2023 COURT OPINIONS
LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT

TABLE OF CONTENTS

Cheney, O'Signac, & Thull v. LRBOI Election Board **23-013-GC**

Summary: This case was heard by Judge Caroline LaPorte.
Plaintiffs filed a complaint against Defendant alleging violations of the Constitution, abuse of power and violations of the Election Board Regulations. Plaintiffs requested the following injunctive relief:

1) Ex-parte restraining order and stay for the 2022 Special Election and the 2023 Regular Election.
2) Permanent injunction for the 2022 Special Election and the 2023 Regular Election.
3) Mandatory Injunction for the 2022 Special Election and the 2023 Regular Election.
4) Immediate removal of Election Board members Karen Love, Laura Echelbarger and Kathy Gibson.

Decision and Order: The Court entered Order Denying Ex-parte Injunctive Relief, Dismissing Relief in Part Due to Mootness, and Setting for Hearing dated January 9, 2023. This denied Plaintiffs' requests for ex-parte injunctive relief for failure to show damage that serving the Defendant would cause delay and irreparable injury, loss or damage or that notice would precipitate adverse action before an order could be issued. The Court also ordered that the requests for injunctive relief regarding the Special Election were denied as the Plaintiffs' request is moot because the Special Election results were certified on December 20, 2022. The Court also ruled that, even if the request was not moot, the complaint would otherwise be barred for two reasons: Plaintiffs' complaint was time barred and Plaintiffs failed to exhaust their remedies. As to the remainder of the Plaintiffs' complaint regarding the 2023 Regular Election, the Court scheduled an injunction hearing for January 20, 2023.

After the Injunction Hearing, the Court entered Order after Hearing dated January 23, 2023. This ordered Plaintiffs to supply the Court and the Defendant with information about where they had received one of the exhibits to their Complaint. It also ordered Defendant to provide email documentation of communication with the election vendor and information regarding the process for counting undeliverable ballots.

The Court entered an Order Requesting Clarification on January 26, 2023. This ordered the Court to explain the discrepancy between the number of undeliverable ballots reported by the Election Board and the number of undeliverable ballots/envelopes counted by the Court.

A continuation of the Injunction Hearing was held on January 30, 2023. The Court entered Final Order dated February 7, 2023. The Plaintiffs' remaining requested relief was dismissed with prejudice as a sanction for failing to provide information to the Court and for their lack of candor before the Court. All other relief requested was denied.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

STACI CHENEY, JOLENE O'SIGNAC, and SUSAN THULL,
Plaintiffs

v.

LRBOI ELECTION BOARD,
Defendant

Case No. 23-013-GC

Honorable Caroline LaPorte

Staci Cheney
Plaintiff, In Pro Per
7350 Warwick Drive
Ypsilanti, MI 48197
cheneys82@gmail.com

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

Jolene O'Signac
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Susan Thull
Plaintiff, In Pro Per
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susan.thull@gmail.com

ORDER DENYING EX-PARTE INJUNCTIVE RELIEF, DISMISSING RELIEF IN PART DUE TO MOOTNESS, and SETTING FOR HEARING

The Plaintiffs filed a Statement of Claim on January 5, 2023 and an amended Statement of Claim on January 6, 2023 ('Complaint') alleging that the Little River Band of Ottawa Indians ('LRBOI') Election Board committed an abuse of power, violated the Constitution of LRBOI, and violated the LRBOI Election Board Regulations/Resolutions/Ordinances. The Plaintiffs are requesting the following:

1. Ex-Parte Restraining Order and Stay for the 2022 Special Election;
2. Ex-Parte Restraining Order for the 2023 Regular Election;
3. Permanent Injunction for both the 2022 Special Election and the 2023 Regular Election;
4. Mandatory Injunction for both the 2022 Special Election and the 2023 Regular Election; and
5. and immediate removal of Election Board Members Karen Love, Laura Echelbarger and Kathy Gibson.

Upon review of the pleading and attached exhibits, **BOTH** requests for Ex-Parte Injunctive Relief are **DENIED** for failing to show that serving the Defendant would cause delay would cause irreparable injury, loss or damage or that notice will not precipitate adverse action before an order can be issued.

Ex-Parte relief is an extraordinary request that the Court does not often grant. For the Court to consider a request for Ex-Parte relief, the Plaintiffs' request must state specific facts set forth in an affidavit or verified pleading and those facts must show that irreparable injury, loss, or damage will result from the delay required to effect notice, or that the notice itself would precipitate adverse action before an order can be issued. In both instances Plaintiffs fail to state any facts or provide any arguments that address their request for Ex-Parte relief. What creates the appearance of urgency rather, is that the Plaintiffs waited until after the Special Election was certified and the week before candidates were to be sworn in, despite their awareness of the alleged impropriety dating back before the candidates for the 2022 Special Election were even slated.[1]

The Plaintiffs are requesting that the Court enjoin the Special Election from certification. The request is for Ex-Parte relief, a permanent injunction and a mandatory injunction. Though the Court has jurisdiction to hear allegations of impropriety by the Election Board as outlined in LRBOI § 2 (A) of the LRBOI Election Board Regulations (as amended September 9, 2022), the Court finds that the Plaintiffs' request is **MOOT** as the Special Election results were certified on ***December 20, 2022.*** Furthermore, the Plaintiffs fail to allege any facts that would show irreparable injury, loss or damage would result from the delay required to effect notice and alternatively, fail to show why notice of their complaint would precipitate adverse action before an order can be issued (thus the Court's present denial of their request for Ex-Parte Injunctive Relief). While not necessary for the Court to address as the requests regarding the 2022 Special Election are **MOOT,** the Plaintiffs' Complaint as to the Special Election would otherwise be barred for two reasons: Plaintiffs' Complaint is time barred and the Plaintiffs failed to exhaust their remedies. In as much as the Plaintiffs' requests could be construed as an election dispute or an election challenge (the later for which they lack standing to raise as they were not candidates in the 2022 Special Election), the Plaintiffs failed to exhaust their remedies by failing to file an election dispute with the LRBOI Election Board. The Court hears allegations of impropriety as stated above under Chapter 14 §2(A) of the LBROI Election Board Regulations, but §2(B) requires that the allegations be filed with the Tribal Court within thirty (30) days of the date on which the complainant has knowledge. In each instance relating to the Special Election of 2022, the Complainants' knowledge of the issue giving rise to the allegation exceeds the thirty (30) day time limit.

The request for Ex-Parte Injunctive Relief with regards to the 2023 Regular Election is also **DENIED.** Plaintiffs fail to allege any facts that would show irreparable injury, loss or damage

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[1] Election Disputes, as outlined in LRBOI Election Board Regulations Chapter 12 §1 et al., must be filed with the Election Board five (5) business days after the date that the Tribal Member has active or constructive knowledge of the act or event giving rise to the dispute. Any registered voter may bring an election dispute. (Chapter 12 §1(B)). Here, though the Plaintiffs should have raised their complaint with the Election Board when they had constructive knowledge of the act or event giving rise to the dispute, they failed to do so and instead waited to file this present action.

would result from the delay required to effect notice and alternatively, fail to show why notice of their complaint would precipitate adverse action before an order can be issued. They fail to address notice at all.

In summation, the Plaintiffs' requests as to the 2022 Special Election and the 2023 Regular Election for Ex-Parte Injunctive Relief are **DENIED.** The Plaintiffs' request for relief regarding the 2022 Special Election is **DISMISSED** as **MOOT.** As to the remainder of the Plaintiffs' complaint regarding allegations of impropriety impacting the 2023 Regular Election, **the Court is setting this matter for a hearing.** To be clear the Court will not entertain arguments resembling election disputes (which need to go before the Election Board before coming in front of this Court as an appeal from an Election Board decision) or election challenges (which also need to go before the Election Board before coming in front of this Court, and for which the Plaintiffs in this case lack standing to bring).

The Court calls to attention serious concerns about the potential ethical issues found within the Affidavit of Valerie McDonnell, namely why Ms. McDonnell would provide the Court with a signed statement that she accessed a "Personnel Security Consultant Website" while a candidate for the 2023 Regular Election **POST** her time as a member of the LRBOI Election Board. Per Ms. McDonnell's Affidavit, she served on the Election Board from 2017 to October of 2022. She states that "during Thanksgiving, she was called and asked to check the Personnel Security Consultant Website to see if the background checks had come to [her] account. That was November 25, 2022."[2] As Ms. McDonnell did not provide the name of the individual who asked her to access the website, Plaintiffs have three (3 days) to provide that information to this Court and the Defendant (not including today). Vague allegations of impropriety (such as the ones included in Ms. McDonnell's Affidavit), which can only serve to undermine the validity of Tribal elections (especially in which the affiant is running), will not be tolerated by this Court.

This matter is set for a hearing on January 20th, 2023 at 1:00 P.M. Notice will issue from the Court and Plaintiffs **MUST** serve their Initial Complaint and Amended Complaint (with accompanying exhibits) on the Defendant.

1/9/2023
Date

DocuSigned by:
Caroline LaPorte
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Caroline B. LaPorte, J.D.
Associate Judge

[2] *See* Sworn Affidavit of Valerie McDonnell, attached as **Plaintiffs Exhibit S** and to this Order.

Plaintiffs Exhibit: S

January 3, 2023

I Valerie McDonnell who lives at 5276 Dalson Rd, Twin Lake MI 49457. Tribal ID 4340. I swear this information in this letter is true to the best of my knowledge.

I used to be the chair on the election board of LRBOI for about 3 years, (I served on the election board from 2017 to October 2022)when I was the chair, we never had the undeliverable ballots come back to the government center, where there could be access to the ballots. They were supposed to go the Manistee Post office where they were kept locked up and we did not have access to them. If they didn't go there then, they went back to the vendor and we could check online to see who was undeliverable. (The vendor would copy the front of the envelope so that we could at least see why the ballot was being returned) That way the integrity of the election was unquestionable. We should never have access to any ballots. Even at the Regular Election the vendor would print a new ballot for anyone who came into vote. That way, they could check to make sure they have not already voted.

On the Special Election, it was noted on the report that there was 0 (zero) undeliverable. I have talked to a current election board member and was told there was 38 undeliverable, most of they were wrong addresses. What happened to them ballots were any opened and used?

During Thanksgiving I was called and asked to check the Personnel Security Consultant website to see if the background checks had come to my account. I did check but they did not come to my account. That was November 25, 2022 and the election board was to slate on Monday the 28th, 2022. So, unless they came thru on the 28th of November, they would have not been back in order to slate the candidates for the election.

On the day of the election if you are close related to a candidate you should recluse yourself. (as defined on page 60 of the election board regulation)

Valerie McDonnell
1/3/2023

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406
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STACI CHENEY, JOLENE O'SIGNAC, and SUSAN THULL,
Plaintiffs

Case No. 23-013-GC

Honorable Caroline LaPorte

v.

LRBOI ELECTION BOARD,
Defendant

Staci Cheney *Plaintiff, In Pro Per* 7350 Warwick Drive Ypsilanti, MI 48197 cheneys82@gmail.com	LRBOI Election Board *Defendant* 2608 Government Center Drive Manistee, MI 49660
Jolene O'Signac *Plaintiff, In Pro Per* 264 Kauai Lane Placentia, CA 92870 osignac@aol.com	Susan Thull *Plaintiff, In Pro Per* 7170 Cattail Drive Byron Center, MI 49315 susan.thull@gmail.com

ORDER AFTER HEARING

On January 20, 2023, the Court held a hearing in the above captioned matter. The pro se Plaintiffs were present, as were the Defendants, represented by their attorney. The Plaintiffs' motion to add a fourth plaintiff was **DENIED** at this hearing.

During this hearing, Plaintiffs were unable to recall, due to alleged memory issues, where they received Plaintiffs' exhibit F. At one point during the hearing, Plaintiffs indicated they printed the document from Facebook, but the post had since been deleted. **Plaintiffs have until Thursday 5:00 PM EST January 26, 2023**, to supply the Court and the Defendant with this information or their complaint will be dismissed with prejudice as a **SANCTION** (specifically *who* from and with specificity *where* the document was shared (ie: in what Facebook group or via whose email address)).

Defendant was also **ORDERED** to provide email documentation of their communication with the vendor. Defendant has since satisfactorily supplied that information to this Court. The Court **ORDERS** the Defendant to provide the process and the cut-off date for counting undeliverable ballots (for the 2022 Special Election), specifically for purposes the unofficial results and the

official results. A law enforcement officer retrieved the undeliverable ballots from the 2022 Special Election immediately post the hearing on January 20, 2023 and the Court had them placed into an evidence locker with LRBOI Tribal Police, where they will remain until further Order of this Court. **Defendant has until Wednesday 5:00 PM EST to provide the Court with its response.**

Date: 1/23/2023

DocuSigned by:
Caroline LaPorte
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Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify that a copy of this Order was served upon the parties via email on this day.

1-24-23
Date

Spring Medacco
Court Clerk/Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS
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ORDER REQUESTING CLARIFICATION

Post the hearing January 20, 2023 at 1:00 p.m., as stated in the previous order, the Court had an LRBOI Law Enforcement Officer retrieve the undeliverable ballots from the 2022 Special Election. With an officer and a Clerk of Court present, the Court counted the undeliverable ballots.

The Defendants stated in their affidavit that there were only 38 undeliverable ballots. However, the Court counted 63 undeliverable ballots. All the undeliverable ballots were intact, and all had a returned date stamp.

After receipt of the Defendants' response dated January 25, 2023, the Court had an LRBOI Law Enforcement Officer bring the undeliverable ballots to the Court once again. With the Officer and a Clerk of the Court present, on Thursday, January 26, 2023 the Court counted the ballots again and took note of each date that they were returned. Only three of the undeliverable ballots came in post-December 12, 2022.

