

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_)  
NELLIE RAMOS, CURTIS HENDRICKS, )  
GEORGE BINGHAM, PAUL MILLS, )  
NATHANIEL J. TOBEY, LAWRENCE )  
TOBEY, Jr., PATRICIA OAKLEY, )  
FRANCIS FERMINO, )  
and LEIGH POTTER, )  
Plaintiffs, )

v. )

C.A. No. 1:13-CV-10065-RBC

\_\_\_\_\_)  
BUREAU OF INDIAN AFFAIRS, )  
MICHAEL BLACK, Director, )  
Bureau of Indian Affairs, )  
MIKE SMITH, Deputy Director, Bureau )  
Of Indian Affairs, )  
FRANKLIN KEEL, Regional Director, )  
Bureau of Indian Affairs, and KEVIN )  
WASHBURN, Assistant Secretary – )  
Indian Affairs, )  
Defendants, )  
\_\_\_\_\_)

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**COMPLAINT**

COMES NOW the Plaintiffs, Nellie Ramos (“Ramos”), Curtis Hendricks (“Hendricks”), George Bingham (“Bingham”), Paul Mills (“Mills”), Nathaniel J. Tobey (“Tobey”), Lawrence Tobey, Jr. (“Tobey Jr”), Patricia Oakley (“Oakley”), Francis Fermino (“Fermino”) and Leigh Potter (“Potter”) all duly enrolled members of the Mashpee Wampanoag Tribe (“Tribe”), and for their Complaint against the Bureau of Indian Affairs (“BIA”), Michael Black, Director, Bureau of Indian Affairs (“Black”), Mike Smith, Deputy Director, Bureau of Indian Affairs, (“Smith”), Franklin Keel, Regional Director, Bureau of Indian Affairs (“Keel”), and Kevin Washburn, Assistant Secretary, Indian Affairs (“Washburn”) (BIA, Washburn, Black, Smith and Keel, collectively, the “Defendants”), and allege and state as follows:

**Jurisdiction and Parties**

1. Plaintiffs are residents of Barnstable County, Massachusetts, and duly enrolled members of the Tribe, a federally recognized Indian tribe, seeking assistance from BIA in addressing their concerns that the credibility of the membership of the Tribe has deteriorated since recognition and called into question the validity of all future Tribal elections.

2. Defendant BIA is an agency as defined by 5 U.S.C. § 701, and responsible for providing oversight and superintendence of federally recognized Indian tribes.

3. Defendant Black is currently the Director of the BIA, delegated with authority by the Assistant Secretary – Indian Affairs for carrying out the duties and responsibilities of the BIA in its capacity as Trustee for Indian Tribes and their members. Defendant Black is named in his official capacity.

4. Defendant Smith is currently the Deputy Director of the BIA, delegated with authority by the Assistant Secretary – Indian Affairs for carrying out the duties and responsibilities of the BIA in its capacity as Trustee for Indian Tribes and their members. Defendant Smith is named in his official capacity.

5. Defendant Keel is currently the Regional Director of the Eastern Region of the BIA, delegated with authority by the Assistant Secretary – Indian Affairs for carrying out the duties and responsibilities of the BIA in its capacity as Trustee for Indian Tribes and their members. Defendant Keel is named in his official capacity.

6. Defendant Washburn is currently the Assistant Secretary of Indian Affairs. Defendant Washburn is named in his official capacity.

7. Jurisdiction against Defendants is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1361.

8. Venue is proper pursuant to 28 U.S.C. § 1391.

**Background Facts**

**Tribal Membership**

9. Anyone seeking membership with the Tribe must meet specific qualifications laid out in Article III of the Tribe's Constitution. Federal law includes provisions similar to the Tribe's Constitution for federal acknowledgement, or as it is also known, federal recognition. 25 C.F.R. § 83.7 lists seven requirements for recognition, including 25 C.F.R. § 83.7(e), which requires that the Tribe's membership "consists of individuals who descend from a historical Indian tribe".

