Medacco v. LRBOI/Tribal Ogema/HR Department 17006GC

Summary: On January 6, 2017, the Plaintiff filed a Summons and Complaint –first requesting a TRO. The plaintiff was called for an interview for Maintenance Supervisor positon and then informed when got there that he was not allowed to interview based on his previous employment termination.

Decision and Order: Plaintiff did not present any further documentation to support claim. He did not prove irreparable harm, nor did he establish a right to an interview or right to be hired based on any version of the Tribal Preference Ordinance. The TRO is dissolved and this case is dismissed.

Wolfe v. LRBOI/Ogema Larry Romanelli 17014GR

Summary: With the stipulation and order being signed over a year prior, on April 24, 2018 a NOTICE OF INTENT TO DISMISS FOR NO PROGRESS was mailed to the parties. On May 21, 2018, the Petitioner requested the Court to continue with the case. The hearing on the petitioner's grievance was scheduled for June 11, 2018.

Decision and Order: The Petitioner had withdrawn their complaint from the National Labor Relations Board at the end of February 2017 and should have requested a hearing on their grievance within ten days of dismissing it from NLRB. This case is dismissed with prejudice.

Crampton v. Little River Band of Ottawa Indians Election Board 17053EB

Summary: Petitioner filed for a restraining order against the Election Board on March 7, 2017. Petitioner alleged that the Election Board violated some of their own regulations and was seeking injunctive relief in the form of stopping both the Special Election and the General Election from moving forward. The Petitioner stated that all the citizens that voted did not have their ballots properly counted. She also argued that the ballots confused people because they were mailed out so close to one another. Petitioner challenged the outcome and was granted a hearing by the Election Board, but the hearing was scheduled *after* the swearing in ceremony.

Decision and Order: The Court granted a stay of the proceedings preventing the swearing in of the declared winner of the special election. A hearing on the request for injunctive relief was then scheduled for March 17, 2017.

Crampton v. Little River Band of Ottawa Indians Election Board 17053EB

Summary: The hearing was held on March 17, 2017. The Petitioner argued that the Election Board did not hold an immediate re-count as was reflected in their regulations when a candidate was defeated or eliminated by 1% or less of the votes counted for that office. The Petitioner also states that some ballots were not counted.

Decision and Order: The Court found that the Election Board should have done an immediate re-count on February 9, 2017. It was not conducted until February 23, 2017. Because the recount results were the same as the original count the Court finds that is was a harmless error. The ballots that were not counted were received after the deadline for ballots for the special election and therefore were not considered. The Court found that the Petitioner did not sustain her burden for continuing the restraining order. The injunctive relief is denied. The declared winner of the Special Election shall be sworn in and the General Election shall proceed.

Stone v. LRBOI/Tribal Council 17061GC

Summary: On March 10, 2017, the Plaintiff filed a Summons and Complaint against Defendant Tribal Council. The Plaintiff alleged that the Tribal Council violated Tribal and Federal Laws regarding harassment; hostile work environment; violation of the Ethics Ordinance; and violations of the Faire Employment Practices Code. The Plaintiff said he suffered stress "due to council members statements made on social media and through their actions while in office." The Plaintiff specifically sites Councilor Crampton as using his official capacity to defame and slander the Plaintiff causing harm to him professionally, physically, and emotionally. A motion hearing and pretrial was scheduled for May 1, 2017.

Decision and Order: At the hearing, the Court heard the Motion for Summary Disposition by the defendant's attorney. The Defendant's attorney claimed that the Plaintiff did not follow protocols set in place by the Whistleblower's Ordinance, found in a separate section of the Fair Employment Practices Code; Charge of Discrimination filing through the Tribal Court, as the Fair Employment Practices Code requires; nor the Ethics Ordinance complaint filing protocols. Because the Plaintiff failed to follow the laws and regulations of the Tribe by using the proper forum for his complaints, the Court granted the Summary of Disposition by the Defendants and the case is dismissed without prejudice.

Nelson/Corey v. LRBOI Election Board/Champagne 17113GC

Summary: 1. On May 2, 2017, Petitioner filed a Summons and Complaint and on May 5, 2017, filed an Amended Complaint and Ex-parte Petition for a Temporary Restraining Order against the Election Board seeking a Request for a Stay preventing the Election Board from certifying the winners of the Outlying seats from election.

2. Petitioners alleged that the Election Board should not have allowed Champagne to become a candidate because he was not qualified according to the LRBOI Constitution, in that he was not a resident of the State of Michigan for six months prior to the election and that he did not disclose to the membership of his 2006 conviction of attempted fraud where the victim was the Tribe, also in violation of the LRBOI Constitution. The Election Board alleges that the Petitioners' claims were not timely made.

Decision and Order: 1. The Court finds that the Petitioners were unable to satisfy the requirements by presenting any evidence on how they would be irreparably injured, harmed, or suffer irreparable loss or damage as a result of a delay in effectuating notice. The Court denies the Petitioners' request for an Ex-Parte Order of Stay and a hearing is scheduled for May 16, 2017.The opinion and order after hearing was received at the hearing on May 16, 2017, where the Petition for a Stay was denied by the Court. On May 22, 2017 the Court denied the Petition for a Temporary Restraining Order from interested party respondent, Champagne.

2. The Court finds that Champagne was a resident of the State of Michigan for at least six months prior to the election, therefore, the Election Board did not violate the Constitution by placing his name on the ballot as a candidate. The Court also finds that Champagne did not sufficiently satisfy the requirements of disclosure under the Constitution. However, the Court finds that the Petitioners did not bring this matter to the Court in a reasonable time, thus the Petitioners' request for relief is denied.

Nelson/Corey v. LRBOI Election Board/Champagne 17182AP

Appellate Decision and Order on Case #17113GC: 1. On February 1, 2018, the Tribal Appellate Court grants the Motion for Stay of Execution of Tribal Court Judgment.

2. On June 8, 2018, the Tribal Court of Appeals issued the Opinion and Order—The Appellate Court orders the relief requested of removing Champagne from the ballot, along with the votes received for him, and for the Tribal Council seats to be filled by the remaining candidates who meet all Constitutional requirements and have received the highest number of votes respectively.

3. On June 21, 2018, William Willis, LRBOI Tribal Citizen and candidate for the seats on Tribal Council at issue in this case, submitted a Motion for Reconsideration and Motion to Intervene, alleging that there must be a special election following a vacancy of the Tribal Council seat. The Tribal Appellate Court dismisses the automatic stay and denies the Motion for Reconsideration and Motion to Intervene, stating that the term "vacancy" does not apply to the Tribal Council seat at issue and that Willis did not submit his Motion for Reconsideration and Motion to Intervene in a timely manner.

4. On July 2, 2018, the Tribal Appellate Court ordered the final Opinion and Order of the "relief of removing Mr. Champagne from the ballot along with the votes received, and the election to these seats on Tribal Council from the remaining candidates on the ballot

who fulfilled the Constitutional requirements to seek election to and serve as Members of Tribal Council and received the next highest number of votes respectively to these seats on Tribal Council."

Nelson v. LRBOI Election Board **17172GC**

Summary: At an Election Board Public Hearing the Election Board admitted to being aware that the Attorney and his office were only conducting background investigations for a period of 7 years despite being aware of the need for a ten year investigation for the Election Board to be in compliance with the Constitution.

Decision and Order: A Consent judgment was entered by the parties in favor of the Plaintiff, Nelson against Defendant, LRBOI Election Board. Defendant concedes that it knowingly, upon the advice of legal counsel, conducted a 7-year background check on candidates running for office in the 2017 General Election where the Tribe's Constitution requires the disclosure of certain crimes or violations that date back to 10 years. Defendant shall reimburse to each candidate the monies paid by him or her for the 7-year background check.

Groh v. LRBOI HR Department **17223GR**

Summary: On August 23, 2017, the Petitioner was terminated as the Tribal Ogema's receptionist upon the Tribe's receiving the results of the Petitioner's criminal background check. The background showed and OUI, two arrests that did not lead to convictions, and an outstanding warrant. The Plaintiff was terminated for not disclosing the two arrests and outstanding warrant on their employment application which asked for all arrests. The Plaintiff argued that they were no longer an at-will employee because their 90-day probationary period had ended on August 18, 2017. The Respondent argued because of the Plaintiff's two-week leave that the probationary period is extended 14 days. The Plaintiff also argued that it is in violation of the Constitution to ask a potential employee of their arrest record.

Decision and Order: The Court finds that if the Plaintiff were given the correct application she would not have been accused of falsifying the document because she would not have to disclose the arrests and outstanding warrant that did not lead to convictions. The Court also finds that the Government Operations Personnel Manual states a leave of absence is not to be considered a break in service. Therefore, the Plaintiff was no longer on a probationary period of employment. The Court orders that the Plaintiff be returned to her position as receptionist and compensated for her back wages and any other benefits that she did not receive.

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PLAINTIFF:
JAMES MEDACCO

V.

CASE NUMBER: 17006GC
HON. DANIEL BAILEY

DEFENDANT:
LITTLE RIVER BAND OF OTTAWA INDIANS,
TRIBAL OGEMA &
HUMAN RESOURCE DEPARTMENT

James Medacco
In Pro Per
2573 E. Maw Gaw Ne Quong
Manistee MI 49660

Attorneys for the Defendants
Rebecca Leibing
Caitlin Rollins
2608 Government Center Drive
Manistee MI 49660

At a session of said Court on January 16, 2017
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
PRESENT: HON. DANIEL BAILEY

On January 6, 2017, the Plaintiff filed a Summons and Complaint and asked verbally for a Temporary Restraining Order. Mr. Medacco was called in for an interview for the Maintenance Supervisor position and then was informed when he got there that he was not allowed to interview based on his employment termination on January 8, 2014. He was released from his position for "inappropriate and unauthorized use of an enterprise credit card for personal transactions outside the scope of your employment..."

The Court is always cognizant of the inability of unrepresented parties to articulate and present a well written argument and grants exceptional latitude to pro se parties. The Court also recognizes the inconvenience of the halt of government business when it grants an injunction; that is why the hearing was scheduled so quickly.

Plaintiff did not present any further documentation to support his claim. Mr. Medacco called one witness who did corroborate his own testimony of the possible "proof" of an agreement regarding the credit card from minutes taken during a meeting of the Board of Directors. The Plaintiff did not provide a copy of the minutes. He did not prove irreparable harm; nor did he establish a right to an interview or a right to be hired based on any version of the Tribal Preference Ordinances. The TRO is dissolved and this case is dismissed.

SO ORDERED: _____ 1/16/17
Judge Daniel Bailey Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PETITIONER:
JULIE WOLFE

V. **CASE NO. 17014GR**

RESPONDENT:
LITTLER RIVER BAND OF OTTAWA INDIANS
OGEMA LARRY ROMANELLI

Julie Wolfe
Petitioner
413 Florida Street
Florence KS 66044

Caitlin Rollins
Attorney for Respondent
2608 Government Center Dr.
Manistee MI 49660

At a session of said Court on June 11, 2018
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
PRESENT: HON. DANIEL BAILEY

Court employees are tasked with making sure cases are decided and closed in a timely manner. (*Administrative Order 06-002AO*) The stipulation and order to stay the case was signed well over a year ago. There appeared to be no progress on this case. The Court mailed a *NOTICE OF INTENT TO DISMISS FOR NO PROGRESS* to the parties on April 24, 2018.

On May 21, 2018, the Petitioner emailed the Court requesting to continue with the case. The hearing on the grievance matter was scheduled for June 11, 2018. The Petitioner appeared by telephone and Counsel for the Tribe/Ogema was present.

After testimony by both parties it is evident to the Court that dismissal of this case is the only option. The Respondent stated and it was not disputed, that Ms. Wolfe withdrew her complaint from the National Labor Relations Board at the end of February 2017. At that point, the Petitioner should have requested a hearing on her grievance within ten (10) days of her dismissing her complaint to the NLRB. (*Ordinance # 05-300-04, Section V, 5.02)*

The Court finds that even if the dismissal of Ms. Wolfe's complaint was done in **February of 2018**, it would still have to dismiss the case. The request to proceed with her employment grievance should have come within 10 days of Ms. Wolfe's dismissal of the National Labor Relations Board complaint, thus ending the stay.

This case is dismissed with prejudice.

SO ORDERED:

Judge Daniel Bailey

Date 6/13/18

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660

BERNADENE CRAMPTON,
Petitioner

Case No.: 17-053 EB
Hon. Angela Sherigan

V.

LITTLE RIVER BAND OF OTTAWA INDIANS
ELECTION BOARD
Respondent

ORDER REGARDING (EXPARTE) PETITION FOR INJUNCTIVE RELIEF AND TEMPORARY/PRELIMINARY RESTRAINING ORDER

On March 7, 2017, Petitioner filed a Summons and Complaint/Petition against the Election Board alleging that the Election Board violated the Election Board Regulations and she seeks injunctive relief in the form of stopping both the Special Election and the General Election. There are two parts to her complaint.

Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable harm. In this case the Petitioner must first show why this injunction/restraining order should be granted without notice to the Respondent. If the Court is satisfied, then it will move to analysis as to whether or not a preliminary injunction should issue.

First part: A temporary restraining order *may* be granted without written or oral notice to the adverse party or the adverse party's attorney only if:

> (a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;
>
> (b) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and
>
> (c) a permanent record or memorandum is made of any non-written evidence, argument, or other representations made in support of the application.

Petitioner here does not have an attorney. This Court has always been lenient towards unrepresented parties when it comes to rules, and does not require strict adherence.

Applied to this case, the court will treat her complaint as a verified complaint to satisfy the first part of (a). As to the rest of (a), the swearing in of the declared winner of the winner of the Special Election at the Tribal Council meeting is scheduled for March 8, 2017 at 10:00 a.m., and thus a delay in providing notice to the Respondent would result in immediate and irreparable injury, loss or damage, as notice would put a decision past the swearing in. As to the general election, the Court finds that no immediate and irreparable injury, loss or damage would result by giving notice to the Respondent. Thus, the second part of Petitioners complaint will be set for a hearing, and not addressed in this Order. The rest of the analysis will only address the Special Election Swearing In for purposes of a preliminary temporary restraining order.

