

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Archie D. Fool Bear,	)	Case No:
	)	
Plaintiff,	)	Judge:
	)	
vs.	)	<b><u>PLAINTIFF'S MOTION FOR</u></b>
	)	<b><u>TEMPORARY RESTRAINING</u></b>
Standing Rock Sioux Tribe, Tribal	)	<b><u>ORDER/MOTION FOR</u></b>
Council, et al.	)	<b><u>PRELIMINARY INJUNCTION</u></b>
	)	
Defendants.	)	
	)	

NOW COMES Plaintiff, Archie Fool Bear, by and through undersigned counsel, and requests that the Court grant a temporary restraining order or a preliminary injunction under Fed. R. Civ. P. 65 to enjoin Defendants from conducting the Tribal primary election scheduled for **July 19, 2017**. Plaintiff has brought an action asserting that Defendants violated his equal protection and due process rights under 25 U.S.C. 1302(a)(8) by declaring him ineligible for the primary election as a candidate to seek the Standing Rock Sioux Tribe office of Chairman of the Tribal Council. If injunctive relief

is not granted and the primary election is held, Plaintiff will suffer immediate and irreparable injury by being denied the right to run for office.

Plaintiff's Memorandum in Support of Motion is attached to this motion and is incorporated by reference.

Respectfully submitted,

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/s/ Scott R. Miller  
By: Scott R. Miller, Esq.

**MEMORANDUM IN SUPPORT OF MOTION**

Plaintiff brings this action under 25 U.S.C. 1302(a)(8), for Defendants' violation of Plaintiff's equal protection and due process rights in finding Plaintiff ineligible as a candidate to seek the Standing Rock Sioux Tribe office of Chairman. Plaintiff's Verified Complaint seeks a declaratory judgment that Defendants violated Plaintiff's equal protection and due process rights per 25 U.S.C. 1302(a)(8), and further requests that the Court order Defendants to place Plaintiff's name on the primary ballot for the office of Chairman of the Tribal Council of the Standing Rock Sioux Tribe. Plaintiff's Verified Complaint also seeks injunctive relief.

Injunctive relief under Fed. R. Civ. P. 65 enjoining Defendants from holding the primary election of July 19, 2017, is necessary in this case. If relief is not granted and the primary election is held, Plaintiff will suffer the immediate and irreparable injury of being denied the right to run for office.

**FACTUAL BACKGROUND<sup>1</sup>**

Per Plaintiff's Verified Complaint, Plaintiff is a member in good standing with the Standing Rock Sioux Tribe, and resides in Ft. Yates, North Dakota. Defendants are the Standing Rock Sioux Tribe, Tribal Council, the Standing Rock Sioux Tribe, Tribal Council Election Commission, Dave Archambault II, Chairman of the Tribal Council, and Linda Comeau, Chair of the Tribal Council Election Commission. On May 15, 2017, Plaintiff submitted paperwork and signatures seeking election to the office of Chairman of the Tribal Council of the Standing Rock Sioux Tribe. Nearly a month later, on June 12, 2017, Defendant Comeau, chair of the Tribal Election Commission, issued a letter to Plaintiff informing Plaintiff that the Election Commission found Plaintiff initially

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<sup>1</sup> All facts are taken from Plaintiff's Verified Complaint.

ineligible as a candidate for Chairman, based solely on an alleged delinquency on a debt to the Tribe. This debt originated in 2001. In the letter, Defendant Comeau set a hearing for the following day, June 13, 2017, at 10:00 a.m.

Plaintiff appeared at the June 13, 2017, hearing, and disputed the initial finding of eligibility on the grounds that Plaintiff is unemployed, and that the debts of unemployed Tribe members are not considered delinquent. Plaintiff, before submitting paperwork to run for election, confirmed his non-delinquent status with Tribe CFO Jerome Long Bottom. Furthermore, Edie Rhoades, short-term loan director for the Tribe, testified at the June 13, 2017, hearing, and stated that Plaintiff is not delinquent on any debt owed to the Tribe.

On June 14, 2017, Defendant Comeau issued a letter to Plaintiff informing Plaintiff that the Election Commission found Plaintiff ineligible as a candidate for Chairman, again based on an alleged delinquency on a debt to the Tribe. Plaintiff on June 19, 2017, in writing, requested reconsideration of the Election Commission decision. Reconsideration was denied by letter on June 20, 2017.

Additionally, Plaintiff, while allegedly owing the *same debt* to the Tribe, was *twice* declared *eligible* by the Election Commission to seek Tribal office in 2013: Tribal Chairman (primary election), and Cannon Ball Local District Chairman (general election). By declaring Plaintiff ineligible as a candidate for the office of Chairman of the Tribal Council of the Standing Rock Sioux Tribe for the July 19, 2017, primary, Defendants failed to comply with the Tribe's own election procedures.

## LAW AND ARGUMENT

Plaintiff is entitled to fair compliance with the Tribe's own voting procedures, and the Tribe's violation of its procedures constitutes equal protection and due process violations under 25 U.S.C. 1302(a)(8). *See, White Eagle v. One Feather*, 478 F.2d 1311 (8th Circuit 1973). To preserve Plaintiff's constitutional rights, injunctive relief is crucial. If the election is allowed to proceed without Plaintiff on the ballot, his ability to challenge the Defendants' unconstitutional finding of ineligibility will be lost forever. *See, Webster Two Hawk v. Rosebud Sioux Tribe*, 534 F.2d 101 (8th Cir. 1976) (failure to obtain injunctive relief before primary election makes tribal election constitutional challenge moot).

Furthermore, Plaintiff has a substantial likelihood of success on the merits. The equal protection clause of the Native American Civil Rights Act requires that tribal law be applied with an even hand, rather than being arbitrarily enforced in some cases and not in others. Tribal law must be applied equally to all persons similarly situated. *Wounded Head v. Tribal Council of Oglala Sioux Tribe*, 507 F.2d 1079 (8th Cir. 1975). Back in 2013, with the *very same debt* that is alleged to be delinquent today, Plaintiff was found to be *eligible* to be a candidate for Tribal office, not once, but *twice*. Two separate positive eligibility determinations were made, for two separate offices. Plaintiff was on the ballot for one office in the primary election, and another in the general election.

In the case at bar, under the *same facts* as in 2013, Defendants ignored precedent. Defendants ignored the testimony of Edie Rhoades, short-term loan director for the Tribe, that Plaintiff's alleged debt was not delinquent. Defendants ignored the acceptance of Tribe CFO Jerome Long Bottom of Plaintiff's letter noting Plaintiff's unemployment and

Plaintiff's commitment to make payments once employed. Instead, Defendants arbitrarily and capriciously disqualified Plaintiff. The Tribal election code, Title XV 15-102(g), requires for disqualification that a debt to the Tribe be *delinquent*, not merely just owed.

This is hardly an even-handed application of Tribal election law. Two different years, same person in question, same debt in question, same circumstances, two different results. Defendants have clearly violated Plaintiff's equal protection and due process rights under 25 U.S.C. 1302(a)(8), and the court needs to enjoin Defendants from conducting the July 19, 2017, primary to provide Plaintiff an opportunity to assert his rights, and to prevent immediate and irreparable harm.

Counsel for Plaintiff has notified Defendants of Plaintiff's lawsuit, and of this motion, by faxing the documents to Defendants' office. (See, Exhibit A, Affidavit of Scott R. Miller).

Therefore, Plaintiff requests that his Motion for Temporary Restraining Order/Motion for Preliminary Injunction be GRANTED.

Dated this 14th day of July, 2017.

Respectfully submitted,

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