EXHIBIT P-3

Complaint for Injunctive and Declaratory Relief with Exhibits for the Leech Lake Tribal Court

Leech Lake Band of Ojibwe
In Tribal Court

Arthur Dale LaRose, LLBO Secretary-Treasurer,
Petitioner,
v.

Cathy Chavers, Minnesota Chippewa Tribe President and Gary Frazer, Executive Director Minnesota Chippewa Tribe and as Election Court Clerk (in their official capacities) and

The Minnesota Chippewa Tribe Tribal Election Court of Appeals (in their official capacities as 2022 certification panel),

Respondents,

Case No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Petitioner, Arthur "Archie" LaRose, through his attorney, Frank Bibeau, for his Complaint against the Minnesota Chippewa Tribe (MCT) President Cathy Chavers and Executive Director Gary Frazer and as Election Court Clerk for the Minnesota Chippewa Tribal Election Court of Appeals for Elections 2022, states and alleges as follows:

INTRODUCTION

Petitioner LaRose is currently the *now seated*, duly elected, Secretary-Treasurer for the Leech Lake Reservation Business Committee (LLRBC), following the 2018 MCT Elections. LaRose has held elected offices of Chairman and Secretary-Treasurer for the LLBO over the past 18 years. Petitioner has been certified as a candidate for Leech Lake

Reservation elections 10 times, 3 times before the MCT Constitutional amendment, and won LLRBC elected office six (6) times.

In 2005, the Bureau of Indian Affairs (BIA) conducted a Secretarial Election at the request of the Minnesota Chippewa Tribe (MCT) to amend the Revised Constitution of the Minnesota Chippewa Tribe, MN (MCT Const.) The language of the 2005 amendment focused on "if [a candidate] has ever been convicted of a felony of any kind . . . ." sometimes referred to as the felon amendment.

There was a timely challenge to the 2005 Secretarial Election about (1) not meeting the 30% required eligible voters participation in the MCT Constitution, Art XII and (2) the ex post facto "if . . . ever" constitutional violations of the MCT Const. and Indian Civil Rights Act of 1968 (ICRA)(See **Exhibit A**, MCT Legal Counsel Brodeen Memorandum to MCT-TEC on Applicability of *Hudson v Zinke* dated 7-13-2020, including 2005 amendment challenge history). Ultimately, the Secretary approved the MCT Constitutional amendment in 2006, which became part of the MCT Const. on Jan. 5, 2006.

Shortly after in 2006, the Honorable Judge Wahwassuck of the Leech Lake Tribal Court determined in Gotchie v Goggleye (CV-06-07), that both Petitioner LaRose herein and then seated Chairman George Goggleye were not convicted felons under Minnesota's criminal law. (See *Aff. of LaRose* **Exhibit 3**, Findings of Fact, Conclusions of Law & Declaratory Judgment by the Honorable Judge Wahwassuck dated 12-8-2006). On Feb. 23, 2006 the Leech Lake Reservation Business Committee (LLRBC) adopted Resolution

2006-76 *Convictions that are deemed misdemeanors for certification of tribal office candidates*. (See *Aff. of LaRose* **Exhibit 1**). The Tribal Court *found* that the Res. 2006-76 was not inconsistent with Minnesota Law or MCT Election Ord. No. 10, and *concluded* that the LLRBC did not exceed its authority by passing Res. #2006-76. (See Wahwassuck decision dated 12-8-2006, attached as *Aff. of LaRose* **Exhibit 3**). Whether Petitioner was convicted of a misdemeanor has been long decided election certification law for Leech Lake Reservation and its voters.

The Minnesota Chippewa Election Ordinance was amended by the MCT Tribal Executive Committee (TEC) just before the January 2022 election cycle, which permits candidates to challenge other candidate's certification with supporting documentation, *after* the Leech Lake Reservation Business Committee (LLRBC) had certified candidates. (See **Exhibit B**, MCT Election Ordinance). There was not a due process requirement under the MCT Election Ordinance (revised 12/14/2021) that any candidates challenge to another candidate's certification, with supporting documentation, be filed with the Leech Lake Reservation Business Committee (LLRBC) first. (Id.)

In their *In Re LaRose Decision & Order* dated 2-16-22, the Court stated that based on the records received, submitted by the Challenger, the Minnesota Chippewa Tribe's Tribal Election Court of Appeals determined LaRose was "convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and the Minnesota Chippewa Election Ordinance, as

amended on December 14, 2021. . . ." (Id. See *Decision & Order* dated 2-16-22 attached as *Aff. of LaRose* **Exhibit 4**).

The Minnesota Chippewa Tribe's Tribal Election Court of Appeals decision did not consider or mention Petitioner LaRose's constitutional and ICRA expressly raised defenses against *ex post facto* application of the 2006 amendment for a 1992 conviction. (See *Aff. of LaRose* at p. 3, item 17). Nor did the MCT Election Court of Appeals comment on the LLRBC Resolution 2006-76 entitled *Convictions that deemed to be misdemeanors for certification of tribal office candidates*, which declared that the Leech Lake Tribal Court's determination that convictions deemed to be a misdemeanor under Minnesota criminal law was now codified as Leech Lake Band law. (See *Aff. of LaRose* **Exhibit 1**, Res. 2006-76 with Minutes). The Minutes from Feb. 21, 2006 and Feb. 23, 2006 reveal a 4-0 unanimous vote to codify Leech Lake policy with Res. 2006-76, with Donald Finn, then LLRBC District 3 Representative, present and voted as part of the 4-0 vote to adopt 2006-76.

The *ex post facto* "if . . . ever" MCT Const. amendment language was obtained by a Secretarial Election with BIA waivers, which resulted in about 17% MCT eligible voter participation, thereby circumventing the MCT Constitutional requirement of 30% eligible voter participation in Article XII, as legally analyzed and described in Hudson v Zinke (2020) decision (overturned in 2021 for Hudson *lack of standing*).

Petitioner brings this lawsuit to seek **declaratory judgment** re-affirming that Petitioner is not a convicted felon under Minnesota law as determined by the Leech Lake

Tribal Court and LLRBC Res. 2006-76 and was improperly disqualified as a certified candidate for 2022 Secretary-Treasurer by Defendants *and* that Petitioner has exhausted administrative remedies within the MCT, TEC to continue to be re-elected for the same office currently held and be on the 2022 MCT election ballot as a certified candidate for re-election to the LLRBC Secretary-Treasurer office.

Petitioner also brings this lawsuit to seek **injunction** against Respondents MCT-TEC and MCT Election Court of Appeals for applying the unconstitutional *ex post facto* amendment without any mention, consideration or legal analysis after Petitioner raised ex post facto constitutional defenses, and restart the Leech Lake Reservation election contest with long-seated Secretary-Treasurer LaRose as a candidate for re-election.

Petitioner is being deprived of a variety of due process violations, civil rights deprivations of interfering with significant and important property rights related to holding elected office[1] and seeking re-election for that office, and the Leech Lake voter's rights to free and fair elections, directly resulting from actions and omissions by the Minnesota Chippewa Tribe's Tribal Executive Committee in amending the 2022 Minnesota Chippewa Tribe's Election Ordinance (See **Exhibit D**, TEC Minutes from 12-14-21 Special Meeting, whereby the TEC voted to amend Election Ord. Dec. 14, 2021, with LL Chair and Secretary-Treasurer voting against) and the resulting decision by the

[1] See Hudson v Haaland (U.S. Court of Appeals filed April 6, 2021, on Appeal from the United States District Court for the District of Columbia, Hudson v Zinke (2020)(No. 1:15-cv-01988). Haaland reversed, remanded and ordered dismissal for Hudson v Zinke due to Zinke's *lack of standing*.

MCT Tribal Elections Court of Appeals to disqualify LaRose as a candidate for re-election on Feb. 16, 2022. (See *Aff. of LaRose* **Exhibit 4**).

PARTIES, JURISDICTION & VENUE

1. Petitioner is a citizen and enrolled member of the Minnesota Chippewa Tribe, residing on and enrolled at the Leech Lake Reservation.
2. During all relevant times Petitioner has held and continues currently holding elected office of Secretary-Treasurer. (See *Affidavit of LaRose* at p. 1).
3. Defendant(s) are (1) the *President* of the MCT-TEC and *Executive Director* (who also serves at Clerk of Court for the MCT Tribal Election Court of Appeals) of the Minnesota Chippewa Tribe a federally recognized Indian Tribe, based in Cass Lake, Minnesota on the Leech Lake Reservation, and (2) the MCT Tribal Election Court of Appeals (2022).
4. The Leech Lake Tribal Court has original jurisdiction over the parties and claims set forth in this *Complaint* under the MCT Constitution, the Indian Civil Rights Act of 1968, and as a result of Petitioner LaRose having exhausted administrative remedies under the Minnesota Chippewa Tribe's Election Ordinance as amended Dec. 14, 2021, and with the MCT Tribal Executive Committee.
5. The jurisdiction of the Tribal Court and the effective area of this code shall extend to disputes arising within or concerning all territory within the Leech Lake Indian reservation boundaries . . . . (Part II Jurisdiction, Section 1, Leech Lake Band Tribal Court Jurisdiction, A. *Territory*).

6. The jurisdiction of the Tribal Court shall extend to: All persons who reside or are found within the territorial jurisdiction of the band and are: band members or eligible for membership in the band; members of the Minnesota Chippewa Tribe . . . (Id. B. *Subject Matter*, Section 1) where ever located, while exercising tribal rights pursuant to federal, state or tribal law. (Id. 2) and All persons whose actions involve or affect the band, or its members (Id. 4), and the judicial power of the tribal court shall extend to: All matters and actions within the power and authority of the Leech Lake band including controversies arising out of the Constitution of the Minnesota Chippewa Tribe, bylaws, statutes, ordinances, resolutions, and codes (Id. C. Section 1, *Actions*) including All civil action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), (Id. 2) and/or other actions arising under the laws of the band as provided in those laws. (Id. 3)
7. Venue in this Court is proper because Defendant MCT's headquarters is located within the exterior boundaries of the Leech Lake Reservation, and where most of the relevant and related events occurred.

FACTUAL ALLEGATIONS

8. On Feb. 16, 2022, the Minnesota Chippewa Tribe's Tribal Election Court of Appeals began their *Discussion* in In Re Arthur LaRose Decision [] Challenge to

Election Certification Decision for Secretary/Treasurer [] by the Leech Lake Reservation Business Committee *Decision & Order* with

> Article IV, § 4 of the Constitution provides that
>
> No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, **if he or she has ever been convicted of a felony of any kind** . . . .

Id. p. 1. (Emphasis in original, twice, quoting the MCT *Election Ordinance* Exhibit B). (See *Decision & Order* dated Feb. 16, 2022 attached as *Aff. of LaRose* **Exhibit 4**).

9. The *Conclusion* states that "[f]or the reasons stated above, this Court approves Mr. Fineday's challenge finding that Mr. LaRose was convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer." Id. p. 3.
10. On Feb. 9, 2022, Leonard Fineday, certified candidate for LLRBC Secretary-Treasurer filed a certification challenge against Petitioner LaRose, pursuant to the MCT Election Ordinance as amended Dec. 14, 2021. The challenge materials all relate to a 1992 conviction of LaRose that has been *stare decisis* deemed a misdemeanor by the State of Minnesota. (See *Aff. of LaRose* **Exhibit 5**). Mr. Fineday's certification challenge included a 2018 MCT Election Appeals Court decision from Donald "Mick" Finn v Leech Lake Election Board *Decision & Order* dated June 29, 2018, which was supposed to be about vote count challenges at the end of the election, not certification. (See *Aff. of LaRose* **Exhibit 6).**

11. Petitioner's 1992 conviction was previously considered by the Honorable Judge Wahwassuck, Leech Lake Tribal Court Case No. (CV-06-07) Gotchie v Goggleye. The Court found that LaRose and Goggleye were in the same boat and commented in FN 2 that

> Although LaRose is not a party to this action, the Court notes that the decision in this matter would apply to LaRose in the same manner as Goggleye, as LaRose's conviction was also deemed to be a misdemeanor pursuant to Minn. Stat. 609.13.

(See Findings of Facts, Conclusions of Law& Declaratory Judgment dated 12-8-2006 (See copy *Aff. of LaRose* **Exhibit 3**).

12. Petitioner LaRose did file an *Answer to Challenge Motion for Dismissal* to the certification challenge with the MCT Tribal Court of Appeals on Feb. 11, 2022 (See copy attached as *Aff. of LaRose* **Exhibit 9**, including *Table of Authorities*).

13. In item 4 of Petitioner's *Answer to Challenge Motion for Dismissal* the term *ex post facto* appears at the bottom of page 1, which continues onto page 2 raising defenses under the

> . . . Indian Civil Rights Act 1302 (a) 1, 3, 8, 9 [*ex post facto*] on civil rights (A-15); MCT Const. Article XIII, Rights of Members will be afforded equal rights, equal protection, guarantees under the U.S., and due process of law (A-16); Minnesota Const. Art. 1. Bill of rights, Section 7. Due Process, 8. [. . .] 11. Attainders, ex post facto laws (A-17); and U.S. Constitution is the supreme law . . .

Id. p. 2.

Petitioner attached hard copies attachments with his *Answer to Challenge Motion for Dismissal* with *Table of Attachments* listing some 50 attachments. (See copy attached as *Aff. of LaRose* **Exhibit 9**).

14. The MCT Tribal Election Court of Appeals failed to address Petitioner's asserted defense of ex post facto laws being unconstitutionally applied, again. Id. (See also MCT Elections Appeals Court *Decision & Order* dated Feb. 16, 2022, *Aff. of LaRose* **Exhibit 4**).
15. On Feb. 17, 2022, Petitioner sent the MCT President, Cathy Chavers a letter "Requesting an "Emergency" Special Meeting Request of the Minnesota Chippewa Tribe, TEC. (See copy *Aff. of LaRose* **Exhibit 10**).
16. On Feb. 18, 2022, MCT President Chavers sent a response saying "Section 1.3(C)(6) of the Election Ordinance as amended clearly states that the *Court's decision is final, and therefore not subject to appeal or reconsideration*" and denied Petitioner LaRose's request for Emergency Special Meeting. (See copy attached as *Aff. of LaRose* **Exhibit 11**).
17. On Feb. 22, 2022, Four (4) TEC members requested a Special Meeting as a matter of right under MCT Bylaws, Article II – Tribal Executive Committee Meetings, Section 3. The President shall call a special meeting of the Tribal Executive Committee upon a written request of at least one-third of the Tribal Executive Committee. (See *Aff. of LaRose* **Exhibit 12**).

18. On March 10, 2022 the TEC held an Emergency Special Meeting, which was cut short by motion and vote to adjourn prematurely to avoid the complete Leech Lake presentation and draft Zinke fix resolution for the MCT (See email and draft TEC Res attached as *Aff. of LaRose* **Exhibit 13**) and by letter dated March 16, 2022, from MCT President Chavers to MCT Enrollees to inform them that the MCT "Appellate Courts decision to not certify Mr. LaRose for the upcoming 2022 election still stands. (See *Aff. of LaRose* **Exhibit 13**).
19. On March 31, Leech Lake Chairman Faron Jackson sent a letter to the MCT indicating that LLRBC never took official action to opt into the MCT Tribal Court of Elections Appeals. (See *Aff. of LaRose* **Exhibit 14**).
20. Ultimately, on April 1, 2022, Phil Brodeen, MCT General Counsel and Gary Frazer, MCT Executive Director sent a response letter to LLRBC Chairman Jackson, ultimately saying "the decision of the Election Court of Appeals is final and should be recognized as such." (See *Aff. of LaRose* **Exhibit 15**).
21. Consequently, because the ex post facto "if . . . ever" language was obtained by a Secretarial Election with waivers, in violation of the 30% requirement in Article XII, MCT Constitutional protection and requirement as described in Hudson v Zinke (2020) and LaRose meets the criteria for standing as outlined in Hudson v Haaland (2021).

COUNT I
Due Process Violations
MCT Const., Art. XIII Rights of Members

Petitioner re-alleges the above allegations of this Complaint and alleges as follows:

1. Defendant MCT, violated the Petitioner's several constitutional rights whereby

   Art. XIII Rights of Members declares

   > All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, ***and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States***, *including but not limited to* freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, ***the right to petition for action or the redress of grievances, and due process of law.***

2. Petitioner has been denied certification as a candidate for MCT, LLRBC

   Secretary-Treasurer as a result of a 2005 Secretarial Election (approved 2006) for

   a MCT Const. amendment which included an ex post facto "if . . . ever" convicted

   of a felony language

   > No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, **if he or she has ever been convicted of a felony of any kind**; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

(See Id. Art. IV – Tribal Elections Sec. 4, As amended per Amendment IV,

approved by the Secretary of the Interior on January 5, 2006).

3. Petitioner's 1992 conviction was specifically identified and recognized to be

   deemed to be a misdemeanor under Minnesota law, same as then Chairman

Goggleye, and Petitioner was then seated Secretary-Treasurer LLRBC. (See FN 2, *Findings of Facts, Conclusions of Law & Declaratory Judgment* dated 12-8-2006 (See *Aff. of LaRose* **Exhibit 3**).

4. On Feb. 23, 2006 the Leech Lake Reservation Business Committee (LLRBC) adopted Resolution 2006-76 *Convictions that are deemed misdemeanors for certification of tribal office candidates*. (See *Aff. of LaRose* **Exhibit 1** with Minutes).
5. The LL Tribal Court found that the Res. 2006-76 was not inconsistent with Minnesota Law or MCT Election Ord. No. 10, and concluded that the LLRBC did not exceed it authority by passing Res. 2006-76. (See Wahwassuck decision dated 12-8-2006, *Aff. of LaRose* **Exhibit 3**).
6. Judge Wahwassuck also sent a *Request for Opinion from Tribal Executive Committee* concerning *retroactivity* of Art. 4 on 12-8-2006 (*Aff. of LaRose* **Exhibit 3**).
7. After *Hudson v. Zinke* (2020) was decided regarding IRA 30% eligible voters constitutionally required threshold cannot be amended by BIA elections waivers, the MCT, TEC was updated by MCT Legal Counsel. (See **Exhibit A**, Applicability of *Hudson v Zinke* Memorandum by MCT Legal Counsel dated 7-13-2022, to Minnesota Chippewa Tribe, Tribal Executive Committee).
8. A short time after at a TEC meeting, MCT Executive Director Gary Frazer was asked about not acting on the *Request for Opinion from Tribal Executive*

Committee from Judge Wahwassuck and stated that his office never received the Request for Opinion.

9. Co-Plaintiff Storbakken (in Gotchie v Goggleye, CV-06-07), then re-served the *Request for Opinion from TEC* on Feb. 9, 2021. (See **Exhibit E**).
10. On Dec. 14, 2021, the TEC held a Special Meeting to Amend the MCT Election Ordinance, discussion included questions about the 30% (Zinke) requirement and undoing the ex post facto amendment to which MCT Legal Counsel stated that the time to challenge that has passed. (See **Exhibit D**, Minutes from Sp. TEC Meeting 12-14-21).
11. Defendants MCT-TEC are directly liable for the on-going, ex post facto constitutional violations obtained by circumventing the 30% eligible voter requirement of Art. XII, with BIA waivers.
12. Defendants and MCT Tribal Election Court of Appeals are vicariously and/or directly liable, because the amended MCT Election Ord. is a direct and proximate cause of Defendant's unconstitutional ex post facto conduct, Petitioner has been injured in job and profession, suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, loss of reputation, and has incurred attorneys' fees, costs and expenses and has suffered other serious damages, as a result of the retroactive application of the 2006 BIA approved amendment, to a 1992 Minnesota conviction, previously deemed a misdemeanor under Minnesota

law by the Leech Lake Tribal Court and LLRBC Res. 2006-76. (*Aff. of LaRose* **Exhibit 1).**

13. That Attorney Sharon Osborn, Attorney at Law, with family at White Earth sent a letter on March 28, 2022, to the MCT, TEC and MCT Election Court of Appeals explaining ex post facto and continuing to punish LaRose (See **Exhibit F**).
14. The MCT Tribal Election Court of Appeals *Decision & Order* makes no reference to Petitioner's asserted constitutional ex post facto defenses raised. (*Aff. of LaRose* items 17, 18 and 19).

COUNT II
Due Process Violations
MCT Election Ordinance (revised 12-14-21)

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. The MCT Election Ordinance (Revised 12/14/21) at 1.3(C)(6) provides in part that

> [t]he Executive Director or designee shall submit the following materials to the Tribal Election Court of Appeals at the expiration of the aforementioned deadlines: the challenge and supporting documentation; the record compiled by the band governing body; and any timely filed answer to the challenge. Notwithstanding any provision of this ordinance, the Tribal Election Court of Appeals shall convene within 48 hours of receiving the challenge, record, and answer, decide the issue of the certification or non-certification based on the materials described above. The Tribal Election Court of Appeals may convene by telephone conference. The decision of the Tribal Election Court of Appeals must be in writing and signed by the Chief Judge. The decision of the Tribal Election Court of Appeals shall be final. (Id.)

2. Petitioner LaRose received a copy of the candidate certification challenge at 3:30 pm on Feb. 9, 2022. (See *Aff. of LaRose* **Exhibit 5**).

