



THE SUPREME COURT OF THE LUMBEE TRIBE OF NORTH CAROLINA

*Chief Justice Ronette Sutton
Justice Eric Freeman*

*Justice Tona Jacobs
Justice Emily Deese
Justice Edward Brooks*

Dr. Kenneth L. Bowen,)	
Petitioner,)	
)	
v.)	Case No.: 2025-004
)	
Lumbee Tribe of NC Election Board,)	OPINION AND ORDER
Respondent.)	
)	
)	

Chief Justice Ronette Sutton delivered the opinion of the Court.

IN THIS MATTER, the Petition of Dr. Kenneth L. Bowen against the Lumbee Tribe of NC Election Board is dismissed for lack of a justiciable case or controversy within this Court’s jurisdiction and for failure to state a claim upon which relief can be granted under the Lumbee Constitution and Election Ordinance No. 2005-0002.

I. Background and procedural posture

Petitioner, a Lumbee tribal member and resident of Scotland County, filed a pro se Petition challenging the conduct and outcome of the 2025 District 12 Tribal Council election administered by the Lumbee Tribe Election Board (LTEB). He alleges violations of Ordinance No. 2005-0002, Section 3 (Items 7 and 21), Section 4 (Item 3(a)), and Section 6 (Items 1(c), 5(a), and 5(b)), asserting that unequal access to voter lists, inaccurate absentee and provisional ballot records, alleged electioneering near the polling site, and the use of a tie-breaking coin toss rendered it impossible to determine with “mathematical certainty” the lawful winner.

Petitioner requests sweeping relief, including a full audit of all District 12 ballots and records, post-election “curing” opportunities for provisional voters, invalidation of the tie-breaking coin toss, prohibition of certification, and either certification of corrected totals or a new election.

The Elections Board filed a detailed written Answer denying any violation of the Constitution or Ordinance, explaining its absentee and provisional ballot procedures under the Elections Board Policies and Procedures (EBPP), and asserting that all ballots were handled lawfully, that the final tally was a

mathematically certain tie (66-66), and that the mutually agreed-upon coin toss was an appropriate tie-breaking method in the absence of contrary tribal law. The Board asks this Court to affirm the validity of the election and deny the Petition.

Pursuant to the Judicial Codes, the Court now determines on the written submissions whether the Petition states a justiciable case or controversy.

II. Jurisdiction and governing law

Article IX of the Lumbee Constitution grants this Court “original jurisdiction over all cases and controversies arising under the Lumbee Constitution and all ordinances of the Lumbee Tribe of North Carolina.” Petitions must identify a specific constitutional or ordinance provision allegedly violated and clearly state “how or why” the provision was violated in a manner that presents a concrete dispute suitable for judicial resolution, not a request that the Court conduct an open-ended investigation or supervise political decision-making.

In *Richard C. Jones v. Lumbee Tribal Council*, Case No. 2025-001, the Court emphasized that Article IX confines the judicial role to discrete, justiciable controversies tied to specific provisions and that broader structural concerns about representation and electoral design are generally addressed through the political and electoral mechanisms established by the Constitution. In *Anita Hammonds Blanks v. Lumbee Tribal Council*, Case No. 2025-002, the Court dismissed a petition that aggregated multiple practices into generalized complaints and sought structural reform, holding that a petition must allege “an act, described with particularity,” and that to review “insufficiently identified constitutional violations” would amount to an impermissible advisory opinion and raise political-question concerns.

Most recently, in *Bowen v. Doss*, Case No. 2025-003, the Court applied *Jones* and *Blanks* to dismiss a petition that sought a Court-directed investigation into “suspected” election misconduct by a candidate and attempted to halt certification and coin-toss procedures, concluding that such relief would displace the Elections Board’s fact-finding role and extend beyond the Court’s Article IX authority. These precedents guide our analysis here.

