that the current election had been impacted by the allegations. Instead, the Plaintiff filed a large number of largely irrelevant documents that he believed supported his complaint. In the Election Board's words, "...instead of specifying the particular misrepresentations and the evidence supporting such, Mr. Crampton provided the Election Board with volumes of unidentified transcripts, excerpts from Tribal Council meetings, social media postings, Michigan State Court cases, and the Michigan State Election Code, all of which he asserts constitutes evidence of misrepresentation and election fraud. The Election Board thoroughly reviewed each and every document but cannot ascertain the exact allegations of misrepresentation and evidence supporting same." See Defendant's Notice of Motion and Motion to Dismiss and Memorandum in Support of Motion to Dismiss, p. 3, Case no. 21-000504.

The Election Board stated in oral arguments that they dismissed his complaint without a hearing primarily because they determined his complaint to be an election dispute and not an election challenge. Hence, they found his filing untimely and therefore waived. Their written opinion could have stopped with an analysis of the timeliness of the complaint, but instead, it discussed the nature of the Plaintiff's complaint and addressed the Election Board's authority to answer complaints within those categories. The Election Board determined the Plaintiff's claim amounted to an allegation of fraud under the LRBOI Law and Order - Criminal Offenses – Ordinance 12.03. The Election Board found that it did not have the authority to hear criminal complaints. The Election Board also addressed the alleged violations of Michigan law and found that Michigan law is not only inapplicable to his allegations, but also has no precedential effect on the Election Board. There was also a discussion by the Election Board of freedom of speech which is clearly an issue for the Tribal Court, not the Election Board.

The Plaintiff responded by arguing that since the Election Board is responsible for ensuring free and fair elections, they have the authority to regulate candidate speech that might be criminal in nature. “Free and fair” elections is not a phrase in the Constitution, the Election Statute or the regulations, and it does not accurately describe the duty of the Election Board. The Election Board’s regulations are an authority that is binding in election matters. It describes the Election Board’s duty as follows in Chapter 14, Section 1(A):

“Members of the Election Board shall seek to uphold the integrity and fairness of Election processes, and shall seek to uphold due process and civility during hearings.”

Fairness must be interpreted within the boundaries of Tribal law as it relates to elections. Therefore, an election is fair when the Constitution, Tribal statutes and election regulations are followed.

The Plaintiff also wrongly argued that Michigan law should apply to the Tribe’s election. In an effort to bring oral arguments back to the issue before the Court, the Court asked the Plaintiff to support his argument that he filed an election challenge as opposed to an election dispute. The Plaintiff responded that what he filed was an election challenge because he believed it affected the outcome of the election.

If the Plaintiff filed an election challenge, his complaint was timely. If he filed an election dispute, his complaint was untimely, and the Election Board properly dismissed it. Under Chapter 8 of the Election Code, an election dispute is any dispute relating to the election process while an election challenge is any challenge to the results or outcome of an election. Chapter 12, Section 1, subsection C specifies the timing of an election dispute:

“[for purposes of submitting a timely Election Dispute, the period of time runs from the date that the Tribal Member had actual or constructive knowledge of the act or event giving rise to the dispute. The date that the Tribal Member had actual or constructive knowledge of the act or event giving rise to the dispute is not included. The Tribal Member has five (5) business days to file an Election Dispute but in any case, no Election Dispute may be filed fewer than ten (10) business days prior to the Election.”

Typically, election disputes happen before the election takes place as the election process moves forward. Examples given in the Regulations of election disputes include candidate eligibility, voter eligibility, issues with ballots and the vote count process.² Election challenges happen on election day or after the election and include issues that materially impact the outcome of the election; no exceptions to this definition could be articulated by the Election Board on the record. Examples of issues or actions that would properly be brought as election challenges would be irregularities with cast ballots, issues with the vote count or tabulation misreads, etc.

² This must refer to some aspect of the vote count process that happens more than 10 days before the election.

In this case, the actions that gave rise to the dispute involved statements made by other candidates dating from March 7, 2021, all the way back to 2017. Even if these candidates' statements were regulated under the jurisdiction of the Election Board and giving the Plaintiff the benefit of the doubt about when he knew the statement existed, the deadline for filing a proper election dispute was 10 days prior to the election. The nature of the allegations made in Plaintiff's complaint are properly classified as an election dispute, rather than an election challenge. Consequently, after considering oral arguments from both sides, the Plaintiff's complaint and the response filed by the Defendant the Court, the **Court FINDS that the Election Board did not err in dismissing the Plaintiff's complaint without a hearing because the Plaintiff filed an untimely election dispute, not a challenge.**³

The Court still must consider whether the Defendant committed a clear error in violation of its regulations by not granting the Plaintiff a hearing.

The Plaintiff cited the following Regulations found in Chapter 13 in support of his assertion that the Election Board was clearly an error when it denied him a hearing:

"Section 2. Request for Hearing....

C. Request for Hearing on Disputes. Any Registered Voter may request a hearing for an Election Dispute ...The Election Board will conduct a hearing, subject to the subsection D herein, as long as the request has been properly made. Absent the filing of a Request for Hearing, the Election Board may, at its discretion, make a ruling based solely on the written complaint."

The Plaintiff is correct in asserting that this section of the regulations could entitle him to a hearing. However, the Election Board is only required to hold a hearing if it determines that the request has been *properly made as reasonably determined by the Election Board*.

The Constitution delegates authority to the Election Board regarding this nation's elections. Article IX, Section 4 (e) reads:

"The Election Board shall be authorized to issue such rules and procedures as may be necessary to carry out tribal elections..."

The Election Board is the administrative body that is tasked with developing regulations to implement its Constitutional requirements. The Election Board adopted Regulations under the authority of the Tribal Constitution and Tribal law. Nothing in Tribal law extends the authority of the Election Board to the regulation of criminal behavior or behavior that could rise to the level of a tort. In fact, such an interpretation would lead to a violation of separation of powers. Therefore, it was reasonable for the Election Board to determine that the Plaintiff's complaint

³ There was some discussion on the record about documents the Plaintiff filed that the Court did not have. Upon research by this Court, the Court learned that the Plaintiff filed approximately 60 pages of Michigan election code that was not forwarded to this Judge. As Michigan election law has no bearing on tribal elections, the Court finds this clerical oversight to be irrelevant and have no impact on the case.

was improperly before them because they were correct in determining that they did not have the authority to regulate the conduct of which the Plaintiff complaint. **The Court FINDS that the Election Board did not commit clear error in refusing to grant the Plaintiff a hearing. Even if it was an error to refuse the Plaintiff a hearing, it is harmless error because the Court FINDS that the Plaintiff filed an untimely election dispute, not a challenge.**

After the Court informed the parties on the record of how it intended to rule, the Plaintiff claimed he was “blindsided” by the email notice provided of the hearing by the Court and renewed his request for more time to “develop his case” and look for an attorney. At this time, he told the Court that although he opened and read the first attachment sent to him by the Court, he could not open the second email attachment, which was a response to his last complaint not yet addressed by the Court, and therefore he could not continue.

