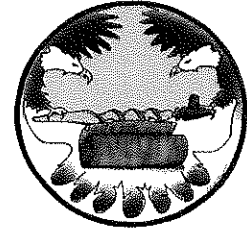


**LITTLE TRAVERSE BAY BANDS OF  
ODAWA INDIANS**

**Tribal Court  
Civil Division**



Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740  
Phone: 231-242-1462

Case No: **C-208-0515**

**Plaintiffs:**

Linda Gokee  
John Keshick, III  
Michelle Keshick  
Jesse Boda,  
Bernadece Boda

v.

**Defendants:**

LTBB Election Board:  
Merle Carson-Chairperson  
Alice Hughes-Vice-Chairperson  
Carol Quinones-Secretary/Treasurer  
Christine Shomin-Board Member  
Jon Shawa-Board Member

**ORDER DISMISSING ELECTION CHALLENGE**

This case arises from a Complaint filed by the Plaintiffs, alleging that the Defendants violated WOS §3.112(A)(10) and (12) by misspelling the name of Mr. John Keshick III on election ballots for the Primary Elections for the LTBB Tribal Council, and through the subsequent mailing of a notice of the error and a second ballot with a corrected spelling. The Plaintiffs request that, because of this error, the Primary Election should be voided and a new election held.

The Plaintiffs raise two arguments within their Complaint. First, they contend that because the Defendants mailed the Primary Ballots to voters 31 days prior to the Primary Election, the Defendants violated WOS §3.112(A)(10), which requires that “[t]he Election Board shall prepare the election ballots and mail them to all registered voters no less than thirty (30) calendar days prior to the election.” Second, the Plaintiffs argue that while the initial ballot (with the misspelling) was sent out in accordance with the timeframe proscribed by WOS §3.112(A)(10), the subsequent ballot (with the corrected spelling) was not. The Plaintiffs also

allege that the initial ballot, with Mr. Keshick's name misspelled, violated WOS §3.112(A)(12), which requires that "[n]ames shall appear on the ballot as they are printed on the nomination petition." This argument arises from the fact that the nominating petition listed Mr. Keshick's name as "John W. Keshick III" while the ballot listed it as "Jon W. Keshick III".

The Defendants contend that the Plaintiffs' arguments lack merit. First, the Defendants argue that because the statute requires only that ballots are mailed at least 30 days prior to an election, the addition of "at least" allows for the Board to send the ballots at any point prior to the 30 day mark. Second, the Defendants argue that because the second ballot that was sent out merely corrected the spelling error, it did not entirely replace the first white ballot, nor did it deem the second green ballot void or invalid. The Defendants argue that because the initial white ballots remained valid, the statute was not violated, as ballots were indeed sent out for the election in a timely fashion.

A review of Little Traverse Bay Bands case law, the case law of other Tribes, and federal case law results in the absence of any binding or persuasive case law on the issue. The Defendants cite to a decision of the Michigan Court of Appeals in *Dukesherer Farms, Inc. v. Director of Dep't of Agriculture*, 172 Mich. App. 524 (Mich. Ct. App. 1988), which provides some guidance. In *Dukesherer Farms*, after an initial referendum ballot was sent to the electorate within the forty-five day time deadline prior to the election, a language error contained within the initial ballot was discovered, and a subsequent ballot was sent out after the forty-five day deadline. The Michigan Court of Appeals found no error in such procedure, finding that "[a]lthough the subsequent balloting fell outside the forty-five day time limit, the initial ballot was within the time limit. We believe the director's correction of the error amounted to substantial compliance with the forty-five day limit." *Id.* at 534.

The Defendant contends *Dukesherer Farms* is analogous to this case because in both cases, due to an error on the initial ballot, a second ballot was required to be sent out. The Defendants point out that in that case, just as in this case, there was a certain number of days before which ballots must have been sent out, however the second ballot was sent out after such timeframe. The Defendants further argue that the Michigan Court of Appeals ruled that the correction of the error amounted to substantial compliance with the regulation and upheld the election, and that this Court should do the same.

