

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NELLIE RAMOS, CURTIS HENDRICKS,)
GEORGE BINGHAM, PAUL MILLS,)
NATHANIEL J. TOBEY, LAWRENCE)
TOBEY, Jr., PATRICIA OAKLEY,)
FRANCIS FERMINO,)
and LEIGH POTTER,)
Plaintiffs,)

v.)

C.A. No.)

BUREAU OF INDIAN AFFAIRS,)
MICHAEL BLACK, Director,)
Bureau of Indian Affairs,)
MIKE SMITH, Deputy Director, Bureau)
Of Indian Affairs,)
FRANKLIN KEEL, Regional Director,)
Bureau of Indian Affairs, and KEVIN)
WASHBURN, Assistant Secretary –)
Indian Affairs,)
Defendants,)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMPLAINT

COMES NOW the Plaintiffs, Nellie Ramos (“Ramos”), Curtis Hendricks (“Hendricks”), George Bingham (“Bingham”), Paul Mills (“Mills”), Nathaniel J. Tobey (“Tobey”), Lawrence Tobey, Jr. (“Tobey Jr”), Patricia Oakley (“Oakley”), Francis Fermino (“Fermino”) and Leigh Potter (“Potter”) all duly enrolled members of the Mashpee Wampanoag Tribe (“Tribe”), and for their Complaint against the Bureau of Indian Affairs (“BIA”), Michael Black, Director, Bureau of Indian Affairs (“Black”), Mike Smith, Deputy Director, Bureau of Indian Affairs, (“Smith”), Franklin Keel, Regional Director, Bureau of Indian Affairs (“Keel”), and Kevin Washburn, Assistant Secretary, Indian Affairs (“Washburn”) (BIA, Washburn, Black, Smith and Keel, collectively, the “Defendants”), and allege and state as follows:

Jurisdiction and Parties

1. Plaintiffs are residents of Barnstable County, Massachusetts, and duly enrolled members of the Tribe, a federally recognized Indian tribe, seeking assistance from BIA in addressing their concerns that the credibility of the membership of the Tribe has deteriorated since recognition and called into question the validity of all future Tribal elections.
2. Defendant BIA is an agency as defined by 5 U.S.C. § 701, and responsible for providing oversight and superintendence of federally recognized Indian tribes.
3. Defendant Black is currently the Director of the BIA, delegated with authority by the Assistant Secretary – Indian Affairs for carrying out the duties and responsibilities of the BIA in its capacity as Trustee for Indian Tribes and their members. Defendant Black is named in his official capacity.
4. Defendant Smith is currently the Deputy Director of the BIA, delegated with authority by the Assistant Secretary – Indian Affairs for carrying out the duties and responsibilities of the BIA in its capacity as Trustee for Indian Tribes and their members.. Defendant Smith is named in his official capacity.
5. Defendant Keel is currently the Regional Director of the Eastern Region of the BIA, delegated with authority by the Assistant Secretary – Indian Affairs for carrying out the duties and responsibilities of the BIA in its capacity as Trustee for Indian Tribes and their members.. Defendant Keel is named in his official capacity.
6. Defendant Washburn is currently the Assistant Secretary of Indian Affairs. Defendant Washburn is named in his official capacity.
7. Jurisdiction against Defendants is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1361.
8. Venue is proper pursuant to 28 U.S.C. § 1391.

Background Facts

Tribal Membership

9. Anyone seeking membership with the Tribe must meet specific qualifications laid out in Article III of the Tribe's Constitution. Federal law includes provisions similar to the Tribe's Constitution for federal acknowledgement, or recognition. 25 C.F.R. § 83.7 lists seven requirements for recognition, including 25 C.F.R. § 83.7(e), which requires that the Tribe's membership "consists of individuals who descend from a historical Indian tribe".
10. Plaintiff Oakley was hired for the position of Tribal Genealogist, and compiled and submitted individual information of Tribal members used to establish the historical lineage of the Tribe necessary to compel recognition.
11. In its Final Determination, the Office of Federal Acknowledgement found that the Tribe was able to certify that 97% of its membership descended from an historical tribe, 2% from Indians who "integrated socially and politically...and whom the petitioner [Tribe] considers eligible ancestors under the provisions of its Constitution", and less than 1% who had not documented descent, "but likely will be able to...provide...the proper evidence". Summary Under the Criteria for Final Determination on the Mashpee Wampanoag Indian Tribal Council, Inc., United States Department of the Interior, Office of Federal Acknowledgement, page 28-35 (2/15/2007) ("Exhibit A").

