

FILED JUN 29 2018



LYNN K. McDONALD
CLERK OF COURT

IN THE TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SMSC RESERVATION

STATE OF MINNESOTA

In Re the Removal Process of:

Case No. 885-18

Freedom Brewer, Secretary/Treasurer

Memorandum Opinion

In these proceedings we are asked to decide whether the removal of Ms. Freedom Brewer from the office of Secretary/Treasurer of the Shakopee Mdewakanton Sioux Community (the "Community") was legally proper, and whether the suspension of her authority and compensation before the hearing on her removal comported with the Community's law. For the reasons set forth below, we conclude that Ms. Brewer's removal from office was legal and effective, but that because the Community's Removal Ordinance provides the only mechanism by which duly elected Community officials can be deprived of their authority and compensation, Ms. Brewer's suspension from April 30, 2018 through May 7, 2018 was improper and ineffective.

1. Procedural History.

These proceedings began on April 27, 2018, when the Community filed a motion under Community Ordinance No. 2 (“the Removal Ordinance”),¹ seeking a certification by the Court of the then-current list of the Community’s eligible voters. Cmty. Mot. (Apr. 27, 2018). In its motion the Community informed the Court that on April 23, 2018 the Community’s Business Council had received a petition seeking the removal of the Community’s Secretary/Treasurer, Freedom Brewer, and that a Special General Council meeting had been scheduled for May 8, 2018 to hear the charges against Ms. Brewer and to vote on her removal. *Id.*, ¶¶ 3-4.

Section 4 of the Removal Ordinance provides that when removal proceedings have begun the Court shall “convene a summary hearing to certify the current list of eligible voting members” of the Community, at least two days before the date of the meeting at which the General Council will vote on the removal. Given the importance of proceedings involving the removal of an officer of the Community and the need for the Court to speak definitively with respect to any questions arising from such proceedings, on April 27 this matter was certified under Rule 25 of our Rules of Civil Procedure to be heard by a three-judge panel of the Court.

Also on April 27, Ms. Brewer filed a motion requesting various forms of relief. Brewer Mot. (Apr. 27, 2018). She alleged that although she had received a letter from Mr. Charles Vig, the Community’s Chairman, describing the charges against her and

informing her of the May 8, 2018 General Council removal hearing date, she had not been allowed to see the petition that Community members had signed seeking her removal. *Id.*, ¶ 45. She therefore asked the Court to order that the removal petition be provided to her to facilitate the preparation of her response. *Id.*, ¶ 47.

Ms. Brewer's motion also sought prospective relief with respect to a special General Council meeting that had been called for April 30. Her filing included an April 24 notice for the meeting stating that the General Council would consider and vote upon "Censure of Secretary/Treasurer and Suspension of Duties and Pay." Kaardal Aff., Ex. 2 (Apr. 27, 2018). Ms. Brewer contended that under Community law, the Removal Ordinance provides the only mechanism by which the Community can remove an elected officer's authority, and she therefore sought an order either directing that the April 30 General Council meeting be conducted using all the procedures of—and with all the protections afforded by—the Removal Ordinance, or requiring that the April 30 meeting be canceled. Brewer Mot. at 7 (Apr. 27, 2018).

Several considerations – including the timing of Ms. Brewer's motion, which the Court received at 4:30 p.m. on the Friday before the Monday when the meeting at issue was scheduled to begin; the fact that the Community therefore had virtually no

¹ The Community's General Council adopted the Removal Ordinance on July 11, 1972, and amended it twice, by General Council Resolutions 11-29-84-001 and 11-08-88-03. The Removal Ordinance sets forth the procedures the Community must follow when Community members file a petition seeking the removal of a Community officer.

opportunity to respond to the motion; and the likelihood that the Court could provide post-meeting relief if the law and the facts warranted it – prompted the Court to decline prospective relief with respect to the April 30 meeting. *See In Re the Removal Process of Freedom Brewer*, No. 885-18, Scheduling Order at 4-5 (Apr. 30, 2018).

