



INTERIOR BOARD OF INDIAN APPEALS

LaRue Parker, Christine Noah, and Mary Pat Clark v. Southern Plains Regional Director,
Bureau of Indian Affairs

45 IBIA 310 (09/28/2007)



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

LaRUE PARKER,)	Order Dismissing Appeals from Regional
Appellant,)	Director's June 16, 2004, Decision
)	and Vacating Regional Director's
CHRISTINE NOAH,)	January 13, 2006, Decision
Appellant,)	
)	
and)	
)	
MARY PAT CLARK,)	Docket Nos. IBIA 04-126-A
Appellant,)	04-131-A
)	06-47-A
v.)	
)	
SOUTHERN PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	September 28, 2007

These consolidated appeals are from two decisions, dated June 16, 2004, and January 13, 2006, issued by the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning various disputed actions taken within the government of the Caddo Nation of Oklahoma (Nation) between 2003 and 2005, relating to the composition of the Nation's Tribal Council (Council) and the Nation's Election Board.

LaRue Parker (Docket No. IBIA 04-126-A), as Chairperson and on behalf of the Nation, challenges the portions of the Regional Director's June 16, 2004, decision that declined to recognize tribal membership actions in 2003 purporting to recall and replace members of the Election Board and to recall Council members Marilyn Threlkeld (Secretary), Ann Donaghey (Anadarko Representative), and Mary Pat Clark (Ft. Cobb Representative). Parker has moved to dismiss all of the appeals pending before the Board of Indian Appeals (Board) as moot based on tribal elections held in 2005 and 2006. Those elections are outside the scope of this appeal, no party has produced a BIA decision recognizing the results, and the record is insufficient for us to determine whether the

election results are still subject to appeals within the Nation or to BIA. However, we construe Parker's motion as effectively withdrawing her appeal, and therefore we dismiss her appeal without deciding whether Parker would otherwise have had standing to bring an appeal on behalf of the Nation, and if so, whether her appeal is in fact moot.

Christine Noah (Docket No. IBIA 04-131-A), as Binger Representative on the Council, and Council members Threlkeld, Donaghey, Clark, and LaCreda Daugomah (Treasurer), appealed from the portion of the June 16, 2004, Regional Director's decision in which he declined to recognize action taken on November 20, 2003, by their five-member majority of the Council, to remove Parker as Chairperson. The Board previously held that only Noah's appeal was timely, and dismissed the appeal as untimely to the extent it was filed on behalf of the other four individuals. We conclude that Noah, appealing individually as a member of the Council, lacks standing to assert the interests of the Council as a whole or the collective interests of the five-member majority, and therefore we dismiss her appeal.

Mary Pat Clark (Docket No. IBIA 06-47-A), on behalf of the same five-member majority of the Council — herself, Noah, Threlkeld, Donaghey, and Daugomah — challenges the January 13, 2006, decision of the Regional Director, which affirmed a July 7, 2005, decision by the Anadarko Agency Superintendent (Agency; Superintendent) to recognize certain individuals as members of the Election Board. The Superintendent's decision preceded by two days a July 9, 2005, regular tribal election conducted by that Election Board. We agree with the Clark Appellants that BIA's pre-election decision purporting to "recognize" the composition of the Election Board improperly intruded into tribal affairs, and therefore we vacate the Regional Director's January 13, 2006, decision.

Background

The Nation has an eight-member Tribal Council, which includes a Chairperson, Vice-Chairperson, Secretary, Treasurer, and four district representatives (Anadarko, Binger, Ft. Cobb, and Oklahoma City). The Council has the authority, subject to the approval of the Nation's voting membership, to appoint a five-member Election Board. Caddo Constitution Art. V, Sec. 1(a).¹ The Election Board administers tribal elections.

