

JUN 30 2025

Shirley D. Sten
Clerk of Court / Assistant

IN THE
HO-CHUNK NATION TRIAL COURT

Benjamin Gamble,
Plaintiff,

v.

Case No.: CV 25-08

Ho-Chunk Nation Election Board,
Defendant

ORDER
DENYING PLAINTIFF'S MOTION FOR INJUNCTION AND
GRANTING DEFENDANT'S MOTION TO DISMISS

INTRODUCTION

This case arises out of plaintiff's challenge of the Ho-Chunk Nation Election Board's (hereinafter Election Board) decision to certify the results of the June 3, 2025, Ho-Chunk Nation General Election. The Court must determine whether to grant the Plaintiff's *Emergency Motion to Strike Certification and for Sanctions*. The record and pleadings in this matter do not sustain Plaintiff's claims against this defendant. Accordingly the court declines to grant remedies sought by the Plaintiff. Conversely, the *Motion for Summary Judgment and Dismissal* filed by the Defendant Election Board is granted.

PROCEDURAL HISTORY

The Court recounts procedural history of the instant case preliminarily in its *Scheduling Order*, CV 25-08 (HCN Tr. Ct., June 18, 2025). Given the compressed timelines of an Election Challenge, since the entry of that *Scheduling Order* the following has occurred: The *Defendants Answer to Plaintiffs Complaint* was timely filed on June 18, 2025. The Defendants by Tribal Attorney David Mrgudich and Senior Tribal Counsel Erik Shircel also filed the *Defendants Motion for Summary Judgment and Dismissal* on June 18, 2025, along

1 with Exhibits 1-7. On June 20, 2025 the Defendants attorneys filed the *Defendants Witness*
2 *List*, and *Defendants Rule 31 Disclosure*. The Court issued an *Order (Erratum)* to the parties
3 and interested parties on June 23, 2025 to correct a clerical error related to the start time of the
4 June 26, 2025 *Pre Trial Hearing* which included an error as to the start time. The *Erratum*
5 *Order* provided clarity as to the fact that the *Pre-Trial Hearing* would start at 8:00 a.m. CDT
6 on the 26th of June, 2025.
7

8 On June 24, 2025 the Plaintiff, still representing himself, *pro se*, filed *Plaintiffs Final*
9 *Rebuttal*; and a document labeled *Summary*. Plaintiff also submitted *Exhibits A-H*: “EBM
10 *Training*” noted in upper left corner of document, from 3/10/25 [appears to be two pages];
11 *Gmail dated June 19, 2025 at 7:53 a.m.* purported to be from Linda McHugh to Plaintiff
12 [concerning ballots and other concerns of sender]; Ex. D- “Disenfranchised Voters, District 4,
13 June 3, 2025 Election”, a list consisting of 10 names.¹ The other exhibits submitted include a
14 sheet labeled “Page 2, EBM-06/04/25” this page which includes what appears to be five (5)
15 motions made in the Election Board meeting where the Board addressed certification of
16 winners. (Included no specific exhibit label). A spread sheet documenting the *District IV*
17 *Absentee Tracking from June 3, 2025 Election* was attached, the addresses of the individuals
18 had been redacted, AES Control #'s are also listed. (Included no specific exhibit label). Page 2
19 of the Election Board Minutes from 02/10/25 was submitted by the Plaintiff as an Exhibit
20 (included no label). A document labeled as “Exhibit H Chicago Vote Breakdown” (Included
21 no specific exhibit label, nor source information).
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28 ¹ At the Pre-Trial the Plaintiff did not indicate who had prepared this list of individuals. The Court had advised the parties that one of the names on the list of people who were labeled as “disenfranchised voters” was Tonia Lowe, the Ho-Chunk sister of the presiding Chief Judge. This disclosure was made at the outset of the hearing on June 26, 2025 to permit the parties an opportunity to determine if they had objections to the Chief Judge continuing on with the case. There were no objections.

1 The Defendants by legal counsel filed *Defendant's Reply to Plaintiff's Rebuttal* on June
2 25, 2025, with Attached *Exhibits*.

3 On the 25th of June, 2025. The Plaintiff filed the *Emergency Motion to Strick* [sic]
4 *Certification and for Sanctions*; a document titled "*Corrected Exhibit*" and *Exhibits A-H*.

