

FEB 18 2025


Clerk of Court / Assistant

IN THE
HO-CHUNK NATION TRIAL COURT

Brianna Tahdoahnippah,
Plaintiff,

v.

Ho-Chunk Nation Election Board,
Defendant.

Case No.: CV 25-03

**ORDER
(Granting Preliminary Injunction; Joining the Ho-Chunk Nation Legislature;
and Denying Motion for Summary Judgment)**

INTRODUCTION

The Court must determine whether to enjoin the Ho-Chunk Nation Election Board from holding the upcoming elections on February 18, 2025, March 2, 2025, and March 5, 2025. Upon reviewing the requisite four (4) prongs for granting a preliminary injunction, the Court determines to grant the plaintiff's request. Further based on Rule 24, of the *Ho-Chunk Nation Rules of Civil Procedure*,¹ the Court determines it is necessary to join the Ho-Chunk Nation Legislature as an interested party. The Court provides the basis for its decisions below.

PROCEDURAL HISTORY

On February 5, 2025, the plaintiff, by and through counsel, Attorney Forrest Tahdoahnippah, filed a *Complaint* accompanied by four (4) attachments. Also accompanying the *Complaint* was a *Motion for Preliminary Injunction* and an *[Proposed] Order*. On February 6,

¹ Parties can obtain a copy of the applicable rules by contacting the Ho-Chunk Nation Trial Court at (715) 284-2722 or (800) 434-4070 or visiting the Judiciary website at <https://ho-chunknation.com/government/judicial-branch/judicial-rules/>.

1 2025, the Court issued a *Summons-Amended* for the defendants, and effectuated service upon the
2 Office of the defendants and through the Attorney General. *See Ho-Chunk Nation Rules of Civil*
3 *Procedure* (hereinafter *HCN R. Civ. P.*), Rule 75(C).

4
5 On February 7, 2025, the defendants, by and through the Ho-Chunk Nation Department of
6 Justice (hereinafter DOJ) Attorneys Erik Shircel and David Mrgudich, filed *Defendants' Answer*
7 *to Plaintiff's Verified Complaint* (hereinafter *Answer*). Accompanying the *Answer* was
8 *Defendant's Reply to Plaintiff's Motion for Injunction*, and *Defendant's Motion for Summary*
9 *Judgment and Dismissal* and two (2) *Attachments*.

10
11 On February 10, 2025, the plaintiff, by and through Attorney Tahdooahnippah, filed
12 *Amended Motion for Preliminary Injunction and/or Temporary Restraining Order and*
13 *Memorandum of Law in Support Thereof* (hereinafter *Amended Motion*). Accompanying the
14 *Amended Motion* was *Declaration of Brianna Tahdooahnippah in Support of Amended Motion for*
15 *Preliminary Injunction and/or Temporary Restraining Order* and a *[Proposed] Order*. Also
16 accompanying the *Amended Motion* was *Plaintiff's Response to Defendant's Motion for Summary*
17 *Judgment*.

18
19 On February 10, 2025, the defendants, by and through DOJ Attorneys Shircel and
20 Mrgudich, filed *Defendant's Reply to Amended Motion for Injunction* accompanied by three (3)
21 attachments. On February 11, 2025, the defendants, by and through DOJ Attorneys Shircel and
22 Mrgudich, filed *Defendant's Reply in Support of Motion for Summary Judgment and Dismissal*
23 (hereinafter *Reply in Support of Motion*).

24 25 **FINDINGS OF FACT**

26
27 1. The plaintiff, Brianna Tahdooahnippah, is an enrolled member of the Ho-Chunk Nation,
28 Tribal ID # 439A004787, and resides at 13112 Shadow Ridge Dr., Elgin, OK, 73538. *See*

1 *Complaint* (Feb. 5, 2025) at 2. Ms. Tahdooahnippah is also currently the District 4, Seat 3
2 Representative of the Ho-Chunk Nation Legislature. *Id.*

3 2. The defendant, Ho-Chunk Nation Election Board, is a constitutionally established entity,
4 and maintains an address W8801 Mission Rd., Black River Falls, WI, 54615.

5
6 3. The Ho-Chunk Nation held a Special Election for Redistricting and Reapportionment on
7 October 17, 2024, which was certified on October 18, 2024.

8 4. Notice and Rules of General Primary Election for Wednesday, March 5, 2025 were posted
9 on November 25, 2024; December 11, 2024 and January 20, 2025.

10
11 5. Notice and Rules of Special Election for Tuesday, February 18, 2025 were posted on
12 January 21, 2025 and February 1, 2025.

