

*J. Betty*

IN THE COURT OF APPEALS  
 FOR THE ROUND VALLEY INDIAN TRIBES  
 A SOVEREIGN NATION OF CONFEDERATED TRIBES

<p>In the Matter of:                  Zerlinda Hoaglen-Card,                  Petitioner,                  vs.                  Round Valley Tribal Council Election Board, Round Valley Tribal Council, and Mr. Lewis Lincoln,                  Respondents.                  Concerning:                  Lewis Lincoln, Lawrence Joaquin, Ronald Lincoln, Sr., Lois Whipple,                  Appellants.</p>	<p>Case No. RVIT-APP-2015-001</p> <p><b>Final Order and Decision</b></p>
<p>In the Matter of:                  Caroline Card-Want,                  Petitioner,                  vs.                  Round Valley Tribal Council Election Board, Round Valley Tribal Council, and Mr. Lawrence Joaquin,                  Respondents.                  Concerning:                  Lewis Lincoln, Lawrence Joaquin, Ronald Lincoln, Sr., Lois Whipple,                  Appellants.</p>	<p>Case No. RVIT-APP-2015-002</p>

These consolidated cases come before this Court of Appeals upon a Notice of Appeal filed by the above Appellants from a decision entered by the Tribal Court of the Round Valley Indian Tribes on November 21, 2014, in which the Tribal Court invalidated the Tribe's general election results of November 04, 2014, and ordered a special election. This Court accepted the appeals and set the matters for oral argument after receiving briefing from the parties.

Having fully considered the arguments, briefs, and the record below, this Court finds that the Court of Appeals for the Round Valley Indian Tribes does not have jurisdiction over this matter, upholds the decision of the lower court, and hereby dismisses the Appellants' appeals.

## **Facts and Proceedings**

### **A. Tribal Election Dispute**

The Round Valley Indian Tribes is a federally recognized sovereign Indian tribe with a Tribal Constitution adopted by the membership on August 03, 1994, and approved by the Bureau of Indian Affairs on September 14, 1994. The Constitution establishes the election process to fill vacancies on the Tribal Council (Council), as well as the process for challenging election results.

On November 04, 2014, the Round Valley Indian Tribes held a general election to fill multiple member vacancies on the Council. Several days later on November 07, 2014, two Tribal members, Ms. Caroline Card-Want and Ms. Zerlinda Hoaglen-Card, filed separate petitions challenging the election results citing election irregularities. Both petitions alleged that violations of the Constitution and the Tribal election ordinance occurred during the November election and requested that the Round Valley Indian Tribes Tribal Court invalidate the election results and remove several candidates from the ballot.

On November 20, 2014, the Round Valley Indian Tribes Tribal Court invalidated the results of the general election held on November 04, 2014, and ordered that a special election be held on December 23, 2014. A special election was held as ordered and new Council members were elected and seated.

### **B. Appellate Review**

On December 18, 2014, the above Appellants, of whom include two of the Election Board members and two of the candidates that were removed from the ballot, filed appeals of the Tribal Court's decision to invalidate the November 04, 2014 election and its order of a special election. The Appellants asked that the Tribal Court's decision be overturned. It is these matters that are before this Court of Appeals, and, after adopting new appellate court rules on January 20, 2015, this Court of Appeals ordered the Appellants to re-file their appeals in accordance with the new rules.

The issues presented by these petitions are matters of first impression before the Tribal judiciary and raise a number of important constitutional issues. The Court is mindful of this fact and the Court is addressing only those questions necessary to resolve the issues before it. In

review of this matter, the Court of Appeals considered the Constitution, election ordinances, the briefs submitted by the parties, as well as the oral arguments and positions advanced by the parties.

### **Jurisdiction**

Before proceeding to the merits of the appeals, this Court must first decide the threshold question of whether this Court of Appeals has jurisdiction over the matters. Even in the absence of a challenge from a party, courts have an independent obligation to determine whether subject matter jurisdiction exists. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 126 S.Ct. 1235, 163 L.Ed. 2d 1097 (2006).