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6 PRE-TRIAL/MOTION HEARING/ JUDICIAL DISCLOSURE

7 The Court convened the *Pre-Trial Conference and Motion Hearing*, (hereafter *Motion*
8 *Hearing*), Thursday, June 26, 2025 at 8:00 a.m. CDT. The following parties appeared at the
9 hearing: Department of Justice Tribal Attorney David Mrgudich and Department of Justice
10 Senior Counsel Erik Shircel appeared in person, for the Defendant Election Board and they
11 noted that Ms. Weeta Montelongo, the Election Board Chair and Ms. JoAnn Maney, Election
12 Board member were attending remotely. The Plaintiff was not immediately connected to the
13 hearing, the court suggested that in the interests of justice a brief recess could be taken to
14 permit the plaintiff to join the proceeding. *Mot. Hr'g* (LPER, June 26, 2025, 8:06:00 a.m.CDT).
15 Attorney Shircel taking the lead for the Defendant, suggested that he would be open to a brief
16 recess to permit the plaintiff to join the hearing. He also stated that in litigation it was
17 possible that he would seek a default judgment if the Plaintiff did not appear, and it was not
18 necessary to make further attempts to locate the Plaintiff, he had been present at scheduling and
19 had notice as to the date and time to appear. *Id.*, 08:06:47 CDT. The Court took a brief recess.
20 Back on the record at 8:16:52 a.m. and Plaintiff Benjamin Gamble had been able to join the
21 hearing. He apologized for the lateness and explained that he had used the wrong information
22 to attempt to connect to the proceeding. *Id.*, 8:17:36 CDT. The Court advised him that the
23 defendant's attorneys from the Nation's Department of Justice were present in person and that
24 Ms. Maney and Ms. Montelongo appeared virtually.
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1 Judicial Disclosure

2 Chief Judge Lowe disclosed to the parties that in review of materials submitted by the
3 plaintiff on June 24, 2025 she noted that tribal member Tonia Lowe, who is a resident of Area
4 IV, is the Ho-Chunk kinship sister of the presiding judge. She explained that Tonia Lowe's
5 father and Judge Lowe's father were brothers. Judge Lowe also affirmed that she could fairly
6 and objectively hear the pending matter. Her disclosure was made as part of an ethical
7 responsibility so as to allow the parties to determine if the information was of significance to
8 them and whether they had any objections to the judge continuing on with the case. *Mot. Hr'g*
9 (LPER, June 26, 2025, 8:07:25 a.m. CDT and again at 8:17:53 a.m. CDT. The parties were
10 given time to think about the disclosure. The plaintiff had no objection *Id.*, 8:19:49 a.m. CDT.
11 Attorney Shircel for the defendants had no objection and stated the disclosure did not rise to the
12 level of recusal. *Id.*; 8:19:56 a.m. CDT.
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14 The Court then addressed the purpose for the *Pre-Trial Hearing* as being useful to
15 identify and narrow the issues that can be resolved, and those which must go to litigation-- if
16 possible. Given the compressed timelines of an election case the parties would also take up the
17 pending motions as had been previously agreed to by the parties at the *Scheduling Conference*
18 June 16, 2025.
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20 Those motions were identified as the *Defendants Motion for Summary Judgment and*
21 *Dismissal*, and the *Defendants Reply to the Plaintiff's Rebuttal*, filed 6.24.25, Defendants
22 counsel Shircel also raised a motion on the record. He categorized it as a Rule 56 b motion for
23 an involuntary dismissal due to gross violations relating to the plaintiff's citation of law and
24 cases. Senior counsel Shircel went on to argue that the involuntary dismissal was warranted
25 where he has been unable to locate and find the references to the CONSTITUTION and ELECTION
26 CODE cited by the plaintiff. He questioned whether the plaintiff relied on AI (Artificial
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1 Intelligence) tools for research. He further asserted that the plaintiff had supplied the court with
2 false information and should be sanctioned. The Court inquired as to whether counsel Shircel
3 was preparing written support identifying the specific concerning citations and data provided
4 by the plaintiff for the defense motion, or whether the motion itself was going to be put in
5 writing. Attorney Shircel confirmed that he was making the motion on the record today and
6 would be able to argue it as it was essential to his defense. LPER 8:28:44 a.m. CDT

7
8 Plaintiff expressed a desire to think about the disclosure relating to the Tonia Lowe
9 disclosure of LPER 8:23:19 a.m. CDT. The Court determined to hear the position of the
10 Plaintiff as relates to all the motions. Plaintiff indicated that he was prepared to proceed with
11 addressing the *Emergency Motion* which includes his request to void the election pursuant to
12 the Election code, “ §18.9(d)” and seeks sanctions under “Rule §5-111” for material
13 misrepresentations and discovery abuses buy the Defendant. Plaintiff seeks to secure an Order
14 for an immediate audit under the Election Code 18, 9 (a) – (c) with sanctions for non-
15 compliance with a court order--if the Election Board Defendant were to fail to comply within
16 72 hours. *Emergency Motion*, CV 25-08 (HCN Tr. Ct.) at 1.