3. Petitioner filed his *Answer to Challenge Motion to Dismiss* with Executive Director Frazer at 2:15 pm on Feb. 11, 2022. (See *Aff. of LaRose* **Exhibit 9**)

4. On Feb. 16, 2022, the MCT Tribal Election Court of Appeals issued its *Decision & Order* which Petitioner was provided a copy at 11:17 am, on Feb. 16, 2022. (See *Aff. of LaRose* **Exhibit 4**).

5. The MCT Election Ord. at 1.3(C)(6) clearly states and requires that

> Tribal Election Court of Appeals shall convene within 48 hours of receiving the challenge, record, and answer, decide the issue of the certification or non-certification based on the materials described above.

6. The Clerk for the Tribal Election Court of Appeals was physically in possession of the challenge, record, and answer on Feb. 11, 2022 at 2:15 pm. (Id. **Ex. 4**)

7. The MCT Election Ord. at 1.3(C)(6) clearly states and requires that

> The decision of the Tribal Election Court of Appeals *must be in writing* and *signed by the Chief Judge*.

8. The *Decision & Order* dated Feb. 16, 2022, does not comply with the MCT Election Ord. by: (1) not identifying who the Chief Judge was/is still, (2) nor was the decision signed, and (3) the Election Court appears to have exceeded the decision time period of forty-eight (48) hours.

9. The MCT Election Ord. at 1.3(C)(6) clearly states and requires that

> The Tribal Election Court of Appeals shall [. . .] decide the issue of the certification or non-certification based on the materials described above (the challenge, record, and answer).

10. The *Decision & Order* dated Feb. 16, 2022, does not comply with the MCT Election Ord. because closing statements by the Election Court suggest lack of review of the complete, 2-inch stack of documentation attached to the *Answer to Challenge Motion to Dismiss* filed by Petitioner, which is part of *the record*, by saying

> Mr. LaRose argues that this court cannot reconsider the decisions of a prior Minnesota certification court because we are collaterally estopped from looking at the issue or it is *res judicata*. This would be a good argument if the prior courts had the information and documents, in the record, that was available to this court. However, both Judge Rotelle[sic] and Judge Johnson make clear on the record that they had no evidence of Mr. LaRose's prior felony conviction. It was alleged by Mr. Finn in his petition, but there is no evidence provided to the court. The court can only rely on evidence in the record. That is a sharp contrast to what was provided to this court. We have the complaint and the official records from the state of Minnesota demonstrating a felony conviction in 1992.

11. Had the MCT Tribal Election Court of Appeals examined all the *evidence in the record*, it would have noticed and maybe needed to comment on *Petitioner's Answer to Challenge Motion to Dismiss* which included the Leech Lake Tribal Court Case CV-06-07 Gotchie v Goggleye (*Aff. of LaRose* **Exhibit 3**), the related LLRBC Res. 2006-76 (*Aff. of LaRose* **Exhibit 1**), and the 2 decisions from White v LaRose CV-18-66, whereby LLRBC Dist. Rep. 2 attempted to use the Judge Routel general election *Decision & Order* dated June 29, 2018 (See *Fineday Challenge Exhibit 5*) to remove LaRose from LLRBC elected office in CV-18-66, which TRO request by White was denied

by Judge BJ Jones on July 3, 2018 (*Aff. of LaRose* **Exhibit 7**) and White's Petition was dismissed July 12, 2018 (*Aff. of LaRose* **Exhibit 8**).

12. Defendant MCT Election Court of Appeals *Decision & Order* states that

> Mr. Fineday obtained the official records of Mr. LaRose's felony case from the Minnesota State Court Information System and provided a copy of those documents to the Court making it part of the record. [But in fact] This Court [only] has a copy of the Complaint [and Minute Sheet] against Mr. LaRose from Nov. 20, 1991.

(See *Aff. of LaRose* **Exhibit 4**) and State v LaRose 11-L6-91-714, Criminal Minutes Sheet dated 12-28-1992 (See *Aff. of LaRose* **Exhibit 5** Fineday Certification Challenge), which includes no contact with Christopher Finn[2], Donald "Mick" Finn's son.

13. There is no statement in the record, or within Mr. Fineday's challenge, that suggests the State's 1992 Complaint was actually obtained by Mr. Fineday from the Minnesota State Court Information System, but instead, based on information and belief, the present Complaint is a photocopy of the same Complaint submitted in CV-06-07, with the same white outs, which was reviewed and considered by Judge Wahwassuck in 2006, and formed the basis of LLRBC Res. 2006-76, where Donald Finn as Dist. 3 Rep. participated in a 4-0 vote resolution to codify convictions deemed a misdemeanor. (See *Aff. of*

[2] See State v. Christopher Finn, charged with Felony burglary and felony theft, and conditions including no contact with Arthur LaRose. Christopher Finn pled to lesser Felony theft and received a stay of imposition, also sentenced on 12-28-1992 in Cass County Court. (See **Exhibit G**, Register of Actions Case No. 11-KX-91-000862, State of Minnesota vs. Christopher Dale Finn).

LaRose **Exhibit 1**, Minutes of LLRBC meetings adopting LLRBC Res. 2006-76).

14. Defendant MCT Tribal Elections Court of Appeals failed to give fair and full consideration of Petitioner's constitutional and MCT Election Ord. defenses and "decide the issue of certification or non-certification based on the materials" (the challenge, record and answer) while openly commenting that ["t]he court can only rely on evidence in the record." The MCT Tribal Election Court of Appeals does not appear to have executed their duties to the best of their ability (See Election Contest Judge Oath of office 1.7(D)).

COUNT III
Due Process Violations
U.S. Const. Amend V; amend XIV, § 1; and
Indian Civil Rights Act of 1968 §1302

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. The Fourteenth Amendment, the Fifth Amendment includes a due process clause stating that no person shall "be deprived of life, liberty, or property, without due process of law." The Fifth Amendment's due process clause applies to the federal government, while the Fourteenth Amendment's due process clause applies to state governments. It is the Indian Civil Rights Act of 1968 (ICRA) § 1302, which protects tribal members'

> Constitutional Rights: No Indian tribe in exercising powers of self-government shall: (a) In general

> 1. make or enforce any law prohibiting the . . . right of the people peaceably to assemble and to petition for a redress of grievances;
>
> 5. take any property for a public use without just compensation;
>
> 8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
>
> 9. pass any bill of attainder or ex post facto law;

Petitioner cited to the ICRA and provided a copy of 1302 as (A-15) in his *Answer to Challenge Motion to Dismiss*. (See *Aff. of LaRose* **Exhibit 9**, Table of Attachments, page 7).

2. Defendants have vicariously and/or directly engage in conduct depriving Petitioner of equal protection of the laws, deprived Petitioner of important and significant property and liberty rights to be a candidate for office, using an ex post facto law, obtained in violation of the MCT Const. Art. XII (See Hudson v Zinke (2020)) and Art. XIII, in violation of the U.S. Constitution and in violation of the Indian Civil Rights Act, while using the MCT Election Ord. to assert [t]he decision of the Tribal Election Court of Appeals shall be final" (1.3(C)(6), which was re-announced by the TEC, after preventing Petitioner from the full benefit of petitioning for redress at Special Meeting held March 10, 2022 at Walker, requested by 4 TEC members (See *Aff. of LaRose* **Exhibit** 12) under MCT Const. Bylaws Art. II, Section 3, which was cut short by motion to adjourn and follow-up announcement declaring "This means the

Appellate Court decision to not certify Mr. LaRose for the upcoming 2022 election still stands." (See *Aff. of LaRose* **Exhibit 12**, MCT Pres. Chavers Memorandum to Minnesota Chippewa Tribe Enrollees dated March 16, 2022).

3. On March 31, 2022, LLRBC Chairman Faron Jackson gave NOTICE OF BAND APPELLATE COURT JURISDICTION to MCT Ex. Dir. Frazer that no official action had been taken to opt into the MCT Tribal Election Court of Appeals (See *Aff. of LaRose* **Exhibit 14**).
4. On April 1, 2022, Mr. Frazer and MCT General Legal Counsel responded by letter that "jurisdiction over candidate certification challenges **lies exclusively** with the Tribal Election Court of Appeals. Bands do not have to opt-in and cannot opt out" and that "the decision of the Election Court of Appeals is final and should be recognized as such." (See *Aff. of LaRose* **Exhibit 14**).
5. Petitioner LaRose seeks a declaration from this LL Tribal Court that Petitioner has exhausted his administrative remedies with Defendants MCT-TEC and MCT Tribal Court of Election Appeals.

COUNT IV
Takings Clause Violations
U.S. Const. Amend V and
Indian Civil Rights Act of 1968 §1302

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. Petitioner has been denied equal protection under the MCT Tribal Election Court of Appeals, which *Decision & Order* appears to be an unequal review of the record that has resulted in depriving Petitioner of his civil liberty to be re-

elected as a certified candidate for Secretary-Treasurer of the LLRBC on the MCT ballot, which is an *earned* property right. (See *Aff. of LaRose*).

2. Defendants have continued to apply the ex post facto amendment obtained by unconstitutional BIA election waivers. (Id. History of election certificaitons).

COUNT V
Takings Clause Violations
MCT Const. Art. VII
U.S. Const. Amend V and
Indian Civil Rights Act of 1968 §1302

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

1. The Minnesota Chippewa Tribe's Tribal Election Court of Appeals began its Discussion in their *In Re LaRose Decision & Order* dated 2-16-22 with Article IV, § 4 of the Constitution which provides that the *ex post facto* application of "**'if he or she has ever been convicted of a felony of any kind . . . .'** (Emphasis added)." (Emphasis in original order, second time quoting Election Ordinance)((See *Aff. of LaRose* **Exhibit 4**, page 1).

2. The if ever felony amendment was obtained use of BIA Election Waivers to circumvent the MCT Const. requirement of 30% eligible voter participation as decided by the D.C. Federal Court in Hudson v Zinke (2020), whereby MCT Const. Art. XII provides that

> This constitution may be revoked by Act of Congress or amended or revoked 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 if at least 30 percent of those entitled to vote shall vote.

(Id. MCT Const.)

3. In almost identical circumstances to the MCT 2005 Secretarial Election with BIA waivers, the Hudson v Zinke Court, involved an enrolled member of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota who sought review of the tribes' secretarial election which amended the tribes' constitution and bylaws to change composition of Tribal Business Council, alleging that election lacked requisite 30% quorum under tribal constitution and Indian Reorganization Act.

4. The Hudson v Zinke District Court held

> that as matter of first impression, certification of tribe's secretarial election based on quorum of registered voters, as opposed to quorum of adult members of tribe, was contrary to law because the [BIA tribal election waivers] regulation requires a quorum of only registered voters, it contradicts the Tribe's constitutional provision and therefore the Tribal Constitution's quorum requirement applies. See 25 C.F.R. § 81.2(b). The court further finds that Defendants' [Secretarial approval] certification of the 2013 Election based on a quorum of registered voters is contrary to law and a violation of the APA. See *Nat'l Envtl. Dev. Ass'n's Clean Air Project*, 752 F.3d at 1010–11 (holding that agency action violated the APA by being contrary to law because it was "plainly contrary to the agency's own ... rules"). Therefore, Defendants' [Secretarial] approval of the 2013 Election must be vacated.

(See Hudson v Zinke, 453 F.Supp.3d 431, 437 (2020) rev'd on other grounds).

5. MCT Legal Counsel Brodeen prepared a *Memorandum* dated July 13, 2020, to the TEC with the Subject: Applicability of *Hudson v Zinke* that provides a thorough understanding of applicability at the time and concluding that "a challenge to the constitutional amendments adopted by the MCT in 2006 based on Hudson v Zinke is likely to fail." (See (See *Aff. of LaRose* **Exhibit A**, p. 4).

6. In fact, *Hudson v Haaland* (Zinke) DC Circuit Court of Appeals ORDERED AND ADJUDGED that the judgment of the United States District Court for the District of Columbia be VACATED and the case be REMANDED FOR DISMISSAL, based on a lack of standing by Hudson, not previously raised at the District Court.

7. The *Hudson v Haaland* Court explained that

> The "irreducible constitutional minimum of standing" is that (i) the plaintiff suffered an "injury in fact[,]" meaning "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (ii) the injury must be "fairly traceable to the challenged action of the defendant"; and (iii) a favorable decision by the court must be likely to redress the injury.

See *Hudson v. Haaland*, 843 Fed. Appx. 336, 337 (2021).

8. The DC Appellate Court in Hudson v Haaland went on to explain that

> Hudson was not injured by the substantive changes effected by the constitutional amendments. Hudson [was] not a member of the Tribal Business Council and could not be injured by the new rules providing for the recall of its members or for their potential discharge from the Business Council after a felony conviction.

(Id.)

9. Defendant MCT-TEC requested a Secretarial Election under Art. XII to amend the MCT Const. in 2005, and understands the MCT Const. felon amendment was obtained by violating MCT Const. Art. XII 30% required eligible voters with BIA election waivers, yet the TEC continues to enforce the unconstitutional ex post fact law, obtained by violating the MCT constitutional rights of all of the MCT

members' voting rights, thresholds and other Indian Civil Rights Act protections from tribal government.

10. MCT-TEC and MCT Tribal Elections Court of Appeals knows and/or should have known they are depriving Petitioner of his multiple constitutionally protected §1982 property rights and liberty interests and §1983 civil rights, expressed in the Indian Civil Rights Act of 1968, MCT Const. Art XII Amendment (30%) and Art XIII Rights of Members and US Constitutional rights of all citizens against ex post fact laws.

11. Petitioner requests a Temporary Restraining Order (TRO) to prevent the MCT 2022 election for Secretary-Treasurer on Leech Lake Reservation be enjoined from further proceedings and the MCT election calendar tolled until Petitioner is placed on the ballot as a candidate in *stare decisis* of the decided election law for Leech Lake Reservation. (TRO Petition will be served and filed tomorrow).

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests the following relief:

A. That the practices of Respondents complained of herein be adjudged, decreed and **declared** to violate the civil rights secured by Petitioner under the MCT Const., Art XII and Art. XIII, U.S. Const. Art. V and Art 14, violations under Indian Civil Rights Act of 1968 right to seek redress, due process, unjust taking, ex post facto, and 42 USC §1981 et seq. and unlawful retroactive application of MCT Const. Art 4.

B. That a **permanent prohibitory injunction** be issued against Respondents from continuing the 2022 LLRBC Secretarial-Election without Petitioner LaRose on the ballot.

C. That the Court issue an **order enjoining Respondents** and their officers, agents, and employees from subjecting Petitioner Plaintiff to different treatment under the MCT Election Ordinance.

D. That the **court retain jurisdiction** until the Court is satisfied that the Respondents have remedied the ex post facto and other civil deprivations complained of herein and are determined to be in full compliance with the law.

E. That Petitioner *be awarded such other and further legal and equitable relief as may be found appropriate, just, and equitable.*

Dated: April 28, 2022

/s/ Frank Bibeau
Frank Bibeau
Attorney for Petitioner LaRose

Leech Lake Band of Ojibwe
In Tribal Court

Arthur Dale LaRose, LLBO Secretary-Treasurer,
Petitioner,
v.

Cathy Chavers, Minnesota Chippewa Tribe President and Gary Frazer, Executive Director Minnesota Chippewa Tribe and as Election Court Clerk (in their official capacities) and

The Minnesota Chippewa Tribe Tribal Election Court of Appeals (in their official capacities as 2022 certification panel),
Respondents,

Case No. _____

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner Arthur LaRose, by and through his attorney Frank Bibeau, hereby respectfully moves for a temporary restraining order ("TRO") and preliminary injunction immediately directing Respondents Cathy Chavers in her capacity as Minnesota Chippewa Tribe ("MCT") President, Gary Frazer in his capacity as MCT Executive Director, and MCT Tribal Court of Appeals (collectively, "Respondents") to: (1) certify Petitioner as a candidate for Secretary-Treasurer of the Leech Lake Band of Ojibwe ("Leech Lake" or "Band") Reservation Business Committee ("LLRBC") in the upcoming 2022 election, and (2) place Petitioner on the ballot for

the 2022 regular election consistent with the MCT election calendar. Alternatively, Petitioner requests that the Court enjoin or delay the upcoming 2022 MCT election to allow sufficient time to address Petitioner's claims.

MEMORANDUM AND POINTS OF AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner Arthur LaRose brings this suit against Respondents to block their unlawful non-certification of Petitioner as a candidate for Secretary-Treasurer of the LLRBC in the upcoming 2022 election. Petitioner is currently the LLRBC Secretary-Treasurer and has served on the LLRBC for the past 18 years. Petitioner has consistently been certified as a candidate for the LLRBC in accordance with the Revised MCT Constitution and fundamental due process protections and constitutional law principles. The MCT Tribal Election Court of Appeals, however, denied to certify Petitioner as a candidate for the Band's Secretary-Treasurer position in the upcoming 2022 election based on candidate eligibility criteria set forth in a 2006 amendment to the MCT Constitution and Revised MC Election Ordinance, which provides that "[n]o member of the Tribe shall be eligible to hold office … if he or she has ever been convicted of a felony." MCT Const. art. IV, § 4 (hereinafter referred to as the "2006 Amendment").

The case involves Petitioner's prior conduct taking place in 1992—long before the enactment of the 2006 Amendment. The Election Court of Appeals decision was based on Petitioner's 1992 criminal conviction involving third degree assault, which occurred long before the 2006 Amendment's enactment, and in which this Court has previously recognized is deemed to be a misdemeanor under Minnesota law. *Gotchie v. Goggleye, Findings of Fact, Conclusions of Law & Declaratory Judgment*, No. CV-06-07, at 2 n.2 (Leech Lake Tribal Ct. Dec. 8, 2006).

Respondents' non-certification of Petitioner as a candidate for LLRBC Secretary-Treasurer in the 2022 election violates Petitioner's rights protected under the MCT Constitution in several respects.

First, Respondents unlawfully applied the 2006 Amendment to Petitioner's prior conduct retroactively in the absence of any clear and unequivocal intent for the Amendment to be applied to conduct taking place prior to its effective date. Under the "well-settled presumption" against retroactivity, *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), laws are to be read "prospective in application unless [the legislature] has unambiguously instructed retroactivity." *Vartelas v. Holder*, 566 U.S. 257, 266 (2012). A law operates retroactively when it "attaches new legal consequences to events completed before its enactment." *Landgraf*, 511 U.S. at 270. "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly[.]" *Id.* at 265. Nothing in the 2006 Amendment clearly and unambiguously demonstrates that MCT tribal members intended the no felony requirement to retroactively apply to conduct taking place prior to the effective date. The Election Court of Appeals' failure to address whether the 2006 Amendment could be applied retroactively violated Petitioner's rights protected under the MCT Constitution.

Second, the MCT Constitution prohibits only persons with a felony conviction from running for Tribal office. Petitioner's prior conviction is deemed a misdemeanor, and therefore, does not disqualify him from being certified as a candidate. This Court's precedent and Tribal law affirm Petitioner's eligibility to be certified as a candidate for the 2022 election.

Third, the 2006 Amendment was obtained by a Secretarial Election with BIA waivers, which resulted in a 17% MCT eligible voter participation, thereby circumventing the MCT Constitutional requirement of 30% eligible voter participation in Article XII. The Court should decline to apply the 2006 Amendment to Petitioner's prior conduct as it was not properly enacted

in the first place. Petitioner has standing to object to the 2006 Amendment's validity as he has suffered an immediate impact to his due process and property rights that is fairly traceable to the Election Court of Appeals' decision denying certification and a favorable decision by this Court recognizing the invalidity of the 2006 Amendment would redress Petitioner's injury.

Fourth, Respondents failed to comply with the MCT Election Ordinance in responding to the certification challenge. For these reasons, the Court should grant Petitioner's application for a TRO and preliminary injunction to enjoin Respondents' unlawful conduct relating to the non-certification of Petitioner as a candidate for the 2022 election.

II. BACKGROUND

A. Petitioner's Past Certification for Tribal Office.

Petitioner is an enrolled member of Leech Lake Band of Ojibwe—a constituent band of the Minnesota Chippewa Tribe, a federally recognized sovereign Indian tribe. 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022). Petitioner is currently the seated and duly elected Secretary-Treasurer of the LLRBC. LaRose Aff. ¶ 1. Over the past 18 years, Petitioner has held the positions of Chairman and Secretary-Treasurer of the LLRBC. *Id.* ¶ 3. During this time, Petitioner has been certified as a candidate for to serve on the LLRBC a total of ten times and seven times following the enactment of the 2006 Amendment to the MCT Constitution. *Id.* ¶ 2. Prior to the 2022 election cycle, Petitioner has never been denied certification to be a candidate for the LLRBC. *See id.*

B. The 2006 Amendment to the MCT Constitution Prohibiting Candidates with Felony Convictions.

The MCT Constitution ensures that all MCT Tribal members are afforded basic privileges and protections: "All members of the Minnesota Chippewa Tribe shall be accorded by the governed body equal rights, equal protection, and equal opportunities to participate in the

economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including … the right to petition for action or the redress of grievances, and due process of law." MCT Const. art. XIII.

The MCT Constitution may be amended in specific circumstances. The MCT Constitution expressly requires a minimum of 30 percent of eligible tribal members to vote in order to have a valid Secretarial election. MCT Const. art. XII ("This constitution 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 if at least 30 percent of those entitled to vote shall vote.").

