Introduction to Tribal Election Law

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Merrill Godfrey, Senior Counsel

American Indian Law and Policy

Akin Gump Strauss Hauer & Feld LLP
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Tribal Elections: Basics

- Tribal governments administer regular tribal elections to elect leaders (legislative, executive, and judicial positions) and address governance issues (e.g., initiatives and referendums).
- Each tribe has its own distinct election laws, rules, and processes. Tribal customs and traditions, constitutions, codes, statutes, and resolutions set forth how each tribe conducts its elections.
- Usually laws include a section on Elections, often in an Election Code.
- In some instances, tribes continue to use non-election customs and traditions (e.g., tribal elders, clan mothers, and religious leaders).
Tribal Elections: Characteristics

- **Term:** Intervals between elections vary widely.

- **Ballots:** Some require vote on reservation, others allow absentees. Some are secret ballots, some are open voting.

- **Administration:** Usually a tribal commission/board/agency, appointed or elected. Voter registration, candidate qualifications, voter challenges, certification of results, etc.

- **Voter Eligibility:** Defined by tribal law. Usually only tribal citizens may vote.
Tribal Elections: Secretarial Elections

- Conducted by the Bureau of Indian Affairs (BIA), with authority delegated by the Secretary of the Interior, for tribes that were organized under the Indian Reorganization Act (IRA) and chose to follow certain provisions of the IRA.

- In the IRA, Congress delegated to the Secretary certain election duties (e.g., adoption, amendment, or revocation of tribal constitutions/bylaws, etc.).

- Some tribes that adopted a constitution under the IRA (or that are subject to a specific federal law or corporate charter) must have secretarial elections to amend or revoke their constitutions/bylaws.

Tribal Elections: Dispute Resolution

- **Tribal Laws** prescribe how tribal election results or conduct may be challenged, usually in the tribal administrative and court system.
- **Tribal Election Commission/Board** receives election results and hears disputes. Investigates and may hold a hearing. Often appointed by the tribal council, may be viewed as biased.
- **Tribal Legislative/Executive Body** may have a review function or be the final judges of an election dispute. The council may disagree with a board recommendation, causing tension.
- **Tribal Courts** are usually tribal citizens’ last resort. Some tribes waive their immunity in tribal court. Tribal law governs causes of action and procedures. Many tribes also allow the Courts of Indian Offenses to have jurisdiction over tribal election disputes.
Tribal Elections: Types of Disputes

- Intratribal conflicts (membership disputes and election disputes) are very contentious and can be lengthy.
- Election commissions/boards are where disputes begin, but election issues can result in member takeovers of buildings and finances.
- Due process is not always guaranteed under tribal law.
- Examples:
  - Challenges to election results
  - Signature certification and candidate qualification disputes
  - In person/absentee ballot spoliation
  - Undue influence over the election process
  - Removal actions
Relationship Between Tribal Election Law and Federal Law

- Tribal election laws and voting rights are internal tribal matters, generally not subject to federal laws or oversight.
- Federal courts lack jurisdiction to review tribal elections.
- Sometimes, the federal government must identify the official governing body (e.g., to administer federal programs on behalf of tribes). Reviewable under the Administrative Procedure Act.
Building Strong Tribal Election Laws

- Many tribes adopted IRA Constitutions that lack specificity; tribes sometimes do not review and update outmoded election laws.
- Tribal attorneys and courts are bound by tribal law even if it does not adequately embody tribal values.
- When tribal governments invest in regular revisions of constitutions and election codes, they ensure consistency with tribal values.
- Tips for Building Strong Tribal Election Laws:
  - Incorporate and define key tribal customs and traditions
  - Develop processes for accountability of election boards
  - Consider protections against outside influence on elections
  - Consult with tribal members for input and guidance
Elections and Representing Tribal Clients

• Tribal governments have their own constituents and intratribal political pressures. Election results affect tribal government priorities.
• Respect and be sensitive to tribal customs and traditions.
• For attorneys, tribal elections may affect who your client or contact is.

Tips:
• Understand who your client is (e.g., Board vs. Council).
• Tribal governments face internal political and electoral issues you cannot control.
• Be flexible and amenable to changes in leadership and contacts.
• Consider risks of taking advocacy roles in election disputes.
Disenfranchisement of Tribal Members in State/Federal Elections

- Congress passed the Indian Citizenship Act in 1924, but many Native Americans were not allowed to vote in elections for state and federal officers until much later.

- Tribal members, especially those on Indian reservations, continue to face challenges when they attempt to exercise their right to vote.

- Non-traditional addresses are a big issue. Many forms of tribal identification do not have addresses. Tribal members may not have standard addresses, may move frequently, and may rely on P.O. boxes.

- The Native American Voting Rights Coalition through the Native American Rights Fund has very helpful resources on these issues.
Questions:
Merrill Godfrey
mgodfrey@akingump.com
(202) 887-4000