

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

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LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL,
Plaintiff

Case No. 23-105-GC

Honorable Caroline LaPorte

v.

OGEMA LARRY ROMANELLI, and
TRIBAL PROSECUTOR JONATHON
HAUSWIRTH,
Defendants

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ORDER DENYING PARTIAL STAY

On October 24, 2023, the Tribal Council Plaintiffs filed a Motion for a Partial Stay, pending the determination of its appeal of this Court's Order dated September 27, 2023. The Court heavily considered the Motion and the Brief that was filed by Tribal Council's legal representation, but **DENIES** it for the reasons that follow.

A. Addressing Tribal Council Plaintiffs' First Argument for the Partial Stay

The Court's Order dated September 27, 2023 was clear. Council violated the LRBOI Constitution because they voted in closed session (via motion) and then failed to pass a resolution where their vote was recorded for the Tribal Membership to have knowledge of it. Tribal Council Plaintiffs argue that their inability to vote in closed session absent a resolution (which was stated repeatedly in the Court's Order dated September 27, 2023¹) would cause them a great harm as Plaintiffs, and a harm that outweighs the harm to the Defendants. This is false. Tribal Council may continue to have its closed session meetings, they just have to do it in accordance with the LRBOI Constitution (which the Court ruled had not been done in regard to

¹ If the Court's Order was not clear, Council could have filed a motion for clarification.

the voting that occurred in this case). Again, the purpose of closed session meetings is to **discuss** the three matters that are outlined in the LRBOI Constitution. *See* §9.02 of the Tribal Council Procedures Ordinance, #06-100-02. (“Closed sessions are **intended to permit the Tribal Council to engage in open, frank discussion and debate** regarding matters that may require confidentiality, involve proprietary business matters, negotiating positions or are covered by one or more legally recognized privileges.” **Emphasis added.**)

Article IV, Section 6(d) specifically states (as stated in the Court’s Order dated September 27, 2023):

(d) *Open Meetings; Closed Sessions.* All meetings of the Tribal Council shall be open to the Tribal Membership. However, the Council may meet in closed session for the following purposes:

1. Personnel Matters, provided the employee in question did not request a public meeting, or
2. Business matters involving consideration of bids or contracts which are privileged or confidential, or
3. Claims by and against the Tribe.

The LRBOI Constitution also states:

Section 6 (g): “Action by the Tribal Council.

1. The Tribal Council shall act only by ordinance, resolution or motion.
2. The Tribal Council action shall be determined by a majority of the quorum present and voting at the meeting, unless otherwise specified in this Constitution, and minutes shall identify each Council Member’s vote on every issue.”

Again, the Court resolved the question of whether or not going into “closed session” is a valid abrogation of Section 6(g)(2), specifically where it states “minutes shall identify each Council Member’s vote on every issue.” *Id.* The Court then clearly stated “no.”

Because we were focusing on the **lack of a resolution** to authorize this suit, the Court’s analysis turned on the definition of “legal matters.” “Legal matters” means all matters of the Tribe wherein the Tribe is, or may be, a party, either directly or indirectly, to a legal proceeding in federal, state, or Tribal court or an administrative forum addressing a matter to which the attorney-client privilege attaches; a matter wherein the Tribe is considering acting in its legal capacity as a party; e.g., purchase of land. Legal matters may be **discussed** by the Tribal Council in closed session pursuant to Article IV, Section 6(d) of the Tribal Constitution.” **Emphasis added.** *See* §3.10 of the Tribal Council Procedures Ordinance, #06-100-02.

The Court’s further stated, “Open, frank discussion and debate is what occurs during closed session. Votes do not. Upon the conclusion of closed session discussions and debate, council votes to move into open session (where there is time) to record the vote of Council. If time does not permit, the matter gets put on the next meeting agenda as per the rules.”² A footnote to this section highlighted the following provision:

² Court Order dated September 27, 2023

“At the conclusion of each closed session, the Tribal Council will discuss whether any portion of the record (i.e. documents or written minutes) of such meeting can be open to the public. Except where the nature of the matter makes disclosure of the decision reached or action recommended following discussion of an item in closed session (i.e. adopting litigation strategy or negotiating position), a record of the decision made or action taken by the Tribal Council should be reported in the minutes and made public. If time permits, action by the Tribal Council should be moved to open session or placed on the agenda for action in open session at a future meeting.” See Article IX, §9.03(e) of the Tribal Council Procedures Ordinance, #06-100-02.

Also as stated in the Order, “legal matters may be *discussed* in closed session. Adopting a litigation strategy or a negotiating position is not the same as authorizing suit, which is an action.”³

Again, Council may **discuss** in closed session, as is the purpose of closed session per laws of this Tribe as analyzed in the Court’s Order dated September 27, 2023. That analysis is *ONLY discussed* here to address the arguments raised in the Motion for a Partial Stay. Tribal Council’s minutes, as stated in the Motion for the Partial Stay, as well as the Constitution and the LRBOI Tribal Council Procedure Ordinance, can remain cordoned off from the general membership, only accessible via review and release of Tribal Council or through an Order from this Court. And while the Court did Order that either the minutes from the closed session meeting on March 8, 2023 or the resolution authorizing this suit be filed with this Court, neither was complied with. Instead, Tribal Council’s first attorney filed a Motion stating that there was no such resolution and that she was there during the meeting and council voted in closed to authorize the suit. At no time were minutes produced to the Court and at no time was even the simple record of the vote provided. It appears that the March 8, 2023 closed session meeting happened almost entirely in the dark, and absent the minute meetings or the resolution, the Court has no valid reason to believe otherwise. Tribal membership *ONLY* knows of this meeting and this agenda item and this vote because of this lawsuit. Those facts were laid out in the Order dated September 27, 2023.

