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

**Paul M. Krause,**  
Plaintiff,

v.

Case No.: **CV 08-89**

**Ho-Chunk Nation Election Board**

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**ORDER  
(Motion to Dismiss Granted)**

**INTRODUCTION**

The Court must address a challenge to the November 18, 2008 Special Redistricting/Reapportionment Election, specifically whether to grant the defendant's motion to dismiss. Subsequently, the plaintiff neither attended the *Motion to Dismiss Hearing*, nor complied with discovery requests. Thus, the Court dismisses the election challenge.

**PROCEDURAL HISTORY**

The plaintiff, Paul M. Krause, initiated a cause of action by filing a challenge to the certified results of the November 18, 2008 Special Redistricting/Reapportionment Election through his December 1, 2008 *Complaint*. See *Scheduling Order*, CV 08-89 (HCN Tr. Ct., Dec. 1, 2008). On December 5, 2008, the defendants, by and through Ho-Chunk Nation Department

1 of Justice (hereinafter DOJ) Counsel Michelle M. Greendeer, filed the *Defendants' Answer* in a  
2 timely fashion. See *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*),  
3 Rule 76. The Court convened the *Pre-Trial Hearing* on Monday, December 8, 2008 at 9:30 a.m.  
4 CST. The following parties appeared at the *Hearing*: Paul M. Krause, plaintiff; DOJ Attorney  
5 Michelle M. Cleveland, defendant's counsel and Election Board Chairperson Judy Whitehorse.  
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7 The defendant requested that the Court schedule a *Motion to Dismiss Hearing*, which the  
8 Court granted. The Court convened the *Motion to Dismiss Hearing* on Monday, December 15,  
9 2008 at 1:30 p.m. CST. The following parties appeared at the *Hearing*: DOJ Attorney Michelle  
10 M. Cleveland, defendant's counsel and Election Board Chairperson Judy Whitehorse. The  
11 plaintiff, Paul M. Krause, failed to attend the *Motion to Dismiss Hearing* in person or by  
12 telephone.  
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## 14 **APPLICABLE LAW**

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

#### 16 **Art. V - Legislature**

##### 17 **Sec. 1. Composition of the Legislature.**

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

26 **Sec. 4. Redistricting or Reapportionment.** The Legislature shall have the power to  
27 redistrict or reapportion including changing, establishing, or discontinuing Districts. The  
28 Legislature shall maintain an accurate census for the purposes of redistricting or  
reapportionment. The Legislature shall redistrict and reapportion at least once every five (5)  
years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall

1 exercise this power only by submitting a final proposal to the vote of the people by Special  
2 Election which shall be binding and which shall not be reversible by the General Council. Any  
3 redistricting or reapportionment shall be completed at least six (6) months prior to the next  
4 election, and notice shall be provided to the voters.

4 Art. VIII - Elections

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

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

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

14 HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1  
15 HCC § 1

16 Subsec. 5. Rules and Procedures.

17 c. The Judiciary shall have exclusive authority and responsibility to employ  
18 personnel and to establish written rules and procedures governing the use and operation of the  
19 Courts.

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

22 ELECTION ORDINANCE, 2 HCC § 6

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

27 c. Primary Elections and Runoff Elections.

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

4 Subsec. 15. Challenges to the Election Results.

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

9 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

10 Rule 1. Scope of Rules.

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

15 Rule 3. Complaints.

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

17 (A) filing a written *Complaint* with the Clerk of Court and paying the appropriate fees. The  
18 *Complaint* shall contain short, plain statements of the grounds upon which the Court's  
19 jurisdiction depends, the facts and circumstances giving rise to the action, and a demand for any  
20 and all relief that the party is seeking. Relief should include, but is not limited to, the dollar  
21 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  
22 contacted. The *Complaint* shall be signed by the filing party or his/her counsel, if any.

23 Rule 19. Filing and Responding to Motions.

24 (A) Filing. *Motions* may be filed by a party with any pleading or at any time after their first  
25 pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other  
26 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.

27 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the  
28 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the

1 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the  
2 *Motion* must file any *Reply* within three (3) calendar days.

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

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

7 Rule 76. Answering an Election Challenge.

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

10 Rule 80. Appeals.

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

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

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

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

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20 **FINDINGS OF FACT**

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22 1. The parties received proper notice of the December 8, 2008 *Pre-Trial Hearing* and the  
23 December 15, 2008 *Motion to Dismiss Hearing*. The Court faxed a copy of the *Scheduling*  
24 *Order* to the plaintiff, Paul M. Krause, on December 1, 2008 at 4:30 p.m. CST. The Court faxed  
25 a copy of the *Scheduling Order* to the defendant, Ho-Chunk Nation Election Board, on the same  
26 date and approximate time, and also personally served a representative of the DOJ on the same  
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1 date. At the *Pre-Trial Hearing*, the parties scheduled a *Motion to Dismiss Hearing* on Monday,  
2 December 15, 2008 at 1:30 p.m. CDT.

