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**IN THE
HO-CHUNK NATION TRIAL COURT**

Gloria Visintin,
Plaintiffs,

v.

Case No.: **CV 08-86**

Ho-Chunk Nation Election Board,
Defendant.

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**ORDER
(Granting Motion to Dismiss)**

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INTRODUCTION

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The Court must determine whether to grant the defendant's motion to dismiss. The plaintiff failed to articulate basic facts and circumstances within her initial pleading, and subsequently provided untenable causes of action within a discovery document. The Court, therefore, dismisses the election challenge.

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PROCEDURAL HISTORY

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The Court recounts the procedural history in significant detail in a previous judgment. *Scheduling Order*, CV 08-86 (HCN Tr. Ct., Dec. 1, 2008) at 1. For purposes of this decision, the Court notes that the defendant, Ho-Chunk Nation Election Board (hereinafter Election Board), by and through Ho-Chunk Nation Department of Justice (hereinafter DOJ) Attorney Michelle M. Greendeer, submitted its *Answer & Motion to Dismiss* on December 2, 2008, which constituted

1 an untimely filing.¹ See *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ.*
2 *P.*), Rules 19(A), 76(A). To facilitate the prompt resolution of this matter, the Court scheduled a
3 *Pre-Trial Hearing. Scheduling Order* at 2.

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5 The Court convened the *Hearing* on December 2, 2008 at 2:30 p.m. CST. The following
6 parties appeared at the *Pre-Trial Hearing*: Gloria J. Visintin, plaintiff (by telephone); Judith A.
7 Whitehorse, defendant's designated representative; and DOJ Attorney Michelle M. Greendeer,
8 defendant's counsel. At the *Hearing*, the Court established deadlines for the filing of an
9 amended complaint,² amended responsive pleading,³ and amended dispositive motion, if
10 necessary.⁴ Additionally, the Court tentatively scheduled a *Motion Hearing* in the event the
11 defendant reasserted its *Motion to Dismiss*.⁵

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13 On December 3, 2008, the plaintiff filed her mandatory discovery disclosures. See
14 *Scheduling Order* at 1. The following day, the plaintiff submitted her *Answer to Defendant's*
15 *Interrogatories*, which the defendant presented on December 3, 2008. The defendant filed an
16 *Amended Answer* and *Reassertion of Motion to Dismiss* on December 5, 2008, thereby
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19 ¹ The Court declined to grant a default judgment principally due to the absence of any "facts and circumstances
20 giving rise to the action" contained within the initial pleading. *Pre-Trial Conference* (LPER at 4, Dec. 2, 2008,
21 02:35:49 CST) (citing *HCN R. Civ. P.* 3(A)). The Court retains discretion to grant default judgments by virtue of
22 the permissive wording of the relevant rule. See *Citizens Cmty. Fed. v. Neperud*, CV 04-18 (HCN Tr. Ct., Apr. 26,
23 2004); see also *HCN R. Civ. P.* 54(A). The Court could have refused to accept the plaintiff's *Complaint* due to a
24 clear failure to include the necessary component parts of an initial pleading. See *HCN R. Civ. P.* 3(A). While the
25 CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION) permits the filing of timely election
26 challenges, thereby conferring automatic standing upon the complainant, CONST., ART. VIII, § 7, it also confers
27 authority upon the Ho-Chunk Nation Supreme Court "to establish written rules for the Judiciary." *Id.*, ART. VII, §
28 7(b); see also HCN JUDICIARY ESTABLISHMENT & ORG. ACT, 1 HCC § 1.5(c-d). The plaintiff did not abide by the
resulting rules that "govern the procedure of the Trial Court in all actions and proceedings." *HCN R. Civ. P.* 1. The
Court nonetheless accepted the plaintiff's deficient *Complaint*, providing her the opportunity to file an amended
pleading at a later juncture. See *HCN R. Civ. P.* 21.

² The Court directed the plaintiff to file her amended pleading on or before Thursday, December 4, 2008, and stated
this deadline on three (3) separate occasions. LPER at 11, 12, 15, 03:00:39, 03:05:46, 03:16:00 CST.

