



INTERIOR BOARD OF INDIAN APPEALS

Anthony Wadena, Darrell Wadena, Frank Bibeau v. Midwest Regional Director,
Bureau of Indian Affairs

47 IBIA 21 (04/23/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ANTHONY WADENA,)	Order Affirming Decision
Appellant,)	
)	
DARRELL WADENA,)	
Appellant,)	
)	Docket Nos. IBIA 06-41-A
FRANK BIBEAU,)	06-43-A
Appellant,)	06-44-A
)	
v.)	
)	
MIDWEST REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	April 23, 2008

In these three consolidated appeals, Appellants Anthony Wadena (IBIA No. 06-41-A), Darrell Wadena (IBIA No. 06-43-A), and Frank Bibeau (IBIA No. 06-44-A), seek review of three January 5, 2006, decisions of the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The decisions addressed related challenges to the November 22, 2005, Secretarial election at which two amendments to the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (Tribe) were adopted.¹

On appeal to the Board of Indian Appeals (Board), Appellants maintain that (1) the Tribe’s resolution requesting the Secretarial election was invalid; (2) insufficient notice of the election was provided; (3) BIA failed to notify tribal members that various regulations for the conduct of a Secretarial election had been waived; (4) voters improperly were permitted to register to vote on Election Day; (5) an insufficient number of votes were cast for the election to be valid; and (6) that Appellants’ due process and equal protection rights were violated by these deficiencies. We conclude that Appellants lack

¹ A Secretarial election is a Federal election conducted by BIA acting pursuant to authority delegated to BIA by the Secretary. See 25 U.S.C. § 476; 25 C.F.R. § 81.1(s); *Thomas v. United States*, 189 F.3d 662, 667 (7th Cir. 1999). Regulations governing the conduct of Secretarial elections are found at 25 C.F.R. Part 81.

standing to challenge the Tribe's resolution requesting the Secretarial election, that BIA properly determined that voter turnout was sufficient, that Appellants' remaining challenges fail for lack of substantiating evidence, and that Appellants fail to show any violation of their due process and equal protection rights. Therefore, we affirm the Regional Director's decisions.

Facts

1. Secretarial Election

On February 17, 2005, the Tribal Executive Committee adopted Resolution No. 70-05, in which the Tribe requested that a Secretarial election be called for the purpose of amending the Tribe's Constitution to add two new provisions.² The Resolution also requested "that to maximize voter participation the Secretary shall take such action as may be necessary to permit registration at the polls on the day of the Secretarial election." Resolution No. 70-05 at 2. The Resolution was adopted by a vote of eight in favor, three against, and was transmitted to BIA in July 2005 for action.³ One of the two representatives from the Leech Lake Reservation did not vote on the issue.

On August 8, 2005, the Regional Director forwarded Resolution No. 70-05 to the Assistant Secretary - Indian Affairs for action insofar as it requested a waiver of regulations governing the conduct of Secretarial elections. *See* 25 C.F.R. § 1.2 (authorizing the Secretary to "make exceptions to his regulations . . . where permitted by law and [where it serves] the best interest of the Indians"). By letter dated September 20, 2005, the Acting Principal Deputy Assistant Secretary - Indian Affairs (Principal Deputy) advised the Tribe that its requested waivers were approved. In particular, the Principal Deputy waived

² One ballot provision would add a residency requirement to section 2 of Article IV of the Tribe's Constitution for candidates for the offices of Chairman, Secretary-Treasurer, and Committeeman (Amendment A); the second ballot provision would add a new section 4 to Article IV to prohibit persons convicted of a felony or certain lesser crimes from holding office as a Committeeman or Officer (Amendment B).

³ The Tribe's Constitution provides that a Secretarial election may be requested to amend the Constitution "when requested by two-thirds of the Tribal Executive Committee." Tribe's Constitution, Art. XII. The Tribal Executive Committee consists of 12 members, 2 from each of the 6 bands that comprise the Tribe (Bois Forte (Nett Lake), Leech Lake, Grand Portage, Mille Lacs, White Earth, and Fond du Lac). *Id.*, Art. III, § 1.

