

CHIPPEWA CREE TRIBAL MEMBER,
KEN BLATT ST. MARKS,
Plaintiff/Appellee,

v.

CHIPPEWA CREE ELECTION BOARD
MEMBERS, individually and in their official
capacity, Cecelia Parker, Paulette Pipe, Gayle
Denny, Anna Crain, and Ramona Henderson,
Defendants/Appellants.

Cause No. 2013-CV-CV-1645

OPINION

The Election Board appealed the Tribal Court decision to this Court. Several preliminary motions were made before this Court and those motions were ruled upon.

1 Now, this Court AFFIRMS the decision of the Tribal Court. At the outset, it should be
2 noted that in carrying out its constitutional and statutory functions, the Election Board is
3 generally entitled to deference from the courts. Though the Election Board was correct in
4 finding a violation of the Election Ordinance, in this case, the particular violation had no
5 practical effect on the outcome of the election. For this core and relatively narrow reason, this
6 Court finds that there was not a “valid reason[] ... why the results of the election shall not be
7 final.” This Court emphasizes that this decision should be understood in light of its particular
8 facts.

9 **Factual and Procedural History**

10 The parties’ briefs before this Court, the Tribal Court’s Opinion and Order, and, among
11 other documents and records, the Tribal Court hearing transcript exceeding 150 pages
12 demonstrate a detailed and complex factual background to this case. For purposes of delivering
13 its opinion, this Court will selectively list certain case facts and procedural history:

- 14 1. A Special Election for Chairmanship was held on July 30, 2013.
- 15 2. The special election results were as follows: Ken Blatt St. Marks (the Appellant) received
16 453 votes; Richard Morsette received 315 votes; Jonathan Windy Boy received 192
17 votes; Curtis A. Monteau, Jr. received 108 votes; Bert Corcoran received 32 votes; and
18 Luanne Belcourt received 16 votes. These results were certified as “official results” by
19 the Election Board.
- 20 3. The Election Ordinance of the Chippewa Cree Tribe of the Rocky Boy’s Reservation, as
21 amended, requires that Tribal voters provide a Chippewa Cree Tribal Identification Card
22 (“Tribal ID”) in order to vote.
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- 1 4. A group of 12 prisoners voted in the special election, and an unverified number of these
2 individuals, possibly seven to ten, were permitted to vote without providing the
3 Chippewa Cree Tribal Identification Card. The individual prisoners who did not present
4 a Chippewa Cree Tribal Identification Card did provide a Certificate of Indian Blood
5 (“CIB”) for purposes of identification at the time of voting in the special election.
6 Though not evidently central to the Election Board’s protest decision, Election Board
7 procedures were not followed by the actions of an Election Board member in taking the
8 enrollment book to the police van and allowing the 12 prisoners to vote in the van.
- 9 5. An election protest, together with applicable payment, was received by the Election
10 Board Chairperson on August 2, 2013. In most relevant part, the protest asserted that, in
11 violation of the Election Ordinance, the group of prisoners did not present Tribal IDs but
12 instead presented CIBs; that an Election Board member personally signed the voter
13 registration form and ballot form on behalf of the prisoners; and that there “may have
14 been other individuals to utilize [CIBs] to vote in this election.” The election protest was
15 made by Richard Morsette, the runner-up in the special election.
- 16 6. The Election Board determined that the protest was valid and, in effect, set aside the
17 results of the special election, announcing that a new special election for chairmanship
18 would be held. In relevant part, the Election Board “admit[ted] that the protest is
19 accurate as to prisoners voting with photo copies of [CIBs] and not providing [Tribal]
20 Identification Cards.” The Election Board also stated that it was “uncertain as to how
21 many voters submitted copies of [CIBs].”
- 22 7. Appellant Ken Blatt St. Marks filed an appeal and a writ in Tribal Court against
23 Appellants, the Chippewa Cree Election Board members, which, in substance, served as
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an appeal of the Election Board decision regarding the special election protest.

Combined, the pleadings raised a number of allegations and legal challenges to the Election Board's action relating to the protest, which are part of the record of this case.

8. The Tribal Court ruled in favor of Appellant's challenge of the Election Board decision on the protest and remanded the matter to the Election Board. Among other things, the Tribal Court determined that Election Board procedures were not followed with respect to the voting of the 12 prisoners in the van and that it could not determine the number of those prisoners who voted upon providing CIBs instead of Tribal IDs. The Tribal Court invalidated the 12 prisoner votes and, significantly, determined that it could not verify that any additional voters were allowed to vote with CIBs. With regard to invalidating the votes of the 12 prisoners, the Tribal Court found that "this margin of error fails to invalidate the election...." The Tribal Court ruled that the Election Board's protest decision was null and void and remanded the matter to the Election Board for further proceedings under the law.

