



## INTERIOR BOARD OF INDIAN APPEALS

Madelyn Genskow v. Midwest Regional Director, Bureau of Indian Affairs

62 IBIA 155 (02/11/2016)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

MADELYN GENSKOW,	)	Order Dismissing Appeal in Part and
Appellant,	)	Affirming Decision in Part
	)	
v.	)	
	)	Docket No. IBIA 15-097
MIDWEST REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	February 11, 2016

Madelyn Genskow (Appellant) appealed to the Board of Indian Appeals (Board) from a June 12, 2015, decision (Decision) of the Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director denied Appellant’s challenge to the Secretarial election<sup>1</sup> (Election) held on May 2, 2015, for the Oneida Tribe of Indians of Wisconsin (Tribe), in which five proposed amendments to the Tribe’s Constitution and Bylaws (Constitution) were adopted. In chief, Appellant claims that the Tribe provided misleading information to other tribal members regarding the Election; an absentee ballot was mailed to the wrong address; one of the amendments should be rejected because it does not provide for absentee voting in future constitutional amendment elections; and an insufficient number of votes were cast for the Election to be valid.

We dismiss the appeal in part, for lack of standing, and affirm the Decision in remaining part. Appellant lacks standing to challenge the substance of a constitutional amendment. And, to the extent that Appellant challenges the fairness and integrity of the Election itself, she has not provided substantiating evidence to support her claims. Nor has

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<sup>1</sup> A Secretarial election is a Federal election held within a tribe pursuant to regulations prescribed by the Secretary of the Interior (Secretary), as authorized by Federal statute. 25 U.S.C. § 476; 25 C.F.R. § 81.1(s). Secretarial elections are distinguished from tribal elections, which are conducted pursuant to tribal authorities and without Federal oversight. See *Visintin v. Midwest Regional Director*, 60 IBIA 337, 337 (2015). Regulations governing the conduct of Secretarial elections are currently found in 25 C.F.R. Part 81. Revised Part 81 regulations became effective on November 18, 2015. 80 Fed. Reg. 63094, 63094 (Oct. 19, 2015). In our decision, we cite to the Part 81 regulations that were in effect at the time of the Election and the filing of Appellant’s challenge.

Appellant shown any error in the Regional Director's determination that voter turnout was sufficient.

### Background

Under the Tribe's Constitution, the General Tribal Council, which is composed of all of the qualified voters of the Tribe, is "[t]he governing body" of the Tribe, and the Oneida Business Committee, which is elected at large by the qualified voters, "shall perform such duties as may be authorized by the General Tribal Council." Oneida Const. art. III, §§ 1 & 3 (Administrative Record (AR) 44).

On January 19, 2011, the Business Committee, on behalf of the General Tribal Council, requested that a Secretarial election be called on five proposed constitutional amendments. Request for Secretarial Election, Jan. 19, 2011, at 00175<sup>2</sup> (AR 35); BC Resolution No. 11-10-10-F (AR 36). In summary, the amendments lower the minimum voting age from 21 to 18 years of age (Proposed Amendment A); change the Tribe's official name to "Oneida Nation" (Proposed Amendment B); remove provisions in the Constitution necessitating approvals by the Secretary, including approval of future constitutional amendments, and require tribal members to present themselves at the polls in order to vote in future constitutional amendment elections (Proposed Amendment C); establish a judicial branch within the Constitution (Proposed Amendment D); and allow flexibility in the scheduling of General Tribal Council meetings (Proposed Amendment E).

Based on an authorization by the Assistant Secretary – Indian Affairs for BIA to process the request for a Secretarial election, *see* 25 C.F.R. § 81.5(e), and after a technical and legal review of the proposed amendments, on September 11, 2014, the Regional Director authorized BIA's Great Lakes Agency Superintendent (Superintendent) to call and conduct the Election on the amendments. Memorandum from Assistant Secretary to Regional Director, June 2, 2011 (AR 31); Letter from Regional Director to Superintendent, Sept. 11, 2014 (AR 17); *see also* AR 10, 12, and 13 (extensions of Regional Director's authorization). Pursuant to 25 C.F.R. § 81.8 (Election board), the Superintendent, as Chairman of the Secretarial Election Board, appointed a BIA administrative officer to act as her representative, and the Tribe appointed tribal members to serve on the Secretarial Election Board. *See* AR 15 (appointment of Superintendent's representative); Tribe's Answer Brief (Br.), Oct. 30, 2015, at 3.

