

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

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STACI CHENEY, JOLENE O'SIGNAC,
and SUSAN THULL,
Plaintiffs

Case No. 23-013-GC

Honorable Caroline LaPorte

v.

LRBOI ELECTION BOARD,
Defendant

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FINAL ORDER

The Court held a hearing on the above captioned matter on January 20, 2023. The Plaintiffs appeared pro se and Defendant (LRBOI Election Board) appeared and was represented by counsel. The Court stated at the outset that the reason for the hearing was to address the affidavit of Ms. Valerie McDonnell, previous LRBOI Election Board Chair and current candidate for the 2023 Regular Election as well as the Defendant's concern regarding **Plaintiffs' Exhibit F**, which was a file stamped copy of a DRAFT vendor contract **which was not part of the public record.**

1. Procedural History of this Case

The Plaintiffs filed a Statement of Claim on January 5, 2023 and an amended Statement of Claim on January 6, 2023 ('Complaint') alleging that the Little River Band of Ottawa Indians ('LRBOI') Election Board committed an abuse of power, violated the Constitution of LRBOI, and violated the LRBOI Election Board Regulations/Resolutions/Ordinances. In their pleading, the Plaintiffs requested the following:

1. Ex-Parte Restraining Order and Stay for the 2022 Special Election;
2. Ex-Parte Restraining Order for the 2023 Regular Election;
3. Permanent Injunction for both the 2022 Special Election and the 2023 Regular Election;
4. Mandatory Injunction for both the 2022 Special Election and the 2023 Regular Election;
and
5. immediate removal of Election Board Members Karen Love, Laura Echelbarger and Kathy Gibson.

At no time did the Plaintiffs file an Election Dispute with the LRBOI Election Board as required by the Election Board Regulations. Instead, Plaintiffs' stated their claim was an allegation of impropriety, which this Court exercises jurisdiction over. On January 9, 2023, the Court denied both requests for Ex-Parte Injunctive Relief as Plaintiffs failed to show that serving the Defendant would cause delay, would cause irreparable injury, loss or damage or that notice will not precipitate adverse action before an order could be issued.¹ Though the Court has jurisdiction to hear allegations of impropriety by the Election Board as outlined in Chapter 14 § 2(A) of the LRBOI Election Board Regulations (as amended September 9, 2022), the Court found in its previous order that the Plaintiffs' request was **MOOT** as the Special Election results were certified on **December 20, 2022** and their ask was specifically to enjoin the certification of the Special Election.

While it was not necessary for the Court to address as the requests regarding the 2022 Special Election were **MOOT**, the Court nevertheless explained that Plaintiffs' Complaint as to the Special Election would otherwise be barred for two reasons: Plaintiffs' Complaint was time barred and the Plaintiffs failed to exhaust their remedies. In as much as the Plaintiffs' requests could have been construed as an election dispute or an election challenge (the later for which they lack standing to raise as they were not candidates in the 2022 Special Election), the Plaintiffs failed to exhaust their remedies by failing to file an election dispute with the LRBOI Election Board. And while the Court hears allegations of impropriety as stated above under Chapter 14 §2(A) of the LBROI Election Board Regulations, §2(B) requires that the allegations be filed with the Tribal Court within thirty (30) days of the date on which the complainant has knowledge. In each instance relating to the Special Election of 2022, the Complainants' knowledge of the issue giving rise to the allegation exceeds the thirty (30) day time limit.

Because the Plaintiffs are pro se, and the Court does provide some consideration for pro se litigants, the Court set the remainder of the Plaintiffs' complaint regarding allegations of impropriety impacting the 2023 Regular Election for a hearing. The Court was clear that it would not entertain arguments resembling election disputes (which need to go before the Election Board before coming in front of this Court as an appeal from an Election Board decision) or election challenges (which also need to go before the Election Board before coming in front of this Court, **and for which the Plaintiffs in this case lack standing to bring**).

Additionally, in the Court's Order dated January 9, 2023, the Court was seriously concerned about the potential ethical issues found within the Affidavit of Valerie McDonnell, namely why Ms. McDonnell would provide the Court with a signed statement that she accessed a "Personnel Security Consultant Website" while a candidate for the 2023 Regular Election **POST** her time as

¹ See this Court's Order dated January 23, 2023.

a member of the LRBOI Election Board. Per Ms. McDonnell's Affidavit, she served on the Election Board from 2017 to October of 2022. She states that "during Thanksgiving, she was called and asked to check the Personnel Security Consultant Website to see if the background checks had come to [her] account. That was November 25, 2022."² The Court gave the Plaintiffs (in order language), three (3) days to provide the name of the individual who asked Ms. McDonnell to access the website. No name was provided by the Plaintiffs, so the Court issued a subpoena for Ms. McDonnell and had her served.