On February 17, 2005, the TEC adopted Resolution No. 70-05, requesting that a Secretarial election be called for the purpose of amending the MCT Constitution. The Bureau of Indian Affairs ("BIA") subsequently held a Secretarial election at the request of the MTC to amend Article IV, Section 4 (Tribal Elections) of the Revised MCT Constitution to add the following provision:

> No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.[1]

Following the Secretarial election, there was a timely challenge brought for the failure to meet the 30 percent required eligible voters participating in the election and the *ex post facto* application of the 2006 Amendment. Ultimately, the Secretary of the Interior approved the 2006 Amendment, which then became part of the MCT Constitution.

[1] The MCT amended its Election Ordinance to restate this same requirement. Election Ordinance § 1.3(D)(1). The Election Ordinance provides that a felony is any crime that is defined as such under "the law of the jurisdiction in which [the] crime was prosecuted." *Id.* § 1.3(D)(2)(c).

On February 23, 2006, the LLRBC adopted Resolution No. 2006-07 entitled "Convictions that are deemed misdemeanors for certification of tribal office candidates." In Resolution No. 2006-07, the LLRBC declared that "the policy of the Leech Lake Tribal Council is that convictions bearing the declaration 'This offense is deemed to be a misdemeanor' on criminal background check results shall be deemed to be misdemeanors by the Leech Lake Tribal Council in determining eligibility of candidates to run for tribal council." Resolution No. 2006-76 at 2.

Subsequently, the Honorable Judge Wahwassuck of the Leech Lake Tribal Court determined in *Gotchie v. Goggleye* (CV-06-07), that both Petitioner LaRose and then-seated Chairman George Goggleye were not convicted felons under Minnesota criminal law. Findings of Fact, Conclusions of Law & Declaratory Judgment by the Honorable Judge Wahwassuck (Leech Lake Tribal Ct. Dec. 8, 2006). The Tribal Court also found that the Resolution No. 2006-76 was not inconsistent with Minnesota Law or MCT Election Ord. No. 10, and concluded that the LLRBC did not exceed it authority by passing Res. #2006-76. *Id.* Judge Wahwassuck explained that Resolution No. 2006-07 "codifies the Band's policy on certification, declaring that when a Minnesota criminal background check indicates that a conviction is deemed to be for a misdemeanor, the [LLRBC] will also deem it to be for a misdemeanor." *Id.* at 9–10. Thus, the question of whether Petitioner was convicted of a misdemeanor has been a long-decided election certification law for Leech Lake Reservation and its voters.

Judge Wahwassuck also certified the following questions to the TEC for an opinion pursuant to a Tribal Constitution Interpretation No. 1-80:

1. Is Revised MCT Constitution Article IV intended to apply to Tribal Council member elected to office prior to the date of enactment on January 5, 2006?

2. Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the date of enactment) constitute a retrospective application of the law?

Gotchie v. Goggleye, No. CV-06-07, *Request for Opinion From Tribal Executive Committee* at 2 (Leech Lake Tribal Ct. Dec. 8, 2006). The TEC, however, has failed to provide any interpretation on the two questions certified by Judge Wahwassuck.

C. Petitioner's Non-Certification as a Candidate for the 2022 Election.

On February 9, 2022, Leonard Fineday, a certified candidate for LLRBC Secretary-Treasurer, filed a certification challenge against Petitioner pursuant to the MCT Election Ordinance as amended in December 2021.[2] Petitioner received a copy of Mr. Fineday's certification challenge on 3:30 PM on February 9, 2022. In the certification challenge, Mr. Fineday asserted that Petitioner was ineligible to be a candidate in the 2022 election based on a third-degree assault charge under Minnesota law from 1992. Fineday Certification Challenge Letter at 1.

Mr. Fineday took the position that "[t]he fact that [Petitioner's] conviction was later deemed a misdemeanor in 1995 does not change the fact he was convicted of a felony." *Id.* Mr. Fineday's certification challenge relied on court records showing that Petitioner's prior conviction is deemed a misdemeanor and a 2018 Decision & Order by Leech Lake Contest Judge Collette Routel in *Finn v. Election Board* (June 29, 2018), which was not intended to be a candidate certification decision, but instead a challenge to the Leech Lake Band's general election outcome. In denying the election contest filed by Mick Finn, Judge Routel stated in dicta that Petitioner's conviction is "deemed to be a misdemeanor" and "despite the fact that he has held a position as an

[2] On December 14, 2021, the TEC amended the MCT Election Ordinance to allow candidates other candidate's certification with supporting documentation *after* candidates have already been certified.

elected official for many years and received thousands of votes by Band members, he cannot be certified as a candidate after this election cycle without, at a minimum, a change in the MCT Election Ordinance." *Id.* at 5.

Following Judge Routel's decision, this Court denied a TRO requested brought by Steven White to remove Petitioner from Tribal office. *White v. LaRose*, No. CV-18-66 (Leech Lake Tribal Ct. July 3, 2018). In the Order, it was explained that the "Court does not find Judge Routel's finding regarding [Petitioner's] legal right to occupy the seat he was elected to of any legal import …. [Judge Routel] appears to be ruling that LaRose is not eligible to be seated as the Secretary-Treasurer, but there is no mechanism in place to stop him being seated. However, it is clear to this Court that the opinion she expressed was not necessary to the ultimate resolution of the election contest and thus not entitled to full faith and credit or preclusive effect in this Court." *Id.* at 2. The Court also noted that Judge Routel's decision relied on a prior decision of the Election Court of Appeals involving Guy Green III and Minnesota court cases which conclude "that Defendants who receive suspended imposition of sentences in Minnesota on felonies, that are later reduced to misdemeanor convictions after complying with the conditions of the suspended, have nonetheless been convicted of felonies." *Id.* This Court explained that "[t]his interpretation of the law may run contrary to several federal court decisions on the issue … interpreting suspended impositions of sentences as not being convictions at all." *Id.*

On February 11, 2022, at 2:15 PM, Petitioner filed his Answer to Challenge Motion to Dismiss with MCT Executive Director Frazer. On February 16, 2022, the Tribal Election Court of Appeals issued its Decision & Order denying Petitioner certification as a candidate for the Secretary-Treasurer of the LLRBC. Petitioner was provided a copy of the Decision & Order at 11:17 AM on February 16, 2022. In the Order & Decision, the Election Court of Appeals approved

Mr. Fineday's certification challenge, finding that Petitioner "was convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth" in the MCT Constitution and MCT Election Ordinance. Decision & Order at 1.

On February 17, 2022, Petitioner wrote a letter to MCT President Cathy Chavers requesting an emergency TEC special meeting to reconsider the denial of his certification as a candidate for the 2022 election. Petitioner's request was denied. This suit follows.

III. STANDARD OF REVIEW

To obtain injunctive relief, the petitioner must show that: (1) he "is likely to success on the merits," (2) he is "likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in his favor," and (4) "that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "[T]he standard for analyzing a motion for a temporary restraining order is the same as amotion for preliminary injunction[.]". *Tumey v. Mycroft AI, Inc.*, 27 F.4th 657 (8th Cir. 2022). "While no single factor is determinative, the probability of success factor is the most significant." *Carson v. Simon*, 978 F.3d 1051, 1059 (8th Cir. 2020). Under certain circumstances, a court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney. Here, all factors strongly favor the issuance of a temporary restraining order.

"It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Preamble of the Leech Lake Band Judicial Code states that a purpose of the Tribal Court is to "assure the protection of the rights of members of the Leech Lake Band." The Judicial Code also provides that the "judicial power of the Tribal Court shall extend to: All matters and actions within the power and authority of the Leech Lake

Band including controversies arising out of the Constitution of the Minnesota Chippewa Tribe, by-laws, statutes, ordinances, resolutions and codes and codes enacted by the Reservation Tribal Council." Judicial Code Part II § 1(C)(1). "This provision clearly confers subject matter jurisdiction to this Court to hear this case as it is a controversy arising out of the MCT Constitution." *Leech Lake Band of Ojibwe v. White*, No. CV-03-81, 2004 WL 6012165, at *3 (Leech Lake Tribal Ct. Sept. 29, 2004). "[T]his Court cannot simply ignore the clear due process rights guaranteed to tribal members by the MCT Constitution and the federal Indian Civil Rights Act."[3] *Id.* at *6.

IV. ARGUMENT

A. Petitioner Has a Strong Likelihood of Success on the Merits.

1. The MCT Court of Election Appeals Unlawfully Applied the 2006 Amendment Retroactively to Petitioner's Prior Conviction Occurring Before the Amendment's Enactment.

Regardless of whether Petitioner's prior conviction is deemed a felony or misdemeanor, Respondents unlawfully applied the 2006 Amendment retroactively to past conduct taken place prior to the Amendment's effective date. Petitioner's relevant conduct—a criminal conviction for third-degree assault under Minnesota law—occurred in 1992—long before the 2006 Amendment's effective date. The Election Court of Appeals, however, entirely failed to analyze whether the Amendment could properly be applied retroactively to Petitioner's conduct. Adhering to the traditional presumption against retroactivity in applying the 2006 Amendment shows why the

[3] The Indian Civil Rights Act provides that: "No Indian tribe in exercising powers of self-government shall … deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law [or] pass any bill of attainder or ex post facto law[.]" 25 U.S.C. § 1302(a)(8)–(9).

Court should reverse the Election Court of Appeals' decision to deny Petitioner certification for the 2022 election cycle.

"As a general, almost invariable rule, a legislature makes law for the future, not for the past." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS, at 261 (2012). "Even when they do not say so (and they rarely do), statutes will not be interpreted to apply to past events." *Id.* The presumption against retroactivity is "[t]he principle that legislation usually applies only prospectively [which] 'is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic.'" *Opati v. Republic of Sudan*, 140 S. Ct. 1601 (2020) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994)).

The presumption against retroactivity may apply to amendments to tribal constitutions. *See Ballini v. Confederated Tribes of Grand Ronde*, 4 Am. Tribal Law 107, 117 (Confederated Tribes of the Grand Ronde Cmty. Ct. App. 2003) ("[W]e adopt the presumption against retroactive legislation as explained in *Landgraf*, understanding 'legislation' to include not only the Tribal Council's enactments but also voter-approved constitutional amendments.").[4]

Under the presumption against retroactivity, "courts read laws as prospective in application unless Congress has unambiguously instructed retroactivity." *Vartelas v. Holder*, 566 U.S. 257, 266 (2012); *see also Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 946 (1997) (explaining that a court is to "apply this time-honored presumption unless Congress has clearly

[4] The presumption against retroactively is also codified in Minnesota statutes: "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21. "The language of the statute must contain clear evidence of retroactive intent, 'such as mention of the word 'retroactive.'" *Sletto v. Wesley Const., Inc.*, 733 N.W.2d 838 (Minn. Ct. App. 2007) (quoting *Duluth Firemen's Relief Ass'n v. City of Duluth*, 361 N.W.2d 381, 385 (Minn. 1985)); *see also K.E. v. Hoffman*, 452 N.W.2d 509, 512 (Minn. Ct. App. 1990) (concluding that reference in statute to "actions pending" indicated retroactive intent), *review denied* (Minn. May 7, 1990).

manifested its intent to the contrary"). To have retroactive effect, the statutory language must be "so clear that it could sustain only one interpretation." *I.N.S. v. St. Cyr*, 533 U.S. 289, 316–17 (2001).[5] Specifically, there must be an "express command" or "unambiguous directive" in order to apply laws retroactively. *Martin v. Hadix*, 527 U.S. 343, 354 (1999) (quoting *Landgraf*, 511 U.S. at 263, 280); *Reynolds v. McArthur*, 27 U.S. 417, 434 (1829) ("[L]aws by which human action is to be regulated … are never to be construed retrospectively unless the language of the act shall render such construction indispensable.").

The retroactive application of laws is disfavored due to fundamental and basic concerns about fairness: "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the 'principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." *Landgraf*, 511 U.S. at 265.[6]

"Several provisions of the Constitution … embrace the doctrine [against retroactive legislation], among them, the *Ex Post Facto* Clause, the Contract Clause, and the Fifth Amendment's Due Process Clause." *Vartelas*, 566 U.S. at 266. "The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation." *Landgraf*, 511 U.S. at 267. "The Due Process Clause also protects the interests in fair notice and repose that may be compromised by

[5] *Murray v. Gibson*, 56 U.S. 421, 423 (1853) ("As a general rule for the interpretation of statutes, it may be laid down, that they never should be allowed a retroactive operation where this is not required by express command or by necessary and unavoidable implication. Without such command or implication they speak and operate upon the future only.").

[6] *General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) ("Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset transactions.").

retroactive legislation; a justification sufficient to validate a statute's prospective application under the Clause 'may not suffice' to warrant its retroactive application." *Id.* at 266–67.

The Supreme Court has set forth a two-part test for evaluating whether a statute applies retroactively. First, the court must "determine whether [the legislature] has expressly prescribed the statute's proper reach." *Martin v. Hadix*, 527 U.S. 343, 352 (1999) (quoting *Landgraf*, 511 U.S. at 280). If there is no "directive on the temporal reach of a statute, [the court] determine[s] whether the application of the statute to the conduct at issue would result in a retroactive effect." *Id.* If so, consistent with the "'traditional presumption' against retroactivity, [the court] presume[s] that the statute does not apply to that conduct." *Id.*

"[D]eciding when a statute operates 'retroactively is not always a simple or mechanical task." *Landgraf*, 511 U.S. at 268. As the Supreme Court explained in *Landgraf*:

> A statute does not operate "retroactively" merely because it is applied in a case arising from conduct antedating the statute's enactment …. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. The conclusion that a particular rule operates "retroactively" comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event.

Id. at 269–70; *see also Martin v. Hadix*, 527 U.S. 343 (1999) ("The inquiry into whether a statute operates retroactively demands a commonsense, functional judgment about 'whether the new provision attaches new legal consequences to events completed before its enactment.' This judgment should be informed and guided by 'familiar considerations of fair notice, reasonable reliance, and settled expectations.'") (quoting *Landgraf*, 511 U.S. at 280). Several cases have applied the presumption against retroactivity framework, which are instructed for the Court in this case.

For example, in *Vartelas*, the Court considered whether a provision of the Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which precluded foreign travel by lawful permanent residents, applied retroactively to a lawful permanent resident convicted *before* the IIRIRA's enactment. 566 U.S. at 260. "Guided by the deeply rooted presumption against retroactive legislation," the Supreme Court held that "the relevant provision of IIRIRA … attached a new disability (denial of reentry) in respect to past events (Vartelas' pre-IIRIRA offense, plea, and conviction)." *Id.* at 261. As such, the Court concluded that the IIRIRA provision "does not apply to Vartelas' conviction" and "brief travel abroad on his permanent resident status is therefore determined not by IIRIRA, but by the legal regime in force at the time of his conviction." *Id.*

In analyzing whether the IIRIRA provision could be applied retroactively, the Court stated that "Congress did not expressly prescribe the temporal reach of the IIRIRA provision in question[.]" *Id.* at 267. This is in contrast to other provisions of the IIRIRA, which "expressly direct retroactive application." *Id.* (citing 8 U.S.C. § 1101(a)(43)) (IIRIRA's amendment of the "aggravated felony" definition applies expressly to "conviction[s] … entered before, on, or after" the statute's enactment date); *see also INS v. St. Cyr*, 533 U.S. 289, 319–20 & n.43 (2001) (setting out further examples in the IIRIRA).

The Court then proceeded to "the dispositive question whether, as Varetlas maintains, application of IIRIRA's travel restraint to him 'would have retroactive effect' Congress did not authorize." *Id.* The Court determined that "Varetlas presents a firm case for application of the antiretroactivity principle" because "[n]either his sentence, nor the immigration law in effect when he was convicted and sentenced, blocked him from occasional visits to his parents in Greece" and the IIRIRA provision, "if applied to him, would thus attach 'a new disability' to conduct over and done well before the provision's enactment." *Id.*

Likewise, in *Martin v. Hadix*, 527 U.S. 343 (1999), the Supreme Court considered whether the Prison Litigation Reform Act of 1995 ("PLRA"), which imposed limits on the fees that could be awarded to attorneys who litigant prisoner suits applied to post-judgment monitoring of defendants' compliance with remedial decrees that had been performed before the PRLA became effective. *Id.* at 347. The text of the PLRA provides that [i]n *any* action brought by a prisoner who is confined [to a correctional facility] … attorney's fees … shall not be awarded, except" as authorized by the statute. 42 U.S.C. § 1997e(d)(1) (emphasis added).

The Court rejected the argument that the statutory phrase "[i]n any action brought by a prisoner who is confined" clearly expresses congressional intent to apply the statute retroactively. *Id.* at 355. The Court pointed out that "Congress has not expressly mandated the temporal reach" of the PLRA. *Id.* Additionally, the Court explained that "although the word 'any' is broad, it stretches the imagination to suggest that Congress intended, through the use of this one word, to make the fee limitations applicable to all fee awards." *Id.* at 354. As the Court detailed: "Had Congress intended [PLRA] to apply to all fee orders entered after the effect date, even when those awards compensate for work performed before the effective date, it could have used language more obviously targeted to addressing the temporal teach of that section. It could have stated, for example, that 'No award entered after the effective date of this Act shall be based on an hourly rate greater than the ceiling rate." *Id.*

In discussing statutory language that might show clear congressional intent to apply the PLRA retroactively the Court explained: "The conclusion that [PLRA] does not clearly express congressional intent that it apply retroactively is strengthened by comparing [PLRA] to the language that we suggested in *Landgraf* might qualify as a clear statement that a statute was to apply retroactively: '[T]he new provisions shall apply to all proceedings pending on or commenced

after the date of enactment.' This provision, unlike the language of the PLRA, unambiguously addresses the temporal reach of the statute. With no such analogous language making explicit reference to the statute's temporal reach, it cannot be said that Congress has 'expressly prescribed' [PLRA]'s temporal reach." *Id.* 354–55. As such, the Court "conclude[d] that the PLRA contains no express command about its temporal reach" and because "the PLRA, if applied to postjudgment monitoring services performed before the effective date of the Act, would have a retroactive effect inconsistent with our assumption that statutes are prospective, in the absence of an express command by Congress to apply the Act retroactively, we decline to do so." *Id.* at 362 (citing *Landgraf*, 511 U.S. at 280).

Here, the 2006 Amendment presents a clear case for application of the presumption against retroactivity. First, the 2006 Amendment is entirely silent with respect to the issue of retroactivity and the Amendment's temporal reach. There is no language in the 2006 Amendment whatsoever that operates as an "unambiguous directive" or "express command" to apply the Amendment retroactively to convictions taking place prior to its effective date. The 2006 Amendment does not speak to persons who have previously been certified as a candidate for Tribal office under the prior version of the MCT Constitution and have been convicted *before* the Amendment's enactment. An express directive of the 2006 Amendment's retroactive application must have clear and unambiguous language mandating retroactive application. *See Varetlas*, 566 U.S. at 267 (stating that IIRIRA's amendment of "aggravated felony" definition applies expressly to "conviction[s] … entered before, on, or after" the statute's enactment date); IIRIRA § 321(c) ("The amendments made by this section shall apply to actions taken on or after the date of the enactment of this Act, regardless of when the conviction occurred …."); IIRIRA § 322(c) ("The amendments made by subsection (a) shall apply to convictions and sentences entered before, on, or after the date of the

enactment of this Act"); *Landgraf*, 511 U.S. at 255–56 & n.8 (stating that the language "all proceedings pending on or commenced after the date of "enactment" amount to "an explicit retroactivity command").[7] The 2006 Amendment says absolutely nothing about convictions entered before its enactment.

Moreover, while the phrase "ever been convicted of a felony of any kind" may read broadly, it is a far stretch to suggest that the MCT people intended, through the use of the word "ever," to make the 2006 Amendment applicable to all convictions, including those entered prior to its enactment. *See Martin*, 527 U.S. at 343 (explaining that "although the word 'any' is broad, it stretches the imagination to suggest that Congress intended, through the use of this one word, to make the fee limitations applicable to all fee awards" in the phrase "[i]n any action brought by a prisoner who is confined").[8] At most, the "ever been convicted" language in the 2006 Amendment raises an ambiguity as to whether it applies to a person committed a felony prior to its enactment and has previously been certified as a candidate for Tribal office. The language in the 2006 Amendment thus "falls short … of the 'unambiguous directive' or 'express command' that the [2006 Amendment] is to be applied retroactively." *Martin*, 527 U.S. at 354. Had the MCT voters intended the 2006 Amendment to apply to criminal convictions entered prior to its effective date, they "could have used language more obviously targeted to addressing the temporal reach of that section." *Id.* But they choose to not do so.

---

[7] *See also Al Bahlul v. United States*, 767 F.3d 1, 12 (D.C. Cir. 2014) (holding that statutory language conferring jurisdiction on military commissions to try "any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001" constitutes a "clear[] statement of the Congress's intent to confer jurisdiction on military commissions to try the enumerated crimes regardless whether they occurred 'before, on, or after September 11, 2011").

[8] *See also Scott v. Boos*, 215 F.3d 940, 944 (9th Cir. 2000) ("The fact that [a] statute applies to all people and is very clear in its mandate … does not necessarily mean that it should apply retroactively.").