10. Plaintiff Oakley was hired by the Tribe, at that time known as the Mashpee Wampanoag Tribal Council, Inc., in 1999 to the position of federal recognition assistant. She later was appointed to the position of Tribal Genealogist in 2000, a position which she held contemporaneously with an appointment to the Enrollment Committee. She held that position during the period leading up to federal recognition and until 2009. In that position, Plaintiff Oakley compiled, stored and submitted to Defendant BIA individual information of Tribal members used to establish the historical lineage of the Tribe necessary to compel recognition by the federal government.

11. In its Final Determination, the Office of Federal Acknowledgement found that the Tribe was able to certify that 97% of its membership descended from an historical tribe, 2% from Indians who "integrated socially and politically...and whom the petitioner [Tribe] considers eligible ancestors under the provisions of its Constitution", and less than 1% who had not documented descent, "but likely will be able to...provide...the proper evidence".

### **Emergency Meeting**

12. On January 9, 2009, the acting Tribal Council held an emergency meeting to conduct business on behalf of the tribe, for the express purpose of reinstating four shunned members of the tribe immediately prior to the General Election, without providing proper notice to all Tribal Council members.

13. Furthermore, the emergency meeting included the resigned Tribal Chief Vernon Lopez as a voting member and therefore lacked a quorum. Because of the improper notice and lack of quorum, the shunned members did not legally have their privileges returned.

14. As a result of the emergency meeting, the four shunned members were returned to the voter list, and were allowed to vote in the General Election, in violation of Tribal law.

15. Members of the acting Tribal Council later requested an advisory opinion from contract Tribal Judge Rochelle Ducheneaux (“Ducheneaux”) concerning the validity of the emergency meeting. Judge Ducheneaux took the request under consideration and found the emergency meeting was validly conducted. However, the ability to issue such an advisory opinion was beyond Judge Ducheneaux’ authority, and therefore invalid. The sole purpose of requesting the advisory opinion was to intimidate Tribal members, and validate the usurpation of authority by several members of the Tribal Council. This also created an impression that Tribal Judge’s within the Mashpee Tribal Court favored the Tribal Council over the interests of Tribal members, and would not act to protect the interests of Tribal members by respecting the enacted Constitution and Tribal ordinances.

### **2009 General Election**

16. In January of 2009, Plaintiff Oakley began to prepare the eligible voters list and registered voters list that would go to the Election Committee to use in conducting the election.

The enrolled members list is a comprehensive list of all eligible members who have attained the age of 18 on the date of the election. In comparison, the registered voters list is only those eligible members who have registered with the Election Committee to vote.

17. Also in January, Plaintiff Oakley began to receive numerous telephone and walk-in requests from pending members asking for their Tribal ID so they could vote in the election. Plaintiff Oakley informed pending members that they would be ineligible to vote until they had received a certified letter from the Enrollment Committee, as required by Tribal law.

18. On February 8, 2009, the Tribe conducted its General Election in a reckless fashion. Plaintiff Oakley and other Tribal members witnessed that voter turnout was significantly larger than at any other election, with many individuals who were not recognized as members of the community or on the voter list, and that the Election Committee was not requiring voters to show their Tribal ID, or any other form of ID, in order to obtain a ballot.

19. Following the election, the Election Committee failed to properly maintain the election records, in accordance with the common practice followed by the Election Committee in prior elections and as required by Tribal law. These measures include sealing the ballot box and voter sign-in sheets for certification after the election, and retaining these records in archival storage for a set period.

20. For two days following the General Election, Plaintiff Oakley was locked out of her office and prevented from verifying the voter sign-in sheets as she had done in all prior elections as the Tribal Genealogist. At some time after the election, the election results were certified to BIA by the same Election Committee involved in the election misconduct.

### **Election Challenge**

21. The Tribe's Constitution and the associated ordinance governing election disputes, the Ordinance for Conduct of Elections of Election Committee Responsibilities ("Election Ordinance"), describe the procedure for challenging the results of an election. In particular, the Election Ordinance requires that a tribal member submit an election challenge in writing, stating the basis for the challenge and including any substantiating evidence, to any member of the Election Committee. The Elders of the Tribe, at that time defined as those members attaining the age of 62, are then responsible for forming a tribunal from their membership to hear the dispute and render a decision on the matter.