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4 2. The plaintiff, Paul M. Krause, is an enrolled member of the Ho-Chunk Nation, Tribal ID#  
5 439A003219, and maintains an address of 1819 Green Bay Street, La Crosse, WI 54601.  
6 *Compl.*, CV 08-89 (Dec. 1, 2008) at 1.

7 3. The defendant, Election Board, is a constitutionally established entity, and maintains an  
8 address of 206 South Roosevelt Road, Black River Falls, WI 54615. CONST., ART. VIII, § 4.

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10 4. On December 1, 2008, the plaintiff filed a *Complaint* in which he “request[ed] relief  
11 against the defendant for . . . action taken by respondent [*sic*] in violation of Article V, Section  
12 1(b) and Section 4 of the Constitution of the Ho-Chunk Nation.” *Compl.* at 1. He further  
13 indicated that “[t]he certified results violate[d] the Constitution of the Ho-Chunk Nation.” *Id.* at

14 2. Furthermore, in an attached addendum, he cited to a Legislative Resolution indicating that the  
15 “Legislature shall be composed of eleven (11) Representatives.” *Compl.*, Attach. 1. He  
16 requested that “the Trial Court nullify the Special Election for Redistricting and  
17 Reapportionment of November 18, 2008.” *Compl.* at 3.

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19 5. At the *Pre-Trial Hearing*, the presiding judge explained the procedural rules and relevant  
20 case law regarding election challenges. *Pre-Trial Hr’g* (LPER at 2, Dec. 8, 2005, 9:33:09 CDT).

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22 6. Additionally, the Court reiterated the portion of the *Scheduling Order*, which dealt with  
23 discovery requests, noting that discovery requests needed to be received on or before December  
24 9, 2008, and that discovery concluded on December 12, 2008. *Id.* at 4, 09:38:19 CDT.

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26 7. The defendant submitted a timely discovery request. *See Defendant’s Discovery Request*,  
27 Dec. 9, 2008. The plaintiff did not submit any requests.

28 8. The plaintiff did not respond to the discovery request.

1 9. The defendant requested the Court impose a monetary fine of \$500.00 upon the plaintiff  
2 for initiating a “frivolous and/or wholly without merit” *Complaint*. *Def.’s Mot. to Dismiss* at 5;  
3 *Mot. to Dismiss Hr’g* (LPER at 4, Dec. 15, 2008, 01:36:43 CDT).  
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## 6 DECISION

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8 The Court must decide an election challenge within twenty (20) days of its filing.  
9 CONSTITUTION OF THE HO-CHUNK NATION [hereinafter CONSTITUTION], ART. VIII, § 7.  
10 However, the Court dismisses the December 1, 2008 *Complaint* filed by the plaintiff, Paul M.  
11 Krause. The plaintiff attended the December 8, 2008 *Pre-Trial Conference* and received  
12 appropriate notice regarding the December 15, 2008 *Motion to Dismiss Hearing* and failed to  
13 attend the proceeding. The plaintiff rightfully bears the burden of prosecution, and this burden  
14 takes on greater urgency within the condensed timeframe of an election challenge. The plaintiff  
15 needed to establish “by clear and convincing evidence that the Election Board violated th[e]  
16 Election Ordinance or otherwise conducted an unfair election, *and* that the outcome of the  
17 election would have been different but for the violation.” ELECTION ORDINANCE, 2 HCC § 6.15b  
18 (emphasis added); *see also Christine Funmaker-Romano et al. v. HCN Election Bd. et al.*, SU  
19 05-08 (HCN S. Ct., Aug. 3, 2005). In the instant case, the plaintiff did not appear at the *Motion*  
20 *to Dismiss Hearing*, and did not comply with discovery request, and therefore did not meet the  
21 defined burden.  
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25 The Court recognizes that “most challenges represent honest and legitimate concerns of  
26 the complainants.” *Visitin v. HCN Election Bd.*, CV 08-86 (HCN Tr. Ct., Dec. 16, 2008) at 11.  
27 The Court reserves judgment as to the nature of the plaintiff’s claims, but does not believe that  
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1 they rise to the level of a monetary fine and subsequent delineation of “frivolous and/or wholly  
2 without merit” filing. **BASED UPON THE FOREGOING**, the Court denies the plaintiff’s  
3 request for relief. The Court grants the defendant’s *Motion to Dismiss*, which serves to conclude  
4 this election challenge. The parties retain the right to appeal this final judgment pursuant to the  
5 *Special Rules for Election Challenges. HCN R. Civ. P. 80.*  
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7 **IT IS SO ORDERED** this 17th day of December 2008, but *nunc pro tunc* December 15,  
8 2008, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign  
9 lands of the Ho-Chunk Nation.  
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13 Honorable Amanda L. Rockman  
14 Associate Trial Court Judge  
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