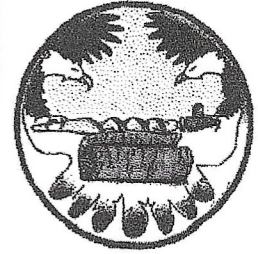


**LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS**

**Tribal Court
Civil Division**



Court Mailing Address: 911 Spring St., Petoskey, MI 49770

Phone: 231-242-1462

REGINA GASCO-BENTLEY, in her official
capacity as TRIBAL CHAIRPERSON OF THE
LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS,

Plaintiff,

v.

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS TRIBAL COUNCIL in its
official capacity,

Defendant.

Case No.: C-233-0918

Hon. Allie Greenleaf Maldonado

**ORDER GRANTING MOTION
FOR SUMMARY DISPOSITION**

ORDER GRANTING MOTION FOR SUMMARY DISPOSITION

The Tribal Court must determine whether to grant the Plaintiff's Motion for Summary Disposition. The Tribal Chairperson ("Plaintiff") claims the Tribal Council ("Defendant") violated her constitutional right as Tribal Chairperson to submit nominations for appointed positions on Tribally-chartered corporations and other subordinate Tribal entities. The Court finds that the Tribal Constitution is plain and unambiguous on this matter. The appointment process set out in the Tribal Constitution consists of Tribal Chairperson nomination and Tribal Council appointment to all appointed positions, including those on Tribally-chartered corporations and other subordinate Tribal entities. As this is a legal question

and there is no genuine issue of material fact, the Court GRANTS the Plaintiff's Motion for Summary Disposition and finds all practices inconsistent with this opinion to be unconstitutional.

I. ISSUE

The parties seek disposition of a single question: whether the Tribal Chairperson has the constitutional right to nominate for positions on Tribally-chartered corporations or other subordinate Tribal entities under any of the following constitutional provisions:

- LTBB Const. art. VIII, § C, cl. 3
- LTBB Const. art. VII, § D, cl. 16
- LTBB Const. art. VII, § D, cl. 24

Stipulation to the Question at 1-2. The parties listed the following Tribally-chartered corporations and other subordinate Tribal entities in their Stipulation: American Indigenous Sovereign Funds (WOS 2019-001), Odawa Aviation Corp. (WOS 2018-017), Gaming Authority (WOS 2018-016), Odawa Economic Affairs Holding Corp. (WOS 2018-015), Odawa Construction Corp. (WOS 2018-014), Odawa Construction Administration Holding Corp. (WOS 2018-009), Ziibimijwang, Inc. (WOS 2014-005), Odawa Economic Development Management (WOS 2009-024), and Traditional Tribal Burial Board, Inc. (WOS 2009-018). *Id.* at 1 (statutory references added).

The Court understands this to be a non-exhaustive list of examples because of the grammatical structure of the Stipulation itself, which embeds the list in a paragraph, encloses it in parentheses, and excludes reference to the statutes and charters that created the listed entities. The parties' briefings also have not produced a conclusive list of entities. The Court, therefore, does not read the Stipulation as a request to analyze specific statutes or determine which ones in fact exclude Executive nomination. Rather, the parties have asked the Court to determine whether the Tribal Chairperson's nomination power extends to the kinds of subordinate Tribal entities listed.

II. JURISDICTION

The Court has jurisdiction to hear the question before it because both parties are real parties in interest, LTBBRCP IX(1), the issue is one of constitutional interpretation, and there has been a clear and express waiver of the Tribe's sovereign immunity. The Tribal Court's judicial power "extend[s] to all civil and criminal cases arising under this Tribal Constitution, statutes, regulations or judicial decisions" and consists of "the power to interpret the Constitution and laws" of the Tribe. LTBB Const. art. IX, § C, cl. 1-2. However, this constitutional jurisdiction is not in itself a waiver of sovereign immunity of the Tribe, LTBB Const. art. IX, § C, cl. 4, as the Tribe and its subordinate entities are "immune from suit except to the extent that the Tribal Council clearly and expressly waives its sovereign immunity," LTBB Const. art. XVIII, § A. Therefore, "the Judiciary has the power to interpret the Constitution and hear claims invoking constitutional rights, but only if a valid waiver of the Tribe's sovereign immunity applies." *LTBB Gaming Regulatory Comm'n v. Roberts*, No. A-018-0811 at 14 (LTBB Ct. App. Dec. 20, 2012).