22. On February 9, 2009, as required by the Tribe's Constitution, Plaintiff Ramos made a written request to the Election Committee in charge of enforcing Tribal election laws informing them of the violations raised above and requesting a new election. In addition, Plaintiff Ramos offered substantiating testimony from other tribal members to the actual fraudulent conduct alleged in her complaint. The chair of the Election Committee verbally informed her that her request was denied, and no further action was taken by any of the parties involved at that time.

23. At the time Plaintiff Ramos' written challenge was submitted, no tribal court was in place to hear the matter, and in any case, the ordinance had not yet been altered to direct the filing of an election challenge with the tribal court. Therefore, the only then existing tribunal to hear this dispute would have been the Elders of the Tribe.

24. On February 17, 2009, in an effort to bring the violations referred to in paragraphs 12 through 15, and 17 through 20 to the attention of tribal members, Plaintiff Oakley distributed

a letter to the tribe reporting on the enrollment status of the Tribe and discussing the conduct of the 2009 General Election.

25. As a result of Plaintiff Oakley's letter, Tribal Council member Aaron Tobey ordered an investigation into breaches of security during the election by Tribal Council member Carlton Hendricks. As a result, an investigation was conducted into the alleged tampering of the ballot box and voter sign-in sheet. During this investigation, the ballot box and voter sign-in sheets were presented to Plaintiff Oakley. However, due to the physical condition of the ballot box and voter sign-in sheets that appeared to indicate tampering, Plaintiff Oakley refused to certify the results.

26. On March 18, 2009, Carlton Hendricks made his report available to the Tribal Council. To date, the Tribal Council has taken no action whatsoever.

27. In March, the Tribal Council fired Plaintiff Oakley for allegedly violating confidentiality by sending her letter to the Tribe, and for failing to give up a video recording made of the condition of her office and enrollment records after the election.

#### **BIA Involvement**

28. On February 26, 2009, members of the Enrollment Committee met in Washington, D.C. with then Director of BIA, Jerry Gidner, Defendant Smith, and Tribal Relations officer Daisy West, to discuss the election irregularities and raise allegations based on the facts presented in paragraphs 12 through 15, and paragraphs 17 through 20. In response, Tribal members were asked to provide additional supporting documentation. Tribal members supplied Defendant's with copies of available records including Vernon Lopez resignation letter, Judge Ducheneaux's advisory opinion, Plaintiff Oakley's letter, Plaintiff Oakley's video

recording, Carlton Hendrick's Report on Breach of Security, and a list of Tribal ordinances passed without public notice.

29. On July 31, 2009, a contingent of Tribal elders and members again travelled to Washington, D.C. to meet with Director Gidner, and Tribal Relations officer Elizabeth Colliflower, and repeat their allegations. The BIA refused to offer assistance or even investigate these allegations, and instead delayed a response by asking Tribal members to clarify their request. Because of the illegal actions of the Election Committee, and the resulting unavailability of any recourse for Plaintiffs within a Tribal forum, Tribal members specifically asked that the BIA nullify the election based on numerous irregularities and provide oversight of a new election that followed the proper procedures outlined by Tribal law.

30. On August 5, 2009, tribal members sent a packet of materials with supporting documentation, to Director Gidner, Defendant Keel, and Ms. Colliflower, specifically requesting that the BIA "hold new elections and provide oversight to ensure that it is executed properly and results in duly elected officials." Letter of The Committee to Preserve the Rights and Tribal Culture of the Mashpee Wampanoag Tribe, Re: Mashpee Wampanoag Tribe Constitutional Crisis, August 5, 2009. (Exhibit A).

31. On November 11, 2011, Tribal members again submitted their requests and supporting documentation to Defendant Black, and then Assistant Secretary – Indian Affairs, Larry Echohawk. Letter of Elder Anne Peters Brown, Re: Request for Intervention and Assistance to Correct Government Misconduct and Impropriety in 2009 Mashpee Wampanoag Tribal Election, December 12, 2011. (Exhibit B).

32. Since 2009, the Tribal Council has amended or attempted to amend several ordinances affecting the rights of Tribal members. For example, the Tribal Council amended the



Election Ordinance to limit the ability of Tribal members to challenge election results by reducing the time available for appeal. The Tribal Council has also sought several times to unconstitutionally allow write-in voting, by amending the Election Ordinance rather than follow the procedure outlined in the Constitution for amendments.

