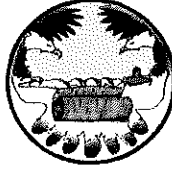


**Little Traverse Bay Bands of Odawa Indians
Tribal Court**

Court Mailing Address:
7500 Odawa Circle, Harbor Springs, Michigan 49740
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Tamela Okuly-Shananaquet,
Plaintiff,

vs.

LTBB Election Board,
Defendant.

)
)
) **Case No.: C-226-0517**
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)
)

) **Opinion after Order on Challenge to Little**
) **Traverse Bay Bands of Odawa Indians**
) **Tribal Primary Election**

OPINION

Pursuant to the Order of this Court dated May 25, 2017, the following Opinion is submitted.

SUMMARY OF PROCEEDINGS

Plaintiff Tamela Okuly-Shananaquet filed a challenge to the Little Traverse Bay Bands of Odawa Indians Primary Election held Monday May 8, 2017, on May 17, 2017. Plaintiff/Challenger has stated in her complaint that the Election results were tainted because of too many questionable discrepancies. The Plaintiff/Challenger listed 15 particular items to be considered. She requests as relief a new election as well as reimbursement of expenses. Also included in the request is that charges be filed against any individual who purposely tampered with election process.

A hearing on the Challenge was held May 24, 2017. Present in Court was Plaintiff/Challenger Tamela Okuly-Shananaquet. The Tribal Election Board was represented by Carlos Alvarado-Jorquera. Also appearing for the Election Board was Chairperson Carol Quinones.

The Court heard from the Plaintiff/Challenger on each enumerated item in her Complaint. Counsel for the Election Board, as well as its Chairperson, were allowed to respond. Although the hearing was not testimonial, the parties were able to express their views, concerns, and attendant explanations for their differences.

TRIBAL LAW

The Court will rely on the following applicable Tribal law:

The Constitution of the Little Traverse Bay Bands of Odawa Indians (LTBB) sets forth an election process to ensure orderly selection of Tribal leaders. (Article XII Elections).

The Constitution provides for an Election Board, created as an independent entity to govern all general and special elections. This Board can adopt its own regulations and procedures to carry out their responsibility. (Article XI Election Board).

The Constitution specifies requirements for Tribal voter registration and dissemination of ballots to said registered voters. (Article XII Section D).

The Constitution also directs the method of Election certification, both unofficial and final certification. (Article XII Section E).

The Constitution allows Challenges for Cause the results of an election by filing a written challenge. (Article XII Section F).

The Election Board, pursuant to the LTBB Constitution, is governed by Statute as to its composition, duties, and responsibilities. (WOS 2012-020).

The Election Board has promulgated its Regulations and attendant policies and procedures. (Election Board Action February 6, 2016).

Tribal Court Rule of Civil Procedure provides “i. ...hold a show cause hearing, in which Plaintiff must establish that the Challenge of Election Results is a claim upon which relief can be granted. In order to demonstrate this to the Court, the Plaintiff must allege facts with sufficient specificity to demonstrate the Challenge of Election results is plausible on its face, not merely conceivable...”. (Rule 1, Section 3(c)).

Based on this language, the Plaintiff/Challenger is subject to a hearing to show cause why her request, specifically for a new election, should be granted. This language allows the Court to implicitly, if not explicitly, presume that the Election Board performed its duties as required.

SUMMARY OF RECORD AND FINDINGS OF THE COURT

The Court allowed the Plaintiff/Challenger to present, explain, and/or discuss each specific item in the written challenge. The Defendant Election Board was allowed to respond if desired. The following is a summary with attendant findings as understood by the Court.

Item 1. A citizen was directed to recast his vote. The Election Board acknowledged that a voter was allowed to recast a ballot to correct same. The court finds this action consistent with Election Board Regulation X (B) (6) for replacement ballots.

Item 2, 3, and 4. Reference was made to a candidates' forum and perceived difficulties encountered by Plaintiff/Challenger and her team. These included seating, time allotted for comments, and inappropriate questions. The existence of a forum for candidates is not an election requirement. And while the actions in conducting the forum may seem unfair to this candidate, or all the candidates, its impact on this or any election is too speculative to conclude that the election outcome was affected.