13 6. Notice and Rules of Special Election for Sunday, March 2, 2025 were posted on January
14 31, 2025

15
16 7. The plaintiff submitted her *Official Declaration of Candidacy* and *Official Nomination*
17 *Petitions* to the Election Board on January 17, 2025. *See Complaint* (Feb. 5, 2025) at *Exhibit A*.

18 8. The plaintiff has continuously lived in District 4 since 2018, first in Minnesota, which was
19 part of District 4 until the Special Redistricting Election in October of 2024 and then relocating to
20 Oklahoma in August of 2024 which was and remains part of District 4. *See Complaint*, at 2-3 and
21 *Answer* and 2. The plaintiff correctly updated her address with the Ho-Chunk Nation Department
22 of Enrollment when she moved to Oklahoma, in August 2024. *Id.* Under both the previous
23 Legislative Districts and the new scenario adopted in October of 2024, the entire state of Oklahoma
24 is within District 4. *Id.* As such the plaintiff has continuously resided in District 4 since 2018. *Id.*

25
26 9. The plaintiff collected fourteen (14) signatures in December 2024 and January 2025 on her
27 *Official Nomination Petitions*.
28

1 10. On January 20, 2025, at 2:14 p.m. CST, the Election Board convened a meeting at which
2 Devin Funmaker made a motion to deny Ms. Tahdooahnippah’s *Official Declaration of Candidacy*
3 “for not enough signatures and residency requirement,” which was seconded by Joann Maney and
4 carried eleven to zero (11-0-0). *See Answer* (Feb. 7, 2025), at *Election Board Mtg. Minutes* (Jan.
5 20, 2025) at 4.

7 11. The Election Board did not inform the plaintiff which signatures they invalidated nor did
8 they provide a reason for invalidating any of the signatures provided by the plaintiff on *Official*
9 *Nomination Petitions*. *See Answer*, at 2 and *Complaint*, at 4. The Election Board also did not
10 explain why the plaintiff did not meet the residency requirement. *Id.*

12 12. The Election Board failed to notify the plaintiff in writing via certified mail of her
13 disqualification as a candidate, which is required pursuant to the HO-CHUNK NATION ELECTION
14 CODE 2 HCC § 6.8(f)(2).² *Complaint*, at 4. The Defendants admitted that the plaintiff was not sent
15 the required written notice because she was notified verbally at the WebEx meeting on January
16 20, 2025. *See Answer*, at 3 and 5.

18 13. On January 25, 2025, the plaintiff emailed and mailed an appeal letter to the Election
19 Board. *See Complaint*, at 4.

21 14. On January 31, 2025, at 6:00 p.m. CST, the Election Board convened a meeting at which
22 Cher Laubmeier made a motion to deny the plaintiff’s appeal, which was seconded by Barbara
23 Funmaker. *See Answer*, at *Election Board Mtg. Minutes* (Jan. 31, 2025) at 2. Once again the
24 Election Board did not explain how the plaintiff failed to obtain enough valid signatures or meet
25 the residency requirements under the CONSTITUTION. *See Complaint*, at 4.

27 15. In *Dallas White Wing v. HCN Election Board*, the Supreme Court states “this Court, like

28 ² Parties can obtain a copy of the applicable law by contacting the Ho-Chunk Nation Legislature at (715) 284-9343 or (800) 294-9343 or visiting the legislative website at <https://ho-chunknation.com/government/legislative-branch/ho-chunk-nation-laws/>.

1 the Trial Court, is troubled by the lack of a prepared and properly served notice of the original
2 May 6 decertification decision.” *Decision*, SU 07-09 (HCN S. Ct., June 3, 2007) at 12. The
3 Supreme Court further explained that “the Election Board must be held to give actual prompt
4 notice of its decisions to not certify nominees as candidates and to decertify candidates in future.”
5 *Id.*, at 13.

7 16. Further, in *Valerie R. Kempen v. Bridgett Schulz et. al.*, the Trial Court, when discussing
8 whether to use the date of service or the date an individual learns of the Election Board’s decision
9 for the purposes of calculating timelines stated “the Court believes that using the date of service
10 most effectively provides for a reliable written record and straightforward guidance to litigants.
11 Given the limitations of mailing and the possibility for delays between Election Board meetings
12 and preparation of a written determination, the defendants’ theory could result in plaintiffs being
13 forced to file their appeals without any tangible basis or evidence for the exhaustion of their
14 administrative remedies. While this would not be a bar if the statute clearly expressed that the date
15 of the decision referred to the date of the relevant Election Board meeting, the Court will not infer
16 this potentially impractical interpretation merely on the basis of statutory ambiguity.” *Order*
17 *(Enjoining Legislative Election, Denying Mot. to Dismiss; Reversing and Remanding)*, CV 15-03
18 (HCN Tr. Ct., March 4, 2015) at 25.