¹

Under the Nation's election ordinance, the Election Board's five members are supposed to serve staggered five-year terms. Caddo Election Ordinance, Sec. 4.a. Regular vacancies are to be filled by appointment of the Council during its quarterly October meeting, subject to the approval of the membership at its quarterly meeting. *Id.* When a non-regular vacancy occurs, the Council is to make an interim appointment to fill the remainder of the unexpired term, subject to approval by the membership at its next meeting. *Id.*

These appeals arise from a dispute between two factions within the Nation dating back (at least) to 2003. That year, the Election Board declined to certify a July 12, 2003, tribal election and, after finding several irregularities, called for a new election. Parker, who claimed to have been re-elected Chairperson in the July 2003 election, and joined by her supporters, attempted to override the Election Board's decision and to recall and replace the entire Election Board. A five-member majority of the Council — Noah, Threlkeld, Donaghey, Clark, and Daugomah — then purported to remove Parker as Chairperson at a special Council meeting held on November 20, 2003. On November 22, 2003, tribal members supporting Parker held three special membership meetings and purported to recall Threlkeld, Donaghey, and Clark from the Council.²

Each faction then sought to have its actions recognized by BIA. In a series of decisions, the Superintendent declined to recognize any actions purporting to invalidate the Election Board's decision setting aside the July 2003 election or actions to change the membership of the Council. Superintendent's Decision, Aug. 19, 2003; Superintendent's Decision, Feb. 27, 2004. The Superintendent did, however, recognize the membership's recall and replacement of the Election Board, while noting that the Nation had not "strictly" followed its constitution. Superintendent's Decision, Nov. 24, 2003; *see* Superintendent's Decision, Dec. 5, 2003. Each faction appealed to the Regional Director from one or more of the Superintendent's decisions.

The Regional Director, in his June 16, 2004, decision, affirmed the Superintendent's decisions except with respect to the recall and replacement of the Election Board. Thus, the Regional Director concluded that both the Council and the Election Board remained unchanged. At the time, the Council consisted of Parker, Joyce Hinse (Vice-Chair), Threlkeld, Daugomah, Donaghey, Noah, Clark, and Frances Kodaseet (Oklahoma City Representative). The Election Board consisted of Carol Swindell, Margaret Francis Rico, and Carol Ross.³

² "Recall" and "removal" have distinct meanings in the Nation's constitution. A "recall" is conducted by the Nation's membership to divest a tribal official of his or her position. *See* Caddo Constitution, Art. XII, secs. 1 & 2. A "removal" is conducted by the tribal body of which an official is a member (e.g., the Council), to divest the official of his or her position on that body. *See id.* sec. 3.

³ The Regional Director upheld the Superintendent's decision to recognize Eloise Harjo as Chairperson of the Election Board, but stated that she had since resigned. He also noted that another individual had been appointed but never sworn in, leaving a three-member Election Board.

Both factions appealed to the Board. Parker, filing on behalf of the Nation, appealed all portions of the Regional Director's decision except his decision that she had not been removed as Chairperson. Noah, filing on behalf of herself and on behalf of Threlkeld, Daugomah, Donaghey, and Clark, as individual Council members, appealed from the Regional Director's refusal to recognize the Council's purported removal of Parker from office. Subsequently, the Board determined that Noah's appeal was timely only with respect to her own individual appeal, and dismissed the appeal as untimely to the extent it was filed on behalf of Threlkeld, Daugomah, Donaghey, and Clark as co-appellants. Order, Feb. 16, 2005, at 3.

While the Parker and Noah appeals were pending before the Board with respect to the events of 2003, Parker requested that the Superintendent recognize Dorothy Garrett, Teresa Keller, Rico, Ross, and Swindell as the Election Board members, "so that they can proceed with their duties under the Caddo Nation Constitution." Letter from Parker to Superintendent, Jan. 12, 2005. Parker's letter cited no provision in the Nation's Constitution or in tribal law that authorizes or requires BIA to approve or to "recognize" the members of the Election Board before they may perform their duties. Nor did Parker provide any justification that would require BIA to make such a decision for purposes of its ongoing government-to-government relationship with the Nation.

On January 14, 2005, the Superintendent issued a letter to the entire Council purporting to "recognize" the members of the Election Board as Garrett, Keller, Rico, Ross, and Swindell.⁴ The letter did not contain appeal rights. In May of 2005, Garrett, Keller, and Rico apparently voted to remove Ross and Swindell from the Election Board. Subsequently, in a July 7, 2005, letter addressed to the entire Council and to Garrett, Keller, and Rico (but not to Ross or Swindell) and "respond[ing] to inquiries about the current, legal composition of the Caddo Nation Election Board," the Superintendent stated that the Agency "hereby recognizes" Garrett, Keller, and Rico "as the current, legal members of the Caddo Election Board." Letter from Superintendent to Council, July 7, 2005. This time the Superintendent included appeal rights, pursuant to 25 C.F.R. § 2.7.

