

IN THE DISTRICT COURT OF THE DELAWARE NATION

EXECUTIVE COMMITTEE of the)
 Delaware Nation,)
)
 Plaintiff,)
)
 v.)
)
 ELECTION COMMITTEE of the)
 Delaware Nation,)
)
 Defendant.)

Case No. CIV-2021-005

Appeal from Election Committee, Delaware Nation.

Klint A. Cowan, Fellers Snider, Oklahoma City, OK; for Plaintiff.

Peary L. Robertson, Roberston Law Office, PLLC; Seminole, OK; for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff-Delaware Nation Executive Committee appeals Defendant-Delaware Nation Election Committee's December 7, 2021, decision to vacate the results of a referendum election conducted on November 20, 2021. For the reasons set forth herein, this Court grants Plaintiff's motion for summary judgment and vacates Defendant's decision of December 7, 2021. Defendant is directed to certify the results of the November 20, 2021, referendum election.

BACKGROUND

The parties presented the following undisputed facts that are material to the Court's summary judgment determination.

1. On October 28, 2021, a petition for referendum election approving the Delaware

Nation Revenue Allocation Economic Development (“RAED”) Plan was submitted to the President of the Executive Committee and a \$1,000 filing fee was paid to the Election Committee for the referendum election.

2. On November 5, 2021, the President called a special General Council meeting for November 20, 2021, for the purpose of voting on the question of whether to approve the RAED Plan.

3. On November 8, 2021, the Election Committee verified the petition for referendum election, confirmed the special General Council meeting set for November 20, 2021, and mailed referendum election absentee ballots to absentee voters.

4. On November 20, 2021, voters at the special General Council meeting approved the RAED Plan by a vote of 40 yes to 6 no.

5. Also on November 20, 2021, the Election Committee counted absentee ballots received showing a vote to approve the RAED Plan by 132 yes to 13 no.

6. The total absentee and in-person votes (172 yes to 19 no) resulted in the RAED Plan referendum passing.

7. On or about November 29, 2021, the Election Committee received a protest challenging the referendum election

8. On December 7, 2021, the Election Committee notified the Executive Committee by letter of its decision to vacate the results of the RAED Plan referendum election.

9. The Election Committee’s letter of decision provided to reasoning, facts, explanation, or description of the arguments presented by the protest.

10. Plaintiff moved for summary judgment on January 17, 2022.

11. Defendant moved for summary judgment on January 28, 2022.

Plaintiff argues that (1) the referendum election was conducted in accordance with the Delaware Nation Constitution and Bylaws; (2) Defendant's decision to vacate the results of the November 20, 2021, referendum election, was arbitrary and capricious because it was delivered without explanation; and (3) Defendant violated Plaintiff's right to due process because Defendant's decision to vacate was delivered without notice or a hearing.

Defendant asserts the referendum election results were invalid because (1) the Delaware Nation Constitution and Bylaws do not require a referendum election to be conducted within fifteen days of receipt of a referendum petition; (2) the referendum election did not comply with absentee voting requirements; and (3) the Election Committee is not required to hold a hearing on an election protest. Both parties appeared for oral argument on February 7, 2022.

JURISDICTION, SCOPE AND STANDARD OF REVIEW

Jurisdiction is proper under Delaware Nation Election Ordinance, Section 1201.C.2. On administrative appeal from a decision of the Election Committee regarding an election protest, "a decision of the Election Committee shall be upheld by the Tribal Court unless it is arbitrary and capricious, [an] abuse of discretion, not supported by substantial evidence[,] or unauthorized by law."¹

ISSUE PRESENTED

Under the Delaware Nation Constitution, Article X, Section 2, must a referendum election be conducted within fifteen days of receipt of a verified recall petition?

DISCUSSION AND ANALYSIS

¹ Delaware Nation Election Ordinance §1201.C.4.

Delaware Nation Constitution, Article X, Section 2, expressly requires the President of the Executive Committee, after receipt of a verified referendum petition² “to call and conduct within fifteen (15) days, a special meeting of the [G]eneral [C]ouncil for the purpose of presenting to the voters for their determination any issue or question.”³ Additionally, Article X, Section 2, specifies “[t]he decision of the majority of those voting shall be binding on the [E]xecutive [C]ommittee, provided a quorum is present.”⁴

When a Constitutional provision is unambiguous, this Court presumes the ratifying electorate intended the resulting impact of the unambiguous provision and apply the provision according to the plain meaning of its terms. Use of the “plain-meaning rule” is both an appropriate judicial deference to the General Council’s constitutional law-making authority and an analytical hurdle which limits unnecessary judicial encroachment into the authority of the electorate.

Summary judgment is appropriate where there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. A dispute is genuine when there is sufficient evidence on each side so that a rational trier of fact could resolve the dispute in favor of either party. Here, no genuine dispute of material fact is presented. Election ordinances cannot modify the unambiguous requirement under Article X, Section 2, for referendum elections to occur within fifteen days of receipt of a verified petition. The Court declines to address any other arguments presented by the parties, as Plaintiff is entitled to summary judgment on the application of Article X, Section 2, alone.

IT IS HEREBY ORDERED that Plaintiff’s motion for summary judgment is hereby **GRANTED**.

² Article X, Section 2 specifies that a referendum petition must be “signed by at least forty (40) of the tribe’s registered voters.”

³ Id.

⁴ Id. Under Article XV, “Twenty (20) citizens of the [G]eneral [C]ouncil shall constitute a quorum.”

IT IS FURTHER ORDERED that Defendant's December 7, 2021, decision to vacate the results of the November 20, 2021, referendum election is hereby **VACATED**. This matter is remanded to Defendant-Election Committee with instructions to certify the results of the November 20, 2021, referendum election that approved the RAED Plan.

FILED AND ENTERED: May 9, 2022



Shannon L. Prescott
District Judge