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I am the attorney representing Orville Langdeaux Jr. and John McCauley, Sr., two members of the Lower Brule Tribal Council.

We have reviewed you letter of September 9, 2015, attached.

This is to advise you that all actions taken at the September 8, 2015, regular meeting, Resolution 2015-100, and Resolution 2015-01, are void an of no effect because the actions taken were taken without a quorum, without a secretary, and in other ways in violation of the Lower Brule Sioux Tribal Constitution. This matter will be brought to the attention of the Lower Brule Sioux Tribal Court because it is in violation of previous orders enjoining Kevin Wright, Sonny Ziegler, and Desiree LaRoche from taking action in violation of the Tribal constitution. See Attached.

In short, withdrawal of any funds by Wright, Grass Rope, Ziegler, or LaRoche is at your own peril and repayment will be sought from you if the funds are released under the invalid and illegal documents.

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LOWER BRULE SIOUX TRIBAL COURT ) IN TRIBAL COURT  
LOWER BRULE SIOUX TRIBE )SS  
LOWER BRULE SIOUX TRIBE JURISDICTION ) CIVIL DIVISION

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ORVILLE LANDEAU JR.,  
JOHN MCCAULEY,  
Plaintiffs-Intervenors

CIV-14-12-0119

vs.

INTERIM ORDER REGARDING  
QUORUM AND MAJORITY  
VOTE ISSUE

KEVIN WRIGHT, SONNY ZIEGLER,  
AND DESIREE LAROCHE,  
Defendants.

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Hearing was scheduled in this case for the 11<sup>th</sup> day of June 2015 at 9 AM on the Plaintiffs' motion for preliminary relief on its amended complaint against the Defendants. The Plaintiffs appeared in person and through their attorney, Terry Pechota. The Defendants retained counsel Gary Montana immediately preceding the hearing and the hearing was delayed to permit counsel Montana to be admitted into the Lower Brule Sioux Tribal bar, which he was. The Court notes that several motions were filed by the Defendants including a motion to recuse this Judge and a motion for stay of proceedings pending appeal. The Defendants withdrew their recusal motion and this Court contacted the Chief Justice of the Appellate Court who indicated the Court was not inclined to grant a stay.

Counsel for the Defendants then asked for an adjournment to permit him to become familiar with the case. The Plaintiffs did not oppose the continuance provided all previous orders of the Court remained in effect. The Court then engaged in a dialogue with counsel and the parties about the constitutional requirement that the Council meet

and the apparent difference of opinion on what constitutes a quorum and majority vote to conduct business when the Chairman has died and his position has not been filled. The Plaintiffs are asserting that the Lower Brule Constitution defines the quorum necessary to approve tribal business as 2/3's of the officers called for under the Constitution (6), while the Defendants seem to be of the opinion that in the absence of the Chairman, who died, a quorum would be 3 officers of the 5 remaining officers. This issue seemed critical to the resolution of the current impasse because the Defendants seem intent upon proceeding with tribal business, including declaring the Chairman's position vacant and filling it, based on its theory of the quorum while the Plaintiffs are resisting meeting with the Defendants based on their belief that the Constitution still requires a quorum of 4 even when one position is vacant due to death and that they do not want to participate in Council meetings under the Defendants' theory of the quorum.

The Court allowed the parties to brief the quorum and majority vote issue on or before June 24, 2015 and both sides submitted briefs and the Plaintiffs submitted a response brief. Because the Council is scheduled to meet on July 1, 2015 under the Constitution the Court is issuing this interim order pending further hearing on July 9, 2015.