A clear and express waiver of sovereign immunity has been provided by Tribal Council in the parties' Stipulation, which states, "[i]n consideration of the consensus of the parties . . . Tribal Council agrees to provide a limited waiver of sovereign immunity for the disposition of the above stated question." Stipulation to the Question at 2. The Court must determine the scope of this limited waiver. In *Roberts*, the waiver of sovereign immunity at issue was embedded in Tribal Council-approved regulations. No. A-018-0811 at 5. The Appellate Court interpreted that waiver to strictly limit the Tribal Court's review of administrative hearings to that set out in the regulations, which only allowed for findings based on procedural error. *Id.* Absent any separate waiver of immunity, the court was limited to this narrow review. *Id.*; *see also McGraw v. Colby*, No. A-030-1115 at 6 (LTBB Ct. App. Oct. 1, 2015) ("In deference to the Council's determination, waivers of sovereign immunity are strictly construed."); *Library of Congress v. Shaw*, 478 U.S. 310, 318 (1986) ("In analyzing whether Congress has waived the

immunity of the United States, we must construe waivers strictly in favor of the sovereign, and not enlarge the waiver beyond what the language requires.” (citations omitted)).

In the present matter, the only waiver of sovereign immunity is provided in the parties’ Stipulation, and it is limited to “the disposition of the above stated question.” Stipulation to the Question at 2. This Court’s jurisdiction and review, therefore, is strictly limited to the parties’ stipulated question: whether the Tribal Chairperson has the constitutional right to nominate for positions on Tribally-chartered corporations or other subordinate Tribal entities. *Id.* at 1. In light of the narrow Stipulation and the waiver of sovereign immunity thereto, the Court acknowledges that this opinion may leave additional questions unanswered and matters raised in briefing unaddressed.

III. BACKGROUND

The Plaintiff in her official capacity as Tribal Chairperson filed her initial Complaint against the Defendant in its official capacity as Tribal Council on September 14, 2018 in response to the Gaming Authority statute (WOS 2018-016). *See* Pl. Compl. ¶ 17-18. The Defendant passed the Gaming Authority statute on July 12, 2018. Pl. Compl. ¶ 16. The Plaintiff vetoed the statute on August 10, 2018, and on September 12, 2018 the Defendant overrode the Plaintiff’s veto. Pl. Compl. ¶ 17, 20. The Plaintiff’s opposition to the statute, as laid out in her veto statement and subsequent complaint, was based on the Defendant’s exclusion of a nomination provision, which prevented the Plaintiff in her capacity as Tribal Chairperson from nominating candidates for the appointed management positions on the Gaming Authority, a subordinate Tribal entity. *See* Pl. Compl. ¶ 15, 18; Pl. Compl. Ex. A at 2. The Plaintiff followed her Complaint with an Emergency Motion for Entry of Ex Parte Temporary Restraining Order on September 20, 2018, seeking to stop the implementation of the Gaming Authority statute. Pl. Mot. for T.R.O. The motion was denied by a court order signed on September 25, 2018. Order Den. Mot. for T.R.O.

The Defendant issued an Answer to the Plaintiff's Complaint on October 2, 2018, arguing that the Tribal Constitution did not mandate Executive appointments for all appointed positions, but only for those that Tribal Council chose to assign to the Executive. Def. Answer at 3. The Defendant's Motion to Dismiss from the same date argued lack of subject matter jurisdiction under LTBBRCP XVI(b)(1) and failure to state a claim upon which relief could be granted under LTBBRCP XVI(b)(6), arguing that Tribal Council's sovereign immunity barred the suit. Def. Mot. to Dismiss ¶ 1-2. The Plaintiff submitted a Response to the Motion to Dismiss on October 19, 2018, as well as a request to amend her Complaint and correct the caption to reflect that the Defendant Tribal Council members were also being sued in their individual capacities. Pl. Mot. to Amend Compl.