Both Parties stipulated during the hearing that they agree to the facts of the case as presented in their opposing briefs. In this case, the Election Board initially mailed out ballots (white in color) for the May 11, 2015 Primary Election on April 10, 2015, 31 days before the election. On April 21, 2015, the Election Board mailed out new ballots (this time green in color) along with a notice, informing voters that the original ballot had contained a misspelling of the name of candidate John W. Keshick III, with the name instead spelled as “Jon”.<sup>1</sup> This notice informed voters that should they wish to submit only the original white ballot or only the new green ballot, their vote would be counted exactly once. It also informed voters that should they have already submitted their white ballot, but due to the corrected spelling hoped to change their ballot, submission of the green ballot would result in only their green ballot being counted. Following the election, in which Mr. Keshick placed outside of the group that qualified for the General Election, Plaintiffs filed this action.

---

<sup>1</sup> While some discussion took place during the hearing, and the Court allowed for both parties to present evidence and testimony on the issue should they wish, the only evidence given as to the date that the Election Board learned of the error was in Defendant’s Brief, in which the Defendant stated that Mr. Keshick contacted the Election Board and alerted them to the error on April 21, 2015, 11 days after the ballots had been mailed.

## ANALYSIS

This case involves, essentially, two challenges by the Plaintiff. First, that the mailing of the Primary Election ballots 31 days prior to the election was improper, as it violated WOS §3.112(A)(10). Second, that the mailing of the subsequent green ballot was improper, as it violated WOS §3.112(A)(10), and that the misspelling on the initial ballot violated WOS §3.112(A)(12). On each of the claims, the Court finds for the Defendants, and holds that no material violation of either statute has taken place, and that the results of the May 11, 2015 Primary Election should be certified in accordance with the requirements under the LTBB Constitution and Tribal Code.

### **I. The Defendant did not violate WOS §3.112(A)(10) by mailing the original ballots to voters 31 days before the election**

The initial argument from Plaintiff is that the Election Board violated WOS §3.112(A)(10) when it mailed ballots out 31 days prior to the election. The statute itself reads that “[t]he Election Board shall prepare the election ballots and mail them to all registered voters no less than thirty (30) calendar days prior to the election.” The Defendant’s interpretation of the statute is correct that “no less than,” in this instance, means 30 or more days and not exactly 30 days, as argued by the Plaintiff. This is a common interpretation in all examples of statutory and linguistic interpretation, and this Court finds no reason to deviate from that common understanding.

### **II. The Defendant did not materially violate WOS §§ 3.112(A)(10) and (12) or the election regulations, as the first ballot was still a valid ballot, the misspelling was a harmless error not likely effecting the outcome of the election, and the method used by the Election Board did not result in an amendment to an existing rule or regulation.**

There is no dispute that the initial ballot (hereinafter, the “white ballot”) distributed by the Election Board contained a misspelling of Mr. Keshick’s name. There is also no dispute that

the white ballot was sent out 31 days prior to the Primary Election, followed by a second ballot (hereinafter, "green ballot") 11 days later (or 20 days before the election) with the name of Mr. Keshick spelled correctly. Voters were able to return either ballot and have their vote counted, and returning of both the green and white ballot would cause the white ballot to be discarded, and the green ballot counted in its place. The dispute instead arises in regards to the actions taken by the Election Board, and the question of whether the green ballot needed to be sent 30 days before the election, as required under WOS §3.112(A)(10), requiring the date of the election to be moved, and whether the initial misspelling of Mr. Keshick's name on the white ballot is a violation of WOS §3.112(A)(10).

The Court first holds that because the original ballot was still a valid ballot, and could be used to vote, that the obligations of the Election Board are fulfilled. While the *Dukesherer Farms* case cited earlier in the holding is in no way binding upon this Court, it is persuasive, and we find that in this instance there was even less likelihood for voter confusion, as the error was a typographical one rather than a more substantial one. As such, the rationale employed by the Michigan Court of Appeals is applicable here. All that is required under the statute is that the election ballots are sent to voters 30 days prior to an election. As the ballots sent were able to be voted on in the election for which they were sent, this Court finds that no violation of WOS §3.112(A)(10) took place when the green ballots were sent out, as the green ballots did not entirely replace the white ballot, but only attempted to correct the spelling mistake.