25 C.F.R. § 81.11, which requires the Election Board to select a date by which voters must register to vote, and approved the Tribe's request to permit registration to occur up to and including the day of the election. Also waived was 25 C.F.R. § 81.9 to permit off-reservation polling places in Minneapolis and Duluth, Minnesota. The Principal Deputy also waived section 81.12, which requires the posting of an alphabetical list of registered voters 20 days prior to the election. In its place, the Principal Deputy required the posting of the list of tribal members eligible to register to vote.⁴

By memorandum dated September 26, 2005, the Regional Director approved the Tribe's request for the Secretarial election on the two proposed constitutional amendments and authorized the Superintendent to call and conduct the election. The Superintendent called the election for November 22, 2005, and began the process of publicizing the election. On October 13, 2005, the Superintendent faxed the notice of the election to the Tribal Executive Committee members with a request to post the notice in the tribal office and in public places on the reservation. He also faxed a press release to 17 newspapers. On October 24, 2005, public notice of the election was faxed for publication to 14 newspapers; the next day, October 25, 6 newspapers were faxed the sample ballot for publication.⁵

On October 12, 2005, BIA mailed a list of 34,153 tribal members eligible to register to vote in the election for posting at the Tribe's offices as well as at the tribal government centers of the 6 bands comprising the Tribe. BIA also posted the list in its office(s).⁶ Sometime between October 19-21, 2005, BIA mailed out 27,702 election packets to

⁴ The Principal Deputy did not address how, if at all, challenges to the eligibility of registered voters could be made. *See* 25 C.F.R. § 81.13 (any eligibility dispute claim not presented at least ten days before the election "shall be disallowed").

⁵ Appellant Bibeau provided a copy of the article that appeared in De-Bah-Ji-Mon newspaper on November 1, 2005. The article announced the election, identified polling places and the two ballot measures, and provided general information, including voter registration information, about the Secretarial election. The record does not otherwise reflect whether or when the Tribe and its bands posted notices of the election or when any of the newspapers printed articles or notices of the election aside from De-Bah-Ji-Mon.

⁶ The Regional Director does not identify which BIA office(s) posted the list of tribal members eligible to register to vote or when the notices were posted.

eligible voters;⁷ Appellant Bibeau claims he received his packet on October 25.⁸ The election packet contained a sample ballot, voter registration form, absentee ballot request form, general information concerning the election (location of polling places, date and time of election, the text of the two proposed constitutional amendments, voting by absentee ballot, and voter eligibility criteria). The election notice also informed voters that they “can either register on election day at one of the voting precincts prior to voting or they may register by completing and returning the voter registration form included in this mailing.” Letter from Superintendent to Tribal Member, Oct. 19, 2005. Voters were also informed that they could vote at any of the designated on-reservation polling places or at one of two off-reservation polling places in Duluth and Minneapolis, Minnesota.

The election was held as scheduled on November 22. A total of 6,552 persons registered to vote; 4,986 ballots were cast for Amendment A and 4,989 ballots were cast for Amendment B. All three Appellants successfully registered to vote and cast ballots in the election. A total of 1,677 voters voted at the polls while 3,348 voters voted by absentee ballot for a total of 5,025 ballots cast. Of these ballots, 13 were spoiled while 23 had “unsigned envelopes.” These 36 ballots were not counted. The election results were certified and posted by the Election Board on November 23, 2005: 4,127 in favor of Amendment A and 846 against (13 spoiled ballots); 4,133 in favor of Amendment B and 844 against (12 spoiled ballots).⁹

2. Appellants’ Election Challenges and the Regional Director’s Decisions

On November 23, 2005, Appellant Bibeau raised various challenges to the election, which he supplemented on November 29, 2005. Also on November 29, BIA received

⁷ BIA does not explain why the list of tribal members eligible to register to vote contains 34,153 names but only 27,702 packets were mailed.