21 17. The Trial Court went on to suggest that perhaps the Election Board should develop a
22 decision form and said “the Court assumes this form would properly notify the challenger of the
23 Board’s decision and **provide meaningful communication of the reasons** for the decision.”
24 *[emphasis added]*. *Id.* The Supreme Court decision on appeal only determined that the Election
25 Board did not have to issue a written decision regarding their decision when a candidate challenged
26 a denial of certification. *HCN Election Board, et al. v. Valerie Kempen, Decision*, SU 15-04 (HCN
27
28

1 S. Ct., Mar. 25, 2015) at 4. The Supreme Court did not indicate in any way that the Election Board
2 did not have to comply with initial written notification required by the statute. *Id.*

3 18. *Robert A. Mudd v. HCN Legislature et. al.*, reviewed what occurred following a Special
4 Election for Redistricting and Reapportionment and the Legislature’s plan for implementation.
5 The Supreme Court stated that “When the voters of the Ho-Chunk Nation approved the
6 redistricting plan on January 12, 2002, the old districts *ceased to exist* pursuant to HCN CONST.
7 Art. V, § 4. When the HCN Legislature adopted the revised ELECTION ORDINANCE on
8 November 19, 2002, the redistricting plan was fully implemented.” *Decision*, SU 03-02 (HCN S.
9 Ct., Apr. 8, 2003) at 7.
10

11
12 19. The Supreme Court went on to explain that there was no requirement under the
13 CONSTITUTION or other law that required Legislators continue to live in their Districts following
14 an election, so long as they had met the residency requirements at the time they filed their
15 *Declaration of Candidacy*. *Id.*, at 8. The Supreme Court also explained that while the
16 CONSTITUTION mandates that Legislators hold meetings in their Districts, “the methods and
17 means” of those meetings are solely under the authority and power of the Legislature and the
18 Judiciary “will not interfere” unless there is evidence that the Legislature is acting against the
19 CONSTITUTION. *Id.*
20

21
22 20. On December 4, 2018, the Legislature amended the HO-CHUNK NATION ELECTION CODE
23 by quick passage to reflect that, following a Special Election for Redistricting, a holdover
24 Legislator shall continue to represent the District that elected them until “March 1 of the year
25 immediately after the Special Election.” *See* ELECTION CODE 2 HCC § 6.20(c)(5)(b).
26

27 21. On page three (3), number twelve (12) of the *Answer*, “Defendant admits to items 35-37 of
28 the *Plaintiff’s Complaint*.” *See Answer*, at 3. Item thirty-five (35) of the *Complaint* states

1 “Tahdooahnippah realleges the allegations in Paragraphs 1-34 above and incorporates the same by
2 reference.” *See Complaint*, at 5. This includes the entirety of Count I-Violation of Due Process
3 (Ho-Chunk Nation Constitution, Article X Section 1(a)(8)). *See Complaint*, at 4-5.

4
5 22. Section 28 of the ELECTION CODE provides for a limited waiver of sovereign immunity, in
6 which it addresses Sections 16, 18, and 19 of the code. Section 16 deals with Election Fraud,
7 Section 18 deals with Challenges to the Election Results and Section 19 deals with the Prohibition
8 on Outside Influence on Elections. Each section clearly mentions the Trial Court or the Judiciary’s
9 potential involvement, however other Sections within the ELECTION CODE that also incorporate
10 the Judiciary’s authority are not included within the limited waiver of Section 28. For example
11 Section 10(i) Challenge to Candidacy or Section 8(f)(2) Certification of Qualifications.

12
13 23. The Ho-Chunk Nation Supreme Court has declared that neither the Trial Court nor the
14 Supreme Court are barred from issuing declaratory relief pursuant to HCN CONSTITUTION ART.
15 VII, SEC. 6 & 7. *Robert A. Mudd v. HCN Legislature et. al.*, *Decision*, SU 03-02 (HCN S. Ct., Apr.
16 8, 2003) at 6. In the *Mudd* case the Supreme Court noted that “The appellant continues to
17 misapprehend the nature of sovereign immunity. This doctrine prevents actions against the Nation
18 without its permission, particularly where the suit is for money. Here the claim is not for money
19 damages against the Nation but rather for declaratory and injunctive relief. These are remedies in
20 equity and prospective in nature and are not generally barred by the doctrine of sovereign
21 immunity.” *Id.*, at *Footnote 2*.