A hearing was scheduled for November 7, but on October 31, 2018, the parties requested to adjourn the hearing to provide more time to resolve and clarify the issues before the Court. Stipulation to Cont. Hr'g on Mot. to Dismiss. On November 8, 2018, this Court granted dismissal of the complaint against the Defendant Tribal Council members in their individual capacities, and granted the requested moratorium for sixty days to give the parties still more time to resolve and clarify the matter. Order to Dismiss Compl. and Moratorium. The moratorium was continued on December 21, 2018 and again on February 7, 2019. Orders Granting Stipulation to Cont. Moratorium.

On February 22, 2019, the parties issued a Stipulation to the Question Presented to the Court and Limited Waiver of Sovereign Immunity. This document clarified the question and constitutional provisions at issue, named nine examples of applicable subordinate Tribal entities, and removed any potential jurisdictional barrier of sovereign immunity as to the question presented. Stipulation to the Question. On March 22, 2019, the Plaintiff submitted a Motion for Summary Disposition, arguing that she is entitled to judgment as a matter of law. The Defendant's Reply to the Motion for Summary Disposition was submitted May 6, and the Plaintiff's Rebuttal came on May 22. The parties appeared before the Court for oral arguments on the motion on May 28, 2019.

IV. STANDARD OF REVIEW

A. Summary Disposition

Summary disposition “shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” LTBBRCP XVII. The LTBB rule closely mirrors both the Federal Rules of Civil Procedure and the Michigan Court Rules.¹ *See* Fed. R. Civ. P. 56(a); MCR 2.116(C)(10); *see also McGraw v. Colby*, No. A-030-1115 at 3-4 (LTBB Ct. App. Oct. 1, 2015). A motion for summary disposition requires the court to consider all evidence presented by the parties to determine whether a dispute of fact exists. *See McGraw*, No. A-030-1115 at 3. The moving party “always bears the initial responsibility of informing the [] court of the basis for its motion, and identifying those portions of the [filings] which it believes demonstrate the absence of a genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party meets this initial burden, it falls to the nonmoving party to show that there is still a genuine issue of material fact. *McGraw*, No. A-030-1115 at 3 (citation omitted). Facts are “material” only if they have the ability to affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In reviewing a motion for summary disposition, the court is required to draw all inferences from the evidence presented in the light most favorable to the nonmoving party. *Id.*

In this case the moving party, the Plaintiff, has met its initial burden by showing that it is entitled to judgment as a matter of law. The Plaintiff correctly notes that the parties have stipulated to a legal question of constitutional interpretation. Pl. Rebuttal at 3. The only facts material to this question might arise if the parties disputed whether the statutes at issue truly excluded Executive nomination, or if the parties alleged constitutional ambiguity sufficient for the court to extend its review to legislative history

¹ The Court notes that references to rules and cases from other jurisdictions throughout this opinion are merely used as persuasive authority, “instructive to the extent that they offer persuasive reasoning that is consistent with the Tribal Constitution and laws,” and are not binding on the Tribal Court. *See LTBB Tribal Council Members: Bardwell et al. v. Harrington*, No. A-022-1212 at 5 (LTBB Ct. App. Mar. 5, 2015).

and public policy considerations. Neither is the case here. On the contrary, the Defendant fully admits that it has omitted the language and practice providing for Executive nomination to the type of entities listed, because it believes it has the constitutional right to do so. *See, e.g.*, Def. Reply at 9-10. Additionally, rather than alleging the Tribal Constitution to be ambiguous, each party finds support for its position in the plain language of the document. The Court must also be mindful of the immunity waiver tied to the parties' Stipulation, which precludes the Court from considering facts surrounding specific statutes or applications of them. The stipulated question is purely legal, limited to whether the Tribal Chairperson has a constitutional right to nominate for positions on the types of subordinate Tribal entities listed. Stipulation to the Question at 1.

The Defendant's additional arguments fail to establish a genuine issue of material fact, even after drawing all inferences in the light most favorable to the Defendant as the nonmoving party. In its brief and at oral argument, the Defendant focused on legislative trends and claimed that more discovery was needed to bring facts regarding legislative history, public policy concerns, and Tribal custom before the Court. It would be inappropriate to deny summary disposition at the Defendant's mere suggestion that material facts might exist, *see McGraw*, No. A-030-1115 at 4; *Anderson*, 477 U.S. at 247-48, though the Defendant is right to point out that the question before the Court is an important one and should be approached with the utmost care. Nevertheless, there is no lack of care on the Court's part. Where the Tribal Constitution is clear and unambiguous, the Court does not extend its review to concerns of legislative history, public policy, or custom. *See McGraw v. Colby*, No. C-206-0115 at 3 (LTBB Tribal Ct. Oct. 1, 2015) ("It is not the Court's role to consider the public policy justifications when a statute is clear on its face as written . . ."); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 340-41 (1997).

