



**Little River Band of Ottawa Indians
Tribal Court of Appeals**

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**SARA AGOSA AND,
JOLENE OSSIGINAC (O'SIGNAC)**
Appellants/Plaintiffs,

v.

**OGEMA OF THE LITTLE RIVER BAND OF
OTTAWA INDIANS IN HIS OFFICIAL CAPACITY
(LARRY ROMANELLI)**
Appellee/Defendant.

Case Number: 22-037-AP

Hon. Melissa L. Pope, Chief Justice
Hon. Berni Darrow, Associate Justice
Hon. Bernadene Crampton, Associate Justice

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**ORDER AND OPINION DENYING STAY WITH CLARIFICATION REGARDING STANDING
IN ACTIONS BY TRIBAL CITIZENS THAT CHALLENGE
PERFORMANCE OF CONSTITUTIONAL POSITIONS AND DUTIES**

Appellants and Plaintiffs Sara Agosa and Jolene Ossiginac (O'Signac), ("Appellants-Plaintiffs") are Tribal Citizens of the Little River Band of Ottawa Indians ("LRBOI") who filed a Petition for Temporary Restraining Order (TRO) / Preliminary Injunction ("Stay") in Court of Appeals ("Motion for Stay") to prevent the Ogema from continuing to make financial decisions regarding operation of the

LRBOI business enterprise of the Little River Casino Resort with all briefs on the Motion to Stay submitted to and Oral Argument held before this Court of Appeals.

This Court of Appeals de facto denied the Motion for Stay as it did not issue an order that granted the requested stay. After critical review of the precedent of the LRBOI Court of Appeals, as well as multiple *Opinions* issued by the United States Supreme Court addressing the jurisdiction of federally recognized American Indian Tribes (“Tribes”, “Native Nations”, and/ or “Tribal Nations”) and cases filed with the LRBOI Court of Appeals, both prior to, during, and what is considered after the COVID-19 Pandemic, the Court now issues this *Order and Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties* (“*Order and Opinion*”). A purpose is to address the significant challenges that have arisen from the misinterpretation of *Candace Chapman v. Little River Band of Ottawa Indians and Little River Band of Ottawa Indians Tribal Council*, Case No. 08-023-AP (Decided August 5, 2008) (“*Chapman*” or “*Opinion in Chapman*”) while addressing the stay requested.

This Court of Appeals discussed in detail the requirements for a stay of execution to be issued by the Court of Appeals in the *Opinion on Appellate Motions* issued in *Romanelli as Ogema of Little River Band of Ottawa Indians and Stone v. Little River Band of Ottawa Indians Tribal Council*, Case No. 20-051-AP (*Opinion on Appellate Motions* decided on September 1, 2020), that clarified and established the requirements for a stay as follows:

The Court’s discussion of the requirements in § 5.409 (F) of the LRBOI Appellate Court Rules and previous LRBOI caselaw on motions to stay execution of a Trial Court order, including the use of the four-part test for a preliminary injunction, highlights how all of these interrelated factors and considerations are important for the Court to determine whether to grant a stay. The two-part test in § 5.409 (F) of the LRBOI Appellate Court Rules requires that a stay only be granted when justice so requires and that there is good cause, **with the moving party required to demonstrate** irreversible harm if the stay is not granted under one of the two requirements in the Court Rule or independently pursuant to binding precedent in *Wabsis* and the fundamental necessity of this consideration in granting or denying a stay. Upon review of the applicable Court Rules

and caselaw, it does not appear that an analysis of the case within the context of the four-part test for a preliminary injunction is required other than as it relates to the moving party establishing irreversible harm absent the stay. However, for the reasons discussed in this *Opinion on Appellate Motions*, analysis of these four factors, or three if there is no impact on the public interest, is anticipated as necessary when a party has requested a stay because the information provided through the analysis of this four-part test is fundamental to the overall considerations for deciding whether to grant a stay. It is up to the moving party to determine how they want to frame presentation of the information, including in reference to establishing that there is good cause for and that justice so requires the stay, with the burden on the moving party to meet the requirements of the Court Rules and caselaw. (*Romanelli as Ogema of Little River Band of Ottawa Indians and Stone v. Little River Band of Ottawa Indians Tribal Council*, Case No. 20-051-AP, *Opinion on Appellate Motions* decided on September 1, 2020 at Pages 9 to 10; Bolded language added for this *Order and Opinion*).

