

**LITTLE RIVER BAND OF OTTAWA INDIANS  
ELECTION BOARD**

IN THE MATTER OF:

SARA J. AGOSA ELECTION  
CHALLENGE

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

On April 30, 2021, the Election Board of the Little River Band of Ottawa Indians (Election Board) conducted the constitutionally mandated Regular Election. This Election included two seats for the Office of Tribal Council-Outlying, one seat for the Office of Tribal Council At-Large, two seats for the Office of Tribal Council-9 County and three seats on the Election Board.

**BACKGROUND**

Sara J. Agosa filed an Election Challenge on June 15, 2021 based on a posting made on June 8, 2021 in the Rapid River News of a memorandum written by George D. La Vasseur, the LRBOI IT Director, who presented his thoughts on the Regular Election to Ogema Larry Romanelli. This memorandum disclosed confidential email communications between the Election Board and the election service company True Ballot and Mr. La Vasseur had not been authorized to disclose these confidential communications by the Election Board. The date of this memorandum was May 5, 2021. Mr. La Vasseur is not a member of the Election Board and has no authority to make statements on its behalf. Mr. La Vasseur's memorandum makes no distinction between the information provided during the primary election and that provided during

the Regular Election. Mr. La Vasseur makes statements therein which are hearsay and have no evidentiary value. Assuming his number was accurate, two people reported to the Election Board that they did not receive their ballots and were provided with replacements. No other Member has come forward to state that they never received a ballot after requesting same.

Voter turnout for the 2019 Regular Election, as reported by Automated Election Services, was 32% with a total of 3825 registered voters in the Tribe. The 2021 Regular Election service provider True Ballot mailed ballots to a total of 3779 registered voters who voted with a turnout rate of 30%, well within the normal range. Voter rolls normally change between primary and Regular elections based on the addition of new eligible members (18<sup>th</sup> Birthday) or removal from voter rolls due to death of the member or from voters who may relocate thus changing their voter status from the Outlying to 9-County or the reverse. The LRBOI election procedure requires the creation of a list of voters who receive the 9-County ballot and other voters who receive the Outlying district ballot; therefore two voter lists are always required.

Out of the 3779 ballots mailed out by True Ballot for the 2021 Regular Election, a total of 1127 ballots were cast in the Regular Election. According to Google, Inc. and a search on the Internet, the typical rate which mail is lost by the United States Postal System is approximately 3%. While the Election Board and the election service vendor does everything reasonably necessary to assure that all members of the Tribe are able to vote in each and every election, there are sometimes circumstances beyond their control. As such, if the standard mail loss rate is applied to the ballots sent out in the LRBOI Regular Election, it would be conceivable that over 113 ballots could potentially be lost by the US Postal Service, however in this case, the assertions by Mr. La Vasseur only cite to 2 potential instances of voters who reported that they did not receive their ballot, however both of these voters were provided with replacement ballots in a timely



manner. LRBOI Elections are conducted primarily by mail-in ballot, however the Election Board also provides in-person voting options on election day. LRBOI has received no complaints from other potential voters who were not given the opportunity to vote, either by mail or by in person means.

As of the filing of Ms. Agosa's Dispute, all but one elected office has been certified and seated (sworn in). The harm to the Tribe would be great if an otherwise valid election was disrupted based on hearsay and innuendo, and wholly unsupported by factual support or backing but rather appears to be an attempt to overturn a valid election. The burden to provide a factual basis for her assertion rests on the complainant, and she has provided no more than one man's uninformed speculation as to potential errors. Such memorandum cannot form the basis to overturn an otherwise valid election. Moreover, Mr. Romanelli clearly did not find the memorandum of sufficient value to take any action with the Election Board himself.

Ms. Agosa alleges that the memorandum written by Mr. La Vasseur presents serious errors in the ballots, the impact of which on the Regular Election being unknown, therefore she is challenging the Election Results based on the materials Mr. La Vasseur presented to Mr. Romanelli in his May 5, 2021 memorandum.

After consideration of the record in this matter, the Election Board makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. The Election Board is the Tribal entity charged with carrying out the provisions of the Election Code to ensure all Tribal elections are conducted fairly and honestly and in the best interest of the Little River Band of Ottawa Indians (the Tribe) and its members.

