**Mashpee Wampanoag Tribe vs. Phillip Earl Cash**

**CRM 19-001**

Synopsis

On December 21st, 2018, a small bag of heroin was discovered by employees on the lobby floor of the Tribal Government & Community Center. Tribal police were called to the center where they reviewed security footage and identified the defendant as the possessor of the scheduled A controlled substance. The footage revealed that the defendant dropped the bag of heroin while picking up his 5-year-old child from school at the center.

The prosecution and defense engaged in plea discussions and agreed that, upon acceptance by the District Court of the defendant’s plea of no contest, he would remain at liberty under the supervision of the Elder’s Judiciary Committee for one year with the deferral of sentencing. The agreement required a number of conditions; for example, the EJC could utilize at its discretion the services of a traditionalist probation officer, and the defendant must comply with substance abuse education and provide copies of pay stubs to the EJC (among other requirements.)

Holding

The Court ordered that the defendant be placed on Supervised Deferred Judgment and Sentence pursuant to the terms within the Stipulation for Supervised Deferred Judgment and Sentence agreed upon by both parties. With there being no objections to the Court’s order by the tribal prosecutor within that one-year period of probation, the case was dismissed on July 23rd, 2020.

**Aaron Tobey Jr. vs. Rita Lopez, Election Committee Director**

**CV-19-002**

Synopsis:

The defendant (Aaron Tobey Jr.) filed a complaint on May 7th, 2019 alleging that the Election Committee’s dismissal of his petition for recall of Chairman Cedric Cromwell and Vice-Chairman Jessie Baird was in violation of the Constitution of the Mashpee Wampanoag Tribe and that the Defendant (Rita Lopez) was acting beyond the scope of her official authority as Election Committee Director in her dismissal of the plaintiff’s petition for recall of the aforementioned tribal officials. The plaintiff’s complaint maintains that the petition was filled out and administered with the adequate number of valid signatures in compliance with Article VIII of the Constitution. Specifically, the defendant argued in his complaint that if a tribal member asserts that his or her constitutional rights are violated, then the Tribal Council should not be able to assert Sovereign Immunity against such constitutional claims because doing so would render those constitutional rights as meaningless and the constitution itself as hollow.

The defense filed a Motion to Dismiss the complaint on the grounds that members of a tribal agency including the defendant are protected by sovereign immunity unless sovereign immunity is clearly waived. Since sovereign immunity was not waived by the defendant, the complaint failed to state a complaint for which relief could be granted pursuant to MWT RCP 13(a)(3). The defense also argued that the plaintiff’s service of the Summons was insufficient and in violation of MWT RCP 15(b) and therefore must be dismissed pursuant to MWT RCP 13 (a)(4). Further, the defense claimed that the case should be dismissed on the grounds that the Tribal Court did not have subject matter or personal jurisdiction over the Election Committee Chairperson or Election Committee pursuant to MWT rule 13(a)(1) and MWT RCP 13(a)(2).

Holding:

On August 22, 2019, the court granted the Defendant’s Motion to Dismiss the complaint. While the Court found that the plaintiff’s service of the Summons was proper and sufficient, the Court found that the recall petitions were in fact insufficient according to the Constitution’s requirements for sufficiency. The Court concurred with the Defendant’s assertion that the Election Committee retains sovereign immunity, however noted that the plaintiff did not initiate suit against the Committee as a whole, but rather alleged that the individual defendant acted outside of the scope of her authority. The court therefore raised the poignant question of whether the defendant herself retains official immunity and held that *the Amended and Restated Mashpee Wampanoag Election Ordinance* should be amended to included clear expectations regarding the *Vacancies and Removal of Tribal Officials* process*.* Despite this unresolved question regarding the particularities of this process, the Court dismissed the complaint on the grounds that the recall petition was insufficient since an Affidavit was not present and since the complaint failed to allege specifically why the tribal officials should be recalled.