³ The defendant agreed to file its amended answer on or before Friday, December 5, 2008. *Id.* at 12, 03:05:46 CST.

⁴ The Court directed the defendant to resubmit, modify or withdraw its *Motion to Dismiss* on or before Friday,
December 5, 2008. *Id.* at 11, 13, 03:00:39, 03:08:58 CST.

⁵ The Court scheduled a tentative *Motion Hearing* on Tuesday, December 9, 2008, to address any potential
dispositive motions, and stated the particulars of this proceeding on two (2) separate occasions after the parties
mutually agreed to the details. *Id.* at 13, 15, 03:08:58, 03:16:00 CST.

1 necessitating a *Motion Hearing*. The Court convened the *Hearing* on Tuesday, December 9,
2 2008 at 1:30 p.m. CST.⁶ The following parties appeared at the *Hearing*: Gloria J. Visintin,
3 plaintiff (by telephone); Judith A. Whitehorse, defendant's designated representative (by
4 telephone); and DOJ Attorney Michelle M. Greendeer, defendant's counsel.
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6 **APPLICABLE LAW**

7 **CONSTITUTION OF THE HO-CHUNK NATION (Reprinted Jan. 25, 2008)**

8 **Art. V - Legislature**

9 **Sec. 1. Composition of the Legislature.**

10 (b) The Legislature shall be composed of Representatives from the following
11 Districts, subject to Section 4 of this Article: the Black River Falls District, consisting of Clark,
12 Eau Claire and Jackson counties, which shall elect three (3) members; the Wisconsin Dells
13 District, consisting of Wood, Juneau, Adams, Columbia, and Sauk counties, which shall select
14 three (3) members; and the La Crosse-Tomah District, consisting of La Crosse, Monroe, Vernon,
15 and Crawford counties, which shall elect one (1) member; and the Wittenberg District, consisting
16 of Marathon and Shawano counties, which shall elect one (1) member; and three (3) members
17 which shall be elected at-large from outside the Districts listed above.

18 **Sec. 4. Redistricting or Reapportionment.** The Legislature shall have the power to
19 redistrict or reapportion including changing, establishing, or discontinuing Districts. The
20 Legislature shall maintain an accurate census for the purposes of redistricting or
21 reapportionment. The Legislature shall redistrict and reapportion at least once every five (5)
22 years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall
23 exercise this power only by submitting a final proposal to the vote of the people by Special
24 Election which shall be binding and which shall not be reversible by the General Council. Any
25 redistricting or reapportionment shall be completed at least six (6) months prior to the next
26 election, and notice shall be provided to the voters.

27 **Sec. 6. Terms of Office.** Members of the Legislature shall serve four (4) year terms
28 which shall be staggered. Legislators shall represent their respective Districts until their
successors have been sworn into office except if the Legislator has been successfully removed or
recalled in accordance with this Constitution. Members of the Legislature shall be elected by a
majority vote of the eligible voters from their respective Districts.

⁶ The plaintiff refrained from filing a written response to the dispositive motion "at least one (1) day before the hearing." *HCN R. Civ. P.* 19(B).

1 Art. VI - Executive

2 Sec. 5. Term of Office. The President shall serve four (4) year terms. The President
3 shall serve until a successor has been sworn into office. The President shall be elected by a
4 majority of the eligible voters of the Ho-Chunk Nation.

5 Art. VII - Judiciary

6 Sec. 7. Powers of the Supreme Court.

7 (b) The Supreme Court shall have the power to establish written rules for the
8 Judiciary, including qualifications to practice before the Ho-Chunk courts, provided such rules
9 are consistent with the laws of the Ho-Chunk Nation.

10 Sec. 10. Election of Supreme Court Justices. Supreme Court Justices shall be elected by a
11 majority of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election
12 provisions of Article VIII, Section 1, unless otherwise provided.

12 Art. VIII - Elections

13 Sec. 2. Special Elections. Special Elections shall be held when called for by the General
14 Council, the Legislature, or by this Constitution or appropriate ordinances. In all Special
15 Elections, notice shall be provided to the voters.