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18 Senior Counsel Shircel advocated that his client should not be faced with witnesses if
19 the matter goes to trial as the plaintiff failed to comply with the Rule 31 disclosures and has
20 also failed to provide a witness list as of today. He argued that this puts him in an impossible
21 position in preparing a defense. Further, his argument is that the inaccurate citations for the
22 laws the Plaintiff has cited to effectively prohibit his ability to identify the law and thus hinder
23 his ability to create a defense of his client.

24
25 In response to Senior Counsel Shircel’s expression of a desire to prohibit the calling of
26 witnesses and use of witnesses by the Plaintiff. Plaintiff offered that he had no witnesses. *Pre-*
27 *Trial/Motion Hearing*, June 26, 2025, LPER 8:31: 11, a.m. CDT.

1 With those disclosures, the hearing shifted focus to the arguments and supportive
2 evidence related to the pending motions of the parties. Specifically whether the action should
3 be dismissed for the failure of the plaintiff to prove any violation of the Ho-Chunk Nation
4 Election Code.
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6 FINDINGS OF FACT

7 At the *Pre-Trial Conference and Motion Hearing*, convened on June 26, 2025 the
8 following findings were made by the Court.
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- 10 1. The parties received proper notice of the June 26, 2025 *Pre-Trial and Motion Hearing*.
- 11 2. The plaintiff, Benjamin Gamble is an enrolled member of the Ho-Chunk Nation, Tribal
12 ID # ending in 4767, and maintains an address of 31928 Granville Drive, Winchester, CA 92526.
- 13 3. The Plaintiff was a candidate for the Ho-Chunk Nation Area IV, Seat 3 Legislative
14 position in the June 3, 2025 General Election. In his initial appearance before the court, plaintiff
15 advised that he had intended to secure legal counsel. *Scheduling Conference*, May 16, 2025
16 LPER, 3:01:35 p.m., CDT. He continues to represent himself in this action as of June 26, 2025.
17 He explained that he had difficulty in trying to secure counsel to represent him in tribal court.
18 *Pre-Trial Conference Motion Hearing*, June 26, 2025 LPER, 8:33:08 a.m. CDT.
19
- 20 4. Harm. Plaintiff claimed that three disenfranchised votes would have changed the
21 outcome of the election or forced a runoff. The *Official Results of the Election* show that Sandra
22 WhiteWing had nineteen (19) total votes compared to the Plaintiff's fifteen (15) total votes. Thus
23 even if the Defendant had the three (3) claimed votes given to him in his favor, he still would
24 have lost the Election 19 to 18. (See Ex. 1, *HCN Election Official Certified Results*, and dated
25 June 04, 2025). Ms. Sandra WhiteWing received 19 votes and was certified as the winner in
26 the June 3, 2025 General Election for the Area IV, seat 3 by the defendant Election Board.
27
28 *Admission of Defendant, Answer at 3. HCN Certified Election Results*, dated June 4, 2025.

1 5. Plaintiff challenges the Election results and defendants certification of the June 3, 2025
2 General Election through his timely filed *Complaint*, CV 25-08 (HCN Tr. Ct., June 13, 2025)
3 alleging violations of the CONSTITUTION and Election Code by the defendants. *Id.*,
4

5 6. Plaintiff alleges that the applicable law supporting his cause of action is the HCN
6 CONSTITUTION, ART. VII, § 5(a) JUDICIARY; ART. V § 4 LEGISLATURE, REDISTRICTING OR
7 REAPPORTIONMENT, and the ELECTION CODE CH. I §2.4; CH. II §§ 2, 9a, 11e (2); 2. *Complaint*. At
8 2.

9
7 The CONSTITUTION at ART. VIII, § 7 states:

10
11 Section 7. Challenges of Election Results. Any member of the Ho-Chunk Nation
12 may challenge the results of any election by filing suit in the Trial Court within ten
13 (10) days after the Election Board certifies the election results. The Trial Court shall
14 hear and decide a challenge to any election within twenty (20) days after the
15 challenge is filed in the Trial Court.

16 8. A review of the Plaintiff's cited supporting laws alleging to be from the HO-CHUNK
17 NATION ELECTION CODE, 2 HCC §6, reveals that of the law cited by plaintiff, the only two that
18 actually exist are the references to CH. II §9. , and CH. II.9a. Relating to Notice of Election.

19 9. The plaintiff has cited to non-existent provisions of the ELECTION CODE in offering cites
20 to the other sections: CH. I 2.4, CH. II §§ 11e (2) and 2. This Court cautions parties where they
21 engage in on-line forms of research. Be aware that the citations may not reflect actual law and
22 must be checked for accuracy and relevance.

23 10. The HCN CONSTITUTIONAL provisions referencing ART. V § 4 and VII §5a do exist and
24 appear to be relevant to the action before the court.