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<sup>2</sup> The record was consecutively paginated by BIA. We cite to BIA's page labels instead of a document's original page numbers.

On March 6, 2015, the Secretarial Election Board mailed to all eligible voters 18 years of age and older<sup>3</sup> an official Election packet containing a registration form; an absentee ballot request form; an addressed return envelope with pre-paid postage; a brochure explaining the date and time of the Election, the location of polling places, and the rules governing the Election; and a sample ballot setting forth the text of each proposed amendment. AR 38 (packet); Regional Director's Answer Br., Nov. 3, 2015, at 5. Appellant registered to vote in the Election as an absentee voter. Final List of Registered Voters, Apr. 8, 2015, at 00221 (AR 40).

The Secretarial Election Board conducted the Election on May 2, 2015, and the results were posted the same day. Letter from Regional Director to Tribe, June 19, 2015, at 00004 (AR 2). Of the 1,694 tribal members who had registered to vote, 874 voters, or 51.6%, cast ballots. Final List of Registered Voters at 00233; Memorandum from Superintendent to Regional Director, May 12, 2015, at 00036 (AR 7). A majority voted to adopt each of the five proposed amendments.<sup>4</sup> The Secretarial Election Board certified the results of the Election, including that at least 30% of the 1,694 tribal members "entitled" to vote cast ballots. Notice of Official Results of Secretarial Election at 00063-67.

On May 5, 2015, Appellant filed an election challenge with the Secretary under 25 C.F.R. § 81.22 (Contesting of election results).<sup>5</sup> Letter from Appellant to Cameron,

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<sup>3</sup> Because Secretarial elections are Federal elections, anyone who is 18 years of age or older and otherwise qualified is eligible to vote, even if the tribal governing document requires voters to be 21 to be eligible to vote in tribal elections. *See, e.g., Chosa v. Midwest Regional Director*, 46 IBIA 316, 321 (2008) ("Except where Federal law provides a role for tribal law as part of the Secretarial election procedures, Secretarial elections are conducted in accordance with Federal law.").

<sup>4</sup> Votes were cast on each amendment, and no amendment was voted on by all 874 voters. The votes were: Proposed Amendment A, 868 votes, 506 for, 361 against, 1 spoiled or mutilated ballot; Proposed Amendment B, 872 votes, 629 for, 242 against, 1 spoiled or mutilated ballot; Proposed Amendment C, 860 votes, 583 for, 276 against, 1 spoiled or mutilated ballot; Proposed Amendment D, 832 votes, 610 for, 221 against, 1 spoiled or mutilated ballot; and Proposed Amendment E, 869 votes, 711 for, 157 against, 1 spoiled or mutilated ballot. Notice of Official Results of Secretarial Election, May 2, 2015, at 00063-67 (AR 9).

<sup>5</sup> Section 81.22 provides:

Any qualified voter, within three days following the posting of the results of an election, may challenge the election results by filing with the

(continued...)

Superintendent, and Secretary, May 5, 2015 (Election Challenge) (AR 8). Appellant claimed that (1) the Vice Chairwoman of the Tribe, who served on the Secretarial Election Board, held informational meetings with tribal members in their homes, creating an “opportunity to mislead” them about the effect of the proposed amendments, *id.* at 00040, 00048; (2) the Vice Chairwoman and a Councilman told a tribal member, incorrectly, that absentee ballots would be allowed in future constitutional amendment elections, *id.* at 00041, 00047; (3) the tribal newspaper, *Kalihwisaks*,<sup>6</sup> published misleading statements about the Election and proposed amendments, *id.* at 00042, 00049-51; (4) an absentee ballot was mailed to the wrong address, *id.* at 00043, 00052-54; and (5) under the Tribe’s Constitution, in Appellant’s words, at least 30% of “all members 18 years old and older” were required to vote in the Election in order for the amendments to be adopted—not merely 30% of registered voters, *id.* at 00045, 00055. Appellant closed her challenge by expressing concern for U.S. military personnel who under Proposed Amendment C would not be able to vote by absentee ballot in future constitutional amendment elections. *Id.* at 00045. Subsequently, on May 28, 2015, Appellant submitted a letter to the Regional Director enclosing additional documentation in support of her challenge. Letter from Appellant to Regional Director, May 28, 2015 (AR 6).