16 Sec. 4. Election Board. The Legislature shall enact a law creating an Election Board.
17 The Election Board shall conduct all General and Special Elections. At least sixty (60) days
18 before the election, the Election Board may adopt rules and regulations governing elections.
19 Election Board members shall serve for two (2) years. Election Board members may serve more
20 than one term. The Legislature may remove Election Board members for good cause.

21 Sec. 7. Challenges of Election Results. Any member of the Ho-Chunk Nation may
22 challenge the results of any election by filing suit in Tribal Court within ten (10) days after the
23 Election Board certifies the election results. The Tribal Court shall hear and decide a challenge
24 to any election within twenty (20) days after the challenge is filed in Tribal Court.

22 Art. XIII - Amendments

23 Sec. 1. Requirements. This Constitution may be amended by a majority vote of the
24 qualified voters of the Ho-Chunk Nation voting at an election called for that purpose by the
25 Secretary of the Interior, provided, that at least thirty (30) percent of those entitled to vote shall
26 vote in such election; but no amendment shall become effective until approved by the Secretary
27 of the Interior or until deemed approved by the Secretary by operation of law. If the voters adopt
28 the amendment(s), the Secretary of the Interior shall approve such amendment(s) within forty-
five (45) days after the election unless the amendment(s) are contrary to applicable law.

1 Sec. 2. Requests for a Secretarial Election. It shall be the duty of the Secretary of the
2 Interior to call and hold an election on any proposed amendment to this Constitution at the
3 request of two-thirds (2/3) of the entire Legislature, at the request of the General Council, or
4 upon presentation of a petition signed by thirty (30) percent of the eligible voters of the Ho-
5 Chunk Nation.

6 Legislative History of Redistricting and Reapportionment, Section 1(B), Article V - Legislature,
7 Constitution of the Ho-Chunk Nation.

8 Article V - Legislature

9 Sec. 1. Composition of the Legislature.

10 January 12, 2002 (New Districts)

11 Sec. 1(b). The Legislature shall be composed of the eleven (11) representatives elected from the
12 following five (5) Districts established pursuant to the January 12, 2002 Special Election for
13 Redistricting and Reapportionment and subject to Section 4 of this Article.

14 (1) District 1, consisting of the Wisconsin counties of Barron, Buffalo, Chippewa,
15 Clark, Dunn, Eau Claire, Jackson, Pepin, Pierce, Polk, Rusk, St. Croix, and Trempealeau, which
16 shall elect three (3) members;

17 (2) District 2, consisting of the Wisconsin counties of Crawford, Grant, Iowa, La
18 Crosse, Lafayette, Monroe, Richland, and Vernon, which shall elect one (1) member;

19 (3) District 3, consisting of the Wisconsin counties of Ashland, Bayfield, Brown,
20 Burnett, Calumet, Door, Douglas, Florence, Fond du Lac, Forest, Iron, Kewaunee, Langlade,
21 Lincoln, Manitowoc, Marathon, Marinette, Menominee, Oconto, Oneida, Outagamie, Portage,
22 Price, Sawyer, Shawano, Sheboygan, Taylor, Vilas, Washburn, Waupaca, Waushara, and
23 Winnebago, which shall elect one (1) member;

24 (4) District 4, consisting of the Wisconsin counties of Adams, Columbia, Dane,
25 Dodge, Green, Green Lake, Jefferson, Juneau, Kenosha, Marquette, Milwaukee, Ozaukee,
26 Racine, Rock, Sauk, Walworth, Washington, Waukesha, and Wood, which shall elect three (3)
27 members; and

28 (5) District 5, consisting of all the area outside the State of Wisconsin, which shall
elect three (3) members.

