

## TRIBAL COURT

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

LARRY OLSON,  
Plaintiff

Case No. 21-000524-EB

Honorable Allie Maldonado

v.

LRBOI ELECTION BOARD,  
Defendant

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

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

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

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### **ISSUE AND COURT'S RULING**

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

Please read the full opinion for the Court's analysis.<sup>1</sup>

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

## **HISTORY OF THE CASE**

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

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

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

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

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

### **JURISDICTION OF THE COURT**

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

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

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

Furthermore, the Constitution gives the Tribal Court broad jurisdiction over conflicts and matters that are addressed by LRBOI laws:

“Article VI, Section 8 — Powers of the Tribal Court

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

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.
2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.”

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

### **STANDARD OF REVIEW**

The LRBOI Constitution gives the Election Board broad authority to “issue such rules and procedures as may be necessary to carry out Tribal elections. . . .” See the LRBOI Constitution Article IX, Section 4(e).

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

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

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

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

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

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

### **ANALYSIS**

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

In this case, the Plaintiff alleged that Ogema “Larry Romanelli interfered in the election by trying to have me arrested by the Warren Police Department during the election period.” *Plaintiff’s Complaint* filed with the Court, June 14, 2021. The Plaintiff asserted that this amounted to harassment, intimidation and fraud and caused him votes. In researching the Election Board’s authority to hear this matter, the Court could not find any mention of harassment or intimidation in the Election Board statute or regulations. In the hearing, the

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

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

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

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

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

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

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

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

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

Election Board, other allegations of official misconduct fall under the authority of the Tribal Council in the Constitution<sup>3</sup>, the Prosecutor<sup>4</sup> under *The Law and Order Criminal Ordinance*, Section 4.02 (f)(2) and the Judiciary<sup>5</sup> under Article IV, Section 6(b)(2) of the Constitution. The Election Board did not provide the Court with a citation to any delegation of that authority, nor could the Court find one that gave it the power to act. However, the Election Board had another reason for holding the hearing, and it did cite to other authority within its jurisdiction as provided by law under that reasoning.

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

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

<sup>4</sup> Who can charge an official for abuse of power.

<sup>5</sup> Who can remove a judge for misconduct.



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

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

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

"The procedures for the Hearing is as follows:

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

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

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

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

### **CONCLUSION**

**The Court made the following findings:**

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

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

6-22-21

Date

Allie Maldonado  
Honorable Allie Maldonado