The Constitution of the Round Valley Indian Tribes establishes a judicial branch comprising of the Tribal Court (which serves as the trial court) and the Tribal Court of Appeals. CONST., ARTICLE VI, §1. This same Article VI details the jurisdiction of the Courts over all cases and controversies within the jurisdiction of the Tribe and enumerates the powers of the Courts, which include, in part, the power to interpret, construe, and apply the laws of or applicable to the Tribe. Dissatisfied parties are given the right to appeal a civil action or a criminal action to the Tribal Court of Appeals and the Constitution orders that all matters of law and procedure may be decided by the Court of Appeals. CONST., ARTICLE VI, §12.

Appellants maintain in their brief that the Court of Appeals has jurisdiction over all civil cases appealed thirty calendar days after the entry of the final written order of the Court. In this case, Appellants state that the Tribal Court entered a final order in the lower court cases, and that each of these cases were timely appealed on December 18, 2014, less than thirty days after entry of the Tribal Court order. As such, Appellants argue that this matter is properly before this Court.

Alternatively, Respondents argue that this Court of Appeals lacks jurisdiction to consider these appeals and maintain that applicable law instead provides that the Tribal Court (trial court level) has jurisdiction. In support of its position, Respondents cite to the Constitution, which grants the Tribal Council the “power to adopt an election ordinance covering all necessary procedures for both general and special elections.” CONST., ART. VIII, §17. Respondents maintain that the Council, in exercising this constitutional power, enacted an Election Ordinance

on July 08, 2003, which was later revised on August 21, 2012. Respondents argue that both versions of the election ordinance clearly state that election challenges are heard by the Tribal Court and that the decision by the Tribal Court shall be final.

Furthermore, Respondents point to Article VIII, §15 of the Constitution which allows any Tribal member to challenge election results by filing a suit in Tribal Court within ten days after the Election Board certifies the results. The Tribal Court shall hear and decide election cases within thirty (30) days after the Election Board certifies the results, except that one thirty (30)-day extension may be granted at the discretion of the Tribal Court. This section also allows the Tribal Court to order a new election to be held as soon as possible if the Tribal Court invalidates the results. These provisions are also incorporated into the Tribe's election ordinance.

After reviewing the powers enumerated in the Constitution, in particular Article VI, §12, the Court of Appeals recognizes that the membership in their delegation of powers intended that the Round Valley Indian Tribes Court of Appeals have broad powers, including the judicial power to hear "all matters of law and procedure." These broad powers granted in Article VI must also be read in concert with Article XIII, which provides that members who wish to challenge election results may file suit in Tribal Court, that the Tribal Court shall hear and decide the election cases within thirty (30) days, and, if the Tribal Court invalidates the election results, the Court shall order a new election be held as soon as possible. While these two sections appear to conflict, this Court understands that election disputes are of a unique nature and they are often matters in which a timely resolution is preferable and often necessary.

This Court does not interpret Article XIII to bar the Court of Appeals from having jurisdiction from any election appeal; there may be limited circumstances where an election challenge contains issues that are properly before the Court of Appeals. However, in the case at hand, the Constitution provides that the Council has the right to adopt an election ordinance covering all necessary procedures for both general and special elections.

In 2003, the Council exercised this right to pass an election ordinance to establish procedural guidelines for the general and special elections. In its analysis of the Constitution and election ordinance, the Court is guided by tribal law of other jurisdictions, which although not binding, is persuasive in this matter. See *Peters v. Saginaw Chippewa Indian Tribe of Michigan* (No. 04-CA-1019, Saginaw Chippewa Appellate Court, 2005) (Court held that the Saginaw Chippewa

Tribal Council does have the authority to pass an ordinance to establish procedural guidelines to implement the constitutional right to recall and such procedural guidelines must be upheld unless they impair the substantive right of recall accorded to tribal members in the Constitution, or otherwise violate due process rights.) Under this holding, the Council for the Round Valley Indian Tribes has the authority and power to adopt an election ordinance to guide Tribal elections and to implement its members' right to appeal election results.

By the Tribal membership adopting constitutional provisions that require the trial court to hear and decide election appeals, this Court is persuaded that the intent of this process was to provide a remedy that would be more efficient and would be resolved in an expedited fashion. Both versions of the election ordinances, regardless of whether the 2003 or 2012 version is applied, state that the decision of the Tribal Court (or Election Board) shall be final. This Court finds that the Constitution intended an expedited remedy for election challenges and that the Constitution and the Council designated the Tribal Court, acting as the trial court for the Tribe, with the final decision making role in resolving these election disputes.