November 1, 1994 (Old Districts)

Sec. 1(b). The Legislature shall be composed of Representatives from the following Districts,
subject to Section 4 of this Article: the Black River Falls District, consisting of Clark, Eau
Claire and Jackson counties, which shall elect three (3) members; the Wisconsin Dells District,
consisting of Wood, Juneau, Adams, Columbia, and Sauk counties, which shall select three (3)

1 members; and the La Crosse-Tomah District, consisting of La Crosse, Monroe, Vernon, and
2 Crawford counties, which shall elect one (1) member; and the Wittenberg District, consisting of
3 Marathon and Shawano counties, which shall elect one (1) member; and three (3) members
which shall be elected at-large from outside the Districts listed above.

4 HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1
5 HCC § 1

6 Subsec. 5. Rules and Procedures.

7 c. The Judiciary shall have exclusive authority and responsibility to employ
8 personnel and to establish written rules and procedures governing the use and operation of the
9 Courts.

10 d. All matters shall be tried in accordance with the Ho-Chunk Rules of Procedures
11 and the Ho-Chunk Rules of Evidence which shall be written and published by the Supreme Court
and made available to the public.

12 ELECTION ORDINANCE, 2 HCC § 6

13 Subsec. 1. Authority.

14 c. Article V, Section 6 of the Constitution requires that members of the Legislature
15 shall be elected by a majority vote of the eligible voters from their respective Districts.

16 d. Article VI, Section 5 of the Constitution requires that the President shall be
17 elected by a majority vote of eligible voters of the Ho-Chunk Nation.

18 e. Article VII, Section 10 of the Constitution requires that Supreme Court Justices
19 shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance
20 with General Election provisions in Article VIII, Section 1, unless otherwise provided.

21 Subsec. 3. Elections. The Constitution prescribes two (2) types of elections: General
22 Elections and Special Elections. When three (3) or more candidates run for a seat in a General or
23 Special Election, there shall be a Primary Election and, if required, a Runoff Election as
described in paragraph c, below.

24 c. Primary Elections and Runoff Elections.

25 (1) Primary Elections shall be held prior to an Election with three (3) or more
26 candidates in order to ensure compliance with the majority vote requirement as provided for in
paragraphs 1c through 1e, above.

27 Subsec. 5. Elective Offices and Terms.

28 a. Legislature.

1 (1) Legislative Districts.

2 (a) The Legislature shall be composed of the eleven (11)
3 Representatives elected from the following Districts that were established by the
4 January 12, 2002 Special Election for Redistricting and Reapportionment.

5 District 1: Wisconsin Counties of Barron, Buffalo, Chippewa, Clark,
6 Dunn, Eau Claire, Jackson, Pepin, Pierce, Polk, Rusk, St. Croix, and
Trempealeau.

7 District 2: Wisconsin Counties of Crawford, Grant, Iowa, La Crosse,
8 Lafayette, Monroe, Richland, and Vernon.

9 District 3: Wisconsin Counties of Ashland, Bayfield, Brown, Burnett,
10 Calumet, Door, Douglas, Florence, Fond du Lac, Forest, Iron, Kewaunee,
11 Langlade, Lincoln, Manitowoc, Marathon, Marinette, Menominee, Oconto,
Oneida, Outagamie, Portage, Price, Sawyer, Shawano, Sheboygan, Taylor,
12 Washburn, Waupaca, Waushara, Winnebago, and Vilas.

13 District 4: Wisconsin Counties of Adams, Columbia, Dane, Dodge,
14 Green, Green Lake, Jefferson, Juneau, Kenosha, Marquette, Milwaukee, Ozaukee,
Racine, Rock, Sauk, Walworth, Washington, Waukesha, and Wood.

15 District 5: Outside the State of Wisconsin.

16 (b) Until modified in accordance with Article V, Section 4 of the
17 Constitution, the Districts shall be:

<u>District</u>	<u>Number of Legislators</u>	<u>Seat Number</u>
District 1:	3	1, 2, 3
District 2:	1	1
District 3:	1	1
District 4:	3	1, 2, 3
District 5:	3	1, 2, 3

22 Subsec. 15. Challenges to the Election Results.

23 b. The person challenging the election results shall prove by clear and convincing
24 evidence that the Election Board violated this Election Ordinance or otherwise conducted an
25 unfair election, and that the outcome of the election would have been different but for the
26 violation. If the Court finds the challenge is frivolous and/or wholly without merit, the party
27 challenging shall be assessed costs of the action in an amount to equal five hundred dollars
28 (\$500.00).