The Tribal Council Plaintiffs argue that harm to them as Defendants is extremely high should they no longer be able to vote in closed session. The Court strongly disagrees for the reasons already stated in its Order dated September 27, 2023. But most importantly, the Court finds that should it issue a partial stay **the harm is not to the Defendant Ogema or to the Plaintiff Tribal Council, but rather to the Tribal Membership.**

Tribal Council is a representative form of government, a body politic that is **ELECTED** by tribal membership. This Court carries immense *Mnaadendimowin*—respect, for this Nation and the PEOPLE from which its sovereignty is born: its tribal members.

Voting in closed, absent a resolution where the vote is recorded (as is how resolutions are drafted), as stated in the Court’s Order dated September 27, 2023, “robs tribal members of certain critical aspects of a representative government: it mutes their vote and their collective voice by stripping them of their ability to know which *elected* council member voted on which

³ Id.

issue and which way they voted.”⁴ Again, the Court finds that the harm that befalls the Tribal Membership is so severe should a partial stay be granted, that it **MUST** be denied.

The Court stands by its original determination and will, with *Dbaadendiziwin*—humility, await the determination of the LRBOI Appellate Court.

B. Addressing Tribal Council Plaintiffs’ Second Argument for the Partial Stay

Tribal Council Plaintiffs additionally raise that because the Court found this case to be frivolous, it cannot involve a Constitutional question, and vice versa. Therefore, according to Tribal Council Plaintiffs, it cannot be frivolous. But this is a red herring. The Court ruled this suit to be frivolous as to Jonathan Hauswirth, who is an individual employee of this Tribe. The Court **DID NOT**, as is noted in the Court’s Order dated September 27, 2023, rule that Tribal Council was to pay the Defendant Ogema’s attorneys fees.⁵ And while the Constitutional argument was raised, it was raised as a defense by the Ogema. Tribal Council never raised it in a pleading until after their first attorney was permitted by this Court to withdraw (well into the case timeline). The Constitutional argument did not require the participation of Jonathan Hauswirth as an individually named defendant, who would have likely been dismissed from this suit had there not been multiple motions asking the entire judiciary to recuse itself (which had to be addressed, clearly, before moving onto the Motions for Summary Disposition).⁶ Here the Court finds that the harm to the Plaintiffs is simply what it costs to litigate: a known risk. Plaintiffs are aware of this, as Plaintiffs are a governing body, which in a general sense, are often involved (mostly by virtue of what it means to govern within legal frameworks) in litigation.

In *Debwewin*—truth, this case was filed to harass the prosecutor from doing his job, which as the Court stated in its Order dated September 27, 2023, is to help “keep this Native Nation safe.” Simply because another party raised a Constitutional argument does not operate as a cancellation of intended purpose in filing suit. The findings of fact in this case were clear, and included a record of pleadings and motions that bolster them. Here, we had an individual defendant file a motion to intervene in this case who also in his own criminal case filed a request for two subpoenas asking the Court for certain employment related information regarding the Prosecutor as well as closed session minutes from November 2020: the same minutes that were in question early on in this case. Minutes that Mr. Champagne, who was not on council at the time, would not have had knowledge of were Tribal Council truly concerned about the harm that could befall it should the minutes of a closed session be released to the general public (which again, is not the issue in this case, because the Court is concerned with the recording of votes either via minutes or via resolution). In the Order dated March 9, 2023 in case No. 22-040-PM, the Court stated, “the mere request for the employment information of the Prosecutor may constitute intimidation, which is impermissible entirely. The chilling effect of having the Prosecutor’s employment questioned by defendants in criminal matters or child welfare matters would be detrimental to the prosecutorial functions of the Office. Such requests, like the one before the Court now, could impact the Office’s ability to carry out one of its key functions: namely, “to protect the Tribal Community.” (LRBOI 11-400-09 §1.03(c)). Of note, this case was filed on May 4, 2023 and the request for the subpoenas on March 7, 2023. Again, Tribal Membership does not need to look to

⁴ See Court’s Order dated September 27, 2023.


⁵ Though it could have has a sanction.

⁶ In the future, the Court will likely require a bond or the production of the insurance policy that will be utilized to cover attorneys fees when individual employees are named when acting in the scope of their employment.

a hypothetical to see why voting in closed session absent a resolution (or otherwise record of the vote—*not the discussion) significantly harms THEIR interests as an informed body of voters. The Court still does not have the meeting minutes from March 8, 2023 (which would be kept under seal) nor a record of the vote in open, nor a record of the vote via resolution.

Motion for Partial Stay is **DENIED** this **30th Day of October 2023**.

DocuSigned by:
Caroline LaPorte
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The Honorable Caroline LaPorte, J.D.
Associate Judge



CERTIFICATION OF SERVICE

I certify that a copy of this order was mailed to all parties and/or their attorneys via email on the below date.

10/30/23
Date

Laurie Welles
Court Clerk/Administrator