This process and remedy of allowing election challenges to be resolved at the Tribal Court level is a much more efficient process and allows challenges to be resolved in an expedited manner that allows the stability of the tribal government to be maintained and the democratic process protected.


#### **Decision and Order**

For all the reasons stated above, the decision of the Tribal Court is affirmed and these appeals are dismissed due to lack of jurisdiction.

#### **IT IS SO ORDERED.**

Date 06-30-15

  
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Jessica R. Bear, Justice  
Round Valley Indian Tribes  
Court of Appeals

  
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Sandra Denton, Justice  
Round Valley Indian Tribes  
Court of Appeals

JUSTICE ABELL concurring in the judgment.

I find that this Court of Appeals has jurisdiction to hear the election challenge under Article VI, §12 of the Tribal Constitution. As the lower decision was within the discretion of the trial court, however, I concur with the judgment.

Jurisdiction is a threshold matter the parties were directed to brief in the April 30, 2015 Order for Expedited Briefing and Consolidation of Cases. The crux of the matter is the seeming contradiction between Article VI, §12 of the Tribal Constitution, which appears to guarantee a general right of appeal in all civil and criminal actions, and §13.01(b) of the 2012 Election Ordinance, specifying that the decision of the Tribal Court or Election Board regarding election disputes is final.

The Constitution contains two provisions at issue. The first is Article VIII, §17 confirming that “[t]he Tribal Council shall have the power to adopt an election ordinance covering all necessary procedures for both general and special elections.” Acting on that grant of authority, the Tribal Council enacted the 2012 Election Ordinance with §13.01(b) of the Election Ordinance stating that “[t]he Tribal Court (or the Election Board) shall hear and decide all disputes concerning elections...[t]he decision of the Tribal Court (or the Election Board) *shall be final*” (emphasis added).<sup>1</sup>

The second provision at issue is Article VI, §12 pertaining to the judiciary:

Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal therefrom to the Tribal Court of Appeals...Findings of fact shall be made by the Tribal Court and shall be reviewable only when arbitrary or capricious.

Article VI, §12 is further supported by Article VI, §3 which addresses the power of judicial review: “The Judiciary shall have the power to:...declare the laws of the Tribe void if such laws are not in agreement with this Constitution.”

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<sup>1</sup> This provision goes substantially further than Art. VIII, §15 of the Constitution which merely specifies that election challenges may be brought before the Tribal Court, but is silent regarding appellate rights.

Respondents contend that this Court lacks jurisdiction to hear the appeal, arguing that the Council exercised “specific, express power” under Article VIII, §17 to establish the 2012 Election Ordinance, including §13.01(b). Respondent’s Answering Brief, at 4. Respondents admit, however, that the process outlined in the Election Ordinance through Article VIII of the Constitution is “at odds with the right of appeal afforded any dissatisfied party to a civil action under Article VI, Section 12 of the Constitution.” *Id.* at 6, FN2. Nevertheless, Respondents argue that the right of appeal is circumscribed by several factors, including whether the Council has authorized and funded a Tribal Court of Appeals and whether the court rules are consistent with Tribal Law. *Id.*

Appellants disagree. Appellants contend that the Court has jurisdiction arising from both the Tribal Court Code and the Constitution. Appellants’ Reply, at 5. Appellants also contend that the appellate rules specify that there is a right to appeal in any civil action, including election disputes. *Id.* at 4.

I am persuaded the Appellants are correct. Our foremost duty is to the Constitution. “The first rule of constitutional interpretation is to look at the plain meaning of the Constitution’s text.” *Solorio v. United States*, 483 U.S. 435, 447 (1987). When Constitutional provisions seemingly conflict, it is incumbent upon the judiciary to give effect to both provisions, within the bounds of the written text. “Where choice may be had between two constructions, that is to be adopted which is most in harmony with the whole instrument.” *Pocket Veto Case*, 279 U.S. 655 (1929).