On June 12, 2015, the Regional Director issued the Decision denying Appellant’s challenge. Decision (AR 5). First, she reasoned that Appellant did not allege that the Secretarial Election Board itself provided misleading information, and therefore Appellant’s claims regarding informational meetings and newspaper articles did not “relate to the conduct of the actual election.” *Id.* at 00023. Second, she found that the record showed that a “clerical error” had indeed resulted in an absentee ballot being mailed to the wrong address, but that the individual who requested the absentee ballot successfully cast an absentee ballot in the Election, and that the tribal member who received the misaddressed absentee ballot did not file a challenge. *Id.* Therefore, the Regional Director concluded, Appellant did not provide “substantiating evidence,” under 25 C.F.R. § 81.22, demonstrating that a procedural error had occurred that would warrant a recount or a new election. *Id.* at 00023-24. Third, the Regional Director affirmed the Secretarial Election

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(...continued)

Secretary through the officer in charge the grounds for the challenge, *together with substantiating evidence*. If in the opinion of the Secretary, the objections are valid and warrant a recount or a new election, the Secretary shall order a recount or a new election. The results of the recount or new election shall be final.

25 C.F.R. § 81.22 (emphasis in original).

<sup>6</sup> *Kalihwisaks* is the “official newspaper” of the Tribe. Reply Br., Ex. 9 (front page of Sept. 3, 2015, issue of *Kalihwisaks*).

Board's determination that the required 30% of voters who were entitled to vote did vote in the Election, based on the percentage of registered voters 18 years and older who had cast votes, because under 25 C.F.R. § 81.11 only registered voters are entitled to vote in Secretarial elections.<sup>7</sup> *Id.* at 00024. She explained that Appellant was apparently relying, incorrectly, on the absence of a requirement in the Tribe's Constitution for voters to register in advance of tribal elections. *Id.* Finally, the Regional Director rejected the additional information submitted by Appellant on May 28, 2015, as untimely under 25 C.F.R. § 81.22. *Id.*

Appellant filed a notice of appeal, an amended opening brief, and a reply brief. The Regional Director and the Tribe and each filed answer briefs, arguing that Appellant lacks standing to raise all or some of her claims, and that the Decision should be affirmed on the merits in remaining part.<sup>8</sup> For the reasons discussed below, we dismiss the appeal in part, for lack of standing, and affirm the Decision in remaining part.

## Discussion

### I. Appellant's Standing to Challenge a Constitutional Amendment

On appeal, Appellant emphasizes that “[o]ne of [her] greatest concerns is that without absentee ballot voting, the next change in [the] Tribe's Constitution, Oneida men and women who faithfully serve this great country in the U.S. military will not be able to vote if they cannot appear at the polls.” Amended Opening Br., Oct. 23, 2015, at 5; *see also*

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<sup>7</sup> The Regional Director quoted the portion of § 81.11 that provides:

Only registered voters will be entitled to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters. The election board, upon receipt of authorization to conduct an election, shall notify by regular mail all adult members of the tribe, who to its knowledge are eligible to vote pursuant to § 81.6 of the need to register if they intend to vote.

25 C.F.R. § 81.11(a).

<sup>8</sup> In addition, the Regional Director filed a motion to clarify the status of the amendments or to make the Decision immediately effective under 25 C.F.R. § 2.6. The Tribe requested that the Board expedite its review and decision on Appellant's appeal, and supported the request with an affidavit. Appellant opposed the “request that the [T]ribe be allowed to implement the changes before the [Board] decision is made on the appeal,” Reply Br. at 4, without addressing the request for an expedited Board decision. The Board grants the Tribe's motion for an expedited Board decision, and thus the Regional Director's motion is moot.

Answer Brief of Appellant (Reply Br.), Dec. 30, 2015, at 3-4; Notice of Appeal, July 9, 2015, at 2. Thus, in addition to her arguments regarding the Election process, which we address *infra*, Appellant seeks to challenge the substance of Proposed Amendment C. We agree with the Tribe that she lacks standing to do so. Tribe’s Answer Br. at 8.

