



Justice Tona Jacobs
Justice Eric Freeman
Justice Paul Locklear

Case No.: 24-02-01
FINAL DECISION

IN THIS MATTER, a Petition was filed on February 7th 2024, alleging violation(s) of the Constitution of the Lumbee Tribe of North Carolina, specifically that Amended Tribal Ordinance CLLO-2005-0002 violates Article III, Section 1 and Article VII, Section 2 of the Constitution of the Lumbee Tribe of North Carolina. Even more specifically, the Petitioner alleges that Section 2, Subsection 4 of said Amended Tribal Ordinance, which states “A board member shall not be eligible to run for Tribal Office (Tribal Council or Tribal Chairman) for (2) years following the expiration of their term on the Lumbee Tribe Election Board,” violates the minimal requirements to run for Tribal Office as set forth in the Constitution. **WE AGREE.**

BACKGROUND

On March 21, 2019, the Lumbee Tribal Council amended CLLO-2005-0002, commonly referred to as "Election Ordinance." Specifically, the Tribal Council amended the Election Ordinance to prohibit current members on the Lumbee Tribe Election Board from running for Tribal Office for (2) years from the expiration of their term. At hearing, the uncontroverted testimony was that this action was taken by the Tribal Council because a person previously serving on the Lumbee Tribe Election Board resigned from their appointment and immediately filed to run for a seat on the Lumbee Tribal Council. Also uncontroverted was the reason offered by the Lumbee Tribal Council for taking said action; its purpose was intended to prevent future persons serving on the Election Board from exercising a perceived unfair advantage in Tribal Elections in that Election Board members have unequaled access to tribal enrollment records not readily available to the public, such as voter names and addresses. We believe the Tribal Council's action to be well-meaning and a sincere attempt to resolve a real concern with potentially harmful implications. We also believe it to be a concern that should not have been.

Upon further review, it appears Election Board members have unequaled access to tribal enrollment records not readily available to the public, such as voter names and addresses, because of this Court's decision in Purcell Jones vs. Sheila Beck, Harvey Godwin Jr., and Freda Porter Case No.: 2017-003. Both the Petitioner and the Respondent agreed this was the case at hearing. In that 2017 case, this court reviewed whether Petitioner Jones was entitled to receive voting records from polling sights pursuant to CLLO 2010-0318-01 titled "AN ACT TO GOVERN THE LUMBEE TRIBE DISCLOSURE ORDINANCE." Section 3 of CLLO 2010-0318-01 states, "To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Tribe may delete identifying details when it makes available or publishes

any record.” This Court, seemingly without provocation, decided that the information requested by Petitioner Jones, including but not limited to tribal member names and addresses, would “clearly create an unwarranted invasion of personal privacy.” WE NOW DISAGREE.

This Court does not take lightly reversing any part of any previous Court’s decision. Judicial precedent and a constitutional government’s reliance upon it, is fundamentally essential for effective governance. Nevertheless, there are times when a judiciary must act decisively and retroactively, even potentially against its own interest, to prevent further wrongs. We believe the Court’s lone initiative in 2017-003, to unilaterally act as the “tribe” and deem the disclosure of tribal records, including tribal names and addresses, to be a “clear unwarranted invasion of personal privacy,” outside the scope of this Court’s expansive powers of judicial review. This should not be interpreted however as an advisory opinion should this question ever come before the Supreme Court for judicial review.

It must also be acknowledged that this Court previously reviewed the constitutionality of Section 2, Subsection 4 of the Election Ordinance in *Reginald Oxendine v. Richard Jones*. In that case, the Petitioner requested the Court to remove the Respondent from a race for Tribal Council on the basis that the Respondent had violated Section 2, Subsection 4, in that he resigned from the Election Board in order to immediately run for Tribal Council. In that matter, the court decided not to remove the Respondent from the ballot on the belief that the ordinance was amended subsequent to the Respondent’s appointment to the Election Board, and on the basis that we believed the (2) year requirement in Section 2, Subsection 4 to be “arbitrary and capricious.” We now believe Section 2, Subsection 4 to be unconstitutional in its entirety and must now therefore amend that final decision as well for the following reasons.

RULING

But for the Court's decision in 2017-003, Election Board members most likely would not have exclusive access to enrollment records not generally available to other tribal members, nor would the Tribal Council have felt the need to prohibit their perceived ability to gain an unfair advantage in tribal elections. Nevertheless, the Court now rules Section 2, Subsection 4 of Amended Tribal Ordinance CLLO-2005-0002 unconstitutional, in that it 1) violates Article III, Section 1, Article VII, Section 2 and Article VIII, Section 2 of the Lumbee Constitution, and in that it 2) circumvents remedies afforded by Article XI of the Lumbee Constitution and CLLO-2010-0312-01, or more commonly referred to as "Ethics and Conflict of Interest Ordinance."