Instead, the Court scheduled a hearing for May 3, 2018 to deal with two issues: its obligation under the Removal Ordinance to certify a list of eligible Community voters, and Ms. Brewer's contention that she had a right to see the removal petition that had been filed against her. *Id.* The Court also established a briefing schedule that would permit both the Community and Ms. Brewer to address, after May 8, any questions with respect to Ms. Brewer's situation that might exist following the April 30 and May 8 General Council meetings. *Id.*

The April 30 meeting of the General Council therefore took place, and at its conclusion the General Council adopted Resolution 04-30-18-001-SCGM. Hardacker Aff., Ex. A (May 2, 2018). That resolution formally censured Ms. Brewer for (a) improperly using a tribal credit card for personal purchases totaling \$32,400.00; (b) delaying repayment of those amounts after demand for repayment had been made; (c) making unauthorized and improper transfers of Community funds, in the amount of \$42,100.00, to her personal and business accounts; and (d) providing false information to the General Council during an April 10, 2018 meeting that had been called to discuss

the credit-card usage and the fund transfers. *Id.*, Ex. A, at 3. Resolution 04-30-18-001-

SCGM contained the following provisions:

BE IT FURTHER RESOLVED, the General Council hereby suspends Secretary/Treasurer Freedom Brewer without pay, effective immediately, pending an appeal of this censure as provided for herein or pending removal pursuant to a petition presented to the Business Council pursuant to Ordinance No. 2 (as amended).

BE IT FURTHER RESOLVED, the Secretary/Treasurer may appeal this censure and suspension without pay to the General Council by providing written notice to the Business Council; such written notice to include the basis of the appeal that should include factual rebuttals to the acts described above that are the basis of the censure and suspension.

BE IT FURTHER RESOLVED, in the event the Secretary/Treasurer provides notice of appeal to the Business Council, the Chairman shall call for a Special General Council meeting to be held within 30 days of receipt of the notice of appeal; and such Special General Council meeting shall be noticed and held as all regular General Council meetings are noticed and held; and the Secretary/Treasurer shall be provided the opportunity to respond to and/or rebut the acts described above that are the basis of the censure and suspension, such response and/or rebuttal limited to the basis for the censure and suspension.

BE IT FURTHER RESOLVED, the vote of the General Council on any appeal of the censure and suspension shall be final.

BE IT FINALLY RESOLVED, the General Council confirms that the Chairman and Vice-Chairman maintain all necessary authority to fully conduct the ongoing business and affairs delegated to the Business Council during the suspension of the Secretary/Treasurer.

During its April 30 meeting, when Resolution 04-30-18-001 was adopted, the General Council did not follow the procedures prescribed by the Removal Ordinance. Specifically, Ms. Brewer was not explicitly given the opportunity to be represented by

counsel, no particular rights to hear and respond to charges were given, and although Resolution 04-30-18-001-SCGM was adopted by a vote of 160 in favor, 4 opposed, with 2 abstentions, with the Chairman not voting, *Hardacker Aff., Ex. A.* at 5, the number of members who voted in favor of the Resolution—and therefore in favor of her suspension—was not “at least 60% of the eligible voters of the Community,” which section 3 of the Removal Ordinance requires to remove a duly elected Business Council member from office.

The Court held a hearing on May 3 to address certifying a voter list for the General Council’s May 8 meeting and to hear Ms. Brewer’s motion for access to the removal petition. *See In Re the Removal Process of Freedom Brewer*, No. 885-18, Scheduling Order (Apr. 30, 2018). At the commencement of the hearing, the Community and Ms. Brewer agreed that the Community voter list that Ms. Brewer had certified on April 18, 2018 was proper. The Court therefore certified that list under section 4 of the Removal Ordinance. *See In Re the Removal Process of Freedom Brewer*, No. 885-18, Order Certifying Voter List (May 3, 2018). Then, following testimony relating to the certification of the removal petition’s signatures and an *in camera* inspection by the Court of the petition itself, the Court ruled from the bench that the Removal Ordinance gave Ms. Brewer the right to see the petition’s specific charges against her, but also that the petition’s signers had legitimate privacy concerns which, coupled with the scrutiny that the Community’s Election Commissioner had given the petition’s signatures, made it unnecessary and