The Lower Brule Sioux Tribal Constitution and its By-Laws govern the issue before the Court. The LB Constitution provides at Article III, §2 that the membership shall elect a Chairman, Vice-Chairman, Treasurer and three Councilpersons. Of those six elected officers, five shall constitute a quorum to conduct business. Bylaws, Art. IV, §2. The By-laws at Art. IV, Section 4, paragraph 4 provide that any motions or resolutions of the Council must be passed by a 2/3's majority vote of the "full" Tribal Council. The

Chairman under this by-law though is only given the right to vote in a tie, which must mean if only four elected leaders and the Chairman appear for a meeting or if the full Council meets and one councilperson abstains, then and only then would the Chairman have the authority to vote. However, this makes no sense because if the Chairman breaks a two-two tie the vote would be 3 to 2. However, that would not constitute a “majority vote” because it is not 2/3’s of the full Council. If all Councilpersons appear for a meeting then the Tribal Chairman has no authority to vote, unless there are abstentions, yet the Tribal Chairman is counted in determining the “full” Tribal Council. It does not seem to make sense to include an elected officer who has no independent right to vote, except in a case of a tie, as part of the “full” Council in determining the 2/3’s vote. The actual percentage that is required under the Plaintiff’s theory of the vote is 4/5’s because the Chairman has no vote except in a tie, but he cannot really break a tie because there could never be a tie at Lower Brule of 3-3.

On the other hand, however, use of the 2/3’s majority vote language in the By-Laws strongly suggests that 4 is the magic number for the Tribal Council at Lower Brule to take action. This is because 3/5’s is not equivalent to 2/3 as 3/5’s is 9/15’s while 2/3 would be 10/15. Therefore even if the Court were to accept the Defendants’ argument that the “full” Council, in light of the death of the Chairman, should be five Council members, a 2/3’s majority vote would exceed 3/5’s vote.

This Court cannot rewrite the Constitution and By-Laws of the Lower Brule Sioux Tribe, however, even in a case such as this where there seems to be an impasse in government caused by the death of the Chairman. The three Defendants wish to deal with the vacancy created by the Chairman’s death and perform their constitutional duty under

Article V to declare the Chairman's position vacant and appoint a "qualified individual" to serve his term. The Plaintiffs appear to be resistant to this, either because they don't see a possible solution to the current 3-2 impasse or they distrust the majority of the remaining Council and their wisdom on appointing a new Chairman. There was even a suggestion near the end of the hearing that the 2/3's vote would apply to the act of declaring the Chairman's seat vacant. Certainly any elected official who refuses to vote yes on declaring the seat vacant would be violating Article V of the LB Constitution because that Article uses the term "shall", thus mandating that the remaining Councilpersons declare the office vacant.

Once that is done, however, this Court lacks the authority to direct any Tribal Councilperson to vote yes or no on a proposed replacement for the Chairman. This Court also rejects the Plaintiffs' suggestion that the Court resolve the impasse by ordering a special election to fill the Chairman's seat. This Court does not have that authority as the Constitution does not provide that a special election is the appropriate vehicle for filling the position. Whether the Council could use that alternative to appointment is a question for the Council to resolve.

So, short of amending the Constitution, which is not a viable option, this Court can only order the parties to this case to meet as required by the Constitution, to declare the Chairman's seat vacant, and then to proceed to appoint a tribal member who otherwise meets the Constitutional requirements to hold the Chairman's position. Four of the remaining Council must vote for the replacement so the Parties to this case must put aside their differences and perform their constitutional duties. There has to be a Lower

Brule member eligible to serve as Chairman whom four of the remaining elected leaders can agree upon.

WHEREFORE it is hereby

ORDERED, ADJUDGED, AND DECREED that the Parties to this case shall meet for their regularly-scheduled Tribal Council meeting, declare the Chairman's position vacant, and then proceed to perform their constitutional duties as required by Article V to fill the vacancy created by the Chairman's death by the votes of 4 remaining elected leaders. All other orders issued by this Court previously in this case shall remain in effect, except insofar as they are inconsistent with this order, including the potential for this Court to hold any party to this case in contempt for a willful and contumacious refusal to abide by this Court's orders. Further hearing shall continue to be held on the 9<sup>th</sup> day of July 2015 at 9 AM to resolve other issues remaining.

So ordered this 30<sup>th</sup> day of June 2015.



