IN THE TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SMSC RESERVATION	STATE OF MINNESOTA
Anthony Muellenberg, et al., Petitioners, vs. Keith B. Anderson, et al., Respondents.	Court File No. 988-23

Memorandum Opinion and Order

Under the Community's Tribal Court Ordinance, a case must raise a controversy, a requirement akin to the case-and-controversy requirement under the U.S. Constitution. One element of a "controversy" is that the plaintiffs have standing to raise it. Because at least one of the Petitioners in this case meets the standing requirement, the Respondents' motion to dismiss the complaints in these consolidated cases is denied.

I.

Land management in the Shakopee Mdewakanton Sioux Community is governed by the Consolidated Land Management Ordinance (the "Ordinance"). *See* Ordinance § 1.2. Under the Ordinance, enrolled members "of the Community by order of birth . . . have priority to receive assignments of land for residential uses, except that enrolled members of the Community who are terminally ill, gravely ill or at an

advanced age, may request relinquishment of the member's land assignment" to certain other persons, including adult biological children who are not enrolled in the Community. Ordinance §§ 3.1.1, 4.14, 4.14.1. A member's request to relinquish an assignment to a nonmember biological child must be approved by the Community's General Council.[1] Ordinance § 4.14.1.

On January 10, 2023, the General Council convened for a regular meeting to vote on, among other things, a resolution to approve the relinquishment of a land assignment from Barry Welch to Stephanie Welch (No. 01-10-23-011) and a resolution to approve the relinquishment of a land assignment from Gail Campbell to Lynn Blue (No. 01-10-23-012) (collectively, the "Relinquishment Resolutions"). Amended Complaint, *Muellenberg v. Anderson*, No. 988-23 at 1 & Ex. A and B (Feb. 15, 2023). During a 24-hour vote, 172 General Council members were recorded as present, and the vote counts for the Relinquishment Resolutions were as follows:

- Resolution No. 01-10-23-011:
    - Yes - 86
    - No - 68
    - Abstentions - 17
    - Chair Not Voting - 1
- Resolution No. 01-10-23-012:

[1] The General Council, the Community's governing body, is defined in the Community Constitution as "all persons qualified to vote in [C]ommunity elections." Const. art. III. And "Community members eighteen (18) years of age or over shall qualify as voters" in Community elections. *Id.* at art. IV.

- Yes - 77
- No - 74
- Abstentions - 20
- Chair Not Voting - 1.

Id. at 2 & Ex. C, E, I. According to an affidavit, Petitioner Cherie Crooks was among those who voted against the Relinquishment Resolutions. C. Crooks Aff. ¶ 3 (July 20, 2023).[2]

Following the vote, the Relinquishment Resolutions were deemed approved. Amended Complaint at 2 & Ex. C, E. The Petitioners—Crooks, Anthony Muellenberg, and Crystal Kilcher—initiated this consolidated matter, challenging the validity of the Relinquishment Resolutions. The Petitioners ask the Court to enjoin the land-assignment relinquishments, rescind the Relinquishment Resolutions, and declare the Relinquishment Resolutions as "failed." *Id.* at 2.

At the Court's invitation, the Respondents—Keith Anderson, Rebecca Crooks-Stratton, Cole Miller, Angela Sauro, the Community Election Commissioner, and the Community Business Council—have now moved to dismiss the consolidated complaints, arguing that Petitioners lack standing.

II.

With rare exception, it has been the Court's view that its "function is to hear

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[2] The Court can review matters outside the pleadings in a factual challenge to subject-matter jurisdiction. *See, e.g., Osborn v. United States*, 918 F.3d 724, 729 (8th Cir. 1990) (explaining that a court is not confined to pleadings when the factual basis for subject-matter jurisdiction is challenged).

cases and controversies—that justiciability, and the adversarial process, alone produce the sort of complete record which permits sound decisions." *In re Advisory Request from the Bus. Council—Payment of Revenue Allocation to Thirty One Members*, 1 Shak. T.C. 142, 144 (Feb. 11, 1994); *see also* Tribal Court Ord. § II (stating that the Court has jurisdiction to hear "controversies"). Thus, this Court has followed the lead of its federal counterparts in treating standing as an essential component to its jurisdiction. *See Smith v. Bd. of Dirs. of Little Six, Inc.*, 2 Shak. T.C. 118, 124 (May 1, 1996). In other words, unless a plaintiff possesses standing, this Court cannot exercise jurisdiction. *See* SMSC R. Civ. P. 12(b). And unless Tribal law says otherwise, "this Court applies the federal court's interpretation of the 'case' or 'controversy' requirement found in Article III of the United States Constitution in determining a Plaintiff's standing to sue." *Smith*, 2 Shak. T.C. at 124.