In order to have a right to appeal to the Board, an appellant must demonstrate that she has standing. See 25 C.F.R. § 2.2 (definitions of “Appellant” and “Interested party”); 43 C.F.R. § 4.331 (Who may appeal); *Friends of Our Pyramid Lake Reservation v. Western Regional Director*, 55 IBIA 272, 273 (2012).

To determine whether an appellant has standing, the Board applies the judicial elements of standing articulated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). *Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 292 (2014). Under the first element, the appellant must show that she has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest.<sup>9</sup> *Lujan*, 504 U.S. at 560. In doing so, the appellant must assert her own legal rights and interests, and cannot bring a claim on behalf of the rights and interests of others, e.g., rights that may belong to other tribal members or to the tribe as a whole. *Kennedy v. Pacific Regional Director*, 60 IBIA 94, 96 (2015) (citations omitted). “Tribal members, as individuals, . . . do not have standing to bring an action based on a personal assessment of what is or what is not in the best interests of the tribe.” *Id.* (quoting *Bullcreek v. Western Regional Director*, 40 IBIA 191, 194 (2005)). In the specific context of a tribal member’s challenge to a Secretarial election called to approve a constitutional amendment, we have found that:

[W]here the relevant regulation, 25 C.F.R. [§] 81.22, contemplates that election contests will be limited to challenges to the conduct of the election, . . . it would be particularly inappropriate for the Board to recognize the standing of a tribal member to make a collateral attack upon the amendment through the contest procedure.

*Welbourne v. Anadarko Area Director*, 26 IBIA 69, 78 (1994). Accordingly, in *Welbourne*, we held that the appellant lacked standing “to challenge the substance of the amendment and/or BIA’s action in reviewing the amendment.” *Id.*

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<sup>9</sup> Under the remaining elements, (2) the injury must be fairly traceable to the challenged action, and not to some independent action of a party not before the Board, and (3) the injury must be subject to redress by a favorable decision of the Board. *Kennedy*, 60 IBIA at 97 (citing *Lujan*, 504 U.S. at 560-61).

In this case, to the extent that Appellant's challenge to the Election is based on the substance of Proposed Amendment C, it must be dismissed for failure to satisfy the first element of standing. Applying *Welbourne*, Appellant lacks standing to collaterally attack Proposed Amendment C through a challenge to the Election under § 81.22.<sup>10</sup>

## II. Whether Appellant Substantiated Her Challenge to the Election

Turning to Appellant's concerns about the Election process, Appellant argues that she "feel[s] there was a lot of misleading information provided by the Tribe through the Tribal newspaper and other entities of the Tribe." Amended Opening Br. at 1. She argues that "[t]here was so much confusion to Tribal members because they are not accustomed to being able to vote on anything Tribal by absentee ballot . . . and many may have assumed that they would be unable to vote by absentee ballot [in this Secretarial election<sup>11</sup>] and never bothered to read or even open the registration material." *Id.* Appellant also argues that tribal members may have been unaware that Proposed Amendment C does not provide for absentee voting in future constitutional amendment elections. *Id.* at 1-2. And Appellant argues that an absentee ballot was mailed to an incorrect address. *Id.* at 2-3.

The Regional Director responds that Appellant lacks standing to challenge the Election because Appellant does not contend that she was confused and deterred from casting her vote in the Election by absentee ballot, Appellant cannot assert standing on behalf of other tribal members or the Tribe as a whole, and most of the purported injuries were allegedly caused by the independent actions of third parties not before the Board, e.g., the Tribe, individual tribal officials, or the tribal newspaper. Regional Director's Answer Br. at 8. We need not decide Appellant's standing to challenge the Election process, because we agree with the Tribe's argument, in which the Regional Director joins, that

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<sup>10</sup> Nor do we recognize Appellant as having standing to assert her claim on behalf of other tribal members, such as those serving in the U.S. military, or the Tribe as a whole. While Appellant emphasizes, in response to the answer briefs, that the Board has stated that it "*generally* declines to recognize tribal members, individually or as organizations composed of tribal members, as having standing to bring an action on behalf of the tribe," Reply Br. at 7 (quoting *Visintin*, 60 IBIA at 339 (Appellant's emphasis)), she does not explain the basis for her belief that she has standing to assert her claim on behalf of the Tribe, which the Tribe disputes.