As to (b), Petitioner is not represented by an attorney. As to (c), the Petitioner has attached various documents to her Complaint that are now part of this record.

The Court finds that Petitioner has satisfied the above requirements and the Court will consider the request for a preliminary temporary restraining order without a hearing for the Special Election Swearing In only.

The purpose of a preliminary injunction is to preserve the status quo so that the rights of the parties' may be determined without injury to either in the interim.

Four factors are considered as to whether or not a preliminary injunction should issue:

1) harm to the public interest if the injunction issues;

2) whether the harm to the applicant in absence of a stay outweighs the harm to the opposing party if granted;

3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits[1]; and

4) demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted.

The factors should be balanced to obtain an equitable result.

Factor 1. Petitioner has not stated what if any harm would be to the public interest if the injunction issues, rather has stated that the citizens that voted, and their will, would not be counted and that the wrong person may be sworn in.

[1] The applicant must present a prima facie case but need not show a certainty to win.

Factor 2. The harm to the applicant/petitioner is that she may be the actual winner of the Special Election and would be denied the opportunity to represent the "will" of the voters. The Election Board's harm would be that of not having the declared winner sworn in. The position be contested by the challenge to the election is one that makes, and votes on, decisions that affect the Tribe as a whole.

Factor 3. Petitioner/applicant has demonstrated a strong likelihood of prevailing on the merits, as the Election Board Regulations state at Chapter 4, Section 12, paragraph b., that the election board shall prepare a final report and, at paragraph c., that "[T]he Election Board shall vote on whether to approve the Final Report after the scheduled time for withdrawals, recount petitions and election challenges has lapsed, or after all recounts and/or challenges have been completed, whichever is longer." Petitioner filed an election challenge within the time frame for filing challenges, and was notified on or about February 24, 2017, that her challenges, including the challenge to the Special Election, will be heard at a hearing on March 8, 2017 at 4:00 p.m. The swearing in is scheduled for March 8, 2017 at 10:00 a.m., prior to her hearing.

Additionally, the issue of the counting of ballots that were placed in the wrong envelops and not counted will be addressed at that hearing. If Petitioner is successful in her challenge that those ballots should be counted, it could change the outcome of the election as there was only a two vote difference between the top two candidates.

The Court has considered these factors in conjunction with the documents presented in the Complaint/Petition, and finds that the Petitioner has demonstrated to the Court that a preliminary injunction should issue.

THEREFORE, Petitioners request for a Preliminary Restraining Order preventing the swearing in of the declared winner of the Special Election now set for March 8, 2017, is hereby GRANTED. The swearing in of the winner of the seat of the Special Election is hereby STAYED, until further order of the Court.

A full hearing on the issue of the Special Election, and a hearing on the request for injunctive relief regarding the General Election will be held March 17, 2017 at 10:00 a.m.

Angela Sherigan
Judge Angela Sherigan

3/8/17
Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660

BERNADENE CRAMPTON,
Petitioner

Case No.: 17-053 EB
Hon. Angela Sherigan

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
ELECTION BOARD
Respondent

v.

JAMIE FRIEDEL,
Intervenor.

Bernadene Crampton
Pro-Se Petitioner

Christopher M. Bzdok
Bryan W. Langepfeffer
Attorneys for Respondent

Jamie Friedel
Pro-se Intervenor

ORDER AFTER HEARING FOR INJUNCTIVE RELIEF AND PRELIMINARY RESTRAINING ORDER

On March 7, 2017, Petitioner filed a Summons and Complaint/Petition against the Election Board alleging that the Election Board violated the Election Board Regulations and she seeks injunctive relief in the form of stopping both the Special Election and the General Election.

On March 8, 2017 the Court issued a Preliminary Restraining Order, without a hearing, regarding the swearing in of the declared winner of the Special Election, and set a hearing for March 17, 2017 on both the Special and the General Election claims in the complaint. A hearing was held in which all parties and/or their attorneys appeared. At the beginning of the hearing the Court heard a Motion to Intervene filed by Jamie Friedel, the declared winner of the Special Election. There were no objections to the Motion and the Court granted the Motion.

Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable harm.

SPECIAL ELECTION

Petitioner stated three parts in her complaint/petition regarding the Special Election:

1 – that the recount was not done in accordance with the Election Board Regulations, because it should have been automatic;

2 – that the Election Board certified the election prior to her challenge being heard in violation of the Election Board Regulations; and

3 -there was so much confusion regarding the Special Election and the General Election, with three ballots being sent out, the elections being so close together, and that there is a large percentage of voters that are "elders" or 55 years or age or older, and "during the normal aging process there may be loss of short-term memory, eyesight, hearing, physical limitations and diabetes, heart disease and high blood pressure that contributes to the loss of the 5 senses. There was very little understanding of people with some kind of physical challenge - aging process, dyslexia, eyesight, etc." that all ballots should be counted regardless of when they were received.

The Election Board stated that it followed the procedures, there was no impropriety, and that the recount was done.

The intervenor, stated that he felt the Election Board followed the procedures, and that the ballots and envelopes were color coded. Additionally, he added that he was paralyzed during the election and was still able to properly vote.

Both the Election Board and the Intervenor argued that the ballots that came in for the Special Election after the due date and time should not be counted, as they were late.

As to Petitioners first claim that the Election Board Regulations were not followed regarding the recount, by not holding an immediate recount. The Election Board Regulations state at Chapter 6, Section 2. a. Automatic Recount. "If the tentative results reflect that a candidate for any office was defeated or eliminated by 1% or less of the votes counted for that office, the Election Board will hold an automatic recount of the vote for that office immediately following the original count."

There were 334 votes counted on February 9, 2017. Of those, Ms. Crampton received 64 votes, or 19.46% of the votes, and Mr. Friedel received 66 votes, or 20.06%. This is within 1%, and an immediate recount should have been conducted. The recount was not conducted until February 23, 2017. The results of the recount were the exact same as the original count.

The court finds that the Election Board Regulations were violated, however, because the recount was eventually done with the exact same results as the original count, it was harmless error.

As to Petitioner's second claim that the Election Board certified the election prior to her challenge being heard in violation of the Election Board Regulations.

The Election Board Regulations state at Chapter 4, Section 12, paragraph b., that the election board shall prepare a final report and, at paragraph c., that "[T]he Election Board shall vote on whether to approve the Final Report after the scheduled time for withdrawals, recount petitions and election challenges has lapsed, or after all recounts and/or challenges have been completed, whichever is longer."

Petitioner filed an election challenge within the time frame for filing challenges, and was notified on or about February 24, 2017, that her challenges, including the challenge to the Special Election, will be heard at a hearing on March 8, 2017 at 4:00 p.m. The swearing in is scheduled for March 8, 2017 at 10:00 a.m., prior to her hearing.

On February 23, 2017, during the recount, the Election Board stated that it would not count the other ballots, the ballots received after the deadline for Special Election ballots. However, the February 24, 2017 letter notifying Ms. Crampton of the hearing on her challenges did state that that the Special Election challenge would be heard. At the March 8, 2017 hearing, the Special Election challenge concerning the late ballots was not heard. The Election Board stated that it did not know why the Special Election ballot challenge was included in the letter, and it was not addressed at the March 8, 2017 hearing because it felt that the issue was resolved.

Neither the Petitioner, nor the Election Board, provided the Court with the actual date that the official Special Election results were announced, and it is unclear from the Exhibits as the "Official Results" Exhibit is neither signed nor dated. Presumably, it was before March 8, 2017, as the swearing in was scheduled, however, no evidence was presented of when it was certified, absent any evidence, the Court is unable to make a determination on this claim, as the burden is on the Petitioner, not the Court.

As to Petitioner's third claim, that there was so much confusion regarding the Special Election and the General Election, with three ballots being sent out, the elections being so close together, and that there is a large percentage of voters that are "elders" or 55 years or age or older, and "during the normal aging process there may be loss of short-term memory, eyesight, hearing, physical limitations and diabetes, heart disease and high blood pressure that contributes to the loss of the 5 senses. There was very little understanding of people with some kind of physical challenge - aging process, dyslexia, eyesight, etc." that all ballots should be counted regardless of when they were received, the Court in unimpressed with this argument. The idea that simply because someone is over the age of 55, they have diminished capacity to understand how to vote, and which envelope to put a ballot in, is preposterous. Petitioner offered no evidence of her claim. An allegation devoid of any evidence cannot be sustained

Additionally, the Election Board Regulations state at Chapter 4, Section 5 b, ii that "To be counted, completed mail ballots must be received by the Election Board, at its post office address, before noon on Election Day. It is the responsibility of the registered voter to verify that ballots are mailed in a timely fashion to meet the deadlines." The deadline for ballots for the Special Election was February 9, 2017 at noon. Any ballots received after that time, will not be counted.

Therefore, the Court finds that the counting of the Special Election ballots was done in compliance with the Election Board Regulations, and that the swearing in of the declared winner, Jamie Friedel, shall move forward.

The Petitioner has not sustained her burden for a continuation of the restraining order.

GENERAL ELECTION

The Election Board argued that issue regarding the General Election is not ripe, among other things, as it has acted appropriately, and a hearing regarding the challenges was conducted on March 8, including the issue of ballots and envelopes, and the decision from the hearing officer has not issued.

The Election Board Regulations state at Chapter 4, Section 12, paragraph b., that the election board shall prepare a final report and, at paragraph c., that "[T]he Election Board shall vote on whether to approve the Final Report after the scheduled time for withdrawals, recount petitions and election challenges has lapsed, or after all recounts and/or challenges have been completed, whichever is longer."

The Court agrees that this issue is not ripe, as the decision regarding the challenges has not been rendered. Therefore, it will not go into the analysis regarding whether or not to issue a restraining order.

THEREFORE, IT IS HEREBY ORDERED:

1. Petitioners request for injunctive relief is DENIED.

2. The declared winner of the Special Election, Jamie Friedel, shall be sworn in as soon as possible.

3. The General Election shall proceed in accordance with the Election Board Regulations.

Angela Sherigan

Judge Angela Sherigan

3/20/17

Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PLAINTIFF:
ISRAEL W.C. STONE

V.

CASE NUMBER: 17061GC
HON. DANIEL BAILEY

DEFENDANT(S):
LITTLE RIVER BAND OF OTTAWA
TRIBAL COUNCIL

Plaintiff:
Israel Stone
506 12th Street
Manistee MI 49660

Defendants Attorneys:
Rebecca Liebing
Caitlin Rollins
2608 Government Center Drive
Manistee MI 49660

At a session of said Court on May, 1, 2017
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
PRESENT: HON. DANIEL BAILEY

ORDER AFTER HEARING ON MOTION FOR SUMMARY DISPOSITION
Statement of Facts

The Plaintiff filed a Summons and Complaint on March 10, 2017 against Defendant Tribal Council. The Court has jurisdiction based on the membership of the parties; and the fact that the parties are either employed by or elected to a position within the Tribe.

The Plaintiff alleges that the Tribal Council has violated Tribal and Federal Laws regarding harassment; hostile work environment; violation of the Ethics Ordinance; and violations the Fair Employment Practices Code.

Stone had attached some documents that, he says, demonstrates why he has suffered stress "due to council members statements made on social media and through their actions while in office." The Plaintiff specifically sites Councilor Crampton as using his official capacity to defame and slander the Plaintiff causing harm to him professionally, physically, and emotionally.

After receiving the *Answer from the Defendant* and *A Motion for Summary Disposition Under Tribal Court Rules 4.116(C)* on April 5, 2017, a motion hearing and pretrial was scheduled for May 1, 2017.

PLAINTIFF:
ISRAEL W.C. STONE

V.

CASE NUMBER: 17061GC
HON. DANIEL BAILEY

DEFENDANT(S):
LITTLE RIVER BAND OF OTTAWA
TRIBAL COUNCIL

The Plaintiff and the Council's Attorneys were present at the hearing. The Court heard the Motion for Summary Disposition first. Attorney Liebing testified that the Court does not have subject matter jurisdiction because the Defendant did not follow the laws and regulations put in place to protect employees and Tribal Members from the abuses that Mr. Stone alleges in his complaint.

The Plaintiff states he filed a Whistleblower's Complaint with the Tribal Prosecutor last year and has yet to receive a report of the investigation. He says: "The Tribal Prosecutor neglected to investigate the claims as required under the fair employment practices code and said that he was awaiting the decision of the tribal courts in the Stone v. Tribal council case."

Ms. Liebing states that Mr. Stone did not provide evidence that he properly filed a Whistleblower's Complaint with the Prosecutor, thus the Court does not have subject matter jurisdiction on this point.

The Whistleblower's Ordinance is a separate section of the Fair Employment Practices Code (Article XII Sec. 12.01) with separate processes that differentiate it from the Fair Employment Practices Code. The Tribal Prosecutor is a part of that process.

Mr. Stone feels he has been subject to threats and a hostile working environment and says that "The fair employment practices code and federal labor law protect all citizens and employees..."

Mr. Stone has not filed a Charge of Discrimination through the Tribal Court as the Fair Employment Practices Code requires. (Ordinance # 05-600-03, Art. VI Sec. 6.02)

The Defendant's Attorney testified that the Tribal Council, even as the Board of Directors; and now the Oversight Committee, were not in a position to terminate anyone's job.

The Plaintiff alleges that Councilor Crampton violated the Elected Officials Ethics Ordinance (#14-100-10) by posting derogatory remarks on social media sites. He also says the rest of Council would be culpable to allow such violations.

After looking carefully at the copies of social media the Plaintiff attached to his complaint as exhibits, the Court could only find one place where Mr. Stone's name was used and it was not considered a derogatory statement. It alluded to the Plaintiff's salary.

Ms. Liebing pointed out that the same Ethics Ordinance (# 14-100-10) provides a description of how one goes about filing such a complaint. Mr. Stone did not do so, so the Court has no jurisdiction over this claim.

