

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

IN THE MATTER OF:

ELECTION CHALLENGE #2 FILED BY
GARY DI PIAZZA

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

On March 10, 2022, Ryan L. Champagne resigned his membership in the Little River Band of Ottawa Indians (the Tribe) and on March 16, 2022 he transmitted a copy of his resignation from his position on the Tribal Council of the Little River Band of Ottawa Indians (Tribal Council) to the Little River Band of Ottawa Indians Election Board (Election Board). Thereafter, pursuant to its Constitutional Mandate, the Election Board announced a special election for the now vacant seat on the Tribal Council. This Special Election was set for June 8, 2022.

On or about May 16, 2022, the election services vendor True Ballot, mailed the Special Election Ballots to the Outlying Membership. Without the knowledge or consent of the Election Board, certain, but not all, of the Secrecy Envelopes sent as part of the mail-in Ballot packets, had modifications made to such envelope to allow easier removal and tabulation by True Ballot. Some of the Secrecy Envelopes had portions of a corner cut to facilitate Ballot access, and others had entire sides of the envelope removed while other secrecy envelopes had no modifications whatsoever.

On multiple occasions between May 23, 2022 and May 25, 2022 the Election Board met to discuss whether the varied modifications to the Secrecy Envelope, made by True Ballot,

violated the Election Board's Constitutional mandate. After extensive discussions, the Election Board determined that the purpose and effect of the Secrecy Envelope remained in effect and determined that it would authorize the Members of the Tribe who were voting to take whatever steps they felt necessary to maintain the secrecy of their choice. The Election Board posted an announcement on May 26, 2022 which explained in part:

The purpose of the "secrecy envelope" is to protect the Member's Ballot choices during the time between the opening of the "official election envelope," when the Ballot is separated from the "secrecy envelope" and prior to the Ballot being counted. The Election Board Regulations require that the Ballot be placed in the "secrecy envelope" and then "close and seal" the envelope. Collins dictionary states that "when you seal an envelope, you close it by folding part of it over and sticking it down."

The mail-in Ballots are processed by the Election Vendor who separates the envelopes and counts the Ballots. This preserves the integrity of the vote counting process and adds an extra layer of protection and secrecy because the vast majority of the Ballots are handled exclusively by a third party and not Tribal Members or any other person who could have an interest in the outcome of the Election.

The Election Board has determined that the secrecy envelopes sent to the Members, for use in the Special Election, meet the regulation requirements for the protection of the Member's Ballots, any member who may wish to further protect their Ballot by double folding their Ballot, or taping up the open side of the secrecy envelope, or otherwise replacing the secrecy envelope with a different one, is hereby authorized to do so.

Thus, by this announcement, the Election Board ensured and communicated to the Members that any person who chose to modify their ballot secrecy envelope would still be entitled to have their votes counted, even though this is contrary to the instructions stated on the mail-in ballot.

On June 15, 2022, Gary DiPiazza filed an election Challenge on the following bases summarized below:

- The envelopes which have an opening are in violation of the Tribe's Constitutional requirement of a secret ballot.
- This caused confusion on the part of the voters.
- for these reasons, he has requested that the election be nullified and a new election be held.

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

FINDINGS OF FACT

1. The Election Board is the Tribal entity charged with carrying out the provisions of the Election Code to ensure all Tribal elections are conducted fairly and honestly and in the best interest of the Tribe and its members.
2. An Election Challenge is decided by the Election Board under authority of the Tribal Constitution.
3. The Election Board is Constitutionally mandated to hold a special election for a Tribal Council position within three (3) months of the resignation of that Tribal Council member,
4. Ryan Champagne resigned his Membership in the Tribe on March 10, 2022 and was therefore automatically ineligible to hold his position on the Tribal Council. He communicated his official resignation on March 16, 2022.
5. On or about May 16, 2022 the election services vendor, True Ballot, mailed the ballots to the Members in the Outlying District.
6. The Constitution mandates that the Ballots be mailed no later than May 17, 2022.
7. The deadline for filing of an Election Dispute was May 24, 2022.

8. Ballots for a variety of state and local elections regularly have return envelopes which include holes or other means to identify that a ballot is contained within.

9. Ballots for a variety of state and local elections regularly have ballots that need to be folded multiple times in order to fit within the ballot or secrecy envelope.

10. The purpose of the “Secrecy Envelope” is to protect the Member’s Ballot choices from being identified during the time between the opening of the “official election envelope,” and when the Ballot is separated from the “secrecy envelope” prior to the Ballot being counted.

11. The requirement for a Secrecy Envelope does not require that an envelope be sealed in such a manner as to be impenetrable, most envelopes have portions of which that are not sealed so as to facilitate ease of opening.

12. The Tribe has utilized a third-party election services vendor for at least the last four elections. The election services vendor opens, separates and counts over 95% of all ballots cast in any given election. This third party is designed to add an extra layer of protection and secrecy to the Member’s ballots so that the vast majority of the Ballots are handled exclusively by a third party and not Tribal Members or any other person who could have an interest in the outcome of the Election.