<sup>11</sup> In response to a request by the Tribe for a regulatory waiver to allow off-reservation residents to vote, and to allow absentee balloting in the Election, the Assistant Secretary – Indian Affairs determined that no waiver was necessary. Memorandum from Assistant Secretary to Regional Director, July 24, 2014, at 00098-100.

Appellant fails to provide substantiating evidence to support her challenge. Tribe's Answer Br. at 5-7; Regional Director's Answer Br. at 9.

A Secretarial election challenge must be brought by a "qualified voter" and her challenge must identify "the grounds for the challenge, *together with substantiating evidence.*" 25 C.F.R. § 81.22 (emphasis in original). In the context of § 81.22, the Board has concluded that

in order to present 'substantiating evidence,' a challenger must present evidence that supports both (1) the particular claim being made, i.e., that an alleged procedural error occurred in the conduct of the election, and (2) the conclusion that the procedural error likely affected or tainted the election results in such a way as to cast doubt on the fairness of the election and the integrity of the ultimate results.

*Wadena v. Midwest Regional Director*, 47 IBIA 21, 28-29 (2008); *see also Welbourne*, 26 IBIA at 77.

Appellant does not allege a violation of any procedural requirement of 25 C.F.R. Part 81, much less adduce evidence that any procedural error affected the voter turnout or tainted the results of the Election.<sup>12</sup> We have suggested that an appellant who challenges the fairness and integrity of a Secretarial election could substantiate her allegations through affidavits or statements showing that eligible voters were discouraged from voting. *See Hudson v. Great Plains Regional Director*, 61 IBIA 253, 258 (2015) ("affidavits from eligible off-reservation voters who were dissuaded from registering or from requesting an absentee ballot by the allegedly confusing voter information"); *Wadena*, 47 IBIA at 29 ("statements from voters who attempted to vote by absentee ballot but did not have sufficient time to do so"). Relevant to Appellant's claims, the Tribe notes that Appellant has not provided, e.g., "statements from off-reservation tribal members who were confused and assumed they would not be able to vote," "statements from tribal members who were unaware that Proposed Amendment C does not provide for absentee voting in future constitutional amendment elections," and "any evidence suggesting that the misaddressed absentee ballot may have affected the results." Tribe's Answer Br. at 7. We agree that Appellant's

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<sup>12</sup> While Appellant posits that some tribal members may not have "read or even open[ed] the registration material"—apparently a reference to the official Election packet—Appellant does not contend that the packet itself was flawed. Nor is it evident from Appellant's pleadings or the record why the packet, which undisputedly was mailed to all eligible voters, would have been insufficient to remedy any misinformation that was conveyed by third parties.

argument that the Election was tainted is based on speculation, and does not meet her burden to produce substantiating evidence. *Id.*

### III. Whether an Insufficient Number of Votes Were Cast in the Election

In remaining part, Appellant's May 5, 2015, challenge to the Secretarial election raises a question of law regarding the method for calculating the minimum required 30% of voter participation. There is no disagreement regarding Appellant's production of "substantiating evidence." It is undisputed that, if Appellant's interpretation is correct that the law requires a turnout of at least 30% of all tribal members 18 years of age and older, the Election is invalid for insufficient voter turnout. Nor, with respect to the Regional Director's interpretation, is there any dispute that a sufficient percentage of registered voters cast ballots in the Election. Although on appeal Appellant "question[s]," *inter alia*, "whether or not all of the absentee ballots were counted"—which new questions we address further *infra*—Appellant does not dispute that *at least* 30% of the registered voters cast ballots. Reply Br. at 6. Accordingly, we proceed to the merits. *See Hudson*, 61 IBIA at 259; *Wadena*, 47 IBIA at 30.

Appellant relies on Article V of the Tribe's Constitution, which provides:

This Constitution and Bylaws may be amended by a majority vote of the *qualified voters* of the Tribe voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of *those entitled to vote* shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

Oneida Const. art. V, *quoted in* Appellant's Reply Br. at 7 (emphases added). Appellant construes "qualified voters" and "those entitled to vote" as referring to all tribal members who are 18 years of age and older, and argues that the term "entitled" does not mean "registered." Amended Opening Br. at 3; Election Challenge at 00045 (AR 8).