The Plaintiff also alleges that he has been threatened, specifically by Shannon Crampton, to the levels of physical harm. Those threats would be something that should be handled by complaints to the Department of Public Safety.

PLAINTIFF:
ISRAEL W.C. STONE

V.

CASE NUMBER: 17061GC
HON. DANIEL BAILEY

DEFENDANT(S):
LITTLE RIVER BAND OF OTTAWA
TRIBAL COUNCIL

He goes on to claim that Councilor Crampton has defamed and slandered him which has "...led to stress and fear for my health and wellbeing." (Protection against Defamation Act of 2006 would address this and allow Stone an avenue for redress.)

Mr. Stone attests that he is not an attorney and admits that he probably didn't follow the protocol. After testimony, the Court has to agree with the Plaintiff that he failed to follow the laws and regulations of the Tribe.

Mr. Stone's complaints may well be valid but he didn't provide any proof for requesting relief in the proper forum. The Plaintiff has access to the Whistleblower's Ordinance, the Elected Officials Ethical Ordinance, The Fair Employment Practices Code, and the Department of Public Safety.

The Court grants the Summary Disposition of the Defendants and dismisses this case without prejudice.

SO ORDERED: _____ 5/8/17
Judge Daniel Bailey Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660

NIKKI NELSON and,
DAVE COREY,
Petitioners

V.

LITTLE RIVER BAND OF OTTAWA INDIANS
ELECTION BOARD,
Respondent.

Case No.: 17-113 GC
Hon. Angela Sherigan

ORDER REGARDING EXPARTE PETITION FOR TEMPORARY RESTRAINING ORDER (STAY)

On May 2, 2017, Petitioner filed a Summons and Complaint and on May 5, 2017, filed an Amended Complaint and Ex-parte Petition for a Temporary Restraining Order against the Election Board seeking injunctive relief in the form of a request for a Stay preventing the Election Board certifying the winners of the Outlying seats from the election.

Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable harm. In this case the Petitioner must first show why this injunction/restraining order should be granted without notice to the Respondent. If the Court is satisfied, then it will move to analysis as to whether or not a temporary restraining order should issue.

First part: A temporary restraining order *may* be granted without written or oral notice to the adverse party or the adverse party's attorney only if:

> (a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;
>
> (b) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and
>
> (c) a permanent record or memorandum is made of any non-written evidence, argument, or other representations made in support of the application.

Petitioners here does not have an attorney. This Court has always been lenient towards unrepresented parties when it comes to rules, and does not require strict adherence.

Applied to this case, the court will treat the complaint as a verified complaint to satisfy the first part of (a). As to the rest of (a), that immediate and irreparable injury, loss, or damage will result to the applicant(s) from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued, the Petitioners have not presented any evidence or allegations on how they would be irreparably injured, harmed, or suffer irreparable lost or damage as a result of a delay in effectuating notice.

Since Petitioners are unable to satisfy this requirement, no further analysis is needed.

The Court finds that Petitioners have not satisfied the above requirements and the Court will not consider the request for a preliminary temporary restraining order without a hearing.

THEREFORE, Petitioners request for an Ex-Parte Order of Stay is hereby DENIED.

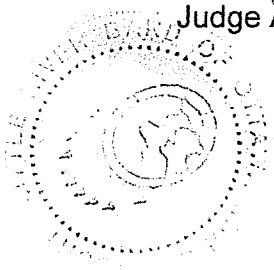
A hearing on the Petition will be held May 16, 2017 at 1:30 p.m.

Angela Sherigan Dr

Judge Angela Sherigan

5/8/17

Date



LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

NIKKI NELSON and,
DAVE COREY,
Petitioners
V.

LITTLE RIVER BAND OF OTTAWA INDIANS
ELECTION BOARD,
Respondent.
and

RYAN CHAMPAGNE,
Interested party Respondent.

Case No.: 17-113 GC
Hon. Angela Sherigan

Nikki Nelson, in pro-per
Dave Corey, in pro-per
Petitioners

Chris Bzdok
Attorney for Election Board

Ryan Champagne, in pro-per
Interested Party Respondent

OPINION AND ORDER AFTER HEARING

On May 2, 2017, Petitioners filed a Summons and Complaint and on May 5, 2017, filed an Amended Complaint and Ex-parte Petition for a Temporary Restraining Order against the Election Board seeking injunctive relief in the form of a Stay preventing the Election Board certifying the winners of the Outlying seats from the election. The Court denied the request Ex-Parte and scheduled a hearing for May 16, 2017, after hearing, the Court denied the Petition for a Stay, and set a schedule for the case to move forward.

On May 22, 2017, the Court received a Petition for a Temporary Restraining Order from interested party respondent Champagne, seeking injunctive relief in the form of a Stay preventing the swearing in of all Tribal Council candidates which the court denied.

Petitioners also filed a complaint with the Election Board regarding the same issues, and a hearing was held on that matter on May 28, 2017 and the decision was rendered on June 2, 2017 and accepted by the Election Board on June 14, 2017, and provided to the Court.

A full hearing was held in this matter on June 16, 2017, in which all parties and/or their attorneys were present.

Petitioners allege in their complaint that:

1.the Election Board should not have allowed Ryan Champagne to become a candidate because he was not qualified according to the Constitution at Article IV, Section 3 (a), in that he was not a resident of the State of Michigan for six months prior to the election; and

2. that the Election Board should not certify him as the winner of the seat because Mr. Champagne did not disclose to the membership of his 2006 conviction of attempted fraud where the victim was the Tribe, in violation of Article IV, Section 3 (b)(1) and (b)(3).

Respondent Election Board, as well as interested party, Ryan Champagne, both rely on the Election Board decision of June 14, 2017. The Election Board also pleaded laches as an affirmative defense. (That Petitioners' claims were not timely made.)

This Court has jurisdiction under Article VI, Section 8 (a), (b), and (j), and is not bound by the June 2017 decision of the Election Board.

As to the first allegation, Petitioners' allege that Mr. Champagne was not a resident of the State of Michigan and that the Election Board should not have allowed him to be placed on the ballot. In support of their position, Petitioners

presented evidence that the vehicle that Mr. Champagne drives does not have a Michigan plate and that Michigan law requires registration of vehicles for residents. The Election board argued that Mr. Champagne certified that he was a resident in his sworn statement and his driver's license is issued by the State of Michigan, and that having plates from somewhere other than the state of Michigan just means that the vehicle is registered in a state other than Michigan and may be a violation of Michigan law, but is not proof of residency, the Court agrees. During the Election Board hearing regarding this issue, evidence was presented to show proof of residency, including the driver's license, utility bills, bank statements, and other correspondence to Mr. Champagne at the Manistee address, and testimony that candidate addresses are checked with enrollment.

Based on the evidence presented, the Court finds that Mr. Champagne was a resident of the State of Michigan for at least six months prior to the election and therefore the Election Board allowing his name to be placed on the ballot as a candidate did not violate the Constitution.

As to the second allegation that the Election Board should not certify him as the winner of the seat because Mr. Champagne did not disclose to the membership of his 2006 conviction of attempted fraud where the victim was the Tribe, in violation of Article IV, Section 3 (b)(1) and (b)(3), the court must determine and interpret what does disclose to the membership mean, including determination and interpretation of "membership".

Article IV, Section 3 of the Constitution states:

"A Tribal Member must meet the following qualifications to be a candidate or nominee for Tribal Council,...

(b) He or she must disclose to the Membership if any of the following apply:

(1) He or she has any current prosecution pending or has any conviction for a crime involving fraud or misrepresentation; and/or

(3) He or she has any current prosecution pending or has any conviction within the past ten (10) years for any felony in any jurisdiction, or for any other offense, the victim of which offense was the Tribe, or any Tribal business, enterprise, department or program...."

There is no dispute that Mr. Champagne has a conviction that falls within the scope of this section which must be disclosed. As to disclosure, Petitioners state that they were waiting for Mr. Champagne to disclose his conviction. The respondent Election Board relies on the June 2017 hearing decision, stating that since the application for candidacy is a public record, checking the box stating you have a conviction is disclosure. Interested party Champagne stated he relies on the Election Board decision and as well as stated that the claim is against the Election Board and not him.

The language in Article IV, Section 3 regarding disclosure of convictions was added to the Constitution in the August 24, 2016 amendment. Prior to the amendment, there was no requirement for disclosure of pending prosecutions or conviction as now required in 3(b). This change is an addition, indicating that the intent of the change was to mandate disclosure to the membership. Membership is listed under Article II of the Constitution and the eligibility requirements are set for in Section 2 of that article.

. The respondent Election Board's position on the term "membership" as used in Article IV, Section 3(b) is that of "registered voters". Its position relies on

the June 2007 hearing decision, specifically page 11 of that decision in which there is an interpretation of the Constitution. The Court does not agree with the interpretation. Membership cannot be, and is not, limited to registered voters. The benefits of membership[1] in the Tribe extend to each member regardless of if they are registered to vote or not, including the right to run for office, which according to the Constitution, does not require the member to be a registered voter. Additionally, a member may register to vote in the primary or general election after the timeline of when the candidates must submit their application for candidacy.[2]

Therefore, the "membership" is all of those enrolled as members of the Tribe.

Having made the finding that the membership is all those enrolled as members of the Tribe, the Court must now look to what does disclosure to the membership mean. It appears that the Petitioners' interpretation is something other than checking the box on the declaration of candidacy packet that the applicant candidate has one of the provisions listed in Article IV, Section 3 that requires disclosure, which should be made sometime before the end of the election, including up to the date of the election. The respondent Election Board's interpretation is the check alone is satisfactory as the packets are public

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[1] Which include, but are not limited to: protections provided in the Constitution, access to Indian Health Services contract health, Indian Child Welfare Act protections, members legal assistance, members assistance, per-capita distributions, Family Services assistance, fuel, cigarette, and other tax exemptions, hunting and fishing rights, etc.

[2] In this election, the declaration of candidacy packet ere due on October 28, 2016, the slate of candidates' was certified on December 12, 2016. The last day to register to vote in the primary election was December 13, 2016. The primary election was held on February 2, 2017, and the general election was held on April 28, 2017. The last day to register to vote in the general election was February 27, 2017. Thus, under the Election Board's interpretation, the "membership" for purposes of Article IV, Section 3, would be subject to change.

record. Interested party, Ryan Champagne relied on the Election Board's position and additionally argued that the Petitioners' complaint is against the Election Board and not him, and did not offer any evidence of his disclosure to the membership.

When Mr. Champagne motioned the Court to intervene in this action, he became an interested party/respondent and not a mere observer. His decision to rely solely on the positions and arguments of the election board is detrimental. There was no evidence presented that there was any disclosure of the conviction to the membership by Mr. Champagne, and the Court finds that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution.

However, the Election Board has pleaded laches as an affirmative defense, and the Court agrees. Petitioners stated that they were aware of the conviction in October of 2016. They did not file a complaint with the Election Board or with this Court after the primary election was over, which is when it was ripe, or during anytime leading up to the April election. It was only after the election was over did the Petitioners decide to bring this action. The Court finds that there has been an unreasonable delay in bringing this action and is therefore estopped by the doctrine of laches. The relief requested is DENIED.

Angela Sherigan

Judge Angela Sherigan

7/11/17

Date

Little River Band of Ottawa Indians
Tribal Court of Appeals
3031 Domres Road
Manistee, Michigan 49660
Phone: 231-398-3406 Fax: 231-398-3404

DAVID COREY AND NIKKI NELSON,
Appellants/Petitioners,

v.

LITTLE RIVER BAND OF OTTAWA INDIANS ELECTION BOARD,
Appellee/Respondent,

and

RYAN CHAMPAGNE,
Interested Party Appellee/Respondent.

Case Number: 17182AP

Hon. Melissa L. Pope, Chief Justice
Hon. Berni Carlson, Associate Justice
Hon. Joseph LaPorte, Associate Justice

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Interested Party Appellee In Pro Per
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OPINION AND ORDER GRANTING MOTION FOR STAY OF EXECUTION OF TRIBAL COURT JUDGMENT

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 1st day of February of 2018.

JURISDICTION

The Little River Band of Ottawa Indians Constitution establishes the Tribal Justice System in Article VI – Tribal Court:

> Section 1 – 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.

The Constitution goes on to mandate the independence of the Judicial Branch in the exercise of its duties in Article VI § 9 as follows:

> Section 9 – *Judicial Independence*. The Tribal Judiciary shall be independent from the legislative and executive functions of the tribal government and no person exercising powers of the legislative or executive functions of government shall exercise powers properly belonging to the judicial branch of government; provided that the Tribal Council shall be empowered to function as the Tribal Court of the Little River Band until the judges prescribed by this Article have been appointed; provided further that the first Tribal Council and Tribal Ogema elected under this Constitution shall make appointments to its courts within ninety (90) days after its members are elected.

Article VI § 8 – *Jurisdiction and Powers of the Tribal Courts*, details the authority and duties of the Court and provides that, "[t]he jurisdiction and judicial powers of the Little River Band of Ottawa Indians shall extend to all cases and matters in law and equity arising under the Tribal Constitution or under the laws and ordinances applicable to the Little River Band of Ottawa Indians" with Section 8 (a) providing in pertinent part that this authority includes the power "[t]o adjudicate all civil and criminal matters arising within the territorial or membership-based jurisdiction of the Tribe". Article VI § 8 (b) further provides in pertinent part that this Court has the power "[t]o review ordinances and resolutions of the Tribal Council or General Membership to ensure that they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution".

This matter involves the election process for the Little River Band of Ottawa Indians Tribal Council pursuant to the Constitution, Election Ordinance, Election Board Regulations, and other authorizing documents properly enacted pursuant to Tribal law. This Court, therefore, has jurisdiction over this matter, including to determine whether to grant a preliminary injunction of the final judgment entered by the Trial Court.

