

Law: a command enacted by a legislature, formally recognized as binding, and enforced by a controlling authority.

Rule of Law: an accepted principle, test, or perspective that assists the judiciary in interpreting and applying the law.

ISSUE

Michael J. Roberts was denied by the Sisseton-Wahpeton Oyate Reservation Election board as unqualified to run for the political office of Chairman due to the Residency Requirement in the SWO Chapter 3 Election Code.

Is it Constitutional to have an Election Code that has language that is a “Contradiction” to the rights guaranteed by the SWO Constitution Bill of Rights and the actions of the Tribe itself?

RESEARCH

Constitution Bill of Rights:

“All members of the Sisseton-Wahpeton Oyate shall be accorded equal political rights and equal opportunities to participate in the economic resources and activities of the Tribe...”

CH. 3 Election Code:

03-05-01 (A)

“That in order to ensure that candidates for the office of Chairman, Vice-Chairman or Secretary have a thorough knowledge of Tribal Affairs, and understanding of the issues confronting Tribal members in the conduct of their daily affairs, and first-hand knowledge of Reservation life, every candidate must have been living within the original boundaries of the reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota, for the twelve consecutive months immediately preceding the dealing for filing a Notice of Intent to run for the Office of Chairman, Vice-Chairman or Secretary.”

- 1) have a thorough knowledge of Tribal Affairs?
- 2) understanding of the issues confronting Tribal members in the conduct of their daily affairs?
- 3) first-hand knowledge of Reservation life?

Why Browns Valley, Minnesota and Waubay, South Dakota?

Both are off-reservation...and there are many more towns that qualify under this reasoning.

Contradictions to the SWO Constitution Bill of Rights as certain 'economic' activities are accepted, but not running for political office:

- 1) Half of the SWO enrolled members live off reservation.
 - a. Their enrollment number is counted and used to seek Federal and non-profit funding for a large number of services for all members.
 - b. Half of the SWO has no right to vote by absentee under Chapter 3.
 - c. Half of the SWO have no representation on Tribal Council.
- 2) I received Electrical Assistance in February, 2010 from the Enemy Swim District for my house in Watertown, South Dakota....yet I cannot run for office.
- 3) I received emergency medical assistance while traveling between my home in Savage and my rented home in Watertown by the HIS...Watertown is in the IHS service area...yet I cannot run for office.
- 4) I received Higher Education money for my grades and will be receiving money for my graduation in September...yet I cannot run for office.
- 5) The low-income rental units at Dakota Magic are off-reservation and on fee-land. If you move to those apartments, you are not eligible to run for office. The Tribe is building housing and paying for people to get housing off-reservation...and by doing so, you cannot run for office.
- 6) The Tribe has paid up to \$5,000 for disaster relief for tribal members that reside off-reservation...yet they cannot run for office.
- 7) I was the ESD Vice-Chairman for the 94-95 term, during that term and before I was not a resident, I lived in Watertown then Aberdeen...yet I still cannot run for Council or Executive office?

ANALYSIS

REB's Determination

"The language of the Election Ordinance is clear – the Oyate desires those individuals who desire to run for political office to maintain a continuous physical presence on the reservation for twelve consecutive months preceding the election."

How can this be a true statement if it was never put on a ballot for the Oyate to decide upon? The election code can be changed with a motion by Tribal Council, a constitutional amendment is a more true representation of the Oyate than a Motion that can change from day to day.

Norman Johnson v. Reservation Election Board

...tribal members oftentimes have to be away from the reservation in no way indicates their lack of involvement in the tribal community or disinterest in the community...

...tribal members remain nonetheless members of the community and should not be penalized because they have been physically away from the area...

...others of a similar ilk to be “involuntary” absences from the reservation occasioned by the desire of tribal members to improve the lives of themselves and their families...

..there must be standards administrative tribunals and courts must adhere to in resolving disputes such as this or the danger exists that tribal members will be treated dissimilarly based upon their particular circumstances...

Involuntary Absence: I applied in 2004 for the Planning Director position, was not hired. I was hired in May, 2009 as CEO of DNGE. I received a three-year contract that was cut short after four months. I did seek a home in South Dakota to purchase, but could not find one, so in late August, 2009 I signed a One-Year-Lease for a rented house in Watertown from September 1, 2009 to August 31, 2010. In January, 2010, I went back to school full-time to finish my MBA with the University of Phoenix. During this time, I was unemployed and commuting between Savage, MN where I own a residence, and Watertown. Without gainful employment in the area, I could not maintain the rented residence in Watertown. I have attended District meetings this year, and make motions at my District meetings. I made a full-faith effort to remain in the area and stay involved in Tribal Affairs, due to the lack of CEO-level employment opportunities, I had no choice but to move back to Savage, Minnesota to pursue education and to provide for myself and my four children. The INTENT has always been there, but the circumstances have left me no choice but to search employment while finishing my MBA and taking care of my children.

Gerrymandering:

- to divide (an area) into political units to give special advantages to one group.
- to create an artificial civil division within a particular locale for an improper purpose.

Ch. 3 has created a political divide....On-Reservation v. Off-Reservation...in the right to run for public office on Tribal Council. Putting the off-reservation members at a serious disadvantage compared to on-reservation with no political representation, no absentee voting, and no opportunity to run for political office with a residency requirement.

Gerrymandering is not a legal-term, the practice was decided by the Supreme Court in 1985 with Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) a decision against political gerrymandering, the over-zealous affirmative action supporters had managed to entrench a tradition of racial gerrymandering which allowed electoral districts to be redrawn into bizarre shapes in order to create districts with a majority of minorities. The theory was that this process gave underrepresented minorities a chance to "elect their own" to office. The Supreme Court struck down this practice as unconstitutional in two landmark rulings: Shaw v. Reno (1993) and Miller v. Johnson (1995).

Gerrymandering seeks to violate the constitutional mandate of "one man-one vote" by creating legislative districts of unequal populations. In our case, on-reservation v. off-reservation.

The residency requirement is a direct contradiction to the language in the SWO Constitution Bill of Rights, and a threat to our democracy. It has been said that in a normal democracy the voters choose the elected officials, but with political gerrymandering the elected officials choose the voters. Chapter 3 can be changed with a simple Motion by Tribal Council. It should be added into the Tribes Constitution as an amendment if the Oyate is to honestly weigh-in and vote on the subject. Members of a Tribal Council can rise to power or stay in office not because of the policies they stand for but simply because they control who votes in each Election.

Equal Protection Clause: The clause grants all people "equal protection of the laws," which means that the states must apply the law equally and cannot give preference to one person or class of persons over another.

The residency requirement is giving preferential treatment to reservation-bound tribal member preference over non-reservation bound members. ***Meaning that some people's votes count more than others?***

CONCLUSION

Based on the evidence of a direct contradiction in the Election Code to the Constitution, and the ancillary documentation of cases on Residency, Gerrymandering, and Equal Protection Clause the Court would have to conclude that the Chapter 3 Election Ordinance is Unconstitutional.