Herc, neither party provided information on the background or intent of the Article VI, §12. A guaranteed right to appeal in both civil and criminal matters is unusual, but not unheard of. Various tribes and states have similar provisions. The Constitution of the Yavapai-Apache Tribe, for example, contains precisely the same guaranteed right to appeal in both civil and criminal cases as that outlined in Article VI, §12 of the Constitution.<sup>2</sup> Similarly, the Constitution of the Ho-Chunk Nation contains a nearly identical provision.<sup>3</sup>

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<sup>2</sup> “Any party, to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal therefrom to the Yavapai-Apache Tribal Court of Appeals. All matters of law and procedure may be decided by the Court of Appeals. Findings of fact shall be made by the Tribal court and shall be reviewed only when arbitrary or capricious.” CONSTITUTION OF THE YAVAPAI-APACHE NATION, ARTICLE VI, §12(available at [http://thorpe.ou.edu/constitution/Yavapai/YAconst.html#right\\_appeal](http://thorpe.ou.edu/constitution/Yavapai/YAconst.html#right_appeal))(last visited June 27, 2015). Interestingly,

Among the states, constitutionally-guaranteed rights to appeal in criminal matters are relatively common. Washington State became the first to constitutionally guarantee a right to appeal from a criminal conviction in 1889. *See* James A. Lobsenz, A CONSTITUTIONAL RIGHT TO AN APPEAL: GUARDING AGAINST UNACCEPTABLE RISKS OF ERRONEOUS CONVICTION, 8 U. Puget Sound L. Rev. 375, 376 (1985). Since then, at least six other states have amended their constitutions to guarantee a right to appeal in criminal cases, including Utah, Arizona, Michigan, Louisiana, Nebraska, and New Mexico. *Id.*

At the federal level, analysis of appellate rights provides only limited assistance. The guaranteed right to appeal in the Round Valley Indian Tribe Constitution appears to be much broader than appellate rights in the U.S. federal system, primarily because the U.S. Congress is specifically empowered to restrict federal appellate jurisdiction “with such exceptions, and under such regulations as the Congress shall make.” U.S. CONST. ARTICLE III, §2. No such jurisdiction-stripping power appears in the Tribal Constitution.

In sum, the guaranteed right to a civil appeal has precedent in other jurisdictions and it appears that the Tribe’s leadership designed a broad, constitutionally-mandated appellate right.<sup>4</sup> The plain language of Article VI, §12 establishes a right to appeal for “[a]ny party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict.” The Appellants certainly qualify. Moreover, §13.01(b) of the Election Ordinance cannot be given full effect without making the clear language of Article VI, §12 inoperable. This undermines the concept of constitutional supremacy and the canon of statutory interpretation that statutes should be read in accordance with the Constitution. Consequently, I find that this Court has jurisdiction to hear this appeal.

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Article VI of the Tribal Constitution is notably similar in multiple respects to Article VI of the Yavapai-Apache Constitution, including heading titles and verbatim provisions. I have been unable to locate any case law addressing these provisions, but the identical provisions suggest a common background, perhaps originating with the Bureau of Indian Affairs.

<sup>3</sup> “Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal to the Supreme Court. All appeals before the Supreme Court shall be heard by the Full Court.”

CONSTITUTION OF THE HO-CHUNK NATION, ARTICLE VII, §14 (available at [http://www.ho-chunknation.com/media/8649\\_courtreporter.pdf](http://www.ho-chunknation.com/media/8649_courtreporter.pdf)) (last visited June 27, 2015). Notably, the Ho-Chunk Constitution appears to have been adopted in 1994, approximately the same time as the Tribal Constitution.

<sup>4</sup> For a comprehensive review of the issue, including an argument that the U.S. Supreme Court should explicitly recognize a constitutional right to appeal in both civil and criminal cases, *see* Casandra Burke Robertson, *The Right to Appeal*, 91 N.C. L. Rev. 1219 (2013).



Although not controlling, there are strong policy grounds underlying this finding. When governance of the Tribe is at stake, it is important for the legitimacy of the process that there be recourse to an appeal. Unfortunately, the cost of any such appeal is that the case may take longer to resolve, as exemplified in this matter.<sup>5</sup> Nevertheless, that is a comparatively modest price to ensure such an important matter is addressed in a comprehensive legal fashion.