22
23
24 24. Pursuant to ARTICLE III, Section 4 the HO-CHUNK NATION CONSTITUTION is the supreme
25 law over all territory and persons within the jurisdiction of the Ho-Chunk Nation. *See also Reply*
26 *in Support of Motion* (Feb. 11, 2025) at 6. Under ARTICLE VIII, Section 2. Special Elections.
27 Special Elections shall be held when called for by the **General Council, the Legislature, or by**
28

1 **this Constitution or appropriate ordinances.** In all Special Elections, notice shall be provided
2 to the voters. *[emphasis added]*.

3 25. A portion of ARTICLE V, Section 4 also applies to this matter, “Any redistricting or
4 reapportionment shall be completed at least six (6) months prior to the next election, and notice
5 shall be provided to the voters.” *[emphasis added]*.

6 26. The relevant sections of the ELECTION CODE 2 HCC § 6 are as follows:

7
8 2. **Purpose and Construction.** The Election Code (2 HCC § 6) is enacted to provide basic rules
9 and establish election procedures to ensure that all elections are conducted in a fair and proper
10 manner. The Election Code (2 HCC § 6) shall be interpreted liberally in order to accomplish this
11 purpose. Substantial compliance will satisfy the Election Code (2 HCC § 6).

12 3. **Definitions.**

13 (y) “Election Procedures” mean the established or correct method of procedures for an Election.

14 (ff) “Fraudulent” means conduct involving bad faith, dishonesty, or misrepresentation.

15 (hh) “General Election” means the final election held to choose a person to serve as an elected
16 official that shall be held on the first (1st) Tuesday in June of odd numbered years.

17 (kk) “Meetings” means as stated within the Open Meetings Act 2 HCC § 2.

18 (ll) “Minutes” means as stated within the Open Meetings Act 2 HCC § 2.

19 (oo) “Nomination Petition” means a written request or official document signed by ten (10) or more
20 Tribal Members (eligible voters) supporting a candidate.

21 (ddd) “Residency” means the permanent physical address (not a P.O. Box) stated on the periodic
22 Address Verification Forms provided by the Nation’s Office of Tribal Enrollment with respect to
23 per capita distributions. Except that in the case of candidates or voters in military service or full time
24 registered students, “residency” will be the last permanent physical address of such person before
25 he or she entered military service or school.

26 (hhh) “Special Election” means an Election other than the General Election or Primary Election that
27 is called for by the General Council, the Legislature, or by the Constitution or appropriate ordinance.

28 8. **Qualifications. [...]**

a. Qualifications of Legislators. [...]

iii. Residency Requirement for Legislative Candidates. A candidate for Legislature shall be eligible
to run for office in the District in which the candidate has resided for at least one (1) year
immediately prior to filing the petition declaring his or her candidacy.

iv. Except for as provided in Section 20 for holdover Legislators, a Legislator must maintain
residency in the District that elected him or her during his or her entire term. A holdover Legislator,
as defined in Section 20, must maintain residency in the geographic region that originally elected

1 him or her to the Legislature during his or her entire term.

2 [...]

3 f. Certification of Qualifications.

4 (1) [...]

5 (b) The Election Board will determine whether each candidate for elective office meets the
6 appropriate qualifications listed in the Constitution and any other qualifications required under the
7 laws of the Ho-Chunk Nation, including Section 8, subparagraph d., above, and the Ho-Chunk
8 Nation Code of Ethics Act (2 HCC § 1). The Board shall determine whether a candidate has already
9 served two (2) consecutive four (4) year terms prior to the current Election Cycle. Background
10 checks are conducted to determine if a candidate meets these qualifications for office will be made
11 available and seen by all Election Board Members prior to the Election Board making the
12 determination as to whether or not the candidate meets these qualifications for office.

13 (2) The Election Board shall immediately notify a candidate in writing by certified mail if the
14 candidate does not meet the qualifications of office. The candidate will have five (5) business days
15 from the date of receipt of notice to appeal the eligibility determination to the Election Board. The
16 Election Board shall issue a decision within five (5) business days of receipt of the appeal. The
17 candidate/appellant may appeal the decision of the Election Board to the Trial Court within five (5)
18 business days of the decision only upon the grounds that it is inconsistent with the *Election Code* (2
19 HCC § 6) and/or the *Constitution*. [emphasis added]

20 20. **Special Election for Redistricting/Reapportionment.**

21 [...]

22 c. Redistricting procedures.

23 [...]

24 (d) [...]

25 6 An implementation plan. [...]

26 d(3) Notice Requirements. (b) Production and distribution of a Special Edition of the Nation's
27 newsletter (currently the Hocak Worak) providing at a minimum a map of the Redistricting
28 Scenario(s) and the implementation plan for each of the Redistricting Scenario(s). The distribution
of a Special Edition may be waived by the Legislature, but only if it passes a Resolution to waive
production and distribution of the Special Edition; and

[...]

