

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Tribal Court



Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

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TRIBAL COURT

Case No: C-158-0713

Gerald V. Chingwa

Plaintiff,

vs.

Little Traverse Bay Bands of Odawa Indians Election Board

Defendant.

ORDER FOLLOWING SHOW CAUSE HEARING

INTRODUCTION

A show cause hearing was held on July 19, 2013 before the Hon. Jocelyn Fabry, Little Traverse Bay Bands (LTBB) of Odawa Indians Judge *pro tem*. Present at the hearing were Gerald V. Chingwa, Plaintiff, and Carlos Alvarado, Attorney for the Defendant. The Court must determine whether to granted the relief requested by the plaintiff regarding an election challenge to the June 24, 2013 General Election. Due to the plaintiff's failure to state a claim upon which relief could be granted, the Court hereby denies the request of the plaintiff. The analysis and holding of the Court follows.

FACTUAL FINDINGS¹

On June 24, 2013, the LTBB conducted its bi-annual General Election. The Plaintiff was a candidate for the office of Tribal Council. Votes were counted mechanically and a hand tally was made regarding votes the machine rejected through the mechanical process. Upon completion of the first count, the Poll Officials determined that there was a two-vote difference between Mr. Aaron Wayne Otto, who received 327 votes, and the Plaintiff, who received 325 votes. (Def's Ex. A.) The less than one

¹ The parties stipulated to the facts on the record.

percent difference between the vote totals triggered an automatic recount under the Tribal Election Regulations (“Regulations”).

The LTBB Election Board (“Election Board”), following the procedures outlined in the Regulations, proceeded to conduct a second count utilizing a second certified machine. The mechanical recount, along with the hand tally of these machine-rejected votes, resulted in Mr. Otto receiving 326 votes and the Plaintiff receiving 325 votes. (Def’s Ex. B.) Due to the close margin, the Election Board conducted a third count, this time by hand, which confirmed Mr. Otto’s advantage of one vote over the Plaintiff as found in the recount. Having completed the procedures mandated by the Regulations, the Election Board signed and executed the proper preliminary non-certified results. (Def’s Ex. C.) The Plaintiff did not have a Poll Watcher present during the counting of the ballots as allowed by the Regulations, nor did he make a request of the Election Board to view the ballots after they were counted.

DISCUSSION

On July 2, 2013, within the 10-day period following an election allowed under the Constitution, the Plaintiff filed a complaint before the Court requesting that the “LTBB Election Board give primary credence to the voting machine tally that indicates a tie vote. In the event that ballots must be recounted, I request that all ballots be recounted by voting machine and I request to review all ballots counted and those determined by Election Committee as invalid to be reconsidered.” (Pl’s Compl. at 1.)

During the hearing, the Plaintiff clarified for the Court what relief he was requesting. Specifically, the Plaintiff requested that the Court order the Election Board to conduct another count of the ballots to identify the ballots cast and allow the Plaintiff to examine any ballots found by the Election Board to be invalid and those rejected by the machine and counted by hand. The Plaintiff expressly disavowed any allegations that the Election Board’s process for conducting elections and counting ballots, as exercised in this case, violated the Tribal Constitution, Wanagakising Odawak Statute, or the Regulations. Instead, he indicated he simply had concerns that a mistake was made given that the original count and the first re-count had differing results.

Pointing out that the Plaintiff did not object to the Election Board’s procedures in this case or otherwise object to election process as a matter of law, Mr. Alvarado requested the Court to dismiss the Plaintiff’s challenge to the election results contained in the preliminary non-certified results for lacking cause.

As an initial matter, the Plaintiff’s Complaint appears to be without merit. The LTBB Constitution mandates that the Election Board shall “adopt rules and regulations governing elections . . .” LTBB CONST., Art. XI(A). Consistent with its Constitutional responsibilities and authority, the Election Board has adopted regulations establishing rules and procedures for tribal elections, including procedures for challenging election results. Pursuant to both the Constitution, Article XVII(F) and to the Regulations, Section XI(D), “[a]ny registered voter of the Tribe may challenge *for cause* the results of

any election by filing a written challenge with the Tribal Court within (10) days after the Election Date.” The Regulations provide that election results having a margin of less than “one percent shall be subject to a recount.” R. at XII(C)(4). When recounting ballots as provided for by the Regulations, the Election Board has the “authority to utilize the same machine, a second machine . . . or to complete the recount through a hand count.” *Id.* Following a recount, the Election Board must “verify the new count and will issue the results of the recount as preliminary non-certified results.” *Id.*

In order to establish a claim against the Election Board or election process, a Tribal citizen must file a challenge “for cause.” *Id.* Put differently, a Tribal citizen challenging election results must show that any part of the election process was inconsistent with the LTBB Constitution, Regulations, or Waganakising Odawak Statute. Here, the Plaintiff has failed to make such a claim. On the contrary, the Plaintiff acknowledges that the process by which the Election Board conducted the June 24, 2013 Tribal Council Election was consistent with the Regulations, LTBB Constitution, and Waganakising Odawak Statute. Instead of claiming that the election process or Election Board violated any legal obligations owed to the Plaintiff or in general, the Plaintiff requests, among other things, relief on the grounds that another recount might lead to a different result. As conceded by the Plaintiff, however, the Election Board has complied with the relevant law and Regulations regarding the recount process. Therefore, absent any allegations to the contrary, the Plaintiff’s Complaint must be dismissed as lacking cause.

CONCLUSION

Because the Plaintiff failed to state a claim for which relief can be granted as he does not cite specific conduct which violates any applicable law, the Court hereby **DISMISSES** Plaintiff Gerald V. Chingwa’s election challenge against Defendant LTBB Election Board.

IT IS SO ORDERED.

7/22/13
Date

Jocelyn Fabry, LTBB Tribal Court Judge *pro tem*