As the Court does not extend its analysis beyond the plain language of the Tribal Constitution, the Defendant has not met its burden to show that a genuine issue of material fact persists, and the Plaintiff is entitled to judgment as a matter of law. Where there is no genuine issue of material fact, summary disposition is appropriate even for deciding matters of constitutional interpretation. *See, e.g., Citizens*

United v. Fed. Election Comm'n, 558 U.S. 310 (2010); *Cantrell v. Cherokee Nation*, No. JAT 97-01, 1999 WL 809863 (Cherokee Apr. 9, 1997); *Eyde v. Charter Twp. of Lansing*, 363 N.W.2d 277, 279 (Mich. 1984).

B. Constitutional Interpretation

The Tribal Constitution is the supreme law within LTBB jurisdiction, LTBB Const. art. VI, § E, and certain rules guide the Court in its interpretation. Accordingly, “[i]f there is a conflict between a provision in the LTBB Constitution and an inferior Tribal statute, the constitutional provision prevails.” Restatement of the Law of the LTBB § 3.04 (2015); see *LTBB Tribal Council Members: Bardwell et al. v. Harrington*, No. A-022-1212 (LTBB Ct. App. July 9, 2014). To determine if there is such a conflict, the Tribal Constitution must be read as a whole, see *Harrington v. LTBB Tribal Council Members: Bardwell et al.*, No. C-120-0411 at 5 (LTBB Tribal Ct. Nov. 29, 2012), and every effort must be made to give effect to each provision, disfavoring any reading which renders part of the document “inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (citation omitted). As this Court has explained, “[w]hen there are conflicting interpretations of the Tribal Constitution, the interpretation that is most consistent with a reasonable reading of the document, and does not threaten to explicitly violate any other section of the document, will prevail.” *Harrington*, No. C-120-0411 at 6.

Constitutional interpretation begins with a plain reading of the text, giving words their ordinary meaning unless otherwise defined. See *Roberts*, No. A-018-0811 at 7. Disputed language is considered on its own, in its specific context, and within the context of the document as a whole. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Only if there is ambiguity does a court extend its interpretation to external resources such as the drafters’ intent and public policy. *Id.* at 340. As stated above, the Court does not find the disputed language in this case to be ambiguous or inconsistent, so the Court restricts its analysis to the plain language of the Tribal Constitution.

V. ANALYSIS

The Tribal Constitution is one of limited, enumerated powers, which delegates only “specific powers and functions” to the government and retains all others with the Tribal membership. LTBB Const. art. I, § A; *see Harrington*, No. A-022-1212 at 15-16. These enumerated powers are distributed between three branches of government, which may only exercise those powers expressly granted to them and cannot exceed the bounds of the Tribal Constitution. *See* LTBB Const. art. VI, § C; art. VII, § E; art. VIII, § F. To ensure separation of powers between the branches, the Tribal Constitution dictates that “[n]o branch of the government shall exercise the powers, duties or functions delegated to another branch.”

LTBB Const. art. VI, § D. As explained by the supreme court of the Muscogee (Creek) Nation:

The very essence of Separation of Powers is an easy enough concept to grasp: government can best be sustained by dividing the various powers and functions of government among separate and relatively independent governmental entities; no single branch of government is able to exercise complete authority and each is dependent on the other. This autonomy prevents powers from being concentrated in one branch of government, yet the independence of each helps keep the others from exceeding their powers.

Ellis v. National Council, No. SC 2005-03, 2006 WL 6122766 at *2 (Muscogee (Creek) Feb. 20, 2006).