(5) Committee Members and Legislators:

(a) A Tribal Member serving on a public body who no longer resides in the District that nominated
him or her to the public body may continue to serve on that public body until such time as that Tribal
Member's term expires. [...]

(b) Holdover Legislator. Until March 1 of the year immediately after the Special Election on
Redistricting, a holdover Legislator shall continue to represent the District and constituents living
in the District that originally elected him or her to the Legislature and attend the same District
Meeting(s) that he or she attended before the Special Election on Redistricting. After such time, the
boundaries approved in the Special Election on Redistricting as the adopted District Plan will govern

1 Legislator representation and attendance at District Meeting(s). The only exception to the preceding
2 sentence is if the newly adopted District Plan results in a fewer number of Legislators in which case
3 the holdover Legislator may be subject to a Special Election pursuant to the requirements of Section
4 20, subparagraph c. (5) (c) immediately below. Legislators who are not holdover Legislators will
5 follow the same timeline to March 1 as stated above. (Per the Legislative History this language was
6 adopted on December 4, 2018, long after the Supreme Court decision in *Mudd*).

7 [...]

8 (6) The date the Election Board certifies the results of the Redistricting Special Election will be
9 notated in the Legislative History of this *Election Code* (2 HCC § 6) and a record of the results of
10 the Redistricting Special Election will be placed in the back of the Constitution.

11 27. The Court notes that the Legislative History of the ELECTION CODE has not been updated
12 to reflect the most recent Redistricting Special Election and more importantly the CONSTITUTION
13 does not contain a record of the two (2) most recent Redistricting Special Elections, neither the
14 one from 2018 or 2024.

15 28. Pursuant to *HCN R. Civ. P.*, Rule 24, to the greatest extent possible, all persons with an
16 interest will be joined in an action if relief cannot be accorded among the current parties without
17 that person, or the absent person's ability to protect their interests is impeded unless they are a
18 party.

19 DECISION

20 First the Trial Court takes this opportunity under *HCN R. Civ. P.*, Rule 24, to join the Ho-
21 Chunk Nation Legislature as an interested party. The Trial Court takes this action due to the fact
22 that under the CONSTITUTION the Legislature has the power to make laws, including codes,
23 ordinances, resolutions, and statutes with specific oversight to Election Codes.

24 At this juncture, the Court must determine whether to grant the plaintiff's *Amended Motion*
25 *for Preliminary Injunction and/or Temporary Restraining Order* and the Defendant's *Motion for*
26 *Summary Judgment and Dismissal*. The Court reviews each request in turn below. The Court shall
27 address the case in chief at a later date.

28 I. Motion for Preliminary Injunction

1 Parties have presented requests for preliminary injunctions to the Court in two (2) different
2 manners in the past. Some parties have lodged the request within the body of the pleading. *See,*
3 *e.g., Anna Rae Funmaker v. Kathryn Doornbos et al.*, CV 96-02 (HCN Tr. Ct., Nov. 22, 1996) at
4 1; *see also Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 60(B-
5 C). Others have submitted the request in a motion accompanying the pleading. *See, e.g., Todd R.*
6 *Matha v. HCN Election Bd. Chairperson, Vaughn Pettibone, et al.*, CV 02-34 (HCN Tr. Ct., Apr.
7 12, 2002) at 2; *see also HCN R. Civ. P.* 18, 19(A). Either method has proven acceptable to the
8 Court since they are equally accommodated by the *HCN R. Civ. P.*

9
10
11 Here, the plaintiffs requested a preliminary injunction in a *Motion* accompanying the
12 *Complaint* and then later in an *Amended Motion*. Initially the plaintiff moved the Court for an
13 “Order enjoining the 2025 Election from proceeding until the conclusion this action.” *See Motion*
14 *for Preliminary Injunction* (Feb. 5, 2025) at 1. In the *Amended Motion*, the plaintiff further
15 requested that the Court enjoin the “February 18, 2025 “Special Election.” *See Amended Motion*
16 (Feb. 10, 2025) at 1.