FACTUAL HISTORY OF REQUEST FOR STAY

On October 31, 2017, Appellants David Corey and Nikki Nelson ("Appellants" or "Appellants-Petitioners"), by and through their attorney, submitted the Appellants Request for Stay of Execution of Tribal Court Judgment ("Appellants Request for Stay"). The Appellants-Petitioners explained in this Request that, "[d]uring the pendency of the trial court case the Appellee Election Board did not certify the election results with respect to the outlying seats", but that "Appellants have learned that the Appellee Election Board now intends to certify the election results with the respect to the outlying seats". (Appellants Request for Stay at 2). As such, the Appellants-Petitioners requested that this Court enter a Stay of Execution of the Tribal Court Judgment. Addressing the four-part test for a preliminary injunction, the Appellants noted that "if the Appellee certifies the election an individual who failed to comply with the Constitutional requirements to be eligible to sit as a candidate will be seated, in other words an individual not eligible to sit as a candidate to be seated on the Tribal Council". (Appellants Request for Stay at 3-4). The Appellants-Petitioners went on to state that, "[a]t this point issuing the stay would maintain the status quo and would ensure that the Tribe's election process was conducted in a manner consistent with the Tribe's Constitution". (Appellants Request for Stay at 4).

On November 2, 2017, this Court issued the *Order for Temporary Stay of Execution of Tribal Court Judgment and Appellate Stay of Execution Briefing Schedule* ("*Order for Temporary Stay*"). This Court granted a temporary stay, noting that it took the findings of the Trial Court into consideration, specifically that the Trial Court held in pertinent part in its *Order After Hearing* issued on July 11, 2017 that "[t]here was no evidence presented that there was any disclosure of the conviction to the membership by Mr. Champagne, and the Court finds that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution". (*Order After Hearing* at 6). In issuing the *Order for Temporary Stay*, the Court stated:

> The fact that the Trial Court held that Mr. Champagne did not meet the Constitutional requirements provides sufficient reasoning to support a stay so that, should this Court ultimately disagree with the Trial Court's holding that the affirmative defense of laches applies, the Appellants and Tribe do not suffer the harm of a person who was not eligible to be seated as a candidate being seated as a Tribal Council Member. Further, this Court agrees with the Appellants that a stay would "maintain the status quo" as the former Members of Council in the outlying seats have remained in their positions with the Appellee Election Board not certifying these seats. As such, it would appear from Tribal Council operating in this manner for approximately six (6) months that continuing in this manner temporarily would not be an undue burden. (*Order for Temporary Stay* at 3).

The Court also entered a briefing schedule so that the Appellee Election Board could explain its actions and the Appellants-Petitioners would have the opportunity to respond to the reasoning of the Appellee Election Board since it had no information other than having learned that the Appellee Election Board had scheduled the Oath of Office Ceremony. The Court also noted that this Court learned of the pending Oath of Ceremony "due to having been contacted for a Member of the Judiciary to administer the Oath of Office at the Ceremony".

On or about November 13, 2017, Appellants-Petitioners' Attorney notified the Court Administrator that the Attorneys for the Appellants-Petitioners and the Appellee Election Board had identified a typographical error in the *Order for Temporary Stay*. The error involved the names of the parties in relation to the stay of execution briefing schedule. The Appellants' Attorney advised that these two parties were aware of the error and were submitting their briefs pursuant to the intended schedule with the Appellee Election Board's written filing due on Friday, November 17, 2017 and the Appellants written reply being due on Friday, December 1, 2017. The Chief Justice advised the Court Administrator to request written confirmation from the Appellee Election Board's Attorney that she was aware of the typographical error and that she intended to submit the Brief on November 17, 2017. The Appellee Election Board's Attorney submitted this confirmation via email to the Court Administrator.

On November 17, 2017, the Court received the Appellee Election Board's Response in Opposition to Appellants' Request for Stay of Execution of Tribal Court Judgment ("Appellee Response Brief").

On December 1, 2017, the Court received the Appellants' Reply to Appellee Little River Band of Ottawa Indians Election Board's Response in Opposition to Appellant's Request for Stay of Execution of Tribal Court Judgment ("Appellants' Reply Brief").

This Court appreciates the parties' diligence in notifying the Court of the typographical error, confirming the actual date briefs were due, and submission of their briefs pursuant to the intended schedule.

While the Briefs were being submitted pursuant to the *Order for Temporary Stay*, a Motion to File Amicus Curiae Brief was under consideration by this Court. On September 18, 2017, this Court issued the *Order Regarding Unified Legal Department Motion to File Amicus Curiae Brief*. In this *Order*, the Court noted specific issues for the ULD to discuss if further consideration was desired to file an amicus brief in the present case. With the Appellee Election Board having responded to the ULD Motion to File Amicus Curiae Brief by requesting the opportunity to respond to the ULD Brief prior to the Court issuing a final opinion in the present case, if the Court granted the ULD request, this Court determined that it must respond to the ULD Motion to File Amicus Curiae Brief prior to a final ruling on the Appellants Motion to Stay Execution of Tribal Court Judgment, as well as prior to sending Notice of Oral Arguments in the present case. With this Court having issued the *Opinion and Order Denying Unified Legal Department Motion to File Amicus Curiae Brief and Ruling Void Provisions of the Unified Legal Department Act Not Consistent with the Constitution* on January 24, 2018, this Court now turns to the Appellants Request for Stay.

ANALYSIS

The LRBOI Court Rules of Appellate Procedure provide the standard for review for requests for stays in Section 5.409: The Tribal Court of Appeals may grant a stay of the Tribal Court judgment only upon a showing of good cause and when justice so requires.

In addition, this Court has adopted a four-part test for requests for preliminary injunctions with the moving party bearing the burden to prove all four elements of the test. (See *Tyler v LRBOI Election Board*, Case No. 13079-AP, Decided April 3, 2013, and *Crampton v Election Board*, Case No. 09-084 EB, Decided May 8, 2009).

In the present case, the stay requested serves as a preliminary injunction of the Appellee Election Board certifying the election results for the outlying seats of Tribal Council with one of these candidates, Ryan Champagne, failing to meet the requirements as provided by Tribal law. In *Tyler v LRBOI Election Board*, the Court noted the test previously adopted for a preliminary injunction to be issued as follows:

> 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 to 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. *Tyler v LRBOI Election Board*, Case No. 13079-AP, at 11, Citing *Sam et al. v. Ossiginac et al.*, 09-012-AP, at page 8.

This Court holds that the Appellants-Petitioners have met the burden for the first requirement of demonstrating irreparable harm for the reasons discussed in the *Order for Temporary Stay*, including the Trial Court holding, after considering both the evidence presented and arguments made by the parties, that "[t]here was no evidence presented that there was any disclosure of the conviction to the membership by Mr. Champagne, and the Court finds that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution. (*Order After Hearing* at 6). This Court agrees with the Appellants-Petitioners that all Tribal Citizens, including the Appellants-Petitioners, would suffer irreparable harm if an individual who was determined by the Trial Court to be ineligible to sit as a candidate for Tribal Council was seated as a Member of Tribal Council prior to a final decision of this Court of Appeals as to whether the election met all requirements established in the Constitution, Tribal law, and the precedent of this Court.

This Court holds that the Appellants-Petitioners have also met the burden of demonstrating that the harm to the moving party if the preliminary injunction is denied outweighs the harm to the Appellee Election Board if the preliminary injunction is granted. The Trial Court did not hold that Ryan Champagne met the constitutional requirements for office; the Trial Court held that the case was barred by laches. If this Court overturns the Trial Court's application of laches, the harm suffered by Tribal Citizens would either expand into the burden for removing a Member of Tribal Council, in addition to having to hold a new election, or continue throughout the term of office with an individual not eligible as a Tribal Council candidate serving as a Tribal Council Member, depending on the relief granted by this Court. Either option relating to seating an ineligible candidate as a Member of Tribal Council constitutes a greater harm to Tribal Citizens that outweighs the harm of maintaining the status quo, as well as outweighs the harm to an individual candidate whose eligibility has been

challenged prior to being seated as a Member of Tribal Council and who has not participated in this court process.

Like many other jurisdictions, the LRBOI four-part test for a preliminary injunction includes the requirement for the moving party to demonstrate a likelihood of success on the merits. This requires the Court to engage in the challenging endeavor of reviewing the legal arguments and, sometimes disputed, facts of a case before all arguments have been presented to the Court to determine if the moving party can demonstrate a likelihood of success on the merits. The Appellants-Petitioners argue:

> Laches is the embodiment of the idea that those who sleep on their rights may lose them. In this case however, the application of that doctrine was incorrect for at least two reasons. The first is that the LRBOI Regulations provide a timeframe in which to bring election challenges or disputes and the Appellants brought their challenge within that timeframe. (Appellants' Reply Brief at 5).

They go on to cite foreign case law to support their argument:

> The doctrine of laches may not be used to block a claim brought within a limitations period set-forth in a statute. See Petrella v Metro-Goldwyn-Mayer, Inc. 134 S CT 1962 (2014) ("Petrella")(laches cannot bar action brought within the statute of limitations); see also SCA Hygiene Products Aktiebolag v First Quality Baby Prods, LLC 137 S CT 954, 197 L ED 2D 292 (2017) ("SCA") (holding laches cannot be used to bar a claim brought within the statute of limitations). (Appellants' Reply Brief at 5).

This Court finds the principles in the foreign case law cited persuasive for the purposes of determining whether to continue this preliminary injunction with the fact that the Appellants-Petitioners filed the present case within the timeframes required. Thus, this Court finds that the Appellants-Petitioners have met their burden of demonstrating a likelihood of success on the merits.

The final part of the four-part test, for the facts of this case, requires the Appellants-Petitioners to demonstrate harm to the public interest unless a preliminary injunction is granted. As the parties have stressed throughout the

course of this case, the election by the Citizens of this Nation of the individuals they choose to serve in the constitutionally-created positions to fulfill the constitutionally–mandated duties of those positions is of critical importance to the individual Citizens of the Tribe and this Nation as a whole. Further, the interpretation of an amendment to the Constitution is involved with the analysis of this case. As such, the matters in this case not only involve matters of public interest, but matters of the public interest that are of the utmost importance. With the analysis provided already discussing the harm to Tribal Citizens and this Nation absent a preliminary injunction, and this harm directly impacting the public interest, the Appellants-Petitioners have not only met their burden for the fourth part of the test for a preliminary injunction, but also met the standard of review in Section 5.409 of the LRBOI Court Rules of Appellate Procedure with showing that there is good cause to grant a preliminary injunction until a final decision is issued by this Court of Appeals and that justice requires issuance of a preliminary injunction.

The Appellee Election Board addresses the effect of this Court issuing a stay in the Appellee Response Brief:

> Furthermore, the Election Board already issued its Final Report to certify the election results on October 18, 2017. It has nothing more to do. If this Court were to enter a stay, it is uncertain the impact on the Election Board, if any. Presumably, because there is no further action to prevent, a stay is moot. (Appellee Response Brief at 13).

The assertion by the Appellee Election Board that a preliminary injunction is irrelevant as it has fulfilled the final requirements of the Election Board is inaccurate. The Election Ordinance, Ordinance #08-200-02, provides in Section 6.01 – Conclusion of Election, that "[t]he Election shall be concluded upon submission by the Election Board of the Final Report to the Tribal Ogema, Tribal Council, and filing with the Tribal Court". The Appellee Election Board did not file the Final Report with the Tribal Court. As such, the Appellee Election Board did not fulfill its duties to finalize the election results for the outlying seats and is hereby prohibited from doing so with issuance of this stay.

Independent of failing to meet the requirements in the Election Ordinance, the conduct of the Election Board sets a dangerous precedent that this Court cannot permit to stand with the Election Board taking the ultimate action of filing a Final Report when there is an active case in the Court of Appeals – and then claiming the issue is moot.

The conduct of the Appellee Election Board is especially disturbing considering the history of the present case. At the Appellate Scheduling Conference, the Chief Justice was informed that the Appellee Election Board had not certified the election results for the outlying seats of Tribal Council that are at issue in the present case. The Appellee Election Board did not indicate that maintaining the status quo of the former Tribal Council Members remaining in the outlying seats pending resolution of this case was problematic. The Chief Justice also asked the parties if there were any requests to accelerate the schedule for this case. Neither party requested an accelerated schedule at the Appellate Scheduling Conference nor at any point during this appeal. The Appellee Election Board also gave no indication to this Court that maintaining the status quo had become a concern or notify this Court that it had any intention of filing the Final Report for the outlying seats.

Instead of engaging in the court processes available, the Appellee Election Board acted without notice. The Appellee Election Board states that it made the decision to file the Final Report for the outlying seats, in part, because it was being threatened with lawsuits for not seating these candidates absent a stay from this Court. This could have been resolved immediately if the Appellee Election Board had notified the Court and the opposing parties that it intended to issue the Final Report.

Further, the history of this case makes clear that the Appellee Election Board knew there would be opposition to issuing the Final Report under the Election Ordinance with the following of specific importance when reviewed individually and together: The Appellants-Petitioners filed this Appeal in clear opposition to the Trial Court holding that their action was barred by laches; the Appellants argued in their pleadings that Ryan Champagne did not meet constitutional requirements to be a candidate for a seat on Tribal Council, an argument the Trial Court found had merit; the Appellants-Petitioners requested a stay at the start of the Trial Court case, the denial of which preceded the factual findings of the Trial Court; this Court inquired into the status of the outlying seats with no mention from the Appellee Election Board that maintaining the status quo was problematic; and the Court inquired as to whether there were any requests regarding scheduling with neither party requesting an accelerated schedule. At best, the failure to notify the Court that maintaining the status quo had become problematic so that the issue could be addressed through the proper procedures demonstrates a lack of professional courtesy. Taking all of the above factors into consideration, combined with the fact that the Appellee Election Board failed to file the Final Report with the Tribal Court as required in the Election Regulations – when there was an active appeal on the outlying seats pending – and subsequently argued that a preliminary injunction was moot since the Report was already filed, the Appellee Election Board's actions indicate an attempt to

circumvent this Court. Such an action would be disrespectful to this Nation's Court, the Appellants, and the Citizens of this Nation.