While the Court at this point believes this to be harmless error, the Court still wants the discrepancy explained. **Defendant has until 8:00 a.m. EST on Friday, January 27, 2023 to explain the discrepancy in the number of undeliverable ballots.**

Date: 1/26/2023

DocuSigned by:
Caroline LaPorte
1A8D833FDE10437

Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify a copy of this document was served via email to the parties and/or their attorneys of record on this day.

1-26-23
Date

Spring Medaco
Court Clerk/Court Administrator

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Plaintiffs

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FINAL ORDER

The Court held a hearing on the above captioned matter on January 20, 2023. The Plaintiffs appeared pro se and Defendant (LRBOI Election Board) appeared and was represented by counsel. The Court stated at the outset that the reason for the hearing was to address the affidavit of Ms. Valerie McDonnell, previous LRBOI Election Board Chair and current candidate for the 2023 Regular Election as well as the Defendant's concern regarding **Plaintiffs' Exhibit F**, which was a file stamped copy of a DRAFT vendor contract **which was not part of the public record.**

1. Procedural History of this Case

The Plaintiffs filed a Statement of Claim on January 5, 2023 and an amended Statement of Claim on January 6, 2023 ('Complaint') alleging that the Little River Band of Ottawa Indians ('LRBOI') Election Board committed an abuse of power, violated the Constitution of LRBOI, and violated the LRBOI Election Board Regulations/Resolutions/Ordinances. In their pleading, the Plaintiffs requested the following:

1. Ex-Parte Restraining Order and Stay for the 2022 Special Election;
2. Ex-Parte Restraining Order for the 2023 Regular Election;
3. Permanent Injunction for both the 2022 Special Election and the 2023 Regular Election;
4. Mandatory Injunction for both the 2022 Special Election and the 2023 Regular Election; and
5. immediate removal of Election Board Members Karen Love, Laura Echelbarger and Kathy Gibson.

At no time did the Plaintiffs file an Election Dispute with the LRBOI Election Board as required by the Election Board Regulations. Instead, Plaintiffs' stated their claim was an allegation of impropriety, which this Court exercises jurisdiction over. On January 9, 2023, the Court denied both requests for Ex-Parte Injunctive Relief as Plaintiffs failed to show that serving the Defendant would cause delay, would cause irreparable injury, loss or damage or that notice will not precipitate adverse action before an order could be issued.[1] Though the Court has jurisdiction to hear allegations of impropriety by the Election Board as outlined in Chapter 14 § 2(A) of the LRBOI Election Board Regulations (as amended September 9, 2022), the Court found in its previous order that the Plaintiffs' request was **MOOT** as the Special Election results were certified on ***December 20, 2022*** and their ask was specifically to enjoin the certification of the Special Election.

While it was not necessary for the Court to address as the requests regarding the 2022 Special Election were **MOOT,** the Court nevertheless explained that Plaintiffs' Complaint as to the Special Election would otherwise be barred for two reasons: Plaintiffs' Complaint was time barred and the Plaintiffs failed to exhaust their remedies. In as much as the Plaintiffs' requests could have been construed as an election dispute or an election challenge (the later for which they lack standing to raise as they were not candidates in the 2022 Special Election), the Plaintiffs failed to exhaust their remedies by failing to file an election dispute with the LRBOI Election Board. And while the Court hears allegations of impropriety as stated above under Chapter 14 §2(A) of the LBROI Election Board Regulations, §2(B) requires that the allegations be filed with the Tribal Court within thirty (30) days of the date on which the complainant has knowledge. In each instance relating to the Special Election of 2022, the Complainants' knowledge of the issue giving rise to the allegation exceeds the thirty (30) day time limit.

Because the Plaintiffs are pro se, and the Court does provide some consideration for pro se litigants, the Court set the remainder of the Plaintiffs' complaint regarding allegations of impropriety impacting the 2023 Regular Election for a hearing. The Court was clear that it would not entertain arguments resembling election disputes (which need to go before the Election Board before coming in front of this Court as an appeal from an Election Board decision) or election challenges (which also need to go before the Election Board before coming in front of this Court, ***and for which the Plaintiffs in this case lack standing to bring).***

Additionally, in the Court's Order dated January 9, 2023, the Court was seriously concerned about the potential ethical issues found within the Affidavit of Valerie McDonnell, namely why Ms. McDonnell would provide the Court with a signed statement that she accessed a "Personnel Security Consultant Website" while a candidate for the 2023 Regular Election **POST** her time as

[1] *See* this Court's Order dated January 23, 2023.

a member of the LRBOI Election Board. Per Ms. McDonnell's Affidavit, she served on the Election Board from 2017 to October of 2022. She states that "during Thanksgiving, she was called and asked to check the Personnel Security Consultant Website to see if the background checks had come to [her] account. That was November 25, 2022."[2] The Court gave the Plaintiffs (in order language), three (3) days to provide the name of the individual who asked Ms. McDonnell to access the website. No name was provided by the Plaintiffs, so the Court issued a subpoena for Ms. McDonnell and had her served.

2. The Hearing and Subsequent Events

As stated above, the parties appeared ready on January 20, 2023. Plaintiffs provided prepared opening statements around the allegations of impropriety, which centered on the familial relationship of two LRBOI Election Board Members and two candidates for the 2022 Special Election. Plaintiffs rely on the LRBOI Constitution Article XII and LRBOI Election Board Regulation Chapter 14 Section 1(B)(10). It is worth noting that neither candidate relevant to the action at hand were elected in the 2022 Special Election.

Plaintiffs' reading of these provisions is that Election Board Members whose family members run in any election have to refrain from all of their duties as Election Board Members. That is incorrect. The regulations state that in this instance Election Board Members should recuse themselves when deliberating or voting on election matters. "Deliberating or voting on election matters" means, as was provided at the hearing on January 20, 2023, decisions regarding election challenges or disputes. Day to day responsibilities of the Election Board do not require recusal. On any Election Day, the election vendor is tasked with counting ballots. As stated in Defendant's response, the Election Board is only present to open the exterior ballot envelopes which is in full view of the public. As to the conflict of interest provision within the LRBOI Constitution, the provision clearly states,

> "In carrying out the duties of tribal officer, no tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a personal financial interest, other than interests held in common by all tribal members, against the interests of the tribe." *See* Article XII, LRBOI Constitution.

The Plaintiffs could not show, nor did they attempt to show, that any member of the Election Board made or participated in decisions involving a personal financial interest. Mere relation does not create a personal financial interest.

Plaintiffs' complaint also centered on 38* [3]undeliverable ballots from the 2022 Special Election. Defendant's counsel stated that her client could retrieve the undeliverable ballots, which were locked in the Election Board Offices in a locked file, with the assistance and escort of an LRBOI

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[2] *See* Sworn Affidavit of Valerie McDonnell (**Plaintiffs Exhibit S).**

[3] *See* Sworn Affidavit of Valerie McDonnell (**Plaintiffs Exhibit S)** (attesting that when Ms. McDonnell was told by an Election Board Member that there were 38 undeliverable ballots).

Tribal Law Enforcement Officer. An Officer brought the ballots to the Court, which the Court (in the presence of the Officer and a Clerk of Court), counted.

The Court counted 63 envelopes. **All envelopes were checked repeatedly to confirm that they were either still sealed or that the ballots within them were intact.**

With the exception of the obvious numerical difference between 38 and 63, the Court found no issues with the undeliverable ballots themselves (which are not utilized in the count of votes as they were not cast). The Clerk of Court and the Officer sealed the undeliverable ballots back into their original envelopes with evidence tape and had them placed in the LRBOI Tribal Police Department property room (where evidence is safely stored so that it cannot be tampered with). The Court issued a second order on January 23, 2023 asking the Defendants to explain the process for counting undeliverable ballots, as both creation of and following process is part of their obligation to ensure valid tribal elections. Defendant's response was vague, so the Court clarified its order. On January 26, 2023 a third order was entered, which required the Defendants to explain the discrepancy specifically by Friday January 27, 2023.

The Court did not receive a response from Defendant. The Court was clear that this was an issue of direct contempt.

Then, on January 30, 2023, the Court held its final hearing in this matter. Defendant had *an* explanation for the discrepancy, which was that in filing their affidavits they relied on the Plaintiffs' assertion that there were 38 undeliverable ballots. The Court finds this to be astonishing, but also not material to a finding of impropriety. Which places the Court in an odd position, where something that is not relevant to the problem at hand has become nuisance for the Court to resolve.

Also a nuisance, though more alarming for various public interest reasons as well as potential criminal liability of a conveniently unknown individual, is the representation of Plaintiffs that at least one of them suffers (without providing any medical documentation from a licensed professional competent to make such a diagnosis) from "short term memory" problems and because of that, the Court cannot have its answer. Rather than avoiding stating the obvious, the Court gave the Plaintiff, as it gave the Defendant, an additional opportunity to share the information as to where they retrieved their filed **Exhibit F**. But the Plaintiffs could not recall and instead filed (prior to the hearing) a response and exhibit, which the Court is **STRIKING** for the reasons requested by the Defendant in its response dated January 27, 2023. Because the Plaintiffs have no recollection of where the file stamped DRAFT copy of a vendor contract not available to the public for numerous legal reasons, **Exhibit F** is also **STRICKEN.**

3. Further Analysis Regarding the Four-Part Test and the Claim of Impropriety

The Court was clear that should the Plaintiffs not provide the information the Court ordered on January 23, 2023, the Court would dismiss their claim in its entirety as a SANCTION. Regardless, here the Court analyzes the Claim for Injunctive Relief and the Plaintiffs' claim of impropriety.

Injunctive relief is an extraordinary remedy that should only be granted when no adequate legal remedy exists, there is an imminent danger of irreparable harm and justice requires that such extraordinary relief be granted. *Pontiac Fire Fighters Union Local 367 v. Pontiac, 482 Mich.* 1, 8 (2008). The Little River Tribal Court of Appeals has adopted a four-part test in determining whether to grant a preliminary injunction or a temporary restraining order:

The trial court must evaluate whether (1) the moving party made the required demonstration of irreparable harm, (2), the harm to the applicant absent such an injunction outweighs the harm it would cause the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is issued.[4]

The moving party must demonstrate a likelihood of success on the merits. *Crampton v. LRBOI Election Board*, Case No. 05-11-AP (2005). Further, the moving party must demonstrate irreparable harm to their rights, and that failure to do so precludes injunctive relief. *Medacco v. Little River Band of Ottawa Indians*, Case No. 17-006GC. Defendants argue that, rather than weighing the four factors, Tribal Court has dismissed requests for injunctive relief if one or more of the factors cannot be proven. Defendants assert that the Plaintiffs have failed to prove that any of the essential factors are present. The Court agrees.

Again, as stated above, the Plaintiffs' primary claim is that the LRBOI Election Board acted with impropriety because two board members did not recuse themselves from being present on Election Day despite familial relationships. This alleged claim does not rise to the level of impropriety. Impropriety is "willful conduct or behavior which violates the ethical standards set forth for Members of the Election Board under these Regulations and which affects the outcome of a Tribal Election. Impropriety does not include disagreements with decisions of the Election Board."[5] The Court agrees with the Defendant that a charge of impropriety requires that the Election Board undertake three (3) actions: 1) the Election Board must act with willful or intentional conduct or behavior; 2) that the Election Board must then violate their ethical duties as described in Chapter 14, Section 1 of the LRBOI Election Board Regulations; and 3) the willful conduct must affect the outcome of the Tribal Election. Plaintiffs have not met their burden to establish impropriety on the part of any of the Election Board Members.

The ethical standards that govern the Election Board Members are established in Chapter 14 of the Election Board Regulations. Section 1(B)(10) states that Election Board Members shall recuse themselves from deliberations or voting on Election Matters where such involvement may result in personal gain; where a personal bias or prejudice may exist; and where there is a reasonably close family relationship to the individual requesting action by the Election Board.

It is not contested whether a familial relationship existed between the Election Board Members and the candidates at issue. So the issue then turns on the meaning of "deliberation or voting on Election Matters." As provided above, the action the Plaintiffs took issue with was that Election Board Members were present on voting day. The Court has stated why this action does not fall under the scope of "deliberation or voting on Election Matters." As stated in Defendant's

[4] See *Ossignac v. Sam*, Case no. 09-012-AP (2009).
[5] *See* Chapter 1, Section 2 (S) of the LRBOI Election Board Regulations.

response, there was no need to deliberate or vote on requests for action to the Election Board because no disputes, challenges, or other matters were at issue regarding these two candidates.

Furthermore, because a finding of impropriety requires that the alleged impropriety must actually affect the outcome of the Election, Plaintiffs fail to meet their burden. Neither relative of either Ms. Love or Ms. Echelbarger was elected in the special election. Here, the Court finds no impropriety by the Election Board Members.

Plaintiffs have failed to demonstrate a likelihood of success on the merits. Plaintiffs have not demonstrated irreparable harm nor did they provide any evidence to support such a finding. The Plaintiffs provide vague allegations of impropriety, refuse to provide the names of their sources, and rely on hearsay and expect this Court to do the same. Furthermore, the Court finds that an injunction would cause substantial harm to the Tribe. This lawsuit itself is a waste of Tribal resources, Tribal Court resources, and Election Board time. It is merely a political trojan horse designed to erode public trust in valid Tribal elections without basis.

4. Conclusion

As Kwe, the Court is dismayed. Both parties are being admonished by the Court for their lack of candor. Both parties are warned not to file anything in this Court, especially not affidavits, that are not accurate (Defendant and Plaintiffs), that they should not have in their possession (Plaintiffs), and especially where they cannot locate or recall the source of such information (Plaintiffs).