In the LTBB Tribal Constitution, this separation of powers principle is exemplified by the fact that the document empowers the Tribal Council to make the laws, the Executive to enforce those laws, and the Judiciary to apply them. LTBB Const. art. VI, § C. No branch has unilateral power, yet each gets a say in the law, and this incentivizes the branches to work together to best serve the Tribal membership. Their individual roles provide checks on the other branches’ powers to prevent overextension. To protect the principles set out by the Tribal membership in the Tribal Constitution, it is crucial to ensure this delicate balance of power is maintained.

The separation of powers principle is essential to the present case, which presents a dispute between two branches of government: the Tribal Chairperson (Executive) and the Tribal Council (Legislative). The Tribal Chairperson is vested with the executive power, LTBB Const. art. VIII, § A, and

the Tribal Council is vested with legislative powers, LTBB Const. art. VII, § A. As stated above, each branch may only exercise those powers delegated to it in the Tribal Constitution, and may not exercise the powers delegated to one another. LTBB Const. art. I, § A; art. VI, § D. It follows that any power claimed by one branch must be supported by a specific enumeration within the Tribal Constitution. *See Harrington*, No. A-022-1212 at 16.²

The parties provide three such constitutional provisions in their Stipulation:

LTBB Const. art. VIII, § C, cl. 3
LTBB Const. art. VII, § D, cl. 16
LTBB Const. art. VII, § D, cl. 24

Stipulation to the Question at 1-2. Again, the question is whether the Tribal Chairperson has the constitutional right to nominate for positions on Tribally-chartered corporations or other subordinate Tribal entities under any of these provisions. The Plaintiff says yes, and the Court agrees, to the extent that the stipulated question concerns the constitutional right for the Tribal Chairperson to nominate for *appointed* positions on subordinate Tribal entities. Taking the parties' briefings into consideration, the Court understands this to be the proper question at hand. As will be explained, appointment cannot happen without nomination, and vice versa—it should go without saying that the Tribal Chairperson can only nominate those positions on a subordinate Tribal entity which are *appointed* positions created by Tribal Council or set out in the Tribal Constitution.

The appointment process is clear from a plain reading of the Tribal Constitution, and there are no exceptions to it. Article VII, Section C, Clause 3 and Article VII, Section D, Clause 16 work together to illustrate the procedure. The Tribal Chairperson has the exclusive power to “receive, prepare and submit” nominations to the Tribal Council for appointed positions, LTBB Const. art. VIII, § C, cl. 3, and the Tribal Council has the exclusive power to “approve appointments as presented by the Executive,” LTBB

² In the *Harrington* case, the Appellate Court reinforced the separation of powers between these two branches, holding that the Tribal Council's practice of modifying budgets by simple motion rather than by statute or resolution unconstitutionally bypassed the Executive's right to approve or disapprove of such modifications and violated the Executive's power to administer the funds appropriated by Tribal Council. No. A-022-1212 at 15-17. This division of power was not discretionary or conditional in *Harrington*, and it is not so here.

Const. art. VII, § D, cl. 16. There are no constitutional limitations on which appointed positions the Executive nominates, because the Tribal Chairperson submits nominations for all appointed positions created by the Tribal Constitution or by Tribal Council.³ LTBB Const. art. VIII, § C, cl. 3. As there is no other authority for creating governmental appointments, this applies to all appointed positions.

The application to subordinate Tribal entities comes from the parties' third stipulated constitutional provision, Article VII, Section D, Clause 24, which empowers Tribal Council to provide "for the management of any and all economic affairs and enterprises" of the Tribe, and requires Tribal Council to delegate management responsibilities to "Tribally chartered corporations or other subordinate Tribal entities, or where appropriate, to the Executive Branch." LTBB Const. art. VII, § D, cl. 24. The appointment process outlined above is no different for these Tribally-chartered corporations or other subordinate Tribal entities.⁴ If such entities have government-appointed positions, then those positions must have been created by Tribal Council or the Tribal Constitution, and the Tribal Chairperson is empowered to receive, prepare, and submit nominations for them. *See* LTBB Const. art. VIII, § C, cl. 3; art. VII, § D, cl. 24.

