

5. That the Oglala Sioux Tribal Supreme Court in deciding *Bad Wound v. Cummings* OSTSCT 98-465, turned to *Marbury v. Madison* 5 U.S. (1Cranch) 137, 176, 2L Ed. 60 (1803) "The powers of the legislature are defined and limited, and that those limits may not be mistaken or forgotten, so the Constitution is written."

6. That the Oglala Sioux Tribe has a written Constitution which was approved and amended by the membership of the Oglala Sioux Tribe.

7. That Article VII-Elections, Section 2

"The time, place and manner of nomination and election of councilmen and other elective officers of the council shall be determined by the tribal council by appropriate ordinances"

8. The Oglala Sioux Tribe does have an Election Code adopted by Ordinance 04-06 Section 3. Court Of Appeals

"The Council shall appoint by vote of a majority of representatives present and voting, a Court **"to hear all challenges and/or appeals to the eligibility of candidates and voters, and to the election process."**

CONCLUSIONS OF LAW

1. The Court has both personal and subject matter jurisdiction as all parties are members of the Oglala Sioux Tribe.
2. That the Petitioners have taken their oaths of office and that the Temporary Restraining Order restraining Respondent from interfering in that process is now moot.
3. That the Oglala Sioux Tribes Constitution is rigid and firm and can only be changed by Amendment and not by Ordinance.
4. That the OST Election Ordinance only allows the Court of Election Appeals to "hear challenges, and or appeals to the eligibility of candidates and voters and to the election process". It does not afford them the opportunity to call for a new election in that it is in direct violation of the OST Constitution.
5. The OST Constitution clearly indicates that only the Tribal Council may actually call any election.
6. That the Restraining Order restraining Respondent from calling a new election is now moot as Mr. White Plume does not have the authority as an individual or in any capacity to call a new election.

7. That since both issues raised in the Temporary Restraining Order are now moot, it is in the best interests of justice that this matter be dismissed.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter is DISMISSED.

DATED this 12th day of December, 2006.

BY THE COURT:

ATTEST:

By


(Deputy Clerk)

(SEAL)


STEVEN R. EMERY

ASSOCIATE JUDGE - OGLALA SIOUX TRIBE