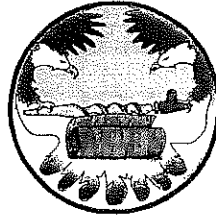


**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS**

**CIVIL DIVISION OF TRIBAL COURT**

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**THE LITTLE TRAVERSE BAY BANDS OF  
ODAWA INDIANS TRIBAL COUNCIL  
and TRIBAL CHAIRPERSON,  
Plaintiffs,**

v.

**CASE NO.: C-209-0715**

**LITTLE TRAVERSE BAY BANDS OF  
ODAWA INDIANS ELECTION BOARD,  
Defendants.**

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**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION**

**Introduction**

This matter comes before the Court on Plaintiffs' *Motion for Summary Disposition*. Because the Court finds that there is no material issue of fact and the Plaintiffs are entitled to judgment as a matter of law for the reasons set forth below, the Court grants the motion. The Court permanently enjoins the Election Board from placing Initiative #1 on the ballot.

**Findings of Fact and Procedural History**

1. A petition for Initiative #1, Tribal Per Capita Distribution, was filed with the Election Board by members of the Tribal membership. Initiative #1 is a proposed statute that would increase the annual per capita payment to \$2,500. *Complaint, attachment at p. 7.*

2. The current annual per capita payment is \$599.00 under the Tribe's Tribal Revenue Allocation Plan, as approved by the United States Department of Interior. The total per capita distribution to the membership was approximately \$2.7 million in 2014. *Motion for Summary Disposition* at 2.
3. On May 20, 2015, the Election Board Chairperson met with the Tribal General Counsel, requesting an opinion whether the Election Board should review the petition signatures and proposed statute. *Complaint* at 2-3.
4. On May 20, 2015, the General Counsel advised the Election Board to reject the initiative on its face and to not proceed with technical signature review. *Complaint* at 3.
5. On July 9, the Election Board indicated to the Tribal Council and Chairperson that they were going to place Initiative #1 on the ballot along with the candidates in the primary election for Tribal Council. The decision to process the Initiative #1 was, at least in part, based on the language in the initiative it "provides for separating certain Tribal resources by priority, specifically net gaming revenue, into one part for Per Capita Distribution leaving the remainder as a second part for use as the Tribal government shall decide." *Complaint* at 3-4.
6. On July 9, 2015 the Plaintiffs filed a *Complaint and Motion for Immediate Temporary Injunction* with the Court.
7. On July 9, 2015 at 8:12 p.m., this Court issued a *Temporary Restraining Order* prohibiting the Election Board from placing Initiative #1 on any future ballots until further order.
8. The Parties agreed that there is no material issue of fact and that this case could be resolved by summary disposition. *Stipulation*, July 13, 2015.
9. On July 30, 2015, the Plaintiffs filed a *Motion for Summary Disposition* with the Court.
10. On August 4, 2015, the Defendant filed *Defendant's Response to Motion for Summary Disposition*.
11. On August 7, 2015, the Parties appeared before the Court for oral argument on the *Motion*.

### Analysis

The issue before the Court is whether the Election Board may include Initiative #1 on a ballot. In order to decide that issue, the Court ultimately must decide whether Initiative #1 is a statute addressing appropriations or establishing the Tribal budget, and thus exempt from the initiative process under the Constitution. Section A.1 of the LTBB Constitution provides that the LTBB membership has the power to propose laws by initiative. However, it specifically exempts “statutes addressing appropriations for Tribal institutions or statutes establishing the Tribal budget.”

Under the LTBB Constitution, as drafted by the membership, it is the Tribal Council’s role to appropriate Tribal funds. Art. XI(C), Art. VII(D). The initiative exemption in Article XIV(A)(1), specifically recognizes and reinforces the separation of membership’s power to propose legislation by initiative from the legislature’s power to appropriate funds. And wisely so. Tribal Council is in the best position and uniquely situated to make financial decisions, having the day-to-day working knowledge of the Tribe’s resources and competing needs. In addition, the initiative exemption for statutes that appropriate Tribal funds for Tribal institutions or establish Tribal budgets also insulates Tribal assets from unwise decisions made by the public at any one point in time that could “sink the ship” for future generations, as Plaintiffs’ counsel pointed out at oral argument.

Tribal funds subject to appropriation solely by Tribal Council pursuant to the LTBB Constitution include the net revenues generated by the Odawa Casino Resort, as it is wholly owned and operated by the Tribe. Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721; WOS 2011-005, §§ IV, V. It is precisely those gaming revenues generated by the casino, less its’ operating expenses and other financial obligations, that Initiative #1 addresses, and ultimately, would appropriate.

The language of Initiative #1, Section II(E), provides that “allocation of Net Gaming Revenue shall be in two parts, in order by priority: (a) the primary allocation of Net Gaming Revenue shall be comprised of funds for payment of Per Capita Distribution according to the provisions of this statute; and (b) the remaining or secondary allocation of Net Gaming Revenue shall be available to the Tribal Government for such purposes as the government shall

determine.” The proposed statute submitted as Initiative #1 explicitly, then, attempts to separate Tribal funds into two separate portions – one for capita payments to Tribal members at a set amount, with the remainder left and provided to the legislature for appropriation. Black’s Law Dictionary defines an appropriation as “a legislative body’s or business’s act of setting aside of sum of money for a specific purpose.” (10<sup>th</sup> ed. 2014). The direct result of this separation of Tribal funds in Initiative #1, in and of itself, is an appropriation for Tribal institutions by directly decreasing the amount of funds that Tribal Council may use to fund those Tribal institutions. Moreover, Initiative #1 acts to establish the Tribal budget. Part of Tribal Council’s annual budget pursuant to the Tribal Revenue Allocation Plan, must necessarily include per capita payments. Initiative #1, if passed, would statutorily dictate the amount to be budgeted each year for per capita payments, and the amount to be budgeted each year for other Tribal expenses. Initiative #1 is precisely the type of proposed legislation meant to be exempted from the initiative process as it directs how Tribal funds are to be spent, addresses appropriations for Tribal institutions (the remainder of net gaming revenues after per capita payments are made) and establishes the Tribal budget.

Initiative #1’s proponents attempt to make the Constitutional exemption inapplicable by positing that the initiative does not address appropriations for Tribal institutions or establish a Tribal budget, but rather “provides for separating certain Tribal resources by priority, specifically net gaming revenues, into one part for Per Capita Distribution leaving the remainder as a second part for use as the Tribal government shall decide.” This explanation, set forth in their cover letter, and presumably accepted by the Election Board, does not hold water and the attempt to bypass the Constitutional initiative exemption fails.<sup>1</sup>

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<sup>1</sup> The Election Board did not assume a strong position within their response nor at the hearing as to whether Initiative #1 fell within the Constitutional exemption, rather arguing that it is not their role to look at the substance of a proposed initiative to determine so. The Court agrees that the Constitution and the Election Regulations do not explicitly set forth the level of substantive analysis of proposed initiatives the Election Board should engage in. However, the Constitution and Election Regulations do plainly provide that if a statute appropriates funds, it cannot be put on the ballot. A cursory review of Initiative #1 would certainly lead a reasonable person to the conclusion that the statute does just that, and the Election Board would have been within its regulatory authority to decline from processing it further. Tribal Elections Regulations. §VII(B)(2). Regardless, the issue is moot at this point, as the matter is properly before the Court.