The Plaintiffs remaining requested relief is hereby **DISMISSED with prejudice as a SANCTION** for failing to provide the requested information and for their lack of candor before this Court. Defendant's additional request for sanctions (attorneys' fees) is **DENIED** for same. All other relief requested is **DENIED.**

This closes this matter on this 7th Day of February 2023.

DocuSigned by:
Caroline LaPorte
1AB0833F0E10437...
Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify a copy of this document was served via email to the parties and/or their attorneys of record on this day.

2.7.23
Date

Spring Medaco
Court Clerk/Court Administrator

Romanelli v. Crampton and Champagne **23-097-GC**

Summary: This case was heard by Judge Angela Sherigan.
Plaintiff filed a complaint against Defendants alleging violations of the Constitution, namely that it does not provide for remote participation and voting at Tribal Council meetings and requested that the Court order Tribal Council members to be physically present at regularly scheduled meetings in order to be counted as members of a quorum and to vote on any matter before Tribal Council.
*Note: The original defendants in this case were Tribal Councilors Shannon Crampton and Cynthia Champagne, who were both on Tribal Council at the time the complaint was filed with the Court. Pursuant to a stipulation and order, Cynthia Champagne was dismissed from the case because she was no longer on Tribal Council.

Decision and Order: Plaintiff filed a Motion for Summary Disposition asking the Court to declare that the constitution requires members of the Tribal Council to be physically present at regularly scheduled meetings to be counted for purposes of a quorum and to vote on matters before the Council, and that "physically present" means that each Councilor be present and seated at the time and in the place named in the resolution setting the schedule of the regular meetings pursuant to Article IV, Section 6(a) of the constitution.

Defendant filed a Motion for Summary Disposition asking the Court to declare that the Plaintiff lacks standing to bring the action and that the doctrine of separation of powers prevents the Court from hearing this matter as it is a procedural matter of Tribal Council and not contrary to some constitutional mandate. Defendant also argued that there was a necessary party missing to the case, namely Tribal Council.

After hearing both motions, the Court ruled that the Ogema does have standing bring the action because he is charged with the enforcement of laws, ordinances and resolutions of the Tribal Council, consistent with the constitution pursuant to Article V, Section 5(a)(1) and Article XI, Section 2(a). Further, the Court ruled that the Defendant's argument that a necessary party is missing is without merit as he made no attempt to add the Tribal Council as a party.

The Court declined to interpret the meaning of the word "present" as it is a procedural function in which the legislative branch has the authority to determine itself pursuant to Article IV, Section 6(e) of the constitution. Tribal Council had previously passed Resolution #04-1215-505, which did, in fact, make a determination of what "present" means: "... all members of Tribal Council, and the Tribal Ogema are required to attend each duly scheduled or called meeting of the Tribal Council in person..." Since the initial filing of the suit, however, that resolution had been repealed in its entirety by Resolution #23-0816-118. The repeal of the resolution returns the Court to an interpretation of the word "present" which the Court has declined to do.

Thus, the Court denied the Plaintiff's motion and granted the Defendant's motion, and the case was dismissed.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

LARRY ROMANELLI,
As Ogema,
Plaintiff,

v.

SHANNON CRAMPTON, and
In his capacity as a Tribal Councilor,
Defendant.

Case No. 23-097-GC
Hon. Angela Sherigan

/

Dennis M. Swain	Gary S. Pitchlynn
Attorney for Plaintiff	Attorney for Defendant
2608 Government Center	P. O. Box 722786
Manistee, MI 49660	Norman, OK 73070

/

ORDER AFTER HEARING ON MOTIONS FOR SUMMARY DISPOSITION

A hearing was held on both Plaintiff's and Defendant's Motions for Summary Disposition in this matter in which the Plaintiff and his attorney and the Defendant's attorney appeared[1].

This matter was originally brought before the Court as a declaratory action asking the court to declare the meaning of the word "present" in the Constitution as it pertains to Tribal Council regular meetings.

It is the Plaintiff's position that present means *physically* present. (*emphasis added*). In Plaintiff's Motion for Summary Disposition, he argues that pursuant to Resolution 04-1215-505, that Councilor Crampton must be physically present at the Council meetings. The Resolution states that "all members of the Tribal Council and the Tribal Ogema are required to attend each duly schedule or called meeting of the Trial Council in person…".

Plaintiff asks to the Court to declare that the Little River Band of Ottawa Indians Constitution requires members of the Tribal Council be physically present at regularly scheduled meetings to be counted for purposes of a quorum, and in order to vote on matters before the Council, and that physically present means that each Councilor be present and seated at the time and in the place named in the resolution setting the schedule of the regular meetings pursuant to Article IV, Section 6(a) of the Constitution.

In Defendant's Motion for Summary Disposition, he argues that the Plaintiff lacks standing to bring the action, and that the doctrine of separation of powers prevents the court from hearing this matter as it is a procedural matter of Tribal Council and not contrary to some

[1] Defendant failed to appear and was subsequently held in contempt of court after a hearing on the matter.

constitutional mandate. Defendant additionally argues that there is a necessary party missing to this action, namely the Tribal Council.[2]

The Court will first address the issue of standing[3]. The Court finds that the Ogema does have standing as he is charged with enforcement of the laws, ordinances and resolutions of the Tribal Council, consistent with the Constitution pursuant to Article V, Section 5(a)(1) and under Article XI, Section 2(a), which states:

> (a)the Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal officials, acting in their official capacity, shall be subject to suit for declaratory or injunctive relief in the Tribal Court System for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions. of the Tribe.

Here the Ogema is seeking declaratory relief from a constitutionally mandated duty placed on Tribal Council members, attending Tribal Council meetings, as well as the resolutions cited, and the interpretation of the word "present" contained therein. It is the Ogema's position that present means physically present, which he claims Councilor Crampton has not been physically present for Tribal Council meeting for most of 2022 and 2023.

Defendant's argument that a necessary party is missing is without merit, as while he raised this in prior hearings, he made no attempt to add the Tribal Council as a party. It should be noted that various Tribal Council members appeared at various hearings during the pendency of this case, and thus were aware of it, yet never motioned the Court to intervene. Nonetheless, under Article XI, Section 2(a) allows for Tribal Council *members* to be subject to suit, and it is defendants actions that are the impetus of this case.

The defendant argues that under Article IV, Section 6(e), the Tribal Council has authority to determine its own rules of procedure for meeting of the Tribal Council subject to any limitations imposed in the Constitution., and as such the doctrine of separation of powers prohibits the judiciary from encroaching upon or interfering with legislative function. While the Court agrees, it is not an absolute. The Court does have authority to strike down laws, ordinances, and regulations, and resolutions that are inconsistent with the Constitution.

In this instance, the Court declines to interpret the meaning of the word "present" as it is a procedural function, in which the legislative branch has the authority to determine itself, under Article IV, Section 6(e). However, the Tribal Council, did in fact, make a determination on what "present" means in Resolution #04-1215-505, which states "...all members of Tribal Council, and the Tribal Ogema are required to attend each duly scheduled or called meeting of the Tribal Council *in person*..." (emphasis added). While defendant admits in his answer that he has not been physically present for the meetings, he argues that since COVID19, it has been the "policy"

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[2] Defendant did not motion the court at any point in the case to add the Council as a necessary party.
[3] Standing is a non-jurisdictional affirmative defense and must be plead in the first responsive pleading (answer). A review of the file shows that no affirmative defenses were raised and thus the issue of standing is waived.

of the Tribal Council to allow participation virtually. Defendant failed to provide the Court with any proof of that policy. Additionally, a policy does not trump a resolution.

Since the initial filing of this suit, Resolution #04-1215-505 has been repealed in its entirety by Resolution 23-0816-118. This in effect returns the Court to an interpretation of the word "present" which this Court declines to interpret for the reasons stated above.

THEREFORE, the Court denies the Plaintiff's Motion and grants the Defendant's Motion. This case is DISMISSED. There are no other issues remaining and this matter is closed.

Dated: November 6, 2023

Angela Sherigan
Hon. Angela Sherigan

CERTIFICATION OF SERVICE

I certify a copy of this document was served via USPS mail and via email for service to the parties and/or their attorneys of record on this day.

11-6-23
Date

Spring Medacco
Court Clerk/Court Administrator

Tribal Council v. Ogema Romanelli and Tribal Prosecutor 23-105-GC

Summary: This case was heard by Judge Caroline LaPorte.
Plaintiff filed a complaint for declaratory and injunctive relief against the Defendants alleging violations of the Constitution and the Office of the Prosecutor Ordinance. Plaintiff alleged that it did not legally approve the nomination of the Prosecutor and that the Ogema did not have the proper authority to enter the Prosecutor's employment contract. Plaintiff asked the Court to declare the Prosecutor's contract invalid and requested a preliminary injunction to halt the work of the Prosecutor pending litigation.

Decision and Order: The Court entered Order After Motion and Injunction Hearing dated June 16, 2023 which addressed the Motion for Preliminary Injunction as well as two other motions that had been filed by Plaintiff: (Motion to Disqualify) Disqualification of Judges and Motion to Seal Exhibits. The Court denied the (Motion to Disqualify) Disqualification of Judges. The Court also denied the Motion to Seal Exhibits; however, the parties stipulated redacting the exhibits to the complaint. The Court further denied Plaintiff's Motion to Preliminary Injunction.

Defendants filed separate Motions for Summary Disposition, which were heard by the Court on September 12, 2023. The Court granted Defendant Hauswirth's motion for summary disposition, which centered on the doctrine of laches. The Court further ruled that the lawsuit was frivolous and awarded Defendant Hauswirth reasonable costs and fees, including attorney fees.

The Court granted Defendant Ogema's motion for summary disposition. It further ruled that Sections 8.02 and 8.03 of the Office of the Prosecutor's Ordinance are unconstitutional and that Tribal Council violated the Constitution by voting on matters in closed session.

Tribal Council v. Ogema Romanelli and Tribal Prosecutor 23-232-AP

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

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
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LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COUNCIL,
Plaintiff

Case No. 23-105-GC

Honorable Caroline LaPorte

v.

OGEMA LARRY ROMANELLI, and TRIBAL PROSECUTOR JONATHON HAUSWIRTH,
Defendants

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Manistee, MI 49660

ORDER AFTER MOTION AND INJUNCTION HEARING

On June 2, 2023 the Court held a hearing in the above-captioned case. All parties were present via zoom and were represented by counsel. As stated in its previous Order, the Court was set to hear the Motion to Disqualify first.

A. Motion to Disqualify

Having reviewed the motions and responses and having considered the arguments as presented on the record, the Court **DENIED** the Motion to Disqualify. Though the Court stated its reasons on the record, those reasons and additional reasons are restated here:

1. This Judge for the Little River Band of Ottawa Indians was not on the bench during November of 2020 (the time in question). This Judge was seated September 22 of 2021.
2. The Plaintiffs have stated no grounds sworn by affidavit or otherwise verified that would disqualify the entire judiciary or myself.

3. The Plaintiffs filed, with their Complaint, two exhibits of closed meeting minutes. These closed meeting minutes form the basis of the Motion to Disqualify and are part of the record now. What was disclosed in those minutes via Plaintiff's complaint will be read by any judge who hears this case because the Complaint relies on these minutes (supported via affidavit by then Speaker and current Council member, Shannon Crampton) as the basis for removal. By Plaintiff's logic, any Judge who simply reads the complaint would have to disqualify themselves.
4. The Plaintiff's Motion is overly broad and does not provide any specific basis as to why this Judge should disqualify herself. The basis for the Motion is based on assumption and not fact. Judge Sherigan recused herself prior to the Plaintiff filing its Motion to Disqualify.
5. The Court was not persuaded by Plaintiff's argument that due to the nature of legal work and the close proximity in which judges must work with prosecutors, that she should recuse herself. This would require all judges to recuse themselves anytime a prosecutor was before them.

Verified motions are tested by their truthfulness. Here, we have unfounded allegations lobbed against the judiciary in what appears to be an effort to judge shop and one that either way questions the validity of judicial process.

B. Motion to Seal

As the Court ruled from the bench on the Motion to Disqualify, the Court then turned to the Plaintiff's Motion to Seal their Exhibit A and Exhibit B. Both exhibits are closed meeting minutes. The Court was not inclined to grant this Motion as the minutes are the basis of the complaint and were also relied on by the Plaintiff's above-mentioned affidavit. The Plaintiff waived its right to keep those minutes sealed (and Council as a body can release closed meeting minutes to the public at its discretion) when it filed them in this Court. The only person who could really request this court to seal the minutes is factually Mr. Hauswirth, whose rights as an employee could be impacted by the sharing of confidential information. Mr. Hauswirth, through his counsel, has stated no issue with their release. Furthermore, the Plaintiff is essentially requesting the Court to keep something from the general public but also get to discuss it on the record, meaning no one could test the veracity of the statements provided on the record against their documentation.

Regardless, all parties agreed at the Court's request to stipulate what would be redacted. Per the parties' stipulation:

1) **Exhibit A** is to be redacted starting on page 1 at "VII. Closed Session" and ending at page 7 at "4. Approval of Employment Contract for Prosecutor and Confirmation of Appointment." The redaction will then continue starting on page 11 at "5. Approval of Engagement Letter" and continuing though the end of Exhibit A.

2) **Exhibit B** is to be redacted starting on page 1 at "Meeting began at 11:52 A.M" and ending on page 7 starting at "2. Approval of Employment Contract for Prosecutor and Confirmation of Appointment." The redaction will then continue starting on page 19 of

Exhibit B at "D. Acceptance of Submission from Tribal Entities requiring action in Closed Session" continuing through the end of Exhibit B.

C. Motion for Preliminary Injunction

The Motion for the Preliminary Injunction is **DENIED**.

