

May 9, 2022

Dear Board of Directors/Election Committee Members:

I understand that the Board of Directors has requested the Election Committee to review the validity of a Petition for Referendum (Resolution No. 2022-90) that has been submitted to the Board.

Article IX of the Tribal Constitution provides:

Any enacted or proposed ordinance or resolution of the board of directors shall be submitted to a popular referendum upon an affirmative vote of a majority of the board or when so requested by a petition presented to the board bearing the signatures of at least one hundred (100) eligible voters of the tribe. Such referendum must be held within sixty (60) days after receipt by the board of a valid petition. A vote of a majority of the eligible voters voting in such referendum shall be conclusive and binding upon the board of directors provided, however, that at least thirty (30) percent of those entitled to vote shall vote in such referendum conducted pursuant to tribal ordinance.

Chapter 12 of the Tribal Code is the controlling ordinance in regard to referendums¹. Section 12.106(5) of the Referendum Ordinance provides in part, “[t]he Board of Directors shall determine whether the petition is valid not later than thirty (30) days after receipt of the petition.” As such, the Election Committee lacks any jurisdiction or authority to determine the *validity* of a referendum petition, as that authority is reserved solely to the Board of Directors. The Election Committee is the entity responsible to conduct a fair referendum election, only upon a valid referendum petition being submitted to the Board of Directors.

However, despite the fact that the Election Committee has no authority to determine the *validity* of a referendum petition, upon a cursory review the petition signatures that accompanied the referendum, some concerns were noticed. As such, it would be the recommendation of the Election Committee that the Board of Directors recognize and enforce the requirements of both Chapter 12 and Chapter 10 as it relates to the responsibility of the “circulator.”

¹ It should be noted that Section 12.103 provides, in part, that referendum elections shall also be governed by the provision of the Election Ordinance.

12.106 of the Referendum Ordinance, entitled “Submission by Petition of Eligible Voters” provides in part that a *“resolution enacted by the Board of Directors shall be submitted to a popular referendum upon petition of at least one hundred (100) eligible voters of the Tribe presented to the Board in accordance with this section.*

However, before a referendum petition can be validated, it must comport with Section 12.106(2) of the Referendum Ordinance, which provides in part, *“[t]he petition shall bear the name and address of each signatory in legible form. The name and address of the person circulating the petition shall also be included.”* This is the same legal requirement for nomination petitions, which provides at Section 10.111(5)(d) of the Election Ordinance that each petition must state *“the name of the person circulating the petition on all nomination petitions.”*

A primary role of a “circulator” is to personally witness the signing of a petition and to verify that the signatory is who he/she claims to be. As such, a “circulator” provides an essential function to the integrity of the election process, namely, to prevent fraud. If it is apparent on the face of the petition that the “circulator” did not personally witness the person sign the petition, or there was no “circulator” identified, then that signature must be rejected. For example, if there are several signatures on a single petition that are from various states all signed on the same day, the entire petition becomes suspicious and the “circulator” might be contacted to inquire how she/he was able to personally witness signatures on the same date when the signatories resided in different states. Again, if the “circulator” did not personally witness the signing of the petition and verify the identity of the signatory, then it is not a valid signature and must be rejected.

Should there be any questions or concerns in regard to any of the above, please do not hesitate to reach out to me.

Very truly yours,



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