

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

STACI CHENEY, and
SUSAN THULL,
Plaintiffs,

Case Number: 21-582-GC
Hon. Angela Sherigan

v.

LRBOI ELECTION BOARD,
Defendant.

Staci Cheney
7350 Warwick Dr.
Ypsilanti, MI 48197

Susan Thull
7170 Cattail Drive SW
Byron Center, MI 49315

Jo Anne M. Ybaben
Attorney for Defendant
12294 Gold Mountain Loop
Hill City, SD 57745
jybaben@gmail.com

ORDER REGARDING DEFENDANT'S MOTION TO DISMISS

A hearing was held on Defendant's Motion to Dismiss, in which all parties and/or their attorneys appeared.

The Motion is based on LRCR 4.116 and 4.112. Specifically, that:

1. The issues complained of are time barred under the Election Regulations;
2. Plaintiffs have failed to state a claim for which relief can be granted 4.116 C(8);
3. There is no genuine issue as to any material fact 4.116 C(10); and/or that
3. Plaintiffs failed to plead sufficient facts under 4.111.

The complaint filed by Plaintiffs alleges:

1. Illegal campaigning by Dr. Daryl Weaver;
 2. Violation of ethical standards for failure of Karen Love to recuse herself regarding matters involving Shirley Weaver;
 3. Intentional ballot error;
 4. Denial of hearing on dispute/challenge;
 5. Breach of Contract;
 6. Failure to respond to the mail sent by Judge Bailey; and
 7. Election Fraud,
- and 8. overall impropriety on part of the election board by failing to maintain the integrity of the election.

Defendant argues that allegations are time barred and under LRCR 4.116 and 4.111.

The Court will first look at the timing first for each allegation.

Allegation 1. Illegal campaigning by Dr. Daryl Weaver. Defendant's argument to dismiss this allegation is two part: 1. As Dr. Weaver himself was not running for a seat in the election, the complaint should have went to the Ogema not the Election Board; and 2. That the Election Board did ask for additional supporting evidence and the Plaintiffs failed to provide it; and 3. That this claim is time barred as a decision was made in May of 2021, and the time has passed for an appeal to the Court. Plaintiffs argue that they did make a complaint to the Ogema and then came back to the Election Board and that the Election Board did not make a timely decision.

In reviewing the pleadings and the Regulations, the Court finds that the Election Board does not have authority of people who are not part of the election. Additionally, this allegation is time barred.

This allegation is dismissed.

Allegation 2. Violation of ethical standards for failure of Karen Love to recuse herself regarding matters involving Shirley Weaver. Defendant argues that this was known to Plaintiffs in May of 2021, and that this is time barred.

The Court agrees. This allegation is time barred and dismissed.

Allegation 3. Intentional ballot error. Defendant argues that this allegation is time barred also as it occurred in May. Defendant also maintains that this was an error on the part of the printer not the Election Board. Additionally, Defendant argues that this matter was heard in May of 2021 and is therefore time barred. Plaintiffs argue that, through discovery, they will be able to show that it was not an error and Shirley Weaver's name was placed on top in her category, while the rest of the candidates, in all other categories, were placed in alphabetical order.

While the court is somewhat inclined to allow the Plaintiffs to continue with this allegation, it is unfortunately time barred¹. Therefore, this allegation is dismissed.

Allegation 4. Denial of hearing on dispute/challenge. Defendant argues that Plaintiffs are not entitled to a hearing pursuant to *Agosa v. Election Board*, including the issue of disputes verses challenges, and that this is time barred. Plaintiffs allege a denial of a hearing regarding the placement of Shirley Weavers name on the ballot. The Election Board issued a decision on May 14, 2021.

The Court agrees. This allegation is time barred and dismissed.

¹ It is important to note that Plaintiffs were initially granted an extension for filing election disputes/challenges appeals to the court by the Court in late May, and that this filling was almost four months later, well beyond a reasonable time period.

Allegation 5. Breach of Contract. Defendant argues that the Plaintiffs do not have standing as the contract is between the LRBOI Election Board and True Ballot Co. The Court agrees. To have standing to a contract, you must be a party to the contract².

This allegation is dismissed.

Allegation 6. Failure to respond to the mail sent by Judge Bailey. Defendant argues that the regulations do not have anything regarding non-candidate activity and that is a Court issue not an Election Board issue. The Court agrees. Only the Court can take action against a judge for unethical behavior.

This allegation is dismissed.

Allegation 7. Election fraud. Defendant argues that claims of election fraud are criminal in nature, and by ordinance and that authority over this type of behavior belongs with the Prosecutor and not the Election Board, and additionally any complaint as to the Election Board under the Regulations is time barred.

As to the allegation of fraud by Dr. Weaver, a decision was made in May 2021 by the Election board and is now time barred.

Allegation 8 – overall allegation of impropriety. The defendant argues that this allegation is time barred. Plaintiffs argue that if allowed to continue, discovery will lead to more information.

Chapter 14, Section 2 (B) of the Election Board Regulations requires that any complaint for impropriety be filed within 30 days of the date the Complainant has knowledge.

It is now well past since the election has been concluded, and almost four months past the time to file in Court.

THEREFORE, IT IS HEREBY ORDERED:

1. Allegations 1 and 6 are dismissed under LRCR 4.116 C(8), failure to state a claim upon which relief can be granted.;
2. Allegations 2, 3, 4, 7 and 8 are time barred and dismissed.
3. Allegation 5 is dismissed on lack of standing.
4. Defendant's Motion to dismiss is GRANTED.

This closes this case and extinguishes all outstanding subpoenas.

1-3-22


Hon. Angela Sherigan



² Or be an intended third party beneficiary.