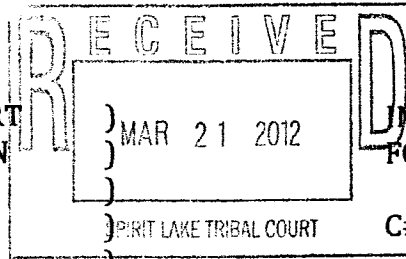


SPIRIT LAKE TRIBAL COURT
SPIRIT LAKE JURISDICTION



IN TRIBAL COURT
FORT TOTTEN, ND

CHERYL GOOD IRON,
Petitioner,

v.

SPIRIT LAKE TRIBAL COUNCIL,
Respondent.

OPINION AND ORDER
OF DISMISSAL

PROCEDURAL HISTORY

Petitioner filed her Complaint/ Petition on January 25, 2012 against the Respondent Tribal Council. Petitioner filed on behalf of tribal members who requested a recall of the Tribal Chairman before the Respondent Tribal Council. The Petition complains that the Respondent has not accepted the Petition for Recall of the Tribal Chairman, Roger Yankton, Sr. Pending the hearing, Petitioners requested the Court to issue a Preliminary Injunction against the Respondents which would order them to cease all duties of their offices until the Tribal Court scheduled a Recall hearing.

On February 17, 2012 the Tribal Court entered its ORDER FOR PRELIMINARY INJUNCTION based on a previous rejection of a Recall Petition that was submitted pursuant to Article IX, Section 4 of the Spirit Lake Constitution and By-Laws. Respondents were ordered to "cease all duties of their positions which is to include all business actions where the status of their positions are needed to conduct matters in relation for the Spirit Lake Tribe until this case is resolved." The Preliminary Injunction was issued by Associate Judge Molly McDonald.

On February 20, 2012, Judge Molly McDonald issued an **AMENDED ORDER FOR PRELIMINARY INJUNCTION**, which provided that "**Council members (including Chairman Roger Yankton) will not be allowed into their offices at the Tribal Blue Building. If personal belongings are needed from their offices, the members shall be escorted to their offices by law enforcement. It will be up to the council members to contact law enforcement for assistance; and it is further ordered that failure of any party named in this order of the Court to adhere to these provisions will be viewed as a direct violation of this order and shall be punishable to contempt or further sentencing which may include time in jail.**"

On February 22, 2012, Chief Judge Peter Belgarde entered an ORDER, which stayed execution of Judge McDonald's orders until an outside Special Judge could hear the matter.

A public hearing was held on March 5, 2012, in the auditorium of the Spirit Lake Tribal Casino.

OPINION

This case involves an interpretation of the Constitution and Bylaws of the Spirit Lake Tribe; specifically, ARTICLE V – NOMINTIONS AND ELECTIONS, Section 1 (b) which says **“Every enrolled member of the Spirit Lake Tribe of the age of 18 years or more, who has resided on the reservation for a period of one year immediately prior to the election, shall be entitled to vote in any election.”**

In addition to Article V, Article IX – REFERENDUM, REMOVAL AND RECALL, Section 4 provides that **“The members of the Tribe shall have the power to recall or reinstate any member of the Tribal Council. The Tribal Chairman, or in his absence or in the case of his involvement, the Vice Chairman, shall call a general meeting of the qualified resident voters of the district or districts represented by a council member or members for the purpose of considering the recall or reinstatement of a council member or members upon filing with the council office a petition containing the signatures of not less than 20% of the qualified resident voters of the district or districts of the council member or members involved. If the Tribal Chairman, or in the case of his absence or in the case of his involvement the Vice-Chairman fails to call such a meeting, it will then be the duty of the Tribal Court to call such a meeting.”**

Vice-chairman Duane Jackson was presented with a petition to hold a recall hearing that was intended to remove Tribal Chairman, Roger Yankton. Respondent Duane Jackson rejected the petition upon his interpretation of Articles V and IX.

In his response to the Sprit Lake Tribal Membership dated January 24, 2012, Vice-Chairman Duane Jackson stated that “The Constitution provides that a General Membership meeting is to be called upon the filing of a Petition of removal of the Tribal Chairman containing the signatures of not less than 20% of the qualified resident voters of the . . . districts . . . involved”. Vice-Chairman Jackson further stated that “Article V, Section 1(b) defines the voting member as being “every enrolled member of the ...Tribe of the Age of 18 years or more, who has resided on the reservation for a period of one year ...” Vice-Chairman Jackson further stated that “The number of individuals voting in earlier elections is irrelevant. Vice Chairman Jackson stated that there are approximately 2, 700 members residing within the Reservation of age 18 or greater who have resided within the Reservation for over a year and that a petition to remove the Chairman would need to contain at least 540 signatures. The Petition submitted on January 23, 2012 contained 213 qualified signatures. For this reason the petition was rejected.

This same issue was addressed in a court hearing held on February 8, 2002. At that time the best evidence available to the court indicated that there were some 2,300 eligible voters who met the age and residence requirements of the tribal constitution. Of these 2,300 eligible tribal members, only 700 voted in the general election of March 2, 2001. The Court relied strictly on Article V, Section 1 (b) of the tribal constitution and determined that the basic constitutional qualifications of an eligible voter are that he/she is enrolled, over 18 years of age and have resided on the reservation for the past year. The constitution does not say that the voter must be registered or to have voted to be counted as a qualified voter.