The Court offered to adjourn the hearing until the next day at a time convenient for the Plaintiff. The Plaintiff said he would check his schedule and get back with Court later. The Court adjourned the matter and directed the court clerk to resend only the attachment that the Plaintiff stated he could not open and then confirm his receipt and that he could open the attachment. As a member of Tribal Council, the Plaintiff often gets emails and attachments and must open them to fulfill his Constitutional duties. Therein, the Court felt that with some effort, the technical difficulty could be resolved.

Approximately an hour after adjournment, the Plaintiff informed the Court that he was unavailable to continue the proceedings the following day. Therefore, the Court ordered the proceedings to resume at 3:00 PM that day.

At the start of the continuation of the hearing, the Court verified that the Plaintiff did successfully receive the email and open the attachment at issue. The Plaintiff again renewed his request for an adjournment stating that he needed more time to prepare, he needed time to develop his case, and he wanted to seek the assistance of an attorney. His primary reason was that he did not feel like he received the Defendant’s response to his complaint in a timely manner. He was confused by the fact that the Defendant characterized their answer to his complaint as a motion to dismiss. This Court took the “motion to dismiss” as a response and answer to the complaint since no other answer was filed. In civil matters like this one, a motion to dismiss can occur at the beginning of the case when on the face of the complaint, even if everything that the Plaintiff alleges in the complaint is true, there is no remedy available to Plaintiff under the law. Winning a motion to dismiss makes a trial unnecessary.

In this instance, judicial review is already limited. The Court only reviews what the parties file in their complaint and answer to see if the Defendant committed clear error. The hearing allows the parties a chance to engage in oral arguments about whether the Defendant’s interpretation of the law is correct and challenge whether the facts support the Defendant’s conclusions regarding the law. It also allows the Court to ask the parties questions about their positions.

However, there is no real opportunity for the Plaintiff to “develop” his case. That is something the Plaintiff should have done before filing his initial complaint with the Election Board.

The Plaintiff filed this complaint, and the Defendant answered through a motion to dismiss. The Plaintiff then came to Court and asked Court to delay the proceedings so that he could have additional time to prepare because he could not adequately respond to the Defendant’s answer to his complaint. This is the Plaintiff’s case that he filed. Neither the law nor the facts of the case have changed since the Plaintiff made his complaint. The Plaintiff does not now get to come back and argue that he is not prepared to support his view of the law and needs an attorney. His view of the law needed to be established at the time he filed the complaint, not later. In addition, if the Plaintiff needed an attorney to file this action, that is also his responsibility to identify and make happen prior to filing the matter, not after. The regulations state, “[t]he burden of proof to reverse the decision of the Election Board shall be upon the party seeking relief.” In this case, the burden of proof to reverse the decision of the Election Board is on the Plaintiff. He failed to file or present any evidence that his complaint was an election challenge, not an election dispute. In fact, his filings to the Court supported the Election Board’s determination that he filed an election dispute as they documented that all the alleged statements in question occurred significantly before the election.

The last issue the Court considered was whether the Defendant committed clear error when it determined that the Plaintiff filed an untimely election dispute when he challenged the Election Board’s decision to amend the election schedule for picking up ballots directly from the Election Board.

Under Chapter 8 of the Election Code, an election dispute is any dispute relating to the election process while an election challenge is any challenge to the results or outcome of an election. As the Regulations clearly state, candidate qualifications fall under the category of an election dispute. See the Election Board Regulations, Chapter 12, Section 1(A). The Plaintiff had ample opportunity to file an election dispute based on the eligibility of a candidate who picked up their packets after the initial deadline set by the Election Board. The statutorily defined deadline for filing an election dispute based on candidate certification was December 11, 2020, or five business days after the candidate pool was certified. The deadline for Candidacy Packet submission was October 16, 2020. The Election Board formally certified the candidates who met the requirements for elected office on December 4, 2020. The Plaintiff sat on his rights, and therefore, **this Court FINDS that Plaintiff failed to file his Complaint within the deadlines provided for in the Statute for filing election disputes and is time-barred.** See David Corey and Nikki Nelson v. Little River Band of Ottawa Indians Election Board and Ryan Champagne, #17182AP (2018).

Even if the Plaintiff’s claim was not barred due to untimeliness, his claim would still fail because this Court has previously ruled that the Election Board has the authority to extend the time for pick-up of candidacy. See Nitumigaabow Ryan Champagne v. The Little River Band of Ottawa Indians Election Board, # 21047EB (2021). In that case, this Court ruled that the Election Board

did have the authority to amend the election schedule up until October 30, 2020, and therefore, the extension of time for pick-up of candidacy packets was not a violation of Tribal law. Even if the Plaintiff's complaint had been timely filed, his complaint would still lack merit under current Court precedent.

All of the allegations in Plaintiff's complaint have failed to meet the legal standard necessary to overturn the Election Board's Order of Dismissal without a hearing.

CONCLUSION

The Court made the following findings:

1. There are no facts in dispute before the Court;
2. Article IV, VI and IX of the LRBOI Constitution give the LRBOI Trial Court jurisdiction to hear this case;
3. The only issue for the Court to decide in the Plaintiff's original filing was whether the Election Board made a clear error in dismissing the Plaintiff's complaint;
4. Administrative Order A-21-2001 was lawfully enacted;
5. The Election Board Regulations allow the issuing a partial report; therefore, the Court denies the Plaintiff's motion requesting that the issuing of a partial report is unlawful;
6. The practice of the Court accepting and sending notifications and filings by email is consistent with its authority to make Court rules under the Constitution, especially under the extraordinary circumstances the worldwide pandemic has created;
7. The Election Board did not err in dismissing the Plaintiff's complaint without a hearing because the plaintiff filed an untimely election dispute, not a challenge;
8. The Election Board did not commit clear error in refusing to grant the Plaintiff a hearing;
9. Even if it was an error to refuse the Plaintiff a hearing, it is harmless error because the Plaintiff filed an untimely election dispute, not a challenge; and
10. Latches attaches to the Plaintiff's complaint regarding the election schedule.

The Plaintiff's case in full is dismissed with prejudice.

6-9-21
Date

Allie Maldonado
Honorable Allie Maldonado

Larry Olson v. LRBOI Election Board

21-000524-EB

Summary: This case was heard by Judge Pro Tem Allie G. Maldonado. Plaintiff filed an election challenge with the Election Board, who scheduled a hearing on Plaintiff's challenge. The Election Board vote to deny the Plaintiff's complaint and issued a written decision. Plaintiff then filed an appeal of the Election Board's challenge with the Court, alleging that Larry Romanelli had interfered with the election by having him arrested by the Warren Police Department.