2. The Hearing and Subsequent Events

As stated above, the parties appeared ready on January 20, 2023. Plaintiffs provided prepared opening statements around the allegations of impropriety, which centered on the familial relationship of two LRBOI Election Board Members and two candidates for the 2022 Special Election. Plaintiffs rely on the LRBOI Constitution Article XII and LRBOI Election Board Regulation Chapter 14 Section 1(B)(10). It is worth noting that neither candidate relevant to the action at hand were elected in the 2022 Special Election.

Plaintiffs' reading of these provisions is that Election Board Members whose family members run in any election have to refrain from all of their duties as Election Board Members. That is incorrect. The regulations state that in this instance Election Board Members should recuse themselves when deliberating or voting on election matters. "Deliberating or voting on election matters" means, as was provided at the hearing on January 20, 2023, decisions regarding election challenges or disputes. Day to day responsibilities of the Election Board do not require recusal. On any Election Day, the election vendor is tasked with counting ballots. As stated in Defendant's response, the Election Board is only present to open the exterior ballot envelopes which is in full view of the public. As to the conflict of interest provision within the LRBOI Constitution, the provision clearly states,

"In carrying out the duties of tribal officer, no tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a personal financial interest, other than interests held in common by all tribal members, against the interests of the tribe." *See* Article XII, LRBOI Constitution.

The Plaintiffs could not show, nor did they attempt to show, that any member of the Election Board made or participated in decisions involving a personal financial interest. Mere relation does not create a personal financial interest.

Plaintiffs' complaint also centered on 38*³ undeliverable ballots from the 2022 Special Election. Defendant's counsel stated that her client could retrieve the undeliverable ballots, which were locked in the Election Board Offices in a locked file, with the assistance and escort of an LRBOI

² *See* Sworn Affidavit of Valerie McDonnell (**Plaintiffs Exhibit S**).

³ *See* Sworn Affidavit of Valerie McDonnell (**Plaintiffs Exhibit S**) (attesting that when Ms. McDonnell was told by an Election Board Member that there were 38 undeliverable ballots).

Tribal Law Enforcement Officer. An Officer brought the ballots to the Court, which the Court (in the presence of the Officer and a Clerk of Court), counted.

The Court counted 63 envelopes. **All envelopes were checked repeatedly to confirm that they were either still sealed or that the ballots within them were intact.**

With the exception of the obvious numerical difference between 38 and 63, the Court found no issues with the undeliverable ballots themselves (which are not utilized in the count of votes as they were not cast). The Clerk of Court and the Officer sealed the undeliverable ballots back into their original envelopes with evidence tape and had them placed in the LRBOI Tribal Police Department property room (where evidence is safely stored so that it cannot be tampered with). The Court issued a second order on January 23, 2023 asking the Defendants to explain the process for counting undeliverable ballots, as both creation of and following process is part of their obligation to ensure valid tribal elections. Defendant's response was vague, so the Court clarified its order. On January 26, 2023 a third order was entered, which required the Defendants to explain the discrepancy specifically by Friday January 27, 2023.

The Court did not receive a response from Defendant. The Court was clear that this was an issue of direct contempt.

Then, on January 30, 2023, the Court held its final hearing in this matter. Defendant had *an* explanation for the discrepancy, which was that in filing their affidavits they relied on the Plaintiffs' assertion that there were 38 undeliverable ballots. The Court finds this to be astonishing, but also not material to a finding of impropriety. Which places the Court in an odd position, where something that is not relevant to the problem at hand has become nuisance for the Court to resolve.

Also a nuisance, though more alarming for various public interest reasons as well as potential criminal liability of a conveniently unknown individual, is the representation of Plaintiffs that at least one of them suffers (without providing any medical documentation from a licensed professional competent to make such a diagnosis) from "short term memory" problems and because of that, the Court cannot have its answer. Rather than avoiding stating the obvious, the Court gave the Plaintiff, as it gave the Defendant, an additional opportunity to share the information as to where they retrieved their filed **Exhibit F**. But the Plaintiffs could not recall and instead filed (prior to the hearing) a response and exhibit, which the Court is **STRIKING** for the reasons requested by the Defendant in its response dated January 27, 2023. Because the Plaintiffs have no recollection of where the file stamped DRAFT copy of a vendor contract not available to the public for numerous legal reasons, **Exhibit F** is also **STRICKEN**.

3. Further Analysis Regarding the Four-Part Test and the Claim of Impropriety

The Court was clear that should the Plaintiffs not provide the information the Court ordered on January 23, 2023, the Court would dismiss their claim in its entirety as a SANCTION. Regardless, here the Court analyzes the Claim for Injunctive Relief and the Plaintiffs' claim of impropriety.