inappropriate for Ms. Brewer to be given copies of the actual signatures on the petition. Therefore, immediately following the hearing, the Community filed with the Court, and gave Ms. Brewer a copy of, the printed text of the removal petition with the petitioners' signatures removed. The Court filed a Memorandum Opinion summarizing and explaining the conclusions it had reached on May 3. *See In Re the Removal Process of Freedom Brewer*, No. 885-18, Memorandum Opinion (May 8, 2018).

On May 8, 2019, the General Council convened a meeting to consider and vote on the removal petition against Ms. Brewer. The April 24, 2018 "Written Notice of Charges and Notice of Special Meeting," signed by Chairman Charles Vig and served on Ms. Brewer in accordance with Section 2 of the Removal Ordinance, specified that

[t]he procedures included in the 24 Hour Voting Procedure Ordinance (enacted by General Council Resolution No. 07-27-90-003) will be utilized to vote on your removal. The voting period will begin on May 8th at the conclusion of your response to the charges.

Pursuant to Ordinance No. 2 (as amended), you are afforded an "unrestricted right to respond to those charges by presenting any defenses through statements, testimony, or documents." A copy of Ordinance No. 2 (as amended) is enclosed. Since the 24 hour voting procedure will be utilized, you should summarize your response to the charges described herein in writing so that a copy is available to any person casting a vote during the 24 voting [sic] time frame.

Kaardal Aff., Ex. 1 (Apr. 27, 2018).

At the beginning of the May 8 meeting, the General Council adopted two resolutions: Resolution 05-08-18-001-SGCM, "Interpretation and Utilization of 24 Hour Voting Procedure Ordinance," and Resolution 05-08-18-002-SCGM, "Rules of Procedure

for Removal Meeting,” drafts of which had been mailed to all Community members more than 48 hours before the meeting commenced. Vig Aff., Exs. D & E (May 25, 2018). Under the procedures adopted by the General Council, the persons seeking Ms. Brewer’s removal were given 90 minutes to present documents and testimony in support of their position. They presented testimony from the Community’s controller, Joseph Dean, with supporting documents, detailing Ms. Brewer’s use of her official credit card for personal purposes, her failure to promptly repay the inappropriately incurred charges, and her transfer of funds to her personal and business bank accounts from a Community account designated for payment of health insurance claims of Community members and employees. *Id.*, Ex. F, Meeting Tr. 17-55.

During the meeting, Ms. Brewer was represented by counsel, who argued that Ms. Brewer’s actions did not constitute the sort of actions that the Removal Ordinance contemplates as grounds for removal, and who presented a written argument on her behalf. *Id.*, Ex. F, Meeting Tr. 71-81.

The presentations at the May 8 proceedings were transcribed by a court reporter, and at their conclusion a transcript of the proceedings, together with copies of the documents that were discussed during the presentations, was made available to any Community member who voted during the subsequent 24-hour voting period. Sauro Aff., ¶ 5 (May 14, 2018). The Community’s Election Commissioner was explicitly

directed to ensure that all members who voted were aware that those materials were available for review. *Id.*, ¶ 6.

The voting period ran from May 8 at the conclusion of the presentations until 9:00 p.m., and on May 9 from 8:00 a.m. to 1:35 p.m., which was 24 hours after the meeting had convened. Vig Aff., Ex. F., Meeting Tr. 87-88. The members favoring and opposing Ms. Brewer's removal had designated poll watchers at the place of voting. *Id.*, Ex. F., Meeting Tr. 86-87.