Decision and Order: The Court found that Article VI of the Constitution gives the LRBOI Tribal Court jurisdiction to hear the case. The Court also found that Plaintiff did not meet the standard of proof to prove that the Defendant committed a clear error in dismissing his complaint. Therefore, the Court found that the Election Board did not commit clear error in dismissing the Plaintiff's complaint, and the case was dismissed with prejudice.

TRIBAL COURT

Little River Band of Ottawa Indians
3031 Domres Road
Manistee, MI 49660

LARRY OLSON,
Plaintiff

Case No. 21-000524-EB

Honorable Allie Maldonado

v.

LRBOI ELECTION BOARD,
Defendant

Larry Olson
Plaintiff, In Pro Per
12443 Coleen Avenue
Warren, MI 48089

LRBOI Election Board
Defendant
2608 Government Center Drive
Manistee, MI 49660

Law Office of Steven D. Sandven, PC
Jo Anne M. Ybabien
Attorney for Defendant
11294 Gold Mountain Loop
Hill City, SD 57745

ISSUE AND COURT'S RULING

The issue in this case for the Court to decide is whether the Election Board made a clear error in dismissing the Plaintiff's complaint. The **COURT FINDS** that the Election Board did not commit a clear error in dismissing the Plaintiff's complaint. The Plaintiff's case is dismissed with prejudice.

Please read the full opinion for the Court's analysis.¹

¹ The Court informed the parties on the record of how it intended to rule. Court Rule 4.602 states that judgments and orders must be in writing. Therefore, this written order is the final order of the Court.

HISTORY OF THE CASE

The Court finds the facts are not in dispute. On August 28, 2020, the Election Board declared the schedule for the 2021 General Election. The election took place on April 30, 2021. On May 7, 2021, the Plaintiff filed a complaint with the Election Board, which he styled as an “election challenge.” On May 11, 2021 the Election Board issued a Decision to Conduct a Hearing into the Plaintiff’s Challenge. On May 14, 2021, the Election Board sent the Plaintiff a Notice of Hearing explaining the hearing process and the Plaintiff’s responsibility to bring forth evidence to prove his case at the hearing. The noticed hearing was held on May 27, 2021. The following individuals were in attendance in person at the hearing: Ogema Larry Romanelli; his attorney, Mr. Dennis Swain; Chief of Police Robert Medacco; Election Board members Valerie McDonnell, Terri Burmeister, Karen Love and Kathy Gibson and attorney for the Election Board, Ms. Ybaben. The Plaintiff appeared virtually via Zoom. After the hearing, the Election Board voted to deny the Plaintiff’s complaint and issued a written decision explaining their reasoning on June 8, 2021.

On June 14, 2021, the Plaintiff filed this appeal to the Election Board’s dismissal of his complaint. On the same day, the Plaintiff filed a request for a waiver of the Court filing fees. The Court granted his request for a waiver and scheduled a hearing for June 21, 2021.

On June 17, 2021, the Election Board filed an answer to the Plaintiff’s complaint that it styled as a “Motion to Dismiss.” On the same date, the Plaintiff filed what the Court

understood to be a request for discovery along with the results of a Freedom of Information Act request from another jurisdiction.

On June 21, 2021, the Court heard arguments from both parties. At the end of the hearing, after carefully considering the arguments of both sides, the Court stated on the record that the Plaintiff did not meet his burden to show the Election Board committed a “clear error” in dismissing his complaint. This opinion of the Court follows.

JURISDICTION OF THE COURT

Whether a Court has jurisdiction to hear a case is a fundamental question that every court must answer at the outset of a proceeding. Article VI of the Constitution establishes the Tribal Court. Section 1 reads as follows:

“The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish.”

Since the plain language of the LRBOI Constitution makes it clear that the Trial Court is within the Tribal judiciary, the Trial Court may hear a case of this nature under the authority of Article XI.

Furthermore, 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.”

This Court has jurisdiction as the Plaintiff is a Tribal citizen, the Defendant is the LRBOI Election Board, and the matter involves the election for the LRBOI. **Therefore, the COURT FINDS that both Article IV, VI and IX of the LRBOI Constitution give the LRBOI Trial Court jurisdiction to hear this case.**

STANDARD OF REVIEW

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).

In addition, LRBOI Election Ordinance #08-200-02 sets few limits on the Election Board’s authority when it comes to regulating elections as it states the following:

“Election Rules and Procedures. The Election Board shall issue such regulations consistent with the Constitution.”
Section 6.01.

Therefore, the Court’s authority to review Election Board decisions is limited by the Election Board regulations that do not conflict with LRBOI statutes or the Constitution. The Election Board Regulations state the following:

“Review Standard. All appeals of Final Election Board Decisions before the Tribal Court, must be reviewed on a clear error standard. Additionally, the Tribal Court shall be bound by the Election Board's findings of fact. There shall be deference given to the Election Board's determination as the government officials charged with the responsibility for interpreting their own regulations. The Tribal Court review of the Election Board's

determinations is limited to interpretation and application of law or regulation. No new or additional evidence in support of or in opposition to the Election Board's decision shall be introduced to the Tribal Court. The decision of the Tribal Court shall be final.” Chapter 12, Section 4(C).

Consequently, the **COURT FINDS** the only issue for the Court to decide in this matter was whether the Election Board made a clear error in dismissing the Plaintiff's complaint. The answer to this question lies in the complaint, the answer and the oral arguments provided to the Court.

ANALYSIS

The Court's analysis in an election case usually begins with determining whether the complaint at issue was an election challenge or an election dispute. If the Plaintiff filed an election challenge, his complaint was timely. If he filed an election dispute, his complaint was untimely, and the Election Board properly dismissed it. However, the Election Board did not challenge whether the Plaintiff's complaint was timely. Therefore, the COURT FINDS the matter of timeliness waived. With timeliness off of the table, the Court must move forward with an analysis of the Election Board's decision to determine whether they committed a clear error in dismissing the Plaintiff's complaint.

In this case, the Plaintiff alleged that Ogema “Larry Romanelli interfered in the election by trying to have me arrested by the Warren Police Department during the election period.”

Plaintiff's Complaint filed with the Court, June 14, 2021. The Plaintiff asserted that this amounted to harassment, intimidation and fraud and caused him votes. In researching the Election Board's authority to hear this matter, the Court could not find any mention of harassment or intimidation in the Election Board statute or regulations. In the hearing, the

Election Board argued that its responsibility for ensuring free and fair elections gave it the authority to investigate allegations of elected official abuse of power that could interfere in the election. “Free and fair elections” is not a phrase in the Constitution, the Election Statute or the regulations. The Election Board’s regulations are an authority that is binding in election matters. It describes the Election Board’s duty as follows in Chapter 14, Section 1(A):

“Members of the Election Board shall seek to uphold the integrity and fairness of Election processes. . . .”