13. The election services vendor has instituted a recent practice of modifying the Secrecy Envelopes to facilitate opening same to provide quicker election results.

14. The Election Board had not been made aware of this change to the secrecy envelopes until after certain Members of the Tribe raised their concerns.

15. On or about May 26, 2022, to accommodate the concerns of certain of the Members, the Election Board made the determination, and posted an announcement stating that any member who was concerned about the secrecy of their Ballot could double fold their ballot, tape or

otherwise seal the existing secrecy envelope to their satisfaction or replace it with a different envelope to as to allay any concerns the Member may have regarding their ballot.

16. Gary DiPiazza was not a candidate in the Special Election.

CONCLUSIONS OF LAW

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

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

2. Article IX, Section 2 (b), of the LRBOI Constitution states:

Special Elections. Special elections shall be called by the Election Board, when appropriate or when required under this Constitution, to remove, recall, and fill vacancies of elected officials, and to submit initiatives and referenda to the Tribal membership.

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

4. As a matter of law, any Election Dispute was required to be filed no later than May 24, 2022.

5. Chapter 1 section 2 (K) of the Election Ordinance defines a Challenge as “a challenge to the results or outcome of an Election. An Election Challenge is decided by the Election Board under authority of the Tribal Constitution.”

6. Chapter 12, Section 2, Subsection B.1. states that “[a]ny Registered Voter may file an Election Challenge to the results of a Referendum or Initiative vote by filling out and submitting the form provided by the Election Board. The form may be requested in person or by mail.”

7. Chapter 12, Section 2, Subsection B.2. states that “[a]ny *candidate* that was not elected in the current Election 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.” (*emphasis added*).

8. As a matter of law, only a *candidate* can file an Election Challenge in any election that is not a ballot initiative or referendum.

9. As a matter of law, the “Challenge” filed by Mr. DiPiazza was actually an Election Dispute.

10. Chapter 1, Section 2, subsection KK defines “Secrecy Envelope” as “the envelope labeled secrecy envelope and submitted to Registered Voters for Tribal elections.”

11. Chapter 3, Section 5, Subsection B.1. states in part that “Ballots shall be mailed to all Registered Voters on a date to be determined by the Election Board, but no later than fifteen (15) business days before Election Day for any given election.”

12. Chapter 3, Section 5, Subsection C states:

Completing Mail-In Ballot. With regard to an Election, a Registered Voter shall receive by mail an envelope labeled “Official Election Envelope,” an envelope labeled “Secrecy Envelope,” one Mail-In Ballot, and instructions for completing the ballot. Upon completing the ballot, the Voter shall take the following steps to complete the voting process for Mail-In Ballots:

1. Please mark your choice(s) clearly for the Candidate of your choosing.
2. Fold the ballot, place the ballot in the envelope labeled “Secrecy Envelope” and then close and seal the envelope.
3. Place the “Secrecy Envelope” in the “Official Election Ballot Envelope”, close and seal the “Official Election Ballot Envelope”, and mail the envelope to the Election Board.

13. The Election Board has determined that as a matter of law, the secrecy envelopes sent to the Registered Voters for the Special Election to be held June 8, 2022, sufficiently protect the secrecy of the Registered Voter’s choice so as to meet the Constitutional and Regulatory requirements.

14. Moreover, given that the Election Board has authorized those Voters who do not believe that their choice is sufficiently protected to, for this one election, take the steps necessary to protect their ballot by either additionally folding the ballot, taping or otherwise sealing the secrecy envelope they were provided with, or by altogether replacing the secrecy envelope with a new one, that the Election Board has undoubtedly complied with their Constitutional and Regulatory mandate.

15. As a matter of law, the Election Board Regulations do not define the Secrecy Envelope as requiring any specific level of “sealing” or “closure” or “impenetrability”.

16. As a matter of law, the Election Board was mandated by the Constitution to hold the Special Election within three months of the resignation of Councilperson Champagne.

17. As a matter of law, the Challenge filed by Mr. DiPiazza is a late filed Dispute and therefore was not timely filed.

18. Given that there are no facts in dispute which are relevant to this matter, the Election Board has specifically determined that a hearing is not relevant or otherwise appropriate on this issue and will not be conducting same.

ORDER

NOW, THEREFORE, it is hereby, ORDERED, ADJUDGED AND DECREED
that Gary DiPiazza's election challenge relating to the secrecy envelope is DENIED.

Dated this 21st day of June, 2022.

By: _____
Valerie McDonnell
Election Board Chairperson

By: _____
Laura Echelbarger
Election Board Secretary

By: _____
Mike Ceplina
Election Board Member

By: _____
Karen Love
Election Board Member

By: _____
Kathy Gibson
Election Board Member