This Court of Appeals also noted the following:

It should be noted that this Court found it helpful to change the order of the four-part test for a preliminary injunction when utilizing the considerations for a stay as the discussion of the harm to the parties, weighing that harm, and any harm to the public interest provided insight into the issue of whether the moving party has demonstrated that it is likely to prevail on the merits. The more helpful order of the considerations in establishing irreversible harm, along with additional edits to reflect a request for a stay, whether that showing of irreversible harm is to support the argument for good cause to grant the stay, support the argument that justice requires the stay, or to show irreversible harm as an independent factor required by caselaw is that the Court must evaluate: (1) whether the moving party made the required demonstration of irreparable or irreversible harm, with these terms used interchangeably by this Court of Appeals; (2) whether the harm to the moving party if a stay is not granted outweighs the harm it would cause to the opposing party if the stay were granted, (3) whether there will be harm to the public interest if a stay is or is not issued; and (4) and whether the moving party showed that it is likely to prevail on the merits. (*Romanelli as Ogema of Little River Band of Ottawa Indians and Stone v. Little River Band of Ottawa Indians Tribal Council*, Case No. 20-051-AP, *Opinion on Appellate Motions* decided on September 1, 2020 at Page 18). ("*Romanelli and Stone v. Tribal Council*").

Within the context of the guidance provided in the *Opinion on Appellate Motions in Romanelli and Stone v. Tribal Council*, the Court now turns to the stay requested by the Appellants-Plaintiffs in the present case. The Trial Court issued the *Order After Defendant's Motion to Dismiss for Lack of Standing* that began with Article XI, Section 2(a) of the Constitution as relied upon by the Court of Appeals in its *Opinion in Chapman*:

The Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal officials, acting in their official capacities, shall be subject to suit for declaratory or injunctive relief in the Tribal Court system for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions of the Tribe. The Trial Court also discussed that Chapman involved a suit against Tribal Council, finding that the provision also applied to the Ogema. (*Order After Defendant's Motion to Dismiss for Lack of Standing* at Page 1).

The Trial Court went on to find that the Appellants-Plaintiffs had not met one of the requirements in the two-part test for an LRBOI Tribal Citizen to have standing to file an action based on the principles of this Court's *Opinion in Chapman*: 1) that there is a failure to perform a duty mandated by the Tribal Constitution; and 2) that there is a public harm. (*Order After Defendant's Motion to Dismiss for Lack of Standing* at Page 2). Specifically, the Trial Court stated that:

The Court will first look at the first part of the Chapman test, failure to perform a constitutionally mandated duty. The Court finds that the constitutionally mandated duty here is found in Article V, Section 5(a)(8): 'To manage the economic affairs, enterprises, property (both real and personal) and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council.'

This enterprise, the Little River Casino Resort, is operating and being managed by the Ogema. There has been no showing that the Little River Casino Resort is not operating, or that the Ogema has failed to manage it.

Without a finding of a failure to perform a constitutionally mandated duty, the Court will not look further. (*Order After Defendant's Motion to Dismiss for Lack of Standing* at Page 2).

The Tribal Court, therefore, found that the Appellants-Plaintiffs lacked standing to file this action as “[t]here was no showing that the Little River Casino Resort is not operating, or the Ogema has failed to manage it”, thus “no finding of a failure to perform a constitutionally mandated duty” as required for an LRBOI Tribal Citizen to have standing to file an action pursuant to the *Opinion in Chapman*.

The purpose of a stay of execution is to prevent enforcement of an order of the Trial Court that resolves the case in its entirety or, in some instances, an order that decides a specific issue critical to progression of the case. With the finding that the Ogema had not failed to perform a mandated duty, the Appellants-Plaintiffs' Motion to Stay is problematic as it does not focus on staying the *Order After Defendant's Motion to Dismiss for Lack of Standing* in which the Tribal Court dismissed the case for lack of standing, but rather, attempts to impose requirements not included in the Tribal Court *Order After Defendant's Motion to Dismiss for Lack of Standing*.

The Appellants-Plaintiffs request in their Motion to Stay that the Ogema be prohibited from management of the Little River Casino Resort with their argument grounded in their belief that the Ogema is engaging in “unlawful use of Executive Orders”. (Motion to Stay at page 2). Of critical importance is that the Appellants-Plaintiffs are requesting this sole appellate court to issue an order that would prohibit the Ogema, the head of the Executive Branch, from performing constitutionally mandated duties when there are no findings of fact in the Trial Court proceedings that establish that the Ogema has failed to perform the constitutionally mandated duty of operating and managing the Little River Casino Resort.