Because the 2006 Amendment contains no "language making explicit reference to [its] temporal reach," *Martin*, 527 U.S. at 355, the Court must "proceed to the second step of *Landgraf*['s] retroactivity analysis in order to determine" whether the 2006 Amendment has a retroactive effect on the rights of Petitioner in this case. *St. Cyr*, 533 U.S. at 320. It is clear that neither Petitioner's conviction, nor the MCT Constitution in effect when he was convicted, barred him from running for Tribal office. The 2006 Amendment, if applied to Petitioner in the manner submitted by the Election Court of Appeals, would thus attach "a new disability" to "conduct over and done well before the [Amendment's] enactment." *See Vartelas*, 566 U.S. at 267. The Election Court of Appeals' decision is directly at odds with "familiar considerations of fair notice, reasonable reliance, and [Petitioner's] settled expectations." *Landgraf*, 511 U.S. at 270. Without a doubt the retroactive application of the 2006 Amendment "would impair rights [Petitioner] possessed when he acted, increase [his] liability for past conduct, [and] impose new duties with respect to transactions already completed." *Id.* at 280. Because application of the 2006 Amendment to Petitioner's prior conduct would have a "retroactive effect inconsistent with [the] assumption that [laws] are prospective," *Martin*, 527 U.S. at 362, the Court should decline to apply the 2006 Amendment to Petitioner's conviction that occurred well before its enactment.

Furthermore, the Election Court of Appeals stated that its denial of Petitioner's certification "is consistent with the binding precedent set forth" in *In re Guy Green III, Non-Certification for Office of District III Representative, Leech Lake Band of Ojibwe* (MCT Tribal Election Ct. of Appeals Feb. 21, 2014) and *In re Peter Nayquonabe* (MCT Tribal Election Court of Appeals Feb. 15, 2018) is incorrect. Specifically, the Election Court of Appeals failed to discuss the obvious differences between *In re Guy Green III* and *In re Peter Nayquonabe* that make these cases clearly distinguishable from this case on the retroactive application issue.

In *In re Guy Green*, the Election Court of Appeals considered whether Guy Green III—a MCT tribal member who was convicted of a second-degree assault with a dangerous weapon under Minnesota law in 2010 *after* the 2006 Amendment's enactment—was eligible to run for Tribal office. *In re Guy Green III*, Decision & Order at 1. The Court found that "Mr. Green's conviction constitutes a felony conviction under the MCT Constitution and Election Ordinance," and therefore "confirm[ed] the decision of the Leech Lake Band to deny him certification as a candidate for the office of District III Representative." *Id.* at 2. Unlike Petitioner's prior conviction, Mr. Green's conviction occurred *after* the 2006 Amendment's enactment. This critical fact makes it so that there is no retroactive application of the 2006 Amendment issue with Mr. Green's conviction disqualifying him from running for Tribal office.

In re Peter Nayquonabe is also distinguishable from this case. In that case, the Election Court of Appeals determined that Peter Nayquonabe—who sought to run for Tribal office for the first time in 2010—was ineligible to be certified as a candidate for Mille Lacs Band Secretary-Treasurer based on a prior felony theft conviction. *In re Peter Nayquonabe*, Decision & Order at 5. Unlike Petitioner who was certified to be a candidate for Tribal office several times *before* the 2006 Amendment's enactment, Nayquonabe was *never* certified as a candidate for Tribal office. This means that Nayquonabe did not obtain "vested rights acquired under existing laws," *Vartelas*, 566 U.S. at 266, in the way that Petitioner did by being certified as a candidate before the 2006 Amendment's enactment. Moreover, there is no indication that Mr. Nayquonabe even raised the issue of whether the 2006 Amendment could be applied retroactively, so it makes sense that the Election Court of Appeals did not address retroactivity in its Decision & Order. This is consistent with the standard practice of declining to review constitutional questions and issues not raised by the parties. *See Andrews v. Louisville & N.R. Co.*, 406 U.S. 320, 325 (1972) ("We do not reach

for constitutional questions not raised by the parties."); *United States v. Walrath*, 324 F.3d 966, 970 n.2 (8th Cir. 2003) ("We decline to address the argument, which was not raised before the district court or in [the] appeal brief or at oral argument.").

Finally, the consistent and repeated certification of Petitioner for the Band's Secretary-Treasurer position in the past six tribal election cycles under the 2006 Amendment heavily weighs in favor of declining to apply the 2006 Amendment retroactively. "It is for the legislature, not the courts, to amend a statute if the plain language of the statute does not accurately reflect the legislature's intent." *In re Racing Servs., Inc.*, 779 F.3d 498 (8th Cir. 2015) (citation omitted).[9] Indeed, if MCT tribal members sincerely believed that Petitioner has been improperly certified as a candidate for Tribal office at any time during the past several election cycles due to his prior conviction, the MCT people would most likely have sought to amend the MCT Constitution to make clear that they intended for the 2006 Amendment is to be applied retroactively. But that is not the case here. There is no evidence that the MCT people have ever sought to amend or clarify the 2006 Amendment so that it is applied retroactively. The Court should thus reverse the Election Court of Appeals' decision denying Petitioner certification to be a candidate for LLRBC Secretary-Treasurer in the 2022 election.

2. <u>Petitioner's Prior Conviction is Deemed to be a Misdemeanor.</u>

Despite Petitioner's prior conviction labeled as deemed as misdemeanor on the court records produced in Mr. Fineday's certification challenge, the Election Court of Appeals determined that Petitioner's conviction is a felony and precludes him from being certified as a

[9] *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) ("Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences. Until it exercises that power, the people may rely on the original meaning of the written law.").

candidate. The Election Court of Appeals' conclusion, however, conflicts with this Court's precedent and Tribal law interpreting the 2006 Amendment.

The 2006 Amendment prohibits MCT members who have been "convicted of a felony of any kind." MCT Const. art. IV. The Election Ordinance provides that "[e]ach Band governing body must certify eligible candidates for office in accordance with the Minnesota Chippewa Tribe Constitution, the Minnesota Chippewa Tribe Election Ordinance, and the dates and guidelines established for Minnesota Chippewa Tribe elections." Election Ordinance § 1.3(C)(4). Under the Band's law, convictions bearing the declaration "'[t]his offense is deemed to be a misdemeanor' on criminal background check results shall be deemed to be misdemeanors by the Leech Lake Tribal Council in determining eligibility to run for tribal council." Resolution No. 2006-76.

As this Court has explained, "[t]his interpretation is not inconsistent with Minnesota law … nor is it inconsistent with the MCT Election Ordinance." *Gotchie v. Goggleye*, *Findings of Fact, Conclusions of Law & Declaratory Judgment*, No. CV-06-07, at 2 n.2 (Leech Lake Tribal Ct. Dec. 8, 2006). This Court has also concluded that Petitioner's same conviction at issue in this case is "deemed to be a misdemeanor pursuant to Minn. Stat. 609.13." *Id.* at 2 n.2. Accordingly, this Court should reaffirm its precedent determining that Petitioner's prior conviction is a misdemeanor and does not preclude him from being certified as a candidate in the 2022 election.

3. <u>The 2006 Amendment is Invalid and Petitioner Has Standing to Object to its Application.</u>

The 2006 Amendment was obtained by a Secretarial Election with BIA waivers, which resulted in a 17% MCT eligible voter participation, thereby circumventing the MCT Constitutional requirement of 30% eligible voter participation in Article XII, as described and decided by the D.C. District Court in *Hudson v. Zinke*, 453 F. Supp. 3d 431 (2020), *rev'd on other grounds*,

Hudson v. Haaland, 843 Fed. Appx. 336 (D.C. Cir. 2021). In almost identical circumstances to the MCT 2005 Secretarial Election with BIA waivers, the Court in *Hudson v. Zinke*, involved an enrolled member of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota who sought review of the tribes' secretarial election which amended the tribes' constitution and bylaws to change composition of Tribal Business Council, alleging that election lacked requisite 30% quorum under tribal constitution and Indian Reorganization Act.

The court in *Hudson v. Zinke* held that:

> [A]s matter of first impression, certification of tribe's secretarial election based on quorum of registered voters, as opposed to quorum of adult members of tribe, was contrary to law because the [BIA tribal election waivers] regulation requires a quorum of only registered voters, it contradicts the Tribe's constitutional provision and therefore the Tribal Constitution's quorum requirement applies. See 25 C.F.R. § 81.2(b). The court further finds that Defendants' [Secretarial approval] certification of the 2013 Election based on a quorum of registered voters is contrary to law and a violation of the APA. See *Nat'l Envtl. Dev. Ass'n's Clean Air Project*, 752 F.3d at 1010–11 (holding that agency action violated the APA by being contrary to law because it was "plainly contrary to the agency's own ... rules"). Therefore, Defendants' [Secretarial] approval of the 2013 Election must be vacated.

453 F. Supp. 3d at 437. On appeal, in *Hudson v. Haaland*, the D.C. Circuit ordered and adjudged that the D.C. Circuit's judgment be vacated and the case be remanded for dismissal based on a lack of standing by Hudson, not previously raised at the District Court. The D.C. Circuit court explained:

> The "irreducible constitutional minimum of standing" is that (i) the plaintiff suffered an "injury in fact[,]" meaning "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (ii) the injury must be "fairly traceable to the challenged action of the defendant"; and (iii) a favorable decision by the court must be likely to redress the injury.

Hudson v. Haaland, 843 Fed. Appx. 336, 337 (D.C. Cir. 2021). The D.C. Circuit went on to explain that:

> Hudson was not injured by the substantive changes effected by the constitutional amendments. Hudson [was] not a member of the Tribal Business Council and could not be injured by the new rules providing for the recall of its members or for their potential discharge from the Business Council after a felony conviction.

Id. By contrast, Petitioner has suffered an immediate impact to his due process and property rights that is fairly traceable to the Election Court of Appeals' decision denying certification and a favorable decision by this Court recognizing the invalidity of the 2006 Amendment would redress Petitioner's injury.

4. <u>The MCT Tribal Court of Election Appeal's Decision & Order Denying Petitioner Certification Failed to Comply with the MCT Election Ordinance.</u>

The MCT Election Ordinance sets forth specific requirements that must be met in handling a certification challenge. Specifically, the Election Ordinance provides in part that:

> The Executive Director or designee shall submit the following materials to the Tribal Election Court of Appeals at the expiration of the aforementioned deadlines: the challenge and supporting documentation; the record compiled by the band governing body; and any timely filed answer to the challenge. Notwithstanding any provision of this ordinance, the Tribal Election Court of Appeals shall convene within 48 hours of receiving the challenge, record, and answer, decide the issue of the certification or non-certification based on the materials described above. The Tribal Election Court of Appeals may convene by telephone conference. The decision of the Tribal Election Court of Appeals must be in writing and signed by the Chief Judge. The decision of the Tribal Election Court of Appeals shall be final.

Election Ordinance § 1.3(C)(6). Respondents failed to comply with these basic requirements. Petitioner LaRose received a copy of the candidate certification challenge at 3:30 pm on Feb. 9, 2022. (*See* LaRose Aff. Exhibit 5). Petitioner filed his Answer to Challenge Motion to Dismiss with Executive Director Frazer at 2:15 pm on Feb. 11, 2022. (See LaRose Aff. Exhibit 9).

On Feb. 16, 2022, the MCT Tribal Election Court of Appeals issued its Decision & Order which Petitioner was provided a copy at 11:17 am, on Feb. 16, 2022. (*See* LaRose Aff. Exhibit 4).

The MCT Election Ord. at 1.3(C)(6) clearly states and requires that "Tribal Election Court of Appeals shall convene within 48 hours of receiving the challenge, record, and answer, decide the issue of the certification or non-certification based on the materials described above. The Clerk for the Tribal Election Court of Appeals was physically in possession of the challenge, record, and answer on Feb. 11, 2022 at 2:15 pm. (LaRose Aff. Exhibit 4).

The MCT Election Ordinance § 1.3(C)(6) clearly states and requires that: "The decision of the Tribal Election Court of Appeals must be in writing and signed by the Chief Judge. The Decision & Order dated Feb. 16, 2022, does not comply with the MCT Election Ord. by: (1) not identifying who the Chief Judge was/is still, (2) nor was the decision signed, and (3) the Election Court of Appeals appears to have exceeded the decision time period of forty-eight (48) hours.

The Elections Court of Appeals failed to give fair and full consideration of Petitioner's constitutional and MCT Election Ordinance defenses and "decide the issue of certification or non-certification based on the materials" (the challenge, record and answer) while openly commenting that "[t]he court can only rely on evidence in the record." The Election Court of Appeals does not appear to have executed their duties required by the MCT Election Ordinance in violation of Petitioner's rights.

B. <u>Absent Immediate Injunctive Relief, Petitioner Will Suffer Irreparable Harm.</u>

If Petitioner is not immediately certified as a candidate for LLRBC Secretary-Treasurer in the 2022 election, he will be irreparably harmed. The harm to Petitioner's due process and property rights guaranteed by the MCT Constitution by Respondents' non-certification of Petitioner as a candidate would be violated in the absence of immediate injunctive relief. "The denial of a constitutional right is a cognizable injury … and an irreparable harm." *Portz v. St. Cloud Univ.*, 196 F. Supp. 3d 963, 973 (D. Minn. 2016) (citations omitted). Furthermore, "once the election

occurs, there can be no do-over and no redress. The injury to [Petitioner] is real and completely irreparable if nothing is done to enjoin [Respondents]." *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). If immediate relief is not granted, Petitioner would unquestionably suffer irreparable harm.

C. The Balance of Equities Tips in Petitioner's Favor and an Injunction Is in the Public Interest.

"[T]he government 'cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required.'" *Luokung Tech. Corp. v. Dep't of Defense*, 538 F. Supp. 3d 174 (D.D.C. 2021) (citation omitted). "Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). While courts ordinarily enjoy discretion to balance the equities and weigh the public interest, this discretion "is bounded" when the activity in question contravenes a statutory directive. *Gordon v. Holder*, 721 F.3d 638, 652 (D.C. Cir. 2013). Here, an injunction blocking Respondents' unlawful non-certification of Petitioner is in the public's interest as it will ensure that Petitioner will appear on the ballots for the Band's voters in the 2022 election and vote for their preferred candidate. Respondents will not suffer any harm from maintaining their unlawful actions, and the MCT people's interests in upholding the MCT Constitution. Therefore, the balance of public interest to free and fair elections heavily weighs in Petitioner's favor and an injunction is in the public's interest.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the motion for a temporary restraining order and preliminary injunction.

Dated: April 29, 2022

Respectfully submitted,

/s/ Frank Bibeau

Frank Bibeau
55124 County Road 118
Deer River, MN 56636
Telephone: (218) 760-1258
Email: frankbibeau@gmail.com

STATE OF MINNESOTA)
) ss. Affidavit of Arthur LaRose
COUNTY OF ITASCA)

Your affiant, Arthur "Archie" LaRose, after oath does swear and depose as follows:

1. That I am currently the *now seated*, duly elected, Secretary-Treasurer for the Leech Lake Reservation Business Committee (LLRBC), following the 2018 MCT Elections by the Minnesota Chippewa Tribe (MCT).

2. That I have been certified as candidate ten (10) times as a candidate for MCT elections at Leech Lake Reservation, seven (7) times after the 2006 felon amendment to the MCT Constitution.

3. That I have been elected to LLRBC *at large* offices of Chairman and Secretary-Treasurer.

4. That my elected LLRBC offices made me a member of the MCT's Tribal Executive Committee (TEC).

5. That in 2006, following the Secretary's approval of the amendment to the Revised Constitution of the MCT, there was a legal challenge brought against *then seated* Chairman Goggleye alleging his being convicted as a felon. In that action the Honorable Judge Wahwassuck determined (1) that both Goggleye's and Petitioner LaRose's convictions were deemed to be misdemeanor convictions under Minnesota law, (2) that the LLRBC adopted Resolution 2006-07 (See **Exhibit 1**), with a 4-0, was considered by the Tribal Court and found not inconsistent the Court's decision, and (3) the Honorable Judge Wahwassuck sent a *Request for Opinion from Tribal Executive Committee* dated Dec. 8, 2006, (See **Exhibit 2**, Request for Opinion to TEC).

6. That Petitioner's 1992 conviction was considered by the Honorable Judge Wahwassuck, Leech Lake Tribal Court Case No. (CV-06-07) Gotchie v Goggleye. The Court found that LaRose and Goggleye were in the same boat and commented directly in "FN 2 Although LaRose is

not a party to this action, the Court notes that the decision in this matter would apply to LaRose in the same manner as Goggleye, as LaRose's conviction was also deemed to be a misdemeanor pursuant to Minn. Stat. 609.13." (See Findings of Facts, Conclusions of Law& Declaratory Judgment dated 12-8-2006 attached as **Exhibit 3**).

7. That years later after Hudson v Zinke (2020) decision, the TEC was asked at a public meeting about the Request for Opinion from Tribal Executive Committee dated Dec. 8, 2006, and was informed by Gary Frazer, the Executive Director of the MCT, he never received the request.

8. That the *Request for Opinion from Tribal Executive Committee* dated Dec. 8, 2006, was reserved on the TEC at a Meeting after that discussion by 2006 then Plaintiff Wallace Storbakken, because the 2006 MCT Const. amendment was achieved with on 17% of the MCT, instead of MCT Const. threshold of required 30% minimum participation by eligible voters.

9. That I am providing this Affidavit in support of my Complaint and application for Temporary Restraining Order (TRO) against the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribal Court of Appeals for Elections 2022, which denied my certification as candidate for re-election for the Secretary-Treasurer for the Leech Lake Reservation Business Committee.

10. That on Feb. 16, 2022, the in their *In Re LaRose Decision & Order* the MCT Tribal Court of Appeals for Elections stated that based on the records received, submitted by the Challenger Mr. Fineday, the Minnesota Chippewa Tribe's Tribal Election Court of Appeals determined LaRose was "convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and the Minnesota Chippewa Election Ordinance, as amended on December 14, 2021. . . ." (See *Decision & Order* dated Feb. 16, 2022 attached as **Exhibit 4**).

11. That Mr. Leonard Fineday, certified candidate for LLRBC Secretary-Treasurer position filed a challenge to my certification on Feb. 9, 2022, with the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribal Court of Appeals for Elections 2022. (See copy of Mr. Fineday's certification challenge attached as **Exhibit 5**).

12. The primary legal documents submitted by Mr. Fineday were my 1992 charges, my Minnesota Register of Actions showing my conviction was deemed a misdemeanor and a decision in "Finn v Election Board, Leech Lake Election Contest Decision & Order, June 29, 2018, pgs. 4 & 5" and provided a "copy of the Judge Routel's Order from 2018 is attached for the Court's review." (See **Exhibit 6**, at p. 3)

13. The odd thing is the Finn *Decision & Order* was not a candidate certification decision, but instead a final election vote outcome challenge, which was subsequently used by Steve White, District 2 Rep in a Leech Lake Tribal Court in a TRO Petition White v LaRose (CV-18-66) to remove LaRose from office, after the 2018 election. (See **Exhibit 7**, Order Denying TRO/Directing Responses dated July 3, 2018).

14. In that July 3rd Order the Honorable Judge B.J. Jones explains that the certification discussion by Judge Routel is outside the scope the vote count challenge, and is "deemed dicta and not entitled to any judicial weight in a court of law."

15. Soon thereafter the Court issued an Order Dismissing Petition on July 12, 2018. (See **Exhibit 8**).

16. That I did provide both of these orders in CV-18-66 to the MCT for the Tribal Elections Court of Appeals as Exhibits attached to my *Answer to Challenge and Motion for Dismissal* dated Feb. 11, 2022. (See **Exhibit 9**, Table of Attachments).

17. That I did not find any consideration in the MCT Tribal Election Court of Appeals *Order & Decision* of ex post facto defenses which I raised on the first and second pages.

18. That I did not find any consideration in the MCT Tribal Court of Election Appeals *Order & Decision* of two (2) orders from White v LaRose described above.

19. That I did not find any consideration in the MCT Tribal Court of Election Appeals *Order & Decision* of any of my materials which was served timely and accepted by the MCT Executive Director Gary Frazer.

20. That after the 2022 election court certification *order* I made multiple efforts to have a special TEC meeting to address the unconstitutional amendment and it's immediate impact on my due process and property rights, just like Hudson v Haaland (Zenke) 2021 describes for sitting official and retroactivity of unconstitutionally adopted amendment to the tribe's constitution.

21. That I requested an emergency TEC meeting on Feb. 17, 2020 (See **Exhibit 10**), which MCT-TEC President Chavers *denied* my request on Feb. 18, 2020 (See **Exhibit 11**).

22. That myself and three other TEC members requested a Special TEC meeting under the constitution (See **Exhibit 12**), and we provided a draft TEC resolution fix (See **Exhibit 13**) because the 2006 amendment was obtained in violation of the minimum 30% eligible voters under the MCT constitution, just like Hudson v Zinke.

23. That members of the TEC made motion to adjourn before the Zinke fix resolution could be considered (See **Exhibit 13**) and the result was MCT President's Memo declaring MCT's election continues without change.

24. That Leech Lake Chairman Faron Jackson attempted to opt out of the MCT election process (See **Exhibit 14**), but was informed that that was not permitted and exclusive remedy lies with the Minnesota Chippewa tribe and Tribal Court of election appeals and that the result should be accepted. (See **Exhibit 15**, Memorandum from Gary Frazer Executive Director and Phil Brodeen General Counsel, dated April 1, 2022).

25. That I believe the latest revisions in the MCT election ordinance amended on December 14, 2021 violates the MCT constitutional RBC rights and authorities, because the candidate challenge information was not provided to the LLRBC in the election certification process first.