25 11. Plaintiff has alleged that in the June 3, 2025 General Election, the Election Board's
26 actions resulted in the disenfranchisement of At-Large Voters. The exceptionally low voter
27 turnout is claimed to be due to systemic barriers that prevented voters from participating.
28

1 12. The Plaintiff claims that his election prospects were materially harmed by unlawful
2 barriers placed on voters intending to support him. It is his contention that equal protection has
3 been denied under tribal law by flaws in the absentee ballot process. *Complaint* at 3.

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5 13. The Plaintiff also lists numerous hardships encountered by absentee voters, the expense
6 of a notary, only having one polling place in all of Area IV, the reliance on the US Mails for
7 ballot delivery and return and the variables in delay caused by that factor, limitations on
8 electronic access to make requests for absentee ballots, and the lack of a means to cure error
9 with absentee ballots and other general concerns. *See Complaint*, at 1-3

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11 14. Plaintiff claims that the Nation's Cybersecurity firewalls block attachments. *Plaintiff's*
12 *Complaint Attachment e-mail*, p. 1. Plaintiff has identified at least one individual tribal member
13 that experienced an inability to utilize the e-mail system of the Nation (for reasons which may
14 not clearly be related to the electoral process) per Attorney Shircel.

15
16 15. The current ELECTION CODE requires absentee ballots to be notarized, 2 HCC §13 b (2).

17 16. Plaintiff seeks a determination that the June 3, 2025 General Election violated the
18 ELECTION CODE and CONSTITUTION. Further relief sought would be to direct structural reforms
19 be implemented by the Election Board. *See Complaint* at 3. He suggests the defendants disclose
20 rejected ballots and the basis for rejection, and that the defendant count "good faith" absentee
21 ballots.

22
23 17. The ELECTION CODE does not contain language allowing a voter to cure any deficiencies
24 with a returned ballot. *Defendants Answer to Plaintiff's Complaint*, at 4.

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26 18. Plaintiff also suggests that a determination that the election is invalid could result in the
27 court ordering a "runoff/special election." Plaintiff also suggests that reforms may order
28 implementation improvements in an e-mail system for tribal members, error notifications,
utilization of digital voting, and drop boxes. *Id.*

1 19. It appears from the record and pleadings that information concerning the absentee ballots
2 has been shared with the Plaintiff by the Defendant. The Plaintiff did not argue that he had been
3 denied discovery when directly asked. *LPER Pre-Trial Motion Hr'g.*

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5 20. Plaintiff offered much in the way of anecdotal information from other sources, concerning
6 challenges and issues that tribal members have shared their election related experiences with
7 him via social media and other means. Specifically, plaintiff reviewed his *Emergency Motion*
8 and supplemental materials filed on June 25, 2025 at the *Pre-Trial/Motion Hearing* as
9 supportive of his complaint. However, the nature of the relief sought requires that a certain
10 standard be met for the issuance of relief whether injunctive or other.

11
12 21. Plaintiff acknowledges that he was not really disenfranchised. *LPER 9:19:36 a.m.*

13 22. The defendant, Ho-Chunk Nation Election Board, is a constitutionally established entity,
14 and maintains an address of W9814 Airport Road, Black River Falls, WI 54615. CONSTITUTION
15 ART. VIII, § 4 ELECTION BOARD.

16
17 23. The defendant denies that the plaintiff has met the burden of proving by "clear and
18 convincing evidence that (1) the defendant Election Board violated this ELECTION CODE 2 HCC
19 § 6 or (2) otherwise conducted an unfair election." *ELECTION CODE 2 HCC § 6.18.b.*

20 24. Defense Counsel argued that Plaintiff was should be sanctioned for his use of statutory
21 cites and the inclusion of information which was not actually the correct Ho-Chunk law citation
22 and it made it impossible to locate the cited case or law. Defense stated that the use of such
23 misinformation represents an impossibility to prepare a defense for his client where there is no
24 corresponding law based on the inaccuracies of the citation provided by the proponent.
25 Technology makes it possible to do many wonderful things with on-line research, but we must
26 not sacrifice accuracy and truth for the sake of a "story" or fiction created by use of Artificial
27 Intelligence or similar tools. Fact checking is critical.
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1 25. The Court asked whether there was written support for the Defendant's Rule 56B motion
2 seeking sanction, for citation error by the Plaintiff; or whether the motion itself was going to be
3 put in writing. HCN R., Civ. P. 18 states: Types of Motions.

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5 Motions are requests directed to the Court and must be in writing except for those made
6 in Court. Motions based on factual matters shall be supported by affidavits, references
7 to other documents, testimony, exhibits or other material already in the Court record.

8 Motions based on legal matters shall contain or be supported by a legal memorandum,
9 which states the issues and legal basis relied on by the moving party. The Motions
10 referenced within these Rules shall not be considered exhaustive of the Motions
11 available to litigants.