Of critical importance is that the Appellants-Plaintiffs are requesting this sole appellate court to issue an order that would prohibit the Ogema, the head of the Executive Branch, from performing the constitutionally mandated duty of operating and managing the Little River Casino Resort when there are no findings of fact in the Trial Court proceedings that establish that the Ogema has failed to perform this constitutionally mandated duty.

The recognition that the Appellants-Plaintiffs are requesting the Court of Appeals to issue an order that would prohibit another branch of government from performing constitutionally mandated duties without a factual basis or Trial Court order relating to the performance of constitutionally mandated duties instead of a stay of the Trial Court's *Order After Defendant's Motion to Dismiss for Lack of Standing* is critical to the analysis for why the stay must be denied. This is highlighted through the four-part test for a preliminary injunction that may be utilized to analyze "[t]he two-part test in § 5.409 (F) of the LRBOI Appellate Court Rules that require that a stay only be granted when justice so requires and that there is good cause with the moving party required to demonstrate irreversible harm if the stay is not granted under one of the two requirements in the Court Rule or independently pursuant to binding precedent in *Wabsis* and the fundamental necessity of this consideration in granting or denying a stay" as established in the *Opinion on Appellate Motions in Romanelli and Stone v. Tribal Council* (Pages 9 to 10). The use of the word "only" communicates that the requirements are both mandatory for a stay with these two requirements being that justice requires the stay and that there is good cause to grant the stay. To prove good cause, the moving party must demonstrate irreversible harm if the stay is not granted. One avenue for achieving this requirement is to provide an analysis of the four-part test for a preliminary injunction with the Appellants-Plaintiffs unable to do so in relation to the Trial Court *Order After Defendant's Motion to Dismiss for Lack of Standing*.

It should be further noted that in any motion for a stay, the moving party must provide clear and concise explanations of their specific allegations that are supported by the evidence presented. In a Tribal Citizen's action against a constitutionally created position, that would require clear and concise arguments based on the evidence presented that show the individual is failing to perform specific constitutionally mandated duties. In an action filed in the Tribal Court or an appeal filed in this Court of Appeals, general allegations or allegations that are grounded in the argument that different decisions or approaches would be better or better align with policies or procedures are not sufficient.

To clarify for future cases, a motion for stay to this Court of Appeals must directly relate to the content of the Trial Court order. Pursuant to § 5.409 (F) of the

LRBOI Appellate Court Rules, the moving party must make clear and concise arguments that demonstrate both that justice requires that a stay be granted and that there is good cause for the stay with good cause requiring that the moving party must show they will suffer irreversible harm if a stay of the Trial Court order is not granted. A moving party may demonstrate irreversible harm through analysis of the four-part test for a preliminary injunction with the clear and concise analysis requiring inclusion of a factual basis in the Trial Court record for the allegations for how justice requires the stay and that irreversible harm will occur absent issuance of a stay. It should also be noted that the analysis of the irreversible harm that the moving party will allegedly experience without a stay must be balanced against the harm that the non-moving party will allegedly suffer if the stay is granted.

The Separation of Powers Doctrine must also be discussed due to the substance of the case. Issuing an order that prohibits a constitutionally created position from performing constitutionally mandated duties is an extremely serious action for the Court to consider. The LRBOI Constitution is the supreme law of this sovereign Native Nation. Infringement on the performance of constitutionally mandated duties must be carefully considered based on thorough, succinct, and well-defined arguments that are rooted in the evidence presented in the Trial Court, as well as the orders of the Trial Court. The failure of the Court to engage in careful analysis that evaluates the requirements for a stay when faced with a request to prohibit performance of constitutionally mandated duties puts the Court at risk for violating the Separation of Powers Doctrine that, in part, ensures the checks-and-balances of this Tribal Government.

In the present case, the risk for violating the Separation of Powers Doctrine is significant for several reasons. To begin, the requested stay does not relate to the content of the *Order After Defendant's Motion to Dismiss for Lack of Standing* with the case dismissed for lack of standing because there was "no showing that the Little River Casino Resort is not operating, or that the Ogema has failed to manage it". Although previously discussed, it is critical to understand that the Appellants-Plaintiffs are requesting this Court to issue an order and not a stay. This would be problematic in any circumstance but is especially problematic here as it relates to the performance of duties mandated by the Constitution, the supreme