The Court notes that it did not take the problematic behavior of the Appellee Election Board as discussed above into consideration in holding that the Appellants-Petitioners met their burden for issuance of this preliminary injunction, nor will this conduct bias this Court against the Appellee Election Board. However, the Court has included this discussion to stress that this Court will not tolerate conduct that intentionally or unintentionally circumvents this Court.

IT IS HEREBY ORDERED:

On behalf of the unanimous Court of Appeals,

Melissa L. Pope

Hon. Melissa L. Pope, Chief Justice

February 1, 2018
Date

Little River Band of Ottawa Indians
Tribal Court of Appeals
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DAVID COREY AND NIKKI NELSON,
Appellants/Petitioners,

v.

LITTLE RIVER BAND OF OTTAWA INDIANS ELECTION BOARD,
Appellee/Respondent,

and

RYAN CHAMPAGNE,
Interested Party Appellee/Respondent.

Case Number: 17182AP

Hon. Melissa L. Pope, Chief Justice
Hon. Berni Carlson, Associate Justice
Hon. Joseph LaPorte, Associate Justice

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Ryan Champagne
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OPINION AND ORDER

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 8th day of June of 2018.

JURISDICTION

The Little River Band of Ottawa Indians Constitution establishes the Tribal Justice System of this Native Nation in Article VI – Tribal Court:

> Section 1 – 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.

The Constitution further mandates the independence of this Tribal Justice System, also referred to generally as the "Tribal Court" and specifically as the Judicial Branch, in Article VI § 9:

> Section 9 – *Judicial Independence.* The Tribal Judiciary shall be independent from the legislative and executive functions of the tribal government and no person exercising powers of the legislative or executive functions of government shall exercise powers properly belonging to the judicial branch of government; provided that the Tribal Council shall be empowered to function as the Tribal Court of the Little River Band until the judges prescribed by this Article have been appointed; provided further that the first Tribal Council and Tribal Ogema elected under this Constitution shall make appointments to its courts within ninety (90) days after its members are elected.

The Constitution details the authority and duties of the Court in Article VI § 8 – *Jurisdiction and Powers of the Tribal Courts*:

> Section 8 – *Jurisdiction and Powers of the Tribal Courts*. The jurisdiction and judicial powers of the Little River Band of Ottawa Indians shall extend to all cases and matters in law and equity arising under the Tribal Constitution or under the laws and ordinances applicable to the Little River Band of Ottawa Indians. Such powers shall include, but are not limited to,

(a) To adjudicate all civil and criminal matters arising within the territorial or membership-based jurisdiction of the Tribe.

(b) To review ordinances and resolutions of the Tribal Council or General Membership to ensure that they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.

(c) To hear cases based on ordinances and laws of the Tribe for purposes of determining innocence or guilt where trial by jury has been waived.

(d) To assign fines and penalties as allowed by Tribal and Federal law.

(e) To grant warrants for search to enforcement officers when just cause is shown.

(f) To grant warrants, writs, injunctions and orders not inconsistent with this Constitution.

(g) To swear in Tribal Council members and the Tribal Ogema by administering the oath of office.

(h) To establish, by general rules, the practice and procedures for all courts of the Little River Band.

(i) To prepare and present to the Tribal Ogema and Tribal Council a budget requesting an appropriation of funds to permit the Tribal Courts to employ personnel or to retain by contract such independent contractors, professional services and whatever other services may be necessary to carry out the dictates of this Constitution, the Tribal Court Ordinance and all Ordinances creating lower courts of limited jurisdiction.

(j) To preside over all suits for declaratory or injunctive relief as provided for an in accordance with Article XI of this Constitution.

The present case involves the election process for the Little River Band of Ottawa Indians Tribal Council pursuant to the Constitution, Election Ordinance, Election Board Regulations, and other authorizing documents properly enacted

pursuant to Tribal law. This Court, therefore, has jurisdiction over this matter pursuant to the authority vested in the Court pursuant to Article VI § 8 as it is vested with jurisdiction over "all cases and matters in law and equity arising under the Tribal Constitution or under the laws and ordinances applicable to the Little River Band of Ottawa Indians" including "[t]o adjudicate all civil and criminal matters arising within the territorial or membership-based jurisdiction of the Tribe" and "[t]o review ordinances and resolutions of the Tribal Council or General Membership to ensure that they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution".

FACTUAL HISTORY

This case has involved multiple actions that have exceeded the standard course of an appeal of a Trial Court order resulting from a hearing or trial on the issues being appealed of an appellate scheduling conference, submission of briefs, oral arguments, and ultimate written decision from this Court of Appeals.

Following the Trial Court proceedings and decision, the course of this case has involved: Appellants filed the Notice of Appeal; this Court issued the *Notice and Order for Appellate Scheduling Conference*; the Unified Legal Department filed its Motion to File Amicus Curiae Brief; an Appearance was filed on behalf of the Appellants Election Board along with the Little River Band of Ottawa Indians Election Board's Response to Unified Legal Department's Motion to File Amicus Curiae Brief; this Court convened for the Appellate Scheduling Conference; this Court issued the *Order for Appellate Briefing Schedule*; this Court issued the *Order Regarding Unified Legal Department Motion to File Amicus Curiae Brief*; the Appellee Election Board filed the Substitution of Counsel, stipulated to by the Appellants and Appellee Election Board, along with the Appearance for the Appellee-Respondent Election Board's new counsel; the Appellee Election Board filed the Appellee Little River Band of Ottawa Indians Election Board's Motion to Hold Status Conference and to Amend the Appellate Briefing Schedule; after requests for clarification from the Chief Justice, the Appellee Election Board subsequently filed the Brief in Support of Appellee Little River Band of Ottawa Indians Election Board's Amended Motion to Amend the Appellate Briefing Schedule; this Court issued the *Order for Appellate Briefing Schedule – First Amended* following deliberations; the filing of the Little River Band of Ottawa Indians Unified Legal Department's Brief Pursuant to Court of Appeals Order with Declarations attached; the Unified Legal Department's subsequent filing of an Amended Declaration; the filing of an Appearance on behalf of the Appellants and accompanying Appellant's Response to Little River Band of Ottawa Indians Election Board's Motion to Hold Status Conference and

Amend the Briefing Schedule; the Appellants filed their Appellants Request for Stay of Execution of Tribal Court Judgment; this Court deliberated and then issued the *Order for Temporary Stay of Execution of Tribal Court Judgement and Appellate Stay of Execution Briefing Schedule*; the Appellee Election Board filed the Appellee Election Board's Response in Opposition to Appellants' Request for Stay of Execution of Tribal Court Judgment; the Appellants filed the Appellants Reply to Appellee Little River Band of Ottawa Indians Election Board's Response in Opposition to Appellants Request for Stay of Execution of Tribal Court Judgment; following the timely filing of briefs pursuant to the orders of this Court, resolution of immediate matters, and deliberations, this Court issued the *Opinion and Order Denying Unified Legal Department Motion to File Amicus Curiae Brief and Ruling Void Provisions of the Unified Legal Department Act Not Consistent with the Constitution*; this Court issued the *Notice and Order for Oral Arguments Before the Court of Appeals*; following the timely filing of briefs as ordered and deliberations, this Court issued the *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* with the *Notice and Order for Oral Arguments – First Amended* with the parties having informed the Court of conflicts; the Court convened and held Oral Arguments, including addressing on the record issues that the Appellee Election Board's Attorney had raised in writing prior to Oral Arguments. After full and careful consideration of the Trial Court record, the volume of information presented by the Appellants and Appellee Election Board, Oral Arguments, and the genuine requests to this Court to resolve the dispute to strengthen this Nation going forward, this Court of Appeals now issues this *Opinion and Order*.

ANALYSIS

It is critical to understand the issue before the Court, in part due to the importance of the Trial Court holdings that have not been appealed and contribute significantly to the decisions of this Court, as well as the remedies to implement those decisions.

As has been emphasized throughout this appellate process, this case is of the utmost importance as it involves the election of this Nation's representatives; the individuals entrusted by the Citizens of this Nation to guide the operation of this Tribal Government in a manner that reflects and incorporates the beliefs, values, traditions, and unique history of this Native Nation. The Constitution, the supreme law of this land, eloquently affirms the responsibilities of the Little River Tribal Government, as facilitated by these elected individuals, in the Preamble:

> As an exercise of our sovereign powers, in order to organize for our common good, to govern ourselves under our own laws, to maintain and foster our tribal culture, provide for the welfare and prosperity of our people, and to protect our homeland we adopt this constitution, in accordance with the Indian Reorganization Act of June 18, 1934, as amended, as the Little River Band of Ottawa Indians.

The Constitution also specifies the components of the Tribal Government, including three independent branches of government, articulates the responsibilities of those components, and provides the parameters for those powers. Included in these provisions of power and parameters is the establishment of Tribal Council as the Legislative Branch of the Little River Tribal Government in Article IV. Article IV § 3 provides the requirements for seeking election to Tribal Council:

> Section 3 – *Qualifications*. A Tribal Member must meet the following qualifications to be a candidate or nominee for Tribal Council, or to retain his or her seat as Tribal Council:
>
> a) He or she must be at least twenty-one (21) years of age or older and a resident of the State of Michigan for at least six (6) months prior to the date of the next scheduled election.
>
> b) He or she must disclose to the Membership if any of the following apply:
>
> 1. He or she has any current prosecution pending or has any conviction for a crime involving fraud or misrepresentation; and/or
>
> 2. He or she has any current prosecution pending or has any conviction within the past ten (10) years for any crime listed in the Major Crimes Act (U.S. Stat. Vol.23, 4 Chapter 341) (murder, manslaughter, rape, assault with intent to murder, arson, burglary or larceny); and/or
>
> 3. He or she has any current prosecution pending or has any conviction within the past ten (10) years for any felony in any jurisdiction, or for any other offense, the victim of which offense

was the Tribe, or any Tribal business, enterprise, department or program; and/or

4. He or she has any current prosecution pending or has any conviction for any offense related to sexual crimes or criminal sexual conduct where the perpetrator was convicted as an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders.

At issue in the Trial Court case was whether Ryan Champagne had fulfilled the Constitutional requirements of disclosing to Tribal Citizens that he had been convicted within the last ten (10) years of one of the enumerated crimes in Article IV § 3. The Trial Court held that he had not:

> When Mr. Champagne motioned the Court to intervene in this action, he became an interested party/respondent and not a mere observer. His decision to rely solely on the positions and arguments of the election board is detrimental. There was no evidence presented that there was any disclosure of the conviction to the membership by Mr. Champagne, and the Court finds that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution. (*Order After Hearing* at 6).

Although the Trial Court held that Mr. Champagne failed to disclose his conviction from within the last ten years to Tribal Citizens as required in Article IV, Section 3 of the Constitution to qualify to run for a seat on Tribal Council, the Trial Court held that the Appellants' claim was barred by laches.

This Court referenced in its *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment*, and adopts here, the description of laches as provided by the Appellants: Laches is the embodiment of the idea that those who sleep on their rights may lose them. (Appellants Reply to Appellee Little River Band of Ottawa Indians Election Board's Response in Opposition to Appellants Request for Stay of Execution of Tribal Court Judgment at 5; *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 7). Put another way, a claim that is not filed in a timely manner may be barred.

In deciding the request for stay filed by the Appellants after learning that the Appellee Election Board intended to certify the results of the seats that serve as the foundation for this appeal, this Court discussed the requirements for a request for a stay as provided in Section 5.409 of the Court Rules of Appellate Procedure, as well as the burden of proof the party requesting a preliminary injunction bears with having to prove all elements of the four-part test this Court adopted in *Crampton v Election Board* and upheld in *Tyler v LRBOI Election Board.* (See this Court's *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment; Tyler v LRBOI Election Board*, Case No. 13079-AP, Decided April 3, 2013, and *Crampton v Election Board*, Case No. 09-084 EB, Decided May 8, 2009). With one element of this four-part test being that the moving party must prove the likelihood of success on the merits, this Court was required to engage in preliminary analysis of the laches doctrine. In so doing, this Court referenced the foreign caselaw on laches cited by the Appellants:

> The doctrine of laches may not be used to block a claim brought within a limitations period set-forth in a statute. See Petrella v Metro-Goldwyn-Mayer, Inc. 134 S CT 1962 (2014) ("Petrella")(laches cannot bar action brought within the statute of limitations); see also SCA Hygiene Products Aktiebolag v First Quality Baby Prods, LLC 137 S CT 954, 197 L ED 2D 292 (2017) ("SCA") (holding laches cannot be used to bar a claim brought within the statute of limitations). (Appellants' Reply Brief at 5; Quoted in this Court's *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 7).

For the purposes of the Appellants request for a preliminary injunction this Court held that laches did not apply if a claim is filed within the timeframes specified by law, making the critical inquiry in this case whether the Appellants filed their election challenge in a timely manner. The Court now returns to this issue with this final decision in the present case.

The Constitution provides in Article IX § 4 (g) that, "a Tribal member shall have five (5) business days from the date of the election to file an election challenge". Although the Constitution is the supreme law of the land and, therefore, binding, it should be noted that the Little River Band of Ottawa Indians Election Board Regulations also provides this same five (5) day timeframe in Chapter 6 § 3, as well as makes clear that any registered voter or candidate has standing to file an election challenge:

Section 3. Election Challenges.

a. Filing an Election Challenge. Any registered voter or candidate may file an election challenge by filling out and submitting the form provided by the Election Board. The form may be requested in person or by mail.
b. Timing of Election Challenges. An election challenge may be filed within 5 business days following the announcement of the tentative election results.