26. Had that happened, as part of the due process afforded to myself and existing tribal government, another broader certification packet would've been provided again like in 2018 (See **Exhibit 16**, LLBO Certification Packet), whereby Gotchie c Goggleye CV-06–07 and LLRBC Resolution 2006–07 were made part of the record for the MCT election challenge, following Donald Finn's 2018 candidate certification challenge and LLRBC final review.

27. That I did provide those same LLRBC resolutions, documents, tribal court decisions and other relevant explanations about decided Leech Lake Election Law since 2006, with my *Answer to Challenge Motion to Dismiss* (See full copy attached as **Exhibit 17**).

28. That I believe it's unethical and unfair for my legal defenses and arguments with attached evidence being completely ignored by the MCT Election Court of Appeals and instead the panel appears to have relied completely upon Mr. Fineday's submission of the 2018 general elections challenge decision and order by Judge Routel, with comments from the 2018 MCT Election Court of Appeals Judge Johnson, which certified myself as a candidate for Secretary-Treasurer.

29. That I believe I have exhausted all of my administrative remedies within the MCT's Tribal Court Election Appeals process and the Tribal Executive Committee of the Minnesota Chippewa Tribe.

30. That my intentions here and now are to seek the remedy of overturning the unconstitutionally obtained amendment in 2006, as described in Hudson v Zinke, which held the tribal constitutional requirement of 30% eligible voters for referendum by Secretarial Election cannot be

circumvented by use of BIA election waivers to overcome the constitutional requirements.

31. That I am seeking an injunction against the present MCT 2022 Election being held for Secretary-Treasurer of the Leech Lake Reservation and declaratory judgment that MCT Court of Election Appeals failed to comment on my *ex post facto* defense or other related legal tribal court case orders and tribal resolutions were provided as part of my Answer to Challenge and Motion to Dismiss.

FURTHER YOUR AFFIANT SAYETH NOT.

Arthur La Rose
Affiant, *Arthur David LaRose*

Subscribed and sworn to before me
this 18th day of April, 2022.

Chari LaDuke-Clark
Notary

CHARI L LADUKE-CLARK
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2027

EXHIBIT A

BRODEEN & PAULSON, P.L.L.P.

MEMORANDUM

TO: Minnesota Chippewa Tribe, Tribal Executive Committee

FROM: Philip Brodeen, Legal Counsel

DATE: July 13, 2020

SUBJECT: Applicability of *Hudson v. Zinke*

I. HUDSON V. ZINKE

On April 10, 2020, the United States District Court for the District of Columbia issued a decision in *Hudson v. Zinke*.[1] The case involved a challenge by a member of the Three Affiliated Tribes to constitutional amendments that were purportedly enacted by voters during a Secretarial Election which occurred on July 30, 2013. The dispute focused on differing language in the Secretarial Election regulations and the provisions in the Three Affiliated Tribes Constitution and Bylaws. A brief overview of the Indian Reorganization Act of 1934 ("IRA") and its accompanying regulations will help frame the issues presented in *Hudson*.

A. THE INDIAN REORGANIZATION ACT

The IRA established a mechanism whereby tribes could reorganize through the enactment and ratification of constitutions and bylaws[2]. The IRA and its accompanying regulations set out procedures for tribes to amend tribal constitutions through Secretarial elections. Secretarial elections are "federal – not tribal" elections.[3] A tribe must ask the Secretary of the Interior to call and conduct a Secretarial Election to amend an IRA constitution. For an amendment to be ratified, the IRA requires a majority vote in favor and a quorum of voters participating in the election.[4] The quorum requirement of the IRA states that "the total vote cast shall not be less than 30 per centum of those entitled to vote."[5] This language also appears in many tribal constitutions adopted pursuant to the IRA.

Following the passage of the IRA, the quorum requirement was applied in a straightforward manner. Essentially, the quorum was calculated by taking into consideration all adult members entitled to vote. This was codified in the 1964 regulations related to Secretarial elections which defined a tribal member "entitled to vote" as "any adult member regardless of residence."[6] However, the Department of the Interior ("DOI") changed course drastically in 1967 to implement

---

[1] *Hudson v. Zinke*, CIV. No. 1:15-CV-01988-TSC (D.D.C. Nov. 12, 2015).
[2] 25 U.S.C. § 5123.
[3] *Thomas v. United States*, 189 F.3d 662, 667 (7th Cir. 1999).
[4] 25 U.S.C. § 5127.
[5] Id. at § 5123(c)(1)(B).
[6] 29 Fed. Reg. 14,359, 14,360 (Oct. 17, 1964).

a voter registration requirement for Secretarial elections. This was done by redefining "entitled to vote" to mean "only voters who are duly registered."[7] This principle was bolstered in 1981 when the regulations were again amended to state that "[o]nly 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."[8] The DOI vigorously defended its regulations related to quorum requirements and many Secretarial elections have been ratified based on quorums established in the aforementioned manner.

B. Secretarial Election at Three Affiliated Tribes

The DOI conducted at least six Secretarial Elections at Three Affiliated Tribes that utilized the voter registration requirement for determining quorum. These elections occurred in 1974, 1975, 1985, 1986, 2008, and 2010. The number of registered voters in these Secretarial elections ranged from approximately 1,000 to 2,500. In 2013, Three Affiliated Tribes conducted another Secretarial Election with only 1,249 members registered to vote. The total number of adult members of the Tribe at the time was 9,270. The voting occurred and the DOI determined that approximately 510 people voted, and the 30% registered-voter quorum requirement was met. The Tribal Business Council immediately passed a resolution criticizing the election's low turnout and asked the DOI to decertify the 2013 Secretarial election. This request was rejected by the BIA and the proposed amendments were approved and appended to the tribal constitution.

Three Affiliated Tribal Member Charles Hudson challenged the results of the Secretarial Election through the Interior Board of Indian Appeals ("IBIA"). He argued that constitutional amendments could only be ratified pursuant to the Three Affiliated Tribe Constitution if 30% of all tribal member eligible to vote in fact voted. The DOI countered by relying on its voter registration requirement and stated that the quorum requirement is established by looking at the number of tribal members registered to vote. The IBIA ruled in favor of the DOI and held that Hudson's challenge was "legally unsound."[9] Hudson then filed suit pursuant to the Administrative Procedures Act in United States District Court.

As previously mentioned, the Federal District Court ruled in favor of Hudson by finding that the explicit language in the Tribe's Constitution conflicted with the BIA's regulations. The District Court relied on 25 C.F.R. § 81.2(b) to find that the tribe's interpretation of its own constitution trumps to DOI's regulations.[10] The BIA appealed the *Hudson v. Zinke* decision to the D.C. Circuit Court of Appeals on June 5, 2020. The immediate impact of the *Hudson* decision will not be known until the appeal is decided. However, a brief discussion of its potential application would be beneficial for the current MCT Constitutional Amendment process.

---

[7] 32 Fed. Reg. 11,777, 11,778 (Aug. 16, 1967)(codified at 25 C.F.R. § 52.6(c)).

[8] 46 Fed. Reg. 1,672 (Jan. 7, 1981), codified at 25 C.F.R. § 52.11. The part 52 regulations were subsequently redesignated as 25 C.F.R. Part 81.

[9] *Hudson v. Great Plains Regional Director*, Bureau of Indian Affairs, 61 IBIA 253 (Sept. 15, 2015).

[10] 25 C.F.R. § 81.2(b) states that deference will be given to a Tribe's interpretation of its own constitution,

II. MCT CONSTITUTION

Article XII of the MCT Constitution provides that the constitution may be amended by a majority vote of the qualified voters of the Tribe voting at a Secretarial Election "if at least 30 percent of those entitled to vote shall vote." This language is nearly identical to the provision at issue in *Hudson v. Zinke*. The remainder of this memorandum will discuss the potential impacts of the *Hudson v. Zinke* case on the MCT Constitutional Amendment process.

A. PROSPECTIVE APPLICABILITY

The quorum requirement was discussed by the Tribal Executive Committee at the beginning of the MCT Constitutional Amendment process. The TEC determined at that time that the MCT Constitution requires 30% of all eligible voters to vote in order to enact amendments to the constitution. If the *Hudson v. Zinke* case is affirmed on appeal, the MCT's interpretation of the constitution will be given deference. This means that 30% of all tribal members will be required to vote in order to ratify amendments to the MCT Constitution. If *Hudson v. Zinke* is overturned on appeal, the BIA's regulations pertaining to registered voters could once again serve as the basis for deciding quorum requirements. The outcome and holding of the appeal will have a significant impact on the MCT Constitutional Amendment process.

B. RETROACTIVE APPLICABILITY

At the last TEC meeting, I was tasked with analyzing the impact that *Hudson v. Zinke* could have on prior constitutional amendments ratified using the BIA's method for calculating quorum based on registered voters. Of particular concern were the felony disqualification provisions adopted and ratified through a Secretarial Election in 2005/2006.

In February 2005, the TEC adopted Resolution No. 70-05 which requested a Secretarial Election on two amendments to the MCT Constitution. One of the amendments disqualified anyone convicted of a felony of any kind or of a lesser crime involving theft, misappropriation or embezzlement of money, funds, assets, or property of an Indian tribe or organization from running for public office. A Secretarial Election was held on November 22, 2005. A total of 6,552 members of the MCT registered to vote. Approximately 5,000 ballots were cast for each of the ballot questions. Total enrollment for the MCT at the time was approximately 34,000. The election results were certified and posted by the Secretarial Election Board and ratified by the Regional Director of the BIA. Shortly thereafter, MCT members Anthony Wadena, Darrell Wadena, and Frank Bibeau challenged the results of the Secretarial Election. One of their primary contentions related to a lack of the requisite 30% quorum of MCT members. The IBIA issued a decision on the challenge in 2008 and ruled that the BIA properly ratified the results of the Secretarial Election based upon the registered voter quorum requirements established in the Secretarial Election regulations.[11]

It is unlikely that *Hudson v. Zinke* can be used to challenge or invalidate the constitutional

[11] *Wadena v. Midwest Regional Director*, 47 IBIA 21 (2008).

amendments adopted and ratified in previous Secretarial Elections.[12] As a general matter, the decisions of federal courts are presumed to apply retroactively. However, there are important limits to such retroactivity. The United States Supreme Court has said that "a rule of federal law, once announced and applied ...must be given full retroactive effect by all courts adjudicating federal law," but that command only applies to "cases still open on direct appeal."[13] Importantly, the pronouncement of a new rule by a federal court does not require other courts to re-open or re-decide every case ever litigated to which a new rule might apply. A rule's retroactivity does not extend to cases that have proceeded to:

> Such a degree of finality that the rights of the parties should be considered frozen...[T]hat moment should be when the transaction is beyond challenge either because the statute of limitations has run or the rights have been fixed by litigation and have become res judicata.[14]

Res judicata means a thing adjudicated and is generally understood to mean that the same parties may not pursue the matter further. In a later case, the Supreme Court stated that "the res judicata consequences of a final, unappealable judgment on the merits [are not] altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case."[15]

CONCLUSION

The quorum issues related to the 2006 amendments to the MCT Constitution were litigated to a final, unappealable judgment on the merits in *Wadena v. Midwest Regional Director*. The subsequent ruling in *Hudson v. Zinke*, if it is upheld on appeal, will not automatically impact the validity of the 2006 Constitutional amendments unless a court takes the extraordinary step of entertaining a collateral attack to the final judgment. In rare cases, parties may collaterally attack otherwise final judgments, however, this only happens in truly exceptional cases. Rule 60(b) of the Federal Rules of Civil Procedure includes the following grounds for relief from a final judgment: 1.) mistake, inadvertence, surprise, or excusable neglect; 2.) newly discovered evidence, that with reasonable diligence, could not have been discovered in the time to move for a new trial; 3.) fraud; 4.) the judgment is void; 5.) the judgment has been satisfied, released, or discharged; or 6.) any other reason that justifies relief. Such a motion "must be made within a reasonable time" and generally within one year. F.R.C.P. Rule 60(c)(1). Thus, in practice, this type of relief is very unusual. Notwithstanding an extraordinary exception, it is fair to say that the presumptive retroactive effect of civil judgments reaches back only to controversies still open to judicial resolution. In conclusion, a challenge to the constitutional amendments adopted by the MCT in 2006 based on *Hudson v. Zinke* is likely to fail.

---

[12] Another important thing to note in *Hudson v. Zinke* is that the District Court was only singularly focused on the Secretarial Election that occurred in 2013. The six previous Secretarial Elections at Three Affiliated Tribes conducted using the BIA's registered voter quorum requirements were not mentioned.

[13] *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 87 (1993).

[14] *United States v. Estate of Donnely*, 397 U.S. 397 U.S. 286, 296 (1970) (Harlan, J., concurring). *See also James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 549 (1991).

[15] *Fed. Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

EXHIBIT B

THE MINNESOTA CHIPPEWA TRIBE

ELECTION ORDINANCE

(Revised 12/14/21)

Election Ordinance Amendments
12/14/2021

Page	Section	Changes (added language)	
3	1.2(D)	Postponing Elections.	
		1.2(D)(1)	The Tribal Executive Committee may postpone a previously scheduled election for a natural event that results in or is likely to result in an emergency or disaster declaration by the Band, State, or Federal government or a pandemic, outbreak, or other public health emergency that results in or is likely to result in a public health state of emergency from the Band, State, or Federal government.
		1.2(D)(2)	If the Tribal Executive Committee postpones a previously scheduled election, the Tribal Executive Committee shall adjust the applicable election calendar to conduct the election at the earliest date possible.
		1.2(D)(3)	A Band governing body may, after considering its unique circumstances, opt to conduct elections according to the original election calendar provided that adequate notice is provided to its Band members and the Minnesota Chippewa Tribe.
		1.2(D)(4)	If a qualifying event as defined in Section 1.2(D)(1) occurs that impacts a specific Band, that Band may request a waiver from the election calendar from the Tribal Executive Committee to conduct the election according to a different election calendar.
13	1.7(D)	Inclusion of Oath of Office.	
			Before assuming duties described in this Ordinance, Election Contest Judges must take an oath in substantially the following form: I do hereby solemnly swear that I shall preserve, support, and protect the Constitution of the United States, the Constitution of the Minnesota Chippewa Tribe, and the Election Ordinance of the Minnesota Chippewa Tribe and execute my duties to the best of my ability.
Throughout Document		change "will" to "must" when the provision is directing an individual or entity to complete a specific task	

MINNESOTA CHIPPEWA TRIBE
ELECTION ORDINANCE
TABLE OF CONTENTS

MINNESOTA CHIPPEWA TRIBE
ELECTION ORDINANCE
As Amended on December 14, 2021

CHAPTER I: CANDIDATES AND VOTING

Section 1.1 Primary Elections.

1.1(A). In the event only two candidates are certified for an office, there will be no Primary Election for that position. If more than two persons are certified under this Ordinance as candidates for any one office in either a Regular or Special Election, there must be a Primary Election ("Primary") prior to the Regular or Special Election. The General Reservation Election Board must certify the two candidates with the most votes in the Primary for the office at issue as the only candidates in the Regular or Special Election. The candidate with the most votes in the Regular or Special Election will be the winning candidate and will be entitled to assume the duties of office.

1.1(B). The purpose of Primaries will be to determine two candidates for the Regular or Special Election, unless a candidate receives more than one-half (1/2) of the votes counted for that position in the Primary Election in which case that candidate will be the winning candidate. If two candidates tie with the greatest number of votes in a Primary Election, they will advance as the only two candidates in the Regular or Special Election. If two candidates tie with the second greatest number of votes in a Primary, the General Reservation Election Board must conduct a Recount within twenty-four (24) hours. If the Recount results in a tie, the candidate advancing to the General or Special election (as contestant with the candidate receiving the highest number of votes) will be determined by lot. The General Reservation Election Board must draw the lots within twenty-four (24) hours after the Recount in a forum accessible to Reservation voters.

Section 1.2 Elections: Scheduling and Announcements.

1.2(A). Regular Elections.

1.2(A)(1). The Tribal Executive Committee must set the second Tuesday in June of even numbered years for Regular Elections.

1.2(A)(2). The Tribal Executive Committee must set the tenth Tuesday prior to the Regular Election date as the date for

Primary Elections, if a Primary is required under this Ordinance. The Tribal Executive Committee shall approve an Election Calendar establishing the dates of events required by this Ordinance.

1.2(A)(3). Not less than one-hundred and thirty-four (134) days prior to the date of Regular Elections the Tribal Executive Committee must prepare the Election Announcement of each Regular Election and its associated Primary. Each Band governing body* must post the Announcements at locations designated by such Band on its respective Reservation on the day of, or following, receipt of the Announcement, or by one-hundred and thirty-four days prior to the date of the Regular Elections, whichever comes later.

*"Band governing body" means a Reservation Business Committee, Reservation Tribal Council, or other entity recognized by the Tribal Executive Committee as the lawful governing body of a constituent Band of the Minnesota Chippewa Tribe.

1.2(B). Special Elections.

1.2(B)(1). If a vacancy due to death, removal, or resignation occurs on the Band governing body more than 365 days before the next scheduled Primary Election, the Band governing body must call a Special Election to fill such vacancy. The Special Election will be held within one-hundred and forty-one (141) days after the date the vacancy occurs. A Primary Election, if required under this Ordinance, will be held at least sixty (60) days before the date of the Special Election.

1.2(B)(2). If a vacancy due to death, removal, or resignation occurs on the Band governing body less than 365 days, but more than 180 days, before the next scheduled Primary Election, the Band governing body may call a Special Election, or appoint a person who is qualified to serve under Section 1.3 to fill the vacancy and serve until the next Regular Election is held and the successful candidate is seated. If a Special Election is called, it will be held within one-hundred and forty-one (141) days after the date the vacancy occurs. A Primary Election, if required under this Ordinance, will be held at least sixty (60) days before the date of the Special Election.

1.2(B)(3). If a vacancy due to death, removal, or resignation occurs on the Band governing body less than 180 days before the next scheduled Primary Election, the Band governing body may appoint a person who is qualified to serve under Section 1.3 to fill the vacancy, or leave the vacancy unfilled until the next scheduled Primary Election.

1.2(B)(4). Whenever a Special Election is called the Band governing body shall, within ten (10) days after the date the vacancy occurs, prepare an Election Announcement and Election Calendar and post it at locations designated by it.

1.2(C). "Run-Off" Elections

In case of a tie vote in a Regular or Special Election the General Reservation Election Board must perform a Recount within 24 hours. If the Recount results in a tie, a "Run-Off" election will be held within sixty (60) days following the deadline for determining contests and appeals of such elections.

1.2(D). Postponing Elections.

1.2(D)(1) The Tribal Executive Committee may postpone a previously scheduled election for a natural event that results in or is likely to result in an emergency or disaster declaration by the Band, State, or Federal government or a pandemic, outbreak, or other public health emergency that results in or is likely to result in a public health state of emergency from the Band, State, or Federal government.

1.2(D)(2) If the Tribal Executive Committee postpones a previously scheduled election, the Tribal Executive Committee shall adjust the applicable election calendar to conduct the election at the earliest date possible.

1.2(D)(3) A Band governing body may, after considering its unique circumstances, opt to conduct elections according to the original election calendar provided that adequate notice is provided to its Band members and the Minnesota Chippewa Tribe.

1.2(D)(4) If a qualifying event as defined in Section 1.2(D)(1) occurs that impacts a specific Band, that Band may request a waiver from the election calendar from the Tribal Executive Committee to conduct the election according to a different election calendar.

Section 1.3. Candidates for Office.

1.3(A). Eligibility.

A candidate for office must: (1) be an enrolled member of the Tribe; (2) be enrolled with the Reservation of his/her candidacy; (3) reside on the Reservation of his/her candidacy and enrollment; and (4) meet the requirements of Article IV, Section 4 of the Constitution, as set forth in Section 1.3(D). A candidate for Committeeperson to represent a district established pursuant to Section 1.4(A), below, must reside in the district of his/her candidacy and enrollment. Requirements (1), (2), and (3) must be met for at least the twelve-month period immediately preceding the date established for the Primary election. No member of the Tribe will be eligible to hold office, either as a Committeeperson or Officer, unless he or she will reach his/her twenty-first (21st) birthday on or before the date of the Primary or Special Election. A candidate may file for only one (1) position.

1.3(B). Reservation Definition.

A Reservation is defined as all lands within the exterior boundaries of the reservation. A Band governing body, by official action, may define "reservation" to include specified lands outside the boundaries of the reservation, as may be defined by treaty, statute, executive order, or other document considered sufficient authority by the Band governing body, including all lands considered Indian Country under the governmental authority of that Reservation.

1.3(C). Filing of Notice of Candidacy.

1.3(C)(1). For Regular Elections, eligible candidates must file their notice of candidacy for Chairperson, Secretary/Treasurer, or Committeeperson, with the Secretary/Treasurer of the Band governing body or his/her designee beginning on the next business day after the Tribal Executive Committee prepares the election announcement. The filing period shall end not less than ten (10) days after it begins.

1.3(C)(2). For Special elections, eligible candidates must file their notice of candidacy for such offices beginning the next business day after the Band governing body prepares and posts the election announcement. The filing period shall end not less than ten (10) days after it begins.