Emergency Meeting

12. On January 9, 2009, the acting Tribal Council held an emergency meeting to conduct business on behalf of the tribe, for the express purpose of reinstating four shunned members of the tribe

immediately prior to the General Election, without providing proper notice to all Tribal Council members.

13. Furthermore, the emergency meeting included resigned Chief Vernon Lopez as a voting member and therefore lacked a quorum. Because of the improper notice and lack of quorum, the shunned members did not legally have their privileges returned.

14. As a result of the emergency meeting, the four shunned members were returned to the voter list, and were allowed to vote in the General Election, in violation of Tribal law.

15. Tribal Council later requested an advisory opinion from contract Tribal Judge Rochelle Ducheneaux (“Ducheneaux”) concerning the validity of the emergency meeting, which Judge Ducheneaux took under consideration and found the emergency meeting was validly conducted. The ability to issue such an advisory opinion was beyond Judge Ducheneaux’ authority, and therefore invalid. The sole purpose of the advisory opinion was to intimidate Tribal members. This also created impression that Tribal Judge’s favored the Tribal Council over the interests of Tribal members.

2009 General Election

16. In January of 2009, Plaintiff Oakley began preparing the eligible voters list and registered voters list that she would forward to the Election Committee to use in conducting the election. The enrolled members list is a comprehensive list of all eligible members who have attained the age of 18 on the date of the election. Comparatively, the registered voters list is only those eligible members who have registered with the Election Committee to vote.

17. Also in January, Plaintiff Oakley began to receive numerous telephone and walk-in requests from pending members asking for their Tribal ID so they could vote in the election. Plaintiff Oakley

informed pending members that they would be ineligible to vote until they had received a certified letter from the Enrollment Committee, as required by Tribal law.

18. On February 8, 2009, the Tribe conducted its General Election in a reckless fashion. Plaintiff Oakley witnessed that voter turnout was significantly larger than at any other election, with many individuals who were not recognized as members of the community or on the voter list, and that members turning out to vote were not required to show their Tribal ID to obtain a ballot.
19. Following the election, the Election Committee failed to properly maintain the election records, including sealing the ballot box and voter sign-in sheets for certification after the election.
20. For two days following the General Election, Plaintiff Oakley was locked out of her office and prevented from verifying the voter sign-in sheets as she had done in all prior elections as the Tribal Genealogist. At some time after the election, the election results were certified to BIA by the same Election Committee involved in the election misconduct.

Election Challenge

21. On February 9, 2009, as required by the Tribe's Constitution, Plaintiff Ramos made a written request to the Election Committee in charge of enforcing Tribal election laws informing them of the violations raised above and requesting a new election. The chair of the Election Committee verbally informed her that her request was denied, and no further action was taken.
22. On February 17, 2009, in an effort to bring the violations referred to in paragraphs 13-15 and 17-20 to the attention of tribal members, Plaintiff Oakley distributed a letter to the tribe reporting on the enrollment status of the Tribe and discussing the conduct of the General Election.
23. As a result of Plaintiff Oakley's letter, Tribal Council member Aaron Tobey ordered an investigation into breaches of security during the election by Tribal Council member Carlton Hendricks. As a result, an investigation was conducted into the alleged tampering of the ballot

box and voter sign-in sheet. During this investigation, the ballot box and voter sign-in sheets were presented to Plaintiff Oakley. Plaintiff Oakley refused to certify the results under suspicion of tampering and fraud based on the physical condition that was observed of the ballot box and voter sign-in sheet.

24. On March 18, 2009, Carlton Hendricks made his reported available to the Tribal Council. To date, the Tribal Council has taken no action whatsoever.