33. Since 2009, the Tribal Council has changed the age limit for membership in the Elders, and created two distinct groups of Elders, in order to undermine the authority of the Elders to hold members accountable to the culture and traditions of the Tribe.

34. On December 28, 2012, Tribal members through undersigned counsel submitted a letter to Defendant Black requesting that he act on the August 5, 2009 request within 10 days, and a letter to Defendant Keel, requesting that BIA oversee the February 10, 2013 election.

35. On January 3, Tribal members through undersigned counsel submitted a letter to Defendant Washburn requesting BIA oversight of the February 10, 2013 election.

36. Defendants have failed to act on Plaintiffs requests and there is no indication from the Defendants course of action over the past three years that any action will be forthcoming.

**CAUSE OF ACTION – Mandatory Injunction**

37. Plaintiffs re-allege and incorporate Paragraphs 9 through 36 herein as set forth in full.

38. Plaintiffs have exhausted Tribal remedies, in that their appeal to the judicial body of the Tribe for review was summarily denied without following the procedure required by Tribal law. The plaintiffs therefore have no other recourse than to ask for the relief sought in the letters to Defendants and listed in this complaint.

39. Pursuant to 5 U.S.C. §§ 701-706, a person may challenge the action or inaction of an agency and force agency action that has been unlawfully withheld or unreasonably delayed.

40. The Defendants unlawfully failed to respond to the Plaintiffs repeated request that they investigate the allowance of ineligible voters to vote in the 2009 General Election, to set aside the election results and institute an intermediate government, and oversee the conduct of a new election.

41. The Defendants have unreasonably delayed a response to Plaintiffs request by three years, during which time the Tribe has been governed by Tribal officials who were fraudulently certified in an election that violated numerous Tribal laws.

42. The Defendants owe a duty to respond to correspondence and requests indicating that election results certified to BIA violated Tribal Law.

43. Furthermore, Plaintiffs have been harmed by Defendants inaction which continues to recognize the authority of the current Tribal Council.

44. Pursuant to 25 C.F.R. § 2.6, which states that no decision which is appealable to a superior authority within the department shall be considered final for purposes of judicial review, Defendants actions are final.

45. Therefore, Plaintiffs seek a mandatory injunction requiring the Defendants to:

- a. Conduct an investigation into the allegations raised by Plaintiffs in their August 5, 2009 letter, specifically that the Election Committee is following the procedures then and now existing that govern the conduct of elections and the preservation of election materials, and examine the enrollment records to determine that only eligible members who are able to satisfy the requirements of tribal membership outlined in the Constitution, have been allowed to enroll.
- b. Take any and all further action necessary to ensure that the Tribes elections are conducted in an open and fair manner that respects Tribal law.

WHEREFORE, Plaintiffs pray that the Court issue a mandatory injunction requiring the Defendants to:

- a. Conduct an investigation into the allegations raised by Plaintiffs in their August 5, 2009 letter, specifically that the Election Committee is following the procedures then and now existing that govern the conduct of elections and the preservation of election materials, and examine the enrollment records to determine that only eligible members who are able to satisfy the requirements of tribal membership outlined in the Constitution, have been allowed to enroll.
- b. Take any and all further action necessary to ensure that the Tribes elections are conducted in an open and fair manner that respects Tribal law.

Plaintiffs further request any additional relief that the Court deems just and equitable.

Respectfully Submitted,

By: /s/ Jonathan M. Polloni  
Jonathan M. Polloni, Esq. BBO # 686642  
PO Box 388  
Woods Hole, Massachusetts 02543

I hereby certify this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF and paper copies will be sent to those indicated as non-registered participants on March 19, 2013.

/s/ Jonathan M. Polloni

## The Committee to Preserve the Rights & Tribal Culture of the Mashpee Wampanoag Tribe

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August 5, 2009

To: Jerry Gidner  
Director, Bureau of Indian Affairs  
Frank Keel  
Regional Director, Bureau of Indian Affairs  
Elizabeth Colliflower  
Tribal Relations, Bureau of Indian Affairs

Fr: The Committee to Preserve the Rights and Tribal Culture of the Mashpee  
Wampanoag Tribe

Re: Mashpee Wampanoag Tribe Constitutional Crisis ( detail )

Per your request, we are detailing some of the incidents leading up to the February 8 Election that resulted in the Cromwell Administration (slate) taking control of our tribe. We also point out some of the glaring wrongdoing that followed.