2. Any challenge to the results or to the outcome of an Election is decided by the Election Board under authority of the Tribal Constitution.
3. The Ballots were mailed to the Membership by True Ballot on March 27, 2021.
4. The LRBOI Voter lists must specify which voters receive the 9-County Ballot and which voters receive the Outlying Ballot.
5. The LRBOI voter lists change regularly due to addition of 18-year-old members, removal of members who have died, or the change in residence of members from one voter district to the other.
6. The LRBOI Voter lists continually change in the months between the primary election and the Regular Election due to addition of 18-year-old members, removal of members who have died, or the change in residence of members from one voter district to the other.
7. Ballots are sent via US Mail which has a potential mail loss rate of up to 3%.
8. The election service provider for the LRBOI 2021 Regular Election, True Ballot, mailed ballots to a total of 3779 members of the Tribe who voted with a turnout rate of 30%, well within the normal range of voter turnout.
9. The Election Board has not received any complaints or other notification from any Member that such was not able to vote in the Regular Election because they did not receive a ballot despite requesting one directly from the Election Board.
10. The harm to the Tribe would be extreme if an attempt were made to overturn an otherwise valid election based on biased hearsay, innuendo, and wholly unsupported by facts.
11. The deadline for submission of an Election Dispute was 5 business days after notice or constructive notice as to the activity underlying the Election dispute, but in no way fewer than 10 days *prior* to the Regular Election.



12. The deadline for submission of an Election Dispute related to the Election process and Ballot distribution process was April 20, 2021.

### **CONCLUSIONS OF LAW**

The Election Board has considered the foregoing Findings of Fact, Ms. Agosa's Challenge/Dispute, as well as all evidence in the Election Board's possession and control and has considered all reasonable inferences drawn therefrom, and based on the foregoing, makes the following Conclusions of Law:

1. Article IX, Section 1 (d) and 4 (e) of the Constitution of the Little River Band of Ottawa Indians "authorizes the Election Board to issue such rules regulations and procedures as may be necessary to carry out Tribal Elections and to provide for ongoing Voter registration. Accordingly, the Election Board adopts and issues these Regulations under the authority of the Tribal Constitution."

2. Chapter 1, Section 2 (K) of the Election Regulations defines a Challenge as "a means a direct challenge to the results or outcome of an Election, the object of which is to affect the results of an Election."

3. Chapter 1, Section 2 (M) of the Election Regulations defines an Election Dispute as "means any election dispute other than that which challenges the outcome of an Election, the object of which is to affect how the Tribal election is conducted as the Election process moves forward."

4. Chapter 12, Section 1 (A) of the Election Regulations states "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. An Election Dispute is decided by the Election Board under the authority of the Tribal Constitution.”

5. Chapter 12, Section 1(C) of the Election Regulations states:

Timing of Election Disputes. 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 thereafter has five (5) business days to file an Election Dispute *but in any case*, no Election Dispute may be filed fewer than ten (10) business days prior to the Election. (emphasis added)

6. Chapter 12, Section 3 (B) of the Election Regulations states:

Waiver. Failure to timely file a Complaint within the time limits as provided by these Regulations constitutes a waiver. Untimely Complaints shall only be reviewable for error in computation of time. Untimely Complaints do not satisfy an exhaustion of remedies.

7. Chapter 13, Section 2 (E) of the Election Regulations state:

Review of Hearing Request. Unusual circumstances may arise wherein the Election Board may review a request for a hearing, and based upon its review determine that a Hearing is not appropriate under the circumstances. In the event that the Election Board declines to hold a hearing, it may thereafter issue a written decision without a hearing.

8. As a matter of law, a Member of the Tribe cannot transmute the character of an Election Dispute to an Election Challenge by virtue of when the Dispute is filed. Rather the differences between the two, are directly related to the *character* of the subject matter underlying the Dispute or Challenge. *See Crampton v. Election Board*, Case No. 21-000504 EB.

9. As a matter of law, the process by which enrollment lists are separated into voter lists, and the manner in which ballots are mailed, relates to the process of the Regular Election and not the result of the Election, and is therefore properly defined as an Election Dispute.



10. As a matter of law, no evidence has been presented that the ballot preparation and member distribution process in any way tainted the results of the Regular Election.

11. As a matter of law, Mr. La Vasseur's memorandum disclosed confidential communications between the Election Board and the election service vendor True Ballot.

12. As a matter of law, the Memorandum written by Mr. La Vasseur contained no evidence under the LRBOI Rules of Evidence, but rather was merely hearsay.

13. As a matter of law, any Election Dispute as to the Ballot distribution or other Election process should have been filed *no later than* 10 days prior to the Regular Election.

14. As a matter of law, Ms. Agosa's Election Dispute was filed late and is waived.

15. Given that this Election Dispute was not timely filed and is therefore waived, a hearing is not relevant or otherwise appropriate on this issue and will not be conducted by the Election Board pursuant to its discretion under Chapter 13, Section 2 (E).

### ORDER

NOW, THEREFORE, it is hereby, ORDERED, ADJUDGED AND DECREED that Sara J. Agosa's election dispute related to the Election Process is DENIED.

Dated this 21st day of June, 2021.

By: Valerie McDonnell  
Valerie McDonnell  
Election Board Chairperson

By: Laura Echelbarger  
Laura Echelbarger  
Election Board Secretary

By: Mike Ceplina  
Mike Ceplina  
Election Board Member

By: Karen Love  
Karen Love  
Election Board Member

By: Kathy Gibson  
Kathy Gibson  
Election Board Member