

**IN THE TRIBAL COURT OF THE
ROUND VALLEY INDIAN TRIBES**

RANDALL BRITTON, et al.,
Plaintiff,
v.
ROUND VALLEY INDIAN TRIBES'
ELECTION BOARD
Defendant.

) Case No. RVIT-CV-2023-010-JW

) **DECISION OF THE COURT**

INTRODUCTION

Votes matter and elections have consequences. And absent extraordinary circumstances, court should stay out of the voting booth and overturn elections only when there is compelling evidence of substantial irregularities in the electoral process that undermines the confidence in the results. *See Purcell v. Gonzales*, 549 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.”). In other words, sometimes a court must intervene, and “[w]hen contending parties invoke the process of the courts . . . it becomes [the court’s] unsought responsibility to resolve . . . constitutional issues the judicial system has been forced to confront.” *Bush v. Gore*, 121 S.Ct. 525, 533 (2000).

On June 25, 2023, the Court had to intervene after finding compelling reasons to overturn the results of the May 18, 2023 recall election in which Randall Britton, Tesia Want, and Joel Merrifield (“Plaintiffs”) were removed from their positions as tribal council members.¹ The Court held that the Round Valley Indian Tribes’ Election Board (“Defendant”) did not follow the clear mandates contained in the 2015 Election Ordinance² because (1) Defendant violated Article XV, Section 15.01 J of the Election Ordinance (requiring that “[t]he ballots for the Recall Election . . . include a list of the charges and the response, if any, from the person subject to recall”) and (2) Defendant violated Article X, Section 10.01 F of the Election Ordinance (requiring that “[a]ll Absentee Ballots must be received by the Election Board by the closing of the polls.”). As

1 a result, the Court ordered Defendant to conduct a new election “within thirty days of
2 the date of [the Order].” See June 25, 2023 Decision of the Court at 15:10-11.

3 On June 25, 2023, the Court issued an Order Staying Enforcement of Decision of
4 the Court and held a status conference the next day to consider arguments for and
5 against immediately reinstating Plaintiffs to their position as members of the Round
6 Valley Indian Tribes Tribal Council. The Court concluded that it would not order the
7 immediate reinstatement of Plaintiffs to the Tribal Council because it does not have the
8 power to alter the composition of the Tribal Council and the public interest
9 considerations warranted not reinstating the recalled members pending the new recall
10 election. June 27, 2023 Order Continuing Stay at 1:20-28. Further, the Court ordered
11 Defendant to “continue taking the necessary steps to hold the new election *as specified*
12 *in the Court’s Decision issued June 25, 2023.*” June 27, 2023 Order Continuing Stay at
13 4:11-13 (emphasis added).

14 On July 19, 2023, Defendant conducted the new recall election in which Plaintiffs
15 were recalled a second time by an overwhelming vote. The results of the July 19, 2023
16 election were subsequently certified by six members of the Election Board. On July 28,
17 2023, Plaintiffs filed a challenge to the July 19, 2023 Tribal Recall Election. Plaintiffs
18 generally allege procedural violations of the Tribe’s Constitution and the 2015 Election
19 Ordinance; Defendant did not follow the Court’s June 25, 2023 Decision of the Court
20 nor the June 27, 2023 Order Continuing Stay; and Defendant confused and misled
21 voters. The Court then issued an order notifying the parties that Defendant had until
22 August 11, 2023, to respond to Petitioners’ challenge, and that the Court would render a
23 decision based on the parties’ pleadings. On August 11, 2023, Defendant filed its brief in
24 Opposition to the challenge.

25 For the reason discussed more fully below, the Court finds that (1) Plaintiffs have
26 failed to meet their burden of showing that the July 19, 2023 recall election was infected
27 with substantial irregularities that undermine the confidence in the results, requiring
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1 this Court to invalidate the results; and (2) Defendant abided by the Court’s previous
2 Orders and applicable tribal law in conducting the July 19, 2023 recall election.

3 **ANALYSIS AND DISCUSSION**

4 In what can be best described as “buckshot approach,” Plaintiffs argue in their
5 challenge that Defendant misled and confused voters as to the purpose of the July 19,
6 2023 recall election, that Defendant misstated the Court’s previous orders voiding and
7 ordering the July 19, 2023 recall election, and that Defendant did not follow the Tribe’s
8 Constitution nor the 2015 Election Ordinance. Plaintiffs attached to their moving papers
9 a copy of a letter titled “Recall Election Information;” a copy of Form D-3, Notice of
10 Special Recall Election; A copy of the Notice of Recall Meeting on July 12, 2023; the
11 Absentee Ballot packet including the official absentee ballot; and a copy of the Certified
12 Special Recall Election Results.