The Court has adopted a four-part test when considering granting injunctive relief. The party so moving has the burden of proof to show the Court that:

1) There will be no harm to the public interest if an injunction issues;
2) Whether harm to the movant in the absence of an injunction outweighs the harm to the opposing party if granted;
3) That through the strength of the movant's demonstration, the movant is likely to prevail on the merits; and
4) That the movant will suffer irreparable harm/injury if the injunction is not granted.

The factors should be balanced to obtain an equitable result.

First Factor: There will be no harm to the public interest if an injunction issues.

Plaintiff, who asks this Court to enjoin the Prosecutor from performing his job duties during the pendency of this lawsuit, argue that the Prosecutor is "illegally installed" and that the harm resulting from his employment will result in the overturning of Tribal Court convictions and child welfare dispositions. Plaintiff offers absolutely no legal justification or basis for this assertion. They cite no case law. They point to no ordinance, constitutional provision, code, or resolution to persuade the Court as to the merits of their argument.

Actually, the harm to the public is great should the preliminary injunction issue. The argument itself is both harmful and irresponsible. Granting Plaintiff's request would lend validity to the dangerous idea that this Court's orders, including convictions for violent offenders and child abusers, be undone due to the Plaintiff's own failure to raise any issues relating to this lawsuit when Plaintiff became aware of it: over thirty (30) months ago.

Second Factor: Whether harm to the movant in the absence of an injunction outweighs the harm to the opposing party if granted.

This factor has a risk of conflation due to there being two separate defendants, both acting in different capacities and one of them (the Defendant Prosecutor) could suffer individual harm through the loss of employment (while the harm done to the Office of the Prosecutor in general also likely needs to be considered).

Regardless, Plaintiff has failed to demonstrate that it will suffer any harm at all as Tribal Council. By incorporating its interests with that of the general Tribal membership, the Court must also consider whether the harm to the public outweighs the harm to the Defendants. To this, the Court reiterates its analysis from the first factor. The Court cannot stand by the supposition

that because someone is performing a job, that Council has allowed them to perform for over thirty (30) months, and should now be removed somehow, that the work they have performed is now not only invalid, but has to be redone by another yet to be named individual. The budget that has been approved by Tribal Council for the Office of the Prosecutor for the last thirty (30) months, under Tribal Council's argument, would now just be a loss. Furthermore, the Court would have to rehear the cases to be re-brought by a new prosecutor, essentially double paying for the same amount of work (which of course does not consider the work they would already have to be performing on new criminal and child welfare case). Plaintiff's argument is that the Court might have to overturn DUI convictions, child abuse convictions, child sexual assault convictions, to return guns to the hands of violent offenders, or to return abusers to this community. Plaintiff argues this absent any legal support. That is a harm to the public that the Plaintiff's argument cannot and does not survive.

But what is fatal to the Plaintiff's argument is actually just the argument itself. If Mr. Hauswirth is not enjoined, says Plaintiff, all of these convictions *could* be overturned; not *will*. Plaintiff's argument is that if the Court does not appoint a special prosecutor for pending litigation, then those protentional convictions could be tossed; the basis for which is still unclear. Plaintiff argues that the Court should NOW, going forward, appoint a special prosecutor so that pending cases are not impacted. The problem, as Plaintiff writes it, is a future one. In the same vein, Plaintiff wants to argue that the convictions of the past two years will not really be an issue (or at least Council does not address them) so long as the Court enjoins Mr. Hauswirth during the pendency of this suit. Either the prosecutor could prosecute, or he could not. Council wants the Court to enjoin the prosecutor so the following can be true: Mr. Hauswirth prosecuted these cases validly for the past two years, but because he was not a valid prosecutor, he cannot prosecute now. That is a logical fallacy, and appointing a Special Prosecutor now does not help to cure it.

Even though Plaintiff's argument is self-defeating, the Court nevertheless considers the harm to the Defendants. Here, the Court will focus specifically on the Harm to the Defendant Prosecutor, which is great. At the very least, he will lose his job, his income, and his healthcare during the pendency of this suit. Because the Plaintiff has not stated any harms which have not been dispatched by this Court already, the harm to the Defendant outweighs the harms the Plaintiff has raised.

Third Factor: That through the strength of the movant's demonstration, the movant is likely to prevail on the merits.

Movants have not demonstrated a strong likelihood of prevailing on the merits, as they have not cited a legal basis for the need for the preliminary injunction. Specifically, Plaintiff has stated no basis for its assertion that the community will suffer irreparable harm "because the contract is invalid and therefore any case that the Defendant Prosecutor has previously prosecuted could be overturned due to his 'illegal status'."[1] Nor has Plaintiff supported its argument that the Tribal community is "in grave danger because prosecuted criminals could have their convictions and sentences reversed."[2]

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[1] Plaintiffs' Motion for Preliminary Injunction, pg. 2

[2] *Id.*

Additionally, the Plaintiff did not expressly address the third factor in the four-part test in its Motion for Preliminary Injunction.

Fourth Factor: A demonstration that the movant will suffer irreparable injury if a preliminary injunction is not granted.

Plaintiff cannot in good faith make this argument. The Defendant Prosecutor has been in his position for over thirty (30) months. Tribal Council has approved his budget, has brought him complaints, has paid his salary and so on. There is no need or basis for a preliminary injunction. It is worth noting that as evidenced by the minutes from Plaintiff's exhibits, Plaintiff became aware of this in November of 2020.

Jurisdiction does not jump from individual prosecutor to prosecutor. It sits in the Office of the Prosecutor, awaiting its enforcer. The Tribe pays that person, that person shows up for work, that person is paid health insurance benefits, that person is held accountable to work standards, they hire people for their office, they work with law enforcement, they bring cases on behalf of the Tribe. It is not Mr. Hauswirth's Office. It is the Little River Band of Ottawa Indians' Office of the Prosecutor.

Conclusion

For the reasons stated above, the Motion to Disqualify, the Motion to Seal, and the Motion for the Preliminary Injunction is DENIED. The Court Clerk will redact the Exhibits as was stipulated to by the parties on the record in open Court.

6/16/2023
Date

DocuSigned by:
Caroline LaPorte
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Caroline LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify that a copy of this document was emailed to all parties and/or their attorneys via email on the below date.

6-19-23
Date

Spring Medacco
Court Clerk/Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
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tribalcourt@lrboi-nsn.gov

LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COUNCIL,
Plaintiff

Case No. 23-105-GC

Honorable Caroline LaPorte

v.

OGEMA LARRY ROMANELLI, and TRIBAL PROSECUTOR JONATHON HAUSWIRTH,
Defendants

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ORDER

On September 12, 2023, the Court held a motion hearing on the above captioned case. Defendant Hauswirth, his attorney Mr. Van Alstine, Mr. Swain representing the Ogema, and Mr. Pitchlynn representing Tribal Council all appeared.

This case centers on three different issues:

1. Whether the doctrine of laches bars Tribal Council from success in this suit;
2. Whether Section 8.02 and Section 8.03 of the Office of the Prosecutor Ordinance is unconstitutional;

and *perhaps most important*,

3. What is the right of Tribal citizens to be informed of their Council Members' votes and actions coming out of a closed session?

3. What is the right of Tribal citizens to be informed of their Council Members' votes and actions coming out of a closed session?

During the hearing, the Court heard arguments on the following:

A. Defendant Hauswirth's Motion for Summary Disposition; and
B. Defendant Ogema's Motion for Summary Disposition.

The Court addresses each in turn.

FACTS

The following is not in dispute (some of which are procedural for purposes of establishing a timeline):

1. LRBOI prosecuting attorney, Shayne Machen, resigned from her position with notice to the Plaintiffs and to the Ogema on August 31, 2020 (effective October 30, 2020).
2. A group of interviewers, who at the time did not comprise of Tribal Council members, interviewed five (5) candidates for the position and the Ogema brought current Tribal Prosecutor Jonathan Hauswirth forward as a candidate.
3. On November 18, 2020, a regular Tribal Council meeting was held, where in closed, a discussion was had regarding the nomination and the proposed contract for Mr. Hauswirth's employment. A vote was called in closed session. The vote was as follows (the Court has this information because Plaintiffs filed the closed session minutes with their complaint):
    a. R. Wittenberg- NO
    b. D. Lonn- YES
    c. T. Guenthardt- YES
    d. S. Crampton- NO
    e. D. Corey- NO
    f. R. Pete- YES
    g. G. DiPiazza- YES
    h. C. Champagne- NO
    i. S. Lewis- NO

At the end of the roll call, stated clearly in the minutes, reads "Motion failed (4-5-0-0)".

4. Then, on November 25, 2020, Tribal Council held another regular Tribal Council meeting, where during a closed session, they again voted on Mr. Hauswirth's candidacy. The vote was as follows (the Court has this information because Plaintiffs filed the closed session minutes with their complaint):
    a. R. Wittenberg- NO
    b. D. Lonn- YES
    c. T. Guenthardt- YES
    d. S. Crampton- NO
    e. D. Corey- YES
    f. R. Pete- YES
    g. G. DiPiazza- YES
    h. C. Champagne- NO
    i. S. Lewis- NO

At the end of the roll call, stated clearly in the minutes, reads "Motion carried (5-4-0-0)".

5. The contract for Mr. Hauswirth's employment was executed on December 10, 2020.

6. Hauswirth has served in this position as the LRBOI Tribal Prosecutor since that date and with an approved budget as required.
7. On March 8, 2023, during closed session, council voted to bring suit. The record of this vote is unknown, as it was never disclosed during the pendency of this suit, despite the Court ordering such information to be filed in this case. In a response filed by Attorney Carrie Frias, Plaintiffs stated, "Attorney Frias was present at the closed Tribal Council meeting on March 8, 2023, where Plaintiff passed a motion to duly authorizing this suit." Plaintiff, through their own filing, confirmed there was no resolution existed.
8. On May 4, 2023, Plaintiff Tribal Council filed its Complaint requesting injunctive and declaratory relief asking the Court to affirm that the Prosecutor's contract was "invalid," that the Ogema did not have the authority to enter it, and as a result that the Prosecutor was "illegally installed."
9. On May 5, 2023, Chief Judge Angela Sherigan recused herself.
10. On May 9, 2023, Plaintiffs filed a Motion to have the entire judiciary recuse itself based on closed meeting minutes that were filed by Tribal Council attached to its motion.
11. The Court ruled from the bench on the Motion to Disqualify and denied the request for injunctive relief in an Order dated June 16, 2023.
12. Tribal Council's then attorney, Carrie Frias, filed a motion on June 30, 2023, asking the Court to reconsider its ruling on June 16, 2023, which the Court denied.
13. On August 4, 2023, Ryan Champagne attempted to file a Motion to Intervene in this suit, which has not been heard due to failure to comply with the Tribal Court Rules regarding interventions. A copy of the Motion is attached to this Order.
14. Both Defendants filed Motions for Summary Disposition in this case and both Motions were heard on September 12, 2023.

ANALYSIS

A. Defendant Hauswirth's Motion for Summary Disposition

Defendant Hauswirth's Motion for Summary Disposition centers on the doctrine of laches, which is an equitable defense. Blacks Law Legal dictionary defines laches as "negligence, consisting in the omission of something which a party might do, and might reasonably be expected to do, towards the vindication or enforcement of his rights." *Black's Law Dictionary*, (11th ed. 2019). Here, Hauswirth argues, Tribal Council not only failed to act on its claim, but also ratified his employment contract via the approval of his budget since December 2020. The Court Agrees. As of the date of this suit's filing, Mr. Hauswirth had been in his position for over thirty (30) months. His budget has been approved at least twice. And perhaps most importantly, he has been performing the functions of his job at the behest of this Tribal government. Furthermore, as written in the closed session minutes, the motion on November 25, 2020 **carried.** Council voted and carried the motion. And it bears worth stating that no one had access to the closed meeting minutes or the vote roll call, especially not the Prosecutor, despite Tribal Council's most recent filing. Accordingly, Defendant Hauswirth's Motion for Summary Disposition is **GRANTED.**

The Court now turns to Defendant Hauswirth's request for a finding that this lawsuit is frivolous in accordance with LRCR §4.625. The prosecution acts as an arm of the Executive Branch, which is the enforcement arm of the Little River Band of Ottawa Indians' government. This was an issue between two branches of government, both of whom have in house legal representation and are budgeted to have that representation. Here, we have an employee of the Tribe who has had to hire his own attorney, presently at his own expense, with no way to rely on his future income (as is the nature of this suit directly bearing on whether or not his employment contract was valid on its face).

It bears worth noting that it would be exceptionally hard to keep employees if the following is to be our expectation: that they could be named as individual defendants in a lawsuit between Tribal Council and the Ogema, due to no fault of their own, and that their legal expenses may or may not be covered by the Tribe's insurance or their existing department's budget. And this is especially inequitable because it was Tribal Council, the same party asking this Court to void Mr. Hauswirth's employment contract, who voted and carried their motion to approve that same contract and who have approved his budget since 2020. So, the question then becomes "why now?". And we cannot answer that question without issuing a determination on Mr. Hauswirth's motion to this Court for a finding that this lawsuit is frivolous.

To meet the requirement of showing that a frivolous lawsuit or action has been filed, the movant (here, the Defendant Prosecutor) must show one of the following:

1. That the primary purpose of bringing the suit was to harass, embarrass or injure;
2. That it was based on untrue facts; ***or***
3. The legal position was devoid of arguable legal merit. LRCR §4.625 (*emphasis added*).