law of the land. In the present case, the Appellants-Plaintiffs ask this Court to issue an order, referenced as a stay to reduce confusion unless use of the term “order” is needed, that would prohibit the Ogema from performing duties mandated by the Constitution without presenting clear and concise arguments supported by a factual Trial Court record and order that meet the burden required for a stay. Specifically, the Appellants-Plaintiffs do not establish that justice requires the requested stay or that there is good cause for the stay, including failing to relate the requested stay to the Trial Court to demonstrate that they will experience irreversible harm that is greater than the harm of not granting the stay. There are two harms to balance in the present case. The first is the harm of the constitutionally created position of Ogema being prohibited from performing the duties the Ogema is mandated to perform by the Constitution. The second harm is the Court issuing an order prohibiting the performance of constitutionally mandated duties for the same reasons articulated above of failing to relate the stay to the Trial Court *Order After Defendant's Motion to Dismiss for Lack of Standing* or provide clear and concise arguments that are supported by the evidence and orders of the Trial Court in potential violation of the Separation of Powers Doctrine as the order would prohibit a position created by the Constitution from performing duties mandated by the Constitution.

With the Appellants-Plaintiffs Motion for Stay not a request to prohibit enforcement of the Tribal Court's *Order After Defendant's Motion to Dismiss for Lack of Standing*, the requested order not based on the factual record of the Tribal Court proceedings, and granting the order requested in their Motion to Stay a potential violation of the Separation of Powers Doctrine, the Appellants-Plaintiffs cannot establish that the harm to the moving party if a stay is not granted outweighs the harm it would cause to the opposing party if the stay were granted or whether there will be harm to the public interest if a stay is or is not issued.

With regard to the final consideration of the moving party showing that it is likely to prevail on the merits, we turn to the issue of standing for LRBOI Tribal Citizens to file actions under the *Opinion in Chapman*. The present case, as well as cases filed with the Tribal Court and this Court of Appeals prior to and during the Pandemic, involve the analysis by individual LRBOI Tribal Citizens of how

individuals and bodies perform duties they are constitutionally mandated to perform. This was not the intent of the *Opinion in Chapman*.

The *Opinion in Chapman* was not intended to authorize LRBOI Tribal Citizens to file suit against government officials under Article XI, Section 2(a) of the Constitution because they disagree with actions these officials have taken. The issue in *Chapman* was both narrow and specific. Chapman filed suit because Tribal Council was constitutionally mandated to take a two-step vote when the LRBOI Judiciary refers a Member of the Judiciary to Tribal Council for removal. This Court permitted standing solely to require Tribal Council to take the two votes they were mandated to take with the content of those votes not a consideration for this Court. Put another way, the Court had the authority to order that Tribal Council take the two votes mandated by the Constitution but not the outcome of those votes as to whether those votes resulted in the removal of that Member of the Judiciary.

It should be noted that this Court's interpretation of limited circumstances where Article XI, Section 2(a) of the Constitution authorizes LRBOI Tribal Citizens to file suit is supported by this constitutional provision as it only permits suits involving declaratory and injunctive relief.

In issuing this *Order and Opinion Regarding Standing*, this Court stresses the narrow application for standing in *Chapman*. In contemplating filing suit, appealing the denial of standing, or continuing an appeal, LRBOI Tribal Citizens should critically analyze the facts of their case to determine if they have standing to file suit. The specific requirement for a Tribal Citizen to file a case pursuant to Article XI, Section 2(a) of the Constitution is that a constitutionally created position is not performing duties mandated by the Constitution and that the request for relief involves declaratory or injunctive relief. *Chapman* provides a meaningful example of the failure to perform a constitutionally mandated duty with Tribal Council failing to take the two votes required when considering removal of a Member of the Judiciary pursuant to the recommendation of the LRBOI Judiciary. *Chapman* also illustrates the requirements for declaratory or injunctive relief with the Court having the authority to issue an order requiring Tribal Council to take the two mandated votes, but not the content of Tribal Council's decision of those two votes declining

to remove the Member of the Judiciary in question, despite the Tribal Citizen's sincere and genuine belief that Tribal Council was required to remove the Member of the Judiciary.

The above considerations provide guidance for a deeper understanding and analysis of the two-part test for LRBOI Tribal Citizens to have standing to file an action pursuant to the interpretation of the constitutional requirements in *Chapman* of 1) a failure to perform a duty mandated by the Tribal Constitution; and 2) that there is a public harm.

During Oral Argument, the Appellants-Plaintiffs expressed concern about their arguments being categorized as their beliefs or opinions. However, the performance of actions by individuals working within any government – here “[t]he Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal Officials, acting in their official capacities” – involves actions based in the beliefs and opinions of the individual performing their constitutionally mandated duties. The beliefs and opinions of these individuals who hold governmental positions created by the Constitution provide the foundation for the daily actions they take to fulfill the mandates of the Constitution. In the Tribal Justice System, the Court of Appeals, the sole appellate body, interprets the Constitution, LRBOI laws, LRBOI precedent, and federal law where applicable to decide the questions presented through the appeals filed, ultimately issuing an “order and opinion”. The Court, therefore, does not intend to diminish the opinions of any person in explaining the standards that must be met for a Tribal Citizen to bring an action against a constitutionally created position with constitutionally mandated duties.