13 a. The Relevant Law.

14 Rule 2.02 of the Round Valley Indian Tribes Rules of Court provide that a
15 “complainant in a civil case shall have the burden of proving its case by the
16 preponderance of the evidence, *i.e.*, the greater weight of evidence, except in such cases
17 where it is established by ordinance that the claimant has a different burden of proving
18 his/her case.” *See generally, Director, Office of Workers’ Comp. Programs, Dept. of*
19 *Labor v. Greenwich Collieries*, 512 U.S. 267, 275 (1994) (the party asserting a claim or
20 affirmative defenses has the burden of proving every essential element of its claim or
21 defense), *see also Miraglia v. Board of Supervisors of Louisiana State Museum*, 901
22 F.3d 565, 573 (5th Cir. 2018) (plaintiff’s burden to prove every element is not dependent
23 on whether defendant filed pretrial motion challenging evidence to support claim).

24 Further, Rule 4.01 (B) specifies what must be included in a complaint, including
25 “a concise statement of the law, *evidence and arguments relied on*, and a discussion of
26 the statutes, cases, and other authorities cited in support of the position advance”
27 (emphasis added). Moreover, the Election Ordinance requires the Court to adjudicate a
28 challenge within thirty-days of the certification of the election results—unless the

1 challengers agree to a continuance—thereby precluding the opportunity for the parties
2 to engage in the normal discovery process under Chapter 9 of the Rules of Court. Hence,
3 it is incumbent on a party challenging an election conducted under the Round Valley
4 Election Ordinance to include in their moving papers sufficient facts and evidence to
5 move the pleading beyond mere speculation. In other words, a complaint must contain
6 sufficient factual matter to state a claim to relief that is plausible on its face.

7 A claim has facial plausibility when the plaintiff pleads
8 factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the
10 misconduct alleged. The plausibility standard is not
11 akin to a ‘probability requirement,’ but it asks for more
12 than a sheer possibility that a defendant acted
13 unlawfully. Where a complaint pleads facts that are
14 ‘merely consistent with’ a defendant’s liability, it ‘stops
15 short of the line between possibility and plausibility of
16 entitlement to relief.

17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted); *see also*
18 *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (“A plaintiff . . . must plead facts
19 sufficient to show that her claim has substantive plausibility.”).

20 **1. Plaintiffs Have Not Met Their Burden of Proof.**

21 Plaintiffs failed to meet their burden of proof of showing that the election results
22 should be invalidated because they failed to include sufficient evidence to support their
23 challenge. First, Plaintiffs allege that:

24 [t]he Election Board unreasonably interpreted the Court’s
25 order directing them to include Plaintiffs’ responses, if any,
26 to the charges, in that they failed to solicit actual responses
27 from Plaintiffs to include on the ballot, failed to use the
28 written statements that Plaintiffs had made in response to
charges, failed to use the most recent statements made by
Plaintiffs, instead using statements made in April, and
incorrectly transcribed the statements made. This
improperly influenced the election by failing to allow the
persons subject to recall an adequate opportunity to respond,
in writing, to the charges.

1 Plaintiffs’ Challenge to July 19, 2023 Tribal Recall Election at 3:9-18. First,
2 Plaintiff misinterprets the Court’s June 25, 2023 Decision because the Court did not
3 order Defendant to solicit responses from Plaintiffs or to use the written statements that
4 Plaintiffs made in response to the charges. The Court instead noted that Article XV,
5 Section 15.01 J required Defendant to “include [on the ballot] a list of the charges and
6 the response, if any, from the person subject to the recall.” In the case of the July 19,
7 2023 election, Defendant complied with the requirement of Article XV, Section 15.01 J
8 because they included a statement made publicly by Plaintiffs in response to the recall.
9 While Plaintiff may disagree with the exact statement included on the ballot, neither the
10 Court’s order nor the Election Ordinance required Defendant to solicit responses from
11 Petitioners or to use a formal written response instead of a transcription from a recall
12 meeting where Plaintiffs publicly responded to the allegations. While it is unclear why
13 Defendant chose to use a transcription of the April 2023 recall meeting, and while it is
14 concerning that the transcription contained grammatical or syntactical errors, these
15 concerns do not amount to a violation of the Election Ordinance or this Court’s June 25,
16 2023 Decision. More importantly, Plaintiffs fail to offer *any evidence* to support their
17 allegation that Defendant’s actions improperly influenced the election, prevented voters
18 to exercise their right to vote, or that it failed to allow Plaintiffs adequate opportunity to
19 respond to the charges. In fact, Plaintiffs admit they were able to make public
20 statements in response to the allegations during a recall meeting on July 12, 2023, and
21 that they made written statements.