Having considered the Motion, the Complaint and the allegations contained therein, and the Plaintiffs' requested relief, this Court finds that the first and third prongs of the requirement is met. It is important to state that the Court is making this finding for the following reasons: 1. The Plaintiff waited for over thirty (30) months to bring this suit; 2. This case is being used by Defendants who were previously on Tribal Council and/or whose relatives sat on Tribal Council while the suit was allegedly authorized as a not so thinly veiled attempt to invalidate their prosecution in a criminal case; and 3. The Plaintiffs legal position, which was that if the Court did not declare the employment contract of the Prosecutor to be invalid, the criminal charges, convictions and sentences of cases that have been brought to Mr. Hauswirth to prosecute on behalf of the Tribe would be tossed (despite citing zero legal authority, case law or otherwise, to support this argument). The timing of this lawsuit it not lost on this Court, nor is the likelihood that what occurred in closed session on March 8, 2023, though not shared with the Tribal membership writ large, was shared with at least one criminal Defendant being prosecuted by this Tribe. This lawsuit has been entirely unfair and unequitable to this Prosecutor and it has frustrated his ability to do what he was hired to do: help keep this Native Nation safe. But furthermore, and as was discussed in this Court's initial Order in this case, his livelihood, his reputation, his legal career, his health insurance, and so on, have all been hung in the balance of a case that is very simply not about him. Therefore, having granted the Defendant's Motion under

LRCR §4.625, the Court is *required* to award the Defendant the reasonable costs and fees, including attorneys fees, he incurred in connection with this action pursuant to LRCRC §4.625(A)(2), which is unfortunate for numerous reasons: none more so than the impact to tribal services and tribal members.

The Defendant Prosecutor, as the party entitled to costs and reasonably attorney fees, must prove up their costs and fees in accordance with the LRCR Rules of Civil Procedure.

B. Defendant Ogema's Motion for Summary Disposition

Defendant Ogema's Motion for Summary Disposition centers on two arguments: 1. That §8.02 and §8.03 of the Tribal Prosecutor's Ordinance is unconstitutional considering Article IV §6(g)(2) of the Little River Band of Ottawa Indians Constitution; and 2. There was no resolution authorizing this lawsuit as per *Willis v. Tribal Council*, 22-010-GC.

The second argument of Defendant Ogema also requires the Court to delve into one of the most important aspects of this case: What is the right of Tribal citizens to be informed of their Council Members' votes and actions coming out of a closed session?

1. Section §8.02 and §8.03 of the Tribal Prosecutor's Ordinance is Unconstitutional

The Defendant Ogema raised the constitutionality of the LRBOI Tribal Prosecutor's Ordinance Section 8.02 and Section 8.03.

Section 8.02 of the LRBOI Tribal Prosecutor's Ordinance states:

8.02. *Appointment.* No later than fifteen (15) days prior to the expiration of the Prosecutor's term of office, the Ogema shall nominate an individual for the position of the Prosecutor from among applicants jointly interviewed by the Ogema and Tribal Council.

Section 8.03 states:

8.03 *Confirmation.* The Ogema's nominee shall be subject to a confirmation by a Tribal Council Resolution by an affirmative vote of six (6) Tribal Council members.

As stated in *Stone v. Tribal Council,* 20-051-AP, the Constitution creates three branches of government with the powers and duties of each branch enumerated within this Constitution. A branch of government may only exercise or delegate the powers that the Constitution establishes that it has. No branch of government may exercise what it does not have, including the enumerated powers of another branch. *Id.* Here, we have an ordinance crafted that allows the legislative body to encroach upon the Executive Branch's Constitutionality delegated authority.

Defendant Ogema argues that neither of these provisions is constitutional. The Court agrees and turns first to address the constitutionality of §8.02. The Ogema and Tribal Council are to

interview applicants jointly pursuant to the provision in the ordinance. But "consulting, negotiating and executing contracts" including with private persons, is an enumerated power of the Ogema expressly stated in the LRBOI Constitution. *See* Article V, §5 of the LRBOI Constitution. That the Ogema would be required to interview applicants jointly with Tribal Council is an encroachment on the Executive Branch's power under the separation of powers doctrine. The Court certainly can see the purpose of a Tribal Council that is informed of a candidate's qualifications prior to a ministerial confirmation vote, but to require that they be involved in a specific way, exercising essentially the same function as the Ogema prior to bringing the nominee forward, is an encroachment. Furthermore, there is no requirement of council to appear for said interview process and no remedy should they fail to materialize in a timely manner for said interviews. There is also no mention of how many Tribal Council Members must be present. Accordingly, the Court finds that §8.02 is unconstitutional.

Article 5, §5 of the LRBOI Constitution enumerates the powers of the Ogema, the very first one which states "to enforce and execute the laws, ordinances, and resolutions of the Tribal Council consistent with this Constitution." *Id.* §5 (a)(1). Clearly, enforce and execute the laws, ordinances and resolutions of the Tribe would require, at least in many regards, the appointment of a Prosecutor (and the execution of their employment contract). Even the findings of the Tribal Prosecutors Ordinance recognize the Constitution's grant of executive powers to the Ogema to enforce and execute the laws, ordinances, and resolutions of the Tribal Council, consistent with the Constitution. *See* 1.03 of the Office of the Prosecutor Ordinance, #11-400-09 and Article IV, §5 of the LRBOI Constitution.

An additional enumerated power listed is, "to consult, negotiate, and execute agreements and contracts on behalf of the Little River Band with federal, state, and local governments and other tribal governments, or with private persons or organizations. Agreements and contracts reached must be approved or ratified by Tribal Council to be effective." *Id.* §5 (a)(3). Tribal Council's authority with regard to agreements and contracts with private persons is limited to approval and ratification, and this Court agrees is ministerial in nature. As stated above, the Court found that the Plaintiffs ratified the employment contract of Mr. Hauswirth by taking numerous active measures: approving his budget since hire, paying his salary since hire, having him prosecute cases and so on. The Ogema certainly had the power to execute the employment contract for Mr. Hauswirth, as is clearly stated in the Constitution. The ongoing ratification of that contract for the past thirty-five months by Council made it effective.

The Court now turns to address the constitutionality of Section 8.03 of the Office of the Prosecutor's Ordinance.

Article IV, Section 6(g)(2) of the LRBOI Constitution states:

(g) Action by Tribal Council (2). The Tribal Council action by a majority of the quorum present and voting at the meeting, unless otherwise specified in this Constitution, and minutes shall identify each Council Member's vote on every issue.

Within the LRBOI Constitution, there are places where a super-majority is specified. Specifically, the ***removal*** of the Ogema, a council member, or a judge. *See* Article X, §3 and

Article VI, §6 of the LRBOI Constitution. The Constitution also expressly mandates a super-majority of votes includes Article VII, §4 (General Membership Powers- *Referendum*). The important language from Section 6(g)(2) is "unless otherwise specified in this Constitution."

The Court agrees with the Defendant Ogema, finding that the Constitution does not specify any enumerated power where Tribal Council may create, via ordinance or otherwise, a super-majority vote requirement to confirm an appointment. Tribal Council's attorney, Mr. Gary Pitchlynn, argued during the hearing that Council was creating higher minimum standards for itself by self-imposing the super majority via the Ordinance. But this Court instead finds that the super majority requirement here gives what is essentially veto power to an incredibly small amount of Tribal Council Members, thereby usurping on the enumerated powers of the Ogema and completely frustrating the role of the Executive Branch of this government. Given that the Constitution does not provide a specific grant of authority for Council to impose a super-majority for confirmation, this Court finds that Section 8.03 is unconstitutional.

2. *No Resolution Authorizing this Suit and the Inherent Problem of Voting in Closed Session*

That there was not a resolution authorizing this suit was an issue early on in this case, specifically because no motion or vote on said motion was recorded in the public meeting minutes.[1] It was not addressed until this Order because up to this point, we have had numerous motions to disqualify the judiciary from hearing this case, which were detrimental to moving forward. Therefore, the Court will address it now.

The LRBOI Constitution states:

Section 6 (g): "Action by the Tribal Council.

1. The Tribal Council shall act only by ordinance, resolution, or motion.
2. The Tribal Council action shall be determined by a majority of the quorum present and voting at the meeting, unless otherwise specified in this Constitution, and minutes shall identify each Council Member's vote on every issue."

Here, there is no motion or vote recorded in the minutes of Tribal Council from their meeting on March 8, 2023. The only record we have that this suit was voted on comes from Plaintiffs' response on May 30, 2023. None of the public minutes include a record of the vote or the discussion because it was allegedly handled and voted on during closed session. It was also authorized via motion, rather than resolution, further obfuscating Tribal membership's ability to have knowledge of it.

The Tribal Council Procedures Ordinance defines "Closed Session" to mean that portion of a meeting, which is closed to the public to address personnel, business matters, or legal matters pursuant to Article IV, Section 6(d) of the Constitution.

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[1] *See* Court Order dated May 25, 2023.

So, the question that arises then is whether or not going into "closed session" is a valid abrogation of Section 6(g)(2), specifically where it states, "minutes shall identify each Council Member's vote on every issue." *Id.*

And the answer is no.

Article IV, Section 6(d) specifically states:

> (d) *Open Meetings; Closed Sessions.* All meetings of the Tribal Council shall be open to the Tribal Membership. However, the Council may meet in closed session for the following purposes:
>
> 1. Personnel Matters, provided the employee in question did not request a public meeting, or
> 2. Business matters involving consideration of bids or contracts which are privileged or confidential, or
> 3. Claims by and against the Tribe.

Council is authorized to meet in closed session pursuant to Article IV, Section 6(d) of the Constitution, "to address personnel matters, business matters or legal matters." *See* §9.01 of the Tribal Council Procedures Ordinance, #06-100-02.

Here, we are focusing on the lack of a resolution to authorize this suit, so our analysis must turn on the definition of "legal matters." Luckily, the TCPO defines it for us:

"Legal matters" means all matters of the Tribe wherein the Tribe is, or may be, a party, either directly or indirectly, to a legal proceeding in federal, state, or Tribal court or an administrative forum addressing a matter to which the attorney-client privilege attaches; a matter wherein the Tribe is considering acting in its legal capacity as a party; e.g., purchase of land. Legal matters may be **discussed** by the Tribal Council in closed session pursuant to Article IV, Section 6(d) of the Tribal Constitution." ***Emphasis added.*** *See* §3.10 of the Tribal Council Procedures Ordinance, #06-100-02.

Legal matters may be ***discussed*** in closed session. Adopting a litigation strategy or a negotiating position is not the same as authorizing suit, which is an action. As this is an action, it required a vote. And no vote can occur in closed session. Section 9.02 of the Tribal Council Procedures make this clear.

> "9.02. Purpose. Closed sessions are **intended to permit the Tribal Council to engage in open, frank discussion and debate** regarding matters that may require confidentiality, involve proprietary business matters, negotiating positions or are covered by one or more legally recognized privileges." **Emphasis added.** *See* §9.02 of the Tribal Council Procedures Ordinance, #06-100-02.

Open, frank discussion and debate is what occurs during closed session. Votes do not. Upon the conclusion of closed session discussions and debate, council votes to move into open session (where there is time) to record the vote of Council. If time does not permit, the matter gets put on the next meeting agenda as per the rules.[2] It bears worth discussing why voting is not permitted in closed session. One clear example would be conflicts of interest which would bar a member of Tribal Council from voting. And we do not need to turn to a hypothetical to illustrate this, as we have a Motion to Intervene which has been filed in this case on behalf of Ryan Champagne, a criminal defendant currently being prosecuted by Mr. Hauswirth (this of course bolsters the Court's analysis regarding the finding that this lawsuit was frivolous as to Mr. Hauswirth). A question a Tribal member might validly have is whether or not then Speaker Ryan Champagne's mother, also a member of Tribal Council at the time of the closed session discussion allegedly authorizing this suit, voted (in closed session) to authorize this suit, the basis of which was a request of this court to enjoin the Prosecutor from doing his job. Unfortunately, no one knows the vote roll call because Plaintiffs did not file the Court ordered information, and instead filed another Motion to Disqualify the Judge. At this point, other than through the statements of Plaintiffs then legal counsel (Attorney Carrie Frias) via a written response to the Court, the Tribal membership has no way to confirm whether or not a vote even occurred. Meaning, Tribal membership is getting notice of certain Tribal Council actions through litigation, which defeats the purpose of a purpose of a representative form of government.

This Court finds that Council violated the LRBOI Tribal Constitution Article IV, Section 6(d) by voting in closed session to authorize this suit and by failing to bring forward and produce a resolution authorizing this suit in accordance with Article IV, Section 6(g), since the vote was not recorded in the in the minutes and made public and because "all decisions, actions or directives of the Tribal Council, which are not memorialized by ordinance or resolution, shall be made my motion and roll call vote, in accordance with the procedure described in Section 7.03." *See* §8.05 of the Tribal Council Procedures Ordinance, #06-100-02.

Voting in closed session is antithetical to the purpose of a representative form of government. This is an incredibly troubling aspect of this case. To be informed voters and active political citizens, tribal members must have notice of what is occurring within the Tribe. Voting in closed session robs tribal members of certain critical aspects of a representative government: it mutes their vote and their collective voice by stripping them of their ability to know which ***elected*** council member voted on which issue and which way they voted. Therefore, respectfully, and humbly from this Court, Tribal Council must not vote in closed session.

CONCLUSION

[2] "At the conclusion of each closed session, the Tribal Council will discuss whether any portion of the record (i.e. documents or written minutes) of such meeting can be open to the public. Except where the nature of the matter makes disclosure of the decision reached or action recommended following discussion of an item in closed session (i.e. adopting litigation strategy or negotiating position), a record of the decision made or action taken by the Tribal Council should be reported in the minutes and made public. If time permits, action by the Tribal Council should be moved to open session or placed on the agenda for action in open session at a future meeting)." *See* Article IX, §9.03(e) of the Tribal Council Procedures Ordinance, #06-100-02.