⁴ The Superintendent's decision to recognize Garrett and Keller as members of the Election Board was based on the following findings: On October 7, 2003, the Council, including the opponents of Parker, voted to appoint Garrett and Keller to the Election Board. On June 19, 2004, at a special tribal membership meeting held three days after the Regional Director's June 16, 2004, decision, the tribal membership voted to confirm the Council's October 7, 2003, action appointing Garrett and Keller, thus adding them to the Election Board to fill the two vacancies.

On July 9, 2005, two days after the Superintendent's decision, the Election Board consisting of Garrett, Keller, and Rico conducted a regularly-scheduled tribal election to fill four positions on the Council. On July 14, 2005, Noah, Clark, Threlkeld, Daugomah, Donaghey, and other tribal members filed a "Petition for Declaratory and Injunctive Relief, Mandamus, and Temporary Restraining Orders" in the C.F.R. court,⁵ which they contend is authorized to hear tribal disputes under a tribal authorizing resolution. There is no evidence in the record of any action by the C.F.R. court on the petition.

On July 22, 2005, the Election Board rejected an election contest that had been filed by Noah, Clark, Threlkeld, Donaghey, Daugomah, and other tribal members. The Election Board certified the election as follows: Parker was re-elected Chairperson, defeating Noah by a vote of 202-89; Mary Lou Davis was elected Treasurer by a vote of 205-83 (Daugomah did not run for re-election); Brenda Shemayne Edwards was elected Binger Representative by a vote of 27-14 (Noah had run for Chairperson; Daugomah ran against Edwards); and Jereldine Redcorn ran unchallenged and was elected Oklahoma City Representative (Kodaseet did not run for re-election).

Separately, Clark, Noah, Threlkeld, Daugomah, and Donaghey, as a five-member majority of the Council, appealed to the Regional Director from the Superintendent's July 7, 2005, decision recognizing the composition of the Election Board. On January 13, 2006, the Regional Director upheld the Superintendent's decision. Although it post-dated the July 2005 election, the Regional Director's decision was limited to reviewing the Superintendent's July 7, 2005, decision, and did not address the validity of the July 2005 election itself.

On behalf of the five-member majority, Clark filed a timely appeal to the Board, contending that the Regional Director erred in recognizing Garrett and Keller as members of the Election Board because they had not been properly appointed by the Council or

⁵ Part 11 of 25 C.F.R. establishes "Courts of Indian Offenses," commonly referred to as "C.F.R. courts," one of which has been established for the Nation. *See* 25 C.F.R. § 11.100(a)(9)(iii). The purpose of C.F.R. courts is to provide a limited judicial forum "for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction." *Id.* § 11.100(b). C.F.R. courts do not have jurisdiction over tribal election disputes or internal tribal government disputes, unless authorized by a tribal resolution or ordinance. *Id.* § 11.104(b).

confirmed by the membership. The Clark Appellants also contend that Swindell and Ross were never properly removed from the Election Board.⁶

In July of 2006, the Nation held an election for the positions of Vice-Chairperson, Secretary, Anadarko Representative, and Ft. Cobb Representative. The Clark Appellants accepted the legitimacy of a majority of the Election Board members who conducted the 2006 election and accepted it as “a legally conducted election.” Appellant Clark’s Brief in Opposition to the Motion to Dismiss and Brief in Agreement with the Motion to Consolidate, at 4-5.⁷ However, they continue to contend that Garrett has not lawfully been appointed to the Election Board. *Id.* at 5.⁸

Proceedings Before the Board

On July 27, 2004, after receiving the Parker and Noah appeals and at the request of BIA, the Board referred this matter to the Department of the Interior’s Office of Collaborative Action and Dispute Resolution (CADR) for an assessment of whether voluntary resolution of the tribal dispute might be possible through alternative dispute resolution (ADR) mechanisms. The ADR assessment concluded that the parties were not able to reach agreement at that time.