Injunctive relief is an extraordinary remedy that should only be granted when no adequate legal remedy exists, there is an imminent danger of irreparable harm and justice requires that such extraordinary relief be granted. *Pontiac Fire Fighters Union Local 367 v. Pontiac*, 482 Mich. 1, 8 (2008). The Little River Tribal Court of Appeals has adopted a four-part test in determining whether to grant a preliminary injunction or a temporary restraining order:

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 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.⁴

The moving party must demonstrate a likelihood of success on the merits. *Crampton v. LRBOI Election Board*, Case No. 05-11-AP (2005). Further, the moving party must demonstrate irreparable harm to their rights, and that failure to do so precludes injunctive relief. *Medacco v. Little River Band of Ottawa Indians*, Case No. 17-006GC. Defendants argue that, rather than weighing the four factors, Tribal Court has dismissed requests for injunctive relief if one or more of the factors cannot be proven. Defendants assert that the Plaintiffs have failed to prove that any of the essential factors are present. The Court agrees.

Again, as stated above, the Plaintiffs' primary claim is that the LRBOI Election Board acted with impropriety because two board members did not recuse themselves from being present on Election Day despite familial relationships. This alleged claim does not rise to the level of impropriety. Impropriety is "willful conduct or behavior which violates the ethical standards set forth for Members of the Election Board under these Regulations and which affects the outcome of a Tribal Election. Impropriety does not include disagreements with decisions of the Election Board."⁵ The Court agrees with the Defendant that a charge of impropriety requires that the Election Board undertake three (3) actions: 1) the Election Board must act with willful or intentional conduct or behavior; 2) that the Election Board must then violate their ethical duties as described in Chapter 14, Section 1 of the LRBOI Election Board Regulations; and 3) the willful conduct must affect the outcome of the Tribal Election. Plaintiffs have not met their burden to establish impropriety on the part of any of the Election Board Members.

The ethical standards that govern the Election Board Members are established in Chapter 14 of the Election Board Regulations. Section 1(B)(10) states that Election Board Members shall recuse themselves from deliberations or voting on Election Matters where such involvement may result in personal gain; where a personal bias or prejudice may exist; and where there is a reasonably close family relationship to the individual requesting action by the Election Board.

It is not contested whether a familial relationship existed between the Election Board Members and the candidates at issue. So the issue then turns on the meaning of "deliberation or voting on Election Matters." As provided above, the action the Plaintiffs took issue with was that Election Board Members were present on voting day. The Court has stated why this action does not fall under the scope of "deliberation or voting on Election Matters." As stated in Defendant's

⁴ See *Ossignac v. Sam*, Case no. 09-012-AP (2009).

⁵ See Chapter 1, Section 2 (S) of the LRBOI Election Board Regulations.

response, there was no need to deliberate or vote on requests for action to the Election Board because no disputes, challenges, or other matters were at issue regarding these two candidates.

Furthermore, because a finding of impropriety requires that the alleged impropriety must actually affect the outcome of the Election, Plaintiffs fail to meet their burden. Neither relative of either Ms. Love or Ms. Echelbarger was elected in the special election. Here, the Court finds no impropriety by the Election Board Members.

Plaintiffs have failed to demonstrate a likelihood of success on the merits. Plaintiffs have not demonstrated irreparable harm nor did they provide any evidence to support such a finding. The Plaintiffs provide vague allegations of impropriety, refuse to provide the names of their sources, and rely on hearsay and expect this Court to do the same. Furthermore, the Court finds that an injunction would cause substantial harm to the Tribe. This lawsuit itself is a waste of Tribal resources, Tribal Court resources, and Election Board time. It is merely a political trojan horse designed to erode public trust in valid Tribal elections without basis.

4. Conclusion

As *Kwe*, the Court is dismayed. Both parties are being admonished by the Court for their lack of candor. Both parties are warned not to file anything in this Court, especially not affidavits, that are not accurate (Defendant and Plaintiffs), that they should not have in their possession (Plaintiffs), and especially where they cannot locate or recall the source of such information (Plaintiffs).

The Plaintiffs remaining requested relief is hereby **DISMISSED with prejudice as a SANCTION** for failing to provide the requested information and for their lack of candor before this Court. Defendant's additional request for sanctions (attorneys' fees) is **DENIED** for same. All other relief requested is **DENIED**.

This closes this matter on this 7th Day of February 2023.

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Caroline LaPorte
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Caroline B. LaPorte, J.D.
Associate Judge



CERTIFICATION OF SERVICE

I certify a copy of this document was served via email to the parties and/or their attorneys of record on this day.

2.7.23
Date

Spring Medacco
Court Clerk/Court Administrator