Both Motions for Summary Disposition are **GRANTED,** as is the Prosecutor's motion for a finding that this is a frivolous suit pursuant to LRCR §4.625. The Court finds that §8.02 and §8.03 of the Prosecutor's Ordinance are unconstitutional. Furthermore, the Court finds that Tribal Council violated the Constitution by voting on matters in closed session.

The Office of the Prosecutor was established to be independent, to ensure that the Prosecutor could carry out their prosecutorial discretions and functions without influence from any branch of government and to protect the tribal community. *See* Article 1 §1.03(c) of the Office of the Prosecutor's Ordinance. Unfortunately, this lawsuit was a direct violation of the values espoused in those findings.

All other requested relief not addressed in this ORDER is DENIED. This case is CLOSED.

It is **SO ORDERED** this 27th Day of **September 2023.**

DocuSigned by:
Caroline LaPorte
1AB0833FDE10437
Caroline LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify a copy of this order was served via email and in the USPS for service to the parties and/or their attorneys of record on this day.

9/27/23
Date

Laurie Willis
Court Clerk/Court Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT

2608 Government Center Drive

Manistee MI 49660

Little River Band of Ottawa Indians

Tribal Council

Plaintiff

vs

Case No. 23-105-GC

Ogema Romanelli, and

Jonathon Hauswirth

Defendant(s)

Carrie Frias, Attorney for Plaintiff

1704 Llano Street

Suite B No. 129

Sante Fe, NM 87505

Dennis Swain, Attorney for Defendant

2608 Government Center Drive

Manistee MI 49660

Leslie Van Alstine II, Attorney for Defendant Hauswirth

255 River Street

Manistee MI 49660

MOTION TO INTERVENE

NOW COMES INTERESTED PARTY Nitumigaabow Champagne, impacted party, makes the following Motion to Intervene in Case No. 223-105-GC and has standing to intervene:

1. Nitumigaabow Champagne is currently facing criminal charges where the Chief Complainant is Larry Romenlli, who according to his previous statements to Tribal Council is also the Chief of Police and Chief Prosecutor and is elected to the title of Ogema for the Tribe; and
2. Nitumigaabow Champagne is has irreversibly being harmed by the illegal hiring of Jonathon Hauswirth as "prosecutor" for the Tribe and his current illegal representation of such; and
3. Interested impacted party would suffer irreparable harm as the illegal hiring of Hauswirth as an appointment by Romanelli (Chief Complainant) and acting as "supervisor" and "appointer" of the Hauswirth negates the separation of powers and impacts the civil liberties and freedoms of Champagne; and
4. Champagne's interest in the matter impacts potentially his property, civil liberties and rights, and disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest; and
5. This motion has been filed in a timely manner as the party was not notified of the pending matter nor aware of the specific contents due to impacted party Champagne is not a member of the Tribe and not able to access member information on the tribal website; and
6. Champagne just became aware of the action by this Court in recent order by Honorable LaPorte on June 16th 2023; and
7. Champagne noticed the Court with intent to intervene, reconsideration, and further action on July 7th 2023; and
8. This motion is in-line with precedence set by Tribal Court of Appeals in allowing an impacted party to intervene on proceedings as found Beccaria vs LRBOI, Election Board.
9. In accordance with Federal Rules of Civil Procedure, Rule 24 Intervention, petitioner Champagne has met the Intervention of Right as the motion is timely, the court must permit anyone to intervene who: "(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

Wherefore, Petitioner prays the Tribal Court to grant the following the **MOTION TO INTERVENE**

In the above referenced matter.

07.07.2023

Nitumigaabow Ryan Champagne

Date

Chapman & Puflett v. Housing Dept. & Housing Commission 23-115-GC

Summary: This case was heard by Judge Caroline LaPorte.
Plaintiff filed an appeal of the LRBOI Housing Commission Appeal Decision with the Court, alleging that they were denied due process by the Defendants. Plaintiffs stated in their complaint the following: 1) they were denied Emergency Home Assistance by the Housing Department; 2) their appeal to the Housing Commission was also denied; 3) the Commission appeal hearing was not held properly; 4) the Commission violated their rights afforded to them under applicable law. Plaintiffs requested that the Court order a summary judgment in their favor in the amount of $25,000 and anything else found just and equitable.

Decision and Order: Defendant LRBOI Housing Department filed a Motion for Summary Disposition and Defendant LRBOI Housing Commission filed a Motion to Dismiss. Both motions were heard by the Court on January 3, 2024, with the issue for the Court to resolve being whether the suit was barred by sovereign immunity. For any plaintiff to succeed in overcoming a motion to dismiss such as the ones filed by the Defendants, the Plaintiffs must show that there has been a waiver of sovereign immunity. This waiver can be found by the Court in one of two ways: 1) the U.S. Congress can pass legislation stating that a law is a waiver of tribal sovereign immunity, or 2) Tribal Council may pass a resolution or ordinance waiving that immunity. There is a limited waiver of sovereign immunity in Article XI of the LRBOI Constitution that allows suits for declaratory and injunction relief; however, the suit brought by the Plaintiffs was for monetary damages.

The Court ruled that it lacked subject matter jurisdiction over the matter because the Plaintiffs were requesting relief in the form on monetary damages (and not declaratory or injunctive relief) and that there had been no waiver of sovereign immunity authorizing a suit for the form of relief being requested. Because the suit was barred by sovereign immunity and because the Court lacked subject matter jurisdiction, the matter was dismissed with prejudice.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

GEORGE R. PUFLETT, JR., AND
CANDACE M. CHAPMAN,
Plaintiffs

v.

LRBOI HOUSING DEPARTMENT, and
LRBOI HOUSING COMMISSION,
Defendants

Honorable Caroline LaPorte

Case No. 23-115-GC

GEORGE R. PUFLETT, JR.,
CANDACE M. CHAPMAN
Plaintiffs
3376 Black Creek Road
Muskegon, MI 49444

GARY PITCHLYNN (#07180)
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2608 Government Center Drive
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ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE came before the Little River Band of Ottawa Indians Tribal Court on January 3, 2024 on Defendant Ogema's Motion for Summary Disposition and Defendant Tribal Council's Motion to Dismiss (for lack of subject matter jurisdiction). Plaintiff Candace Chapman is an Elder and a Tribal Member and her husband George Puflett, Jr. is a Co-Plaintiff. All parties appeared, with Tribal Council represented by Mr. Pitchlynn and the Ogema by Mr. Swain.

Both Defendants' motions are dispositive to the matter at hand. The issue for this Court to resolve is whether or not this suit is barred by tribal sovereign immunity. To do that there is a clear analysis any court must work through, as subject matter jurisdiction is always a threshold question for the court to address.

For Tribal Members, the Court explains the following: sovereign immunity is an inherent feature of tribal sovereignty. For any plaintiff to succeed in overcoming a motion to dismiss such as those that have been filed by Tribal Council and the Ogema, that plaintiff **MUST** show that there has been a waiver of that immunity. This waiver can be found by a Court in one of two ways: the United States Congress can pass express/clear/explicit legislation stating that a law is a waiver of tribal sovereign immunity OR (in LRBOI's case) Tribal Council may pass a resolution or ordinance waiving that immunity. There is a limited waiver found in Article XI of the LRBOI Constitution that allows suits for *declaratory and injunctive relief.* The suit that the Plaintiffs' brought in the present case was for *monetary damages* in the amount of $25,000.00.

I. The Plaintiffs' Complaint

This action arises from the Plaintiffs' request for assistance under the Little River Band of Ottawa Indians Emergency Home Repair Program. These funds, which are federal grant dollars, are part of the American Rescue Plan funding that was created during the height of the Covid-19 pandemic. Because this is federal money, the Tribe is limited in its use of these funds, and there are consequences for improper use. Improper use is not at issue here but is relevant to the overall understanding of the implications of the use of these dollars for assistance to Tribal Members. At its simplest, there are rules that accompany the receipt of these funds by any Tribe. Under the LRBOI Emergency Home Repair Program Plaintiffs submitted their application for Emergency Home Repairs. The Plaintiffs requested assistance for the following issues within their home:

- Windows
- Water issues
- Imminent Structural Collapse
- Septic pump out

The award of these funds for emergency use were subject to the discretion of the Housing Director as well as the Emergency Home Repair Regulations, which were provided as part of the application. The funding of this program, which was a grant of federal dollars was only to be used for "emergency repairs," which were defined as: No heat, no hot water, electrical hazards, plumbing, mold, roof, windows, entry doors, imminent structural collapse (foundation, floor, wall, roof that is determined by LRBOI Housing Department as ready to collapse.)

It is critical to note that Regulation No. 4 provided "[n]o more than $15,000 will be accessed by any homeowner for this program." For the Court's analysis, this is critical for two reasons: 1. This is not a replenished pot of funding. The amount available is subject first and foremost to what the federal government provided via the contract funds provided from the Department of the Interior that the Tribe received. Even if every Tribal Member had emergency repairs needed that fit the definitions provided for in the regulations, it is highly unlikely that every Tribal Member would have been able to receive assistance and certainly unlikely that they would be able to receive the full $15,000.00. In fact, only around ten (10) Tribal Members would have been able to receive the full amount. This is why the discretion of the Housing Department is critical to the implementation of these funds.

Mrs. Chapman and her husband did receive assistance under this program for $2,400.00 (for pluming repairs) and $2,842.00 (for roofing and siding). Plaintiffs' request for water remediation, foundational repairs, and replacement of windows and doors had been preliminary denied by the Housing Department. Plaintiffs were notified of this *verbally*. Plaintiffs then responded to this preliminary denial in a letter to the Housing Department requesting reconsideration. On March 10, 2024, the Plaintiffs received an official letter from the Housing Department. Plaintiffs appealed this decision on March 16, 2023, to the Housing Commission. An appeal hearing was held by the Housing Commission on April 6, 2023, and on April 17, 2023, the appeal was denied.

The Plaintiffs' requested relief in this case is **$25,000.00 in monetary damages**.

While the crux of the Plaintiffs' complaint centers on the denial of some of their repairs, and hence the monetary damages, Plaintiffs also felt they were treated unfairly and without respect. During the hearing, Mrs. Chapman raised valid points about what Tribal Members should be able to expect from these processes. The Court understood Mrs. Chapman's reference to processes to mean the following: the establishment of the program/fund itself, the application process, the oversight of the application process and the reviews of the applications, the process of receiving a preliminary denial verbally, receipt of the official letter after Mrs. Chapman had already written the Housing Department for reconsideration, the information available to Tribal Members regarding contact information for Housing Commissioners, the appeal itself, and how the decision was made on appeal by the Housing Commission. What occurred within these processes does not overcome a sovereign immunity defense, but it does not make them any less real or impactful for individuals who experience them. The Court addresses this in its conclusion.

II. The Defendants' Arguments

Mr. Swain argued in his Motion that because the Plaintiffs are suing for monetary damages that the Plaintiffs' burden to establish an explicit waiver of sovereign immunity must be met. The Plaintiffs, per Mr. Swain, had not stated a claim that alleged such a waiver, and therefore, failed to state a claim upon which relief could be granted.

Mr. Pitchlynn argued in his motion that due to the nature of the Plaintiffs' requested relief (monetary damages), the Court lacked subject matter jurisdiction to hear the suit. Mr. Pitchlynn also argued that Defendants' denial of the Plaintiffs' application for emergency home repairs, was not in violation of any law of the Little River Band of Ottawa Indians and therefore, the Plaintiffs failed to state a claim upon which relief could be granted.

Mr. Pitchlynn's third argument addressed the Plaintiffs' assertion that their procedural due process rights had been violated. Mr. Pitchlynn argues that this also fails a sovereign immunity analysis and that because the Plaintiffs do not have a property right in the award of federal grant dollars, Plaintiffs' due process rights were not violated.

III. Legal Standard and the Court's Analysis

The question of whether a court lacks subject matter jurisdiction over a claim barred by tribal sovereign immunity is a threshold question that is properly presented by way of a motion to dismiss. Once sovereign immunity is raised, Plaintiff bears the burden of establishing subject matter jurisdiction, and must prove an explicit waiver of sovereign immunity. This waiver, as the Court stated earlier in this order can travel via one of two rivers: The United States Congress, via its plenary authority over Indian Country matters (Article 1 Section 8 of the United States Constitution), can enact a law authorizing it (which cannot be implied: the authorization must be explicit) OR via a resolution/ordinance by LRBOI Tribal Council (which must also be clear and unambiguous).

The doctrine of tribal sovereign immunity is well established and is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Eng'g. P.C.*, 467 U.S. 877, 890 (1986). See also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670 (1978), which held that Indian Tribes have long been recognized as possessing common-law immunity from suit traditionally enjoyed by sovereign powers. Without congressional authorization, Indian Nations are exempt from suit. *Id.* This immunity extends to tribal commercial and governmental activity, including activities outside of Indian Country. *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 759 (1978). The U.S. Supreme Court has "time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 789 (2014) (alteration in original) (quoting *Kiowa*, 523 U.S. at 756, 118 S.Ct. 1700). **This is complete immunity from suit,** otherwise the sovereign immunity inherent to the Tribe is illusory if the Tribe is required to defend an action barred by the doctrine. Any waiver of a tribe's sovereign immunity, whether by Congress or by the tribe itself, "cannot be implied but must be unequivocally expressed." *Martinez*, at 1677 (citing *United States v. Testan*, 424 U.S. 392, 399 (1976).