The election was not only conducted very poorly, it was also fraught with inappropriate advisory decisions and voter fraud. This in turn lead to the establishment of a team of officers who have engaged in malfeasance, violations of tribal laws and have failed to perform even the most basic of services to the tribe, as is their duty. The Chronology of events are as follows:

### Emergency Council Meeting Jan 9, 2009 **Section 4, page 10 2 of Constitution**

*Despite repeated opinions from three law firms, declaring that there was no emergency at to justify an emergency meeting, Cedric Cromwell, Yvonne Frye Avant and their team pressed forward. The agenda was to put 4 shunned members back on the roll, and to put the Chair and Secretary on Administrative Leave, because the former Chairman had been indicted. Again, this did not constitute an Emergency Meeting as defined in the Tribal Constitution.*

- *After 3 unsuccessful attempts to secure a 7 member quorum, Cedric Cromwell went to the home of the resigned Chief and brought him to the Council offices to make the quorum.*

*( see Article 8, Section 2a) Chief Vernon Lopez had resigned from his post on April 4, 2008, and never attended another Council Meeting, thus making him ineligible to participate in the political process. He was replaced in the Fall of 2008 by the former and current Chief, Earl Mills who presided over 3 funerals and continues in that capacity today. See Attachment A (Letter from Chair on Emergency meetings, Emergency Meeting votes, Lopez records of resignation, news articles and minutes verifying resignation)*

## The Committee to Preserve the Rights & Tribal Culture of the Mashpee Wampanoag Tribe

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The Council member Aaron Tobey ordered Patricia Oakley ( Genealogist ) to put the 4 shunned members on the rolls without a vote of the Elders Judiciary and the full Council. Also the Council never met during January.

- The Cromwell group files suit with the contract judge who issued an *opinion two days before the election* without consideration of the fact that no emergency meetings notices were posted and documentation that confirmed Lopez' resignation. This following the Judges continued conversations between Council woman Yvonne Frye Avant and the Judge
- The Judge issues an Advisory Opinion because she ruled that the shunned could vote and admits the tribe did not have a Court established (and still does not have a Court) During a June 15<sup>th</sup> 2009 contract hearing, the Judge admits that her Feb. Advisory was in question because she did not have jurisdiction (see Attachment B)

### Cromwell slate elected with unusually high voter participation (see Attachment C)

- Nellie Ramos asks for a new election because of the lack of ID and other gross irregularities. **The Election Committee comprised of shunned members denies the request a month after the deadline, A VIOLATION OF THE CONSTITUTION AND ELECTION ORDINANCE**
- Membership and Genealogist locked out of offices for 2 days after the election
- Genealogist and Judiciary Chairman video tape records open files and issues a report to the membership saying that the office is not responsible for tampering that occurred before or after the election. Files have been tampered with.
- ( Election affidavits attached)( videos submitted Feb 26, 2009)
- P. Oakley forwards information to the FBI, fearing the destruction of documents
- Cedric Cromwell demands that **Judiciary Chairman Paul Mills turn over tapes he does not and is removed from post**
- The new administration changes locks on files, moves Elders and Genealogists to new remote location.
- Cromwell Certifies his own election
- Vice Chairman initiates internal investigation to finalize and certify the voter list in question. That voter list was believed to have been altered by Cromwell campaign workers who had access to the **pending** members ( not allowed to vote) who voted. **A VIOLATION OF THE CONSITUTION**. This would account for the high voter participation.
- Feb 25, Carlton Hendricks, Jr. begins internal Election Investigation (Breach of Security document)