Although a well-known principle, especially among the parties in this case, the Court notes for all those who read this *Order and Opinion* that Citizens of any democratic nation have the ability to highlight their concerns, question government officials, and otherwise engage in the political process with one of the most important rights and responsibilities being that of the right to vote. In addition, there are multiple avenues within the processes established by the LRBOI Constitution, and LRBOI laws, policies, and procedures that provide LRBOI Tribal Citizens with the opportunity to be heard and influence the outcomes of their government with

the opinions of LRBOI Tribal Citizens crucial to this Native Nation flourishing for the next Seven Generations.

CONCLUSION


A motion for stay to this Court of Appeals must directly relate to the content of the Trial Court order. The moving party must make clear and concise arguments that demonstrate both that justice requires that a stay be granted and that there is good cause for the stay with good cause requiring that the moving party must show they will suffer irreversible harm if a stay of the Trial Court order is not granted. A moving party may demonstrate irreversible harm through analysis of the four-part test for a preliminary injunction with the clear and concise analysis requiring inclusion of a factual basis in the Trial Court record for the allegations for how justice requires the stay and that irreversible harm will occur absent issuance of a stay. Analysis of the irreversible harm that the moving party will allegedly experience without a stay must be balanced against the harm that the non-moving party will allegedly suffer if the stay is granted.

The Separation of Powers Doctrine is a consideration in motions for a stay in actions filed by Tribal Citizens pursuant to Article XI, Section 2(a) of the Constitution. Issuing an order that prohibits a constitutionally created position from performing constitutionally mandated duties is an extremely serious action for the Court to consider. The LRBOI Constitution is the supreme law of this sovereign Native Nation. Infringement on the performance of constitutionally mandated duties must be carefully considered based on thorough, succinct, and well-defined arguments that are rooted in the evidence presented in the Trial Court, as well as the orders of the Trial Court. The failure of the Court to engage in careful analysis that evaluates the requirements for a stay when faced with a request to prohibit performance of constitutionally mandated duties puts the Court at risk for violating the Separation of Powers Doctrine that, in part, ensures the checks-and-balances of this Tribal Government.

The requirements for a Tribal Citizen to have standing to bring an action against a constitutionally created position that is required to perform specific duties mandated by the Constitution is narrow in application, in part so these individuals

may perform their duties without fear of frequent litigation. For a Tribal Citizen to have standing pursuant to Article XI, Section 2(a) of the Constitution and as relied upon by the Court of Appeals in its *Opinion in Chapman* and further explained in this *Order and Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties*, there must be a failure to perform a duty mandated by the Tribal Constitution and there must be a public harm with the relief sought either declaratory or injunctive relief. In a Tribal Citizen's action against a constitutionally created position, clear and concise arguments based on the evidence presented that show the individual is failing to perform specific constitutionally mandated duties is required. Whether an action filed in the Tribal Court or an appeal of a Tribal Court order, general allegations or allegations that are grounded in the argument that different decisions or approaches would be better or better align with policies or procedures are not sufficient. The Separation of Powers Doctrine should be a consideration in cases before the Trial Court, as well as in an appeal, including if a request for stay is requested as discussed above, in cases filed by Tribal Citizens pursuant to Article XI, Section 2(a) of the Constitution.

IT IS HEREBY ORDERED:



Hon. Melissa L. Pope, Chief Justice

2.15.2024
Date



Hon. Berni Darrow, Associate Justice

2-15-2024
Date



Hon. Bernadene Crampton, Associate Justice

2-15-2024
Date

LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT	PROOF OF SERVICE	Case No: LRBOI 22-037-AP
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In the matter of Agosa and Ossiginac (O'Signac) v Ogema Romanelli of LRBOI

2. Titles of the papers served or mailed: Order and Opinion Denying Stay with Clarification Regarding In Actions By Tribal Citizens That Challenge Performance of Constitutional Positions And Duties

3. According to court rule, I served the papers described above by email or first class mail or hand-delivered registered mail (copy of return receipt attached) certified mail (copy of return receipt attached)

Name	Complete address of service	Date
Sara Agosa	755 Alfa Court, Apt. 1-D Portage, MI 49002 saraagosa@gmail.com	02/15/2024
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I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date: 2-15-24


Signature