Standard of Review

This Court will review factual findings based on a substantial evidence standard. This Court will review conclusions of law on a de novo standard.

Though Tribal law does not provide the standard of review for Election Board decisions (including Election Board interpretations, constructions, or applications of Tribal law), this Court will in general course give deference to the Election Board in light of the Election Board's roles under the Constitution and Election Ordinance with respect to conducting elections and receiving and deciding election protests. While a deference standard is appropriate, this Court will not make a complete adoption of federal or state administrative procedure law as Tribal law.

1 With consideration of general principles of administrative procedure law as background,
2 deference for Election Board decisions regarding the interpretation, construction, or application
3 of Tribal law—in particular, the Election Ordinance—will not apply unless the Election Board
4 decision involves a permissible construction of the Tribal law, which does not frustrate the
5 purposes of the law; the interpretation, construction, or application of the Tribal law is
6 reasonable; and the interpretation, construction, or application is rationally related to the goals of
7 the particular Tribal law.

8 **Analysis**

9 Many issues were briefed for the Appellate Court and raised before the Tribal Court.
10 This Court will not address all of these issues, though this Court considered the briefs of the
11 parties and reviewed the record. In this opinion, the Court will focus on certain issues most
12 central to the decision.

13 **A. Violations of the Election Ordinance**

14 The Tribal Constitution provides, in part, that “Tribal members who are at least eighteen
15 (18) years of age on election day shall be eligible to vote in tribal elections.” Tribal Constitution,
16 Art. IV, § 1.

17 The Election Ordinance, as amended, provides, in part, as follows:

18 Voter Qualifications: All duly enrolled members of the Chippewa Cree Tribe eighteen
19 years of age or older on election day shall be eligible to vote provided the voter is on the
20 certified enrollment list of the Tribe, and provides a Chippewa Cree Tribal Identification
Card; as further required in this Ordinance regardless of place of residence.

21 Election Ordinance, Art. II, § 2.

22 The Election Ordinance, separately, provides, “[A] Protest shall be in writing and set
23 forth valid reasons, based on the Tribe’s Constitution or Election Ordinance as to why the results
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1 of the election shall not be final.” Election Ordinance, Art. VII, § 2. This requirement clearly
2 applies to the making of an election protest; and, this Court finds that the requirement of valid
3 reasons not to make election results final also applies to the decision of the Election Board in
4 reviewing and deciding a protest. This Court notes that though the plural “reasons” is used in the
5 ordinance, in the context of the ordinance a single valid “reason” would be sufficient for
6 purposes of not making election results final.

7 In the ordinance provision on protests, the word, “valid”¹ modifies “reasons,” which
8 means that some reasons are valid reasons to not make the results of an election final—and some
9 reasons are not valid. Though it could be asserted that any violation of the Constitution or
10 Election Ordinance is a “valid” reason to not make an election’s results final, this Court finds
11 that the word “valid” should be read to have independent and distinct meaning. In other words, a
12 violation of the Election Ordinance is not, standing alone, necessarily a sufficient reason for not
13 making an election’s results final—rather, the violation must rise to, or constitute, a “valid”
14 reason as to why the results of an election shall not be made final.

15 More than 1,200 votes were cast in the special election at issue. There are not allegations
16 of fraudulent or multiple voting, non-member voting, or under-age voting. Rather, the Election
17 Board determined, and the Tribal Court found, that individuals in a group of 12 prisoners voted
18 upon showing CIBs rather than Tribal IDs; and the Tribal Court found that the proper procedures
19 were not followed by allowing the prisoners to vote in a van and taking the enrollment book to
20 the van. The Tribal Court invalidated all 12 prisoner votes, and found that the margin of error of
21 12 votes was insufficient to invalidate the election.

23 ¹ Among synonyms or definitions for “valid,” this Court looks to “bona fide,” “well founded,” “justifiable” and
24 “sound”.
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1 The evidence indicates that each voter in the special election met the constitutional
2 requirement of Tribal membership and of being at least 18 years of age, though for some voters
3 CIBs were accepted for identification rather than Tribal IDs as required under the Election
4 Ordinance. The evidence also indicates that the winning candidate's margin of victory over the
5 runner-up was 138 votes.