On February 16, 2005, after receiving the administrative record, the Board issued a briefing schedule for the Parker and Noah appeals and ordered the parties to address their standing to bring their respective appeals, in addition to addressing the merits of their claims.

On September 19, 2005, the Board received from the Regional Director a “Statement on Mootness,” which reported that Parker had been elected Chairperson in the

⁶ On September 17, 2005, Ross and Swindell purportedly conducted a tribal election in which Noah was elected Chairperson. In October of 2005, Noah filed a pleading with the Board in which she still identified herself as the “Binger Representative,” although in subsequent pleadings she identifies herself as Chairperson.

⁷ In a subsequent pleading, filed individually, Noah stated that she did not agree that the 2006 election was valid, asserted without explanation that “there were certainly violations of the Election Ordinance [in] the 2006 Election,” but also noted that there were no challenges filed to that election. Noah Filing, Sept. 15, 2006.

⁸ All parties apparently agree that Keller is no longer on the Election Board.

July 2005 election, Threlkeld was elected Secretary, Donaghey was elected Anadarko Representative, and Clark was elected Ft. Cobb Representative. On September 21, 2005, the Board received from the Regional Director a “Corrected Statement Regarding Mootness,” which stated that Threlkeld and Donaghey had been removed from office on September 3 and 6, 2005, respectively, and removal proceedings had been scheduled for September 19, 2005, for Clark, but BIA had no information regarding the results.⁹

The Board allowed the parties to respond to the information provided by the Regional Director. Parker concurred with the information provided; Noah continued to dispute the validity of the July 2005 election, thus contending that her appeal regarding the alleged removal of Parker in 2003 was not moot.

On April 4, 2006, the Board scheduled briefing for Clark’s appeal from BIA’s decision to recognize the composition of the Election Board. In that order, the Board expressly asked the Regional Director to identify the specific provision in tribal or Federal law upon which he relied as authority to decide internal disputes regarding the Election Board, and to explain under what circumstances he believed such authority arose. Order, Apr. 4, 2006, at 3.

The Regional Director did not respond to the Board’s request.

On August 24, 2006, the Board consolidated the three appeals and again ordered the parties to participate in an ADR assessment, based on indications in the parties’ briefs that at least some, though not all, disputes within the Nation implicated by these appeals might be resolved or capable of resolution. On June 2, 2007, the Board received a joint memorandum from CADR and the U.S. Institute for Environmental Conflict Resolution, reporting that the parties had been consulted and that no agreement had been reached to use ADR to attempt to resolve the issues on appeal.

Discussion

I. Jurisdictional Principles and Standard of Review

Although the Board, as an executive branch forum, is not bound by the case-or-controversy requirement of Article III of the U.S. Constitution, as a matter of prudence the

⁹ All three of these Council members apparently were elected to office in 2002 for four-year terms, and thus none of their seats were subject to the 2005 election.

Board generally limits its jurisdiction to cases in which the appellant can show standing and where the claims have not become moot. *Brown v. Navajo Regional Director*, 41 IBIA 314, 317 (2005).

The appellant bears the burden of establishing standing.¹⁰ *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 70 (2006); see *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Relevant to this case, the first element of constitutional standing is that an appellant show that he or she has suffered an “injury in fact,” that is, an invasion of a legally protected interest which is concrete and particularized, as well as actual or imminent. *Brown*, 41 IBIA at 317 (citing *Lujan*, 504 U.S. at 560-61 (1992)).¹¹ “Particularized” injury means that the injury must affect the appellant in a personal and individual way: the appellant must have a “personal stake” in the alleged dispute and the alleged injury must be particularized to the appellant. *Raines v. Byrd*, 521 U.S. 811, 819 (1997), and cases cited therein.

In addition to the constitutional elements of standing, an appellant must satisfy prudential requirements of standing. Among other things, this means that an appellant must assert his or her own legal rights and interests, and cannot rest his or her claim to relief on the legal rights or interests of others. *Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 311 (2005) (citing *Warth v. Seldin*, 422 U.S. 490, 499 (1975)).