1.3(C)(3). The Notice of Candidacy must be in writing, include the Candidate's physical (residence) address, the Candidate's name as they wish it to appear on the ballot, have the original signature of the candidate, comply with the requirements of Section 1.3(D), below, and be filed by the candidate in person. The Candidate's name may include a nickname or maiden name in parentheses on the ballot, provided that the Band governing body certifies that such nickname is widely known and appropriate for listing on the ballot. A filing fee must accompany each notice of candidacy. The amount of the fee will be Thirty Dollars ($30.00) for Officers (Chairperson, Secretary/Treasurer) and Fifteen Dollars ($15.00) for Committeeperson. An incomplete Notice of Candidacy shall be rejected by the Secretary/Treasurer of the Band governing body or his/her designee.

1.3(C)(4). Each Band governing body must certify eligible candidates for office in accordance with the Minnesota Chippewa Tribe Constitution, the Minnesota Chippewa Tribe Election Ordinance, and the dates and guidelines established for Minnesota Chippewa Tribe elections. Each Band governing body must certify the names of eligible candidates as they shall appear on the ballot. Within twenty-one (21) days after the filing deadline the Band governing body must notify the Tribal Executive Committee of the eligible and ineligible candidates and the position for which they have filed. Certification decisions must adhere to the requirements of the Constitution and this Ordinance. The Band governing body shall make its certification decision based on all information available at the time for determination including information provided by the person who filed the Notice of Candidacy.

1.3(C)(5) If a candidate fails to submit a complete Notice of Candidacy, Certification of Eligibility, or Authorization and Consent to Disclosure during the filing period, the Band governing body shall not certify the candidate as eligible for office.

1.3(C)(6) Any person who has filed a complete Notice of Candidacy has standing to challenge the certification or non-certification of a person who has filed a Notice of Candidacy for the same position. Any challenge of such a decision must be filed with the Executive Director of the

Minnesota Chippewa Tribe or a person designated in writing by the Executive Director by 4:30 p.m. on the second business day following receipt by the Tribal Executive Committee of the notice of certification or non-certification. Any challenge must state with specificity the reason(s) why the decision of the Band governing body did not comply with the requirements of the Constitution and may include supporting documentation. Immediately upon receipt of a challenge, the Executive Director or designee shall: (1) notify the Band governing body of the challenge and advise it that a complete record of all documents related to the challenge determination must be submitted to the Executive Director by 4:30 p.m. on the second business day following receipt of the challenge; (2) provide a copy of the challenge and documentation to the person whose certification is being challenged and advise the person that any answer to the challenge must be filed with the Executive Director by 4:30 p.m. on the second business day following receipt of the challenge; and (3) notify the Tribal Election Court of Appeals that a challenge has been filed. The Executive Director or designee shall submit the following materials to the Tribal Election Court of Appeals at the expiration of the aforementioned deadlines: the challenge and supporting documentation; the record compiled by the Band governing body; and any timely filed answer to the challenge. Notwithstanding any provision of this Ordinance, the Tribal Election Court of Appeals shall convene and within forty-eight (48) hours of receiving the challenge, record, and answer, decide the issue of certification or non-certification based on the materials described above. The Tribal Election Court of Appeals may convene by telephone conference. The decision of the Tribal Election Court of Appeals must be in writing and signed by the Chief Judge. The decision of the Tribal Election Court of Appeals shall be final.

1.3(C)(7). If a member serving in any position on an existing Band governing body, and whose term does not end with the current election, desires to file for a different office on that Committee, he/she may do so. However, at least fifteen (15) days prior to the day that the Election Announcement is posted pursuant to Section 1.2(A)(3), such member must file with the Band governing body or its designee and serve upon each of its other members a notice of resignation from that member's current position. Said resignation shall be irrevocable upon certification of the tribal member who has

resigned as a candidate and will be effective upon the successful candidate's assumption of authority of the position for which such member has filed.

1.3(C)(8). In the event another incumbent member desires to file for the office for which a notice of resignation has been filed and served, he/she must file and serve a notice of resignation as least three (3) days prior to the date that the Election Announcement is prepared.

1.3(C)(9). Each office for which a notice of resignation has been filed and served in accordance with this section will be included in the Election Announcement, and a Special Election for those positions will be held contemporaneously with the Regular Election.

1.3(D). Ineligibility by Reason of Criminal Conviction

1.3(D)(1). General. No member of the Tribe shall be eligible as a candidate or be able to hold office if he or she has ever been convicted of any felony of any kind or if he or she has ever been convicted of a lesser crime if that crime involved the theft, misappropriation or embezzlement of money, funds, assets or property belonging to an Indian tribe or a tribal organization.

1.3(D)(2). Definitions. As used in this subsection:

1.3(D)(2)(a). "Lesser crime" means a misdemeanor, gross misdemeanor or other equivalent offenses under applicable law, but shall not include petty offenses or misdemeanors punishable only by a fine under applicable law.

1.3(D)(2)(b). "Felony" means a crime defined as a felony by applicable law.

1.3(D)(2)(c). "Applicable law" means the law of the jurisdiction in which a crime was prosecuted. In regard to "lesser crimes," the offense must be evaluated in conjunction with the law at either the time of the prosecution or presently, whichever version identifies a lower level offense in the event of a subsequent statutory reclassification.

1.3(D)(2)(d). "Indian tribe" means any federally-recognized Indian tribe, band, group or community.

1.3(D)(2)(e). "Tribal organization" means the recognized governing body of any Indian tribe and any legally established organization or subordinate entity which is owned or controlled by an Indian tribe or tribes.

1.3(D)(2)(f). "Theft", for purposes of illustration, means taking of another's personal property with the intent of depriving the true owner of it.

1.3(D)(2)(g). "Misappropriation", for purposes of illustration, means the application or conversion of another's personal property dishonestly to one's own use.

1.3(D)(2)(h). "Embezzlement", for purposes of illustration, means the fraudulent taking of personal property with which one has been entrusted.

1.3(D)(3). Certification of Eligibility. Each person filing for office shall at the time of filing execute before a notary a representation that he or she is eligible to be a candidate and has not been convicted of a crime which would disqualify him or her under Section 1.3(D)(1). The Tribal Executive Committee shall prescribe the form of the certification. An incomplete Certification of Eligibility shall be rejected by the Secretary/Treasurer of the Band governing body or his/her designee.

1.3(D)(4). Authorization and Consent to Disclosure. Each person filing for office shall at the time of filing execute before a notary an authorization to release and consent to disclosure in favor of the Band governing body for the purpose of conducting a criminal history check. The authorization shall be on a form prescribed by the TEC (or on a form that is required by the responding jurisdiction) and shall require such information as may be reasonably necessary to conduct the criminal history check, including all jurisdictions in which the person has resided or has been convicted of a felony or lesser crime and all names the person has used. An incomplete Authorization and Consent to Disclosure shall be rejected by the

Secretary/Treasurer of the Band governing body or his/her designee.

1.3(D)(5). Conducting Criminal History Check. Each Band governing body shall designate the entity responsible for conducting the criminal history check. Criminal history checks shall commence immediately upon filing and execution of the required forms by persons seeking to be candidates and be completed prior to the date the notice of certification of candidates is due, provided that a late response shall not preclude a later determination of non-eligibility. The scope of each criminal history check shall be sufficient to reasonably verify the eligibility of each candidate under this section.

1.3(E). Write-In Candidates.

No write-in candidate will be recognized.

1.3(F). Order on Ballot.

Each Band governing body shall prepare a list of duly certified candidates for each position. The list shall include the names as they shall appear on the ballot pursuant to Section 1.3(C)(4). The order of placement on the ballot shall be determined by lottery. A separate lottery shall be conducted for the Primary and General Elections. The lottery shall be performed in a public setting with notice provided to the candidates and posted at the locations designated by the Band governing body at least twenty-four (24) hours prior to lottery. If a candidate is the incumbent for the position, the word ("Incumbent") shall appear on the ballot after the candidate's name. The list of duly certified candidates and the order of placement on the ballot shall then be submitted to the Tribal Executive Committee.

Section 1.4. Districts and Polling Places.

1.4(A). Each Band governing body by official action may divide its reservation and surrounding areas into districts for the purpose of electing members to the positions of Committeeperson on the Band governing body.

1.4(B). Each Band governing body by official action must designate polling places for its respective reservation and, on the day when the Tribal Executive Committee is notified of eligible candidates under Section 1.3(C)(4), must notify the Tribal Executive Committee of the districts and designated polling places.

1.4(C). Each Band governing body may, by official action, establish voting precincts in off-reservation areas where it deems it has sufficient eligible voters to warrant a voting polling place.

1.4(D). Each Band governing body may establish alternative polling places in the event an emergency makes a polling place established under Section 1.4(B) unavailable. Notice shall be provided of such emergency relocation by posting at the original polling place and by any other means reasonably calculated to give notice to voters.

Section 1.5. Election Notice.

1.5(A). Regular Elections without an Associated Primary.

At least sixty-four (64) days before the day of the Regular Elections the Tribal Executive Committee must prepare for each Band governing body a Notice of Regular election. This notice must contain: the date of the Regular Election; a list of duly certified candidates for positions on the Band governing body; the designated polling places; the time for opening and closing of polling places; and, the voting requirements. Each Band governing body must post the Notice no later than the day following receipt of the Notice at locations designated by the Band governing body on its respective Reservation.

1.5(B). Regular Elections with an Associated Primary.

At least thirty (30) days before the day of the Primary Elections, but not before the Band governing body certifies the candidates, the Tribal Executive Committee must prepare for each Band governing body a Notice of Primary Election. This notice must contain: the date of the Primary Election; a list of duly certified candidates for positions on the Band governing body; the designated polling places; the time for opening and closing of polling places; and the voting requirements. Each Band governing body must post the Notice no later than the day following receipt of the Notice at locations designated by the Band governing body on its respective Reservation. At least thirty (30) days before the Regular Election, but not before the expiration of the contest period in the associated Primary Election, the Tribal Executive Committee must prepare for each Band governing body a Notice of Regular Election. This notice must contain: the date of the Regular Election; a list of the candidates for positions on the Band governing body resulting from the associated Primary Election; the designated polling places, the time for opening and closing of the polling places; and the voting requirements.

1.5(C). Special Elections.

Within five (5) days after the deadline for filing notice of candidacy, the Band governing body calling the Special Election must prepare and post a Notice of Special Election, giving the dates of the Special Election and any associated Primary Election; a list of the duly certified candidates for vacant positions on the Band governing body; the designated polling places; the time for opening and closing of the polling places; and the voting requirements. The Band governing body must post the Notice at locations designated by the Band governing body on its Reservation. Within five (5) days after the deadline for the decision on the contest of the Primary Election associated with a Special Election, the Band governing body must prepare and post another Special Election Notice containing: the date of the Special Election; a list of the candidates for positions on the Band governing body resulting from the associated Primary Election; the designated polling places; the time for opening and closing of the polling places; and the voting requirements.

Section 1.6. Voter Eligibility.

1.6(A). Judging Qualifications.

Each Band governing body will be the sole judge of the constitutional qualifications of its voters and may, by official action, delegate this responsibility to its General Reservation Election Board.

1.6(B). Eligibility to Vote: Generally.

Eligible voters are enrolled members of the Tribe, 18 years of age or over. All eligible voters shall vote by secret ballot. To be eligible to cast a ballot a voter must meet all constitutional requirements. In addition, to be eligible to cast a vote for Committeeperson, a voter must have resided within that district for at least thirty (30) days immediately preceding the election, unless the voter casts an absentee ballot as permitted by this Ordinance.

1.6(C). Eligibility to Vote: Absentee.

Whenever, due to absence from the reservation, illness or physical disability, an eligible voter is not able to vote at the polls and notifies the General Election Board consistent with this Ordinance, he/she will be entitled to vote by absentee ballot in the manner and under the procedures as provided by Section 2.2(B). To cast an absentee ballot for Committeeperson, an eligible voter must have resided within that district for a period of at least thirty (30) days as his/her last reservation residence. In the event an eligible voter has never resided on the reservation of his/her enrollment, he/she may declare in his/her request which district has been selected in which to cast the ballot for Committeeperson. If an

eligible voter does not and has not previously designated a district, that eligible voter may cast an absentee ballot that includes only the at-large positions up for election. Once a voter has resided in or declared a district, the voter may not thereafter change his/her district for absentee voting purposes without actually residing within a different district on his/her reservation of enrollment for at least thirty (30) consecutive days immediately preceding the election.

Section 1.7. Reservation Election Boards and Election Contest Judges.

1.7(A). General Reservation Election Board.

Within three (3) business days following the notice of certification of candidates for either a Regular Election or Special Election, the Band governing body must appoint at least four (4) eligible voters of the reservation as the General Reservation Election Board. One member of the Board must be appointed the Chair. The appointments must be made either directly by the Band governing body or through another process established by the Band governing body. Each appointee to the Board must have a thorough understanding of this Ordinance. The General Reservation Election Board will also be the District Election Board if the Reservation has no Districts. The General Reservation Election Board will be responsible for the overall conduct of the election. In addition, it must perform, in a nonpartisan fashion, all duties assigned to it by this Ordinance, including the processing and counting of absentee ballots, the certification of election results, the posting of election results, the safekeeping of election materials, and the consideration of recount requests. The Reservation Election Board shall keep and maintain a mailing address for the purpose of receiving election related materials. The Band governing body shall post and publish the mailing address of the Reservation Election Board in advance of upcoming elections. The Band governing body shall establish a work schedule sufficient for the Board to fulfill its duties.

1.7(B). District Election Board.

1.7(B)(1). Within three (3) business days following the notice of certification of candidates for either a Regular Election or Special Election, the Band governing body must appoint a District Election Board of at least three eligible voters from each voting district, and at least one alternate from that district. The appointments must be made either directly by the Band governing body, or through another process established by the Band governing body. One member of the District Election Board must be designated as the Chair, one as Clerk, and one as Teller. The Band governing body

may also appoint one or more additional eligible voters from the reservation to serve as alternates in case any of the original appointees become unable or unwilling to serve. Each appointee as a board member or alternate must have training in this Ordinance. The General Reservation Election Board must attend training from the MCT in the application of this Ordinance. District Board members may also attend.

1.7(C). Vacancy on Election Boards.

Vacancies must be filled by appointed alternates to the Board, provided that in the event no alternate remains available, the Band governing body shall appoint qualified replacements at any time prior to the election. In the event a Band Governing body is unable to convene prior to election day to fill a vacancy, the vacancy shall be filled by a qualified replacement appointed by the Chair of the General Election Board.

1.7(D). Reservation Election Contest Judge.

Within three (3) business days following the notice of certification of candidates for either a Regular Election or Special Election, the Band governing body must designate an Election Contest Judge and an Alternate Election Contest Judge and notify the MCT and the Judges of such designation. If the Election Contest Judge becomes unable or unwilling to serve, the Alternate Election Contest Judge must take his/her place. The Election Contest Judge and Alternate Election Contest Judge must have a thorough understanding of this Ordinance. The qualifications of the Election Contest Judge and Alternate Election Contest Judge shall be determined by the Band governing body. The Election Contest Judge must perform the duties described in this Ordinance for the election that is the subject of the Announcement. The term of such judge will be determined by the Band governing body, provided that the term shall be for the duration of the election cycle. Before assuming duties described in this Ordinance, Election Contest Judges must take an oath in substantially the following form: I do hereby solemnly swear that I shall preserve, support, and protect the Constitution of the United States, the Constitution of the Minnesota Chippewa Tribe, and the Election Ordinance of the Minnesota Chippewa Tribe and execute my duties to the best of my ability.

1.7(E). Restrictions and Removal

No candidate for election, no member of a Candidate's immediate family, not any member of the Band governing body will be appointed to serve on any election board or as an Election Contest Judge or Alternate Election

Contest Judge. The term "immediate family" as used herein will be determined by the Band governing body.

Election Board Members shall not disclose by any means information about requests for, mailing of, or return of absentee ballots to any person, except (1) to the voter to whom the request or ballot pertains or (2) in accordance with an order issued pursuant to Section 3.2(A)(2). Requests by voters for information must be in writing and maintained by the Election Board along with a summary of the information disclosed pursuant to the request. Unauthorized disclosure is grounds for removal. Election Board Members are also subject to standards of conduct applicable to other Band employees that are included in Band law or policy.

Section 1.8. Cost of Election.

Compensation of election board members and all costs of administering all elections, including contests, challenges, and appeals, must be borne by the Band governing body of the reservation holding the election.

Section 1.9. Counting of Days.

Whenever this Ordinance provides for a certain time period to be counted in days, such days will be calendar days, and if the last day when so counted falls on a Saturday or Sunday or legal holiday, the Ordinance will be construed so that then the last day will be the next business day following such Saturday or Sunday or the first day following the legal holiday that is not a Saturday or Sunday.

Section 1.10 Independent Investigations.

Each Band governing body may establish a process for conducting independent investigations related to allegations of the improper conduct of election board members, electioneering, or other violations of this Election Ordinance. If the Band governing body determines that electioneering or any other violation of this Election Ordinance occurred, the Band governing body may require a notice to be posted concerning the activity that gave rise to the electioneering in question.

Section 1.11. Beginning of New Terms.

1.11(A). Action by a Band governing body.

A Band governing body by official action may establish the time and process for newly elected candidates to assume the authority of their positions, however, such time and process must provide that all newly

elected candidates will assume the authority of their positions at or before the times set out in Section 1.10(B), provided that if an election for a particular position is contested and the contest has not been finally ruled upon in accordance with this Ordinance the incumbent will remain in office pending a final decision, and until a new person takes office.

1.11(B). In the Absence of Action by a Band governing body.

1.10(B)(1). In the absence of official action by a Band governing body pursuant to Section 1.10(A), the winning candidates in Regular Elections will take office and assume all the authority of their positions at 12:01 a.m. on the second Tuesday in July following the elections; provided that if an election for a particular position is contested and the contest has not been completed in accordance with this Ordinance, the incumbent will remain in office pending a final decision and until a new person takes office. The contest of the election for any one position will not affect the beginning of the new terms of other winning candidates. If the final decision on the contest upholds the election, the winning candidate will take office and assume all the authority of the position at 12:01 a.m. on the day following the day the final order upholding the election is filed. If the final decision orders a new election, the winning candidate of the ensuing special election will take office and assume all the authority of the position in accordance with the following paragraph.

1.11(B)(2). For special elections, the winning candidate will take office and assume all the authority of the position at 12:01 a.m. on the tenth day following the day of the election provided that there is a vacant position and the provisions of Section 1.3(C)(7) of this Ordinance are not triggered. If a special election is contested, and the contest has not been finally ruled upon by such time, the winning candidate will take office and assume all the authority of the position at 12:01 a.m. on the day following the final order upholding the election.

CHAPTER II: CONDUCT OF ELECTIONS

The General Reservation Election Board will be responsible for the overall conduct of the election and must perform all duties assigned to it by this Ordinance in an unbiased fashion, including the safekeeping of election materials, the processing and counting of absentee ballots, the certification and posting of election results, and the consideration of recount requests. The failure to act in an unbiased fashion may be grounds for removal from the Reservation Election

Board. Election Board Members shall be subject to the standards of conduct applicable to other Band employees.

Section 2.1. Election Security Measures.

Except as specifically provided herein, the General Reservation Election Board is responsible for implementation of the election security measures listed below. In the event that the Tribal Executive Committee designates an outside organization to provide technical assistance and/or election related services, the General Reservation Election Board will be responsible for monitoring the performance of said organization to ensure compliance with the provisions of this Ordinance.

2.1(A). Storage and Distribution of Voting Materials.

2.1(A)(1). Elections for Band governing body positions may be conducted by using an automated ballot tabulating system that meets the standards in Section 2.2. When a Band governing body chooses not to use an automated ballot tabulating system, the Tribal Executive Committee will be responsible for preparing ballots for all elections for Band governing body positions and for making them available to the General Reservation Election Boards at least thirty (30) days prior to the election. The Tribal Executive Committee must take reasonable steps to ensure that all ballots are kept securely prior to delivery to the General Reservation Election Boards. When an automated system is used the supplier shall also be responsible for ballot security and other measures related to the integrity of the election process. All members of the District Election Board at each polling place must certify that any electronic vote tabulator has been tested, correctly reads cast ballots, and has been returned to zero prior to opening of the polls.

2.1(A)(2). The General Reservation Election Board must take reasonable steps to ensure that all election materials, including computers and any electronic memory devices used in the election process are at all times kept in a secure location prior to, during and after the election. The General Election Reservation Board must also ensure that security measures are in place for the commencement and finish of voting that allow for public verification of the sealing and unsealing of ballot boxes.

2.1(A)(3). The General Reservation Election Board must keep all election records and correspondences, including electronic

memory devices used in the election process and the following additional items, under lock and key for at least ninety (90) days following election day or until all contests and appeals have been completed: ballots, whether used, unused, or spoiled, information on each request for an absentee ballot, a record of the date on which each request for an absentee ballot was received, the date on which the absentee ballot was mailed out, the date on which the absentee ballot was received and from whom it was received; any reports from the General Reservation Election Board or a District Election Board; challenge and complaint records; count totals and results, as well as decisions on the validity of ballots. Absentee ballots received by the General Reservation Election Board by mail after the cut-off date and time as specified in Section 2.2(B)(4), must be kept separate from all of the other ballots. The General Reservation Election Board shall maintain a permanent record indicating the District in which each voter cast a ballot.

2.1(A)(4). The ninety (90) day requirement notwithstanding, such materials must be made available at the discretion of the court for contests and/or appeals, if so, authorized by the relevant provisions of Chapter III of this Ordinance. Any materials so released must only be released in accordance with, and for the express purpose(s) set forth in this Ordinance.