If this Court has jurisdiction, the next question is whether the lower court's decision was "arbitrary or capricious" under Article VI, §12 of the Constitution. The Rules of Court also state that a finding of fact by a Tribal Court judge shall be sustained unless "clearly erroneous." Court of Appeals Rules of Court 13(a)(i). Both standards are difficult to meet. *See e.g. Organized Village of Kake v. U.S. Department of Agriculture*, 746 F.3d 970, 974-75 (9<sup>th</sup> Cir. 2014) ("An agency's action is arbitrary and capricious if the agency fails to consider an important aspect of a problem, if the agency offers an explanation for the decision that is contrary to the evidence, if the agency's decision is so implausible that it could not be ascribed to a difference in view or be the product of agency expertise, or if the agency's decision is contrary to the governing law.").<sup>6</sup>

The lower court made four findings of fact:

- 1) Election Board members Inspector Lincoln and Judge Whipple failed to uphold the Election Ordinance by failing to ensure that four election Board members were present for the November 4, 2014 election;
- 2) Inspector Lincoln and Judge Whipple failed to take special care to avoid an appearance of impropriety;
- 3) Inspector Lincoln and Judge Whipple failed to reject Mr. Laurence Joaquin's nomination forms when filed incomplete and untimely; and
- 4) Election Board members called a 30 minutes break after close of polling, the ballot box was unlocked by a non-election board member, and ballots were counted by non-Board members.

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<sup>5</sup> Delay in this case was due, at least in part, to the need to appoint judges, draft and issue Court Rules, and ensure all parties had the necessary record of trial. Although not briefed, Respondents observed during oral arguments that Appellants did not seek a stay of the lower court's ruling and noted that overturning any decision now would disrupt the running of the Council elected on December 23, 2014. Because the ruling was within the lower court's discretion, it is not necessary for this Court to consider the possible effects of disrupting a Council operating for roughly six months. It is sufficient to note that a stay could have been sought under Court of Appeals Rules of Court 7(a).

<sup>6</sup> Although not controlling, the vast majority of case law addressing an arbitrary or capricious standard is in the context of U.S. federal agency actions reviewed under the Administrative Procedures Act, 5 U.S.C. §706(2)(A)). This is an imperfect source of authority given the unique nature of agency decisions and review, but is helpful in underscoring the difficult burden Appellants face to overturn the lower court decision in this matter.

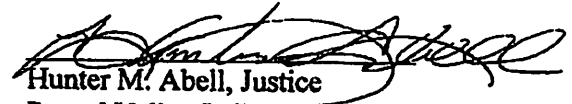
Appellants do not specifically attack any of the above four findings of fact. Consequently, the Court is in a poor situation to assess the strength of the lower court's findings. Instead, Appellants contend that application of the Election Ordinance to the November 4, 2014 election was in error. Specifically, Appellants contend that the Election Ordinance of 2012 was not appropriately certified with a Certificate of Adoption. Appellants' Opening Brief at 2. As a result, Appellants contend that the 2003 Election Ordinance was the controlling law for the November 4, 2014 election. Appellants also contend that the trial court erred by ordering a "special election" as opposed to holding a new general election. *Id.* at 5. Finally, Appellants contend that a special election may only be called by the Tribal Council or the voters under Article VIII, §2 of the Constitution. *Id.* at 2.

Respondents counter by noting that the issue of whether the 2012 Election Ordinance was certified by the Council was not raised in the proceedings below and is therefore not properly before the Court of Appeals for consideration. Respondent's Answering Brief, at 4, FN 1. Respondents also note a "special election" is defined under the Election Ordinance as "all other elections other than General Elections..." *Id.* at 7.

Here, Appellants make no allegation that the Council did not properly enact the 2012 Election Ordinance. At most, Appellants contend that there is a defect in form in that the 2012 Election Ordinance lacks proper certification. Based on the available record, this is an insufficient basis for this Court to set aside the 2012 Election Ordinance. We presume the validity of properly-passed Tribal ordinances, absent evidence in the record to the contrary. Moreover, no persuasive argument has been made regarding how application of the 2003 Election Ordinance would result in a different conclusion in this matter. Regarding the propriety of the lower court calling a "special election," I am satisfied that the 2012 Election Ordinance was properly construed in this instance, particularly given the mandated definition. Finally, Article VIII, §15 clarifies that the judiciary is not precluded from calling a special election when addressing election challenges: "If the Tribal Court invalidates the election results, the Court shall order that a new election be held as soon as possible."

This case is a reminder of the importance of free, honest, and transparent elections that abide by clearly-delineated rules. Promoting clarity in the election process may have the positive

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result of avoiding future cases such as this. For all the reasons specified above, I concur with the majority opinion.

  
Hunter M. Abell, Justice  
Round Valley Indian Tribes  
Court of Appeals