Because the Community had 312 eligible voters on May 8 and May 9, 188 members constituted 60% of the Community's membership. On May 8, during the time that presentations were being made, 171 members were present. Brewer Aff., ¶ 2 (May 15, 2018). At the conclusion of the 24-hour voting period, 223 members had voted by secret ballot, with 214 voting in favor of Ms. Brewer's removal and 9 voting against. Sauro Aff., ¶ 2 & Certification. Ms. Brewer's office therefore was declared to be vacant, and on May 22 the General Council met and elected a new Secretary/Treasurer.

Meanwhile, in accordance with our April 30 scheduling order, Ms. Brewer and the Community submitted briefing on the validity of the removal proceedings, one of the two questions we decide today.

2. The Court's Jurisdiction.

The Ordinance that created this Court gives it "original and exclusive jurisdiction to hear and decide all controversies arising out of the [Community's] Constitution, its

By-laws, Ordinances, Resolutions, or other actions of the General Council, Business Council or its Officers . . ." Gen. Council Res. No. 02-13-88-01 (Feb. 13, 1988). And Section 6 of the Removal Ordinance provides that "[t]he Judicial Court of the Shakopee Mdewakanton Sioux Community shall have authority to review and adjudicate all controversies arising out of Ordinance No. 2 as amended." We therefore conclude that we have both the jurisdiction and the responsibility to resolve questions arise in the context of proceedings to remove an elected Community official.

3. Ms. Brewer's contentions with respect to her removal from office.

a. The requirements of the Removal Ordinance.

Ms. Brewer asks us to invalidate the May 8 – 9 vote to remove her and to restore her to the office of Secretary/Treasurer, arguing that the voting procedures that were employed were inconsistent with the requirements of the Removal Ordinance. Brewer Mot. at 7 (May 15, 2018). At the center of Ms. Brewer's argument is the uncontested fact that during the period on May 8 when the presentations and arguments were made by the persons favoring her removal and the persons opposing it, fewer than 60% of the Community's eligible voting members were present in the room. *Id.* at 5-6. Ms. Brewer's contention – that 60% of the voters were required to actually hear the presentations in order for any vote to be valid – rests on the meaning of Section 3 of the Removal Ordinance. That section provides

Notwithstanding any other provision of law, at the [removal] hearing, the charges shall be read to the accused, who shall have the unrestricted right

to respond to those charges by presenting any defenses through statements, testimony, or documents. After the defense has concluded the General Council shall cast secret written ballots on the petition to remove. An affirmative vote of at least 60% of the eligible voters of the Community shall be required to remove an officer.

Because the Community used its 24 Hour Voting Procedure Ordinance (Resolution No. 07-27-90-003) during the removal hearing, there were 17 fewer members in the room (171) during the time that presentations were made by Ms. Brewer and her accusers than 60% of the eligible voters (188). In Ms. Brewer's view, since 60% of the Community's voting members did not actually hear her defenses, Section 3 of the Removal Ordinance mandated that no vote on her removal could properly be held, and the Court therefore must hold that she remains the Community's Secretary/Treasurer. Brewer Mot. at 4-5 (May 15, 2018).

But as the Community notes in response, nowhere in the Removal Ordinance is there an explicit requirement that the persons who vote on an officer's removal must actually be present to hear the officer's defenses.² Cmty. Opp'n at 12 (May 25, 2018).

² Ms. Brewer cites us to a document dated November 9, 1984, prepared by the Field Solicitor of the United States Department of the Interior on November 9, 1984, that discussed the provisions of an earlier version of the Removal Ordinance. *See* Kaardal Third Aff., Ex. 1 (May 15, 2018). It said ". . . if there are 61 eligible voters, it is sufficient if 31 attend the meeting and *all* vote for removal of the officer." *Id.* Ms. Brewer believes that the implication from that language is that all voting members must attend the removal meeting. But as the Community correctly notes, the Field Solicitor also specifically said "[t]here is no attendance requirement whatsoever, but an affirmative vote of a majority of the eligible voters of the community is necessary in order to remove an officer," *id.* (emphasis added), and although the Field Solicitor's interpretation has no binding