B.J. Jones  
Lower Brule Sioux Tribe  
Special Judge

ATTEST: \_\_\_\_\_

LOWER BRULE SIOUX TRIBAL COURT            )  
LOWER BRULE SIOUX TRIBE                    )SS  
LOWER BRULE SIOUX TRIBE JURISDICTION )            CIVIL DIVISION

---

ORVILLE LANGDEAU JR.,  
JOHN MCCAULEY,  
Plaintiffs-Intervenors

CIV-14-12-0119

vs.

ORDER AND CERTIFICATION  
OF APPROPRIATENESS FOR  
INTERLOCUTORY APPEAL

KEVIN WRIGHT, SONNY ZIEGLER,  
AND DESIREE LAROCHE,  
Defendants.

---

Hearing was scheduled in this case for the 9<sup>th</sup> day of June 2015 at 9 AM on the Plaintiffs' motion for preliminary relief on its amended complaint against the Defendants. The Plaintiffs appeared in person and through their attorney, Terry Pechota. The Defendants appeared in person and through their counsel, Gary Montana.

The Defendants orally moved this Court to reconsider its June 30, 2015 order on the quorum and voting issue and also asked that the amended complaint be dismissed for lack of standing and on sovereign immunity grounds. The Court took both under advisement and indicated it wished to hear testimony on the Plaintiffs' request for preliminary relief on the amended complaint. Plaintiff Orville Langdeau Jr. testified and in the course of that testimony the Court indicated that it would be beneficial to the ultimate resolution of this case for the Parties to continue their July 1, 2015 Council meeting, which had been recessed but not adjourned, in order to take a vote on filling the Chairman's position, declared vacant at the July 1, 2015 Council meeting. The Court indicated that the option for filling that seat by special election, as proposed by the



Plaintiffs, did not seem to be within the realm of a judicial order, absent some stipulation from the Parties, because the Constitution states that the vacancy has to be filled by a vote of the Council.

The Council met in good faith and on a motion made to fill the Chairman's vacant seat with Lewis Grassrope two voted in favor of said motion, one voted against and one abstained. Vice-Chair Kevin Wright did not vote because he was acting Chairman for purposes of the July 1, 2015 regular Council meeting. This Court indicated that it was not confident that the Vice-Chair should have been disqualified from voting because even though he was chairing the meeting the Tribal Constitution does not indicate that he becomes the Chairman by default when the Chairman dies. This Court therefore received his vote on the record and he indicated he would vote in favor of Mr. Grassrope.

The Court then indicated that it was denying the request for reconsideration of this Court's order of June 30, 2015 finding that the Lower Brule Sioux Tribal Constitution and By-Laws require at a minimum a 2/3's vote of the full Council in favor of the replacement for the vacant Chairman's seat. This Court does note, however, that the language of the By-Law does state that the Council "may" pass motions and resolutions by 2/3's vote of the majority, but the Court interprets this provision in light of the last sentence of that By-Law, which indicates that the Council shall try in every case to vote by consensus or unanimous vote. 2/3's of the majority thus appears to be the minimum vote, although a unanimous vote would be preferable.

However, this Court notes that the Defendants have provided to this Court proof that in the past the Tribal Council has passed ordinances, resolutions and motions by less than a 2/3's vote of the full Council. This proof, which was also attached to the

Defendants' brief on the majority vote issue, is proof that the Tribal Council, in its prior practices and customs, would oftentimes ignore the 2/3's of the full council vote requirement. There is even proof that a vacancy on the Council was filled by a vote of less than 4 council members. Plaintiff Langdeau was on the Council when many of these votes were taken. Therefore, it does appear to this Court that the Tribal Council, including at least Plaintiff Langdeau and the former Chairman, would take action on the Council contrary to the position they take in this litigation.

However, this Court must interpret the Constitution as written because it is the voice of the people of the Tribe and the only reasonable interpretation of that provision is that laid out in the Court's June 30, 2015 order. If former Councils have ignored this provision they will have to answer for their actions if called into question later.

