

Tribal Appeals Court reverses disenrollments

Judges unanimously rule that Tribe waited too long to take action

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The Tribe's three-judge Appeals Court unanimously remanded 66 disenrollment cases back to Tribal Court Chief Judge David Shaw and the Tribe's Enrollment Board, ruling that the Tribe waited too long to correct the members' enrollment status.

Appeals Court Judges Robert Miller, Douglas Nash and Patricia Paul, who are all Native American, issued the ruling on Friday, Aug. 5.

"The decisive issue in this case is whether equitable principles of law prevent the Tribe from revisiting the question, in 2013, of whether the petitioners/appellants' lateral and lineal ancestors were enrolled in error in 1986," Miller wrote. "We ultimately decide that the Grand Ronde court system is a court of equity and that both laches and estoppel prevent the Tribe from even raising the issue of the enrollment status of petitioners/appellants based on an alleged error in enrolling their lineal and lateral ancestors in 1986."

In September 2015, Shaw ruled that the Tribe's actions were reasonable in correcting an error of the petitioners' common ancestors being ineligible at the time of enrollment in the Grand Ronde Tribe, "and as such the actions of the relevant Tribal parties are authorized by the Constitution and Tribal ordinance."

The Tribal members claimed lineal descent from Chief Tumulth, who signed the Willamette Valley Treaty of 1855 but never moved to the Grand Ronde Reservation be-

cause he was executed by the U.S. Army in April 1856. They appealed Shaw's decision to the Tribal Appeals Court.

The Tribe's 1984 Constitution, in part, defined descent from a Tribal member to include a person named on any roll or record of Grand Ronde members prepared by the U.S. Department of the Interior before the effective date of the Constitution.

Although members claiming descent from Chief Tumulth first became Grand Ronde Tribal members in 1986, a subsequent 2013 audit of enrollment files found that they did not have the relevant constitutional membership requirement of descent from a lineal ancestor listed on any roll or record of Grand Ronde membership.

Family members claimed to descend from a woman listed on the 1872 census of Grand Ronde members, but the Enrollment Board found the evidence unconvincing and voted in July 2014 to disenroll all those who became members based on lineal descent from Chief Tumulth.

In addition, there was significant debate about whether signing a treaty qualified as a roll or record of Grand Ronde Tribal members prepared by the Department of the Interior, but a definitive answer was never reached.

However, the Appeals Court ruled that the doctrine of laches, which prevents people or governments from waiting too long to institute legal action, unfairly harmed those being disenrolled.

"There is no question that the Tribe, Enrollment Committee and staff were not diligent and unjustifiably delayed instituting this enrollment investigation and the subsequent action to disenroll petitioners," Miller wrote. "For up to 27 years, from 1986 to 2013, the Tribe

was on actual notice of the facts and circumstances under which petitioners and their ancestors were enrolled. The Tribe allowed 27 years to pass before taking any action on this alleged enrollment error."

Miller wrote that the only "reasonable conclusion" that could be drawn from the 27-year delay is that the petitioners have been prejudiced.

"The faded memories and deaths of relevant witnesses, and a passage of such an amount of time that makes discovering evidence difficult or impossible," Miller wrote.

"We do not decide today whether the Tribe has to engage in affirmative misconduct before equitable estoppel can be applied against it. But it seems clear that enrolling petitioners' lateral and lineal ancestors, allegedly in error, and then repeatedly enrolling petitioners, allegedly in error, and then repeatedly telling them, allegedly in error, for 27 years that they were properly enrolled in the Tribe could be affirmative misconduct. ... We hold that the Tribe and Enrollment Committee/Board are estopped from attempting to disenroll the petitioners based on the alleged 1986 error in enrolling their lineal and lateral ancestors."

Estoppel is the legal principle that prevents a party from asserting a fact or a claim inconsistent with a position taken previously, especially

where a representation has been relied or acted upon by others.

Tribal Council Chairman Reyn Leno said at the Tuesday, Aug. 9, Legislative Action Committee hearing that enrollment decisions are out of the hands of Tribal Council, which transferred final authority on loss of membership cases to the Enrollment Board in July 2014.

He said his understanding of the process is that the cases will be remanded back to Shaw and then to the Enrollment Board, which will have to overturn its previous decisions.