12 It is clear that a motion may be made on the record, and need not be written depending
13 on whether supportive material is needed to document facts or provide legal memorandum as
14 necessary. Attorney Shircel confirmed that he was making the motion on the record today and
15 would like to be able to argue it as it was essential to his defense. The court determined to
16 proceed as the Plaintiff Gamble acknowledged that he did in fact perform research on-line and
17 used Google. He advised that he is not an attorney. The legal citation aspects and requirements
18 are challenging.

19 In Ho-Chunk culture it is a matter of respect and is important for each person to be heard.
20 Both the Senior Counsel for Defendants and the Court acknowledge that and work to encourage
21 and make reasonable, legal accommodations for *pro se* litigants. Here the Counsel for the
22 Defendant and the Plaintiff are presented with the opportunity to make the argument relating
23 to concerns about the use of legal research tools, accuracy, truthfulness and how the court
24 should respond to the use of such tools. The Court has not finalized any rules concerning the
25 use of AI or Generative AI tools for legal documents.
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1 26. The Defendants based the Motions for Dismissal and Summary Judgment in part on the
2 Plaintiff's failure to comply with the Court's Scheduling Order as relates to HCN R. Civ. P.,
3 Rule 31 disclosures as additional reasoning for supporting the Motions.
4

5 They argue that the Plaintiff has not made his case as to providing the necessary proof
6 that the Defendants have violated the Ho-Chunk Election Code.

7 27. Neither is there a basis for the Plaintiff to secure an injunction concerning the Area IV,
8 Seat 3 position. The complaint alleges no specific harm that the Plaintiff suffered. Additionally
9 there is no showing that the four prong test adopted by this court has been addressed by the
10 Plaintiff in either an initial pleading or an accompanying motion. See HCN R. Civ. P 60.
11

12 28. At no time has the Plaintiff suggested that his ballot was rejected, and as such he has not
13 argued as to why he personally is disenfranchised.

14 29. The Election Board has developed and used a system that permits them to protect the
15 integrity of the ballots and the balloting process. There is no claim from the Defendants that the
16 system cannot be improved. Rather it was suggested that the population can work to have the
17 specific concerns relating to the issues raised by the Plaintiff addressed via statutory revision,
18 or through policy directives via the General Council process. The tribal members may provide
19 clarity and policy guidance as to the considerable issues raised so that the electoral process can
20 reflect the member needs and our government and its sovereignty can be strengthened.
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23 30. The HO-CHUNK NATION CONSTITUTION represents the Supreme law of the Ho-Chunk
24 Nation. CONST., ART. III § 4. It sets forth the four (4) co-equal branches of government,
25 identifying the spheres of constitutional authority as conferred by the Ho-Chunk Nation General
26 Council. *Id.*, ARTS. III, § 2-3, IV, § 2. In particular, the Ho-Chunk Nation Legislature is charged
27 with promulgating an election code and establishing an Election Board. *Id.*, ARTS. V, § 3, VIII,
28 § 4. When it becomes apparent that a review of processes and procedures and the law is

1 appropriate to assure that things like the US Mail and its issues with staffing and budget may
2 not unilaterally impact our Ho-Chunk Nation elections, it behooves the Legislature to review
3 such concerns and consider whether it is appropriate to craft a Legislative response to the needs
4 of the Nation. Policy concerns can drive Legislation. Here the plaintiff alleged that the US
5 Mail may have impacted the election, but offered no evidence, nor solid proof of the impact of
6 the postal service on our Ho-Chunk Election held June 3, 2025. Further there is no evidentiary
7 nexus between the other allegations relating to Fed Ex expenses, and Birth Certificate cost and
8 Notary expenses and the impact on participation in the election. The failure to introduce
9 evidence proving any impact on the Area IV, Seat 3 General Election prohibits this court from
10 making a finding that the case or controversy must continue to the trial phase. It is difficult to
11 maintain a case or controversy under such circumstances where relevant facts and testimony
12 have not been provided for consideration by the tribunal. Broad sweeping statements and
13 anecdotes, and hearsay are not material facts. Here there is no material dispute of fact. The
14 Plaintiff is displeased with the election outcome and seeks electoral reform. He particularly
15 wants reform to include encouragement of a greater number of tribal members in the election
16 process. He has not been disenfranchised. Specific example and analysis may be preferred by
17 those in a position to actually make positive change in our ELECTION CODE. The Plaintiff has
18 made those suggestions for consideration to enhance participation in the electoral process.