Section 4 of Article IX refers to petitions containing the signatures of not less than **20% of the qualified resident voters of the district or districts of the council member or members involved.** The constitution allows district members to remove council members of their respective districts, provided that at least 20% of the qualified resident voters of the district petition for removal and if a majority of those in attendance at the meeting vote to remove a council representative. If the removal petition is directed at the Chairman, the petition must be signed by at least 20% of the qualified resident voters of all districts because the Chairman is elected **at large**. The constitution does not require 20% of those who voted at the last election, or 20% of those who were registered, it requires at least 20% of all qualified **resident** voters, registered or unregistered. In the *Gourd v. Longie* case, Longie was the Chairman; therefore 20% of all qualified resident voters of all districts were the required number of petitioners. In the present case, Mr. Yankton is the Chairman, and therefore 20% of the qualified resident voters of all districts is required. Both Mr. Longie and Mr. Yankton were elected at large to their Tribal Chairman positions.

A registered voter is an eligible voter who registers in his district and votes. He is also qualified to vote and may do so as soon as he registers. If he does not register, he cannot vote even though he or she might otherwise be qualified and eligible for having met the requirements of the constitution. As a result, there are far more qualified/eligible voters than there are registered voters. The constitution requires the larger number of voters to petition for the recall of an officer if he is elected at large.

This problem was exasperated by the actions of tribal officials who continued the practice of recalling individuals from office on the basis of 20% of those who voted in the last election. After the 2002 order of *Gourd v. Longie*, the tribal officials should have known that the Constitution requires 20% of all resident voters to recall the Chairman, and at least 20% of all district qualified voters in the case of council representatives, rather than 20% of those petitioners who voted in the last election. There were several people who testified that they were recalled on the basis of 20% of the last election, since 2002. That being the case, Petitioners argue that the court should accept 20% of the last election and proceed with a recall hearing on the Chairman.

There is an old saying that two wrongs do not make a right. Several individuals testified that they faced recall actions initiated by petitions containing less than 20% of the total tribal resident membership of the district or districts. These removal cases should be reviewed for constitutional compliance. In the case of district representatives, the petition should have been signed by at least 20% of the district members who were qualified and eligible to vote. Failure to reject the petitions signed by less than 20% of the total adult district residents in the case of district council representative's, or 20% of all district residential tribal members in the case of a Tribal Chairman, was unconstitutional. The Court does not condone unlawful actions, especially when those actions are in violation of the constitution. Elected officers take an oath of office to uphold the constitution and laws of the Tribe and would be in violation of their oath of office when they ignore the constitution and court orders that interpreted the constitution. Ignorance of the constitution is no excuse because the Court clarified that issue on February 18, 2002, some ten years ago in a case involving the Chairman.

The procedures outlined in the Spirit Lake Constitution make sense, but need some clarification. Only the district petitioners should be allowed to recall their representatives because they are the ones who put the representative in office. The entire reservation should be allowed to recall the Chairman and other at-large positions because the entire reservation put the at-large candidates in office. But in either case there must be at least 20% of the qualified resident voters to petition for such recall. This requirement is provided for in the Constitution, which is the most powerful of all tribal laws. The language in the constitution can be simplified for clarity, which would require a referendum vote to amend to the constitution.

As to the Tribal Attorney representing the Tribal Council, it is the Court's opinion that the tribal attorney is not in a conflict of interest by representing the tribe in these cases. The Tribal Council is representative of all tribal members and the tribal members by adopting the Spirit Lake Constitution authorized the Council to employ legal council, or a tribal attorney to defend the Tribal Council when it is sued by any person or persons. As the Tribal Attorney represents all members including its government, it is not necessary that he pay a fee to practice in tribal court, the court that is an arm of tribal government.

For these reasons the Court must affirm its previous ruling of February 18, 2002, and declare that Vice-Chairman Jackson was correct in rejecting the petition to recall the Chairman.

ORDER

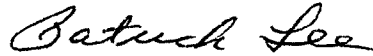
Wherefore it is **Ordered, Adjudged, and Decreed** that the Petition filed on January 23, 2012, by the Petitioners against the Chairman is dismissed for failure to contain the signatures of 20% of all adult, tribal members who reside on the Spirit Lake

Reservation and in accordance with Article V, Section 1 (b) and Article IX, Section 4 of the Constitution and Bylaws of the Spirit Lake Tribe.

It is further **Ordered** that the Petition/Complaint filed on January 25, 2012 against the Spirit Lake Tribal Council is **Dismissed** for failure to state a claim for which relief can be granted. It is further **Ordered** that the Injunctive orders entered by Judge Molly McDonald are vacated and are declared to be null and void.

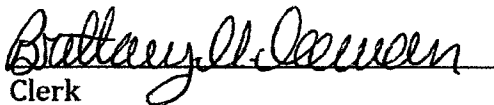
So Ordered on this 21st day of **March 2012**.

BY THE COURT:



Patrick Lee, Special Judge

ATTEST:


Clerk

(SEAL)