2.1(B). Security in Voting Areas.

2.1(B)(1). The District Election Board must ensure that ballot boxes are continuously monitored by at least two members of the Board from the time the polls open on election day to the time the polls close.

2.1(B)(2). It is the duty of the District Election Board to maintain orderly conduct within or near the polling place and prohibit any person from electioneering in a public place within a direct line of 200 feet in any direction from the primary entrance used by voters at the polling place. The District Election Board must also take reasonable steps to ensure that voters have barrier-free and easy access to the polling station.

2.1(B)(3). Any person who engages in electioneering or behavior that distracts, interrupts, or interferes with the Election or the

work of the Board must be removed and excluded from the premises.

2.1(B)(4). As used in this Ordinance, the term "electioneering" shall mean to work actively on behalf of a specific candidate on the ballot at that election, and includes posting signs or banners, passing out pamphlets, flyers or other literature, and verbally urging, advocating or exhorting others to vote for a specific candidate.

Section 2.2. Voting Procedures.

The procedures of this section shall apply when the Band governing body either chooses to use an automated ballot tabulation system or traditional ballot box system. When an automated ballot tabulation system is used the Election Board shall apply the controls and procedures prescribed by the vendor to ensure the integrity of the process of casting and counting all valid ballots. An electronic tabulation system must meet the standards set out in Appendix I or be certified pursuant to voting systems standards adopted either by the Federal Election Commission (FEC) or the Election Assistance Commission (EAC).

2.2(A). Voting at Polling Place.

2.2(A)(1). Instructions to voters describing the manner of casting one's vote must be posted at the polling place and issued upon request to all eligible voters with a ballot.

2.2(A)(2). The polls will remain open at each polling place from 8 a.m. until 8 p.m. on Election Day.

2.2(A)(3). When all else is in readiness for the opening of the polls, the District Election Board Chair in each district must open the ballot box in view of the other District Election Board members, and also in view of any members of the general public then in attendance, must turn same top down to show that no ballots are contained therein, and must lock the box and retain the key in his/her possession until after the polls are closed and until the count of the ballots is started. In the event that the Tribal Executive Committee designates an outside organization to provide election assistance, such as the provision of ballot boxes, an official from said company may be allowed to retain the key in his/her possession. The Ballot boxes must remain locked from the commencement of voting through the close of

voting, when they are opened for removal of the ballots for counting.

2.2(A)(4). The Clerk must make a record of each eligible voter presenting himself/herself at the polls. The voter must sign the register or make his or her mark. The Clerk, with the concurrence of the General or District Election Board, may require proof of identity.

2.2(A)(5). All voting is by secret ballot. The voter must vote in privacy, by indicating with a mark in the place provided adjacent to the name of the candidate(s) supported by the voter. The voter must then hold the ballot so the choice(s) cannot be seen by others and place it in the ballot box provided. It will be the duty of the Chair, or the Chair's designee, when requested by a voter, to have such voter assisted in casting a ballot.

2.2(A)(6). If a voter mutilates a ballot or renders the ballot unusable, another ballot may be obtained. Upon surrender of the mutilated ballot, the Judge must write the word "Disqualified" across the ballot and sign his/her name beneath it, have another ballot issued in lieu thereof and must place the spoiled ballot in a large envelope marked "mutilated ballots." The envelope containing all mutilated ballots must be placed in the ballot box at the end of the voting. All such spoiled ballots must be retained along with the other election materials as specified in this Chapter.

2.2(A)(7). Ballots unused at the end of the voting must be bundled together, and the bundle must be marked "unused" in ink, signed by at least two members of the District Election Board, and placed in the ballot box at the end of voting. All unused ballots must be retained along with the other election materials as specified in this Chapter.

2.2(B). Absentee Ballot Voting Procedures.

2.2(B)(1). The General Reservation Election Board must give or mail ballots for absentee voting to eligible voters upon receipt of a signed written request from such voters. If an eligible voter does not and has not previously designated a district, that eligible voter shall receive an absentee ballot that includes only the at-large positions up for election. The General Reservation Election Board may accept physically

signed written requests by hand delivery, by mail, or by fax or other electronic means, such as electronic mail. The Reservation Election Board shall keep and maintain a mailing address for the purpose of receiving election related materials. The Band governing body shall post and publish the mailing address of the Reservation Election Board in advance of upcoming elections. Under no circumstances shall the General Reservation Election Board hand-deliver absentee ballots off-site. The General Reservation Election Board must give immediate attention to all such requests and must process the requests to permit voters reasonable time to execute and return their absentee ballots within the time allowed by this Ordinance; provided that any eligible voter who requests and receives an absentee ballot in person must be required to cast the ballot with the General Reservation Election Board on the same day. Documents which must be given or mailed to the voter requesting an absentee ballot under this section must include: a) the absentee ballot; b) an inner envelope, bearing on the outside the words "Absentee Ballot" and; c) a pre-addressed outer envelope which, on the reverse side of which there must appear an affidavit as described in Appendix II of this Ordinance.

2.2(B)(2). In no case may a candidate or member of a candidate's immediate family be the notary public who administers the oath.

2.2(B)(3). Those voting by absentee ballot must execute to the required affidavit, mark the ballot to indicate candidate preference(s), acquire witness of a notary public, place the ballot in the envelope marked "Absentee Ballot", seal the envelope, place the sealed envelope marked "Absentee Ballot" in the outer pre-addressed envelope, and mail it or deliver it in person.

2.2(B)(4). Those wishing to vote by absentee ballot must ensure that their outer pre-addressed envelope with enclosed inner envelope and absentee ballot are delivered to the designated post office box one half hour before closing of the relevant post office on Election Day. Any absentee ballots received by mail thereafter must be declared invalid and must be kept separate from the other ballots.

2.2(B)(5). Absentee Ballots that are returned by hand-delivery must be received by the General Reservation Election Board no

later than the close of the polls on Election Day. Any ballot that is hand-delivered must be delivered by the absentee voter himself/herself. Any voter who walks into the polling place on Election Day with an unmarked absentee ballot may choose to have the ballot voided, recorded as void, and proceed to vote as a regular voter.

Section 2.3. Counting of Votes.

2.3(A). The Tally.

At the close of the polls, all election materials must be transported to the counting room, if the counting is to take place in a location other than the polling place. Thereafter, the District Election Board must unlock the ballot box(es); remove the regular ballots; and tabulate the votes according to the procedures established in this Ordinance, or by such other process as may be required by an automated election system.

The District Election Chair and at least two other members of the District Election Board must remain continuously in the room until all the ballots are finally counted.

2.3(B). Observing the Tally.

At least two members of the District Election Board must view each ballot, and each counter must keep a separate tally of the votes cast. Any eligible voter may be present at the tally so long as the voter behaves in a manner consistent with the requirements of this Ordinance.

2.3(C). Rejection of Ballots.

If, during the tallying of the votes, the members of the District Election Board are unable to determine from a ballot the choice(s) of the voter, the ballot must be rejected. A rejected ballot must be marked "rejected" in ink. Each member of the Reservation Election Board must sign their name below this marking. Rejected ballots must be kept together and placed in the Ballot Box at the end of the tally.

2.3(D). Close of Tally.

At the close of the tally, the District Election Board must open the ballot boxes and display the empty box to all persons present to ensure that no ballots are contained therein; determine the total votes cast for each candidate for each office; write down these totals, together with the number of rejected ballots, spoiled ballots, unused ballots and total ballots printed; return the ballots to the boxes, lock and mark the boxes, and turn

over the certified election returns of the District, along with the ballot boxes, and the list of those registered and voting to the General Reservation Election Board.

2.3(E). Counting the Absentee Ballots.

2.3(E)(1). Upon arrival at the polling place, the Chairperson immediately must deliver the still sealed ballots to the remaining members of the General Reservation Election Board, who must deposit them in a special locked ballot box.

2.3(E)(2). Prior to counting the absentee ballots, the General Reservation Election Board must determine whether the person whose name is on the outer envelope and affidavit is a qualified voter, and whether the qualified voter is on the absentee ballot list. The General Reservation Election Board must then count and register absentee votes after all other ballots have been counted and must include such votes in the results of the election. The provisions of Section 2.3(B) and Section 2.3(C) must apply to the counting of the absentee ballots, except that the General Reservation Election Board must perform the listed duties with regard to absentee ballots, instead of the District Election Board.

Section 2.4. Certification and Posting of the Election Results.

2.4(A). It will be the responsibility of the General Reservation Election Board to certify the results of each election. The General Reservation Election Board must convene in a place selected by them and at a time prior to 8:00 p.m. on the day following the election day to receive the certification of the results of the election from each District and must certify the return of the absentee votes.

2.4(B). The General Reservation Election Board must publish and post within two (2) days after the day of the election the results of such election, in the voting Districts, and in other public places throughout the Reservation for the information of the tribal members. The results must also be forwarded to the Minnesota Chippewa Tribe within the same time period.

Section 2.5 Election Signage.

Each Band governing body may adopt generally applicable rules or regulations relating to campaign signage, include when such signs may be posted and when such signs must be taken down.

CHAPTER III: RECOUNTS, CONTESTS, AND APPEALS

Section 3.1. Recounts of Ballots.

3.1(A). A recount of ballots may be sought in any Regular or Special Election and must be mandatory in case of tie votes in such elections. If two candidates tie with the second highest number of votes in a Primary, a recount must be mandatory.

3.1(B). Only a candidate for a Band governing body position may seek a recount of ballots, and the recount may only involve the position for which he/she was a candidate. A candidate seeking a recount must prepare a written Request for Recount stating specific reasons for the need for a recount and must file the Request with the General Reservation Election Board at its office by 5:00 p.m. on the third day following the day of the election. The General Reservation Election Board must consider the Request for Recount of the contesting candidate and must make a decision on the Request within five (5) days following the day the Request is filed with the Board. A recount may be ordered only if the General Reservation Election Board determines that the closeness of the vote makes a recount desirable, or that a material question exists as to whether the initial vote count was accurate. The decision of the General Reservation Election Board will be final without appeal as to the recount request.

3.1(C). All recounts shall include a hand count.

Section 3.2. Election Contest to Reservation Election Contest Judge.

3.2(A). Contest of Primary, Regular or Special Elections.

3.2(A)(1) Only a candidate on the ballot in an election may contest that election, and the contest may only involve the position for which he/she was a candidate. A candidate contesting an election must prepare a written Notice of Contest stating specific reasons for his/her contest, and shall file by regular mail, electronic mail, personal delivery, or facsimile the Notice of Contest with both the Reservation Election Contest Judge at the judge's office and the Executive Director or his designee at the offices of the MCT by 4:30 p.m. of the seventh day following the day of the election. A Notice of Contest must be electronically time and date stamped upon receipt at each office or its receipt must be verified in writing by two (2) persons at each office. The Executive Director or his designee must verify that the Notice of Contest was received prior to the deadline. If the

entire Notice of Contest is not received by the deadline, it shall be void.

3.2(A)(2). Upon the proper filing of a Notice of Contest, the Reservation Election Contest Judge shall review the claims made in the Notice of Contest as soon as practicable after the Notice is filed. In his or her sole discretion, the judge, either *sua sponte* or upon request of the contestor, may order certain discovery of materials held by the General Reservation Election Board if the Contest Judge believes that information will materially assist in making a decision on the Contest. Absent the prior written consent of the person to whom a record pertains, the Contest Judge shall take such steps as are reasonably necessary to ensure that personal information is not disclosed. The Reservation Election Contest Judge may order such a hearing and such submissions as the judge deems necessary, including the testimony of persons on any Election Board, and must make a decision on the Contest within ten (10) days of the deadline for filing a Notice of Contest.

3.2(B). Rules and Procedures for Contests to the Reservation Election Contest Judge.

The following additional rules and procedures will govern the determination of election contests heard by the Reservation Election Contest Judge pursuant to this Ordinance:

3.2(B)(1). The burden of proof rests with the contester who must show by clear and convincing evidence the alleged violations of this Ordinance. There shall be a presumption of correctness in favor of the General Reservation Election Board and the election results until the contester has met his or her burden of proof.

3.2(B)(2). The contester must proceed first in any hearing and must present relevant and material evidence demonstrating how any violations of the Ordinance, alleged and proven, affected the outcome of the election. Evidence may be received on violations of the Ordinance alleged to have taken place in the contested election. The General Reservation Election Board must respond to the case presented by the contester, if it deems it necessary, and may present any exhibits and offer any relevant testimony and/or oral arguments. With an offer of proof and with the

permission of the Judge, another candidate may respond to the allegations in the Notice of Contest.

3.2(B)(3). Legal counsel may assist and accompany the contester but must abide by all rules and regulations applicable to the proceeding.

3.2(B)(4). The contester must be limited to presenting testimony and evidence in support of the allegations contained in the written Notice of Contest. No new allegations will be considered.

3.2(B)(5). Witnesses must be sworn and only one may testify at a time. The judge will have full authority to maintain order and decorum throughout the proceeding.

3.2(B)(6). All evidence offered, whether written or oral, must be relevant to the matters alleged as the basis of the contest, and must be recorded by a court reporter or if a court reporter is not available by video or audio.

3.2(B)(7). The decision of the judge as to the relevancy and weight of any and all exhibits and evidence will be subject to review on appeal only pursuant to this Ordinance.

3.2(B)(8). With regard to a contest of the final vote in an Election, the judge may affirm the results of the election or order that the results of the election are invalid and order that a new election will be held under conditions specified in the judge's order. In no case will the judge order that a new election be held unless the contester has demonstrated violations of this Ordinance which changed who was the winning candidate (or candidates in a Primary) for an office.

3.2(B)(9). The form of the Opinion of the Reservation Election Contest Judge must include a Findings of Fact, Conclusions of Law, and Final Decision.

3.2(B)(10). The judge will not have jurisdiction to rule on questions relating to interpretation of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe.

Section 3.3. Appeal of Reservation Election Contest Judge Decision.

The decision of the Reservation Election Contest Judge, or such other equivalent decision as designated by Band law, may be appealed to either: (1) the Tribal Election Court of Appeals if the Band governing body has, by official action, conferred jurisdiction on that Court; (2) to a Band appellate court with jurisdiction. The Appeal must be limited to the record below subject to the limited exception set forth in Section 3.4 (B)(3). The decision of the Reservation Election Contest Judge shall be reviewed de novo with no deference given to the Election Judge's determinations of either the facts or the law.

Section 3.4. Tribal Election Court of Appeals

3.4(A). Organization of the Court

3.4(A)(1). The MCT Tribal Election Court of Appeals ("Court") will be comprised of a person named by each of the six Bands ("Judge"), chosen as determined by the Band. The Judge representing the Band from which the appeal is taken must be recused from sitting on that matter. In all cases, there shall be five (5) voting members of the Court.

3.4(A)(2). The Executive Director of the MCT or his designee will serve as Clerk of Court.

3.4(B). Jurisdictional Limitations; Band Decision; No New Trial

3.4(B)(1). Jurisdiction of the Court is limited to matters arising under this Election Ordinance.

3.4(B)(2). Each Band governing body may, by official action, opt to confer final jurisdiction on the Court. The Band governing body must notify the Tribe of a decision to use the Court before the date of a scheduled primary election. If no such notice is given, appeals shall be to the Band's appellate court.

3.4(B)(3). The Court may only take appeal from the decision of the Reservation Election Contest Judge, and may not undertake separate fact-finding upon new evidence, unless the Reservation Election Contest Judge clearly refused to accept relevant evidence or failed to consider evidence that could not reasonably have been discovered prior to the underlying hearing. Regardless, the Court cannot consider any claim that could have been presented at the Reservation Contest level.

3.4(C). Procedure

3.4(C)(1). A candidate who is adversely affected or the General Reservation Election Board may file a Notice of Appeal with the Executive Director of the MCT or his designee within three (3) days of the decision of the Election Contest, at the offices of the MCT. A copy of the Notice of Appeal must also be served on the office of the Reservation Contest Judge who made the decision being appealed. The Notice must state the basis for the appeal, including a statement of how the alleged violation of the Election Ordinance was both serious and material and how it affected the outcome of the election.

3.4(C)(2). Upon receipt of the Notice of Appeal by the Reservation tribunal, the record must be prepared and forwarded to the Court at least two (2) days prior to the hearing date. The record must include all documentary evidence presented, a transcript of the proceedings or video or audio recordings, and a copy of the decision of the Reservation Contest Judge.

3.4(C)(3). Upon receipt of the Notice of Appeal by the Executive Director or his designee, a copy of the Notice of Appeal must be forwarded to the Court of Appeals by regular mail, electronic mail or facsimile. The Executive Director must schedule a hearing date within one week from the date of receipt of the Notice of Appeal.

3.4(C)(4). The Court must permit oral argument and written submissions and may establish time or page limits, as the case may be.

3.4(C)(5). The Court may order the issues briefed by counsel but must in any event render a decision on the Appeal within ten (10) days of hearing. The decision must be in writing and address each issue raised on appeal.

3.4(C)(6). The decision of the Court is final and unappealable.

APPENDIX I
MCT ELECTION ORDINANCE

- The electronic voting machine shall be a computer (microprocessor) controlled direct electronic tabulation system. The operating software shall be stored in a non-volatile memory "firmware" and shall include internal quality checks, such as purity or error detection and/or correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected. The voting system shall be a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures. The voting system shall provide alpha/numeric printouts of the vote totals at the closing of the polls. Subsistence, i.e. printer, power sources, microprocessor, switch and indicator matrices, etc., shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards. The unit shall be supplied with dust and moisture-proof cover for transportation and storage purposes.

- Specifications:
    1. Operating temperature - 50°F to 90°F.
    2. Storage temperature - 0°F to 120°F.
    3. Humidity – 30% to 80% non-condensing.
    4. Line voltage – 115 VAC +/- 10%, 60 HZ.

  The memory pack is able to accept over 1,500 voting positions and tabulate over 65,000 votes for each position. The machine shall accept a ballot inserting in any orientation. The tabulator must recognize all errors and be able to reject or return the erred ballot. The tabulator must automatically be able to detect an over-voted ballot. The vote tabulator must contain a public display counter to record number of ballots processed.

APPENDIX II
MCT ELECTION ORDINANCE

AFFIDAVIT

State of _____

County of _____

I, _____, do solemnly swear that I am an enrolled member of the Minnesota Chippewa Tribe, that I will be at least eighteen years of age on the election date and am entitled to vote in the election to be held on _____, 20___.

I have marked the ballot that I requested and received from the Election Board and enclosed and sealed the same in the envelope marked "ABSENTEE BALLOT." It is enclosed in this envelope.

Signed:_____
(Voter)

Subscribed and sworn to before me this ____ day of _____, 20___. I hereby certify that the affiant properly identified himself/herself to me and signed this Affidavit in my presence.

[SEAL]

_____
Notary Public

EXHIBIT C

STATE OF MINNESOTA)
) ss. Affidavit of Arthur LaRose
COUNTY OF ITASCA)

Your affiant, Arthur "Archie" LaRose, after oath does swear and depose as follows:

1. That I am currently the *now seated*, duly elected, Secretary-Treasurer for the Leech Lake Reservation Business Committee (LLRBC), following the 2018 MCT Elections by the Minnesota Chippewa Tribe (MCT).

2. That I have been certified as candidate ten (10) times as a candidate for MCT elections at Leech Lake Reservation, seven (7) times after the 2006 felon amendment to the MCT Constitution.

3. That I have been elected to LLRBC *at large* offices of Chairman and Secretary-Treasurer.

4. That my elected LLRBC offices made me a member of the MCT's Tribal Executive Committee (TEC).

5. That in 2006, following the Secretary's approval of the amendment to the Revised Constitution of the MCT, there was a legal challenge brought against *then seated* Chairman Goggleye alleging his being convicted as a felon. In that action the Honorable Judge Wahwassuck determined (1) that both Goggleye's and Petitioner LaRose's convictions were deemed to be misdemeanor convictions under Minnesota law, (2) that the LLRBC adopted Resolution 2006-07 (See **Exhibit 1**), with a 4-0, was considered by the Tribal Court and found not inconsistent the Court's decision, and (3) the Honorable Judge Wahwassuck sent a *Request for Opinion from Tribal Executive Committee* dated Dec. 8, 2006, (See **Exhibit 2**, Request for Opinion to TEC).

6. That Petitioner's 1992 conviction was considered by the Honorable Judge Wahwassuck, Leech Lake Tribal Court Case No. (CV-06-07) Gotchie v Goggleye. The Court found that LaRose and Goggleye were in the same boat and commented directly in "FN 2 Although LaRose is

not a party to this action, the Court notes that the decision in this matter would apply to LaRose in the same manner as Goggleye, as LaRose's conviction was also deemed to be a misdemeanor pursuant to Minn. Stat. 609.13." (See Findings of Facts, Conclusions of Law& Declaratory Judgment dated 12-8-2006 attached as **Exhibit 3**).

7. That years later after Hudson v Zinke (2020) decision, the TEC was asked at a public meeting about the Request for Opinion from Tribal Executive Committee dated Dec. 8, 2006, and was informed by Gary Frazer, the Executive Director of the MCT, he never received the request.

8. That the *Request for Opinion from Tribal Executive Committee* dated Dec. 8, 2006, was reserved on the TEC at a Meeting after that discussion by 2006 then Plaintiff Wallace Storbakken, because the 2006 MCT Const. amendment was achieved with on 17% of the MCT, instead of MCT Const. threshold of required 30% minimum participation by eligible voters.

