



INTERIOR BOARD OF INDIAN APPEALS

Norman Thompson, Sr., and Randy Shields, Sr. v. Great Plains Regional Director,
Bureau of Indian Affairs

58 IBIA 240 (04/22/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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NORMAN THOMPSON, SR., AND)	Order Dismissing Appeal
RANDY SHIELDS, SR.,)	
Appellants,)	
)	
v.)	Docket No. IBIA 14-049
)	
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	April 22, 2014

Norman Thompson, Sr., and Randy Shields, Sr. (Appellants), appealed to the Board of Indian Appeals (Board) from a December 16, 2013, decision (Decision) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), denying Appellants' challenges submitted to the Crow Creek Agency Superintendent (Superintendent), BIA, contesting the November 5, 2013, Secretarial election for the Crow Creek Sioux Tribe (Tribe) in which two amendments to the Tribe's Constitution and Bylaws were adopted. Appellants challenge the election process as contrary to the Tribe's Constitution and 25 C.F.R. § 81.7, and challenge the substance of one of the amendments as contrary to Section 202 of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302.¹

On receipt of an "Answer of the [Tribe] and Request for Expedited Review," the Board solicited briefing from the parties on whether to make the Decision effective immediately and whether to expedite the Board's review and decision, and also ordered

¹ As pertinent to this appeal, the challenged amendment increases, from 2 years to 10 years after satisfaction of a judgment of felony conviction, a prohibition on running for or holding the position of Tribal Chairman or Tribal Council Member, and clarifies that the prohibition applies only to felonies committed against the Tribe or children. Proposed Amendment XIII (Administrative Record (AR) Tab B-04). Appellants contend that the amendment violates a prohibition in the ICRA against ex post facto laws, 25 U.S.C. § 1302(a)(9). Notice of Appeal at 2 (unnumbered).

The other amendment, which Appellants do not appear to challenge on substantive grounds, eliminates reservation residency as a requirement for voter eligibility. Proposed Amendment XII (AR Tab B-03).

Appellants to demonstrate why the appeal should not be dismissed for lack of standing.² Pertinent to the issue of standing, the Board cautioned that it was unclear from Appellants' notice of appeal—which states that they appeal “as enrolled members of the [Tribe]”—whether any of Appellants' claims are based on a purported violation of a right or interest that belongs to Appellants as individual tribal members and not one that belongs to the Tribe as a whole, which Appellants would lack standing to assert. Order, Jan. 31, 2014, at 3; Notice of Appeal at 1 (unnumbered). Because Appellants have not responded to the January 31 order to demonstrate standing, we now dismiss the appeal based on their failure to show standing.

In order to bring an appeal to the Board, an appellant must demonstrate that he has standing. *See* 25 C.F.R. § 2.2 (definitions of “Appellant” and “Interested party”); 43 C.F.R. § 4.331 (Who may appeal); *Friends of Our Pyramid Lake Reservation v. Western Regional Director*, 55 IBIA 272, 273 (2012); *Wadena v. Midwest Regional Director*, 47 IBIA 21, 27 (2008). An appellant must be able to show standing for each individual claim that he seeks the Board to consider. *Reeves v. Great Plains Regional Director*, 54 IBIA 207, 212 (2012). To evaluate standing, the Board follows the elements of standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *See Wadena*, 47 IBIA at 27. The first element of standing is that an appellant must show that he has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest. *See id.* In doing so, an appellant must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of others, e.g., rights that may belong to other tribal members or to the tribe as a whole. *See id.*; *Friends*, 55 IBIA at 273-75; *Reeves*, 54 IBIA at 213.

As we have said, it is unclear from Appellants' notice of appeal on what basis they would have standing to challenge the election process. Previously, Appellants argued to BIA that, by requiring voters to register, BIA violated the rights of “14 unregistered voters” and “violated all members' rights” under the Tribe's Constitution. Letter from Thompson to Superintendent, Nov. 8, 2013, at 1 (unnumbered) (AR Tab A-03); Letter from Shields to Superintendent, Nov. 8, 2013, at 1 (unnumbered) (AR Tab A-04). The record shows that Appellants were registered to vote in the Secretarial election. *See* Final List of

² Order for Briefing on Whether to Make Decision Effective Immediately, Order for Appellants to Demonstrate Standing, and Order Allowing Responses to Motion for Expedited Review (Order), Jan. 31, 2014.

In light of the Tribe's request to place the Decision into effect, a response from the Regional Director in support of that request, and the absence of any response from Appellants, the Board placed the Decision into effect. Notice of Docketing and Order Making Regional Director's Decision Effective Immediately, Mar. 5, 2014.

Registered Voters for the Secretarial Election of Nov. 5, 2013, at 7 (AR Tab B-07). Thus, to the extent (if any) that Appellants intended through their notice of appeal to make the same argument to the Board, it remains unclear what right or interest, belonging to Appellants as individual tribal members, they contend has been injured. In addition, as we stated in our January 31 order, Appellants' notice of appeal alleges neither that Appellants would be precluded for running for tribal office by Proposed Amendment XIII nor that they intend to run for tribal office. Order, Jan. 31, 2014, at 3 (citing *Peltier v. Great Plains Regional Director*, 46 IBIA 16, 22-23 (2007)); see Notice of Appeal at 2 (unnumbered).

The Board gave each Appellant until 20 days following his receipt of the January 31 order to show that he has standing to maintain the appeal. Order, Jan. 31, 2014, at 4. According to the U.S. Postal Service's Track-and-Confirm service on its website, Thompson received the order on February 11, and Shields received it on February 5. The order stated that if Appellants failed to timely respond, their appeal may be dismissed without further notice. Order, Jan. 31, 2014, at 4. The Board has received no response from either Appellant. Appellants have thus failed to carry their burden of establishing standing.

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 dismisses this appeal.

I concur:

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Thomas A. Blaser
Administrative Judge

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Steven K. Linscheid
Chief Administrative Judge