III. Analysis

A. Voter-list claim under Section 3, Item 7

Petitioner first claims that the Board violated Ordinance No. 2005-0002, Section 3, Item 7 by denying his written request for District 12 voter names and contact information, allegedly giving the incumbent an unfair advantage. The Board’s Answer explains that Item 7 pertains to the constitutional Initiative process, not to campaign voter lists, and that EBPP Section 6, implementing the Election Ordinance and the Disclosure Ordinance, expressly provides that “any candidate or tribal member requesting information regarding voting members shall be denied such information.” The Board further states that it does not release such lists to any candidate and that neither Petitioner nor his opponent received them.

Even assuming Petitioner’s interpretation of Item 7 were plausible, his claim presents no justiciable controversy: he does not allege that the Board selectively released voter lists to his opponent during this election cycle, only that the incumbent benefited from information acquired in prior campaigns and service. Under *Jones*, such generalized concerns about incumbency advantages fall within the political realm, not judicial enforcement of a specific ordinance command. Moreover, where tribal law and implementing policy clearly bar release of voter lists to “any candidate,” Petitioner fails to state a violation of a clear legal duty.

B. Absentee, and provisional ballot allegations

Petitioner next alleges that absentee totals (31 versus 32 ballots) and an increase in provisional ballots from 18 to 19 show violations of Section 3, Item 21 (accurate records) and Section 6, Item 1(c) (correction of obvious canvassing errors), and trigger Section 6, Items 5(a) and 5(b) concerning outcome-changing irregularities and “mathematical certainty.”

The Board’s Answer and the appended EBPP provisions address two distinct sets of issues: 1) absentee ballots and 2) provisional ballots.

First, regarding absentee ballots, the Board reports that 32 were mailed; of these, 5 were rejected after signature verification, 9 were never returned, and 18 were accepted and publicly counted, producing 12 votes for Bowen and 6 for Doss. The 18 absentee ballots match the number of accepted envelopes.

Second, the issue regarding **provisional ballots** arises from a discrepancy between the Election Day poll judge’s verbal report and the physical count: although the poll judge referenced 18 provisional ballots, the sealed provisional bag, when opened pursuant to EBPP Section 11, contained 19 envelopes. Enrollment determined that 2 of these provisional ballots were valid (1 for each candidate), resulting in a final certified vote of 66–66. The Board characterizes the “18 vs. 19” issue as a poll-judge miscount or misstatement rather than evidence of a newly created ballot and asserts that chain-of-custody and logging procedures were properly followed.

Under *Blanks*, this Court does not sit as an auditor of every perceived inconsistency in administrative narration. Still, it assesses whether the Petition alleges, with particularity, that a concrete act of the Board, such as counting a non-existent ballot or failing to reconcile a provable mismatch, violates an identified provision. Here, Petitioner does not identify a single specific absentee or provisional envelope that was illegally counted or omitted, nor does he allege that the physical ballot totals (including the 19 provisional envelopes in the sealed bag) cannot be reconciled with the certified 66-66 tie.

As in *Bowen v. Doss*, the Petition relies on the possibility that an error “could” have changed the outcome, rather than alleging an actual, demonstrable miscount or unlawful inclusion or exclusion of ballots. Section 6, Items 5(a) and 5(b) require proof that the outcome “would have been contrary” or that it is “impossible to determine with mathematical certainty” who won; they do not authorize setting aside a tie merely because a candidate believes alternative administrative choices might have helped him. On the record before us, the ballots physically cast and lawfully counted produce a mathematically certain tie.

C. Provisional “curing” and electioneering allegations

Petitioner argues that the Board violated its duties and Section 6 by failing to contact provisional voters after Election Day to allow them to cure address discrepancies, especially an elder resident of tribal housing at the polling site. The EBPP, quoted in the Board’s Answer, sets forth a complete provisional-ballot process in which the Enrollment Office determines eligibility based on existing records; it contains no authority for post-election outreach or curing, and the Board states that no provisional voter for either candidate was contacted or allowed to supplement information. Under our precedents, courts enforce enacted procedures; they do not judicially invent new steps in the name of fairness. Petitioner therefore identifies no legal duty that was breached, only a policy preference better addressed to the legislative or ordinance-amending process.