The Trial Court found it problematic that the Appellants did not file their claim until after the election had been fully conducted, including Tribal Citizens voting in both the primary and final elections. While this Court recognizes there is validity in the argument that the Appellants filing earlier in the election process may have saved costs and minimized disruption to the election process, it also recognizes that there is validity in the argument that the circumstances of the present case were not ripe until the conclusion of the election as the Constitution does not specify at what time during the election that a conviction must be disclosed to Tribal Citizens.[1] There is also validity in the argument that bringing the action earlier in the election process would have denied Mr. Champagne the opportunity to disclose on his own. Such a circumstance would create significant issues with proof; both proof demonstrating that a disclosure was in fact planned and proof that disputed the assertion that disclosure was pending. These conflicting arguments and oppositional motivations highlight the importance of the law providing parameters that guide the considerations for deciding matters before the Court. Because laches is applied when a party did not file a timely action, a fundamental parameter is whether the action was filed within the time-frames specified in the applicable law. In the present case, the Appellants met the timing requirements established by law, thus the Appellants election challenge of Ryan Champagne's failure to disclose his conviction as required by the Constitution is not barred by laches.

In addition to all of the above, the Court is concerned about the shifting of burden that the application of laches indirectly involves. In Article IV § 3 (b) of the Constitution, the burden for disclosure is on the candidate with stating that "[h]e

[1] Going forward, it will be critical for the Election Board to adopt regulations that fulfill both the requirements for disclosure to the Membership of convictions as provided in the Constitution, as well as the spirit of those Constitutional provisions through a process that promotes meaningful disclosure, specifically that disclosure is made early in the election process and through avenues that ensure voters have actual notice of the conviction(s), and any penalties for not following election board regulations.

or she must disclose to the Membership" the crimes as provided. Further, the Constitution states in Article IV § 3 that this requirement for disclosure applies to individuals "to be a candidate or nominee for Tribal Council, or to retain his or her seat as Tribal Council". This language is important for two reasons. The first is that the Appellants did not bear the burden to disclose Mr. Champagne's conviction to Tribal Citizens; It was Mr. Champagne's burden. The burden on the Appellants was to file an election challenge prior to the deadline in the Constitution; a burden the Appellants met.

The second reason that the language "[h]e or she must disclose to the Membership" in Article IV § 3 (b) of the Constitution is important is that it makes clear that disclosure applies to those seeking election, as well as those who have already been elected. As such, it would have been problematic if Mr. Champagne had been sworn in and seated as a Member of Tribal Council with not having fulfilled the Constitutional requirement of disclosure of his conviction to the Membership.

As previously noted, the Trial Court held that Mr. Champagne did not disclose his conviction as required by the Constitution:

> There was no evidence presented that there was any disclosure of the conviction to the membership by Mr. Champagne, and the Court finds that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution. (*Order After Hearing* at 6).

This Court also previously noted in this *Opinion and Order* that the holding that Ryan Champagne did not disclose his conviction as required by the Constitution was not appealed by any party. The time-period for this holding to be appealed – or any holding not appealed in the Trial Court's *Order After Hearing* – has passed. The Court further notes that Mr. Champagne was aware of the Tribal Court proceedings as evidenced by the fact that he successfully motioned to become an interested party/respondent. Mr. Champagne was also served throughout these appellate proceedings. Despite this notice and ongoing opportunity to participate in these appellate proceedings, however, Mr. Champagne did not appear at any Court of Appeals proceeding nor file any pleadings with this Court. Mr. Champagne's lack of action prohibits his objections at this point. To be clear, the holding that Ryan Champagne does not qualify as a candidate for or a seat on Tribal Council due to his failure to disclose his conviction to the Membership as required by the Constitution is final.

With this Court's holding that laches does not bar this action, and the Trial Court's unchallenged holding that Mr. Champagne did not disclose his conviction to the Membership as required by the Constitution for candidacy to Tribal Council, Mr. Champagne must be removed from consideration in the April 2017 Election as he did not qualify as a candidate for Tribal Council. The Court stresses that the requirement to disclose certain convictions is a requirement in the Constitution; the same Constitution that creates the Legislative Branch, names Tribal Council as the head of the Legislative Branch, creates the positions that comprise Tribal Council, and vests legislative and other authorities in the Members of Tribal Council. It would be unconscionable to allow an individual who did not fulfill the Constitutional requirements to qualify as a candidate for office to be seated as an elected Member of Tribal Council. Mr. Champagne's failure to fulfill the Constitutional requirements to run for office means the votes he received in the April 2017 Election must be disregarded. With determining that Mr. Champagne, and the votes he received, cannot be considered in the April 2017 Election, we now turn to the issue of relief.[2]

The issue of relief is a complicated issue to address. We first face the challenge of there being no binding caselaw issued by this Court to aid in determining the appropriate relief in these circumstances. This issue is further compounded by there being little to no caselaw issued from foreign courts that can offer guidance in addressing relief. As such, this Court focused solely on the facts and circumstances of this case in determining the appropriate relief to order.

A primary consideration in this Court's rigorous and intensive deliberations was that the relief granted must address the foundational need to facilitate a seamless transition to a fully-seated Tribal Council. As the Factual History in this *Opinion and Order* demonstrates, this case has involved a multitude of layers that have included actions standard in any appeal, actions that occur on occasion in an appeal, and actions that rarely occur in an appeal. The vital importance of the issues presented and the numerous actions that required written decisions from this Court on issues that were not anticipated at the onset of this case have resulted in this case being decided one year after the Election was held. Although the Tribal Government has had the capability to fully function by the previous Tribal Council Members continuing to serve in the seats at issue, this "status quo" cannot continue indefinitely for obvious reasons; a final resolution is required.

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[2] The Appellee Election Board also raised the concern during Oral Arguments that holding that the Appellants' claim was not barred by laches would establish the precedent that constitutional challenges to an election must be filed within five (5) days of the election. This question is not before the Court nor is this *Opinion and Order* intended to address this specific question. What has been decided is that laches does not apply when an action has been filed within the timeframes provided by law.

The Court first considered remanding the case to the Trial Court to determine the appropriate relief. This approach was disfavored by the Appellants, the Appellee Election Board, and this Court due to the likelihood that remanding the case would further prolong resolution of the election. In addition to the time that would be required for the Trial Court to fully address the issue of relief, the Court, Appellants, and Appellee Election Board all agreed that it would be highly likely for an appeal of the Trial Court's order for relief to be filed with this Court of Appeals. This Court would then be required to participate in the full range of appellate actions including, but not limited to: holding an appellate scheduling conference; entering a briefing schedule; holding oral arguments; deliberating; and issuing a written decision. This would likely take several months, even if expedited. This Court, therefore, declines to remand this case to the Trial Court.

This Court also considered ordering that a special election be held to fill the seats on Tribal Council that have been at issue in this case. The Court declined this avenue of relief as it would not facilitate stability in the Tribal Government. Such an order would require the Tribe to incur significant costs in holding a special election. Of equal, if not greater, importance, ordering that a special election be conducted would require the ongoing burden of maintaining the "status quo" until the individuals elected were seated on Tribal Council. This process could be lengthy if any challenges were filed pursuant to the Little River Band of Ottawa Indians Election Board Regulations. This length of time could increase if a case was filed in the Tribal Court or expand considerably in the event of an appeal to this Court.

The Court then considered the Appellants' request for relief of removing Ryan Champagne from the ballot and determining the elected Members of Council for these seats from the remainder of candidates on the ballot based on the number of votes received. Removing Mr. Champagne from the ballot and electing the Members of Tribal Council from the remainder of the candidates who fulfilled the Constitutional requirements for seeking and holding these seats on Tribal Council is the only option for relief that fulfills the critical need for a seamless transition to a fully seated Tribal Council. This approach facilitates a seamless transition as it does not require any additional processes, procedures, or costs, other than the two successful candidates being sworn in, to have all seats filled on Tribal Council. Of paramount importance is that this order for relief provides final resolution of this Election for the stability of the Tribal Government and as specifically requested by the Appellants and Appellee Election Board to fully resolve the Election with this *Opinion and Order*.

With this Court's holdings that laches does not bar this action and that Mr. Champagne does not qualify to seek election to or hold a seat as a Member of Tribal Council because he failed to disclose his conviction pursuant to the

Constitution, this Court orders the relief of removing Mr. Champagne from the ballot along with the votes received, and the election to these seats on Tribal Council from the remaining candidates on the ballot who fulfilled the Constitutional requirements to seek election to and serve as Members of Tribal Council and received the next highest number of votes respectively to these seats on Tribal Council.

This Court realizes that there may be objections to the relief ordered from Mr. Champagne. Mr. Champagne, however, had the opportunity to participate in these proceedings, but chose not to, despite having successfully motioned to intervene in the present case and having been sent notice throughout this lengthy appeal process. Further, Mr. Champagne has had notice of this possible order of relief as the Appellants have requested this relief throughout these proceedings. Any objections from Mr. Champagne at this point, therefore, carry no weight with this Court.

The Tribal Citizens who voted for Ryan Champagne, as well as those who may have voted differently had Mr. Champagne not been on the ballot, may also object to the relief ordered. The unfortunate consequence to these Tribal Citizens is the loss of their meaningful participation in the election process due to Mr. Champagne's failure to fulfill the Constitutional requirements to run for office; a consequence compounded by Mr. Champagne's failure to directly appeal the applicable holdings or participate in any way in this appellate process, despite his having motioned to intervene in the Trial Court case and having been sent notice of all Court proceedings.

The Court's relief is not ideal, but it is the relief that will best facilitate the seamless transition to a fully-seated Tribal Council and the stability of the Tribal Government.

In addition to specifically requesting resolution of this matter, the Attorney for the Appellee Election Board submitted a letter to the Court prior to Oral Arguments, requesting the opportunity for the Appellee Election Board, Appellants, and the Court to meet prior to the convening of Oral Arguments, presumably with this meeting being held off the record. The Court addressed this letter on the record, explaining that it favors transparency in the process whenever possible and in particular when matters of paramount importance are involved, such as an election.

There are two critical issues that were discussed at Oral Arguments that are interrelated that this Court shall address: the holdings that serve as binding precedent; and the request from the Appellee Election Board for guidance from the Court for future elections. Before engaging in this discussion, however, the Court shall address a misconception of critical importance regarding the appellate process.

There was in this case, as there has been in previous cases before this Court of Appeals, a misconception that Oral Arguments have little impact as the Court has likely already made its decision based on the review of the Trial Court record and detailed review of the Briefs submitted by the parties. This is not true. Oral Arguments offer the parties the opportunity to stress what they consider to be the critical facts, issues, analyses, and the relief requested. Oral Arguments also provide the Court of Appeals the opportunity to seek clarification on critical facts, issues, analyses, and requested outcomes, pose hypothetical questions, and seek input on alternative analyses and relief requested. In the present case, Oral Arguments played a critical role in the appellate process, in particular with the relief ordered. The Oral Arguments in this case also revealed additional issues that the Court has determined it must address. This Court, therefore, emphasizes to all parties, in the present case and all future cases before this Court, that Oral Arguments are a critical component in the appellate process and that no decisions are made without thorough deliberations after Oral Arguments are held.

In noting the significant factual history of this appellate case and the unusual circumstances of implementing newly adopted Constitutional requirements in the election process, the Appellee Election Board raised the first issue the Court noted that it would address; whether the holdings in this case are considered binding precedent. This question was raised, in part, due to the following finding in its February 1, 2018 *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment*:

> The assertion by the Appellee Election Board that a preliminary injunction is irrelevant as it has fulfilled the final requirements of the Election Board is inaccurate. The Election Ordinance, Ordinance #08-200-02, provides in Section 6.01 – Conclusion of Election, that "[t]he Election shall be concluded upon submission by the Election Board of the Final Report to the Tribal Ogema, Tribal Council, and filing with the Tribal Court". The Appellee Election Board did not file the Final Report with the Tribal Court. As such, the Appellee Election Board did not fulfill its duties to finalize the election results for the outlying seats and is hereby prohibited from doing so with issuance of this stay. (*Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 8).

The Appellee Election Board advised the Court at Oral Arguments that it had filed the Final Report, including with the Court, in the same manner it had

done with previous elections. It, therefore, questioned whether previously filed Final Reports, and the associated elections, were at issue. It also requested guidance on how to fulfill this requirement to ensure compliance in the future; the second interrelated issue the Court noted it shall discuss.

This Court is clearly authorized in Article VI § 8 (b) of the Constitution "[t]o review ordinances and resolutions of the Tribal Council or General Membership to ensure that they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution". Providing guidance, however, differs from evaluating language to determine if it is consistent with the Constitution as it involves indicating language that would be consistent with the Constitution. This is a subtle, but important, difference.

Related to this subtle difference is that providing guidance as requested by the Appellee Election Board could be construed as an advisory opinion. This Court addressed its concerns with issuing advisory opinions in the *Opinion and Order Denying Unified Legal Department Motion to File Amicus Curiae Brief and Ruling Void Provisions of the Unified Legal Department Act Not Consistent with the Constitution*:

> Like many justice systems, this Court does not favor advisory opinions, in part due to the very process the ULD Act requires: The Court is not presented with the full case and controversy. Instead, the Court is given limited facts and questions of law, resulting in what is, in reality, a hypothetical opinion. If the advisory opinion does not resolve the dispute or issue – or there is a different action in the future involving the same or a similar question of law – the fact that an advisory opinion was issued creates the appearance of bias. A party may also request recusal, claiming that the Judiciary is biased based on the advisory opinion issued. In such circumstances, the Court would be required to appoint a visiting judge to hear the trial court case, and visiting justices if the decision is appealed. This does a great disservice to this Nation as it deprives the Citizens of this Nation of decisions issued by the individuals they elected to fulfill the constitutionally-mandated duties of this Tribal Justice System. (*Opinion and Order Denying Unified Legal Department Motion to File Amicus Curiae Brief and Ruling Void Provisions of the Unified Legal Department Act Not Consistent with the Constitution* at 13).

There are two factors, however, that impact this Court providing comment. The first is that Article IX § 4 of the Constitution establishes the Election Board with Article IX § 4 (e) stating that "[t]he Election Board shall be authorized to issue such rules and procedures as may be necessary to carry out tribal elections and to provide for ongoing voter registration". As such, the body created by the Constitution to conduct elections is requesting guidance in exercising its Constitutionally authorized duties of adopting rules and procedures to conduct elections. This fact provides some reassurance that the Court would not be encroaching on the Constitutional authority of another body in providing some comment.