23 31. The Plaintiff has not articulated the case that the Election Board did not act in good
24 faith nor specify as to how specifically they violated the ELECTION CODE. The Plaintiff's recent
25 allegations relating to alleged retaliation by the Election Board are baseless. The Plaintiff
26 provided information about Tammy White Wing which did not appear in the original *Complaint*.
27 The allegations were disposed of by the Defendant's Counsel when he confirmed that she was
28 not a member of the Election Board, nor a poll worker and did not oversee Absentee Ballots nor

1 was she engaged in the Certification Process. *Defendant's Reply to Plaintiff's Final Rebuttal*
2 at 2. The Defendant cannot be held responsible for the conduct of third parties. The Defendant
3 outlined the complaint process that any tribal member could utilize relating to Sections 16 and
4 19 of the ELECTION CODE. It is an administrative process that involves the Defendant.
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6 32. Defense Counsel also cites to the Court's authority to grant Dismissal for failed
7 compliance with the Court's Scheduling Order and Rule 31 of the HCN R. CIV. P. Further,
8 Plaintiff's Complaint and supporting materials and arguments *failed* to show by clear and
9 convincing evidence that the Defendants have violated the Election Code or they otherwise
10 conducted an unfair election and the results would have been different but for the violations.
11 [Emphasis added].
12

13 33. Defense argues that the *Motion to Dismiss and for Summary Judgement* are appropriate
14 whereas here, the Plaintiff has not shown that ballot issues related to tracking, counting,
15 storing or any other matter would have had the effect of resulting in a different outcome of the
16 election for him. Issues relating to costs for returning the ballots aside, the Plaintiff has
17 suggested that there are many concerns and he has suggested a number of ways that the Nation
18 could improve election participation. That being said, those matters can be raised by the
19 Plaintiff or others that have encountered issues that may not rise to the level of illegality, but
20 they are suspect and may readily be improved with some policy development and
21 communication with the Legislature, perhaps resulting in revisions to the statute. Senior
22 Counsel Shircel posits that such conversations engaging with policy makers may also involve
23 groups of tribal members, such as the General Council. The Plaintiff's dissatisfaction with so
24 many issues, does not elevate the case or controversy to justiciability. The governing processes
25 of discussion and policy development are appropriate tools for the Plaintiff and others
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1 similarly situated to use in enhancing tribal member activity in elections and encouraging
2 participation in the activities of a sovereign indigenous people.

3 4 **DECISION**

5 **I. Requested Relief**

6 The Election Board must act within the four corners of the Election Code, and in this
7 instance there has been no showing by Plaintiff that he personally has statements, affidavits,
8 resolutions, etc., that show that he has the authority to speak on behalf of anyone other than
9 himself. Therefore, where his complaint does not allege any specific harm that he suffered, nor
10 does he expand on identification of the alleged unlawful barriers and where he admits he has
11 not been disenfranchised, he cannot prevail in this litigation. Plaintiff makes blanket assertions
12 without any actual proof to back up his claims. Plaintiff fails to cite to any actual evidence that
13 any action suppressed voter turnout or that the outcome of the election would have been different
14 but for the violation. **There is no link proven between the allegations of the Plaintiff and**
15 **that those actions or omissions tend to show Defendant to be violating the Election Code.**
16 **Therefore, in such a situation it would not be appropriate to grant the Plaintiffs request**
17 **for remedy.**

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21 The Plaintiff sought a variety of remedies including a proposed injunction relating to
22 seating the elected Legislative representative for Area IV, Seat 3. *Emergency Motion to Strike*
23 *Certification and for Sanctions*, June 25, 2025, at 1.

24 The Plaintiff did not articulate the four prong test utilized by the Court to determine
25 whether to take action to enjoin a matter. The Court has adopted a four-part test for the purpose
26 of evaluating requests for preliminary injunctions. A party must show that (1) they have no
27 adequate remedy at law; (2) the threatened injury to the plaintiff outweighs the harm of issuing
28 an injunction; (3) the plaintiff has a reasonable likelihood of success on the merits; and (4)

1 granting the injunction serves the public interest. *See e.g. HCN Election Bd. v. Aurelia Lera*
2 *Hopinkah*, SU 98-08 at 8 (HCN S. Ct., Apr. 7, 1999); *Coalition for Fair Gov't II v. Chloris*
3 *Lowe, Jr., et al.*, CV 96-22 (HCN Tr. Ct., July 23, 1996); *Tracy Thundercloud v. HCN Election*
4 *Bd.*, CV 95-16 (HCN Tr. Ct., Aug. 28, 1995); and *Joyce Warner et al. v. HCN Election Bd.*, CV
5 95-03-06, -09-10 (HCN Tr. Ct., July 3, 1995). The Court need not go further with this analysis
6 as the remedy is not appropriate given fact that the Plaintiff has not demonstrated a likelihood
7 of success nor has he identified how the issuance of an injunction on seating a member of the
8 Legislature represents anything but a harm at this time given the unlikely success of the Plaintiff
9 on the merits. There is no justification to postpone the Area IV, Seat 3 seat and no need for a
10 special election with its attendant costs and use of resources of the Election Board and others. .
11 Plaintiff's failure to address the four prongs is not a sole determining factor as to whether the
12 relief is appropriate. However the analysis of the four factors is. In this instance that analysis
13 demands that Plaintiff's request must be denied. **The Court declines to enjoin the seating of**
14 **the Area IV, Seat 3 Legislative Representative currently scheduled for July 2, 2025.**

