



SUPREME COURT OF THE LUMBEE TRIBE

Anthony Blanks

Petitioner,

Vs

Lumbee Tribal Council

Respondent,

Case No: 2006-0015

Ray Littleturtle

Petitioner,

Vs

Lumbee Tribal Council

Respondent,

Case No: 2006-0016

Argued: October 16, 2006

This matter is before the Court on petitions filed by tribal members Anthony Blanks and Ray Littleturtle. Because these petitions raise the same basic issues, we are considering them together. Both of these petitions are challenging the constitutionality of the proposed amendments.

In addition, Anthony Blanks is raising the issue of procedure as outlined in Article XIII (1) (2) of the Tribal Constitution in that he alleges that the procedure for placing amendments before the Tribal Members was not followed and therefore the election should not be allowed to go forward.

Present at the hearing were petitioners Ray Littleturtle and Anthony Blanks.

Representing the Tribe was Speaker Lawrence Locklear, Tribal Council Members Linda Hammonds and Wendy Moore-Graham. Statements were allowed into evidence from Mr. Sam Kerns and Attorney Arlinda Locklear.

Also present were Ertle Oxendine who is a member of the Tribal Elections Board and Angelina Locklear who is employed with the Election Board in its efforts to prepare for tribal elections. Also present were members of the constitutional petition committee and other tribal members and other interested parties.

This case was heard by Justices Henry W. Oxendine and Patricia Freeman.

Mr. Eddie Locklear, who is chairman of the Constitutional Petition Committee was present and made a presentation. Anthony Blanks argued among other things that the procedure outline in Article XIII (1) (2) was not followed.

The Respondents main argument was that the Court did not have the authority to rule on the constitutionality of these proposed amendments and that it was up to the voters to decide whether or not they want these amendments.

The Court will not consider at this time the constitutionality of the proposed amendments. The Court does however take up the question of the procedural issues and whether or not they were followed.

The framers of the Constitution intended for changes in the document to be done with great deliberation. The procedure is very involved.

Evidence was offered to show that the Tribal Council approved these amendments in June 2006.

The Tribal Election Board certified amendments one, two, and three on September 6, 2006. Amendment four was certified on September 7, 2006.

Article XIII of the Constitution deals with procedures for amendments: three requirements have to take place once the Tribal Elections Board certifies the amendments. (1) The Tribal Elections Board must within 10 working days, post the proposed amendments at appropriate public places and (2) publish the proposed amendments in newspapers of general distribution and (3) the Tribal Elections Board shall conduct a special election on the proposed amendments. These procedures are essential for a valid constitutional amendment election to take place.

When the constitution requires that the proposed amendments be posted at appropriate public places it means that they shall be posted so as to be seen by as many tribal members as is reasonably possible. This would apply to the entire tribal territory. When the Constitution requires that the proposed amendment be published in newspapers of general distribution it means that they should be published so as to reach as many tribal members as is reasonably possible. This would apply to the entire tribal territory.

Ertle Oxendine, Elections Board Member, stated that he was not aware of any such posting of the amendments or publishing them in any newspapers. An employee of the Elections Board stated that she was not aware of any such posting of the amendments or publishing them in any newspapers. There was no evidence presented that the proposed amendments were published.

Evidence was presented that the amendments had been posted around the tribal headquarters on the Union Chapel Road in Pembroke. But this was not done in any broad based way.

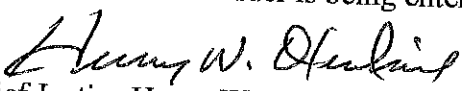
This is inadequate compliance with Article XIII (1) of the Constitution. It must be noted also that some tribal members have already voted on the proposed amendments by absentee ballot. These individuals did not have the benefit of the provisions of Article XIII (1) of the Constitution.

The Constitution also calls for a special election for constitutional amendments. Holding the election for constitutional amendments on the same date as the regular election for Tribal Chairperson and Tribal Council would be a violation of Article XIII (2) of the Constitution.

For these reasons, this Court is of the opinion that a fair and informed election as envisioned by Article XIII of the Constitution cannot take place at this time and the court does hereby issue this injunction prohibiting the constitutional amendment election scheduled for November 14, 2006 from taking place on that date.

This case was heard by Justice Henry W. Oxendine and Justice Patricia Freeman on October 16, 2006. The decision to issue the injunction was entered by the Court on October 17, 2006. Both Justices concurred in the decision to issue this injunction. All interested parties were notified of the Courts decision on October 17, 2006 including the Speaker of the Tribal Council, petitioners Ray Littleturtle and Anthony Blanks and Oceanus Lowry, who is Chairman of the Tribal Elections Board.

This written order is being entered this 1st day of November, 2006


Chief Justice Henry W. Oxendine



LUMBEE TRIBE OF NORTH CAROLINA

SUPREME COURT OF THE LUMBEE TRIBE

Ertle Oxendine, Chairman
Lumbee Tribal Elections Board
PETITIONER

Cases Nos. 2006-15 & 16
ORDER

THIS MATTER came on for hearing and was heard on Wednesday, September 16, 2009 at 6:30 p.m. at the Lumbee Tribal Office Pembroke, North Carolina, as a result of a Petition filed on November 25, 2008 by Ertle Oxendine, Chairman of the Lumbee Tribal Elections Board. Said Petition sought a review of Cases Nos. 2006-15 and 2006-16 wherein this Court issued an injunction October 17, 2006 barring the Lumbee Tribe from proceeding with a tribal wide vote on proposed Constitutional Amendments to the Lumbee Constitution on November 14, 2006. This Court held then that the procedural requirements regarding notice of the pending special election, pursuant to Article XIII (1) of the Lumbee Constitution, had not been met, thus the injunction barring the election.