## The Committee to Preserve the Rights & Tribal Culture of the Mashpee Wampanoag Tribe

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- Cedric Cromwell learns of meeting with BIA and tries to prevent Patricia Oakley and Tribal Elders and members from meeting with Jerry Gidney, Daisy West and Mike Smith when the members are doing so on their own free time as tribal members.
- March 10, the disputed election voter list is taken out of the closet where the locks were changed two weeks in advance, delivered to Genealogist. The documents are in disarray and not sealed as required. Elders and Genealogist refuse to certify because documents that had clearly been tampered with. Carolyn Turner, who was accused of adding pending voters to the voter list became hysterical shouting that she did not want Carlton involved and she wanted one of her sisters( Councilwoman Yvonne Frye Avant or office manager Joanne Frye) present.
- The list was never verified, and the tribe has functioned without an updated voter list
- March 17, **Patricia Oakley**, who has 100% verification of genealogy is **fired**
- Tribal members begin petitions to recall the Cromwell slate ( no constitutional time limit) and rehire Oakley
- March 18, Hendricks turns in his Election Investigation report. Tribal members have never seen the report.
- Federal Grand Jury "**Continues subpoenas indefinitely**" (after May 3) for Cedric Cromwell, Cheryl Frye Cromwell, Aaron Tobey, Nellie Ramos., (We had these documents, trying to locate. Verification can be made at the office of Assistant US Attorney Jonathan Mitchell, 1 Courthouse Way, Suite 9200, Boston, Ma 02210, 617-748-3274)
- In March, the last ICWA social worker **resigned** because of the Administration's failure to provide her with proper staffing. After 8 weeks **Cromwell and Tobey are subpoenaed before the state District Court because it failed to follow the law.** Their answer is a state social worker supervisor ( conflict ) who works for the tribe for 3 hrs a week, the bare minimum.

### Failure to implement tribal Ordinances legally (Attatchment D)

- Procedures for the second election in April ( to replace Council members elected as officers) were not passed properly. They were initiated by the Treasurer instead of the outgoing committee chair

The passage of ordinances are mandated as follows by the Constitution

1. Drafting
2. Posting public hearing date
3. Holding a hearing for membership to review and have input
4. Council Vote

## The Committee to Preserve the Rights & Tribal Culture of the Mashpee Wampanoag Tribe

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- **None of the above ordinance procedures have been followed for changes to the following Tribal ordinances:**

Judiciary

Election Committee

Elders Council

Enrollment

Elders Judiciary

Education ordinance

**\*\*\*\*Each independent branch of the Tribal Government has been compromised, precluding members from having any recourse or checks and balances. A VIOLATION OF THE CONSITUTION**

Since the investors stopped funding the tribe in April, members of the Cromwell slate, Chair Cedric Cromwell (123k), VC Aaron Tobey(79k), Secretary Marie Stone(79k), Treasurer Mark Harding(79k), Cheryl Frye Cromwell(57k), Yvonne Frye Avant(62) and Selena Jonas(52k) have continued to pay themselves salaries without having the funding to do so, or legally voting themselves the salaries, **making the appropriation illegal and A VIOLATION OF THE CONSITUTION**. Now they have begun dipping into lump sum grant revenues that are in the general account.

The most recent issue is the Memorandum from HUD **reminding the Treasurer Mark Harding that he cannot take contracts from Housing as a Tribal officer**. He has done numerous rehab contracts and is targeting bigger housing contracts under his business WampWorx without the certification. There are other tribal builders who are eligible contrary to what Harding and his friend Alice Lopez (Housing Dir) claim.

The funding from the BIA Grants are as follows:

Environ. & Natural Resources (ENRD)	Water Quality Monitoring	\$54,000
ENRD	Shell Fish Propagation	4,000
EPA		120,000
Indian Self Determination (638)	Self Govern Direct Cost	311,000
" " " "	" Indirect Cost	246,000
" " " "	" Direct Cost Support	150,000

Post Office Box 2480 Mashpee, Massachusetts 02649 508-477-1145

## The Committee to Preserve the Rights & Tribal Culture of the Mashpee Wampanoag Tribe

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Indian Reservation Roads                      Transp. Road Maintenance                      100,000

(We have no land in trust, no Reservation but they paid newly elected Council member Winnie Johnson \$ 15,000 out of this grant for a broken down Bobcat and don't have the title. \$6,000 is still owed on it.)