22 Second, Plaintiffs allege that Defendant “improperly influenced the outcome of
23 the election by misinterpreting and misstating the contents of the Court’s Orders, and
24 confusing voters as to what they were voting for and failing to rectify that confusion
25 despite Plaintiffs “altering [sic] them to the problem at a July 8, 2023 community
26 meeting.” Plaintiffs’ Challenge at 4:8-11. Notably missing, however, is any evidence
27 supporting their argument. Plaintiffs do not offer admissible evidence such as affidavits
28 or statements made under declaration of perjury to prove by the preponderance of the

1 evidence that Defendant’s actions unduly and detrimentally impacted the recall
2 election.¹

3 Third, Plaintiffs allege that Defendant violated Article VII, Section 7.03 D of the
4 2015 Election Ordinance by failing to post the Roster of Registered Voters Form F-5 at
5 the polling place five days before the election. Once more, Plaintiffs fail to proffer any
6 evidence that would support such an allegation, such as photographs of the polling place
7 or statements made by tribal members stating that the Roster of Registered Voters was
8 not posted.

11 ¹ In contrast to the absence of any persuasive evidence supporting Plaintiffs’
12 claims, Defendant submitted a 9-page Declaration from Marline Fulwider, signed under
13 penalty of perjury, which describes in convincing detail how the July 19, 2023 recall
14 election was conducted. among other things, explains that “[w]ith the election date of
15 July 19, 2023, the absentee ballot package had to be ready no later than July 5, 2023. . .
16 [and] [a]s of July 5, 2023 none of the Plaintiffs had submitted a written response to the
17 Election Board to be included on the absentee ballot in response to the charges in the
18 recall petition.” *Declaration of Marline Fulwider in Support of Opposition to Plaintiffs’*
19 *Election Challenge*, 2:24-27. Ms. Fulwider’s Declaration elaborates on this point by
20 pointing out that “[o]n July 8, 2023, the Election Board sent out the last absentee ballot
21 packages. The Borad had not received written responses from the Plaintiffs. Rather than
22 leave the response section of the ballots blank, the Election Board printed response on
23 the absentee ballots based on the responses each of the Plaintiffs had given during the
24 prior Recall Election Meeting held on April 24, 2023, which is recorded on Facebook.
25 The written responses on the ballot were verbatim translations form the Plaintiffs
26 responses recorded on Facebook. The Election Board determined it should include these
27 earlier responses on the ballots because the charges were identical in the May 18
28 Election and the July 19 Election . . .” *Id.*, 4:10-17. The charges leveled against each of
the Plaintiffs were indeed the same and were well-known in the community. And since
Plaintiffs did not submit any additional responses before the absentee ballot packages
were sent out on July 8, 2023, the Election Board acted reasonably by including the
verbatim transcription of the Plaintiff’s prior responses in those packets. In addition,
Ms. Fulwider makes it clear that “[a]t the July 12, 2023 Recall Meeting, which was
widely published to the public and attended by about 20 people, including Tribal
Council members, each of the Plaintiffs was granted the opportunity to respond to the
charges that were included in the Recall Petitions.” *Id.*, 6:4-6. Moreover, although in its
Opposition Defendant persuasively argues that Plaintiffs are not entitled injunctive
relief, the Court need not decide the case on that ground because Plaintiffs failed to
present any convincing evidence supporting a claim for relief in their moving papers.

1 Fourth, Plaintiffs allege that Defendant’s composition “changed drastically
2 between the date of [the June 27, 2023] Order and the date of the July 19, 2023 recall
3 election” because the individuals served with the Court’s June 27, 2023 Order differs
4 from the Election Board members that certified the July 19 recall election. Plaintiffs’
5 Challenge at 5:21-28. Aside from the fact that the Court did not order that the Election
6 Board composition remain exactly the same between the June 27, 2023 Order and the
7 July 19, 2023 Recall Election, Plaintiffs fail to provide sufficient evidence that the
8 individuals served with the Court’s June 27, 2023 Order not the duly appointed
9 members of the Election Board at the time of the second recall election.