⁸ The Regional Director represents in his brief that the election packets were mailed on October 19; Appellants produced a copy of a handwritten fax from BIA that states that BIA “mailed 27,702 pieces of mail on October 21, 2005.” Fax from BIA to Appellant Bibeau, Jan. 26, 2006. We assume without deciding that the fax refers to the election packets that were mailed to those tribal members eligible to register to vote in the election.

⁹ As evident from the vote count on the two ballot measures, some voters voted only for one of the ballot measures.

appeals from Appellants Darrell and Anthony Wadena.¹⁰ In three separate decisions issued on January 5, 2006, the Regional Director rejected the challenges raised by Appellants because Appellants did not substantiate their claims with evidence. Notwithstanding this basis for denying Appellants' appeals, the Regional Director went on to address the merits of Appellants' challenges, which are explained below.¹¹

All three Appellants alleged that Resolution No. 70-05 was invalid because an unauthorized person from the Leech Lake Band voted in favor of the resolution. In his response, the Regional Director referred Appellants to correspondence from the Leech Lake Band that explained that the individual was authorized to sit on the Tribal Executive Committee as a Leech Lake representative and could have voted to accept or reject the Resolution, but instead refrained from voting on Resolution No. 70-05.

Appellant Bibeau contended that voters were given less than 30 days' notice of the election in violation of 25 C.F.R. § 81.14. The Regional Director disagreed and claimed that the election packets were mailed to voters 34 days prior to the election on October 19, 2005. He also explained that, by October 13, 2005, the Secretarial Election Notice was faxed to the Tribal Executive Committee members, and a press release and a public notice were sent to newspapers for publication.

Appellants also claimed that voters were permitted to register to vote on Election Day in violation of 25 C.F.R. § 81.11, which requires voters to register in advance of the election. The Regional Director explained that the Principal Deputy, in response to a request from the Tribe, had waived several of the regulatory provisions governing the conduct of Secretarial elections. In particular, the Principal Deputy waived the requirement of advance voter registration and permitted registration and voting to occur at the same time on Election Day.

Finally, all three Appellants argued that the election was invalid because both tribal and Federal law require 30% of the total number of tribal members entitled to vote to cast

¹⁰ The Regional Director determined that the appeals received from the Wadena Appellants were timely because November 24 was the Thanksgiving holiday, November 26-27 was a weekend, and BIA was closed on November 28 due to weather conditions. Consequently, the next available day on which BIA could receive election contests, after the three-day appeal period had elapsed, 25 C.F.R. § 81.22, was November 29.

¹¹ Also on January 5, 2006, the Regional Director approved the two constitutional amendments that had been passed by the voters.

ballots. Appellants contended that all tribal members over the age of 18 who are afforded the right to vote under the Tribe's Constitution constitute the pool of voters "entitled to vote" for purposes of determining whether the 30% voter turnout was achieved for a valid election. Therefore, according to Appellants, since less than 30% of those tribal members who have a constitutional "right" to vote actually voted, the election is invalid.¹² In response, the Regional Director explained that the calculation is based on the number of eligible members who actually register to vote in the election, not on how many are eligible to register to vote. According to the Regional Director, there was 76% voter participation.¹³

All three Appellants timely appealed from the January 5, 2006, decisions of the Regional Director and the Board consolidated the appeals. Appellants filed a joint brief, to which the Regional Director responded. Appellants filed a reply brief in response to the Regional Director's answer brief.