IRR- Stimulus Funds                      Transportation & Road Maintenance                      \$244,000

The Administration fired Cemetery Director Leigh Potter without cause. Potter has total knowledge of the Old Indian Cemetery burial grounds and the unmarked graves and all others belonging to the Mashpee. He has maintained those grounds for 50 years.

Cromwell and his team sought bridge loans recently( without investors commitment and no collateral ) on 7 different occasions with no luck.

Cromwell has asked tribal grant writers to find underwriting for his salary.

The person who would know says the tribe is down to \$1,000, predicting that illegal dipping into grants will intensify. They have also placed a woman in the Membership office who is under the directive to load the rolls with upwards of 60-100 Pending a month. Based on the normal addition of approximately 100 a year in order of the date of submission, the intent to increase federal funding appears clear because they have no other recourse for revenues.

Tribal members have not received the mandated monthly tribal reports, job openings, and financial reports and statements in 6 months **A VIOLATION OF THE CONSTITUTION**

The Committee continues to follow tribal laws and has submitted a valid petition for an Emergency Meeting, despite the fact that the new Director cannot verify the signatures of enrolled members. The Vice Chairman accepted the petition and said the Council will determine the date of the meeting. The deadline is August 27.

The Committee is asking that the Bureau hold a new election for the tribe and provide oversight to ensure that it is executed properly and results in duly elected officials .

The tribe should not be punished for maintaining it's traditional customs or government and refuses to stand by and watch it dismantled by members who have no respect for our customs and came to power illegally.



Larry Echo-Hawk  
Assistant Secretary  
Indian Affairs  
MS-4141-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

12/12/2011

RE: Request for Intervention and Assistance to Correct Government  
Misconduct and Impropriety in 2009 Mashpee Wampanoag Tribal Election

The following is a detailed list of the numerous constitutional and procedural violations leading up to and following the general election of February 2009, and which involved voting by ineligible voters, failure of the election committee to fulfill its responsibilities outlined in the Ordinance for Conduct of Elections of Election Committee Responsibilities ("Election Ordinance") and the Constitution of the Mashpee Wampanoag Tribe ("Constitution"), and failure of the Election Committee to honor a written request challenging the election results. Subsequently, there has continued a pattern of malfeasance and nonfeasance by the tribal government, most importantly by its failure to inform the membership of its annual budget and properly publish ordinances adopted by the Tribal Council. These acts have effectively delegitimized the current administration, and it is therefore urgent that an outside authority intervene and conduct an investigation into these abuses, and a new and legitimate election be conducted under an independent tribal authority.

On January 9, 2009, one month before the general election, an emergency meeting was called by council members Cedric Cromwell, Aaron Tobey, and Yvonne Frye Avant. The purpose of this meeting was to place acting Tribal Chairman Shawn Hendricks and Secretary Desire Hendricks-Moreno on administrative leave, and to rescind a previous order of the council shunning, or barring five members from any involvement with the tribe for a period of seven years. (See Exhibit A). Under the duly adopted Constitution, an emergency meeting is justified only when necessary for “the preservation or protection of the immediate health, peace, safety or property of the tribe”. Under the circumstances, the placement of tribal officials on leave and reinstating five members did not constitute an emergency. In the conduct of ordinary business of the tribal council, resolution or motions, including placement of officials on administrative leave, is adopted by affirmative vote of a majority of Council members, with a quorum of nine members present. Art. IX, Procedures of the Tribal Council. Furthermore, a procedure for suspension of tribal officials is clearly addressed in the Constitution, Art. VIII, section 2. The tribal officials involved offered no justification for the emergency, or explanation why these Constitutional procedures could not be followed. Similarly, the rescinding of a previous and legitimately adopted tribal sanction should follow these same procedures.

In addition to these procedural defects, the emergency meeting lacked a quorum. While the list of voting officers includes Chief “Silent Drum” Vernon

Lopez, Chief Silent Drum had resigned in writing on April 4, 2008, automatically vacating his post. Subsequently, Chief Silent Drum had not attended any meetings of the council, a requirement to maintain a position in office, and a new Chief, Chief Earl Mills, had been named in his place to fill the vacancy, as is required under the constitution. For these reasons, the emergency meeting was invalid and the reinstating of shunned members a violation of procedure.