Article VII, Section 2 and Article VIII, Section 2 clearly set forth the minimum qualifications required for persons to seek tribal office, as members on the Tribal Council and as Tribal Chairperson, respectively. Article VII, Section 2 requires that for a person to run for Tribal Council, they 1) must be over the age of 21, and 2) must have their principal place of residence within the district they seek to stand for election no less than (1) year. Article VIII, Section 2 requires similarly for a person to run for Tribal Chairperson; 1) they must be at least 35 years of age, and 2) they must have their principal place of residence within the Tribal Territory for at least (1) year. Both Article VII and Article VIII authorize the Tribal Council to pass an ordinance disqualifying any persons convicted of a felony from seeking tribal office on the Tribal Council or as Tribal Chairperson, respectively. No other authority is given to the Tribal Council to lessen or add, prohibit or permit, restrict or loosen, disqualify or allow any other persons from seeking Tribal Office on any other basis. Furthermore, Article III Section 1 states, "Those powers not delegated herein are reserved by the general membership of the Tribe." As such, any

tribal act to add to or subtract from the minimum requirements to seek tribal office must come by the general membership of the Lumbee Tribe.

This Court can't help but imagine the potential for legislative abuses should Section 2 Subsection 4 of Amended Ordinance CLLO 2005-0002 remain in effect. In support of CLLO 2005-0002, the Tribal Council argued that its amendment prohibiting Election Board members from seeking tribal office for (2) years from the expiration of their term, to not be an outright restriction but rather merely a temporary delay. We do not agree with this characterization. Suppose the Tribal Council sought to pass an ordinance prohibiting persons from running for Tribal Office who 1) currently hold other non-tribal public offices, 2) who are currently employed full-time by state and/or other local governments, or 3) who are current members of the Tribal Council who seek to run for Tribal Chairman or vice versa. Could not each of these prohibitions be described as "fluid" in nature while also being supported by good faith arguments in support of their enactment? And would not each of these scenarios pose serious challenges to Articles III, VII, and VIII of the Lumbee Constitution?

We also arrive to our conclusion on the basis that other remedies exist to safeguard against persons gaining an unfair advantage in tribal elections. Article XI, Section 2 of the Lumbee Constitution, states, "The first Tribal Council elected under this Constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, which ordinance shall require a tribal official to recuse him or herself from any decision or vote affecting his or her pecuniary interest or a family member." The Tribal Council adopted and amended such an ordinance in CLLO 2010-0312-01 (previously CLLO 2005-008). Section 1, Subsection 1(b), states that a person "Shall not use information that is gained in the execution of his or her office or employment. that is not available to the general

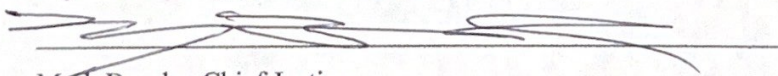
public to further or seek to further the person's private or personal interest." CLLO 2010-0312-01 goes as far to define an "apparent conflict of interest" as when "there is a reasonable perception, which a reasonably well-informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been (or can be) affected by his or her private and/or personal interest." Therefore, any perceived or actual abuses of tribal authority, should be responded to with actual remedies proscribed by well-settled tribal law, and not by constitutional overreach.

THEREFORE, THE FOLLOWING IS THE FINAL RULING OF THIS COURT:

1. The Supreme Court's lone initiative and unilateral decision in Purcell Jones vs. Sheila Beck, Harvey Godwin Jr., and Freda Porter Case No.: 2017-003, to deem voter information, including but not limited to tribal names and addresses, to be a "clear invasion of personal privacy," to be outside the scope of the Court's expansive power of Judicial Review, and;
2. Section 2, Subsection 4 of CLLO 2005-0002, which states, "A board member shall not be eligible to run for Tribal Office (Tribal Council or Tribal Chairman) for (2) years following the expiration of their term on the Lumbee Tribe Election Board," is hereby unconstitutional on the basis that it violates Articles III, VII, and VIII of the Lumbee Constitution. The Tribal Council is hereby ordered to amend CLLO 2005-0002, to comply with this Final Decision of the Supreme Court.

Per the unanimous decision and on behalf of the Court in Conference.

Signed this the 7th Day of June, 2024



Mark Brooks, Chief Justice