When an appeal is brought by a tribal official on behalf of a tribe or a tribal entity, the official must have been authorized or otherwise have authority under tribal law to bring the appeal. See *McKay v. Pacific Regional Director*, 40 IBIA 26, 30 (2004) (appellant, as Chairman of an “Interim Board of Directors” of the tribe, but without being joined by the Interim Board, failed to show that the Interim Board had authorized him to bring an appeal on behalf of the tribe); *Yeahquo v. Southern Plains Regional Director*, 36 IBIA 11, 12 (2001) (appellants produced no evidence that the tribe had authorized them to bring the appeal on

¹⁰ In judicial decisions, the doctrine of standing is typically applied to and discussed in reference to plaintiffs. In Board proceedings, the appellant is effectively equivalent to a plaintiff in judicial litigation.

¹¹ The other two elements of constitutional standing are causation and redressability: the injury must be fairly traceable to the challenged action, and not the result of the independent action of some third party not before the court; and it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Skagit County*, 43 IBIA at 70.

the tribe's behalf); *see also Shoshone-Bannock Tribal Tax Commission v. Acting Portland Area Director*, 30 IBIA 185, 186 (1997) (tribal tax commission not authorized by tribal law to appeal BIA approval of tribal ordinance).

In addition to requiring that an appellant show standing, the Board also follows the principle that it will not decide claims that have become moot. Succinctly described, “the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Cheyenne River Sioux Tribe*, 41 IBIA at 312 (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997)). Mootness may occur when nothing turns on the outcome of an appeal. *Id.* at 310 (citing *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005)). When a party moves for dismissal of an appeal from a BIA decision involving a tribal government dispute on the grounds that the appeal has become moot, the burden is on the party opposing dismissal to demonstrate that the appeal is not moot. *Poe v. Pacific Regional Director*, 43 IBIA 105, 111 (2006).

For appeals over which the Board has jurisdiction, the standard of review is straightforward. We review questions of law and the sufficiency of evidence *de novo*.¹² *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 142 (2007). When a BIA decision involves the exercise of discretion, we determine whether BIA considered all legal prerequisites and whether the decision is supported by the record, but we do not substitute our judgment for that of BIA. *Id.*

II. Parker's Appeal

Parker's appeal, filed on behalf of the Nation, challenged those portions of the Regional Director's June 16, 2004, decision that declined to recognize tribal membership actions in 2003 purporting to recall and replace members of the Election Board and to recall Council members Threlkeld, Donaghey, and Clark. In her opening brief, Parker suggested that her claims regarding the Election Board may be moot, although she continued to press for a decision that Threlkeld, Donaghey, and Clark were no longer on the Council. Following the tribal election in July of 2005, Parker suggested that both her appeal and Noah's appeal were moot. Subsequently, after Clark filed her appeal and after another tribal election (for different Council seats) was held in July of 2006, Parker suggested that all three appeals should be dismissed as moot.

¹² For cases involving tribal law, the Board defers to a tribe's reasonable interpretation of its own law. *Tabor v. Acting Southern Plains Regional Director*, 39 IBIA 144, 151 (2003).

As we have noted, an appellant bears the burden in opposing a suggestion of mootness. Here, Parker herself has suggested that all of the appeals, including her own, are moot. Thus, with respect to her own appeal, Parker's suggestion of mootness effectively constitutes a voluntary withdrawal of her appeal.¹³

Based on Parker's suggestion that her own appeal is moot, we dismiss it without deciding whether she was authorized to bring the appeal in the name of the Nation, and without determining whether we would otherwise decide that it is in fact moot.

III. Noah's Appeal

Noah's appeal challenges the portion of the June 16, 2004, Regional Director's decision in which he declined to recognize action taken at a special Council meeting on November 20, 2003, by a five-member majority of the Council (including Noah), to remove Parker as Chairperson. Noah filed her appeal "as an individual, and on behalf of" Threlkeld, Donaghey, Clark, and Daugomah. Noah's Notice of Appeal at 1. As noted earlier, the Board determined that Noah's appeal was timely only with respect to her own individual appeal, and dismissed as untimely the appeal to the extent it was filed on behalf of the four other Council members. Order, Feb. 16, 2005, at 3. Those four Council members subsequently expressed their support for Noah's individual appeal, and Noah has requested that the Board allow their re-joinder as co-appellants.