Section 3 of the Removal Ordinance simply states that the General Council “shall cast secret ballots on the petition to remove,” without any reference to whether members casting ballots have attended the hearing. The requirement is a vote of at least 60% of “eligible voters” —not of “eligible *attending* voters.” Matters would be different if the Removal Ordinance placed a specific temporal requirement on voting—for example, an explicit requirement that voting must occur while the removal hearing was still convened. But the Ordinance contains no such limitation, whether related to attendance or to the time of voting, and we will not imply such requirements where none expressly exist. *See Welch v. SMS(D)C*, 2 Shak. T.C. 1 (Dec. 23, 1994) (“The Court will not imply terms which are not expressed in a document where that document is clear.”).

The most recent amendment to the Removal Ordinance supports the lack of attendance requirement under Section 3. When the General Council adopted Resolution No. 11-08-88-03, it both replaced an earlier Section 3 with the current Sections 3 through 6, and it clarified the requirements for further amendments to the Removal Ordinance:

Amendments which are also approved in writing by the Chairman and a majority of sitting Judges of the Shakopee Mdewakanton Sioux Tribal Court will be effective if approved by a simple majority of the members of the General Council *attending a Regular or Special General Council meeting*.

Res. No. 11-08-88-03 (Nov. 21, 1988) at 2 (emphasis added).

effect on either the Community or this Court, that interpretation is, in fact, how we read the Removal Ordinance.

By adopting the emphasized language, the General Council demonstrated that it knew how to impose an attendance requirement for a vote under the Removal Ordinance when and if it considered the requirement necessary. Thus, the omission of a similar requirement in the amended Section 3 cannot be interpreted as mandating attendance. *See, e.g., United States v. Baca-Valenzuela*, 118 F.3d 1223, 1229 (8th Cir. 1997) (Congress's failure to include a particular requirement or limitation in a statutory text was purposeful when that limitation is included elsewhere in the same act).

b. Due Process requirements.

Ms. Brewer also argues that when she was elected to be the Community's Secretary/Treasurer in 2016 she became vested with both liberty and property interests that are protected by due process: "Removal means Freedom Brewer lost her job and income – a property and liberty interest," Brewer Mot. at 4 (May 15, 2018), which interests she contends are protected by the due-process provisions of the Community's Constitution, the Indian Civil Rights Act, 25 U.S.C. §1302(a)(8), and the decisions of this Court.

In addressing claims relating to the due process of law, a party must "articulate a cognizable property or liberty interest" in order to "state a due process violation." *In re: Prescott Appeal*, 3 Shak. T.C. 19 (Feb. 20, 1997). "Only then does this Court inquire whether the procedures attendant upon that deprivation were constitutionally

sufficient." *Crooks v. Shakopee Mdewakanton Sioux (Dakota) Community*, 1 Shak. Ct. App. 140, 141 (Nov. 4, 1998).

The Community's response to Ms. Brewer does not directly address the question of whether an elected official of the Community has liberty or property interests in his or her office, but argues that other courts have concluded that due process is provided in a tribal official's removal proceeding if the official has received "fair treatment under law; a right to notice and some opportunity to be heard," Cmty. Opp'n at 15 (quoting *Kinslow v. Bus. Comm. Of Citizens Band of Potawatomi Indian Tribe of Okla*, 1 Okla. Trib. 174, 1988 WL 521357, at 6 (Cit. B. Potawatomi 1988)).

This Court has not squarely addressed whether a person elected to the Community's Business Council has a liberty or property interest in that position, but federal courts generally agree that elected officials do not have cognizable property interests in maintaining their positions. For example, in *Taylor & Marshall v. Beckham*, the governor of Kentucky claimed to have been deprived of property—namely, his political position—without due process of law, since, he averred, the recount election ousting him from office was marred by voter fraud. 178 U.S. 548,577 (1900). The Supreme Court rejected the governor's claim, noting "[t]he decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such [G]enerally speaking, the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right." *Id.*