Discussion

On appeal to the Board, Appellants continue to maintain that the election is invalid because (1) the tribal resolution requesting BIA to call and conduct the Secretarial election was invalid; (2) timely notice of the election was not provided to voters; (3) tribal members were not specifically informed that the Principal Deputy had waived certain regulations that otherwise would have governed the Tribe's Secretarial election; (4) voters were permitted to register on the day of the election instead of in advance of the election; (5) the 30% threshold number of ballots cast (voter turnout) was not met; and (6) Appellants' due process and equal protection rights were violated by these deficiencies. We disagree with Appellants' arguments. We conclude that Appellants lack standing to challenge the validity of Resolution No. 70-05, and that Appellants failed to submit sufficient substantiating evidence as to the next three claims that would justify a new election. We also conclude, as to Appellants' calculation of the required 30% voter turnout, which presents a purely legal issue, that the Regional Director correctly determined that voter turnout was more than sufficient for the election to be valid. Finally, we reject Appellants' due process and equal protection claims as meritless.

¹² According to Appellants' theory, the calculation for Amendment A might be 4,986 (total number of ballots cast) ÷ 27,702 (number of election packets mailed to potentially eligible voters). Pursuant to this calculation, voter turnout was 18%.

¹³ According to the Regional Director, the calculation for Amendment A would be 4,986 total votes cast ÷ 6,547 total number of registered voters = .76 voter participation.

1. Standing to Challenge Resolution No. 70-05

Appellants claim that Resolution No. 70-05 may have been defective because one of the representatives to the Tribal Council from the Leech Lake Band was not authorized to vote. We dismiss this claim on the grounds that Appellants lack standing to challenge the Resolution. Alternatively and assuming they did have standing, Appellants merely repeat the arguments they made to the Regional Director concerning Resolution No. 70-05 and have not addressed, much less shown evidence of, any error in the Regional Director's response.

It is well established that the Board adheres to judicial principles of standing — both constitutional and prudential — as a matter of administrative prudence. *Gardner v. Acting Western Regional Director*, 46 IBIA 79, 85 (2007). The Board follows the three elements of constitutional standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *Id.* Under *Lujan*, an appellant must show that (1) he has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest; (2) the injury is fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision. 504 U.S. at 560-61. Prudential standing, among other things, requires Appellants to assert their own legal rights and interests rather than the rights and interests of others, e.g., rights that may belong to the Tribe. *See Parker v. Southern Plains Regional Director*, 45 IBIA 310, 317 (2007).

Resolution No. 70-05 reflected the collective, though not unanimous, wishes of the Tribal Executive Committee to request BIA to call and conduct a Secretarial election on behalf of the Tribe as well as to request a waiver of several regulations governing the conduct of such elections. Nothing in the Resolution was directed to Appellants, required any action from Appellants, nor did it compel Appellants to refrain from any action. The Resolution is a neutral request for action from BIA that has no impact on Appellants. Therefore, Appellants cannot establish any injury to them as a result of the Resolution. Moreover, to the extent that Appellants do not believe it was in the best interests of the Tribe to seek a Secretarial election, it is well established that individual tribal members lack standing to pursue action on behalf of the Tribe. *See Tsiokawe v. Eastern Regional Director*, 46 IBIA 326, 329 (2008) (individual tribal members lack standing to assert a claim based on their personal assessment of what is or is not in the best interest of the tribe); *Frease v. Sacramento Area Director*, 17 IBIA 250, 256 (1989) (same). Therefore, we conclude that Appellants lack standing to challenge the validity of Resolution No. 70-05.

Even if Appellants did have standing, the Board finds that Appellants have merely repeated to the Board the arguments made to and rebutted by the Regional Director.