“Integrity and fairness” are not defined in the Election Ordinance or Regulations. However, the Court understands that the kind of “fairness” that the Election Board has the authority to investigate must be interpreted within the boundaries of Tribal law as it relates to elections. In other words, there must be a strong nexus to the role of the Election Board in the law akin to the Montana test (*See Montana v. United States*, 450 U.S. 544, 566 (1981)) in order for the Election Board to have authority to hear a matter. Simply put, when election-related conduct threatens or has some direct effect on the integrity or the security of the election, and it falls under some aspect of the Election Board’s authority under the law, the Election Board may investigate. Some examples include interference with election announcements, the distribution of ballots or other proper operations of the Election Board. *See Election Board Regulations* Chapter 1, Section 3 and Chapter 3, Section 4. Other examples of areas over which the Election Board may investigate include anything related to election fraud as listed in *The Law and Order Criminal Ordinance*, 11–400–03, Article XII, Section 12.03. Additional areas under the Election Board’s authority to investigate include campaign rule violations and campaign contribution or reporting violations. *See Election Board Regulations* Chapter 5, Section 3(H) and Chapter 6. While the list is extensive, this authority is limited to issues where the law creates a direct

nexus between the Election Board and the activity of concern. Not every activity of concern that may affect an election is an issue that the Election Board has the authority to adjudicate.

The Election Board stated they believed a hearing was within their jurisdiction because the Plaintiff alleged potential “gross misconduct” of an elected official. More specifically, the Election Board held a hearing, in part, to discover whether Ogema Romanelli possibly interfered with the election by using his authority to have the Plaintiff arrested.² The Election Board unequivocally found that Ogema Romanelli did not have the Plaintiff arrested. In their written dismissal of the Plaintiff’s complaint, the Election Board made the following findings of fact:

“As a matter of law, the Election Board finds that Mr. Romanelli did not cause Mr. Olson to be arrested pursuant to the LRBOI Tribal Prosecutor warrant issued in November 2017...As a matter of law, the Election Board find[s] that Mr. Romanelli did not send law enforcement to harass or intimidate Mr. Olson pursuant to the LRBOI Tribal Prosecutor warrant issued in November 2017....As a matter of law, the Election Board finds that Mr. Olson voluntarily surrendered himself to Tribal Police in April 2021 pursuant to the terms of the warrant.” See *Election Board Findings of Fact and Conclusions of Law after Hearing, In the Matter of Larry Olson Election Challenge* (June 8, 2021).

However, the Court could not find authority that would allow the Election Board to investigate and make a determination about this kind of official misconduct either way.

If a public official were to interfere in election by obstructing a function of the Election Board, the authority for the Election Board to hold a hearing and take election-related action is in the law. For example, if a public official caused ballot boxes to be seized, that would be government interference under the authority of the Election Board through Chapter 3, Section 6 of the Election Board Regulations. However, without some tie to the legal authority of the

² It is important to note that the Plaintiff acknowledges that he was arrested under a **valid** arrest warrant that he knew about since 2017 but did not have the funds to deal with until now.

Election Board, other allegations of official misconduct fall under the authority of the Tribal Council in the Constitution³, the Prosecutor⁴ under *The Law and Order Criminal Ordinance*, Section 4.02 (f)(2) and the Judiciary⁵ under Article IV, Section 6(b)(2) of the Constitution. The Election Board did not provide the Court with a citation to any delegation of that authority, nor could the Court find one that gave it the power to act. However, the Election Board had another reason for holding the hearing, and it did cite to other authority within its jurisdiction as provided by law under that reasoning.

In its oral arguments, the Election Board stated that it determined that the Plaintiff's complaint alleged conduct that, if true, could have been a form of election fraud which the Election Board clearly has the legal authority to investigate. The Election Board found its nexus to the law through the *Law and Order Criminal Ordinance*, Section 12.03 (a)(1) titled, "Election Fraud." This section makes it a crime to give or offer to give anything of value to another person to induce that person to vote, or to refrain from voting, for any candidate, signing a nominating petition, or registering to vote. While the Court does not see how the Election Board came to this conclusion based on the Plaintiff's original complaint to the Election Board, it does believe that the Election Board saw a potential nexus to the law and its' role under the law. Therefore, the Election Board could only dismiss it as not election fraud by obtaining additional information through a hearing. Once the Election Board investigated the allegation and more information was revealed, the Election Board determined there was no violation of the law by

³ Who can remove an Ogema or Tribal Council member for gross misconduct under Article X, Section 3(a).

⁴ Who can charge an official for abuse of power.

⁵ Who can remove a judge for misconduct.

the Ogema, and dismissed the Plaintiff's complaint. Therein, the next question for the Court is whether the Election Board committed a clear error when it determined that the Plaintiff did not provide the evidence necessary to prove that Ogema Larry Romanelli committed election fraud by having the Plaintiff arrested. The COURT FINDS it did not commit a clear error.

The Election Board Regulations state, "the individual filing the complaint, dispute or challenge must provide sufficient evidence in support of the allegation to prove his or her complaint, dispute or challenge by a preponderance of the evidence." *See Election Board Regulations*, Chapter 1, Section 2. Therefore, the burden of proof for an allegation of election fraud before the Election Board was squarely on the Plaintiff to prove with evidence presented in the hearing before the Election Board.

The Plaintiff claims he did not know that he had to prove his allegations in the hearing before the Election Board. However, the Plaintiff had a duty to read and understand the hearing procedures as outlined in the Election Board Regulations, which are readily available to the public. The Election Board Regulations for hearings on election complaints very clearly state:

"The procedures for the Hearing is as follows:

1. Opening statement.
 2. *Presentation of evidence or witnesses in support of the Complaint by the Complainant or their representative.*
 3. Questions allowed by Election Board Members, the Election Board Attorney, or the Complainant or their representative.
 4. Presentation by the Election Board Attorney of any additional evidence or witnesses as determined necessary by the Election Board.
 5. Questions allowed by Election Board Members, the Election Board Attorney, or the Complainant or their representative.
 6. Closing statements."
- (Emphasis added.)

In this case, Mr. Olson was the Complainant in the Election Board hearing, and it was his obligation to prove his allegation with evidence. Speculation and a feeling are not a substitute for evidence in a legal proceeding. However, the Plaintiff failed to present a single document or witness beyond his own testimony at the Election Board hearing, which did not help his case. His speculation that the Ogema was involved in his arrest was contradicted by the testimony of two other witnesses. Under the Election Board Regulations, the Tribal Court must accept the factual findings of the Election Board except in cases of a clear error, which is not an issue in this case as the Plaintiff did not challenge the facts set forth by the Election Board. The findings of fact establish that Mr. Romanelli did not send law enforcement officers to arrest the Plaintiff and that to the contrary the Plaintiff personally contacted the Tribal Police and arranged to surrender to them. Therein, the COURT FINDS the Election Board's dismissal of the Plaintiff's complaint was not a clear error.