The second factor is that the Appellee Election Board provided a copy of the email it sent addressed to various Tribal Government positions, including the Tribal Court Administrator, with the Final Report attached. The Court does not know why the email could not be located at the time this Court was considering the Appellants' Motion for Stay of Execution of Tribal Court Judgment, but the Tribal Court Administrator had no recollection of having received the email and it was not found upon several email searches. The Court notes for the record that it had additional reasons for granting the Motion for Stay, including, but not limited to: the history of the present case; the failure of the Appellee Election Board to notify the Court of Appeals that it intended to proceed with issuing the Final Report when this appeal was pending; the unchallenged holdings of the Trial Court; and the importance of those holdings in relation to an individual held to have not fulfilled the Constitutional requirements to seek or hold a seat on Tribal Council.

As noted at Oral Arguments, the authority to determine what constitutes the filing of the Final Report for an election is within the authority of the Election Board. To honor the Appellee Election Board's request for guidance while respecting the parameters of this Court's Constitutional authority, the Court shares that a clear provision that details the steps for filing a Final Report, including acknowledgement from the recipients, would provide the Election Board with proof of filing to ensure there are no discrepancies in the future. This is not binding precedent nor an indication that a filing requirement that included affirmation is guaranteed consistency with the Constitution; such a holding would require a Constitutional analysis of the actual provision.

As noted earlier in this *Opinion and Order*, the Appellee Election Board must also adopt procedures to implement Article IV § 3 of the Constitution as the Trial Court holding that "checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution" was not appealed. This Court further notes that it is important that the rules adopted by the Election Board comply with

both the written provisions in the Constitution and the spirit of those provisions with processes that facilitate meaningful disclosure, including that disclosure is made early in the election process and through avenues that ensure voters have actual notice of the conviction(s), as well as any penalties for not following election board regulations.

The fact that there are a multitude of regulations that need to be adopted to implement Article IV § 3 is important to understand as we return to the interrelated issue of binding precedent. The Court clarifies that the holdings in this *Opinion and Order* are binding, but that the facts of this case are both extraordinary and unique. A specific factor making this case extraordinary and unique is that it involves the analysis of amendments to the Constitution, with amending the Constitution a rare event in the history of this Nation. Another differentiating factor is that this case involves an election that was conducted without the benefit of regulations implementing these Constitutional amendments. With it unlikely that an election will be conducted without all applicable regulations adopted and governing the process, the extraordinary and unique circumstances giving rise to the relief ordered in this case are not likely to occur again in the future.

The Appellee Election Board has made clear that the adoption of applicable regulations is a priority. In this pursuit, the Appellee Election Board has the benefit of holdings by the Trial Court and this Court of Appeals in the drafting of these regulations. For example, the Appellee Election Board has the benefit of the Trial Court holding "that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution". The Appellee Election Board also has a more developed understanding of laches from this Court of Appeals with these holdings applicable beyond the extraordinary and unique circumstances of the present case.

CONCLUSION

The recent amendment to Article IV § 3 of the Constitution requires in pertinent part the disclosure of certain crimes or that charges are pending for certain crimes "to be a candidate or nominee for Tribal Council, or to retain his or her seat as Tribal Council". The Trial Court found that Ryan Champagne did not fulfill the disclosure requirements in Article IV § 3, including "that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution", but that the action was barred by laches.

This Court adopts the description of laches as provided by the Appellants: Laches is the embodiment of the idea that those who sleep on their rights may lose them. (Appellants Reply to Appellee Little River Band of Ottawa Indians Election Board's Response in Opposition to Appellants Request for Stay of Execution of Tribal Court Judgment at 5; *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 7). Stated another way, a claim that is not filed in a timely manner may be barred.

As a foundational consideration, laches does not apply if a claim is filed within the timeframes specified by law. In the present case, the Appellants filed their election challenge according to the timeframes in Article IX § 4 (g) of the Constitution ("a Tribal member shall have five (5) business days from the date of the election to file an election challenge") and Chapter 6 § 3 of the Little River Band of Ottawa Indians Election Board Regulations (same five-day timeframe).

Ryan Champagne successfully motioned to intervene, but failed to independently participate in the Trial Court proceedings nor participate in any way in these appellate proceedings, despite having been served with all notices, orders, and pleadings throughout the course of this appellate case.

With disclosure required "to be a candidate or nominee for Tribal Council, or to retain his or her seat as Tribal Council", an individual who does not fulfill the Constitutional requirements in Article IV § 3 cannot serve as a Member of Tribal Council. This Court, therefore, orders the relief requested of removing Mr. Champagne from the ballot, along with the votes received, with these Tribal Council seats to be filled by the remaining candidates who meet all Constitutional requirements and have received the highest number of votes respectively. This approach facilitates a seamless transition as it does not require any additional processes, procedures, or costs, other than the two successful candidates being sworn in, to have all seats filled on Tribal Council. Of paramount importance is that this order for relief provides final resolution of this Election for the stability of the Tribal Government and as specifically requested by the Appellants and Appellee Election Board to fully resolve the Election with this *Opinion and Order.*

IT IS HEREBY ORDERED:

On behalf of the unanimous Court of Appeals,

Melissa L. Pope

Hon. Melissa L. Pope, Chief Justice

June 8, 2018
Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT OF APPEALS

DAVID COREY AND NIKKI NELSON,
Appellants/Petitioners,

v.

LITTLE RIVER BAND OF OTTAWA INDIANS ELECTION BOARD,
Appellee/Respondent,

Case Number: 17182AP

Hon. Melissa L. Pope, Chief Justice
Hon. Berni Carlson, Associate Justice
Hon. Joseph LaPorte, Associate Justice

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and

Ryan Champagne
Interested Party Appellee In Pro Per
1080 Red Apple Road
Manistee, Michigan 49660

PROOF OF SERVICE

On June 8, 2018 the Court received and emailed the *Opinion and Order* to all the parties listed above (except David Corey, who has no email address on file.) The Order was photocopied and placed in the outgoing mail on June 8, 2018 to all of the parties listed.

Deborah C. Miller
Clerk/Administrator

6/8/18
Date

Little River Band of Ottawa Indians
Tribal Court of Appeals
3031 Domres Road
Manistee, Michigan 49660
Phone: 231-398-3406 Fax: 231-398-3404

DAVID COREY AND NIKKI NELSON,
Appellants/Petitioners,

v.

LITTLE RIVER BAND OF OTTAWA INDIANS ELECTION BOARD,
Appellee/Respondent,

and

RYAN CHAMPAGNE,
Interested Party Appellee/Respondent.

Case Number: 17182AP

Hon. Melissa L. Pope, Chief Justice
Hon. Berni Carlson, Associate Justice
Hon. Joseph LaPorte, Associate Justice

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Ryan Champagne
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Manistee, Michigan 49660

OPINION AND ORDER DISMISSING AUTOMATIC STAY AND DENYING MOTION FOR RECONSIDERATION AND FIRST AMENDED MOTION FOR RECONSIDERATION AND MOTION TO INTERVENE

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 2nd day of July of 2018.

INTRODUCTION

On June 8, 2018, this Court of Appeals issued the *Opinion and Order* in this case. The Conclusion provides an overview of this Court's holdings:

> The recent amendment to Article IV § 3 of the Constitution requires in pertinent part the disclosure of certain crimes or that charges are pending for certain crimes "to be a candidate or nominee for Tribal Council, or to retain his or her seat as Tribal Council". The Trial Court found that Ryan Champagne did not fulfill the disclosure requirements in Article IV § 3, including "that checking a box on the declaration for candidacy packet is not sufficient to satisfy the requirements of disclosure to the membership under Article IV, Section 3 of the Constitution", but that the action was barred by laches.
>
> This Court adopts the description of laches as provided by the Appellants: Laches is the embodiment of the idea that those who sleep on their rights may lose them. (Appellants Reply to Appellee Little River Band of Ottawa Indians Election Board's Response in Opposition to Appellants Request for Stay of Execution of Tribal Court Judgment at 5; *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 7). Stated another way, a claim that is not filed in a timely manner may be barred.
>
> As a foundational consideration, laches does not apply if a claim is filed within the timeframes specified by law. In the present case, the Appellants filed their election challenge according to the timeframes in Article IX § 4 (g) of the Constitution ("a Tribal member shall have five (5) business days from the date of the election to file an election challenge") and Chapter 6 § 3 of the Little River Band of Ottawa Indians Election Board Regulations (same five-day timeframe).
>
> Ryan Champagne successfully motioned to intervene, but failed to independently participate in the Trial Court proceedings nor participate in any way in these appellate proceedings, despite having been served with all notices, orders, and pleadings throughout the course of this appellate case.

> With disclosure required "to be a candidate or nominee for Tribal Council, or to retain his or her seat as Tribal Council", an individual who does not fulfill the Constitutional requirements in Article IV § 3 cannot serve as a Member of Tribal Council. This Court, therefore, orders the relief requested of removing Mr. Champagne from the ballot, along with the votes received, with these Tribal Council seats to be filled by the remaining candidates who meet all Constitutional requirements and have received the highest number of votes respectively. This approach facilitates a seamless transition as it does not require any additional processes, procedures, or costs, other than the two successful candidates being sworn in, to have all seats filled on Tribal Council. Of paramount importance is that this order for relief provides final resolution of this Election for the stability of the Tribal Government and as specifically requested by the Appellants and Appellee Election Board to fully resolve the Election with this *Opinion and Order*. (*Opinion and Order* at 17 – 18).

On June 21, 2018, William Willis, a LRBOI Tribal Citizen and candidate for the seats on Tribal Council at issue in this case, submitted a Motion for Reconsideration. On June 25, 2018, Mr. Willis submitted a First Amended Motion for Reconsideration and Motion to Intervene ("First Amended Motion"). Pursuant to 5.906 (C) of the LRBOI Tribal Court Rules of Appellate Procedure, "[a] request for reconsideration shall stay all proceedings until the Tribal Court of Appeals issues its decisions on the matter". Section 5.906 (D) states that, "[t]he panel that issued the decision which is the subject of the request shall also decide the request for reconsideration. The request may be granted or denied, and if granted, the parties are entitled to submit briefs according to these Court Rules." With the issuance of this *Opinion and Order Dismissing Automatic Stay and Denying Motion for Reconsideration and First Amended Motion for Reconsideration and Motion to intervene*, the automatic stay is dismissed, and no briefs or other filings shall be accepted by this Court.

ANALYSIS

The primary issue in this case involved the application of laches. This Court described laches as follows:

> This Court referenced in its *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment*, and adopts here, the description of laches as provided by the Appellants: Laches is the embodiment of the idea that those who sleep on their rights may lose them. (Appellants Reply to Appellee Little River Band of Ottawa Indians Election Board's Response in Opposition to Appellants Request for Stay of Execution of Tribal Court Judgment at 5; *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 7). Put another way, a claim that is not filed in a timely manner may be barred. (*Opinion and Order* at 7).

The Court next noted the foreign caselaw on laches cited in the Appellants' Brief:

> The doctrine of laches may not be used to block a claim brought within a limitations period set-forth in a statute. See Petrella v Metro-Goldwyn-Mayer, Inc. 134 S CT 1962 (2014) ("Petrella")(laches cannot bar action brought within the statute of limitations); see also SCA Hygiene Products Aktiebolag v First Quality Baby Prods, LLC 137 S CT 954, 197 L ED 2D 292 (2017) ("SCA") (holding laches cannot be used to bar a claim brought within the statute of limitations). (Appellants' Reply Brief at 5; Quoted in this Court's *Opinion and Order Granting Motion for Stay of Execution of Tribal Court Judgment* at 7). (*Opinion and Order* at 8).

After discussing the specifics of this case, the Court held:

> Because laches is applied when a party did not file a timely action, a fundamental parameter is whether the action was filed within the time-frames specified in the applicable law. In the present case, the Appellants met the timing requirements established by law, thus the Appellants election challenge of Ryan Champagne's failure to disclose his conviction as

> required by the Constitution is not barred by laches. (*Opinion and Order* at 9).

Mr. Willis does not take issue with this Court's substantive holdings regarding laches, nor the decision to remove Mr. Champagne from the ballot. He does not agree, however, with this Court's remedy:

> With this Court's holdings that laches does not bar this action and that Mr. Champagne does not qualify to seek election to or hold a seat as a Member of Tribal Council because he failed to disclose his conviction pursuant to the Constitution, this Court orders the relief of removing Mr. Champagne from the ballot along with the votes received, and the election to these seats on Tribal Council from the remaining candidates on the ballot who fulfilled the Constitutional requirements to seek election to and serve as Members of Tribal Council and received the next highest number of votes respectively to these seats on Tribal Council. (*Opinion and Order* at 12-13).

Mr. Willis states that "Article X, Section 4 of the Tribal Constitution provides the sole and exclusive remedies for filling a vacancy in office" and that "Article X, Section 4(b) requires that a special election be held to fill a vacant term with more than 18 months remaining to be served". (First Amended Motion at 2). He then goes on to attempt to characterize this Court removing Mr. Champagne from the ballot for Tribal Council as a "vacancy" by stating that "Mr. Champagne was properly disqualified from his election, and his election was forfeit, thus creating a vacancy in office". (First Amended Motion at 2). This analysis is not correct.

Article X, Section 4 (b) must include the opening provision to conduct a proper analysis:

> Section 4 – *Vacancies.* A vacancy in the office of an elected official resulting from death, resignation, forfeiture, removal, or recall shall be filled as follows:
>
> (a) If more than eighteen months remain in the term of office of an elected official, a special election shall be held within three (3) months after the vacancy occurs. When calling a special election to the fill the vacancy of a Tribal Council member, the qualifications for candidates and registered voters entitled to

> participate shall be consistent with those applicable to the District in which such vacant seat exists and in regards to any other office the individual must meet the qualifications required in the vacant position.