Along with the initial ballot remaining valid, there is no evidence of confusion on the part of voters. While the language of WOS §3.112(A)(12) does state that the names of the candidates must appear on the ballots as printed on the nominating petitions, the Court finds that the omission of the letter "h" in Mr. Keshick's first name falls under the definition of a harmless

error and does not warrant voidance of the Primary Election. Generally, an error is harmless unless it affects the substantial rights of the parties. *See, e.g.*, LTBB Rules of Civil Procedure, Rule XVIII, §7. To determine if the spelling error affected the substantial rights of Mr. Keshick, we must look to whether the error influenced the outcome of the election. There has been no evidence of, or even allegation of, voter confusion presented by the Plaintiffs as a result of the misspellings of “Jon Keshick III” versus the correct spelling of “John Keshick III.” While the typographical error is certainly regrettable, the names are phonetically identical. The initial white ballot and subsequent green ballot were substantively identical but for the correction of Mr. Keschick’s name. As no plausible injury of confusion has been alleged by any voter within the election, the Court holds that the only violation of WOS §3.112(A)(12) that took place was a harmless error and that the election need not be voided on those grounds.

Finally, the Court is not convinced that the course of action taken by the Election Board in any way disenfranchised voters in the election. First, notice was given to all voters, whether or not they had already cast ballots, which would ensure that a voter who may have been confused by the original ballot’s misspelling was now able to obtain details about the initial ballot, the error involved, and to also see a corrected ballot, clearing up any confusion. Second, along with this, procedures were put in place, and relayed to the voters, to ensure that green white ballots from the same voter are not counted twice. The notice (seen as Defendant’s Exhibit B), provided that “each vote contains a unique bar code, so if (a) bar code is read twice by the system it will be rejected and the Election Board will manually count the green vote.” Thus, even if someone had attempted to vote twice, once with each ballot, they were unable to do so, as the election system was set up in such a way so as to prevent just that occurrence. Furthermore, the number of citizens participating in this Primary Election were in line with, and

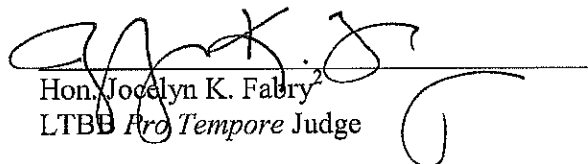
even slightly surpassed, those in recent elections, further demonstrating the absence of any confusion in the Election Board's methods.

Along with all of the above, the Plaintiffs argue that while the Election Board can create new rules, it is a violation of Section II(E) of the Tribal Election Regulations for the Board to amend current rules and regulations while an election is in progress. The Plaintiffs argue that the decision to send out a second ballot amounted to the creation of a new rule or regulation, and that because of this it was a violation of the aforementioned statute. However, the Court is not persuaded by this argument. The Court finds that by acting in the manner that it did, the Election Board was not creating a new rule, but rather acting within the ambit of the existing framework of the rules. A rule is not amended unless the existing framework is altered in some way. This was not the case here, as no framework existed to specifically address such a circumstance, to wit: the misspelling of a candidate's name on a ballot. The Board must be allowed to act when the rules are silent as to the situation before it, and may act as they see fit, provided that they do not violate or amend the current rules and regulations governing elections. While the way the Election Board proceeded after discovery of the misspelling was not a practice set out in the regulations, it was also not prohibited by it. As such, the Court finds that no violation of the LTBB Constitution, Tribal Code, or Election Regulations took place.

THEREFORE, in light of the above findings, IT IS HEREBY ORDERED that the Plaintiffs' Election Challenge Complaint is DISMISSED.

**IT IS SO ORDERED.**

6/10/15  
Date

  
Hon. Jocelyn K. Fabry<sup>2</sup>  
LTBB *Pro Tempore* Judge

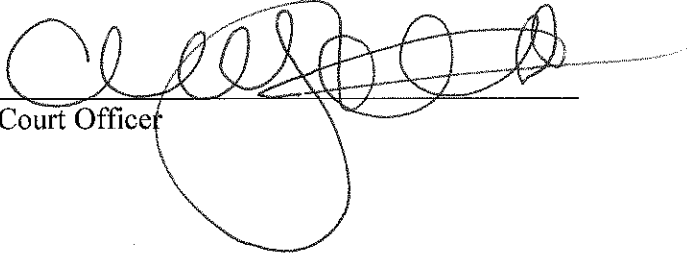
<sup>2</sup> The Court appreciates the assistance of Law Clerk George Holton in the preparation and drafting of this opinion.

**Certificate of Service**

I certify that on this date, copies of the Order were served upon the Parties by First Class or Internal mail.

Date:

June 10, 2015

  
\_\_\_\_\_  
Court Officer