The requirement that an appeal be timely is a regulatory constraint on the Board's jurisdiction. An appeal that is not timely filed must be dismissed for lack of jurisdiction, 43 C.F.R. § 4.332(a); see *Chemehuevi Indian Tribe v. Acting Western Regional Director*, 45 IBIA 81, 85 (2007). Therefore, we cannot waive the requirement with respect to Threlkeld, Donaghey, Clark, and Daugomah, and cannot "re-join" them as co-appellants with Noah.

What this means is that we must evaluate Noah's appeal as one brought by her as an individual member of the Council without being joined by the other members of the majority who voted to remove Parker.

¹³ Put another way, when an appellant voluntarily contends that her own appeal is moot, thus indicating that she no longer believes that a decision on her appeal by the Board is necessary or of any consequence, we see that as the equivalent of a voluntary withdrawal. Cf. *Idaho Power Co. v. Portland Area Director*, 30 IBIA 268 (1997) (appellant, citing mootness, withdrew its appeal).

Noah clearly understands her claim — that BIA improperly declined to recognize Parker’s removal by a majority of the Council — as one that seeks to vindicate the collective interests of the five-member majority of the Council, and possibly of the Council itself (although she did not purport to file her appeal on behalf of the Council as a body). The difficulty for Noah is that the collective interests of the majority are not represented in her appeal, because the appeal was untimely with respect to four of the five Council members on whose individual behalfs she sought to file the appeal, leaving only an appeal on her own behalf as an individual Council member.

Noah, as an individual Council member, is thus limited to asserting and representing her own individual interests and, as an individual, she does not have standing to assert the interests of the Council as a whole or the interests of the other Council members whose appeals were untimely. Although the four other Council members have expressed their support for Noah’s individual appeal and “authorized” her to proceed with her own individual appeal, they cannot confer standing on Noah to represent their own individual interests after their claims have been deemed untimely.

In essence, Noah seeks to compel BIA to recognize a decision made by a majority voting bloc of the Council — the removal of Parker as Tribal Chairperson. As such, the asserted “injury” from BIA’s decision is the nullification of the vote of a majority of the duly-recognized, duly-constituted Council that ostensibly possessed the collective authority to remove the Tribal Chairperson. *See Raines*, 521 U.S. at 823 & 824 n.7. Noah does not profess to have any individual or personal authority to remove Parker as chairperson. Thus, because it was the collective action of the majority of the Council that purportedly resulted in the decision to oust Parker, not Noah’s individual action, it was necessary for the Council or the voting bloc as a whole to appeal BIA’s decision. Because that did not happen, and because Noah’s appeal is only on her own behalf as an individual Council member, she lacks standing to assert her claim. *Cf. Yeahquo*, 36 IBIA at 12 (two members of tribe’s Business Committee did not have authority to represent the Committee or the tribe as a whole, and lacked standing as individuals).

Therefore, we dismiss Noah’s appeal for lack of standing. We express no opinion on whether her appeal would otherwise be moot based on the 2005 tribal election, in which Parker claims to have been re-elected Chairperson.

IV. Clark’s Appeal

As with Noah’s appeal, Clark’s appeal was filed on her own behalf as an individual Council member and on behalf of four other Council members, collectively constituting a majority of the Council. This appeal, however, was timely with respect to all of the Council

members on whose behalf the appeal was filed. Thus, the collective interests of the entire five-member bloc of the Council are represented in the appeal, which is sufficient for purposes of standing. *See Raines*, 521 U.S. at 823 (“legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified”).¹⁴

The Clark Appellants contend that the Regional Director erred in upholding the Superintendent’s decision to recognize Garrett and Keller as members of the Election Board. They argue that the Council did not appoint these individuals as actual members of the Election Board — only as “alternates” — and that they were not properly approved by the Nation’s membership. Clark’s Opening Brief at 24. In effect, the Clark Appellants claim that the Regional Director’s decision injured the Council, or the collective right of the five-member majority of the Council, because BIA’s decision to “recognize” certain individuals as members of the Election Board interfered with the right of the Council to control the appointment of members of the Election Board.

Although Parker argues generally that all of the appeals pending before the Board should be dismissed as moot, based on tribal elections held in 2005 and 2006, she does not explain how the tribal elections to fill Council positions rendered moot the alleged injury caused by the Regional Director’s improper recognition of certain individuals as members of the Election Board. Admittedly, Clark — representing herself and four other members of the Council — stated that they accept as legally-appointed a majority of the members of the Election Board who conducted the 2006 election, but they continue to dispute BIA’s recognition of one individual (Garrett) who apparently is still on the Board.