The Plaintiff seemed confused that the Tribal Court could not provide a trial. He felt certain he was targeted and hoped the Tribal Court could provide relief. In this instance, judicial review is limited. The Court only reviews what the parties file in their complaint and answer to see if the Defendant Election Board committed a clear error. The Tribal Court hearing allows the parties a chance to engage in oral arguments about whether the Defendant's interpretation of the law is correct and challenge whether the facts support the Defendant's conclusions regarding the law. It also allows the Court to ask the parties questions about their positions. However, there is no real opportunity for the Plaintiff to subpoena evidence and call witnesses to prove his case. That is something the law requires the Plaintiff to do in his hearing with the

Election Board. The Court understands how difficult this must all be without an attorney, however, the Court must follow the laws and the regulations that state, “[t]he burden of proof to reverse the decision of the Election Board shall be upon the party seeking relief.” In this case, the burden of proof to reverse the decision of the Election Board was on the Plaintiff, and he failed to meet the legal standard necessary to overturn the Election Board's Order of Dismissal.

CONCLUSION

The Court made the following findings:

1. There are no facts in dispute before the Court;
2. Article IV, VI and IX of the LRBOI Constitution give the LRBOI Trial Court jurisdiction to hear this case;
3. The standard of proof the Plaintiff must meet to overturn the Defendant's decision requires the Plaintiff to prove the Defendant committed a clear error in dismissing the Plaintiff's complaint;
4. The Defendant did not a commit a clear error when it dismissed the Plaintiff's complaint after a hearing.

The Plaintiff's case in full is dismissed with prejudice.

6-22-21
Date

Allie Maldonado
Honorable Allie Maldonado

Sara Agosa v. LRBOI Election Board**21-000535-EB**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against the Defendant, alleging that the election results were jeopardized by the failure

of the Election Board to fulfill its contract terms with TrueBallot, the election service contractor who issued ballots to members in the election, and that the Election Board denied her rights as a Tribal citizen by denying her election challenge.

Decision and Order: The Court found that Article IV of the Constitution gives the LRBOI Tribal Court jurisdiction to hear the case. The Court also found that the language in Chapter 12, Section 4(c) of the Election Board regulations is inconsistent with the Constitution and therefore the Court is not bound by the Election Board's findings of fact. The issues on appeal were: 1) Did the Election Board commit clear error in its decision not to hold a hearing on Plaintiff's complaint? 2) Did the Election Board commit clear error when it treated Plaintiff's complaint as a dispute rather than a challenge? The Court ruled that: 1) Plaintiff failed to show that the Election Board made a clear error and that a statement of "having a right to a hearing" is insufficient proof for the Court to reverse the Election's Board's decision not to conduct a hearing. Therefore, the Court found that the Election Board did not error in denying Plaintiff a hearing. 2) Had the Election Board not converted Plaintiff's complaint from a challenge to a dispute, Plaintiff's complaint would not have received any type of analysis because Plaintiff was not a candidate in the current election (per Election Board Regulations Chapter 12, Section 2(B)2). The Court found that the complaint was a dispute. It also found that, because Plaintiff failed to provide sufficient evidence to the contrary, the Election Board did not commit clear error in denying Plaintiff's election dispute.

Sara Agosa v. LRBOI Election Board**22-037-AP**

*Appeal has been filed and is pending in the LRBOI Court of Appeals.

TRIBAL COURT
LITTLE RIVER BAND OF OTTAWA INDIANS

SARA AGOSA,
Plaintiff,

Case No. 21-000535-EB

Hon. Angela Sherigan

V.

LRBOI ELECTION BOARD,
Defendant.

Sara Agosa
Plaintiff in Pro-per
755 Alfa Court, Apt. 1-D
Portage, MI 49002

Jo Anne M. Ybaben
Attorney for Defendant
49501 Meadowwood Road
Oakhurst, CA 93644

OPINION AND ORDER AFTER HEARING
ELECTION BOARD DECISION REVIEW/APPEAL

A hearing on Plaintiff's Appeal from an Election Board Decision denying her challenge and request for hearing was held on July 7, 2021, in which all parties and/or their attorneys appeared.¹

JURISDICTION

Under the Little River Band of Ottawa Indians (LRBOI) Constitution, Article VI, the Tribal Court is given broad jurisdiction over conflicts and matter that are addressed by LRBOI laws, and is charged with, and has the authority to hear all cases and matters in law and equity.

Section 1 "The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish."

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 This Opinion and Order was due on July 12, 2021, and is being issued one day late due to a death in the Judge's family.

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.”

THE COURT FINDS that it has jurisdiction.

STANDARD OF REVIEW

The Election Board Regulations, Chapter 12, Section 4(c) states:

Review Standard. All appeals of Final Election Board Decisions before the Tribal Court must be reviewed on a clear error standard. Additionally, the Court *shall be bound by the Election Board's findings of fact*. There shall be deference given to the Election Board's determination as the *government officials responsibility for interpreting their own regulations*. *The Tribal Court's review of the Election Board's determination is limited to interpretation and application of law or regulations*. No new or additional evidence in support or in opposition to the Election Board's decision shall be introduced to the Tribal Court. The decision of the Tribal Court shall be final.

Emphasis added.

Pursuant to the Constitution, the Tribal Court is the final, and official interpreter of the Constitution, Laws and Ordinances, Resolutions and Regulations. Article VI, Section 9 states “...no person exercising powers of the legislative or executive function of the government shall exercise powers properly belonging to the judicial branch of government...”. Article IX, Elections, Section 1(d) states that “the Election Board shall issue such rules and regulations, consistent with this Constitution...” Nowhere in the Constitution is the Election Board given authority to, or the responsibility of being the final interpreter of its own regulations. Therefore, the COURT FINDS, that the language which reads “the Court shall be bound by the Election Board's findings of fact” in Chapter 12, Section 4(c) of the Election Board Regulations is inconsistent with the Constitution, and the Court it is not bound by the Election Board's findings of fact.

BURDEN

The burden of proof to reverse an Election Board decision is on the party seeking relief. Election Board Regulations, Chapter 12, Section 4(b).

TIMING ISSUES

TIMING – FILING OF APPEAL

In the Election Board's response and Motion to Dismiss, it argues that Ms. Agosa's appeal to the Tribal Court should be dismissed for filing late. Ms. Agosa argues that she did not file late.