Before the Board, Appellants relied upon the same allegations that they presented to the Regional Director — allegations made by a Tribal Executive Committee member that a representative to the Tribal Executive Committee from the Leech Lake Band was not authorized to vote on the Resolution. Appellants make no effort to respond to the Regional Director’s explanation of the validity of Resolution No. 70-05, let alone provide any evidence contradicting or undermining his explanation and evidence. It is Appellants’ burden to prove error in the Regional Director’s decision. *Gardner*, 46 IBIA at 85. This burden is not met by merely disagreeing with the Regional Director’s decision or making bare, unsupported assertions. *See Anderson v. Acting Southwest Regional Director*, 44 IBIA 218, 225 (2007). Therefore, we conclude that even if Appellants had standing to challenge the Regional Director’s reliance on Resolution No. 70-05 as authorizing him to call and conduct the Secretarial election, Appellants did not meet their burden of showing error in the Regional Director’s determination that the Resolution was valid.¹⁴

2. Substantiating Evidence to Support Claims (2) Through (4)

With respect to claims (2) through (4), Appellants fail to provide evidence to substantiate these claims for setting aside the election. In the absence of substantiating evidence, we agree with the Regional Director that Appellants have failed to meet their burden of production under 25 C.F.R. § 81.22.

Appeals from Secretarial elections are governed by section 81.22, which authorizes qualified voters to “challenge the election results” by providing the grounds for the challenge “*together with substantiating evidence.*” (Emphasis in the original.)¹⁵ “Substantiating evidence” is not specifically defined in the regulations, however the word “substantiate” means to “establish the existence or truth of [facts],” to “verify.” Black’s Law Dictionary 1470 (8th ed. 2004). In the context of section 81.22, we conclude that in order to present “substantiating evidence,” a challenger must present evidence that supports both (1) the particular claim being made, i.e., that an alleged procedural error occurred in the conduct of the election, and (2) the conclusion that the procedural error likely affected or

¹⁴ In addition, we note that Appellants do not assert that they have exhausted tribal remedies for what is intrinsically an intra-tribal matter. *See Ewing v. Rocky Mountain Regional Director*, 40 IBIA 176, 181-83 (2005).

¹⁵ Appellants all registered to vote, and did vote, in the Secretarial election. Therefore, they are “qualified voters” within the meaning of 25 C.F.R. § 81.22, with standing to challenge the results of the election.

tainted the election results in such a way as to cast doubt on the fairness of the election and the integrity of the ultimate results.¹⁶

In the present case, Appellants claim that less than 30 days' notice of the election was provided to potential voters, in violation of 25 C.F.R. § 81.14. Appellants proffered evidence showing that the election packets were deposited in the mailstream 32 days before the election (October 21) and that one Appellant failed to receive his election packet until October 25, less than 30 days before the election. Thus, Appellants supported their claim of procedural error that the requisite 30 days' notice of the election was not provided. However, Appellants fail to substantiate their claim by demonstrating how these facts, standing alone, would reasonably lead to the conclusion that the integrity of the election is in doubt. Appellants *speculate* that some voters may not have had enough time to request, receive, and return their absentee ballots, but Appellants did not *produce any evidence* substantiating this claim, e.g., statements from voters who attempted to vote by absentee ballot but did not have sufficient time to do so. Similarly, with respect to Appellants' challenges to the waiver of regulations by the Principal Deputy or the lack of information concerning the method of calculating the minimum voter turnout for a valid election, Appellants simply do not show how these alleged errors — even assuming they rose to the level of actionable procedural errors — likely, and adversely, affected the election results.¹⁷

Appellants claim that because they only had three days to contest the election, *see* 25 C.F.R. § 81.22, there was insufficient time to obtain the necessary substantiating evidence. We reject this argument. Without deciding under what circumstances, if any, an appellant might be entitled to request and receive additional time from BIA to supplement the evidence to support a challenge, we note that in the present case, none of the Appellants ever attempted to do so.

¹⁶ Because we conclude that Appellants failed to present any evidence supporting the second prong, we do not decide where the threshold may lie for determining that sufficient evidence has been submitted to justify the rejection of the results of a Secretarial election.

¹⁷ Again, Appellants *speculate* that some voters — perhaps in the belief that voter turnout was required to be 30% of the total number of tribal members eligible to register to vote — did not show up to vote on Election Day as an alternate way of voting “no” on the ballot measures: Each voter that stayed away from the polls on Election Day arguably made it more difficult for the Tribe to reach the 30% threshold necessary — 8,311 voters (27,702 x .30) — for a valid election in the absence of a voter registration requirement.

