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

**Christine Funmaker-Romano,**  
Plaintiff,

v.

Case No.: **CV 05-48**

**Ho-Chunk Nation Election Board,**  
**Mary Ellen Dumas Chairman,**  
Defendants.

**Gerald Cleveland, Sr.,**  
Plaintiff,

v.

Case No.: **CV 05-49**

**Ho-Chunk Nation Election Board,**  
Defendant.

**JUDGMENT**

**INTRODUCTION**

These cases are election challenges filed by two incumbent legislators who were defeated by their challengers in the June 7, 2005 General Election. The Court finds clear and convincing evidence that there were two violations of the Election Ordinance, but the Court also finds that neither plaintiff met the statutory burden of proving by clear and convincing evidence that the outcome of the election would have been different but for the violations.

The consolidated *Trial* in these matters was convened on June 28, 2005 at 9:00 A.M. Present in Court were the plaintiffs, Christine Funmaker-Romano and Gerald Cleveland, Sr.;

1 counsel for the plaintiffs, attorney Mark Goodman; defendant, Mary Ellen Dumas; and counsel  
2 for the defendants, Michael Murphy.

## 3 4 5 **APPLICABLE LAW**

### 6 **CONSTITUTION OF THE HO-CHUNK NATION**

#### 7 8 **Art. III - Organization of the Government**

9 Sec. 4. Supremacy Clause. This Constitution shall be the supreme law over the territory  
10 and within the jurisdiction of the Ho-Chunk Nation.

#### 11 **Art. V - Legislature**

12 Sec. 3. Codes. The Legislature shall adopt Codes governing Membership, Open  
13 Meetings, Elections, Ethics including conflicts of interest, nepotism, and the conduct of all  
14 elected and appointed officials and employees, and other Codes as deemed necessary.

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

#### 20 **Art. VII - Judiciary**

##### 21 **Sec. 5. Jurisdiction of the Judiciary.**

22 (a) The Trial Court shall have original jurisdiction over all cases and controversies, both  
23 criminal and civil, in law or in equity, arising under the Constitution, laws, customs and  
24 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its  
25 officials and employees, shall be a party. Any such case or controversy arising within the  
26 jurisdiction of the Ho-Chunk Nation shall be filed in Trial Court before it is filed in any other  
27 court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of  
28 the Nation's sovereign immunity.

##### 29 **Sec. 6. Powers of the Tribal Court.**

(a) The Trial Court shall have the power to make findings of fact and conclusions of  
law. The Trial Court shall have the power to issue all remedies in law and in equity including  
injunctive and declaratory relief and all writs including attachment and mandamus.

1 Art. VIII - Elections

2 Sec. 1. General Elections. General Elections shall be held on the first Tuesday in June of  
3 odd numbered years. Offices of the Legislature, Executive, and Judiciary shall be filled at  
4 General Elections.

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

8 HO-CHUNK NATION ELECTION ORDINANCE, 2 HCC § 6 (amended Nov. 19, 2002)

9 Subsec. 1. Authority.

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

12 Subsec. 7. Notice of Election.

13 a. The Election Board shall post an Official Notice of Election in the ten (10)  
14 Polling Places and any other appropriate locations at least ninety (90) calendar days before the  
15 election, except that a Notice of Special Election shall be published in the Hocak Worak  
16 Newsletter as early as practicable before a Special Election but not less than fifteen (15) calendar  
17 days before such Special Election.

18 b. The Election Board shall use an Official Notice of Election. The Notice shall  
19 include the following information.

- 20 (1) Type of Election (General or Special), and if a Special Election, the issue(s) to be  
21 decided in the Special Election.
- 22 (2) Date of Election.
- 23 (3) Candidate filing deadline.
- 24 (4) Locations of polling Places.
- 25 (5) Absentee voting procedures and deadlines.
- 26 (6) Other important information as determined by the Election Board consistent with  
27 this Ordinance.

28 Subsec. 12. Election Procedures

29 a. Polling Places. There shall be ten (10) Polling Places as follows:

<u>District</u>	<u>Location</u>	<u>Polling Place</u>
1	Black River Falls	1
2	Tomah	1
	La Crosse	1
3	Wittenberg	1

1	4	Wisconsin Dells	1
2		Wisconsin Rapids	1
3		Milwaukee	1
		Madison	1
4	5	Chicago	1
5		Minneapolis/St. Paul	<u>1</u>
			10

6 b. Voting Procedures. An eligible voter may vote as follows:

- 7 (1) At the local Polling Place in the District in which they reside.
- 8 (2) By Absentee Ballot.
- 9 (3) At any Polling Place, provided the Affidavit of Non-Resident Voter Form (Election Board Form 4 at Appendix A) is completed by the voter at the time of voting.