Ms. Brewer argues that her removal “is a termination of [her] property *and* liberty interest,” Brewer Mot. at 4 (May 15, 2018) (emphasis added), but she does not explain how removal from office implicates or affects her liberty. Federal law illuminates two ways in which an officer’s liberty interests could be implicated by a removal proceeding, only one of which has any applicability here. Courts have held that the right to *run* for public office is a protected liberty interest under the Due Process Clause of the Fourteenth Amendment, *see Becton v. Thomas*, 48 F. Supp. 2d 747 (W.D. Tenn. 1999) (holding that the “right to run for public office is constitutionally protected as a liberty interest under the Fourteenth Amendment’s Due Process Clause”). But Ms. Brewer is alleging a liberty interest in *holding* her public office, not in *seeking* a public office, a distinction of critical importance. *See Reid v. West*, No. 2:14-CV-334, 2015 WL 268980, at *7 (E.D. Tenn. Jan. 21, 2015) (explaining that “[w]hile the right to hold a particular political office is not a constitutionally protected property or liberty interest, the right to fairly run for political office” implicates interests under the First and Fourteenth Amendments). Neither the Removal Ordinance, nor the Community’s Election Ordinance, nor any other Community law restricts a removed officer from seeking public office again after removal, so Ms. Brewer’s removal does not implicate her liberty interests by limiting her right to seek public office.

However, this Court’s precedents recognize that an individual can assert a liberty interest in her good name or reputation by satisfying the “stigma plus” standard

outlined in *Paul v. Davis*, 424 U.S. 693 (1976). Specifically, we have held that a plaintiff properly demonstrated a liberty interest in his good name or reputation by alleging a stigma to his reputation *plus* deprivation of some additional right or interest. *In re: Prescott Appeal*, 3 Shak. T.C. at 26-27.

Here, there is little doubt that Brewer's removal impugns her reputation and integrity. The removal petition alleged that Brewer engaged in gross misconduct by "misus[ing] tribal funds by willfully transferring SMSC account monies for personal use." Kaardal Aff., Ex. 1 (Apr. 27, 2018). "This is not a small or insignificant statement and, beyond doubt, stigmatizes [Brewer]." *In re: Prescott Appeal*, 3 Shak. T.C. at 28. Additionally, her removal likely creates "a sufficient alteration of a right or status" to meet the "stigma plus" standard. *Id.* What Ms. Brewer was entitled to, therefore, was "the opportunity to be heard at a meaningful time and in a meaningful manner." *In re: Prescott Appeal*, 3 Shak. T.C. at 32-33 (quoting *Goldberg v. Kelly*, 397 U.S. 254, 263-71 (1970); *Mathews v. Eldridge*, 424 U.S. 319, 313, 334-35 (1975)).

But given the terms of the Removal Ordinance, and the steps that the Community took in implementing the Removal Ordinance, we find that Ms. Brewer had the opportunity to be heard that due process mandated. Under the Removal Ordinance she received notice of the alleged charges and notice of the special meeting at which the removal vote would be held. Cmty. Ord. No. 2, § 2(a). The notice was given at least 10 days before the removal meeting was held, giving her sufficient time to

prepare a defense. *Id.*, § 2(d). And under this Court's order, she was permitted to see the specific statements that were contained in the petition for her removal. *In Re the Removal Process of Freedom Brewer*, No. 885-18, Memorandum Opinion (May 8, 2018). At the removal meeting she had the opportunity to be represented by legal counsel, and she availed herself of that opportunity. Vig Aff., Ex. F, Meeting Tr. 71-81. She had "the unrestricted right to respond to [the] charges by presenting any defenses through statements, testimony, or documents" that Section 3 of the Removal Ordinance requires. Each General Council member who voted and had not been present during the hearing was given complete access to the Notice of Charges, the exhibits that were presented on behalf of the Petitioners, the written materials that were submitted on behalf of Ms. Brewer, and the transcript of the special meeting. Sauro Aff., ¶ 5; and the Community's Election Commissioner informed all voting members that those materials were available for their review. *Id.*, ¶ 6.