Therefore, with the exception of Appellants' purely legal challenge to the sufficiency of voter turnout, discussed below, we conclude that Appellants failed to meet their burden of submitting substantiating evidence to support their claims.

3. Merits of Appellants' Challenge to the Sufficiency of the Voter Turnout

The method of calculating the sufficiency of voter turnout presents a legal question. As a factual matter, it is undisputed that under Appellants' interpretation of the law an insufficient number of voters participated in the election to satisfy the minimum 30% voter turnout required for a valid election. Similarly, it is also undisputed that the 30% voter turnout was met under the Regional Director's interpretation of the law. Thus, for this particular claim, there is no dispute concerning Appellants' production of "substantiating evidence" and we proceed to the merits.

Both Federal law and tribal law require a minimum turnout of 30% of those "entitled" to vote in order to have a valid Secretarial election. *See* 25 U.S.C. § 478a; 25 C.F.R. § 81.7; Tribe's Constitution, Art. XII. Appellants maintain that the voter turnout must be a minimum of 30% of all voters eligible to register to vote; the Regional Director maintains that voter turnout must meet or exceed 30% of those who are eligible *and* who register to vote in the Secretarial election. We conclude that the Regional Director is correct.

In establishing the procedures for Secretarial elections, Congress specifically decreed that "the total vote cast shall not be less than 30 per centum of those entitled to vote." 25 U.S.C. § 478a; *see also* 25 C.F.R. § 81.7 ("[t]he total vote cast . . . must be at least 30 percent of those *entitled* to vote." (Emphasis added.)); *cf.* Tribe's Constitution, Art. XII ("This constitution may be . . . amended . . . by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior if at least 30 percent of those *entitled* to vote shall vote." (Emphasis added.)). The conduct of Secretarial elections is governed by regulations found at 25 C.F.R. Part 81, unless directed otherwise. *See, e.g.*, 25 C.F.R. §§ 1.2 (governing waivers of regulations), 81.7 (provisions in tribal constitutions may alter certain procedures governing Secretarial elections to amend the tribe's constitution).

The Part 81 regulations specifically provide that "[o]nly registered voters will be *entitled* to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters." 25 C.F.R. § 81.11(a) (emphasis added); *see also* 25 C.F.R. § 81.6(d) (Section 81.6 is captioned "Entitlement to vote" and subsection (d) states, "For a reorganized tribe to amend its constitution and bylaws, only members

who have duly registered shall be *entitled* to vote.” (Emphasis added.)). “Registration” is defined as “the act whereby persons, who are eligible to vote, *become entitled* or qualified to cast ballots by having their names placed on the list of persons who will be permitted to vote.” *Id.* § 81.1(o) (emphasis added).¹⁸

Appellants argue that because no list of registered voters was posted, only the list of tribal members eligible to register to vote, voter turnout must be calculated based on the latter group because it would not be possible to know how many voters registered to vote until after the polls closed on election day. In essence, Appellants argue that the list of persons eligible to register to vote substitutes for the list of registered voters and, therefore, the posted list of persons eligible to register was the appropriate group from which the minimum 30% voter turnout should be calculated.

Appellants’ argument is contrary to the plain language of the regulations, which state that “all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters.” 25 C.F.R. § 81.11(a). Appellants rely on Art. IV of the Tribe’s Constitution, which states that “[a]ll members of the tribe, eighteen (18) years of age or over, shall have the right to vote at all elections held within the reservation of their enrollment.” Tribe’s Constitution, Art. IV, § 1(a). This general voter eligibility criteria — which is the same eligibility criteria followed for the Secretarial election, *see* Election Packet sent to voters — says nothing about how the 30% voter turnout requirement should be calculated, assuming tribal law were to apply: Voter turnout requirements for a Secretarial election are governed by Federal — not tribal — law. *See Chosa v. Midwest Regional Director*, 46 IBIA 316, 321 (2008) (“Except where Federal law provides a role for tribal law as part of the Secretarial election procedures, Secretarial elections are conducted in accordance with Federal law.”).