Chief Justice Henry W. Oxendine set this matter for hearing and all parties were notified accordingly. Justices participating in this hearing were Chief Justice Oxendine, Justices Joel G. Locklear and Gary L. Locklear. Justice David Locklear recused himself from participation as he is presently a candidate for the Lumbee Tribal Council. Justice Darlene Ransom was not present and was excused due to work related conflicts. Tribal member Anthony Blanks, Petitioner in Case No. 2006-15 was present and addressed the Court; tribal member Ray Littleturtle, Petitioner in Case No. 2006-16 was not present during these proceedings.

Ertle Oxendine, Petitioner and Chairman of the Lumbee Tribal Board of Elections, addressed the Court and re-stated his question to the Court as set out in his Petition: a request of this Court to determine whether an election for Constitutional Amendments and/or vacant Tribal Council seats could be conducted at the same time as the regular election presently set for November 17, 2009.

The Court considered this Petition as this issue was not resolved in the October 2006 hearings and because this matter involves a substantial question affecting the Lumbee Tribe.

The Court afforded all who were present at the hearing an opportunity to address their respective positions. Numerous persons, including the following, did address the court: Ertle Oxendine, Anthony Blanks, Furnie Lambert, James Harold Locklear, Eddie Locklear, Larry Townsend, and Tribal Chairman Jimmy Goings.

During the hearing, the Court declared that the sole issue before it was whether a special election for Constitutional Amendments could be conducted concurrently with a

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general election. The Court did not address the issue of special elections for vacant seats.

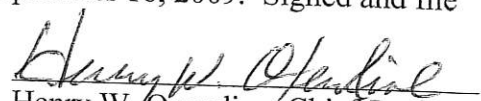
The Court considered the allegations set out in the Petition, the various positions of those who addressed the Court, a letter from the Constitution Petition Committee dated September 2, 2009 and addressed to the Lumbee Tribal Supreme Court, and the Constitution of the Lumbee Tribe, as amended. After due deliberations, including the considerable costs of separate elections, the Court determines the following: Section 2 of Article XIII of the Constitution of the Lumbee People of North Carolina addresses and controls the issue before this Court. It reads in part as follows:

2. Within sixty (60) days after the posting and publication of a proposed amendment, the Tribal Elections Board shall conduct a special election on the proposed amendment. The amendment shall be adopted upon the majority vote of qualified voters voting in the special election. If adopted.....(paragraph continues)

While reasonable minds can and do differ as to opinion and interpretation of many words, in this instance the word "special", and the context in which they are used, common usage and meaning should control unless otherwise specified. Thus, the ordinary and commonly accepted definition of the word "special" as found in multiple locations is as follows: "of a distinct or particular kind or character; pertaining or peculiar to a particular person, thing, instance; having a specific or particular function or purpose; distinguished or different from what is ordinary or usual; extraordinary". Applying any of the above definitions to the word "special" as found in Section 2 Article XIII of the Lumbee Tribe Constitution leads this Court to but one conclusion: the founding fathers of our Lumbee Constitution intended for amendments to this Constitution be voted upon at an election separate and apart from the general election, notwithstanding the additional costs of separate elections.

THUS, IT IS HEREBY ORDERED AND DECREED, and unanimously so by this Court, the Supreme Court of the Lumbee Tribe, that on the sole issue considered at the September 16, 2009 hearing, an election for proposed amendments to the Constitution of the Lumbee Tribe cannot be conducted concurrently (at or on the same time) as a general election.

Heard, deliberated, decided and announced on September 16, 2009. Signed and file on September 23, 2009, for a unanimous Court.


Henry W. Oxendine, Chief Justice
Supreme Court of the Lumbee Tribe

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Present at the hearing were petitioners Ray Littleturtle and Anthony Blanks.

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Also present were Ertle Oxendine who is a member of the Tribal Elections Board and Angelina Locklear who is employed with the Election Board in its efforts to prepare for tribal elections. Also present were members of the constitutional petition committee and other tribal members and other interested parties.

This case was heard by Justices Henry W. Oxendine and Patricia Freeman.

Mr. Eddie Locklear, who is chairman of the Constitutional Petition Committee was present and made a presentation. Anthony Blanks argued among other things that the procedure outline in Article XIII (1) (2) was not followed.

The Respondents main argument was that the Court did not have the authority to rule on the constitutionality of these proposed amendments and that it was up to the voters to decide whether or not they want these amendments.

The Court will not consider at this time the constitutionality of the proposed amendments. The Court does however take up the question of the procedural issues and whether or not they were followed.

The framers of the Constitution intended for changes in the document to be done with great deliberation. The procedure is very involved.

Evidence was offered to show that the Tribal Council approved these amendments in June 2006.

The Tribal Election Board certified amendments one, two, and three on September 6, 2006. Amendment four was certified on September 7, 2006.

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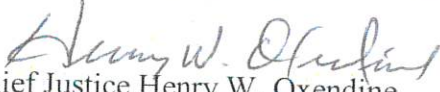
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The Constitution also calls for a special election for constitutional amendments. Holding the election for constitutional amendments on the same date as the regular election for Tribal Chairperson and Tribal Council would be a violation of Article XIII (2) of the Constitution.

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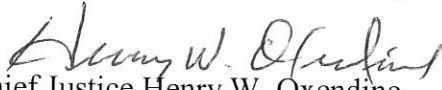
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