6 The Election Board's "Update on Protest" letter stated that "the Election Board did
7 accept photo copies of [CIB]"; stated the Election Board "is uncertain as to how many voters
8 submitted copies of CIB"; and admitted "that the protest is accurate as to prisoners voting with
9 photo copies of CIB and not providing [Tribal] Identification Cards." The Tribal Court found
10 that the Election Board was not able to verify or validate the acceptance of CIBs except in regard
11 to the group of prisoners. In sum, both the Election Board protest review and the Tribal Court
12 hearing did not establish any additional number of ballots cast with use of CIBs—and the Tribal
13 Court ruled that no additional use (beyond the prisoner votes) of CIBs could be validated.²

14 As 12 votes were invalidated below and the winning candidate won by 138 votes, the
15 leading candidate would still hold 126 more votes than the runner-up candidate. Even in the
16 event that voters other than the group of prisoners used CIBs, there is no evidence in the record
17 to establish that 126 or more additional voters used CIBs rather than Tribal IDs. Also, no matter
18 how many CIBs may have been used for identification instead of Tribal IDs, there is no evidence
19 in the record of voters other than Tribal members of lawful ages casting ballots.

20 ² There is the question of the standard of review that the Tribal Court should apply to reviewing Election Board
21 determinations of fact. Appellants assert that the Tribal Court should apply either of the following standards:
22 "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record" or "unsupported
23 by substantial evidence." This Court is in general agreement with Appellant on this point—in other words, there
24 should generally be deference accorded to the Election Board's findings. In reviewing the testimony received by the
25 Tribal Court, however, there is very limited or scant evidence presented regarding the acceptance of any CIBs for
voters other than the prisoners. Based on the record, this Court will not upset the Tribal Court's factual finding.
Also, this Court notes that even if some CIBs were accepted for additional voters, there is no evidence to suggest or
indicate that a high enough number of CIBs were accepted for voters to reach the actual margin of the election win.

1 The key question is whether there is a valid reason to not finalize an election when there
2 is a violation of the Election Ordinance but, in practical effect, that violation does not change or
3 call into question the outcome of the election. The Election Board found a reason not to finalize
4 the election results as it determined that the Election Ordinance was violated by the voting that
5 occurred with CIBs used for identification.

6 Appellants would have the courts defer to its determination that the non-outcome
7 determinative violation of the Election Ordinance is a valid reason as to why to not make the
8 election final. The thrust of Appellants' argument is that the Election Board's determination
9 should be deferred to under the administrative law rubric set forth in *Chevron U.S.A. Inc. v.*
10 *Natural Resources Defense Council*, 467 U.S. 837 (1984). Appellee argues that there is no
11 adequate basis not to finalize the election results, in part asserting that administrative mistakes
12 are not a basis to overturn an election—citing *Atkinson v. Roosevelt County*, 227 P. 811 (Mont.
13 1924).

14 At its core, the relevant part of the protest challenged the form of identification that was
15 accepted and not, for example, whether the voters were eligible voters or if their votes were
16 properly counted. Thus, there is—what can be thought of as—a technical, procedural, or
17 administrative violation of the Election Ordinance that was made by the Election Board itself.
18 The Election Board admitted the violation regarding the form of identification for the group of
19 12 prisoners and, though the evidence before the Tribal Court indicated that some of the
20 prisoners did use the Tribal ID, the Tribal Court invalidated those 12 votes, at least in part
21 because of the irregularities relating to the group of prisoners voting in the van.

22 Though there is evidence to indicate that CIBs might have been accepted for other voters,
23 even from the Election Board protest process, there is no evidence of the number of such
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1 voters—and there is no evidence that any such number might rise to the 126 votes
2 mathematically needed (in addition to the 12 prisoner votes) to reach the margin of error of 138
3 votes in the election. Separately, this Court notes that there is no evidence to indicate that any
4 voters other than Tribal members of lawful ages participated in the election.³

5 Under these facts, the Court must determine whether it is required to give deference to
6 the Election Board’s reading and application of the Election Ordinance’s provision regarding
7 “valid reasons.” Given the particular circumstances of this case, this Court does not see what the
8 Election Ordinance requires—that is, a “valid” reason not to make the election final. Deference
9 is not required if the decision under review frustrates the purposes of the law, is unreasonable, or
10 is not rationally related to the purposes of the law.

11 The purpose of the Election Ordinance is to carry out efficient and timely elections—and
12 to not make elections final only in connection with protests based on “valid reasons.” Here, the
13 decision of the Election Board unnecessarily frustrates the purpose of carrying out elections.
14 Both the Election Board and the Tribal Court did not find that a sufficient number of voters used
15 CIBs instead of Tribal IDs to equal or exceed the 138-vote margin held by the election winner.
16 It would be speculative to assert or conclude that the number of voters using CIBs in fact did—or

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20 ³ This Court briefly notes that Article II, Section 2 of the Election Ordinance can be read on its terms to require a
21 Tribal ID in order to be eligible to vote. This raises an interesting issue. As indicated, there are two constitutional
22 requirements for voter eligibility: (1) being a Tribal member and (2) being at least 18 years of age. This Court
23 declines to read the Election Ordinance as establishing greater eligibility requirements for voters—and rather reads
24 the ordinance consistent with the Constitution; that is, that voters must be Tribal members at least 18 years old, and
25 that a Tribal ID is required for purposes of proving eligibility. In this case, it is established that the Election Board
accepted CIBs from some voters to prove eligibility, and the acceptance of the CIBs instead of the Tribal IDs is a
clear violation of the Election Ordinance. But it is also noted that there isn’t evidence in the record establishing that
the number of CIBs accepted reached or exceeded the number of votes that the winning candidate won by—in part
because the Election Board itself did not reach this conclusion.