Item 5. The totals on the unofficial ballot sheets have differences. This issue is dealt with in a subsequent item.

Item 6. No pencils were used at the election stations. Although directions given for filling in the ballot were to use no.2 pencil, the Election Board represented that felt tip markers were just as effective, and the Court is satisfied with that representation.

Item 7. Spoiled ballots totaling 44. These were acknowledged by the Election Board as ballots that were not machine acceptable, and were to be hand tallied. These ballots were examined to determine intent and then tallied. The Court cannot find any impropriety in such action. See Election Board Policies and Procedures XIII E and H.

Item 8, 9, and 10. This portion of the Challenge involves the mailing of the ballots. Questions arose as to the mailing addresses of voters. A claim is made that not all registered voters received ballots, that completed ballots were returned without time to resend and be counted, and informational pamphlets were returned to the candidate. The main issue was the proper address of the registered voter. The Election Board recognized difficulties with citizens moving and not updating addresses. They informed the Court that Enrollment records are used, and their best efforts are made to get ballots out. The Election Board also stated that ballots can be voted in person if necessary, and a regulation even allows for hand delivery to the voter/citizen if practical.

This area of the Election process is difficult for all candidates, as well as the Election Board. Much of the process depends upon the registered voter/citizen himself/herself. The Court observes that the notices of elections are laid out clearly for the Tribal members, and some responsibility lies on them to make sure they get a ballot timely. This would include the citizen making certain of the address on file, or contacting the Election Board in person as allowed in the Regulations. (Regulation X (A) (4) and (7)). Thus, the Court cannot find it plausible that the problems with notices is of such magnitude that a new election should be held.

Item 11. This item concerned "Politicking" during official activity during work hours. Plaintiff/Challenger stated that she had reported such occurrence to the appropriate authority. This allegation was not further developed as to any impact on the election. The Court is satisfied that there was no certain impact on the conduct of the election, or the election results. Whatever else occurs as to the allegations, is left to the Tribal Administrators.

Item 12. This item was used to remind the reader, whether the Candidate, Election Board, or the Court, of time limits to resolve the issues.

Item 13 and 14. These items involved "Facebook" sharing of unofficial election results. The allegation is that the Election results had been "Tainted/Contaminated" because the results appeared on Facebook before the Election Board had performed their constitutionally mandated duties. This occurrence was fully acknowledged by the Election Board as something that should not have happened. The Board has indicated that they will look at the policies and procedures to ensure that this does not happen again. They insisted however, that the Board performed their duties to disseminate the unofficial results without affecting those results in any way. The Plaintiff/Challenger did indicate that this all occurred after the voting was complete and the results had been tabulated.

This Court cannot ignore the impact of social media on important Tribal affairs. The LTBB Tribe uses such means as Facebook and Twitter to announce, publicize, report, and interact with the various organizations and individuals within and outside the Tribe. To have conversation on social media about results of an important Tribal function such as an election should not be surprising.

However, the Election Board has specific delineated duties under the Constitution, Statute, Regulations and procedures. While these duties were performed as required, the early release of information, no matter how innocently done, leaves an appearance of impropriety when done outside the rules. The Court notes that the appearance of impropriety does not mean that something improper in fact occurred. The Court could not discern any direct impact on the election results and is satisfied that the Election Board performed their required duties.

Item 15. (See also item 5) This item points to the different posted totals on Unofficial /Non-Certified election results. Obviously, this is entitled to the most focus and scrutiny of the Tribe and the Court. Plaintiff/Challenger need only point to the results posted on Facebook (see above), and the results certified by the entire Election Board to note the difference. In explanation, the Election Board asserts that the "hand tally" ballots had not been included in the Facebook posted sheet, and the only numbers affected were the voter participation tallies used to show the percentage of registered voters who actually voted. The Election Board noted that the upper tallies did not vary in the two sheets, and were in fact the correct totals and were signed by the members of the Board.

The Court examined the tally sheets presented by the Challenger and acknowledged by the Election Board Chair. The upper tallies were identical and the explanation for the difference on the voter percentage participation (hand tallies) was adequate. Therefore, the Court is satisfied with the explanation, and further, that the early release of information did not affect the outcome of the election.

