



## TRIBAL COURT

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

Case No. 21-000503-EB

Honorable Allie Maldonado

v.

LRBOI ELECTION BOARD,  
Defendant

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

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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. Ybabien  
*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 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 Board mailed to all Tribal citizens an “Announcement of Regular Election,” which informed the community that the Election Board would provide election candidacy packets from September 21, 2020, through October 2, 2020. The slate of candidates, including Nitumigaabow "Ryan" Champagne (“Mr. Champagne”), was certified by the Election Board by December 4, 2020. The election took place on April 30, 2021. Unofficial results show Mr. Champagne won a seat on Tribal Council.

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

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

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

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

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

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

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

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

## **JURISDICTION OF THE COURT**

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

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

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

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

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

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

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

This Court has jurisdiction as the Plaintiff is a Tribal citizen, the Defendant is the LRBOI Election Board, the matter involves the election for the LRBOI and the interpretation of Tribal law.

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

### **STANDARD OF REVIEW**

The LRBOI Constitution gives the Election Board broad authority to “issue such rules and procedures as may be necessary to carry out Tribal elections. . . .” See the LRBOI Constitution Article IX, Section 4(e). In addition, LRBOI Election Ordinance #08-200-02 sets few limits on the Election Board’s authority when it comes to regulating elections as it states the following:

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

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

The Election Board Regulations state the following:

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

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

## ANALYSIS

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

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

"Rule 4.209 Intervention...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

### **CONCLUSION**

**The Court made the following findings:**

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

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

6-10-21

Date

Allie Maldonado, sm  
Honorable Allie Maldonado

