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ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION) SS. IN TRIBAL COURT
ROSEBUD, SOUTH DAKOTA)

PAUL JOSEPH,) Docket # CIV 15-225
Plaintiff,)

-vs-) ORDER
)

ROSEBUD SIOUX TRIBE ELECTION)
BOARD,)
Defendant,)

The above entitled matter is before the court on Plaintiff's Complaint for Declaratory Judgment for a declaration that Plaintiff is an eligible candidate for the office of Vice-President of the Rosebud Sioux Tribe.

The record in this case reveals that Plaintiff filed his Nominating Affidavit as a candidate for the office of Vice-President. The Election Board filed a challenge against Plaintiff on June 8, 2015 and a hearing on the challenge was held on June 18, 2015. On June 18, 2015, the hearing was held and the Election Board determined Plaintiff was ineligible to be placed on the ballot for the Primary Election scheduled for July 23, 2015. On June 22, 2015, Plaintiff filed a Complaint for Declaratory Judgment and Expedited Hearing. Plaintiff also filed a motion for a temporary restraining order seeking to enjoin Defendants from proceeding with the Primary Election. The court denied the motion for TRO and set the matter for an expedited hearing. The matter came before the court on June 24, 2015. Both Parties appeared with counsel and presented argument.

The record in the present (and past cases involving Plaintiff's eligibility for office) reveals that in 1991 Plaintiff was convicted in federal court for providing a false statement on a loan application. In 2011, Plaintiff was convicted with the crime of felon in possession of a firearm. It appears that this conviction was not in connection with a crime of violence. It also

appears that Plaintiff's eligibility was challenged by the Election Board under Article III, Section 6 of the Constitution of the Rosebud Sioux Tribe which provides, in pertinent part, "[a]ny member of the Sicangu Lakota Oyate at least 30 years of age, who has not been found guilty by the Tribal Council of misconduct in tribal affairs, or who has not been found guilty in a court of law of felony offense involving violence." Plaintiff argues that a felon in possession of a firearm is not a violent crime. Plaintiff further argues that there is no evidence he was convicted of a felony involving violence and Defendants failed to define what constitutes a violent crime for the purposes of this section.

In Norman Running Jr., v. Rosebud Sioux Tribe Election Board, CA 14-252, the Supreme Court of the Rosebud Sioux Tribe addressed the constitutionality of Tribal Ordinance #86-10 which is the Rosebud Sioux Tribe Election Code. Running had timely filed an application to run as a candidate for the office of Tribal Council Representative. Running's candidacy was challenged on the ground that he was a convicted felon who had been found guilty in federal court the crime of "larceny." The Election Board determined this conviction violated Ordinance #86-10 which sets out the requirements to run for office and which states in pertinent part, 'who has not been found guilty of any major crimes (felony) by any jurisdiction.'

Ordinance #86-10 is the implementation of Article III ('Governing Body') of the Tribal Constitution. Article III contains constitutional Amendment H and Amendment I. These two amendments are part of the twenty-seven constitutional amendments voted on in the 2007 Secretarial election. These two amendments are both denominated as Number 6 which set out qualifications to hold office in the Rosebud Sioux Tribe. The first Section 6 (Amendment H to the Tribal Constitution) provides for disqualification only for a conviction of a "felony offense involving violence." The second Section 6 (Amendment I to the Tribal Constitution) also

provides for qualifications to hold office. The Court found that many of the constitutional requirements to run for office contained in these sections appeared to be contradictory. The Court analyzed the two sections to see if they could be reconciled into constitutional harmony or whether they were irreconcilable and contradictory. In addition, the Court examined how Ordinance #86-10 implemented these differing elements. The Court then examined whether Ordinance #86-10 constitutionally harmonizes with the two Sections (Amendment H and I). The Court ultimately concluded Tribal Ordinance #86-10, as written, is unconstitutional.

Based upon its analysis, the Court reversed the decision of the trial court in Running. The Court went on to request that the Rosebud Sioux Tribal Council draft a new or revised ordinance that avoids these constitutional pitfalls. It appears that a new or revised ordinance has been accomplished just recently. However, the matter before the court involves rules and procedures governing qualifications to hold office as set out in Ordinance #86-10, which was deemed unconstitutional.

For the foregoing reasons, the court finds that Plaintiff meets the qualifications to be placed on the ballot as a candidate for the position of Vice-President, therefore it is hereby:


ORDERED, ADJUDGED AND DECREED that the Election Board shall place Plaintiff's name as an eligible candidate on the ballot for the office of Vice-President as the court ruled from the bench.

Dated this 7th day of July, 2015.

BY THE COURT:

Sherman J. Marshall
Chief Judge

ATTEST:


Clerk of Courts