In addition, Leno said he was going to create a staff directive for Tribal Council members to sign that would ask the Court of Appeals judges to appear before Tribal Council and the membership to explain their decision.

In another decision regarding disenrollment proceedings against lineal descendants of Chief Tumulth who have already walked on, the Appeals Court unanimously ruled the petitioners were not appointed as personal representatives, executors or administrators of their deceased ancestors' estates and their status does not "confer representative capacity on them to bring this action on behalf of their deceased ancestors."

The rulings can be read in their entirety at the Tribal website, www.grandronde.org, under the Tribal Court tab. ■

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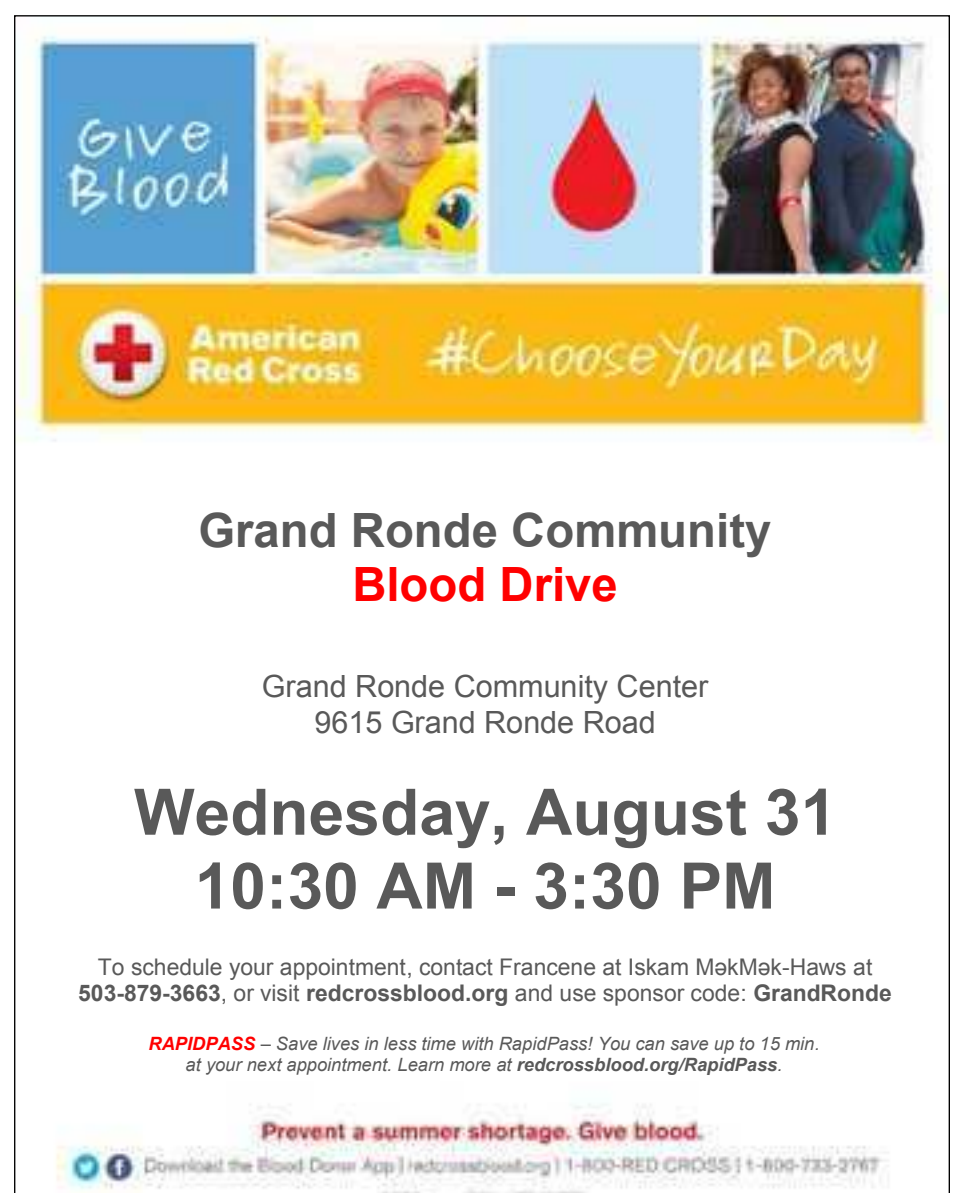
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