1 may have—equaled or exceeded 138; and this Court will not so find based on the record before
2 it.⁴

3 In this election there was no evidence to indicate that anyone other than Tribal members
4 of the lawful ages voted, and there is no indication their ballots choices were not clear or were
5 not counted. In the context of the facts of this case, this Court finds that the decision not to make
6 the election final was not a reasonable decision and this Court will accordingly not defer to it.

7 Though certain mistakes and violations were made—and, to its credit, the Election Board
8 so acknowledged these occurrences, it is the view of this Court from the record that the Election
9 Board did a commendable job of administering the election, including with respect to providing
10 numerous Tribal IDs on the day of the election. From the record, there is not any doubt as to the
11 election results—and the established errors and violations were not established to reach in
12 number the margin of the winning candidate's votes over the runner-up candidate's.

13 Deference to the Election Board is generally appropriate, but, as this case shows, there
14 are limits to where such deference applies.

15 **B. Election Protest—Timeliness and Fee Payments**

16 The Election Ordinance requires that a protest or challenge must be made within five
17 days after the respective election results are posted. Article VII, Section 2. In addition, a
18 petition to protest by a losing candidate must be accompanied by a \$250 cash deposit and, if
19 there is a demand for re-holding an election, there must be an additional \$250 cash deposit. *Id.*

20 Much testimony was taken below regarding the receipt of the protest and the payment of
21 the cash deposits. This Court does not find the method or timing of the election protest or the

22 ⁴ Even if the Election Board or Tribal Court did find that 138 voters or more used CIBs, there would remain the
23 issue of whether there would be a valid reason to set aside an election outcome based on the wrong form of
24 identification accepted under the Election Ordinance where there is no evidence of fraud, non-member voting, or
25 other acts to call into doubt the election's outcome.

1 payments to be invalid or contrary to the Election Ordinance. Based on the record and with
2 deference to the Election Board, this Court sees no reason to conclude that the making of the
3 election protest was invalid or was contrary to the Election Ordinance requirements. This Court
4 finds that the election protest was properly before the Election Board.

5 **C. Appeal to the Court of Appeal—Timeliness**

6 Appellee contends that this Court is without jurisdiction in this matter on the basis that
7 the Appellants were late in filing their Notice of Appeal. This issue was previously the subject
8 of two dismissal motions, and it was extensively briefed by the parties in connection with those
9 motions. The Court previously ruled that Appellants' appeal is timely, and the Court will not
10 now disturb those rulings or revisit the issue.

11 **D. Standing of Election Board on Appeal**

12 Section 7 of the Court of Appeals' Ordinance allows for appeals from final orders and
13 judgments of the Tribal Court. In this case, a lawsuit was filed against Appellants stemming
14 from the Election Board's decision of an election protest. Appellee, as plaintiff below, prevailed,
15 and this appeal was brought by Appellant who was the defendant below.

16 This Court finds that the laws of the Tribe allow a party to bring an appeal of a final
17 Tribal Court order or judgment. Though this Court sees that the role of the Election Board in
18 sitting in review of election protests is somewhat unique, once suit is brought against the
19 Election Board, the Election Board stands as a party to the litigation, and this Court does not find
20 that the laws of the Tribe prevent the Election Board, as the non-prevailing party below, from
21 maintaining this appeal. The interest of the Election Board pertains to its process for reviewing
22 and deciding upon the election protest as well as the scope and nature of the judicial review; it is
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1 unrelated to the specific election outcome. This Court finds that the Election Board has standing
2 and is allowed to appeal under the laws of the Tribe.

3 Conclusion

4 The decision of the Tribal Court is AFFIRMED and this matter is REMANDED to the
5 Election Board. Each party shall bear its respective costs.

6 In closing, this Court reiterates that though deference generally applies with respect to the
7 Election Board, there are certain cases where it does not; and, for the reasons described in this
8 opinion, deference does not extend to the Election Board's interpretation and application of the
9 Election Ordinance in this instance. On the whole, the Election Board performed well in
10 carrying out the special election, and the Tribe and Tribal membership have reason to be
11 confident in the election results.

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13 DATED this 19th day of November, 2014

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16 ELDENA BEAR DON'T WALK
Associate Appellate Justice

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18 DAVID H. HOUSE
19 Special Associate Appellate Justice
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