Taken together, these measures extinguished the possibility that a General Council member would vote on the removal without having had an opportunity to hear Brewer's defense, and therefore provided Ms. Brewer with the due process to which her situation entitled her.

Hence we hold that Ms. Brewer's removal from office was legally proper.

4. Suspension before removal.

In considering whether Resolution 04-30-18-001-SCGM, censuring and suspending Ms. Brewer, was consistent with the Community's law, we take judicial notice of a particular earlier time in the Community's history. During several years in the mid-1980's, there were a number of disputed Business Council removals, followed by disputed elections, and resultant litigation, with the effect that, within and without the Community, enormous uncertainty existed as to who it was that could lawfully exercise the Business Council's functions. *See, e.g., Totenhagen v. Minneapolis Area Director*, 15 IBIA 105, *recon. denied*, 15 IBIA 121, 15 IBIA 123 (1987); *rev'd and remanded, Prescott v. Hodel*, Civil No. 4-87-106 (D. Minn. July 10, 1987); *appeal dismissed*, 16 IBIA 9 (1987).

At the end of that period, the General Council adopted the Removal Ordinance as it now reads, and the protections and procedures that the ordinance created were clearly intended by the General Council to assure that there would not be uncertainty with respect to the identity of, and the authority of, Business Council members. To maximize that assurance, when the General Council passed Resolution 11-08-88-03 adopting the Removal Ordinance in its present form, it mandated that any changes to the ordinance's protections would not be effective unless they had been adopted by one of two specifically described procedures:

Except as hereinafter provided ordinance Number 2 as amended by Ordinances 11-29-84-001 and 11-08-88-03, may only be rescinded or

amended by an absolute two-third [sic] majority of all enrolled and eligible voting members of the Shakopee Mdewakanton Sioux Community. Amendments which are also approved in writing by the Chairman and a majority of the sitting Judges of the Shakopee Mdewakanton Sioux Tribal Court will be effective if approved by a simple majority of the members of the General Council attending a Regular or Special General Council meeting.


The intended effect of Resolution 04-30-18-001, in addition to censuring Ms. Brewer for her conduct, was to completely strip her of the powers of the Community's Secretary/Treasurer, i.e. effectively to remove her from the office to which she had been elected during whatever the undefined period of suspension would be. But the procedures required for removal were not followed when Resolution 04-30-18-001-SCGM was adopted, and the vote in favor of the resolution was not sufficient to amend the Removal Ordinance. Gen. Council Res. No. 11-08-88-03, at 2 (Nov. 8, 1988) (providing that amendment to or rescission of the Removal Ordinance can only occur through: (1) at least a two-thirds vote of all eligible voting members of the General Council, or (2) a simple majority of eligible voting members of the General Council *and* approval of a majority of the sitting Judges of the Shakopee Mdewakanton Sioux Tribal Court). Hence, if Resolution 04-30-18-001-SCGM were to be deemed effective, it would eliminate the vital protections the Community adopted when, with the Removal Ordinance, it sought an end to its period of uncertain government.


We conclude, therefore, that the portion of Resolution 04-30-18-001-SCGM that speaks to Ms. Brewer's suspension is not consistent with the Community's law, and therefore was ineffective.³

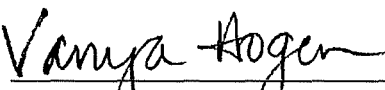
None of this changes the fact that Ms. Brewer was removed from office on May 9, 2018. Her removal was consistent with the Removal Ordinance and with all applicable law. But because her April 30 suspension was inconsistent with the Removal Ordinance, she is owed and should be paid her Secretary/Treasurer's salary for the period from April 30, 2018 through May 8, 2018.

So ordered.

Dated: June 29, 2018


Chief Judge John E. Jacobson


Judge Henry M. Buffalo, Jr.


Judge Vanya S. Hogen

³ The portion of the resolution that censures Ms. Brewer does not contravene any aspect of the Removal Ordinance and therefore is legally unobjectionable.