The Election Board Regulations, at Chapter 12, Section 4, allows for an appeal of Election Board decisions to the Tribal Court within five (5) business days of the decision being issued. The Election Board issued its decision which was dated June 21, 2021. It was sent to Ms. Agosa via U.S. Mail and by email at 6:38 p.m. on June 21, 2021. The Election Board argues plain language, that the Regulations simply state "5 business days from the date of issuance" and does not state a time, and therefore the 5 days starts on June 21, 2021. Ms. Agosa argues that it was after normal business hours and therefore the 5 days counting starts on June 22, 2021.

Using the Election Board's argument, it would allow issuance of a decision at 11:59 p.m., in effect denying a full day for purposes of counting. This Court is a court of law and equity and has the authority for final interpretation of the Constitution, and all cases and matters in law and equity arising under the Constitution or under the laws and ordinances application to LRBOI, and thus,

THE COURT FINDS that for purposes of counting, regular business hours shall be used. Since the publication of the Decision was at 6:38 p.m. on June 21, 2021, that date will not count as the first day as it was after business hours. The date of issuance for counting is June 22, 2021. Therefore, Ms. Agosa's appeal is timely.

TIMING – FILING OF COMPLAINT WITH ELECTION BOARD

The Election Board argues that Ms. Agosa's complaint, rather it be a dispute or a challenge was untimely, and therefore, this case should be dismissed. Ms. Agosa argues that this is challenge not a dispute, therefore it is timely as she filed it within 5 business days of constructive notice.

Chapter 12, Section 1(C) of the Regulations states that the period of time for submitting a timely dispute runs from the date that the Tribal Member had actual or constructive knowledge of the act or event giving rise to the dispute, and gives five business days to file, but in any case, no dispute may be filed fewer than ten business days prior to the Election. This makes the deadline for filing a dispute April 16, 2021, or in this case, June 15, 2021. Ms. Agosa filed her complaint on June 15.

Chapter 12, Section 2(B)2, states "any candidate that was not elected in the current election may file a challenge..." and at Section 2C(2), that challenges must be filed within 5 business days of the announcement of unofficial election results. The deadline for filing a challenge was May 7, 2021.

ISSUES ON APPEAL

There are two issues on appeal. First, did the Election Board error in its decision to deny Ms. Agosa a hearing. Second, did the Election Board error in its decision to treat Ms. Agosa's complaint as a dispute rather than a challenge.

ISSUE 1. Did the Election Board commit clear error in its decision not to hold a hearing on Plaintiff's complaint?

Plaintiff argues that she has a right to a hearing. The defendant argues that it has the authority to issue a decision without a hearing pursuant to its Regulations at Chapter 13, Section 2(E). Chapter 13, Section 2(E) states that "[u]nusual circumstances may arise wherein the Election Board may review a request for a hearing and based upon its review, may request and determine a hearing is not appropriate under the circumstances. In the event that the Election Board declines to hold a hearing, it may thereafter issue a written decision without a hearing." A written decision was issued in this matter. The burden is on Plaintiff to show that the election board made a clear error, which she has failed to do. A blanket statement of "having a right to a hearing" is insufficient for the Court to reverse the Election Board's decision not to conduct a hearing.

Therefore, the COURT FINDS that the Election Board did not error in denying Ms. Agosa a hearing.

ISSUE 2. Did the Election Board commit clear error when it treated Ms. Agosa's complaint as a dispute rather than a challenge?

Plaintiff, Ms. Agosa, argues that the Defendant, Election Board, made a clear error in converting her Challenge into a Dispute. The difference between a dispute and a challenge is found in the definitions of the two terms in the Regulations. A Challenge is a "direct challenge to the results or outcome of an election, the object of which is to affect the results of an election." A Dispute means "a complaint, the object of which is to affect how the election is conducted as it moves forward. An election dispute can question candidate eligibility, voter eligibility, the ballot, and vote count process."

Defendant argues that Plaintiff's complaint is a Dispute as it is questioning the ballot.

Had the Election Board not converted Ms. Agosa's complaint which she titled as a Challenge, into a dispute, Ms. Agosa would not have received any type of analysis regarding her complaint as the Regulations state at Chapter 12, Section 2(B)2 that any "candidate" that was not elected in the current election may file a challenge... Ms. Agosa was not a candidate in the current election.

Therefore, the COURT FINDS, that Ms. Agosa's complaint is a Dispute.

Plaintiff's main argument is based on an email sent from the Director of IT to the Ogema. Defendant, in its decision, and argument stated that the information/evidence Plaintiff presented was insufficient, and not proper evidence as it was hearsay. The Court agrees. Plaintiff failed to provide a sworn statement from the director, or any other person attesting that there were problems with the ballot². Additionally, the emails show that there were only 2 people that did not receive ballots and that was corrected, and that True Ballot received the files and that they could work with them and move forward. Ballots were sent out and the 2021 Election results have been certified. She also speculates that there may be others who did not receive ballots, without providing any evidence. Mere speculation is insufficient.

Therefore, the COURT FINDS that the Election Board did NOT commit clear error in denying Ms. Agosa's election dispute.

July 13, 2021

Date


HON. ANGELA SHERIGAN



² Plaintiff requested that the Court issue subpoenas to the IT Director as well as the Vendor and various other people during the hearing. The request is/was denied for 2 reasons: 1. The burden in election disputes and challenges is on the challenger, meaning it is up to the challenger to gather and present evidence; and 2. The Court only reviews what was presented to the Election Board, nothing new is allowed either in support of or in opposition to at the appeal level.

Larry Romanelli (Ogema) v. Tribal Council**21-577-GC**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against Defendant for declaratory relief and preliminary injunction. The allegations were as follows:

1) That Tribal Council had passed Resolution No. 21-0818-206 that restructured the IT departments of the LRBOI Government and the Little River Casino Resort, which Defendant claimed was an unconstitutional usurpation of the constitutional authority of the Ogema pursuant to Stone/Ogema et. al. v. Tribal Council, Case No. 20-051-AP;

2) That the Tribal Council Speaker refused to honor request for work sessions because the Ogema was not present, which Defendant claimed interfered with the Ogema's constitutional authority to delegate tasks to members of the Executive Branch; and

3) That Tribal Council had ordered the Defendant, other Executive Branch staff, the General Manager of the Little River Casino Resort, and staff of the Little River Casino Resort to attend a meeting for the purpose of "integrating/restructuring Accounting for 1 Accounting Structure," which Defendant claimed usurped the management authority of the Ogema pursuant to Case No 20-051-AP.

Decision and Order: The Court found that the Plaintiff's pleadings did not meet the 4-part test in determining if an injunction will issue; therefore, the Court did not grant the Plaintiff's request for preliminary injunction. The Court also found that the Plaintiff did meet the burden need for the issuance of an injunction in the form of a stay; therefore,

the Court ordered that the implementation of Resolution 21-0818-206 was stayed until further order of the Court.

Prior to the injunction hearing held on November 5, 2021, the parties stipulated to a dismissal of Counts 2 and 3. On January 18, 2022, a Joint Stipulation of Dismissal without Prejudice was filed with the Court, which the Court granted on January 19, 2022. The case was dismissed without prejudice.

