



ROSEBUD SIOUX SUPREME COURT )  
 ROSEBUD SIOUX INDIAN RESERVATION ) SS  
 ROSEBUD, SOUTH DAKOTA )

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VALERIE CRAZY BULL,	)	DOCKET # CA 2021-01
Plaintiff/Appellant,	)	
vs.	)	MEMORANDUM OPINION
ROSEBUD SIOUX TRIBE ELECTION	)	AND ORDER
BOARD,	)	
Defendant/Appellee	)	

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Per curiam (Chief Justice Charles Abourezk, Associate Justices Brett Shelton and Frank Pommersheim)

I. Introduction

This case involves a challenge by Ms. Valerie Crazy Bull to the decision of the Rosebud Sioux Tribal Election Board to declare her opponent, Dennis Spotted Tail, the winner of the election for Rosebud Sioux Tribal Council Representative for the community of Soldier Creek in the August 27, 2020 general election.

The Election Board originally determined that Ms. Crazy Bull was the winner of the election, but subsequently reversed itself based on a protest filed by Mr. Spotted Tail alleging the decision by the Election Board to count 13 ballots due to a technical glitch was an error. The Board apparently agreed with Mr. Spotted Tail and reversed its decision. The original count favored Ms. Crazy Bull by a vote of 1,070 to 1,063. The 'new' count, excluding the 13 contested ballots, favored Mr. Spotted Tail by a vote of 1,062 to 1,060.

This change in result – regardless of its substantive merits<sup>1</sup> was an administrative nightmare and due process debacle. The denial of basic due process as guaranteed by both the Rosebud Sioux Tribal Constitution and the Indian Civil Rights Act of 1968 was manifold. A partial list of the errors includes the following. The *failure* of the Election Board to provide written notice of the challenge hearing in accordance with § 802(C) of the Rosebud Sioux Tribal Election Code which requires service through certified mail and must include a copy of the challenge letter. Ms. Crazy Bull apparently only got wind of the hearing through the ‘moccasin telegraph.’

Ms. Crazy Bull did appear *pro se* at the September 10 hearing. Nevertheless, she had not received notice of the September 2, 2020 letter sent to the Election Board by Rosebud Sioux Tribe Attorney General Lloyd Guy in which he opined that the Election Board had erred in counting the 13 challenged ballots. Ms. Crazy Bull was not provided with a copy of the Attorney General’s letter at any time and perhaps more importantly, the Election Code does not provide standing for the Attorney General (or any other tribal official) to contact the Board about an election result. This raises a serious ethical question about the propriety of a highly placed Tribal official weighing on the side of a challenger to a (lawful) decision of the Election Board.

It further appears that the Attorney General’s letter of September 2, 2020 provided the essential basis for the challenger’s protest, which was filed two days later on September 4, 2020. The Election Board decided to uphold the challenge of Mr. Spotted Tail but did not issue a *written* decision as required by the Election Code at § 802(E) and of course, it did not provide written notice to the parties of its decision. Despite this state of affairs, Mr. Spotted Tail was sworn into office on September 15, 2020. During the hiatus between the Election Board hearing

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<sup>1</sup> The record before this Court is completed devoid of any *substantive* explanation why the Rosebud Sioux Tribal Election Board reversed itself and decided the 13 contested ballots should *not* be counted.

and waiting for its required written decision, Ms. Crazy Bull filed a (*pro se*) action in Tribal Court seeking a temporary restraining order to enjoin the implementation of any Election Board decision that did not comply with due process. Special Judge Jones did not grant a temporary restraining order based on the initial *ex parte* application, but did hold a hearing on September 21 after notice was provided to the Election Board.

At the date of the hearing before Special Judge B.J. Jones, there was still no written decision from the Election Board. Despite the fact that Mr. Spotted Tail had been sworn into office, Judge Jones granted a preliminary injunction and ordered the Rosebud Sioux Tribal Election Board to hold a new hearing that complied with the due process requirement set out under the Rosebud Sioux Tribe Constitution, the Indian Civil Rights Act of 1968, and the Rosebud Sioux Tribal Election Ordinance itself.

A subsequent (second) hearing was held on November 18, 2020 by the Election Board. Both parties appeared (*pro se*) and gave testimony under oath. The Election Board issued its written decision on December 1, 2020 and affirmed its prior decision in favor of Mr. Spotted Tail. As a result, Special Judge B.J. Jones dismissed the application for a permanent injunction.

Plaintiff/Appellant Crazy Bull subsequently filed a motion for summary judgment with this Court.<sup>2</sup> The Clerk of Courts, in accordance with the Appellate Rules of the Rosebud Sioux Tribal Court, issued a briefing order. The Defendant/Appellee Election Board filed no brief (or explanation of its failure to do so) with this Court.

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<sup>2</sup> Motions for Summary Judgment are only available at the trial level. They are not available as vehicles to obtain appellate review. As the Appellant has conducted her appeal *pro se* and without representation of law-trained counsel, such a mistake is harmless and the Motion for Summary Judgment is dismissed without prejudice to be the essential appeal regarding a denial of due process.

After much delay due to COVID and the failure of the Election Board to file any responsive brief or motion with this Court, the Court held a zoom conference to consider this case on the written record available to them. This hearing was held on January 11, 2022.

## II. Issues

This appeal raises two significant issues, namely whether there is a continuing denial of due process and whether this appeal is moot. Each issue will be discussed in turn.

## III. Discussion

### A. Due Process

The essence of due process is notice and the opportunity to be heard. These basic elements were adequately satisfied in the second hearing (but not the first) before the Election Board. It is further important to note that the Tribal Election Ordinance at § 802 (F) states that decisions of the Election Board are ‘final.’ Previous decisions of this Court including *Antelope Community v. RST Election Board* (CIV 20-251) have held that basic elements of *procedural* due process are subject to judicial review, but not the substantive merits of the decision. This Court adheres to this line of distinction and therefore does not review the substantive grounds for the Board’s decision as partially articulated in its written decision of December 1, 2020.

### B. Mootness

Mootness is an important legal principle that requires that an actual, resolvable dispute exists between the parties in order for the court to exercise its jurisdiction. The doctrine is particularly relevant in election disputes when the ‘winning’ candidate has been sworn into office and there is no legally based authority to continue to challenge the office holder. *See, e.g., Scott v. Kindle* (CA2015-01) (2015). This is also the holding of both *Ducheneaux v. Cheyenne River Sioux Tribe Election Board*, CRST Ct. App. #98-012-A (1999) and *In the Woods v.*

*Dupris*, CRST Ct. App. #A-009-10 (2011). The underlying principles of bringing election disputes fairly and properly to final conclusion remain sound and applicable to the case at bar. This is particularly true in the present case where the Tribal Council representative of Soldier Creek had been in office for over a year.

IV. Conclusion

For all of the above-stated reasons, the appeal in this matter is denied.

Yet the Court feels that it is necessary to further state that *no* Tribal official or employee has standing as a matter of law or ethics to communicate with the Election Board about any pending matter or dispute unless invited in writing by the Election Board to do so. Such breaches in the future will result in the potential imposition of sanctions by this Court.

Similarly, the Court admonishes the Election Board and its counsel for their failure to file any responsive brief or motion to the Court in this appeal. Such lapses whether intentional or merely inadvertent due to unusual circumstances such as those created by the COVID pandemic can only undermine the institutional respect that both law and Lakota tradition require. If such actions occur in the future, the parties will be subject to any necessary sanctions.

IT IS SO ORDERED.

FOR THE COURT



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Associate Justice Frank Pommersheim

Dated this 25<sup>th</sup> day of May, 2022.