Mr. Willis attempts to force the application of this Constitutional provision by characterizing the removal of Mr. Champagne from the ballot as a "forfeit". This is not the correct analysis as it takes the word "forfeiture" out of the context of the comprehensive Constitutional provision. A plain reading of the complete provision as provided above makes clear that Article X, Section 4 (b) only applies when there is a vacancy on Tribal Council. It is also clear that a foundational requirement of this Constitutional provision for a vacancy to occur is that the individual who has left the position on Tribal Council must have actually been sworn in and seated as a Member of Tribal Council. Since the Court removed Mr. Champagne from the ballot, he was never sworn in or seated and, thus, not "an elected official". As such, Mr. Champagne could not "forfeit" a seat on Tribal Council as it was never "his" to forfeit. The removal of Mr. Champagne from the ballot was not a forfeit, does not fit the definition of "vacancy" within the context of Article X, Section 4, and, therefore, Article X, Section 4 (b) does not apply. Mr. Willis' Motion for Reconsideration and First Amended Motion for Reconsideration are, therefore, denied.

Mr. Willis also argues that he "was not joined" to this action and, as "a necessary party", should be able to intervene. (See First Amended Motion at 1). This Court finds it ironic that Mr. Willis is filing a motion for reconsideration and motion to intervene after this Nation's sole Appellate Court issued the final *Opinion and Order* with the substantive issue before the Court whether laches – the concept that "those who sleep on their rights may lose them" – applies. The present case involved a substantial period. It also involved the filing of several motions, the submission of briefs on those motions and the overall substantive issues presented in the case, and the issuance of a final opinion and order. Despite the numerous opportunities for filing a motion to intervene, Mr. Willis did not file any documents during the course of this appeal until after the issuance of the final *Opinion and Order* that mandated an order for relief with which he does not agree. Considering the analysis in this case about the legal theory of laches, Mr. Willis should have at least offered an explanation for his failure to submit a motion to intervene at an earlier time.[1] He did not.

---

[1] The Court notes that Mr. Willis should have filed a motion to intervene simultaneously with the motion to reconsider; although he corrected this error with his First Amended Motion, the deadline for a motion to reconsider was 14 days from the date the Opinion was issued. With the First Amended Motion after this time-frame expired, Mr. Willis did not fulfill the foundational requirements.

Of critical consideration is that Mr. Willis did not address the specifics of the Court Rule he cited:

> **Rule 4.205 Necessary Joinder of Parties.**
>
> A. Necessary Joinder. Subject to the provisions of subrule (B), persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests.
>
> B. Effect of Failure to Join. When persons described in subrule (A) have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action, and may prescribe the time and order of pleading. If jurisdiction over those persons can be acquired only by their consent or voluntary appearance, the court may proceed with the action and grant appropriate relief to persons who are parties to prevent a failure of justice. In determining whether to proceed, the court shall consider
>
> 1. whether a valid judgment may be rendered in favor of the plaintiff in the absence of the person not joined;
> 2. whether the plaintiff would have another effective remedy if the action is dismissed because of the nonjoinder;
> 3. the prejudice to the defendant or to the person not joined that may result from the nonjoinder; and
> 4. whether the prejudice, if any, may be avoided or lessened by a protective order or a provision included in the final judgment. Notwithstanding the failure to join a person who should have been joined, the court may render a judgment against the plaintiff whenever it is determined that the plaintiff is not entitled to relief as a matter of substantive law.

With Mr. Willis having been silent throughout the course of this case, Mr. Willis needed to address how the analysis of his circumstances in relation to the above Court Rule outweighed his failure to be involved in the process to protect the rights he alleges he has. In addition, the Court notes here as it did in its *Opinion and Order*, that the Appellants-Plaintiffs requested the relief granted

throughout the course of this case, thus providing notice that it was a possible remedy for this Court to order. As such, it is not appropriate for this Court to grant Mr. Willis' Motion for Reconsideration or First Amended Motion for Reconsideration and Motion to Intervene.

Finally, Mr. Willis argues that the relief ordered in the final *Opinion and Order* is not consistent with the relief ordered in previous cases. He also asks this Court to review other Tribal Court decisions regarding "the Court's jurisdiction and authority to fashion a remedy in this case", implying that a more tempered approach to relief would better reflect the approach to elections expressed in the cases cited. This Court does not agree.

In its final *Opinion and Order*, this Court ordered "the relief of removing Mr. Champagne from the ballot along with the votes received, and the election to these seats on Tribal Council from the remaining candidates on the ballot who fulfilled the Constitutional requirements to seek election to and serve as Members of Tribal Council and received the next highest number of votes respectively to these seats on Tribal Council". (*Opinion and Order* at 12-13). The Court provided its reasoning for this unique approach to the issue of relief:

> This approach facilitates a seamless transition as it does not require any additional processes, procedures, or costs, other than the two successful candidates being sworn in, to have all seats filled on Tribal Council. Of paramount importance is that this order for relief provides final resolution of this Election for the stability of the Tribal Government and as specifically requested by the Appellants and Appellee Election Board to fully resolve the Election with this *Opinion and Order*. (Opinion and Order at 12).

In acknowledging that the relief ordered "is not ideal", the Court stressed again that it was "the relief that will best facilitate the seamless transition to a fully-seated Tribal Council and the stability of the Tribal Government". (*Opinion and Order* at 13). With no other motions for reconsideration filed, including by the Appellants-Plaintiffs or Appellee-Defendant Election Board with the latter the body specified in Article IX, Section 4 (e) of the Constitution as the body "that shall be authorized to issue such rules and procedures as may be necessary to carry out tribal elections and to provide for ongoing voter registration", it appears to this Court that the relief ordered has, at least in part, fulfilled the purpose to "best facilitate the seamless transition to a fully-seated Tribal Council and the stability of the Tribal Government". With no other motions for reconsideration having been filed and no other motions for reconsideration permitted with the

fourteen-day deadline for motions for reconsiderations in Chapter 5, Section 5.906 (A) of the Court Rules having passed, the swearing in ceremony may proceed without any future interruptions through this Tribal Court System with the issuance of this *Opinion and Order Dismissing Automatic Stay and Denying Motion for Reconsideration and First Amended Motion for Reconsideration and Motion to Intervene*.

IT IS HEREBY ORDERED:

On behalf of the unanimous Court of Appeals,

Melissa L. Pope

Hon. Melissa L. Pope, Chief Justice

July 2, 2018
Date

LITTLE RIVER BAND OF OTTAWA INDIANS

TRIBAL COURT

NIKKI NELSON,

Plaintiff,

v.

LITTLE RIVER BAND OF OTTAWA INDIANS ELECTION BOARD,

Defendant.

Case No. 17-172-GC

Hon. Angela Sherigan

NIKKI NELSON
IN PRO PER
Plaintiff
1800 Main Street
Manistee, Michigan 49660
231.907.9331

JANA M. SIMMONS (P58739)
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CONSENT JUDGMENT

Judgment is hereby entered by consent of the parties in favor of Plaintiff, NIKKI NELSON, against Defendant, LITTLE RIVER BAND OF OTTAWA INDIANS ELECTION BOARD, as follows:

1. Defendant concedes that it knowingly, upon the advise of legal counsel, conducted a 7-year background check on candidates running for office in the 2017 General Election where the Tribe's Constitution requires the disclosure of certain crimes or violations that date back 10 years.

2. Within 21 days of entry of this Judgment, Defendant shall reimburse to each candidate the monies paid by him or her for the 7-year background check.

3. This Judgment resolves all claims pending in this matter and closes this case.

IT IS SO ORDERED:

HON. ANGELA SHERIGAN

Dated: 10/25/17

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

REBECCA GROH,
PETITIONER

V. CASE NUMBER: 17223GR

LRBOI HUMAN RESOURCE DEPARTMENT,
RESPONDENT

Petitioner's Attorney
Patrick A. Dougherty
50 Filer Street, Ste. 224
Manistee MI 49660

Respondent's Attorneys:
Shayne Machen
Rebecca Liebing
2608 Government Center Drive
Manistee MI 49660

At a session of said Court on October 9, 2017
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
PRESENT: HON. DANIEL BAILEY

The hearing on the Grievance filed by the Petitioner was heard on the date and time noticed.

The Petitioner's position as the Ogema's receptionist was terminated on August 23, 2017. This action was based on the Tribe receiving the results of a criminal background check for Ms. Groh that is a mandatory requirement for all new employees. The background check showed a conviction for OUI in Traverse City, two other arrests that did not lead to a conviction, and an outstanding warrant in the State of Texas. When the Petitioner met with the Director of Human Resources at HR's request she explained that she didn't list them because two of the charges had been dismissed and that she was unaware of the current warrant. The unsigned memo with no tribal letterhead from Nancy Mallory, HR Director, says: "...you were asked if you had ever been arrested for or charged with a crime. You marked the box stating, 'yes' and only disclosed one OUI. You failed to identify that you have other previous arrests and an outstanding warrant."

The Petitioner wrote a letter to the Tribal Court, the HR Department and the Ogema's office on August 24, 2017. The HR director responded the same day upholding the Petitioners' termination. Ms. Mallory reiterated the "requirement that you disclose <u>all arrests</u>. [Underlined by HR Director.]

Ms. Groh's employment began on May 22, 2017 and her 90-day probationary period would expire on August 18, 2017.

REBECCA GROH,
PETITIONER

V. CASE NUMBER: 17223GR

LRBOI HUMAN RESOURCE DEPARTMENT,
RESPONDENT

The Tribe (Respondent in this matter) asserted that the Petitioner was still on the mandatory 90-day probationary period when her employment was terminated and was an "at will" employee. Respondents contend that because the Petitioner requested a two-week leave of absence on June 6, 2017 that was granted that it automatically tacked on an additional 14-days to her probationary period.

The Respondents also assert that the Grievance was not filed in a timely manner according to the Government Employment Relations Ordinance (#05-600-01) which states in 4.05 "*An employee must file an appeal within ten calendar days of receiving a written disciplinary action.*" The Respondents assert that Ms. Groh was a just cause employee because in the Employment Relations Act Article IV. Sec. 44.01 "...the Tribe or the employee may terminate the employment relationship at-will during the probationary period."

The Petitioner contends that she was past the 90-day probationary period because her time off on leave should be counted towards her 90-days.

The court has considered all the testimony, the personnel file, the one affidavit from Mary Thomas that it asked for, and any other filings in this matter.

The Personnel Manual, in Chapter VI, Benefits, Holidays, and Leave, Probationary employees are entitled to most of the benefits offered by the Tribe. Those employees are provided with standard benefits such as FICA, MEDI, SUTA and Worker's compensation. (6.2) Those employees may be provided with major medical (6.3) Probationary employees are also provided with life insurance (6.4)

The Personnel Manual (6.7) says: "Regular, full-time and part-time employees (including probationary employees) are eligible for PTO benefits. PTO may be used to cover time needed for employees' occasional need to be absent for work for a period of time..."

All of these benefits indicate that the Tribe considers probationary employees to be employees who receive most benefits immediately but have to wait the requisite 90-days to utilize a few of the benefits that were accruing during their probationary time-frame.

Leaves of Absence (6.10) says that all requests must be in writing, and approved by the employees' Director, HR, and the Ogema. The Petitioner was approved for a 14-day leave of absence on June 17, 2017 with an end date of June 30, 2017.

One of the exhibits from the Respondents was the letter of Conditional Offer of Employment. The letter goes on to explain that she must "*...pass a pre-employment drug test and extensive background investigation with satisfactory results.*"

The Petitioner argues that the question relating to "Arrests or Convictions" was actually illegal. The Petitioner cites the Constitution as disallowing the arrest question, (it is actually in the Civil Rights Act of 1964, as amended; Title VII) where an arrest is not

proof of criminal conduct. An individual's arrest record may not be used to take negative employment action.

The Court also notes that the Application for Employment that was given to Ms. Groh was an outdated application. The current application that was approved on 7-22-2015 is the application that should have been used. In the current application, Under General Information, it asks: "have you ever **pled guilty**, or **no contest**, or **been convicted of a crime**?" There is nothing on the current application about arrests.

Ms. Groh also signed a Memorandum of Understanding that states that an investigation would be completed under the authority of federal law; Indian Child Protection and Family Violence Prevention Act, 25 USC § 3.201 et al 1990.

25 USC § 3207 (b) entitled criminal records states that the minimum standards of character that are to be prescribed under this section shall ensure that none of the individuals appointed to positions described in subsection (a) have been **found guilty of, or entered a plea of nolo contendere or guilty to**, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

If the Petitioner was given the correct application, the arrests and the warrant would have been discovered but she could not have been accused of falsifying the document because she did not have to list any arrests; only convictions.

The Government Operations Personnel Manual (Last revision: August 9, 2017) states in section 6.10, Leaves of Absence, second paragraph: " No more than one (1) leave of absence will be granted during one (1) calendar year. No PTO leave shall accrue while an employee is on a leave of absence. Time spent on the leave of absence **shall not be considered a break in service.** [Emphasis added] Benefits will continue for up to thirty (30) days of the unpaid leave." Ms. Groh was granted that two week leave of absence.

The Petitioner's leave of absence is not considered a break in service therefore she was considered an employee who could only be fired for cause.

It is the opinion of the court that the Petitioner was not an at-will employee. She was employed for 94 days and her supervisor had not extended the probationary period for further evaluation or training. (Personnel Manual, 3.4.) There was no break in service as stated by section 6.10.

The Court does not have to rule on the timeliness of the Grievance because the Petitioner was a "for cause" employee who could not be fired for failing to reveal arrests that were dismissed or unknown warrants (that is also not a conviction). However, the

REBECCA GROH,
PETITIONER

V. CASE NUMBER: 17223GR

LRBOI HUMAN RESOURCE DEPARTMENT,
RESPONDENT

court's opinion is that the Grievance was timely filed as it was filed within 10 days of receipt (September 1, 2017) of the August 24, 2017 letter from the HR Director. The court's policy is to accept filings on the next business day if the due date occurs on a day that the court is closed for any reason.

Ms. Groh shall be returned to her position as receptionist. The Court orders that she be compensated for her back wages and any other benefits that she did not receive.

SO ORDERED:

Judge Daniel Bailey

10/23/17
Date