25. Also in March, the Tribal Council fired Plaintiff Oakley for sending her letter to the Tribe, and for failing to give up a video recording made of the condition of her office and enrollment records after the election, which the Tribal Council erroneously described as a violation of confidentiality.

BIA Involvement

26. On February 26, 2009, members of the Enrollment Committee met in Washington, D.C. with then Director of BIA, Jerry Gidner, Defendant Smith, and Tribal Relations officer Daisy West, to discuss the election irregularities and raise allegations based on the facts presented in paragraphs 13-16 and 18-21. In response, Tribal members were asked to provide additional supporting documentation. Tribal members supplied Defendant's with copies of available records including Vernon Lopez resignation letter, Judge Ducheneaux's advisory opinion, Plaintiff Oakley's letter, Plaintiff Oakley's video recording, Carlton Hendrick's Report on Breach of Security, and a list of Tribal ordinances passed without public notice.

27. On July 31, 2009, a contingent of Tribal elders and members again travelled to Washington, D.C. to meet with Director Gidner, and Tribal Relations officer Elizabeth Colliflower, and repeat their allegations. The BIA refused to offer assistance or even investigate these allegations, and instead delayed a response by asking Tribal members to clarify their request. Tribal members specifically

asked that the BIA nullify the election and provide oversight of a new election that followed the proper procedures outlined by Tribal law.

28. On August 5, 2009, tribal members again sent a packet of materials with supporting documentation, to Director Gidner, Defendant Keel, and Ms. Colliflower, specifically requesting that the Bureau “hold new elections and provide oversight to ensure that it is executed properly and results in duly elected officials.” Letter of The Committee to Preserve the Rights and Tribal Culture of the Mashpee Wampanoag Tribe, Re: Mashpee Wampanoag Tribe Constitutional Crisis, August 5, 2009. (Exhibit A)
29. On November 11, 2011, Tribal members again submitted their requests and supporting documentation to Defendant Black, and then Assistant Secretary – Indian Affairs, Larry Echohawk. (Exhibit B).
30. Since 2009, the Tribal Council has amended ordinances such as the Election Ordinance to limit the ability of Tribal members to challenge election results, by reducing the time available for appeal to the day following an election.

CAUSE OF ACTION – Mandatory Injunction

31. Plaintiffs re-allege and incorporate Paragraphs 9 through 30 herein as set forth in full.
32. Pursuant to 5 U.S.C. §§ 701-706, a person may challenge the action or inaction of an agency and force agency action that has been unlawfully withheld or unreasonably delayed.
33. The Defendants unlawfully failed to respond to the Plaintiffs repeated request that they investigate the allowance of ineligible voters to vote in the 2009 General Election, to set aside the election results and institute an intermediate government, and oversee the conduct of a new election.

34. The Defendants have unreasonably delayed a response to Plaintiffs request by three years, during which time the Tribe has been governed by Tribal officials who were fraudulently certified in an election that violated numerous Tribal laws.

35. The Defendants owe a duty to respond to correspondence and requests indicating that election results certified to BIA violated Tribal Law.

36. Furthermore, Plaintiffs have been harmed by Defendants inaction which continues to recognize the current Tribal Council.

37. Therefore, Plaintiffs seek a mandatory injunction requiring the Defendants to:

- a. Conduct an investigation into the allegations raised by Plaintiffs in their August 5, 2009 letter, specifically examining the enrollment records to determine that only legitimate members are being allowed to enroll.
- b. Take any and all further action necessary to ensure that the Tribes elections are conducted in an open and fair manner that respects Tribal law.

WHEREFORE, Plaintiffs pray that the Court issue a mandatory injunction requiring the Defendants to:

- a. Conduct an investigation into the allegations raised by Plaintiffs in their August 5, 2009 letter, specifically examining the enrollment records of the Tribe to determine that only legitimate members are being allowed to enroll.
- b. Take any and all further action necessary to ensure that the Tribes elections are conducted in an open and fair manner that respects Tribal law.

Plaintiffs further request any additional relief that the Court deems just and equitable.

Respectfully Submitted,

By: _____
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