For there to be a valid waiver of tribal sovereign immunity, the Tribal Council's approval of the waiver would need to be embodied in an ordinance or resolution duly enacted by the Tribal Council or the United States Congress itself would have to abrogate it via federal legislation. Congressional abrogation has not occurred in this case or with the appropriation of these funds. So, the Court turns to focus on whether or not Council has waived immunity via resolution or ordinance or other duly enacted law of the Tribe. Plaintiffs' Complaint did not allege that the Tribe has consented to this suit, nor have they alleged that the Defendants' waived their sovereign immunity. And the Court took care to ensure that no acceptance of the funds had contractually waived in whole or part any sovereign immunity, which would have been highly unlikely even with the emergency appropriations here from Congress. However, during the hearing, the Plaintiffs raised the issue of whether the establishment of an appeals process constituted a waiver. The Court wants to be clear in its analysis here because the Court also heard Mrs. Chapman's request for it to be communicated to Tribal Membership. So, the narrower question the Court will resolve is this: does the creation of an appeal process constitute a of waiver of sovereign immunity when the aggrieved party is requesting monetary damages? The answer is no.

Article XI of the Little River Band of Ottawa Indians Tribal Constitution addresses the Tribe's sovereign immunity. Section 1 clearly states that Tribal Council shall not waive or limit the right

of the Little River Band of Ottawa Indians to be immune from suit, except as authorized by Tribal ordinance or resolution in furtherance of tribal business enterprises. Section I further states that except as authorized by tribal ordinance or resolution, the provisions of Article III of the Constitution shall not be construed to waive or limit the right of the Little River Band to be immune from suit for damages. This is an important provision that is relevant to Mr. Pitchlynn's third argument. Article XI Section 2 details which suits are authorized in Tribal Court. It specifically states that the Tribe, Council, the Ogema and other Tribal Officials, acting in their official capacity, shall (ARE) subject to suit for declaratory or injunctive relief in the Tribal Court system for the purposes of enforcing rights and duties established by the LRBOI Constitution and by the ordinances and resolutions of this Tribe. Section b goes on to state that people shall NOT be entitled to an award of damages, as a form of relief, against the Tribe, its Tribal Council members, the Ogema, or other Tribal officials acting in their official capacities. Furthermore, Tribal Council may via ordinance waive the right of the Tribe or Tribal officials to be immune from damages in such suits only in specified instances when such a waiver would promote the best interests of the Band or the interests of justice. *Id.*

Article XI of the LRBOI Constitution is a limited/partial waiver of the Tribe's sovereign immunity for certain types of requested relief (declaratory/injunctive). But it is clear that an individual cannot sue for **damages** absent a waiver in the form of a resolution or ordinance. And while certainly Mr. Swain and Mr. Pitchlynn are correct regarding the burden that shifts to the Plaintiff alleging a waiver of sovereign immunity, because Mrs. Chapman is first an Elder and second pro se, the Court wanted to be certain that no such waiver exists.

The Court finds that there is no waiver in the regulations or ordinances of the Housing Commission or Housing Department or more generally from Tribal Council that would constitute a waiver for monetary damages. The Court additionally reviewed the resolution language regarding the acceptance of the funds titled Resolution 23-0125-012 "Approval for the Bureau of Indian Affairs Emergency Home Repair Program (HER), in the amount of $161,134.00, to be implemented through the Housing Department." There is no waiver within that language either (which again would be unlikely, but the Court wanted to confirm).

Here, Mrs. Chapman "appealed" (not in a legal sense) to the Housing Department via letter for them to reconsider their decision, which was clearly established via the processes outlined as a part of the program. At this point her "appeal" was not for monetary damages, but rather for a second look at her application under the Housing Director's discretion. She then received written notification of the denial. She then ***formally appealed*** to the Housing Commission as established via the Housing Commission regulations. The Commission held a hearing, and the appeal was denied. This case arrives to Tribal Court as a review of the Commission's decision. However, because the Plaintiffs are requesting relief only in the form of monetary damages (and not declaratory or injunctive relief), their suit is absolutely barred by sovereign immunity. As stated in Mr. Pitchlynn's Motion, the Housing Commission Regulations make it clear that "[n]othing in this regulation shall be interpreted as a waiver of sovereign immunity from suit of the Tribe or any of its governmental officers and/or agents." See §9-5 of the Housing Commission's Regulations. The Court can hold an appeal review of an administrative decision by the Housing Commission, but that review does not constitute a separate case. *See* §6.03 of the Housing Commission Ordinance. Nothing here authorizes a suit for monetary damages, and in fact the

regulation makes it clear that no provision can be interpreted as a waiver of sovereign immunity to that effect. The establishment of an appeals process cannot be broadly read to authorize suit for monetary damages in the absence of an ordinance or resolution enacted by Tribal Council clearly and unambiguously stating so.

Though declaratory and injunctive relief is not part of this suit, it is worth discussing why injunctive/declaratory requests for relief would have also likely failed in this instance. Mr. Pitchlynn argued before the Court that Mrs. Chapman and her husband had no property interest here. That is not to say, as Mr. Pitchlynn clarified, that Mrs. Chapman and her husband do not have a property interest in their home. They simply do not have one in the award of discretionary grant funds. Thus, even if Mrs. Chapman could find a waiver of sovereign immunity, her and her husband still cannot establish a legal interest in these dollars or even in the repair of their home. The creation of a program to distribute federal grant dollars does not create an actionable right in which the Plaintiffs could have requested injunctive/declaratory relief.

Therefore, the Court agrees with Mr. Pitchlynn and Mr. Swain regarding the following arguments:

1. Plaintiff has not met their burden to establish a waiver of tribal sovereign immunity and therefore fails to state a claim upon which relief can be granted.
2. Due to the nature of the Plaintiffs' requested relief in the form of monetary damages, the Court lacks subject matter jurisdiction as there has been no waiver of tribal sovereign immunity.
3. The denial of the Plaintiffs' application for emergency home repairs, was not in violation of any law of the Little River Band of Ottawa Indians and therefore, the Plaintiffs failed to state a claim upon which relief could be granted.
4. Plaintiffs do not have a property interest in discretionary grant funds and therefore, there can be no violation of due process rights.

The Court does not address the general assertion that a claim based on a violation of due process rights that are found in the Tribe's Constitution (specifically Article III section h) would not survive a sovereign immunity claim, though certainly acknowledges the valid points regarding *Plains Commerce* as well as the Indian Civil Rights Act. The Court read the argument from Tribal Council to be specific to this case because of the foundational premise that the Plaintiffs lacked a property interest in the funds themselves. And regardless, as stated in Mr. Pitchlynn's Motion, the requested relief for monetary damages is barred by the sovereign immunity of the Little River Band of Ottawa Indians.

IV. Conclusion

The Court lacks subject matter jurisdiction over this matter because the Plaintiffs' requested relief is for monetary damages and the Court has found that there has been no waiver of sovereign immunity authorizing a suit for the form of relief requested.

However, while the sovereign immunity argument was legally straightforward in this matter, the issue of how to provide any resolution for Mrs. Chapman was still something the Court weighed.

Culturally, Mrs. Chapman can expect at least some consideration of what felt deeply unfair to her: the processes and the engagement she experienced prior to getting to Court. That is not a legal basis for fashioning a remedy, but how we see, treat, and speak to each other needs to matter, even if not in a western legal sense. The property the Plaintiffs requested assistance for is *their home*, and the Court feels that much of this suit could have been avoided had Mrs. Chapman been treated like an Elder. The Court found her to be credible regarding how she experienced these processes. Section c of Mr. Pitchlynn's Motion was particularly helpful in combing through some of the issues that Plaintiffs felt were unfair regarding the Commission's Hearing (starting on page 12). The motion addresses each claim and provides the relevant law establishing why the process unfolded as it did. Some of what was carefully explained in the motion could be proactively communicated in non-legalese to Tribal Members prior to the Commission's hearings. For example, a simple notification that as a part of the appeals process, Tribal Members may not contact individual members of the Housing Commission (with a citation to the rule) might have been responsive to the needs of this Tribal Elder. A proactive measure such as this might have helped create the space needed for this Tribal Elder to trust the process that the Housing Commission implements via its regulations. Again, that does not create a legal duty or an actionable right, but it might help Tribal Members feel more secure when navigating these spaces. Regarding the Housing Department on the other hand, the Court feels more that Mrs. Chapman felt disrespected. This is perhaps why Council and the Ogema's attorneys suggested peacemaking at an earlier stage of this case. Mrs. Chapman is owed respect as an Elder of this Tribe, and it was clear during the pendency of this case that she did not feel like she had been heard or spoken to in line with our Seven Grandfather Teachings. When members of our community have experiences such as this, we have an opportunity to reflect on how to better our relations with one another.

This matter is **DISMISSED with prejudice** for lack of subject matter jurisdiction.

IT IS SO ORDERED this 15th Day of February 2024.

DocuSigned by:
Caroline LaPorte
1AB0833FDF10437...

Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed to all parties and/or their attorneys via email and USPS on the below date.

2-15-24
Date

Court Clerk/Administrator

Crampton v. Tribal Council and Tribal Judiciary **23-119-GC**

Summary: This case was heard by Judge Angela Sherigan.
Plaintiff filed a complaint and ex-parte petition for temporary restraining order barring swearing in of the 2023 election on May 23, 2023. Plaintiff alleged in his complaint that the Enrollment Board and Enrollment Commission had enrolled individuals without the documentation required by the Constitution and that the Tribal Council had created a 4/4 presumption which is "extrinsic to our constitutional requirements." Plaintiff requested that the Court prevent the swearing in of the 2023 election winners until the matter was heard by the Court.

Decision and Order: The Court entered Order Regarding Plaintiff's Emergency Request for Ex-Parte Preliminary Injunction on May 23, 2023, which sua sponte dismissed the Trial Judiciary as a Defendant. It also denied Plaintiff's request for ex-parte injunction and set the matter for a hearing.

Plaintiff then filed an amended complaint on May 24, 2023 which contained the same language as the original complaint but removed the Tribal Judiciary as a Defendant and further requested that the Court prevent the swearing in of the 2023 election winners until a 100% enrollment audit is ordered and conducted.

The Court entered Order Regarding Plaintiff's Emergency Request for Ex-Parte Preliminary Injunction on May 24, 2023, which ruled that no additional facts were alleged for the Court to make a determination different from its previous one, and that a 100% enrollment audit would take a great deal of time. Therefore, Plaintiff's request was denied.

Plaintiff filed a Notice of Dismissal of the matter on May 31, 2023, and the Court signed the Order to Dismiss on June 1, 2023.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

SHANNON PAUL CRAMPTON,
Plaintiff,

v.

LRBOI TRIBAL COUNCIL and
LRBOI TRIBAL JUDICIARY,
Defendants.
_____/

Case No. 23-119-GC

Hon. Angela Sherigan

ORDER REGARDING PLAINTIFFS' EMERGENCY REQUEST FOR EX-PARTE PRELIMINARY INJUNCTION

The Court received a Request for an emergency Ex-Parte "Temporary Restraining Order" or Preliminary Injunction enjoining the Tribal Council from conducting the swearing in ceremony of the new Council Members and the Ogema now set for May 24, 2023.

In the Complaint, the Tribal Judiciary is named as a defendant. In reading the Complaint, which is the basis for the Request for the Restraining Order, there are no allegations against the "Tribal Judiciary", nor any basis in law for the suit, nor any request for relief against the "Tribal Judiciary" requested. It appears that either, the "Tribal Judiciary" was named as a party by mistake, or in an attempt to "judge shop". The Court will not allow a simple naming of the "Tribal Judiciary" in a complaint without sufficient and actual allegations to automatically disqualify the Court from hearing the matter. Additionally, the Plaintiff has filed this action and Request for a Temporary Restraining Order the day before the action is to take place less than an hour before the Court closes.

Ex-Parte relief is an extraordinary request, that the Court does not often grant.

For an Ex-Parte order to issue, the court must be satisfied by 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.

In this case, the Plaintiff is not represented and is not an attorney. The Court will not require strict adherence to Court Rules when parties are unrepresented and will treat the Request as a verified pleading.

The Court next looks to whether or not the alleged irreparable injury, loss or damage will result if this request is not considered before a hearing can be set. Here, the Plaintiff has failed to set forth any specific facts as to whom would be sworn in that may not otherwise be eligible to hold a position. Additionally, the allegations that the Plaintiff is making at first impression appear to be an enrollment matter and not an appeal from any election dispute or challenge.

The requirement of irreparable injury, loss or damage, has not been satisfied.

Since this requirement has not been satisfied, the Court will not look further at this time, and will set this request for a hearing.

THEREFORE, IT IS HEREBY ORDERED:

1. The Court sua-sponte is dismissing the "Tribal Judiciary" as a Defendant in this matter.
2. The Request for Ex-Parte Injunction is DENIED.
3. The Court will hear this matter on THURSDAY, JUNE 1, 2023 at 10:00 a.m.

Dated: May 23, 2023 at 6:56 p.m.

Angela Sherigan /s/
Hon. Angela Sherigan

CERTIFICATION OF SERVICE

I certify that a copy of this order was mailed to all parties and/or their attorneys via email on the below date.

5-24-23
Date

Court Clerk/Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

SHANNON PAUL CRAMPTON,
Plaintiff,

v.

LRBOI TRIBAL COUNCIL and
LRBOI TRIBAL JUDICIARY,
Defendants.
_____/

Case No. 23-119-GC

Hon. Angela Sherigan

ORDER REGARDING PLAINTIFF'S EMERGENCY REQUEST FOR EX-PARTE PRELIMINARY INJUNCTION

A new petition was presented in which an amended complaint was also attached. The only difference between the one presented this morning and the one filed yesterday was the addition of a request for and language regarding a 100% enrollment audit. No additional specific facts were alleged to allow for the court to make a determination different than the one from yesterday. Additionally, an enrollment audit would take a great deal of time.

Therefore, the petition is denied.