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Rule 1. Scope of Rules.

3 CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, sec. 7(B) requires that the Supreme Court
4 establish written rules for the Judiciary. These rules, adopted by the Supreme Court, shall
5 govern the procedure of the Trial Court in all actions and proceedings. The judges of the Trial
6 Court may look to Ho-Chunk customs and traditions for guidance in applying justice and
promoting fairness to parties and witnesses.

7 Rule 3. Complaints.

8 General. A civil action begins by one of the following procedures:

9 (A) filing a written *Complaint* with the Clerk of Court and paying the appropriate fees. The
10 *Complaint* shall contain short, plain statements of the grounds upon which the Court's
11 jurisdiction depends, the facts and circumstances giving rise to the action, and a demand for any
12 and all relief that the party is seeking. Relief should include, but is not limited to, the dollar
13 amount that the party is requesting. The *Complaint* must contain the full names, and addresses
of all parties and counsel, as well as a telephone number at which the complainant may be
14 contacted. The *Complaint* shall be signed by the filing party or his/her counsel, if any.

15 Rule 19. Filing and Responding to Motions.

16 (A) Filing. *Motions* may be filed by a party with any pleading or at any time after their first
17 pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other
18 parties at least five (5) calendar days before the time specified for a hearing on the *Motion*.
Motions for Extension of Time and *More Definite Statement* may be filed before the initial
pleading.

19 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the
20 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the
21 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the
Motion must file any *Reply* within three (3) calendar days.

22 Rule 21. Amendments to Pleadings.

23 Parties may amend a *Complaint* or *Answer* one time without leave of the Court prior to the filing
24 of a responsive pleading, or if no responsive pleading is permitted, at any time within twenty
25 (20) days of the original filing date. Subsequent amendments to *Complaints* or *Answers* may
26 only be made upon leave of the Court and a showing of good cause, or with the consent of the
opposing party. All amendments to the *Complaint* or *Answer* must be filed at least thirty (30)
27 calendar days prior to trial or as otherwise directed by the Court. When an *Amended Complaint*
or *Answer* is filed, the opposing party shall have ten (10) calendar days, or the time remaining in
28 their original response period, whichever is greater, in which to file an amended responsive
pleading.

1 Rule 54. Default Judgment.

2 (A) General. A *Default Judgment* may be entered against a party who fails to answer if the party
3 was personally served in accordance with Rule 5(C)(1)(a)(i) . . . or informed through other
4 means of judicially authorized service such as publication or if a party fails to appear at a
5 hearing, conference or trial for which he/she was given proper notice. A *Default Judgment* shall
6 not award relief different in kind from, or exceed the amount stated in the request for relief. A
7 *Default Judgment* may be set aside by the Court only upon a timely showing of good cause.

8 Rule 74. Application and Purpose; Sanctions; Definitions.

9 (A) Application. These *Special Rules for Election Challenges* shall apply to a proceeding where
10 a party (or parties) seek(s) to challenge an election. Unless otherwise provided for in the *Special*
11 *Rules for Election Challenges*, the *Rules of Civil Procedure* and the *Rules of Appellate*
12 *Procedure* shall apply.

13 Rule 76. Answering an Election Challenge.

14 (A) The defendant shall file an *Answer* to the *Complaint* within five (5) calendar days of the
15 filing of the *Complaint* in the Court.

16 Rule 80. Appeals.

17 (A) Appeals. The final judgment of the Trial Court is appealable to the Supreme Court. The
18 Appellant and/or Appellee may obtain a copy of the trial transcript at their own expense.

19 1. The *Notice of Appeal* shall be filed and served within three (3) calendar days of
20 entry of judgment.

21 2. The *Notice of Appeal* must state a basis for appeal based upon the laws and/or
22 CONSTITUTION OF THE HO-CHUNK NATION.

23 3. A *Certificate of Service* and fifty (\$50.00 U.S.) filing fee must accompany the
24 *Notice of Appeal*.