III.

A party's standing rests on three elements: (1) injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The party asserting jurisdiction bears the burden of establishing these three elements. *Id.* at 561. Here, the Respondents argue that the Petitioners fail to satisfy any of these elements. The Court disagrees.

"Injury in fact has been judicially defined as an invasion of a legally-protected interest which is concrete and particularized." *Smith*, 2 Shak. T.C. at 125 (quotations

omitted). It "must be actual or imminent, not conjectural or hypothetical." *Id.* (quotation omitted). To satisfy this first element, the Petitioners direct the Court to *Coleman v. Miller*, 307 U.S. 433 (1939). In that case, certain state senators voted not to ratify an amendment to the U.S. Constitution. *Coleman*, 307 U.S. at 435-36. The voting results would have ordinarily disfavored ratification, but the presiding officer of the senate cast a deciding vote in favor of ratification. *Id.* at 436. The senators (along with some fellow legislators) brought suit challenging the purported ratification of the amendment. *Id.* The U.S. Supreme Court (like the state supreme court) found that the senators had standing to protect the effectiveness of their votes:

> Here, the plaintiffs include twenty senators, whose votes against ratification have been overridden and virtually held for naught although if they are right in their contentions their votes would have been sufficient to defeat ratification. We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes.

Id. at 438.

The Respondents answer *Coleman* by directing this Court to decisions not to hear claims based on generalized injuries shared by the public at large. For instance, the Respondents cite *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464 (1982). In that case, the plaintiffs brought a claim under the Establishment Clause, challenging the conveyance of federal surplus land to a Christian college. *Valley Forge Christian College*, 454 U.S. at 468-69. The plaintiffs alleged that each of its members "would be deprived of the fair and constitutional use of his (her) tax

dollar for constitutional purposes in violation of his (her) rights under the First Amendment of the United States Constitution." *Id.* at 469 (quotation omitted). And the lower court further interpreted their claim as based on "an injury in fact to their shared individual right to a government that shall make no law respecting the establishment of religion." *Id.* at 482. The Court concluded that the plaintiffs lacked standing. *Id.* at 469-70. In reaching its decision, the Court summarized its jurisprudence on citizen standing:

> The Court of Appeals was surely correct in recognizing that the Art. III requirements of standing are not satisfied by the abstract injury in nonobservance of the Constitution asserted by citizens. This Court repeatedly has rejected claims of standing predicated on the right, possessed by every citizen, to require that the Government be administered according to law. Such claims amount to little more than attempts to employ a federal court as a forum in which to air generalized grievances about the conduct of government.

Id. at 482-83 (quotations and citations omitted). As the Court put it, "assertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning." *Id.* at 483.

The Respondents liken the Petitioners to citizens asserting general grievances, in contrast to the senators in *Coleman*. But Crooks is not a citizen asserting a general grievance. Crooks voted on the Relinquishment Resolutions in her capacity as a General Council member. She was exercising constitutional and statutory power delegated to the governing body of the Community. Const. Arts. III, IV; Ordinance § 4.14.1. Thus, Crooks was casting her vote in a capacity akin to that of the senators in *Coleman*. And if

Petitioners ultimately prove their contentions, then the Relinquishment Resolutions should not have passed based on the voting results, including Crooks's vote. Consequently, Crooks's vote was allegedly held for naught by the purported passage of the Relinquishment Resolutions. As in *Coleman*, this Court concludes that Crooks has "a plain, direct and adequate interest in maintaining the effectiveness" of her vote. *See Coleman*, 307 U.S. at 438.[3]