It may be, however, that Clark’s appeal arguably has become moot because the requisite interest of the five Council members on whose behalf the appeal was filed may no longer exist because they no longer hold office as Council members. On the other hand, Parker’s claim that some or all of the Clark Appellants have been replaced in office through subsequent tribal elections rests in part on her contention that the 2005 tribal election was a valid election. However, in making her argument, Parker relies at least in part on her contention that BIA properly recognized the composition of the Election Board that conducted that election. This argument is circular at best, given Clark’s contention that an improperly-constituted Election Board tainted the 2005 election. The validity of the 2005

¹⁴ It appears that a majority of the Council constitutes a quorum at a properly-convened meeting. *See* Bylaws to Caddo Constitution, Art. II, Sec. 3. It also appears that the Council acts by majority vote, and thus a five-member majority is sufficient to take Council action.

election, of course, is outside the scope of any of the BIA decisions that are the subject of the consolidated appeals that we are deciding today, and the Board has been provided with no subsequent decisions by either the Superintendent or the Regional Director, issued in compliance with 25 C.F.R. § 2.7, either recognizing or declining to recognize the results of the 2005 election.

In other cases, particularly where a Board decision might itself improperly intrude into tribal affairs by interpreting tribal law, the Board might well require supplemental information and additional briefing to resolve the mootness issue, and only proceed to the merits if we find that the appeal is not moot. However, in this case, and regardless of the underlying merits, the threshold issue is not one of tribal law, but whether BIA improperly intruded into tribal affairs by issuing a decision at all. In addition, in this case, the Regional Director has declined to defend his decision, notwithstanding the Board's express request to provide us with some legal or factual justification. The Regional Director's failure to respond to the Board's specific request may fall short of an outright concession — but not by much. And no other party to this appeal has sought to justify BIA's issuance of a pre-election decision to “recognize” the composition of the Election Board.

We conclude, particularly in the absence of any citation of legal authority¹⁵ or factual justification for BIA to issue a pre-election decision purporting to “recognize” the composition of the Election Board, that BIA's decision was an improper and unjustified intrusion into the Nation's tribal affairs. It is telling that Parker's request to the Superintendent cited no provision in the Nation's Constitution or in tribal law that authorizes or requires BIA to approve or to “recognize” the members of the Election Board before they may perform their duties. Although there may be limited circumstances in which BIA may be required to determine the legitimacy of a tribal election board — e.g., if two competing election boards purport to conduct competing elections for tribal officials — we find no legal or factual justification in this case for BIA to have done so in advance of the

¹⁵ The Regional Director's decision lists, without explanation, the following as “Authorities”: Constitution and By-Laws of the Caddo Indian Tribe of Oklahoma, as amended; Election Ordinance of the Caddo Tribe of Indians of Oklahoma; and Robert's Rules of Order. The decision does not actually refer to any specific provisions in these authorities. It appears that at most these authorities were used to decide the merits regarding the composition of the Election Board, and *not* as authority for BIA to issue its decision at all.

Nation's election. Therefore, we vacate the Regional Director's January 13, 2006, decision, and leave the Superintendent's underlying decision without any force or effect.¹⁶

Conclusion

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we dismiss Parker's appeal (04-126-A) as effectively withdrawn based on Parker's own suggestion of mootness; we dismiss Noah's appeal (04-131-A) for lack of standing because, as an individual appellant and under the circumstances present here, she cannot assert the collective interests of the majority of the Council; and in Clark's appeal (06-47-A) we vacate the Regional Director's January 13, 2006, decision because it was issued without legal authority or justification.¹⁷

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

¹⁶ In vacating the Regional Director's decision, we express no opinion on the merits of the tribal parties' competing claims concerning the composition of the Election Board in 2005, nor do we express any opinion on whether that issue is even relevant to determining whether the *results* of the July 2005 election are valid, or who would have standing to challenge those results.

¹⁷ Both Noah and Clark, appearing *pro se*, have done an excellent job in presenting their arguments to the Board.