The "management" referred to in Clause 24 is broader than "appointment," allowing the Tribal Council discretion in determining how economic affairs are managed and by whom. Clause 24 does not mandate appointed positions, but gives Tribal Council the ability to provide for them if it so chooses. Because of this flexibility, and because the rules of statutory construction discourage including unnecessary language that has been stated elsewhere, Clause 24 needs no explicit reference to Executive

³ The LTBB Constitution contains no exceptions to Executive nomination. This is contrary to other constitutions like the U.S. Constitution and the Muscogee (Creek) Nation Constitution, which provide for exceptions to Executive nomination when it comes to inferior officers. *See* U.S. Const. art. II, § 2; Muscogee (Creek) Nation Const. art. V, § 2, cl. b. However, even where such exceptions exist, the legislature still cannot make appointments unilaterally but must delegate this power to the Executive alone, the courts, or to department heads. *Id.*

⁴ Any argument regarding the uniqueness of such entities or Tribal Council's extensive power over economic affairs is insufficient to override the plain language and separation of powers concerns. Economic affairs are not Tribal Council's sole purview. *See Harrington*, No. A-022-1212 at 15-16. Even if they were, the U.S. Supreme Court has held that congressional authority over a specific area, such as federal election practices, is not so unique as to "offend well-established constitutional restrictions stemming from the separation of powers." *Buckley v. Valeo*, 424 U.S. 1, 132 (1976). Additionally, the *Buckley* court emphasized that "[n]o class or type of officer is excluded [from the appointment process] because of its special functions." *Id.*

nomination in order for it to apply. This is why the Constitution must be interpreted as a whole. *See Harrington*, No. C-120-0411 at 5. Even the provisions describing the appointed positions set out in the Tribal Constitution, such as Tribal Judges and Tribal Prosecutors, do not mention Executive nomination. *See* LTBB Const. art. IX, § D; art. X, § B. There is no need to re-state the Executive nomination requirement for these positions because it is already provided in Clause 3, empowering the Executive to submit nominations “for the appointed positions *set out in this Constitution*[.]” LTBB Const. art. VIII, § C, cl. 3 (emphasis added).⁵ Similarly, there is no need to re-state the Executive nomination requirement in Clause 24. If Tribal Council chooses to exercise its power to provide for the management of economic affairs via government-appointed positions to Tribally-chartered corporations or other subordinate Tribal entities, then the Tribal Chairperson has the constitutional right to submit nominations for those positions.⁶

When it comes to the appointment process, the Tribal Constitution is plain and unambiguous: the Tribal Chairperson nominates and the Tribal Council appoints. There are no exceptions to this in the Tribal Constitution.⁷ The appointment process described in this opinion upholds the Tribal Constitution’s separation of powers, and Clause 24 is merely a potential application of it. The Tribal Council is not required to manage economic affairs via appointed positions, but should it choose to do so, the Tribal Chairperson must submit nominations for those positions whether or not they happen to be on Tribally-chartered corporations or other subordinate Tribal entities.

⁵ The Court notes that, in fact, *none* of the provisions setting out appointed positions in the Tribal Constitution explicitly provide for Executive nomination, and they do not need to do so. Any other reading would render part of Clause 3 superfluous, violating long-standing canons of statutory construction. *See Corley*, 556 U.S. at 314.

⁶ This is consistent with U.S. government practice as well. Appointed positions on the boards of U.S. government corporations are subject to Executive nomination. *See, e.g.*, Postal Reorganization Act, 39 U.S.C. § 202.

⁷ The Court notes, however, that this appointment process should not be construed to apply to positions or entities entirely within the Legislative branch which are charged with purely legislative functions, such as legislative standing committees. Just as the Tribal Council may not usurp the Tribal Chairperson’s nomination power, the Tribal Chairperson may not improperly extend its power to interfere with Tribal Council’s ability to establish and maintain entities solely to aid Tribal Council in carrying out its enumerated functions. *See Buckley*, 424 U.S. at 141.

HOLDING

For the above stated reasons, the Court finds that the Tribal Chairperson has the constitutional right to receive, prepare, and submit nominations for appointed positions on Tribally-chartered corporations and subordinate Tribal entities, just as it does for all appointed positions set out in the Tribal Constitution or created by Tribal Council. Therefore, the Plaintiff's Motion for Summary Disposition is GRANTED and any practice inconsistent with this opinion is declared unconstitutional.

IT IS SO ORDERED.

6-25-19

Date

Hon. Allie Greenleaf Maldonado, LTBB Chief Judge