The Tribe argues that the Secretarial Election Board and the Regional Director correctly determined that, because 874 of the 1,694 registered voters cast ballots (or 51.6%), the voter participation level exceeded the requirement of 30%, as set forth in 25 U.S.C. § 478a ("the total vote cast shall not be less than 30 per centum of those entitled to vote"), 25 C.F.R. § 81.7 ("The total vote cast, however, must be at least 30 percent of those entitled to vote, unless, with regard to amendments, the constitution provides otherwise"), and Article V of the Tribe's Constitution, *supra*. Tribe's Answer Br. at 9. We agree.

The Board has previously determined that, under the regulations, only registered voters are “entitled” to vote in Secretarial elections. *Wadena*, 47 IBIA at 30-31; *see, e.g.*, 25 C.F.R. § 81.11(a), *quoted in* Decision at 00024 (“Only registered voters will be *entitled* to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters.” (emphasis added)). And, in a case involving virtually identical language in a tribe’s constitution as that contained in Article V of the Tribe’s Constitution, the Board determined that “entitled to vote” should be construed in the same manner as the regulations.<sup>13</sup> *Hudson*, 61 IBIA at 260.

For the reasons expressed in *Wadena* and *Hudson*, Appellant’s argument lacks merit. Appellant, like the appellant in *Hudson*, offers no evidence or legal argument in support of her position that the meaning of “those entitled to vote,” in Article V of the Tribe’s Constitution, was intended to have a different legal meaning than that established by Federal regulation. *Hudson*, 61 IBIA at 260.

#### IV. Appellant’s May 28, 2015, Submission and New Arguments on Appeal

Finally, Appellant appears to argue that the Regional Director erred in refusing to consider Appellant’s May 28, 2015, submission to the Regional Director in support of her timely May 5, 2015, challenge to the Election, *see* Reply Br. at 5, and on appeal she makes new allegations.

Under the regulations, “the grounds for the challenge, *together with substantiating evidence*,” must be filed “within three days following the posting of the results of an election”—in this case by May 5, 2015. 25 C.F.R. § 81.22 (emphasis in original). Even were we to assume that the Regional Director had discretionary authority to consider Appellant’s May 28, 2015, submission, Appellant does not show that the supplemental information and materials substantiate her claims regarding the Election. *See* Notice of Appeal at 2 (enclosing Appellant’s May 28, 2015, submission, without explaining its relevance). We agree with the Tribe that Appellant’s submission does not affirmatively demonstrate any error. Tribe’s Answer Br. at 11.

Further, the Board normally does not consider arguments raised for the first time on appeal to the Board. *E.g.*, *Welbourne*, 26 IBIA at 76. In the case of a Secretarial election challenge, the Board has held that, given the requirement in § 81.22 that the grounds for an

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<sup>13</sup> In that case, the tribe’s constitution provided that it may be amended by a “majority vote of the *qualified voters* . . . voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of *those entitled to vote* shall vote in such election . . . .” *Hudson*, 61 IBIA at 259 (emphases added) (citation omitted).

election contest be presented to BIA within 3 days of the election, the Board could not consider an appellant's new arguments. *Id.* On appeal, Appellant raises additional questions about, *inter alia*, an allegation that she was prevented from speaking at a community meeting on Proposed Amendment C, a referendum question about absentee voting presented in a 2011 tribal general election, the different vote totals for each of the proposed constitutional amendments in the Election, a special election that was held within the Tribe after the Regional Director issued the Decision, Appellant's post-decisional requests for information from BIA on the handling of absentee ballots, and her request for assistance from BIA in the preparation of her appeal under 25 C.F.R. § 2.9(b). *See* Reply Br. at 5-6; Amended Opening Br. at 2-5. To the extent that any of the issues raised by Appellant are relevant to the conduct of the Election, and to the extent that the Board is not foreclosed from considering them pursuant to § 81.22, we are not persuaded that we should consider them, much less that they would support a conclusion that the fairness and integrity of the Election is in doubt.<sup>14</sup>

### Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses Appellant's appeal in part and affirms the Regional Director's June 12, 2015, decision in remaining part.

I concur:

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// original signed  
Thomas A. Blaser  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>14</sup> With respect to Appellant's requests for information from BIA, we also note that the Board lacks jurisdiction over Freedom of Information Act requests or appeals. *Drew v. Acting Northwest Regional Director*, 56 IBIA 132, 144 n.15 (2013).