10 c. Hours of Voting. Each Polling Place shall be open from 8:00 a.m. to 7:00 p.m. Central Time. Any voter in line at a Polling Place by 7:00 p.m. Central Time shall be allowed to finish voting.

11 d. Method of Voting.

- 12 (1) Each prospective voter, upon being identified as an eligible voter, shall sign the list of
- 13 eligible voters and shall be handed an Official Ballot.

14 Subsec. 15. Challenges to the Election Results.

15 a. The results of an election may be challenged in accordance with Article VIII,

16 Section 7 of the Constitution, which states:

17 *Sec. 7. Challenges of Election Results. Any member of the Ho-Chunk*

18 *Nation may challenge the results of any election by filing suit in Trial [sic] Court within*

19 *ten (10) days after the Election Board certifies the election results. The Trial [sic] Court*

20 *shall hear and decide a challenge to any election within twenty (20) days after the*

21 *challenge is filed in Trial [sic] Court.*

22 b. The person challenging the election results shall prove by clear and convincing

23 evidence that the Election Board violated this Election Ordinance or otherwise conducted an

24 unfair election, and that the outcome of the election would have been different but for the

25 violation. If the Court finds the challenge is frivolous and/or wholly without merit, the party

26 challenging shall be assessed costs of the action in an amount to equal five hundred dollars

27 (\$500.00).

28 Subsec. 22. Interpretation and Application of Ordinance by Election Board. The Election Board shall not possess any substantive rule making authority, but shall retain the ability to interpret and apply the Ordinance unless such interpretation or application is found by the Trial Court to be contrary to the Constitution and laws of the Nation.

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Ch. IX - Special Rules for Election Challenges

3 Rule 80. Appeals.

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5 (A) Appeals. The final judgment of the Trial Court is appealable to the Ho-Chunk Nation  
6 Supreme Court. The Appellant and/or Appellee may obtain a copy of the trial transcript at their  
7 own expense.

8 (1) The Notice of Appeal shall be filed and served within three (3) calendar days of entry  
9 of the judgment.

10 (2) The Notice of Appeal must state a basis for appeal based upon the laws and/or  
11 Constitution of the Ho-Chunk Nation.

12 (3) A *Certificate of Service* and fifty dollar (\$50.00) filing fee must accompany the  
13 Notice of Appeal.

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15 **FINDINGS OF FACT**

16 1. The official results of the June 7, 2005 General Election for Ho-Chunk Nation Legislature,  
17 District 4, Seat 1 were Alvin Cloud 199 votes and Gerald L. Cleveland, Sr. 169 votes.

18 2. The official results of the June 7, 2005 General Election for Ho-Chunk Nation  
19 Legislature, District 4, Seat 3 were Ona Garvin 190 votes and Christine Romano 184 votes.

20 3. The Final Notice of Election published in the May 25 edition of the Hocak Worak and  
21 distributed in public places throughout the Ho-Chunk Nation, listed as an official polling place  
22 the Madison Branch Office, 2520 Rimrock Road.

23 4. The actual Madison area polling place used for the June 7, 2005 election was the new  
24 Branch Office located at 1320 Mendota Street.  
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1 5. Election officials at the Wisconsin Dells polling place required voters to show picture  
2 identification consisting of a Ho-Chunk Nation ID card, a State of Wisconsin issued ID card such  
3 as a driver's license, or an employment issued ID badge with photograph.

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5 6. Between 10 and 20 prospective voters were turned away by officials at the Wisconsin  
6 Dells polling place for failing to produce a proper ID. Election official, David Decorah, testified  
7 that some of those 10 to 20 people later returned with ID and were allowed to vote, but that  
8 several people who were turned away did not come back to vote. Mr. Decorah could name only  
9 one person, Delphine Swallow, who failed to return later with identification and vote in the  
10 election. Election official, Lillian Thundercloud, testified that all of the 10 to 20 people who  
11 were turned away did in fact return to vote with the sole exception of Delphine Swallow. Lillian  
12 Thundercloud was the election official with the responsibility of identifying the eligible voters as  
13 they came in to vote, and she is was in a better position to recall the identities of those who were  
14 turned away and those who later returned and voted.

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17 7. Delphine Swallow was well known by the poll workers as being a Ho-Chunk Nation  
18 member and elder, but she was not allowed to vote because she did not produce any sort of  
19 identification card.

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21 8. Delphine Swallow testified that she would have voted for Alvin Cloud and Christine  
22 Romano if she had been allowed to cast her votes.