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

OGEMA ROMANELLI,
Plaintiff,

v.

LRBOI TRIBAL COUNCIL,
Defendant.

Case No. 21-577 GC

Honorable Angela Sherigan

Dennis Swain
Attorney for Plaintiff
2608 Government Center Dr.
Manistee MI 49660

Big Fire Law & Policy Group LLP
Attorneys for Defendant
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Bellevue, NI 68005

ORDER OF STAY REGARDING RESOLUTION 21-0818-206

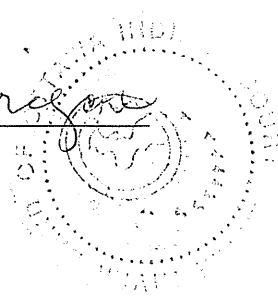
At a session of said Court,
In the Reservation boundaries of the
Little River Band of Ottawa Indians
On the 5th day of November, 2021
Present: Hon. Angela Sherigan

The Court having held a hearing on the Plaintiff's Motion for Preliminary Injunctive Order, in which all parties and/or their attorneys were present, and the Court having issued a Order Regarding Preliminary Injunctive Order on November 5, 2021,

IT IS HEREBY ORDERED: that the implementation of Resolution 21-0818-206, is STAYED until further order the Court.

11-5-21
Date

Angela Sherigan
Hon. Angela Sherigan



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

OGEMA ROMANELLI,
Plaintiff,

v.

LRBOI TRIBAL COUNCIL,
Defendant.

Case No. 21-577-GC

Honorable Angela Sherigan

Dennis Swain
Attorney for Plaintiff
2608 Government Center Dr.
Manistee MI 49660

Big Fire Law & Policy Group LLP
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1404 Fort Crook Rd South
Bellevue, NI 68005

ORDER REGARDING PRELIMINARY INJUNCTIVE ORDER

A hearing was held on September 17, 2021, regarding the Ogema's Motion for a Preliminary Injunction, in which all parties and/or their attorneys appeared. The request for a preliminary injunction – restraining order is based on the three counts in the Ogema's Complaint.

BACKGROUND ON COUNTS

Count I

On August 18, 2021, Tribal Council passed Resolution 21-0818-206, *Accepting Information Technology Restructuring Report & Adopting One IT Restructure to Improve Efficiency and Coverage of the System and to be able to adequately respond the IT challenges due to the COVID-19 Pandemic*, which in effect, combines the Government and the Casino IT departments into one.

The Ogema alleges that this Resolution usurps his power to manage the economic affairs, enterprises, property, and other interest of the Tribe in violation of the Constitution.

Count II

The Ogema alleges that the Council is refusing to proceed on work session requests from the Executive branch if the Ogema is not present and that the Council cannot directly or indirectly require the Ogema to attend work sessions.

Count III

The Ogema alleges that the Council is attempting to usurp his power by "ordering" his staff and members of the LRCR to attend a meeting for the purpose of "Integrating/Restructuring the accounting for 1 Accounting Structure", and that integrating and/or restructuring of any

governmental department and any LRCR department is a management decision reserved to the Ogema.

The Ogema is asking for a preliminary injunction – restraining order on all three counts.

In matters involving requests for injunctive relief, this Court has repeatedly applied a four-part test in determining if an injunction will issue¹:

- 1) harm to the public interest if an injunction issues;
- 2) whether harm to the applicant in the absence of a stay outweighs the harm to the opposing party if granted;
- 3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and
- 4) demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted

The moving party must prevail on all counts.

OPINION

Prior to the issuance of this Order, the parties stipulated to the dismissal of Counts II and III, which was approved and issued in a separate Order.

Count I – Resolution 21-0818-206, Information Technology Restructuring

Resolution 21-0818-206, in effect, combines the Government and Casino Information Technology (IT) Departments into one department, with the Chief Information Officer reporting administratively to the Ogema and to also receive direction and report to the Tribal Council Speaker and Tribal Court Chief Judge.

The Ogema argues that this usurps his power to manage the economic affairs, enterprises, property, and other interest of the Tribe in violation of the Constitution.

The Council argues that it is not usurping the power of the Ogema because the Resolution has the Chief Information Officer reporting administratively to the Ogema.

The Casino Resort is an enterprise/property of the Tribe. The Constitution at Article V, Section 5(a)(8) gives the Ogema the power to manage the enterprises and property of the Tribes.

As to part 1) harm to the public interest if an injunction issues: The Court finds that there will be no harm to the public interest if an injunction issues as it will maintain the status quo. The IT departments of the Government and the Casino are separate so there would be no disruption.

As to part 2) whether the harm to the applicant in the absence of a stay outweighs the harm to the opposing party if granted: This is a balancing test. The harm to the applicant Ogema

¹ The Court applies a similar test when requests are made Ex-Parte.

would be that the Council would be directing and managing the Government IT department by reassigning the staff duties to work on the merging of the two departments, in effect usurping the Ogema's power. The harm to the opposing party Council would be that the timeline as set out in the Resolution would be delayed. The Government IT department is currently short staffed and has four openings. The Court finds that the harm to the Ogema is greater.

As to part 3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits: the Court finds that the Ogema has made a showing of prima facia, in that the Council, by this Resolution, is interfering with the duties reserved to the Ogema by directing the Government IT staff to work on this project.

As to part 4) demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted:

The Ogema argues that employee morale is down, some have left, including one that he states that this Resolution was part of the reason, so there is a risk of losing more staff, that the government and casino still have not recovered from the Covid-19 shut down, and IT is still short staffed. Additionally, the Ogema argues that there could be financial risk and concerns over HIPAA and confidential files, IGRA and the Compact with the State of Michigan.

The Council argues that the Ogema's pleadings do not address the 4 prongs and therefore must fail.

While the Court would have liked a more developed pleading, there was enough presented on the record at the hearing. Additionally, the Court will not consider "what-ifs" or potential problems for the purposes of deciding a request for injunctive relief.

However, as it related to part 4, the Court finds that it is clear that the Ogema would suffer irreparable harm if the injunction does not issue. This Tribe, through the Constitution, is a three-branch government, and when one branch reaches into the constitutionally reserved powers of another branch, that is a usurpation that cannot be undone.

THEREFORE, the Court finds that the Ogema has meet the burden needed for the issuance of an injunction in the form of a Stay, which will be issued separately.