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18 The Defendant's implementation of the newly revised Redistricting and Reapportionment
19 of the Nation's Legislative Districts has been completed for this General Election. That is not
20 to say that the process cannot be improved. Counsel for the Defendant made it clear that the
21 membership of the Ho-Chunk Nation has the opportunity to work with policy makers, the
22 Legislature and General Council to address perceived challenges and engage more members in
23 the electoral process. The Defendant has openly encouraged the observation of its meetings and
24 made the minutes and forms related to this General Election, available for the Nation's
25 members--including information about accountability for ballots, their processing and storage.
26
27 **The duty to assure a fair election lies with the Election Board as it interprets the provisions**
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1 of the ELECTION CODE and assures compliance with the overarching legal mandates
2 related to Elections from the HO-CHUNK CONSTITUTION.

3 It is incumbent upon the proponent of electronically gathered research and information
4 to determine the relevance and accuracy of the legal cites included as part of the case or
5 controversy. It is difficult to sustain a case or controversy where there is no apparent
6 supportive law for the party's contentions. With the correct citations the parties are able to
7 identify key sections and accordingly may frame their arguments based on these accurate
8 filings. The fact that the Plaintiff relied upon some form of research or citation that did not
9 correspond with the laws of the Ho-Chunk Nation, while purporting to be a citation to that law
10 is concerning. Access to justice and knowledge of the applicable law in a given case or
11 controversy are critical factors to achieving just and fair outcomes in litigation. Here the
12 Court exercises its discretion and declines to impose a Rule 56B sanction as to Plaintiff's
13 documentary submissions and legal citations as has been proposed by the Defendant's
14 counsel. The Court anticipates that formal rules and possibly statutes will be developed
15 to address this burgeoning challenge related to technological advances in research and
16 artificial intelligence tools.

17 MOTION TO DISMISS

18 (B) Involuntary Dismissal. After an Answer has been filed, a party must file a Motion to
19 Dismiss. A Motion to Dismiss will be granted at the discretion of the Court. A Motion to
20 Dismiss may be granted for lack of jurisdiction; if there has been no order or other action in a
21 case for six (6) months; if a party substantially fails to comply with these rules; if a party
22 substantially fails to comply with an order of the Court; if a party fails to establish the right to
23 relief following presentation of all evidence up to and including trial; or, if the
24 Plaintiff so requests.

25 Rule 31 HCN R. Civ. P

26 The Plaintiff has failed to comply with the Rule 31 Disclosure requirements as set forth
27 in the *Scheduling Order*, CV 25-08 June 18, 2025, and has additionally failed to establish a
28

1 right to relief as he has not been able to prove by clear and convincing evidence that that the
2 Defendant has violated the Election Code. Therefore he has an inability to meet the burden of
3 showing he is entitled to remedies sought.
4

5 More importantly he has been unable to demonstrate that the election results would
6 have been different even allowing for an increase in three votes. The facts do not support that
7 the Plaintiff has met the burden of showing he is entitled to the remedies sought. He has failed
8 to state a claim for which relief can be granted. Plaintiff's Chain of Custody Breach and
9 Falsified Certification Tallies arguments involving the "Galarza family ballots- not logged",
10 have been proven to be incorrect based on documents exchanged with the plaintiff by Defendant.
11 *Plaintiff's Final Rebuttal*, Ex. F.
12

13 The totality of the circumstances relating to the allegations made by Plaintiff do not
14 clearly show that he has established a right to relief as the Defendant had successfully provided
15 the information necessary to demonstrate that the concerns as to the Galarza family ballots show
16 that their Absentee Ballots were both notarized and logged, (*Ex. 9, Attached Envelopes for*
17 *Galarza Family Absentee Ballots*). For these reasons the Defendant must prevail. **The Court**
18 **determines to grant the Defendant's Motion to Dismiss with prejudice.**
19

20 **MOTION FOR SUMMARY JUDGMENT**

21 This court takes into consideration the briefs and other supportive materials filed in
22 relation to the motions for summary judgment.
23

24 A moving party must demonstrate a factual and legal basis for which the Court should
25 grant summary judgment. *Ho-Chunk Nation Home Ownership Program v. Thundercloud*, CV
26 10-17 (HCN. Tr. Ct., Aug. 24, 2010) at 6. A dispute about a material fact is "genuine" only if a
27 reasonable trier of fact could render a verdict for the non-moving party if the record at trial were
28 identical to the record compiled in the summary judgment proceeding. *Ho-Chunk Nation v.*

1 *Money Centers of Am. Inc.*, CV 10-54 (HCN Tr. Ct., April 15, 2013) at 7. As to materiality, the
2 substantive law will identify which facts are material. Only disputes over facts that might affect
3 the outcome of the suit under the governing law will properly preclude the entry of summary
4 judgment. Factual disputes that are irrelevant or unnecessary will not be counted. *Aleksandra*
5 *Cichowski v. Four Winds Insurance Agency, LLC*, CV 01-90 (HCN Tr. Ct., Dec. 15, 2003) aff'd
6 SU 04-01 (HCN S. Ct., Aug. 20, 2004).