17
18 Shortly after its formation, the Court adopted a four-part test for the purpose of evaluating
19 requests for preliminary injunctions. *Joyce Warner et al. v. Ho-Chunk Nation Election Board*, CV
20 95-03-06, -09-10 (HCN Tr. Ct., July 3, 1995) at 4 (citing *Merrill Lynch, Pierce, Fenner & Smith,*
21 *Inc. v. Salvano*, 999 F.2d 211, 214-15 (7th Cir. 1993)). The Ho-Chunk Nation Supreme Court later
22 sanctioned the use of the incorporated federal standard. *Coalition for a Fair Gov’t II v. Chloris A.*
23 *Lowe, Jr. et al.*, SU 96-02 (HCN S. Ct., July 1, 1996) at 7 (quoting *Tracy Thundercloud v. HCN*
24 *Election Bd.*, CV 95-16 (HCN Tr. Ct., Aug. 28, 1995) at 3); *see also Anna Rae Funmaker v.*
25 *Kathryn Doornbos et al.*, SU 96-12 (HCN S. Ct., Mar. 25, 1997) at 2-3. Consequently, the Court
26 must deny a request for a preliminary injunction when a plaintiff neglects to articulate the standard
27
28

1 and/or allege facts capable of satisfying the four-part test. *HCN Election Bd. et al. v. Aurelia Lera*
2 *Hopinkah*, SU 98-08 (HCN S. Ct., Apr. 7, 1999) at 8-9; *see also HCN R. Civ. P.* 18, 60.

3
4 **1. No Adequate Remedy at Law**

5 The first prong of the test requires the Court to determine if the plaintiff can reasonably be
6 compensated by money damages. *See Warner* at 3; *See also General Council Agency v. Ho-Chunk*
7 *Nation Legislature et al., Order (Denying Motion for Temporary Restraining Order)*, CV 12-83
8 (HCN Tr. Ct., Sept. 27, 2013) at 12. In this case, the plaintiffs seek a preliminary
9 injunction/restraining order to halt the upcoming elections due to allegations concerning the
10 conduct of the Nation's Election Board. If the plaintiff were to succeed on her claim there is no
11 amount of monetary award or other compensation that could remedy the situation after the
12 elections have occurred. Further, the plaintiff is seeking her right to be placed on the ballot, which
13 is an equitable relief not a monetary one. Consequently, the Court finds that the plaintiff have met
14 the first prong.
15

16
17 **2. The threatened injury outweighs the harm of issuing an injunction**

18 The second prong requires the Court to evaluate whether the threatened injury to the
19 plaintiff outweighs the harm of issuing the injunction. Should the Court not grant the injunction
20 then the scheduled Elections will take place on both February 18, and March 5 and the plaintiff
21 will not appear on any Ballot. If a candidate were elected, and the plaintiff's seat filled and it was
22 later determined that the actions of the Election Board were improper this would cause irreversible
23 harm. However, should the Court grant the injunction then there would be a temporary delay to at
24 least the February 18, Special Election for the District 4, Seat 3 and possibly the March 5, General
25 Primary Election. While this may cause some financial burden to the Election Board, the fact that
26 the defendants have admitted in their *Answer* that they violated the plaintiff's due process rights
27
28

1 and further admitted that they failed to provide her the appropriate written notice under the law
2 when she was denied certification of candidacy, the Court has no choice but find in favor of the
3 plaintiff. *See Findings of Fact 12 & 21*. Clearly the threatened injury to the plaintiff outweighs any
4 potential harm from issuing a temporary injunction.
5

6 **3. There is a Reasonable Likelihood of Success on the Merits**

7 The Court finds that there is a reasonable likelihood that the plaintiff will succeed on the
8 merits. Before addressing the merits, the Court will briefly discuss the applicable standard to
9 review the Election Board's actions. The Election Code gives the candidate/appellant the right to
10 appeal the eligibility determination of the Election Board to the Trial Court only upon the grounds
11 that it is inconsistent with the ELECTION CODE and/or the CONSTITUTION. ELECTION CODE, 2 HCC
12 §6.8(f)(2). Historically, the Court has used either the administrative appellate standard of "arbitrary
13 and capricious" or "preponderance of the evidence" when reviewing whether a plaintiff has met
14 their burden of proof in these types of cases. The Court notes there is no set standard under the law
15 for candidacy challenges, only Election challenges.
16
17

18 In this instance the Court does not need to do an in depth analysis as the defendant admitted
19 in their *Answer* that they violated the very provision of the ELECTION CODE that permits the filing
20 of this case. *See Findings of Fact 12 & 26. See also* ELECTION CODE 2 HCC § 6.8(f)(2). The
21 Election Board failed to provide the plaintiff with written notice by certified mail that she did not
22 meet the qualifications for office. *Id.* The Election Board also failed to issue a written decision
23 regarding the plaintiff's appeal of their original decision. *Id.*
24

25 Nearly a decade ago the Trial Court addressed a similar situation regarding adequate notice
26 in a candidacy challenge case and explained to the Election Board and their Legal Counsel that
27 verbal notice was not sufficient for calculating timelines or to create a record for appeal to the
28