10 Taken together, Plaintiffs only offer conjecture and speculation in lieu of
11 admissible evidence that would prove by the preponderance of the evidence that
12 Defendant violated the Court’s previous orders, violated the Tribe’s Constitution and
13 Election Ordinance, or that Defendant’s actions improperly influenced the results of the
14 July 19, 2023 election. The Court cannot overturn the will of the voters based on mere
15 speculation.

16 2. Defendant Abided by the Court’s Previous Orders and Applicable Tribal Law in
17 Conducting the July 19, 2023 Recall Election.

18 Plaintiffs generally allege several procedural violations as outlined above. One is
19 that the Election Board violated the Election Ordinance because it did not conduct the
20 special election to elect replacement candidates in the case of a successful recall of the
21 sitting tribal council members at the same time as the July 19, 2023 recall election. As
22 discussed more fully below, the Court is convinced that Defendant satisfied the
23 requirements of the Election Ordinance, the Tribe’s Constitution, and the Court’s June
24 25, 2023 Decision.

25 a. The Relevant Law.

26 Article XV, Section 15.01 (O) of the Election Ordinance provides that “[a] special
27 election to fill a possible vacancy created by a recall election shall be conducted at the
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1 same time as such Recall Election.” This requirement is also contained in the Article IV,
2 Section 11K of the Tribe’s Constitution.

3 Plaintiffs generally raise issue with the fact that voters were deciding on:

4 whether or not [Plaintiffs] should be recalled, removed from
5 office, and replaced with other candidates – candidates
6 whose names were not even included on the July 19, 2023
7 Recall Elections – because different voters voted in the May
8 and July Recall Elections, we essentially have a situation
9 where *different voters* determined whether Plaintiffs should
be removed from office, and what candidates, if any, should
replace them – and voters voting on replacement candidates
months before Plaintiffs have even been ‘recalled.

10 Plaintiffs’ Challenge at 4:21-28. While Plaintiff’s challenge implies a violation of Article
11 XV, Section 15.01 (O), they fail to offer any evidence supporting their allegation that
12 different voters voted on the recall than those who voted for the three replacement
13 candidates during the previous recall election in May. Nevertheless, the Court will take
14 the opportunity to reiterate and clarify its order invalidating the May 19, 2023 election.

15 The June 25, 2023 Decision of the Court voided the results of the May 18, 2023
16 recall election for two specific reasons: (1) failing to include a statement from the
17 Council members subject to recall in the ballot used for the recall election and (2)
18 counting the mail-in ballots after the closing of the polls on May 18, 2023. In the June
19 25, 2023 Decision and during the June 26, 2023 status conference, the Court stated that
20 the Court only invalidated the results of the special *recall* election and that Defendant is
21 not required to start the process all over again. Decision of the Court 15:26-28.

22 Defendant subsequently proceeded with conducting a new election, which, as Ms.
23 Fulwilder noted in her Declaration, complied with the Court’s Decision by (a) including
24 a response from Petitioners to the allegations and (b) only counting absentee ballots
25 received by the close of the polls on July 19, 2023. Nothing more was required and,
26 therefore, there is no reason to upend the results.

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1 **CONCLUSION**

2 Like all election boards, the Round Valley Indian Tribes Election Board is tasked
3 with the grave responsibility of conducting elections in a fair, impartial, and inclusive
4 manner, and to ensure that citizens’ right to exercise their franchise is protected. Here,
5 what makes Defendant’s job especially difficult is the complex and sometimes
6 ambiguous nature of the Tribe’s Election Ordinance. It is true that when confronted
7 with a statute or ordinance, courts must first look to the plain meaning of the text, and if
8 the meaning is clear, the inquiry ends. Stated another way, “[t]he words of the governing
9 text are of paramount concern, and what they convey, in their context, is what the text
10 means.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal*
11 *Texts*, p. 56 (Thomson/West 2012). However, “[t]he resolution of an ambiguity or
12 vagueness that achieves a statute’s purpose should be favored over the resolution that
13 frustrates its purpose.” *Id.*

14 The overarching purpose of the Election Ordinance of the Round Valley Indian
15 Tribes is to ensure that the right to vote is preserved and elections are conducted in a
16 fair and impartial manner. It is not designed to be a mechanism to challenge every
17 election irregularity, no matter how insubstantial it might be.