The Court asked the parties to meet and try to resolve this issue by having four of them approve of a replacement for the deceased Chairman. They did meet in good faith, but were only able to effect the action described above. Instead of ordering them to continue to meet, much like a Court can do to a jury, this Court recognized its limitations on forcing elected leaders to take some action, and instead opted to put their vote on the record and allow the Defendants to file an interlocutory appeal on the 2/3's vote issue. The Appellate Court can also determine if this Court is correct in determining whether 4 of the remaining Council must vote for the replacement for the Chairman. This Court also finds that although the Parties acted in Council session as if Defendant Wright could not vote, this is not clear to this Court because only the Chairman is denied the right to vote unless there is a tie. Is Mr. Wright the Chairman? Not clear, although he was certainly

Chairing the meeting in question. This Court therefore got his vote on the record in case the Appellate Court rules that he did have the right to vote.

The Plaintiffs ask that this Court enter a preliminary injunction enjoining any actions of Defendants that purported to remove them from office on December 12, 2014 and also to enjoin any actions to enforce the motions of the Council on May 6, 2015 purporting to terminate the attorneys for the Tribe and to terminate certain employees. For the reasons stated herein this Court continues its preliminary injunction on the removal issue, but denies the request for additional relief because this Court is not confident that the Plaintiffs have made a sufficient showing of this Court's jurisdiction to order further relief.

To grant a preliminary injunction the Plaintiffs must establish irreparable harm, a likelihood of succeeding on the merits, harm to the public and an inadequate remedy at law. The Court has already granted a restraining order preventing the Defendants from removing them from their elected seats without adhering to the Constitution and the Indian Civil Rights Act. As indicated before this Court believes the Defendants are not immune from claims for injunctive relief arising under the Indian Civil Rights Act and a removal of them from their elected positions without due process of law states an ICRA claim.

The Plaintiffs also claim that the Court should declare invalid the actions of the Tribal Council dated May 6, 2015 where the Council ratified the actions of Wright to terminate the tribal attorneys, some employees and to hire additional employees. Assuming for the sake of argument that the Plaintiffs would have standing to raise these issues- under a theory that their ability to function as a government is compromised by

these actions- this Court does not believe that these claims arise under the ICRA. The Lower Brule Sioux Tribal Constitution and laws do not waive immunity from suits against elected leaders. This Court found a waiver in the ICRA under the Bay Mills case. However, this Court does not find that an elected leader has a property right to claim that a vote that he disagrees with is taking a property right from him. The Court can understand the argument that his vote is a property right that cannot be taken without due process, but the undisputed testimony is that the Plaintiffs opted to leave the meeting on May 6, 2015 instead of casting a vote on the controversial measures ratified that day. Had they voted and their vote was ignored or not counted this may state an ICRA violation. The Court is very hesitant, however, to permit an elected leader to come into Court and ask the Court overturn an action of the Council that he disagrees with, even if there are apparent procedural irregularities.

Of course if the Appellate Court affirms this Court's assessment of the 2/3's vote issue such a ruling calls into question the legality of the actions taken by the Tribal Council on May 6, 2015. It would be up to the fully-constituted Council, if that ever gets accomplished, to address those actions and either ratify them or deem them invalid. However, the Court does not see those claims arising under ICRA however. This ruling is of course not binding upon any attorney or employee terminated that day to bring any private action they may have, provided of course they could document either a waiver of immunity or an abrogation of that immunity.

WHEREFORE it is hereby

ORDERED, ADJUDGED, AND DECREED that the Court denies the Defendant's motion for reconsideration of its order of June 30, 2015 on the quorum and

the 2/3's of full Council vote issue, but certifies that this Court's determination of this issue is a final order under the rules of civil procedure that can be appealed right away. In the alternative the Court finds it to be an interlocutory order appropriate for appellate review at this time, and it is further

ORDERED, ADJUDGED, AND DECREED that the Court grants a preliminary injunction preventing the Defendants from removing the Plaintiffs from their elected positions or attempting to effectuate the actions they took on December 12, 2014 to remove the Plaintiffs from their positions. The further request for preliminary injunctive relief is DENIED but the Court also certifies that denial as appropriate for interlocutory appeal.

So ordered this 9<sup>th</sup> day of July 2015.



B.J. Jones  
Lower Brule Sioux Tribe  
Special Judge

ATTEST: 