Dated: May 24, 2023

Angela Sherigan
Hon. Angela Sherigan

CERTIFICATION OF SERVICE

I certify that a copy of this order was mailed to all parties and/or their attorneys via email on the below date.

5-24-23
Date

Spring Medacco
Court Clerk/Administrator

Ogema Romanelli v. Tribal Council **23-235-GC**

Summary: This case was heard by Judge Angela Sherigan.
Petitioner filed a request for a writ of mandamus with the Court, alleging that Respondent had refused or failed to take steps to properly run the matters of the Tribe. Petitioner further alleged that Respondent had sought to stall or prevent the business of the Tribe through actions such as not lacing items on the agendas, not voting on certain actions, not approving grants, failing to have a quorum, and interfering with the legitimate business of Tribal government. Petitioner requested that the Court issue a peremptory writ of mandamus compelling the Respondent to: 1) hold regular meetings of the Tribal Council and making sure that quorum exists; 2) attend Tribal Council meetings in person; 3) affirm grants available to the Tribe; 30 comply with Tribal laws affirming the contracts established by the Petitioner.

Decision and Order: Respondent filed a Motion to Dismiss based on lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. That motion was heard by the Court on March 7, 2024. The Court ruled that the petition in this matter was general in its allegation and did not contain any specific facts, and that without a sufficient claim, the action cannot survive. Therefore, no further analysis was necessary, and Respondent's Motion to Dismiss was granted.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660

LARRY ROMANELLI, Ogema of
The Little River Band of Ottawa Indians
Plaintiff,

v.

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL COUNCIL,
Defendant

Case No. 23-235-GC
Honorable Angela Sherigan

Craig W. Elhart (P26369) *Attorney for Plaintiff* 329 South Union Traverse City, MI 49684 (231) 946-2420	Gary S. Pitchlynn (OBA #07180) *Attorney for Defendant* PO Box 722786 Norman, OK 73070 (405) 360-9600

ORDER REGARDING PLAINTIFF'S REQUEST FOR PEREMPTORY WRIT And NOTICE OF HEARING

On November 2, 2023, Plaintiff filed a Petition for Writ of Mandamus. Included in his Petition, there were requests for peremptory writs for the nine counts contained therein.

On December 1, 2023, the Defendant filed an Answer and Defense. The Court having reviewed the pleadings, states as follows:

The requests for peremptory writs do not contain enough information for the Court to issue a peremptory writ in any of the Counts. THEREFORE, the Requests for Peremptory Writs are DENIED. This matter will move forward to a full hearing on February 22, 2024, at 1:30 p.m.

Dated: January 5, 2024

Angela Sherigan
Hon. Angela Sherigan

CERTIFICATION OF SERVICE
I certify that a copy of this order was sent to all parties via USPS mail or LRBOI Interoffice mail on this day.

1/5/24
Date

Laurie Wellis
Court Clerk/Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

LARRY B. ROMANELLI,
Plaintiff,

v.

LRBOI TRIBAL COUNCIL,
Defendant.

Case No. 23-235-GC

Honorable Angela Sherigan

Craig W. Elhart *Attorney for Plaintiff* 329 South Union Traverse City, MI 49684	Gary S. Pitchlynn *Attorney for Defendants* PO Box 722786 Norman, OK 73070

ORDER REGARDING DEFENDANT'S MOTION TO DISMISS

A Motion hearing was held on March 7, 2024, in which all parties and/or their attorneys were present. Defendant brought a Motion to Dismiss based on 1) lack of subject matter jurisdiction, and 2) failure to state a claim upon which relief can be granted. [LR Court Rule 4.116 C (4). (8)]

Defendant argued that the Plaintiff failed to state a claim upon which relief can be granted in that the complaint did not state any facts, and argued that the Court's ruling of January 5, 2024, which denied the ex-parte mandamus request, in essence stated that there was not enough facts stated in the complaint/request, and that the Plaintiff has failed to amend or correct. Additionally, Defendant went through each of the allegations stating its argument for lack of subject jurisdiction and well as an argument alleging that the Court does not have authority to hear mandamus actions.

The Plaintiff argued that the complaint was a "notice" pleading, jurisdictional only, and that the Court does have the authority to hear mandamus actions, citing to the most recent mandamus ruling in 24-01-GC.

Little River Court Rule 4.111 B(1) states as follows:

(B) Statement of Claim. A complaint…must contain the following:
(1) A statement of the facts … on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.

The complaint/petition in this matter is general in its allegation and does not contain any specific facts. Without a sufficient claim, the action cannot survive and therefore no further analysis is necessary.

THEREFORE, IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss based on LRCR 4.116 (C)(6), is GRANTED. This closes the matter.

Dated:

Hon. Angela Sherigan

CERTIFICATION OF SERVICE

I certify a copy of this document was sent via USPS first class mail, or electronically if consented to, to the parties and/or their attorneys on this day.

3-8-14
Date

Court Clerk/Administrator

Ogema & Housing Department v. Housing Commission 23-258-HA

Summary: This case was heard by Judge Caroline LaPorte.
Plaintiffs filed an appeal review with the Court of an adverse decision of the Housing Commission against the Housing Department. Plaintiffs alleged that the Housing Commission reversed the decision of the Housing Department to exclude an applicant from low-income housing due to a prior domestic violence conviction. Plaintiffs requested that the Court reverse and vacate the decision of the Housing Commission in this case.

Decision and Order: A stipulation to dismiss this case was filed on February 22, 2024 and was signed by attorneys for both parties because the Housing Commission had reversed their decision, rendering the matter moot. An Order to Dismiss was issued by the Court on February 26, 2024.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

OGEMA LARRY ROMANELLI &
LITTLE RIVER BAND OF
OTTAWA INDIANS HOUSING DEPARTMENT
Plaintiff,

v.

LITTLE RIVER BAND OF
OTTAWA INDIANS HOUSING COMMISSION,
Defendant

Case No. 23-258-HA

Honorable Caroline LaPorte

DENNIS SWAIN (P29866)	Gary S. Pitchlynn (OBA #07180)
Attorney for Plaintiff	*Attorney for Defendant*
2608 Government Center Drive	PO Box 722786
Manistee, MI 49660	Norman, OK 73070

ORDER TO DISMISS

UPON STIPULATION of the parties to dismiss this appeal review of an administrative decision because the LRBOI Housing Commission has reversed its November 6, 2023 decision,

IT IS HEREBY ORDERED that this case is dismissed.

Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify that a copy of this order was sent to all parties via Email and USPS mail on this day.

7-26-24
Date

Court Clerk/Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS

THE TRIBAL COURT

3031 Domres Rd., Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

LRBOI Tribal Ogema, Larry Romanelli, and LRBOI Housing Department,
Plaintiff,

V.

Case No. 23-258-HA
Hon. Caroline LaPorte

LRBOI Housing Commission,
Defendant.

Dennis M. Swain
Attorney for the Plaintiff
2608 Government Center Dr.
Manistee, MI 49660
(231) 398-6822
dennisswain@lrboi-nsn.gov

Gary S. Pitchlynn
Attorney for Defendants
P.O. Box 722786
Norman, OK 73070
(405) 360-9600
gspitchlynn@pitchlynnlaw.com

STIPULATION TO DISMISS

The Plaintiff, by and through its Attorney, Dennis M. Swain, and the Defendant, by and through its Attorney, Gary S. Pitchlynn, hereby stipulate and agree to dismiss this appeal review of an administrative decision because the LRBOI Housing Commission has reversed their decision of November 6, 2023, rendering the matter moot.

Date: 2/21/2024

Dennis M. Swain P29866
Attorney for Plaintiff

Date: 2/22/24

Gary S. Pitchlynn
Attorney for Defendant

RECEIVED
2-22-24 SM

Ogema & Housing Department v. Housing Commission **23-259-HA**

Summary: This case was heard by Judge Caroline LaPorte.
Plaintiffs filed an appeal review with the Court of an adverse decision of the Housing Commission against the Housing Department. Plaintiffs alleged that the Housing Commission reversed the decision of the Housing Department to exclude an applicant from low-income housing due to a prior domestic violence conviction. Plaintiffs requested that the Court reverse and vacate the decision of the Housing Commission in this case.

Decision and Order: A stipulation to dismiss this case was filed on February 22, 2024 and was signed by attorneys for both parties because the Housing Commission had reversed their decision, thus rendering the matter moot. However, the housing applicant filed a motion for necessary joinder as a party defendant on February 9, which both the Plaintiffs and Defendant objected to. It was brought to the Court's attention that HUD eligibility requirements had recently changed, and the Court ruled that while those changes might make the applicant eligible for Tribal housing, the current regulations did not. An Order to Dismiss was issued by the Court on April 26, 2024.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

OGEMA LARRY ROMANELLI &
LITTLE RIVER BAND OF
OTTAWA INDIANS HOUSING DEPARTMENT
Plaintiff,

v.

LITTLE RIVER BAND OF
OTTAWA INDIANS HOUSING COMMISSION,
Defendant

Case No. 23-259-HA

Honorable Caroline LaPorte

DENNIS SWAIN (P29866) *Attorney for Plaintiff* 2608 Government Center Drive Manistee, MI 49660 DennisSwain@lrboi-nsn.gov	LRBOI Housing Commission *Defendant* 2953 Shaw Be Quo-Ung Manistee, MI 49660 Laura A. Foerster (P43464) Attorney for Stephanie Lynn West 814 S. Garfield Ave., #A Traverse City, MI 49686 lfoerster@mils3.org

ORDER TO DISMISS

On March 18, 2024, the Court held a motion hearing in the above captioned case. The plaintiff appeared and was represented by counsel.

The Plaintiff's counsel informed the Court and the Defendants that HUD had recently issued memo regarding the eligibility requirements for HUD housing. The Court requested the memos from the Plaintiff and subsequently reviewed all of them, despite nothing being highlighted or noted for the Court with any specificity.

At issue in this case was the Plaintiff's ineligibility for tribal housing due to a decade old domestic violence conviction. While the Court is certainly sympathetic to the Plaintiff's current living situation, the Court's role here is limited. The Plaintiff needs

to appeal to the Housing Commission regarding the Department's decision. While the Court understands she already appealed, hence the Commission's original reversal, they reversed again via agreement with the Department separately. The Court does not agree with the Defendant Council that Ms. West could not appeal to the Commission.

Additionally, even if the Plaintiff could show that the Defendants had the ability to house her regardless of the conviction based on an interpretation of HUD guidance, the Defendants, as tribal governmental bodies (at least one of which—Tribal Council— is charged with drafting and enacting legislation), have passed laws, specifically LRBOI Housing Regulations, stating that this conviction prevents the Tribe from placing her into public housing now. Ideally, when a Tribal Member applies for these programs, they would know whether or not they would be eligible regardless of the presence or barrier of a waitlist. In this situation it seems she was on the waitlist, found out she was going to get a place, and then found out she did not qualify. This process hardly seems fair, but problems with process do not generate a right to what the Plaintiff is requesting.

The Court hopes that the Defendant is able to get her record expunged so that Ms. West can access this basic need. It is the Court's additional hope that Ms. West, a tribal member, is being provided with other options (including the numbers for shelters and permanent supportive housing that the Court provided Ms. West's Counsel on the record).

This case is DISMISSED without prejudice.

IT IS SO ORDERED this 26th Day Of April, 2024.

Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify a copy of this document was served via Email, USPS, and interoffice mail to the parties on this day.

4-26-24
Date

Court Clerk/Administrator

Willis v. Tribal Council **23-260-GC**

Summary: This case was heard by Judge Caroline LaPorte.
Plaintiff filed a complaint citing violations of the Budget and Appropriations Act of 2013 by Tribal Council. Plaintiff alleged in his complaint that the Defendants failed to secure the number of votes required by Section 5.13(e) of the Budget and Appropriations Act of 2013 to override the Ogema's veto of Resolution #23-1130-203 and asked the Court for an injunction instructing the Defendants to comply with their legislative responsibilities under both the Constitution and the Budget and Appropriations Act of 2013 as it relates to a budgetary veto by the Tribal Ogema.

Decision and Order: An injunction hearing was held on January 12, 2024, where the parties agreed that the January 11, 2024 order issued in Case No. 24-010-GC (*Order on Verified Complaint for an Ex-Parte Order for a Writ of Mandamus, which found that the annual budget approved and signed by the Ogema on or about December 13, 2023 is the final annual budget for 2024 and ordered Tribal Council to appropriate funds for the FY2024 budget in accordance with the Budget and Appropriation Act and to file the resolution appropriating the funds to the correct budget with the Court*) resolved the issues presented in the Plaintiff's complaint. The matter was dismissed without prejudice.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406
tribalcourt@lrboi-nsn.gov

WILLIAM WILLIS,
Plaintiff,

v.

LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COUNCIL,
Defendant

Case No. 23-260-GC

Honorable Caroline LaPorte

William Willis *Plaintiff* 622 Ramsdell Street Manistee, MI 49660	Gary S. Pitchlynn (#07180) *Attorney for Defendant* PO Box 722786 Norman, OK 73070

ORDER AFTER INJUNCTION HEARING

On January 12, 2024, the Court held an injunction hearing on the above captioned case. Mr. William Willis, Plaintiff and Tribal Member, appeared, as did Tribal Council represented by Mr. Gary Pitchlynn.

With the Court ruling in case number 24-010-GC on January 11, 2024, the parties agreed that this matter should be dismissed.

Accordingly, this matter is dismissed without prejudice.

IT IS SO ORDERED THIS 24th Day of January 2024.

DocuSigned by:
Caroline LaPorte
1AB0833FDF10437...
Honorable Caroline LaPorte
Associate Judge

CERTIFICATION OF SERVICE

I certify that a copy of this order was sent to all parties via email and/or USPS mail on this day.

1-24-24
Date

Court Clerk/Administrator