1 Judiciary. *Findings of Fact 17-18*. The Trial Court also encouraged the Election Board to perhaps
2 develop a standardized form to decrease the delay of the delivery of their decisions and to ensure
3 that “meaningful communication of the reasons for the decision” were provided. *Id.*

4
5 While on appeal of the Trial Court case, the Supreme Court may have determined that the
6 language in the ELECTION CODE 2 HCC § 6.8(2) requiring the Election Board to “issue a decision
7 within five (5) working days of receipt of the appeal,” did not require a written decision, there was
8 no question that the law requires written notification when a candidate “does not meet the
9 qualifications for office.” See *HCN Election Board, et al. v. Valerie Kempen, Decision, SU 15-04*
10 (*HCN S. Ct., Mar. 25, 2015*) at 4. Additionally, the Supreme Court in *Dallas White Wing*,
11 determined that the Election Board was required to give “actual prompt notice of its decisions”
12 and that the notice had to be properly served. See *Findings of Fact 15*.

13
14 Given that the defendant has admitted they chose not to comply with a mandatory notice
15 requirement under the ELECTION CODE, which the Trial Court has upheld as being an important
16 part of both the administrative and judicial process, the Court is left with little alternative but to
17 conclude that it is likely the plaintiff would succeed on the merits.

18 19 **4. Granting the Injunction Serves the Public Interest**

20
21 The fourth and final prong of the preliminary injunction test requires that the Court
22 determine whether issuing the injunction will protect the public interest. Granting a preliminary
23 injunction in this matter upholds the HCN CONSTITUTION, laws of the Nation and protects the
24 interest and welfare of the Nation. The CONSTITUTION provides that “redistricting or
25 reapportionment shall be completed at least six (6) months prior to the next election,” yet the
26 Special Election for Redistricting occurred on October 17, 2024 and was certified on October 18,
27 2024, meaning that the earliest the next election could occur would be April 18, 2025. See *Findings*
28

1 of Fact 25.

2 The CONSTITUTION also clearly and unambiguously states that “Special Elections shall be
3 held when called for by the General Council, the Legislature, or by this Constitution or appropriate
4 ordinances.” See *Findings of Fact 24*. **Nowhere does it indicate that the Election Board has the**
5 **authority to call a Special Election absent explicit authorization by statute**, the only instance
6 of which is in the ELECTION CODE under Section 20 and with very narrow circumstances which
7 have not been met in this year’s Elections.
8

9 Given these glaring CONSTITUTIONAL violations the Court determines that failing to grant
10 an injunction could cause irreparable harm to not only the plaintiff, but to the entire Nation’s
11 membership, effectively disenfranchising them. Based on the Court’s analysis it appears there is
12 no Election currently scheduled which complies with the HO-CHUNK NATION CONSTITUTION.
13

14 **THEREFORE**, the Court finds that a *Temporary Injunction* is appropriate in the instant
15 case. The plaintiff has met the requirements of the four-prong test so both the *Motion for a*
16 *Preliminary Injunction* and the *Amended Motion for a Preliminary Injunction and/or Temporary*
17 *Restraining Order* are **GRANTED**.
18

19 **II. Motion for Summary Judgment and Dismissal**

20 The Court now addresses the *Defendant’s Motion for Summary Judgment and Dismissal*.
21 The defendant argues that the verbal notice that the plaintiff received at the January 20, 2025
22 meeting of the Election Board that her candidacy had not been certified should satisfy the
23 requirements under the ELECTION CODE. The Court has already addressed this matter above and
24 will only reiterate that the law is clear that written notice is required and there is case precedent
25 that supports this standard.
26

27 The defendant further argues that there is no requirement that the Election Board provide
28

1 a detailed explanation for their denial of certification. In the *Motion for Summary Judgment and*
2 *Dismissal* the defendant argues that the requirement under the ELECTION CODE for the Election
3 Board to “immediately notify a candidate in writing by certified mail if the candidate does not
4 meet the qualifications of office,” is “a mere Notice requirement to allow candidates to be informed
5 as to what is going on, as not every candidate can attend certification, nor is it expected that they
6 do.” *See Motion for Summary Judgment and Dismissal* (Feb. 7, 2025) at 5. This argument seems
7 counterintuitive, if the reason behind the notice is to inform potential candidates about “what is
8 going on” due to the fact that they cannot attend the certification meeting of the Election Board,
9 then logic would dictate that the notice would inform them as to why they did not meet the
10 qualifications for candidacy. It stands to reason that in order to appeal the decision of the Election
11 Board a potential candidate would need to know the basis for that decision. In the interests of
12 justice it is the obligation of the Election Board to disclose why they are denying an individual
13 certification of candidacy in order to allow for a meaningful appeal, otherwise it does amount to a
14 violation of due process rights.

