

**2023 COURT OPINIONS  
LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT**

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**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**

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(231) 398-3406  
tribalcourt@lrboi-nsn.gov

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

Case No. 23-013-GC

Honorable Caroline LaPorte

v.

LRBOI ELECTION BOARD,  
Defendant

---

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LRBOI Election Board  
*Defendant*  
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Susan Thull  
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**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.<sup>1</sup>

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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<sup>1</sup> 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."<sup>2</sup> 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 20<sup>th</sup>, 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

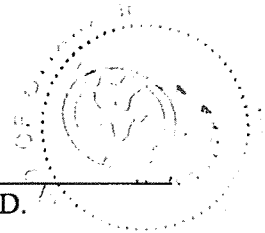
Date

DocuSigned by:

*Caroline LaPorte*

Caroline B. LaPorte, J.D.

Associate Judge



<sup>2</sup> See Sworn Affidavit of Valerie McDonnell, attached as **Plaintiffs Exhibit S** and to this Order.

Plaintiff's  
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 them 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 reclude yourself. (as defined on page 60 of the election board regulation)

Valerie McDonnell  
1/3/2023

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

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STACI CHENEY, JOLENE O’SIGNAC,  
and SUSAN THULL,  
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Case No. 23-013-GC

Honorable Caroline LaPorte

v.

LRBOI ELECTION BOARD,  
Defendant

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Staci Cheney  
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Ypsilanti, MI 48197  
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LRBOI Election Board  
*Defendant*  
2608 Government Center Drive  
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Jolene O’Signac  
*Plaintiff, In Pro Per*  
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osignac@aol.com

Susan Thull  
*Plaintiff, In Pro Per*  
7170 Cattail Drive  
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susan.thull@gmail.com

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**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  
TRIBAL COURT**

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Susan Thull  
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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*  
CAROLINE B. LAPORTE  
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 Medacco  
Court Clerk/Court Administrator

LITTLE RIVER BAND OF OTTAWA INDIANS  
TRIBAL COURT

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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.<sup>1</sup> 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

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<sup>1</sup> 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."<sup>2</sup> 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\* <sup>3</sup>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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<sup>2</sup> *See* Sworn Affidavit of Valerie McDonnell (**Plaintiffs Exhibit S**).

<sup>3</sup> *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.<sup>4</sup>

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."<sup>5</sup> 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

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<sup>4</sup> See *Ossignac v. Sam*, Case no. 09-012-AP (2009).

<sup>5</sup> 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.

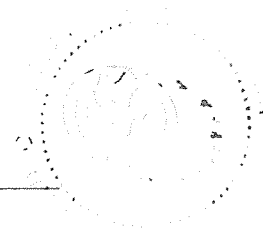
**4. Conclusion**

*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 7<sup>th</sup> Day of February 2023.**

DocuSigned by:  
*Caroline LaPorte*  
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 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**

3031 Domres Road · Manistee, MI 49660  
(231) 398-3406  
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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LESLIE VAN ALSTINE II (P52802)  
*Attorney for Defendant Hauswirth*  
255 River Street  
Manistee, MI 49660

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**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 through 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'."<sup>1</sup> Nor has Plaintiff supported its argument that the Tribal community is "in grave danger because prosecuted criminals could have their convictions and sentences reversed."<sup>2</sup>

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<sup>1</sup> Plaintiffs' Motion for Preliminary Injunction, pg. 2

<sup>2</sup> *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.

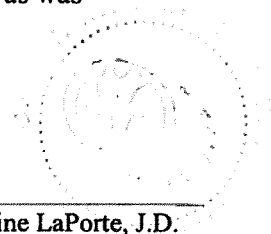
6/16/2023

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**

3031 Domres Road · Manistee, MI 49660  
(231) 398-3406  
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*, (11<sup>th</sup> 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 is 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 inequitable 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.<sup>1</sup> 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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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> "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 27<sup>th</sup> Day of September 2023.

DocuSigned by:  
*Caroline LaPorte*  
1AB0833FDF10437  
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

*Gaurio Williams*  
Court Clerk/Court Administrator



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

**2608 Government Center Drive**

**Manistee MI 49660**

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**Little River Band of Ottawa Indians**

**Tribal Council**

**Plaintiff**

**vs**

**Case No. 23-105-GC**

**Ogema Romanelli, and**

**Jonathon Hauswirth**

**Defendant(s)**

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**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**

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**received**  
2/23

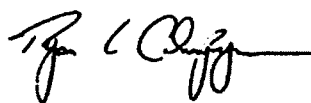
**MOTION TO INTERVENE**

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 Romanelli, 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 16<sup>th</sup> 2023; and
7. Champagne noticed the Court with intent to intervene, reconsideration, and further action on July 7<sup>th</sup> 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

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Nitumigaabow Ryan Champagne

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Date

**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 Tribal 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,

Case No. 23-119-GC

v.

Hon. Angela Sherigan

LRBOI TRIBAL COUNCIL and  
LRBOI TRIBAL JUDICIARY,  
Defendants.

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**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

Spring Medacco  
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,

Case No. 23-119-GC

v.

Hon. Angela Sherigan

LRBOI TRIBAL COUNCIL and  
LRBOI TRIBAL JUDICIARY,  
Defendants.


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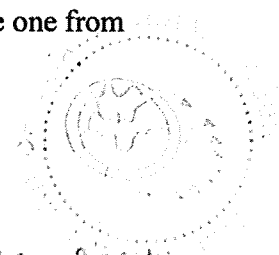
**ORDER REGARDING PLAINTIFF'S EMERGENCY REQUEST FOR EX-PARTE  
PRELIMINARY INJUNCTION**

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


  
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