25 **FINDINGS OF FACT**

26 1. The parties received proper notice of the December 9, 2008 *Motion Hearing*.

27 2. The plaintiff, Gloria J. Visintin, is an enrolled member of the Ho-Chunk Nation, Tribal
28 ID# 439A003116, and maintains an address of W18004 Witt-Birn Townline Road, Wittenberg,
WI 54499. *Compl.*, CV 08-86 (Nov. 26, 2008) at 1.

1 3. The defendant, Election Board, is a constitutionally established entity, and maintains an
2 address of 4 East Main Street, Black River Falls, WI 54615. CONST., ART. VIII, § 4.

3 4. On November 26, 2008, the plaintiff filed a *Complaint* in which she “challeng[ed] HCN
4 Secretarial Election results of November 18, 2008.”⁷ *Compl.* at 2. The plaintiff does not indicate
5 any reason for the challenge, but nonetheless seeks “voidance of HCN Secretarial Election . . .
6 and [to] apply law as applicable.” *Id.* at 3.

7 5. The plaintiff’s *Complaint* fails to satisfy the liberal pleading requirements of the Court,
8 *i.e.*, the initial pleading does not contain “the facts and circumstances giving rise to the action.”
9 *HCN R. Civ. P. 3(A)*.

10 6. The plaintiff failed to file an amended pleading despite receiving an opportunity to do so.
11 *See supra* note 2.

12 7. Instead, the plaintiff articulated two (2) grounds for the election challenge within her
13 December 3, 2008 mandatory discovery disclosures:

14 a. successful Redistricting/Reapportionment Scenario 5 failed to receive majority
15 vote approval, having acquired only 24.65% of the total votes cast in the November 18, 2008
16 Special Election, *see Def.’s Answer*, Attach. A; and

17 b. the Ho-Chunk Nation Legislature did not call a Secretarial Election in order to
18 incorporate the results of the January 12, 2002 Special Redistricting/Reapportionment Election
19 into the CONSTITUTION, thereby confusing the electorate by not supplanting the original
20 legislative districts. *Pl.’s Rule 31 Disclosures*, CV 08-86 (Dec. 3, 2008) at 2; *see also* CONST.,
21 ARTS. V, § 1(b), XIII, § 2, addendum (legislative history).

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28 ⁷ By way of clarification, the Election Board conducted a Special Redistricting/Reapportionment Election, and not a
Secretarial Election, which must be called by the Secretary of the Interior for purposes of amending constitutional
text. *Compare* CONST., ART. V, § 4, *with id.*, ART. XIII, § 1.

1 8. The Court required the defendant to address the plaintiff's above-stated claims despite
2 her failure to file an amended pleading.⁸ *Mot. Hr'g* (LPER at 3, Dec. 9, 2008, 01:41:03 CST).

3
4 **DECISION**

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6 The Court must decide an election challenge within twenty (20) days of its filing.
7 CONST., ART. VIII, § 7. This abbreviated timeframe forces the Court to establish rather
8 inflexible deadlines, but it still strives to resolve the substantive disputes at issue in election
9 challenges. The Court recognizes that most challenges represent honest and legitimate concerns
10 of the complainants.

11
12 Yet, a plaintiff bears the burden of proof at trial, and must be ultimately capable of
13 establishing "by clear and convincing evidence that the Election Board violated th[e] Election
14 Ordinance or otherwise conducted an unfair election, *and* that the outcome of the election would
15 have been different but for the violation." ELECTION ORDINANCE, 2 HCC § 6.15b (emphasis
16 added); *see also Christine Funmaker-Romano et al. v. HCN Election Bd. et al.*, SU 05-08 (HCN
17 S. Ct., Aug. 3, 2005). This elevated standard serves to winnow out most election challenges.
18 "Undoing an election is an extraordinary act and must be avoided as much as possible. It is
19 therefore only appropriate that the challenger in an election dispute prove a violation by a higher
20 standard than by preponderance of the evidence." *Joyce Warner v. HCN Election Bd.*, CV 95-03
21 (HCN Tr. Ct., July 5, 1995) at 2.