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18 The defendant argues that the plaintiff filed her appeal before notice could be sent and
19 therefore rendered the need to send the notice moot. The law states that notice must be sent
20 immediately and to date no evidence has been shown that any notice was ever sent to the plaintiff,
21 in fact the defendant admitted to the Court that it chose not to send the required written notice. *See*
22 *Findings of Fact 12.*

23
24 The defendant has admitted the entirety of the plaintiff’s due process claims under Count
25 I of the *Complaint* and that they have violated the ELECTION CODE 2 HCC § 6.8(2) by failing to
26 provide the initial required written notice that she did not meet the qualifications to run for election.
27 *Id.*, at 12 & 26.
28

1 The democratic process is essential to the survival of any Nation, it is a fundamental
2 exercise of sovereignty, a sacred right that our people have fought and struggled to preserve. The
3 Court is disillusioned by the apparent disregard for the Nation's CONSTITUTION, laws, and long-
4 standing case precedent demonstrated by the Nation's attorneys in this case. The wanton
5 indifference towards our Ho-Chunk electoral process is hugely disappointing. Now more than ever
6 the Ho-Chunk Nation must look inward to strengthen and exercise its sovereignty through every
7 mechanism at its disposal. The Ho-Chunk people have a right to expect that those empowered to
8 represent them will do so zealously and will uphold the HO-CHUNK CONSTITUTION and laws per
9 their oath.
10

11
12 **THEREFORE**, the Court has no choice but to **DENY** the defendant's *Motion for*
13 *Summary Judgment and Dismissal*.
14

15 **FURTHERMORE**, the Court shall hold an *Election Injunction Hr'g* on **February 24,**
16 **2025, at 9:00 a.m. CST.** to determine whether or not the *Temporary Injunction* shall continue and
17 address any other pending matters.
18

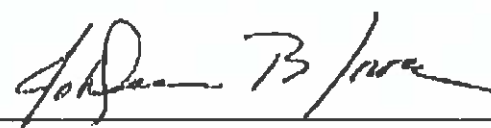
19
20 The parties retain the right to file a timely post judgment motion with this Court in accordance
21 with *HCN R. Civ. P. 58, Amendment to or Relief from Judgment or Order*. As this part of the
22 Court's decision is not a final judgment, if either party is dissatisfied with the decision of this
23 Court, they may file an **interlocutory appeal** (*Petition for Permission to Appeal*) with the Ho-
24 Chunk Nation Supreme Court within ten (10) calendar days from the date this Court renders this
25 *Order (Denying Motion to Supplement the Record)*. The *Petition for Permission to Appeal* must
26 show service was made upon the opposing party prior to its acceptance for filing by the Clerk of
27
28

Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070



1 Court. The *Petition for Permission to Appeal* must contain a statement of the facts necessary to
2 an understanding of the controlling question of law determined by the order of the Trial Court; a
3 statement of the question itself; and a statement of the reasons why substantial basis exists for a
4 difference of opinion on the question and why an immediate appeal may materially advance the
5 termination of the litigation. In addition, the *Petition for Permission to Appeal* must contain, or
6 have annexed to it, a copy of the Trial Court order from which appeal is sought. All appellate
7 pleadings to the Ho-Chunk Nation Supreme Court must be in accordance with the *Ho-Chunk*
8 *Nation Rules of Appellate Procedure*.
9
10

11
12 **IT IS SO ORDERED** this 18th day of February 2025, by the Ho-Chunk Nation Trial Court
13 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
14

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16 
17 _____
18 Honorable Jo Deen B. Lowe
19 Chief Trial Court Judge
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FEB 18 2025


Clerk of Court / Assistant

CERTIFICATE OF SERVICE

I, Margaret A. Falcon, Deputy Clerk 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 (Granting Preliminary Injunction; Joining the Ho-Chunk Nation Legislature; and Denying the Motion for Summary Judgment)** in **Case No. 25-03** in accordance with Administrative Order No. 20-07, upon all persons listed below:

By Electronic Service: Email:

Brianna Tahdoanhippah
Email: maaxisgai@icloud.com

Attorney Forrest Tahdoanhippah
Email: forrestkt@gmail.com

Attorney Erik Shircel and Attorney David Mrgudich
Email: dojcourtfilings@ho-chunk.com

Attorney Michael P. Murphy
Email: Michael.Murphy@ho-chunk.com

Melissa Olvera
Email: Melissa.Olvera@ho-chunk.com

Dated: February 18, 2025



Margaret A. Falcon, Deputy Clerk
Ho-Chunk Nation Trial Court

Cc: File