On alleged electioneering within 50 feet of the polling place in violation of Section 4, Item 3(a), Petitioner asserts that his opponent’s team “repeatedly” conversed with voters indoors while using restrooms. The Board responds that both campaigns were permitted inside solely to use restrooms, that the Chief Judge submitted no Election Day complaints or reports, and that no evidence of active vote solicitation in the restricted zone was presented. Consistent with *Blanks* and *LaClaire*, where a petition

offers generalized allegations without dates, specific incidents, or corroborating complaints, this Court will not transform itself into an investigator of ambient campaign behavior around a polling site. Petitioner has not alleged a particular, documented enforcement decision by the Board that we can review; instead, he asks us to re-weigh on-the-ground judgments of poll officials in retrospect, which exceeds our proper role.

D. Coin toss and “mathematical certainty”

Finally, Petitioner challenges the Board’s use of a coin toss to resolve the 66-66 tie, arguing that randomness contradicts Section 6’s requirement of “mathematical certainty” and that the particular toss was procedurally flawed. The Board explains that the Election Ordinance and EBPP are silent on tie-breaking methods; that it acted under its general authority to govern elections; that coin tosses are widely used in other jurisdictions; and that both candidates voluntarily agreed to this method, with Petitioner inviting his opponent to call the coin, which visibly landed on “tails” without contemporaneous objection.

In *Bowen v. Doss*, this Court held that it is not our function to design or supervise tie-breaking procedures where tribal law is silent, and the Elections Board acts within its delegated authority, particularly when both candidates participate and consent. The “mathematical certainty” language in Section 6, Items 5(a) and 5(b), concerns whether the vote totals can be reconciled and whether a lawful count can identify a winning candidate, not whether a validly declared tie may later be resolved by a neutral random method accepted by the parties. Here, the Petition does not allege that the 66-66 tie is arithmetically incorrect or that the Board counted ballots contrary to ordinance; rather, it objects to the policy choice of a coin toss. Under *Blanks* and *Jones*, such structural or policy disagreements with how political actors exercise delegated discretion raise non-justiciable political questions and do not state a cognizable violation of the Constitution or Ordinance.

E. Overall failure to state a justiciable claim

Taken together, Petitioner’s claims ask this Court to (1) reinterpret ordinance language governing initiatives and disclosure to mandate release of voter lists; (2) re-audit absentee and provisional ballots for potential discrepancies already reconciled by the Board; (3) graft a new “curing” procedure onto the EBPP; (4) retrospectively police alleged electioneering absent contemporaneous complaints; and (5) invalidate the Board’s consensual tie-breaking choice and effectively order new electoral rules. As in *Blanks* and *Bowen v. Doss*, granting this relief would transform the Court into an ongoing supervisor of electoral administration and policymaker for tie-breaking and voter-list access, crossing the line from interpreting law to amending it. Article IX does not authorize that role.

IV. Disposition

For the foregoing reasons, the Court holds:

The Petition fails to allege with sufficient particularity any discrete, unlawful act by the Elections Board, such as counting an ineligible ballot, refusing to count a lawful ballot, or applying a clearly prohibited procedure, which violates Ordinance No. 2005-0002 or the Constitution. It thus does not present a justiciable case or controversy under Article IX.

To the extent the Petition seeks structural changes to voter-list access, provisional-ballot curing, and tie-breaking methods, and asks this Court to conduct a broad audit of election administration, it raises non-justiciable political questions. It seeks relief beyond this Court’s constitutional authority, as explained in *Jones*, *Blanks*, *LaClaire*, and *Bowen v. Doss*.

Because the Petition does not state a claim upon which relief can be granted, it must be dismissed.

Accordingly, the Petition of Dr. Kenneth L. Bowen in *Bowen v. Lumbee Tribe of NC Election Board*, Case No. 2025-004, is hereby DISMISSED without hearing, per the Court's unanimous decision in Conference. This dismissal is without prejudice to any future proceeding challenging a specific, final action of the Elections Board that is alleged, with appropriate particularity, to contravene the Lumbee Constitution or a duly enacted ordinance.

SO ORDERED, this 10th day of March 2026, in Robeson County, North Carolina.

A handwritten signature in cursive script, appearing to read "Ronette Sutton".

Ronette A. Sutton
Chief Justice
Supreme Court of the Lumbee Tribe of North Carolina