22
23 In the instant case, the plaintiff cannot conceivably surmount this burden due to the
24 nature of her asserted claims. The plaintiff first contends that a redistricting/reapportionment
25 scenario must receive a majority vote of the participating electorate in order to effectuate a
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⁸ The Court maintains a long-standing policy of encouraging *pro se* litigation. *See Sherry Wilson v. HCN Dep't of Pers.*, CV 05-43 (HCN Tr. Ct., Dec. 21, 2006) at 12-16.

1 change to the legislative districts. However, while candidacy elections, *i.e.*, presidential,
2 legislative and judicial appellate, require a winner to secure a majority vote, the constitutional
3 redistricting/reapportionment provision contains no such requirement. *Compare* CONST., ARTS.
4 V, § 6, VI, § 5, VII, § 10, *with id.*, ART. V, § 4; *see also* ELECTION ORDINANCE, § 6.1c-e, 3c(1).
5 The fifty percent plus one (50% + 1) requirement announced in this Court’s first cases in 1995,
6 had nothing to do with redistricting/reapportionment. *See, e.g.*, *Jo Ann Jones v. HCN Election*
7 *Bd. et al.*, CV 95-05 (HCN Tr. Ct., July 6, 1995) at 5-6, *aff’d*, SU 95-05 (HCN S. Ct., Aug. 15,
8 1995) at 3-4; *see also generally* *Dennis M. Funmaker, Sr. v. HCN Election Bd. et al.*, CV 05-40
9 (HCN Tr. Ct., May 24, 2005) at 10-18, *rev’d on other grounds*, SU 05-06 (HCN S. Ct., June 6,
10 2005).
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13 The plaintiff next claims that a Secretarial Election must follow each Special
14 Redistricting/Reapportionment Election in order to amend Article V, Section 1(b), “*Composition*
15 *of the Legislature*,” to reflect changes caused by a new redistricting/reapportionment scenario.
16 CONST., ARTS. V, §§ 1(b), 4, XIII, §§ 1-2. The Court refrains from directly commenting upon
17 this issue, reserving possible adjudication for the future. To reiterate, the plaintiff must prove
18 that the Election Board either “violated th[e] Election Ordinance or otherwise conducted an
19 unfair election.” ELECTION ORDINANCE, § 6.15b. The plaintiff raises the above issue to
20 demonstrate the potentiality for confusion. The plaintiff argues that the electorate could not
21 intelligently select a new redistricting/reapportionment without clearly understanding the present
22 legislative districts. The plaintiff also believes that younger voters would be more susceptible to
23 this confusion. *Mot. Hr’g* (LPER at 13, 02:08:15 CST).
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26 The plaintiff’s argument rests upon her supposition that the voting population remains
27 possibly unaware of the present legislative districts due to a failure to amend Article V, Section
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1 1(b). The Court, however, cannot join in this wholly anecdotal argument. The present
2 legislative districts have been utilized since the 2003 General Election, and appear within a
3 constitutional addendum and the election code. CONST., addendum (legislative history);
4 ELECTION ORDINANCE, § 6.5a(1). Furthermore, anyone can gain this information by visiting the
5 legislative website or directly consulting with the Legislature or individual legislators. See [http://](http://www.ho-chunknation.com/?PageId=284)
6 www.ho-chunknation.com/?PageId=284 (last visited Dec. 16, 2008). The electorate must be
7 expected to become at least moderately informed of the issues upon which it votes, especially
8 when the information is readily available from several public sources.
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11 The Court consequently must deny the plaintiff's request for relief. The Court grants the
12 defendant's *Motion to Dismiss*, which serves to conclude this election challenge. The parties
13 retain the right to appeal this final judgment pursuant to the *Special Rules for Election*
14 *Challenges*. HCN R. Civ. P. 80.
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17 **IT IS SO ORDERED** this 16th day of December 2008, by the Ho-Chunk Nation Trial
18 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
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21 _____
22 Honorable Todd R. Matha
23 Chief Trial Court Judge
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