23 9. The names Jan Funmaker, Susie Decorah and Charlie Sheskey were not furnished by the  
24 plaintiffs to the defendants or to the Court prior to the opening of Trial. The Court, therefore, did  
25 not allow their testimony as witnesses. The Court did, however, allow them to make an offer of  
26 proof. Their offer of proof showed that on the morning of the election, Jan Funmaker had  
27 conveyed to Susie Decorah and Charlie Sheskey the information that Tribal ID was required in  
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1 order to vote at the Wisconsin Dells polling place. Susie Decorah and Charlie Sheskey did not  
2 go to the House of Wellness to vote because Charlie Sheskey had previously lost his Tribal ID.  
3 Both Susie Decorah and Charlie Sheskey offered that if they had voted, they would have voted  
4 for Gerald Cleveland, Sr. and Christine Romano.  
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6 10. At approximately 6:30 P.M. on the day of the election, Diane Lonetree and her daughter,  
7 Samantha Beale, went to the 2520 Rimrock Road location in Madison in order to vote in the  
8 General Election. Upon arriving at 2520 Rimrock Road they read signs on the door indicating  
9 that the Madison Branch Office had moved to 1320 Mendota Street. Diane Lonetree and  
10 Samantha Beale proceeded to travel to 1320 Mendota Street, but because of traffic, the distance  
11 involved, road construction and unfamiliar directions, they arrived at the polling place a few  
12 minutes after 7:00 P.M. They were not permitted to vote because they had not arrived at the  
13 polling place by the 7:00 P.M. closing time. Diane Lonetree testified that if she had been  
14 allowed to vote, she would have voted for Gerald L. Cleveland, Sr. and Christine Romano.  
15 Samantha Beale did not testify at *Trial*.  
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## 19 DECISION

20 The Court finds by clear and convincing evidence presented by the plaintiffs that there  
21 were two violations of the Election Ordinance committed by the Election Board or its designated  
22 officials.  
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24 First, the Final Notice and Rules of General Election gave notice of the incorrect location  
25 for the Madison polling place for the June 7, 2005 election. This incorrect notice was a violation  
26 of the Election Ordinance in spite of all efforts by the Election Board to notify voters of the  
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1 change in polling place. Because of the incorrect notice, at least two eligible voters who wanted  
2 to vote in the election were deprived of the right to vote.

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4 Second, the election officials at the Wisconsin Dells polling place exceeded the authority  
5 granted under the Election Ordinance by requiring documentary proof of identity even when the  
6 identity of the prospective voter was well known to one or more of the election officials. The  
7 Election Ordinance does not require documentary proof of identity. It provides only that, “Each  
8 prospective voter, upon being identified as an eligible voter, shall sign the list of eligible voters  
9 and shall be handed an Official Ballot.” If a prospective voter’s identity is personally known to  
10 an election official, and that prospective voter’s name appears in the list of eligible voters, then  
11 the prospective voter must be allowed to vote.  
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13 The Election Ordinance requires that, “The person challenging the election results shall  
14 prove by clear and convincing evidence that the Election Board violated this Election Ordinance  
15 or otherwise conducted an unfair election, and that the outcome of the election would have been  
16 different but for the violation.” Based upon the evidence presented at *Trial*, this Court cannot  
17 find by clear and convincing evidence that the outcome of the election would have been different  
18 but for the violations of the Election Ordinance. The evidence presented revealed at most only  
19 five prospective voters who would have voted if not prevented from doing so because of  
20 violations of the Election Ordinance. Even if the Court were to consider the offers of proof made  
21 by the plaintiffs’ witnesses, Jan Funmaker, Susie Decorah and Charlie Sheskey, as evidence in  
22 these matters, plaintiff Christine Romano would have lost her election by two votes and Gerald  
23 L. Cleveland, Sr. would have lost his election by 28 votes.  
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Although the plaintiffs have proved by clear and convincing evidence that there were violations of the Election Ordinance, they have not proved by clear and convincing evidence that the outcome of the election would have been different if those violations had not occurred.

**IT IS THEREFORE ORDERED** that the election challenges filed by the plaintiffs, Christine Funmaker-Romano and Gerald L. Cleveland, Sr. are both denied.

**IT IS SO ORDERED** this 29<sup>th</sup> day of June 2005, but *nunc pro tunc* June 28, 2005 by the Ho-Chunk Nation Trial Court located in Black River Falls, Wisconsin within the sovereign lands of the Ho-Chunk Nation.

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Honorable William Bossman  
Chief Trial Court Judge