8 **A. Are there any genuine issues of material fact?**

9 This court takes into consideration the briefs and other supportive materials filed in
10 relation to the motions for summary judgment. In CV 25-08 the Plaintiff has been unable to
11 prove any violations by the Election Board. Accordingly there are no material facts in dispute
12 Summary judgment is not precluded and in fact may be the preferred method to resolve this
13 case.
14

15 The allegations concerning Tammy White Wing are not relevant to this action as she is
16 neither an employee nor agent of the Election Board. The Defendants counsel has taken
17 measures to assure that it is clear to all that allegations regarding Tammy White Wing and the
18 Galarza Family and their Absentee Ballots have been addressed. It is not disputed that the
19 Galarza family did participate in the election per Melissa Olvera, *Defendant's Reply to*
20 *Plaintiff's Final Rebuttal*, CV 25-08, June 25, 2025.
21

22 In this matter the Defendant has also sought a *Motion for Summary Judgment*.
23

24 **Rule 55. HCN R. Civ. P. - Summary Judgment**

25 Any time after the date an *Answer* is due or filed, a party may file a *Motion for*
26 *Summary Judgment* on any or all of the issues presented in the action. The Court
27 will render summary judgment in favor of the moving party if there is no genuine
28 issue as to material fact and the moving party is entitled to judgment as a matter
of law. Any time after the date an *Answer* is due or filed, a party may file a *Motion*
for *Summary Judgment* on any or all of the issues presented in the action. The
Court will render summary judgment in favor of the moving party if there is no

1 genuine issue as to material fact and the moving party is entitled to judgment as a
2 matter of law.

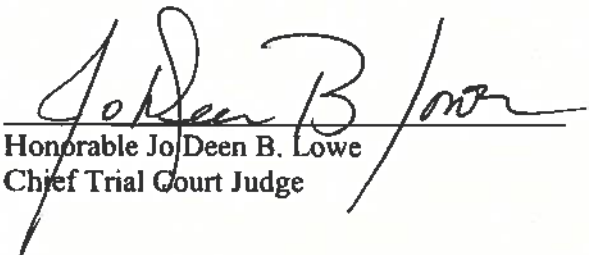
3 The Plaintiff has raised many issues, but has not met the burden of proof to show that there
4 are genuine disputes of material fact. The Defendant is entitled to judgment as a matter of law
5 where there is no proof, no admissible evidence proffered by Plaintiff that supports his claim or
6 would result in different results for the election given the facts in the record. The Election
7 Board has not violated the law or otherwise conducted an unfair election contrary to the
8 Constitutional and statutory requirements of the Nation's ELECTION CODE 2 HCC § 6.
9

10 Each eligible voter is encouraged to choose to participate in the elections and also in
11 suggesting ways to honor our sovereignty and the processes of self-government that will
12 strengthen the Ho-Chunk Nation.
13

14 **Summary Judgment for Defendant.**

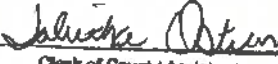
15
16 This *Order* constitutes a final judgment for the purposes of an appeal to the Ho-
17 Chunk Nation Supreme Court. The *Notice of Appeal* shall be filed and served within three
18 (3) calendar days of the entry of judgment, as per the *Ho-Chunk Nation Rules of Civil*
19 *Procedure*, Rule 80(A)
20

21
22 IT IS SO ORDERED this 30th day of June 2025, by the Ho-Chunk Nation Trial Court
23 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
24

25
26 
27 Honorable JoDeen B. Lowe
28 Chief Trial Court Judge



JUN 30 2025


Clerk of Court / Assistant

CERTIFICATE OF SERVICE

I, Tabitha Ostrem, Records Manager of the Ho-Chunk Nation Trial Court, do hereby certify that on the date set forth below, I served a true and correct copy of the **ORDER(Denying Plaintiff's Motion for Injunction and Granting Defendant's Motion to Dismiss)** in **Case No. CV 25-08** and upon all persons listed below.

By Email:

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Dated: June 30, 2025



Tabitha Ostrem, Records Manager
Ho-Chunk Nation Trial Court

Cc: Staff Attorney