**Aaron Tobey Jr. vs. Jessie Baird, Vice-chair**

**CV-19-004**

Synopsis

On May 17th, 2019, the plaintiff filed a complaint against Jessie Baird, Vice-chairwoman of the Tribal Council, claiming that it is a violation of the Constitution (Article VIII, Section 3) for her to maintain office as vice-chair after officially resigning on January 25th, 2019. The plaintiff asked the Court to “enjoin” the defendant from sitting on Tribal Council as vice-chair and maintained in his complaint that the Tribal Council is not protected by sovereign immunity when a tribal member seeks to vindicate constitutional rights, as the Tribal Council is subject to the constraints of the constitution. He stated that if the Tribal Council were able to assert sovereign immunity in every constitutional violation, then the Constitution itself would be resorted to a hollow shell.

The defense filed a motion to dismiss the complaint on the grounds that the plaintiff failed to allege a cognizable injury that would confer standing upon him to bring the complaint and that the Tribe’s sovereign immunity requires dismissal where the Tribe has not consented explicitly to suits like the plaintiff’s complaint.

The plaintiff objected to the defendant’s motion to dismiss on the grounds that he has standing as a registered voter and that since the defendant’s retention of her position after unequivocally resigning violates Article VIII of the Constitution, the plaintiff has standing to seek an injunction for the harm created by this alleged violation of his constitutional equal protection rights, with the Court having subject matter jurisdiction over the complaint.

In reply, the defense argued that the complaint is without merit for it not being about voting rights, but rather a political dispute with the Tribe’s leadership and therefore the Court is not the appropriate forum for resolution.

Holding

The Court pointed out that the plaintiff’s alleged harm was that he, and all registered voters of the Tribe generally, were deprived of electing a new vice-chairperson, but adequate standing pursuant to prudential standing principles requires that any generalized grievance shared in equal measure by a large class of citizens does not warrant an exercise of jurisdiction. The Court, determining that the plaintiff lacks standing on these grounds, granted a dismissal.

**Cedric Cromwell vs. Rita Lopez, Election Committee Chairperson**

**CV-19-013**

Civil Suit

Synopsis

On September 12th, 2019, the plaintiff, Tribal Council Chairperson at the time, filed a complaint against Election Committee Chairperson Rita Lopez alleging that her certification of a recall petition to remove him from his elected position was unconstitutional given that the recall petition lacked an Affidavit. He asked the court to issue and order requiring the defendant to cancel the recall election.

The plaintiff then filed a *Motion for Leave to Withdraw Verified Complaint and Motion for Preliminary Injunction* due to the cancellation of the recall election by the Election Committee, rendering his motion moot.

Holdings

The Court allowed the plaintiff’s *Motion to Withdraw the Complaint,* and it was dismissed without prejudice on October 1st, 2019.

**Aaron Tobey Jr. vs. Election Committee Members- Rita Lopez, Elsie Pocknett, Patricia Keliinui**

**CV-19-014**

Civil Suit

Synopsis

The plaintiff filed a complaint on September 16th, 2019 against three Election Committee Members alleging that the defendants acted outside the scope of their authority by cancelling “the hearing and recall election that was voted and approved by the tribal council to be held on Sunday, September 15th, 2019.” Further, the plaintiff alleges that since the *Constitution of the Mashpee Wampanoag Tribe* only allows for cancellation in specific instances, the Election Committee should have proceeded with the recall process as the interruption was untimely due to the fact that the Committee had already issued its *Certificate of Sufficiency.*

The Defense sought dismissal of the matter on the grounds that the plaintiff lacked standing to sue, that sovereign immunity precluded the matter from proceeding, that the plaintiff failed to state a claim upon which relief may be granted, and that the plaintiff’s claim was barred by *res judicata*.

District Court Holdings

The Court agreed with the defense that the doctrine of *res judicata* was applicable given that the defense had complied with the Court’s previous assertion in *Tobey v. Lopez,* CV-19-002, to amend the Election Ordinance to include clear expectations regarding the *Vacancies and Removal of Tribal Officials* process. Further, the Court found that the Recall Petitions that the plaintiff urged the defense to proceed with were constitutionally invalid given that it lacked an Affidavit. The Court dismissed the case on these grounds. The plaintiff then appealed.

Supreme Court Holdings

The Supreme Court affirmed that the appeal failed under the doctrine of res judicata and also agreed with the trial court that the recall petition promoted by the plaintiff was constitutionally invalid due to the lack of an Affidavit as required by Article VIII, 1.