18 Courts have a unique but limited roles in the electoral process—they are a
19 bulwark against fraudulent or corrupt elections. But not all election irregularities
20 require judicial intervention—only those that shred the fabric of the electoral process
21 and render the results untrustworthy warrant a judicial remedy. Small tears that do not
22 hinder the vote or undermine the confidence in the outcome will not suffice. Plaintiffs
23 here claim that the July 19, 2023 recall election was fatally flawed and must be voided.
24 However, they provided no meaningful support for their allegations and there is nothing
25 in the record that supports the conclusion that votes were suppressed by the actions of
26 the Election Board or that the results of the recall election cannot be trusted. What the
27 record does show, however, is that the Election Board followed the Court’s June 26,
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1 2023 order and conducted a valid recall election, the results of which the Court will not
2 disturb.

3 In closing, it must be acknowledged that for some elections are not to be
4 respected unless the outcome is in their favor, and when it is not, rather than accepting
5 the results, a court fight ensues. And in most cases, the challengers lose. Why, because
6 not every election irregularity warrants a remedy. As the District Court in Georgia aptly
7 noted in a case brought to overturn the results of the 2020 Georgia general election:

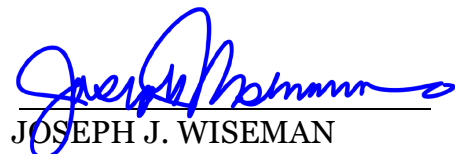
8 Wood seeks an extraordinary remedy: to prevent
9 Georgia's certification of the votes cast in the General
10 Election, after millions of people had lawfully cast their
11 ballots. To interfere with the results of an election that
12 has already concluded would be unprecedented and
13 harm the public in countless ways (internal citation
14 omitted). Granting injunctive relief here would breed
15 confusion, undermine the public's trust in the election,
16 and potentially disenfranchise over one million
17 Georgia voters. Viewed in comparison to the lack of any
18 demonstrable harm to Wood, the court finds *no basis*
19 *in fact or in law* to grant him the relief he seeks.

20 *Wood v. Raffensperger*, 501 F.Supp. 3d. 1310, 1331 (N.D. Ga. 2020), *aff'd*, 981 F.3d
21 1307 (11 Cir. 2020) (emphasis added).

22 Here, Plaintiffs were recalled for a second time in an election that was fair and
23 valid. What they need to do now is accept the results and get over it. Accordingly, for
24 the reasons stated above, judgement the Court **DENIES** Plaintiffs' challenge to the July
25 19, 2023 recall election, **AFFIRMS** the result of that election, and enters judgment in
26 Defendant's favor.

27 **IT IS SO ORDERED.**

28 Dated: August 18, 2023


JOSEPH J. WISEMAN
Chief Judge, RVIT Tribal Court

1 **PROOF OF SERVICE**

2
3 RANDALL BRITTON, JOEL MERRIFIELD,
and TESIA WANT,

Case Number: RVIT-CV-2023-010-JW

4 Plaintiff,

5 v.

6 ROUND VALLEY INDIAN TRIBE'S
ELECTION BOARD,

7
8 I declare that I am a citizen of the United States and employed in the County of
9 Yolo, California; I am over the age of eighteen years and not a party to
the within action, my business address is:

10 Clerk Pro Tem Email address: CATribalCourtClerk@gmail.com.

11 On the date written below, I served the within: **(List Documents)**

12 **Order of the Court**

13 on:

14 ROUND VALLEY ELECTION BOARD

Via Erica Shepherd at Email Address: ShepherdErica89@outlook.com

15 ELINA AGNOLI at Email Address: eagnolo@gmail.com

Attorney for Plaintiffs

16 DAVID DEHNERT at Email Address: david@dehnertlaw.com

17
18 [] **(BY MAIL)**: I placed a true copy of said documents(s) in a sealed envelope with
19 postage thereon fully prepaid for first class mail, for collection and mailing following
20 ordinary business practices. I am readily familiar with this business' practice for
21 collecting and processing correspondence for mailing, whereby the mail is sealed, given
the appropriate postage and placed in a designated mail collection area. On the same
day that correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service.

22 [X] **(BY ELECTRONIC SERVICES)**: I caused the said document(s) to be
23 transmitted via email or via facsimile machine to the email address or telephone
24 number indicated after the address noted above.

25 I declare under penalty of perjury that the following is true and correct, and that this
26 declaration was executed on:

27 August 18, 2023

Nancy Percy

Nancy Percy

28 Date

Print Name

Signature