¹⁸ Although the Principal Deputy purported to waive the provisions of 25 C.F.R. §§ 81.6(d) and 81.11, it is clear from the text of his letter that he was not waiving these provisions but was modifying them. For example, the Principal Deputy characterized subsection 81.6(d) as requiring potential voters to pre-register to vote. The Tribe sought a modification of the rule to permit voters to register up to and including the day of the election. This request was approved by the Principal Deputy, thus modifying but not waiving subsection 81.6(d) — voters were still required to register to vote. Similarly, with respect to section 81.11, the Principal Deputy granted the Tribe’s request to provide advance voter registration forms to *all* potential voters, not just to those residing off the reservations, and to use its own membership records to compile the list of eligible voters. Again, voters were still required to register to vote.

We conclude that, as used in 25 U.S.C. § 478a and 25 C.F.R. § 81.7, “entitled to vote” means those who are eligible *and* who register to vote. We base our conclusion on the definition of “registration” found at 25 C.F.R. § 81.1(o) and other consistent references equating registered voters with those “entitled to vote” in section 81.6. Therefore, in order for the Secretarial election to be valid, 30% of the 6,552 individuals who were actually “entitled” to vote, i.e., those who were registered to vote — or 1,966 — had to have cast ballots on Election Day. At a minimum, 4,986 voters cast ballots. Therefore, as to voter turnout, the Secretarial election was valid.

4. Due Process and Equal Protection Rights

Appellants’ due process and equal protection claims lack any merit. Appellants vaguely maintain that due process and equal protection rights were violated by the lack of information to voters concerning the 30% voter turnout requirement. They do not explain how these rights are implicated, let alone violated, by the lack of information. Even assuming that there is a due process or equal protection right to be informed of this requirement and how it is calculated, that information is readily available by reviewing the regulations at 25 C.F.R. Part 81.

Similarly, Appellants complain that due process and equal protection rights demand that they be informed of the waivers granted by the Principal Deputy. While it may be true that voters were not specifically told that the Principal Deputy had authorized the modification of certain provisions of 25 C.F.R. Part 81, they were informed of the substance of the changes resulting from the waivers, e.g., that voters may register up to and including the day of the election and that they could vote off-reservation in Duluth and Minneapolis, Minnesota. Therefore, even assuming that due process or equal protection rights are somehow implicated by these waivers, we are hard-pressed to find any violation of these rights.¹⁹

Conclusion

We conclude that Appellants lack standing to challenge the validity of Resolution No. 70-05, which authorized requests to BIA for the calling of the Secretarial election and for modifications to the procedures for conducting the Secretarial election. We also

¹⁹ To the extent that Appellants argue that they have a right to present argument and evidence on their claims to an impartial decisionmaker, *see* Reply Brief at 4, that process is found at 25 C.F.R. § 81.22 and 43 C.F.R. Part 4, Subpart D, and has now culminated in this decision.

conclude that the Regional Director properly calculated voter turnout based on 30% of the number of registered voters, rather than 30% of the number of tribal members eligible to register to vote. With respect to Appellants' claims that voters were given less than the required 30 days' notice of the election and that voters were not informed of the Principal Deputy's waiver of certain regulations or the method of calculating the 30% voter turnout, we find that Appellants failed to present substantiating evidence as required by 25 C.F.R. § 81.22 and fail to show any violation of due process and equal protection.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms each of the Regional Director's three January 5, 2006, decisions.

I concur:

 // original signed
Debora G. Luther
Administrative Judge

 // original signed
Steven K. Linscheid
Chief Administrative Judge