The Respondents further cite *Raines v. Byrd*, 521 U.S. 811 (1997), to suggest that Crooks has suffered no injury. *Raines* involved a constitutional challenge to the Line Item Veto Act by six members of Congress who had voted against it. Their challenge was not based on the "effectiveness" of their votes but rather simply on their view that the law—as validly passed—violated their constitutional rights as members of Congress. The *Raines* Court distinguished *Coleman*, saying the *Raines* plaintiffs "have not alleged that they voted for a specific bill, that there were sufficient votes to pass the bill, and that the bill was nonetheless deemed defeated." *Raines*, 521 U.S. at 824. Rather, the *Raines* plaintiffs just lost the vote. *Id.* at 824, 829-30. As this Court has already ruled, the land relinquishments required a majority vote of all General Council members

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[3] This holding is strictly limited to instances when a General Council member seeks to protect the validity of their vote in their capacity as a member of General Council. The Court expresses no opinion about whether a General Council member could bring a similar claim to protect the validity of their vote in their personal capacity, such as in a general election. Nor does the Court express an opinion about whether a General Council member could bring a claim to challenge the validity of an action based on generalized constitutional grounds.

present, *Muellenberg v. Anderson*, No. 988-23, Slip. Op. at 12 (May 2, 2023), which the Petitioners allege did not occur. Assuming without deciding that this is true and that Crooks voted against the Relinquishment Resolutions, then her vote (like those of the senators in *Coleman*) was not given effect—she did not simply lose the vote. Thus, *Raines* is inapplicable.

Having determined that the Petitioners—or at least one of them, Crooks—have established an injury in fact, the Court will quickly address the second and third elements of standing—a causal connection and redressability. "As to causal connection, the Supreme Court has noted that the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Smith*, 2 Shak. T.C. at 125 (quotation omitted). And redressability requires "that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* (quotations omitted).

The Respondents essentially argue that because the Petitioners did not establish an injury in fact, they cannot establish either of the final two elements of standing. For the reasons already discussed, this premise and the arguments stemming from it fail.

Furthermore, the Court notes that these elements are easily satisfied. The Petitioners claim that the Respondents' actions in declaring the Relinquishment Resolutions as passed resulted in the overriding and ultimate nullification of Crooks's vote—the injury in fact. And a favorable decision in this matter would negate that

outcome by requiring the Respondents to enforce the vote in a manner consistent with the Ordinance. The consequence would be the proper treatment of Crooks's vote. Thus, like the first, the second and third elements of standing are satisfied.

IV.

Next, the Court must determine which of the Petitioners may remain parties to this proceeding. The Respondents argue that even if Crooks has standing, Muellenberg and Kilcher do not, and therefore, they should be dismissed from this suit. But the Court need not address Muellenberg's and Kilcher's standing.

"It is settled" in federal courts "that in a case involving joined, individual plaintiffs bringing a shared claim seeking a single remedy, Article III's case-or-controversy requirement is satisfied if one plaintiff can establish injury and standing." *JD v. Azar*, 925 F.3d 1291, 1323 (D.C. Cir. 2019). "In that event, it is immaterial that other plaintiffs might be unable to demonstrate their own standing." *Id.* This has become known as the one-plaintiff rule. *See id.* at 1324; *California v. EPA*, 72 F.4th 308, 313 (D.C. Cir. 2023) (applying rule to petitioners in administrative-review action).

As previously discussed, this Court, in the absence of contrary tribal law, "applies the federal court's interpretation of the 'case' or 'controversy' requirement found in Article III of the United States Constitution in determining a Plaintiff's standing to sue." *Smith*, 2 Shak. T.C. at 124. As an extension of that precedent, the Court

will follow federal jurisprudence regarding the one-plaintiff rule.

This rule is not mandatory and at least one commentator has noted that it has seen exceptions for cases involving monetary relief or where relief would require a defendant to take different actions for different plaintiffs. Bruhl, Aaron-Andrew P., *One Good Plaintiff Is Not Enough*, 67 Duke L.J. 481, 498 (2017). But neither of these circumstances is present here. The Petitioners do not seek monetary damages. And they seek the same relief—invalidation of the Relinquishment Resolutions—which would apply equally to all of them. Instead, the Court finds that this is the quintessential case for application of the rule: "[T]he cases in which the one-plaintiff rule is invoked are usually cases involving injunctive or declaratory relief, such as cases that seek to enjoin an allegedly illegal government policy or action." *Id.* Therefore, Muellenberg and Kilcher may remain parties to this consolidated matter.

Accordingly, it is hereby ordered that the Respondents' motion to dismiss is denied.

Dated: September 21, 2023

Vanya Hogen

Vanya S. Hogen, Judge