11-5-21
Date

Angela Sherigan
Honorable Angela Sherigan



Cheney/Thull v. LRBOI Election Board**21-582-EB**

Summary: This case was heard by Judge Angela Sherigan. Plaintiffs filed a complaint against Defendant, alleging that Chapter 14, Section 3, Part A of the Election Board Regulations were violated; further, that the Election Board failed to “maintain and uphold the integrity of this election.” Plaintiffs’ complaint included the following allegations:

1. Illegal campaigning by Dr. Daryl Wever;
2. Violation of ethical standards for failure of Karen Love to recuse herself regarding matters involving Shirley Wever;
3. Intentional General Election ballot error;
4. Denial of hearing on dispute/challenge;
5. Breach of contract with TrueBallot;
6. Failure to respond to the mail sent by Judge Bailey; and
7. Overall impropriety on part of the Election Board by failing to maintain the integrity of the election.

Decision and Order: After a hearing on Defendant’s Motion to Dismiss held on November 23, 2021, the Court ruled that Plaintiffs’ allegations 1 and 6 were dismissed under LRCR 4.116 C(8), failure to state a claim upon which relief can be granted; that Plaintiffs’ allegations 2,3, 4, 7 and 8 were time barred and dismissed; and that Plaintiffs’ allegation 5 is dismissed on lack of standing. The Court granted Defendant’s motion to dismiss.

Cheney/Thull v. LRBOI Election Board**22-014-AP**

*Appeal has been filed and is pending in the LRBOI Court of Appeals.

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

STACI CHENEY, and
SUSAN THULL,
Plaintiffs,

Case Number: 21-582-GC
Hon. Angela Sherigan

v.

LRBOI ELECTION BOARD,
Defendant.

Staci Cheney
7350 Warwick Dr.
Ypsilanti, MI 48197

Susan Thull
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Jo Anne M. Ybaben
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ORDER REGARDING DEFENDANT'S MOTION TO DISMISS

A hearing was held on Defendant's Motion to Dismiss, in which all parties and/or their attorneys appeared.

The Motion is based on LRCR 4.116 and 4.112. Specifically, that:

1. The issues complained of are time barred under the Election Regulations;
2. Plaintiffs have failed to state a claim for which relief can be granted 4.116 C(8);
3. There is no genuine issue as to any material fact 4.116 C(10); and/or that
3. Plaintiffs failed to plead sufficient facts under 4.111.

The complaint filed by Plaintiffs alleges:

1. Illegal campaigning by Dr. Daryl Weaver;
 2. Violation of ethical standards for failure of Karen Love to recuse herself regarding matters involving Shirley Weaver;
 3. Intentional ballot error;
 4. Denial of hearing on dispute/challenge;
 5. Breach of Contract;
 6. Failure to respond to the mail sent by Judge Bailey; and
 7. Election Fraud,
- and 8. overall impropriety on part of the election board by failing to maintain the integrity of the election.

Defendant argues that allegations are time barred and under LRCR 4.116 and 4.111.

The Court will first look at the timing first for each allegation.

Allegation 1. Illegal campaigning by Dr. Daryl Weaver. Defendant's argument to dismiss this allegation is two part: 1. As Dr. Weaver himself was not running for a seat in the election, the complaint should have went to the Ogema not the Election Board; and 2. That the Election Board did ask for additional supporting evidence and the Plaintiffs failed to provide it; and 3. That this claim is time barred as a decision was made in May of 2021, and the time has passed for an appeal to the Court. Plaintiffs argue that they did make a complaint to the Ogema and then came back to the Election Board and that the Election Board did not make a timely decision.

In reviewing the pleadings and the Regulations, the Court finds that the Election Board does not have authority of people who are not part of the election. Additionally, this allegation is time barred.

This allegation is dismissed.

Allegation 2. Violation of ethical standards for failure of Karen Love to recuse herself regarding matters involving Shirley Weaver. Defendant argues that this was known to Plaintiffs in May of 2021, and that this is time barred.

The Court agrees. This allegation is time barred and dismissed.

Allegation 3. Intentional ballot error. Defendant argues that this allegation is time barred also as it occurred in May. Defendant also maintains that this was an error on the part of the printer not the Election Board. Additionally, Defendant argues that this matter was heard in May of 2021 and is therefore time barred. Plaintiffs argue that, through discovery, they will be able to show that it was not an error and Shirley Weaver's name was placed on top in her category, while the rest of the candidates, in all other categories, were placed in alphabetical order.

While the court is somewhat inclined to allow the Plaintiffs to continue with this allegation, it is unfortunately time barred¹. Therefore, this allegation is dismissed.

Allegation 4. Denial of hearing on dispute/challenge. Defendant argues that Plaintiffs are not entitled to a hearing pursuant to *Agosa v. Election Board*, including the issue of disputes verses challenges, and that this is time barred. Plaintiffs allege a denial of a hearing regarding the placement of Shirley Weavers name on the ballot. The Election Board issued a decision on May 14, 2021.

The Court agrees. This allegation is time barred and dismissed.

¹ It is important to note that Plaintiffs were initially granted an extension for filing election disputes/challenges appeals to the court by the Court in late May, and that this filing was almost four months later, well beyond a reasonable time period.

Allegation 5. Breach of Contract. Defendant argues that the Plaintiffs do not have standing as the contract is between the LRBOI Election Board and True Ballot Co. The Court agrees. To have standing to a contract, you must be a party to the contract².

This allegation is dismissed.

Allegation 6. Failure to respond to the mail sent by Judge Bailey. Defendant argues that the regulations do not have anything regarding non-candidate activity and that is a Court issue not an Election Board issue. The Court agrees. Only the Court can take action against a judge for unethical behavior.

This allegation is dismissed.

Allegation 7. Election fraud. Defendant argues that claims of election fraud are criminal in nature, and by ordinance and that authority over this type of behavior belongs with the Prosecutor and not the Election Board, and additionally any complaint as to the Election Board under the Regulations is time barred.

As to the allegation of fraud by Dr. Weaver, a decision was made in May 2021 by the Election board and is now time barred.

Allegation 8 – overall allegation of impropriety. The defendant argues that this allegation is time barred. Plaintiffs argue that if allowed to continue, discovery will lead to more information.

Chapter 14, Section 2 (B) of the Election Board Regulations requires that any complaint for impropriety be filed within 30 days of the date the Complainant has knowledge.

It is now well past since the election has been concluded, and almost four months past the time to file in Court.

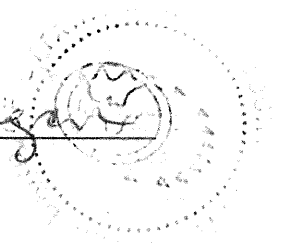
THEREFORE, IT IS HEREBY ORDERED:

1. Allegations 1 and 6 are dismissed under LRCR 4.116 C(8), failure to state a claim upon which relief can be granted.;
2. Allegations 2, 3, 4, 7 and 8 are time barred and dismissed.
3. Allegation 5 is dismissed on lack of standing.
4. Defendant's Motion to dismiss is GRANTED.

This closes this case and extinguishes all outstanding subpoenas.

1-3-22


Hon. Angela Sherigan



² Or be an intended third party beneficiary.