In an effort to legitimize the meeting, Councilwoman Yvonne Frye Avant submitted the issue to the Tribal Court, acting Judge Rochelle Ducheneaux. The Tribal Court rendered its opinion on February 6, 2009, nominally addressing the issues above. (See Exhibit B) However, as will be further explained below, the Tribal Court had no authority to render a decision at that time.

On February 8, 2009, general elections were held in Mashpee. These elections were overseen by the Election Committee comprised of Trish Keliinui (chairwoman), Shelly Pcknett, Sherry Pocknett, Donna Widdiss, and Kim Frye. The resulting election demonstrated a total failure to follow specific election procedure. The Election Ordinance sets out the authority and procedures for conducting an election, and vests sole responsibility for this with the election committee. A significant requirement for voter eligibility is membership in the tribe. Only enrolled members may register to vote. In order to be a member, applicants must satisfy the requirements set out in the Constitution and the

Enrollment Ordinance. Enrollment decisions are made by the Enrollment Committee and require a written decision that is then made part of the members enrollment folder. The list of enrolled members is included as a voter list during the election, along with a sign-in sheet, for purposes of voter verification and to provide documentation in the event there is a challenge to election results. The procedures to be followed for each of these events is addressed by either the Constitution or ordinance. However, at the time of the election, pending members were allowed to vote without having gone through the enrollment process. By allowing pending members to vote without proof that they satisfied the membership criteria, the election Committee effectively waived a necessary requirement of Article III of the Constitution, a power that not even the Tribal Council is authorized to have. Art. III, section 8. At the conclusion of the voting day, none of the election materials, i.e. the voter list, sign-in sheet, and ballots, were properly secured by the election committee. This was documented by genealogist Patricia Oakley. Section 1 of the Election Ordinance sets out the duties of the committee, including the retention of all election material for at least one year and forwarding all material to the archives of the tribe and Federal Records Center. This was never done and additional evidence of tampering was observed.

On February 9, 2009, Councilwoman Nellie Ramos addressed a letter to the Election Committee challenging the election results, citing the numerous concerns with election procedure, tampering with membership files, and

improper voting. (Exhibit C) This request was denied by Election Committee Chairperson Trish Keliinui, an authority not vested with either the Chairperson or the election Committee. Under the Election Ordinance, the two methods of addressing an election challenge are a recount or judicial appeal to the Elders of the Tribe. Acting in her authority, Chairperson Keliinui should have followed the procedures of the Election Ordinance but failed to do so. Final authority for resolution of an election dispute is with the Elders of the Tribe, allowing all parties to submit their case for review. Because of the time constraints set out in the ordinance, the action of the Chairwoman amounts to substantial breach of the responsibility of her office.

As a result of this faulty election, the Mashpee Wampanoag Tribe has been fraudulently represented by its Tribal Council. Not only has this Council acted without authority, they have not followed their prescribed duties under the Constitution. Since February 2009, there has not been a presentation of the annual budget at tribal meeting. Furthermore, the Tribal Council has failed to follow the procedures for adopting ordinances by not publishing them in public where tribal members can access them and be made aware of them.

As mentioned above, the Tribal Court has involved itself in these matters on several occasions. It is also recognized that internal matters should preferably be brought before the tribe's own court. However, the Tribal Court cannot provide a remedy in this matter because the tribe currently lacks a land base. Without a land base, the tribal court has no jurisdiction over which to

exercise their authority. Additionally, in its ruling on the issue of the emergency meeting on Jan. 9, 2009, the tribal court exercised its jurisdiction without any established rules of procedure, and apparently based on nothing more than a petition submitted by a Councilmember. This should demonstrate the inadequacy of the Tribal court as a forum for resolving the issues presented here.

Therefore, it is our purpose to ask that the 2009 election be voided and an investigation into the allegations present be conducted. As such, it is necessary to provide an interim governing body which we suggest be composed of the Golden Age Tribal Elders. This body should govern until proper and legitimate elections can be held according to the legitimate and recognized rules of the Mashpee Wampanoag set out in their Constitution and duly adopted ordinances.

With great hopes that you will assist us,

Anne Peters Brown "Talking Star"  
Mashpee Wampanoag Elder