9. That I am providing this Affidavit in support of my Complaint and application for Temporary Restraining Order (TRO) against the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribal Court of Appeals for Elections 2022, which denied my certification as candidate for re-election for the Secretary-Treasurer for the Leech Lake Reservation Business Committee.

10. That on Feb. 16, 2022, the in their *In Re LaRose Decision & Order* the MCT Tribal Court of Appeals for Elections stated that based on the records received, submitted by the Challenger Mr. Fineday, the Minnesota Chippewa Tribe's Tribal Election Court of Appeals determined LaRose was "convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and the Minnesota Chippewa Election Ordinance, as amended on December 14, 2021. . . ." (See *Decision & Order* dated Feb. 16, 2022 attached as **Exhibit 4**).

11. That Mr. Leonard Fineday, certified candidate for LLRBC Secretary-Treasurer position filed a challenge to my certification on Feb. 9, 2022, with the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribal Court of Appeals for Elections 2022. (See copy of Mr. Fineday's certification challenge attached as **Exhibit 5**).

12. The primary legal documents submitted by Mr. Fineday were my 1992 charges, my Minnesota Register of Actions showing my conviction was deemed a misdemeanor and a decision in "Finn v Election Board, Leech Lake Election Contest Decision & Order, June 29, 2018, pgs. 4 & 5" and provided a "copy of the Judge Routel's Order from 2018 is attached for the Court's review." (See **Exhibit 6**, at p. 3)

13. The odd thing is the Finn *Decision & Order* was not a candidate certification decision, but instead a final election vote outcome challenge, which was subsequently used by Steve White, District 2 Rep in a Leech Lake Tribal Court in a TRO Petition White v LaRose (CV-18-66) to remove LaRose from office, after the 2018 election. (See **Exhibit 7**, Order Denying TRO/Directing Responses dated July 3, 2018).

14. In that July 3rd Order the Honorable Judge B.J. Jones explains that the certification discussion by Judge Routel is outside the scope the vote count challenge, and is "deemed dicta and not entitled to any judicial weight in a court of law."

15. Soon thereafter the Court issued an Order Dismissing Petition on July 12, 2018. (See **Exhibit 8**).

16. That I did provide both of these orders in CV-18-66 to the MCT for the Tribal Elections Court of Appeals as Exhibits attached to my *Answer to Challenge and Motion for Dismissal* dated Feb. 11, 2022. (See **Exhibit 9**, Table of Attachments).

17. That I did not find any consideration in the MCT Tribal Election Court of Appeals *Order & Decision* of ex post facto defenses which I raised on the first and second pages.

18. That I did not find any consideration in the MCT Tribal Court of Election Appeals *Order & Decision* of two (2) orders from White v LaRose described above.

19. That I did not find any consideration in the MCT Tribal Court of Election Appeals *Order & Decision* of any of my materials which was served timely and accepted by the MCT Executive Director Gary Frazer.

20. That after the 2022 election court certification *order* I made multiple efforts to have a special TEC meeting to address the unconstitutional amendment and it's immediate impact on my due process and property rights, just like Hudson v Haaland (Zenke) 2021 describes for sitting official and retroactivity of unconstitutionally adopted amendment to the tribe's constitution.

21. That I requested an emergency TEC meeting on Feb. 17, 2020 (See **Exhibit 10**), which MCT-TEC President Chavers *denied* my request on Feb. 18, 2020 (See **Exhibit 11**).

22. That myself and three other TEC members requested a Special TEC meeting under the constitution (See **Exhibit 12**), and we provided a draft TEC resolution fix (See **Exhibit 13**) because the 2006 amendment was obtained in violation of the minimum 30% eligible voters under the MCT constitution, just like Hudson v Zinke.

23. That members of the TEC made motion to adjourn before the Zinke fix resolution could be considered (See **Exhibit 13**) and the result was MCT President's Memo declaring MCT's election continues without change.

24. That Leech Lake Chairman Faron Jackson attempted to opt out of the MCT election process (See **Exhibit 14**), but was informed that that was not permitted and exclusive remedy lies with the Minnesota Chippewa tribe and Tribal Court of election appeals and that the result should be accepted. (See **Exhibit 15**, Memorandum from Gary Frazer Executive Director and Phil Brodeen General Counsel, dated April 1, 2022).

25. That I believe the latest revisions in the MCT election ordinance amended on December 14, 2021 violates the MCT constitutional RBC rights and authorities, because the candidate challenge information was not provided to the LLRBC in the election certification process first.

26. Had that happened, as part of the due process afforded to myself and existing tribal government, another broader certification packet would've been provided again like in 2018 (See **Exhibit 16**, LLBO Certification Packet), whereby Gotchie c Goggleye CV-06–07 and LLRBC Resolution 2006–07 were made part of the record for the MCT election challenge, following Donald Finn's 2018 candidate certification challenge and LLRBC final review.

27. That I did provide those same LLRBC resolutions, documents, tribal court decisions and other relevant explanations about decided Leech Lake Election Law since 2006, with my *Answer to Challenge Motion to Dismiss*.

28. That I believe it's unethical and unfair for my legal defenses and arguments with attached evidence being completely ignored by the MCT Election Court of Appeals and instead the panel appears to have relied completely upon Mr. Fineday's submission of the 2018 general elections challenge decision and order by Judge Routel, with comments from the 2018 MCT Election Court of Appeals Judge Johnson, which certified myself as a candidate for Secretary-Treasurer.

29. That I believe I have exhausted all of my administrative remedies within the MCT's Tribal Court Election Appeals process and the Tribal Executive Committee of the Minnesota Chippewa Tribe.

30. That my intentions here and now are to seek the remedy of overturning the unconstitutionally obtained amendment in 2006, as described in Hudson v Zinke, which held the tribal constitutional requirement of 30% eligible voters for referendum by Secretarial Election cannot be

circumvented by use of BIA election waivers to overcome the constitutional requirements.

31. That I am seeking an injunction against the present MCT 2022 Election being held for Secretary-Treasurer of the Leech Lake Reservation and declaratory judgment that MCT Court of Election Appeals failed to comment on my *ex post facto* defense or other related legal tribal court case orders and tribal resolutions were provided as part of my Answer to Challenge and Motion to Dismiss.

FURTHER YOUR AFFIANT SAYETH NOT.

Arthur La Rose
Affiant, *Arthur David LaRose*

Subscribed and sworn to before me
this 18th day of April, 2022.

Chari LaDuke-Clark
Notary

CHARI L LADUKE-CLARK
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2027

EXHIBIT D

Tribal Executive Committee
Special Meeting
InterContinental Riverfront
St. Paul, MN
December 14, 2021

A special Tribal Executive Committee meeting was called to order at 9:13 a.m. by President Chavers at InterContinental Riverfront Hotel, St. Paul, Minnesota

Invocation: Baabiitaw Boyd

Roll Call: Michael J. Fairbanks, Chairman, White Earth; Alan Roy, Secretary-Treasurer, White Earth; Faron Jackson, Chairman, Leech Lake; Archie LaRose, Secretary-Treasurer, Leech Lake; Catherine Chavers, Chairwoman, Bois Forte; David Morrison Sr., Secretary-Treasurer, Bois Forte; Melanie Benjamin, Chief Executive, Mille Lacs; via Zoom: Robert Deschampe, Chairman, Grand Portage; April McCormick, Secretary-Treasurer, Grand Portage; Kevin Dupuis, Chairman, Fond du Lac; Ferdinand Martineau, Secretary-Treasurer, Fond du Lac; Sheldon Boyd, Secretary-Treasurer, Mille Lacs.

Others: Minnesota Chippewa Tribe - Gary Frazer, Executive Director; Joel Smith, Director of Administration; Phil Brodeen, Legal; Michael Northbird, GAP Coordinator and other interested parties.

Motion by Secretary-Treasurer Roy to approve Agenda with additions. Seconded by Chief Executive Benjamin. 11 For, 0 Against, 0 Silent. Motion Carried.

DRAFT ELECTION ORDINANCE: Phil Brodeen, Legal

Phil explained the three changes that were made by the election ordinance review committee: Generally, throughout ordinance terminology: "will" was stricken and replaced with "must", Page 3: Section 1.2 (d) regarding postponing elections related to a public health emergency such as the pandemic, Page 13 Section 1.7 (d) oath of office it was requested that the election contest judges will take an oath.

President Chavers asked for comments regarding the Election Ordinance.

Chairman Fairbanks asked about the Election Ordinance – Section 1.3 (c) regarding governing bodies certifying eligible candidates by running background checks. He recommended having the background checks run through the MCT or a third party certify candidates for all six MCT Bands, or recommended that his idea go to the constitution committee.

Secretary-Treasurer LaRose made a statement about how he couldn't vote to support the election ordinance because of this issue: he disagreed with the with approval of the Secretarial Election

that happened 2005 where amendment A and B were passed. We can't pick and choose when to follow 30%, we have to follow our constitution of 1934 or the amended revised constitution and bylaws of the Minnesota Chippewa Tribe of 1935. Cited Article 12 refers to 30% required to change or amend the constitution. When this passed, how could we as TEC enforce new requirements on our membership? He said, "I can't vote to support the election ordinance because of this issue," and would "vote no under protest," further he requested it to be reflected in the minutes.

President Chavers responded that she was glad we were meeting with the Constitution Committee. She restated that clarification of the 30% does need to be done, as it has been an ongoing issue for many years, and asked if there were any other comments to Election Ordinance?

Secretary-Treasurer Roy stated the clarification of 30%, needs to be clear in our minds. I know the TEC voted to affirm that the 30% is 30% this year, the only question is 'how does that 30% affect us moving forward on the proposed amendments that the delegates are working and how does it affect specifically, to the resolution in front of you today. You asked what I wanted to do and that is what this resolution is, it is related to the ordinance because it has the 30% factor to it, last page. Secretary-Treasurer Roy reads the *Now Therefore be it Resolved* section of his proposed resolution. The purpose of this is to find that clarity, it doesn't bind the TEC to any specific reaction, it says the TEC is going to "re-examine" or "re-affirm" and put it to rest. There is another clarification but I'm not bringing that up today, but I want to get clarification on the 30%. As related to the Election Ordinance. He thanked the TEC for their patience. If the president would permit, I would like to make a motion for that examination or affirmation for the staff to help the TEC find that clarity.

President Chavers requested Secretary/Treasurer Roy wait a moment, and asked for comments from Tribal Leaders on Zoom before Secretary/Treasurer Roy does the motion.

Secretary-Treasurer Martineau stated I think the only thing I have to add is, and Phil, I may need you to clarify this, when this Amendment was accepted in 2005 or 2006, it went before Secretary of the Interior (SOI), I believe, the SOI looked at what happened and they certified election. When that that election was certified by the SOI, a lot of objections to 30% or to whether we had 30% or not in the vote – that kind of became a mute issue because of the SOI. Then a court case came out that upheld what the Secretary of Interior did. I thought we would make that change with the Constitution Reform Committee and take care of that issue and I did not think that we would have to deal with this as TEC again, that our Constitution Reform would take care of that issue. I pushed our delegates to bring this up and work on it in that process. He believes that we didn't reach 30% threshold, but in the way that vote was presented to Secretary of Interior and they certified the vote.

Phil responded, my counsel is the same this time as it was last time and the time before that, from a legal perspective, there is nothing to reexamine regarding this issue going back to 2005. The time to challenge that has passed, it was challenged and that challenge failed. That's my counsel, and it largely follows what you've stated. I would agree that the constitution committee should take this up, but I don't think that this is the right way to even reexamine it.

Secretary/Treasurer LaRose asked Phil if that is his legal opinion. Phil responded yes; it certainly is. Secretary/Treasurer LaRose thanked Phil.

Phil responded to audience questions regarding the constitution, and the SOI. Answering the Secretarial Election is a federal process and follows federal rules, and regarding "due process", due process rights come into play when there is a challenge, and it was challenged and that's where their due process. Secretary-Treasurer LaRose claimed the SOI rubber stamped that waiver; asked about in our constitution we don't have that waiver authority to waive anything, we have to require 30% as stated in our 1935 constitution. Phil stated I would disagree that it was rubberstamped, because it went to the court, the Interior Board of Indian Appeals (IBIA).

Comments were heard from audience.
President Chavers called on Secretary/Treasurer McCormick.

Secretary/Treasurer McCormick remarked, I have the same concerns that Secretary/Treasurer Martineau raised, looking at this issue, and hearing what Phil has said, that the IBIA challenge has gone through, the SOI decision to approve that Amendment has occurred. To be honest, I don't think we should take action on this resolution because it creates constitutional issues of reinterpreting the past. I think strongly that the information that's been presented on the agenda is the approval of the election ordinance, which happens every two years, and as we approve that election ordinance, that is the purpose that we have today. I appreciate Secretary/Treasurer Roy bringing packets of information, and putting together a resolution, however, in good conscience, I don't think the TEC should take action on this today.

Motion by Secretary-Treasurer Roy.
Secretary-Treasurer Roy asked for approval to look at the matter more comprehensively and admitted that even if it doesn't pass, this is what is known as an administrative remedy. I have to administratively exhaust all remedies with this body before I can take it to another place and I need that clarification. He confirmed his motion to approve his resolution today.

President Chavers acknowledged Secretary/Treasurer Roy motion and called for a second.
Second by Chairman Jackson.

Secretary/Treasurer LaRose requested a Roll Call Vote. President Chavers stated this will be a roll call vote as requested.

Executive Director announced names for Roll Call Vote:

Chairman Fairbanks?

Chairman Fairbanks said, my question is before we vote is, does this mean we pass this on to the Constitution Committee? Or what action is this going towards? Secretary-Treasurer Roy responded it doesn't identify a particular individual or set of individuals who are going to reexamine the issues, and the Tribal Executive Committee can decide who would look at these issues, whether it be constitution committee, attorney, etc.

Chairman Fairbanks I'm in favor of bringing that to the Constitution Committee to the people.

Executive Director announced Roll Call start again, Chairman Fairbanks?
Chairman Fairbanks, yes to push it to Constitution Committee.

Chairman Dupuis asked for clarification point of order. President Chavers acknowledged Chairman Dupuis. Is the ability to ask questions was before our vote? Or was that taken away when we started the vote? Right now, I am confused, can we make clarification first: are we are roll call voting on this with or without comments or explanation?

Secretary/Treasurer LaRose, I'd say let's just vote, roll call yay or nay.

President Chavers, do you to rescind your motion?

Phil stated the roll call should be Yay or Nay and the time for discussion is when the motion was presented.

Secretary-Treasurer Roy, aye; Secretary-Treasurer LaRose, yes; Chairman Jackson, yes; Secretary-Treasurer Morrison, no; Chief Executive Benjamin, no; Secretary-Treasurer Boyd, no; Chairman Deschampe, no; Secretary-Treasurer McCormick, no; Chairman Dupuis, aye; Secretary-Treasurer Martineau, aye.

6 For, 5 Against, 0 Silent. Motion Carried.

Chairman Dupuis stated Madam President, I have a question, during this process, when we do something like this, I think it's clear the conversation needs to happen. To go into immediately a roll call without any other clarification or discussion, maybe that wasn't the right way to do it. I don't feel this resolution should it be turned over to the delegates. This is a Tribal Executive Committee action or discussion. Someone should clarify to me why it should go to the delegates.

Comment from audience.

Chairman Dupuis stated the resolution simple, does the Constitution say 30% entitled to vote? Yes, it does. The other part is the wavier: Yes, the Secretary of Interior approved waiver, yes, the waiver happened. To me it is simple. Did waiver go to membership for approval? No, it did not. That's why I voted yes. However now I'm more confused than ever.

Chairman Deschampe stated I have a comment, that it's a little disturbing that we get a Resolution sent to us on Saturday, and its Tuesday, and we had two days to look at this and go over it. I think everyone needs to do their due diligence and get this to us two weeks in before the meeting, so we can have a little time to absorb this.

Chief Executive Benjamin made a similar statement explaining, this is a three-page resolution, a lot of citations and a lot of different references, that is necessary for the MLBO to make sure that that it works for MLBO. Even though I voted no, it wasn't necessarily about the resolution itself, it was about the process. There is a process at the Mille Lacs Band, that has to be followed when

looking at these resolutions. We didn't have the opportunity to analyze and have time for our discussion on the parameters for the Mille Lacs Band. There is a process we have to follow at Mille Lacs, that's how we govern, that's how we are going to follow that process.

Comments from the audience.

President Chavers asked for a motion to approve the Draft Election Ordinance that was presented.

Motion by Secretary-Treasurer Roy to approve the Election Ordinance with changes. Seconded by Secretary-Treasurer Martineau. 9 For, 2 Against (Chairman Jackson, Secretary-Treasurer LaRose), 0 Silent. Motion Carried.

Comments from the audience regarding electronic voting machines. Discussion about the voting machine contracts.

CONSTITUTIONAL DELEGATES: Sally Fineday. Leech Lake; Cheryl Edwards, Fond du Lac; Millie Homes, Bois Forte
The Constitution delegates said they have no formal report. They discussed two possible questions for recommendation, at the Friday meeting they had four supportive delegations, one delegation abstain, one delegation voted nay of the following:

1. Question: Remove Secretary of the Interior requirement from Minnesota Chippewa Tribe Constitution.
2. Remove Blood Quantum requirement and replace with lineal decent.

A delegate from White Earth commented that there were delegates that were not at the meeting and did not accept the questions.

Discussion among those present about how the delegates thought they should come to the TEC with a recommended question for the referendum vote, and how each of the delegations 'voted' on the questions discussed above.

Secretary-Treasurer McCormick want to make a point to say that when the Tribal Executive Committee passed the motion for referendum regarding enrollment, we called forth specific parameters for the question. I can read this again, if that's helpful for the delegates and audience to refer to: the Tribal Executive Committee passed motion for referendum regarding enrollment process the question that we ask each Band would determine their enrollment under the Minnesota Chippewa Tribe. (Read question: Page 4 June 22, 2021). The TEC The question has to be clear and only in regards to enrollment, and very defined for our voters. As the committees are reviewing this information we have to stick to those parameters.

Chairman Jackson thanked Secretary/Treasurer McCormick, and also wanted to reiterate if the constitution delegation had dialogue about how they feel about each tribe determine their

enrollment process and still be part of the MCT? We all have to listen to each other. We need somewhere to get started and continue to move in tandem, the TEC and the constitution delegates.

Discussion among those present on how the delegations were appointed by each Band, how they should be/are enrolled members, and the roles expected by the TEC.

Break- 10 minutes – 11:25 a.m.
Meeting resumes - 11:39 a.m.

2022 MEETING SCHEDULE
Executive Director Frazer stated the January meeting would be held in Grand Portage.
President Chavers request the meeting dates be placed on the website for 2022.

President Chavers requested that Reid LeBeau update the Committee on the recent MIGA meeting. Legislature meets in January; sports betting is a major concern in the past few years. We need tribal consensus on on-line option sports betting. At the last MIGA meeting discussed Brick and Mortar gaming, online mobile sports betting. We know this is coming down the line. Suggest today that the Minnesota Chippewa Tribe set up meeting with all the tribes including Red Lake (all northern tribes). The pandemic has really taken a toll on some of the tribes' revenue in gaming. Believes Grand Portage suffered the most with pandemic/closure of border. In regards to the sports betting, the rural/northern tribes need to get together to discuss this issue.

Reid responded there are two (2) options. Should the proposed regulations apply to Brick and Mortar gaming facilities or be limited there, then patrons have to physically go to this location. This was strongly supported by Shakopee. Alternatively, with an online mobile option, people can be able to engage in sportsbook betting wherever they are physically located within the state. One idea proposed by Mille Lacs is that there be essentially one limited entity that be shared within the tribes of the state, thereby benefiting all tribes, that it doesn't matter where the tribe is located and I defer to the Chief Executive if I've misstated anything on that.

Chief Executive Benjamin thanked Reid for providing that update. Our team from Corporate ventures did a lot of research, including data, legislation, so that when we went to the table that we'd have solutions to this. Whenever we have that meeting coming up, we will be more than happy to share this information.

President Chavers requested that Reid provide information on the Seminole case.
Reid referenced the Seminole case, where the D.C. District Court, where the Seminole Tribe out of Florida, executed a compact with State of Florida to do off reservation online sports betting, which they controlled. The other gambling interests in the State of Florida sued, claiming that off reservation gaming is not covered by IGRA Indian Gaming Regulatory Act. The District Court has at least agreed to that. It is an obstacle that can be overcome, but practically it means that if tribes plowed ahead without considering this case, then we likely would have a compact that would not be approved by the Department of Interior pending final resolution for this issue. What it means practically is that for on reservation sportsbook, there would need a new compact.

To go down the road of Online mobile – we may have to have state regulation over the off-reservation gaming, it would need to be worked out.

President Chavers stated this is mainly informational. She asked Executive Director Frazer to set up, Mille Lacs would host. Leech Lake is currently working with setting up with Red Lake right now, they will be invited Meeting set as soon as possible.

Chairman Jackson stated in an initial meeting he attended he understood that our current compacts would not be opened. It would be new compact, with some sort of revenue sharing formula. There was dialogue that if the tribes were not going to participate, they were wondering if the State would move forward with out the tribes. There is more to clarify.

Reid stated what the Bands do collectively will carry weight at MIGA and Capitol. This meeting will try to get everyone on the same page. One other thing gaming related is Card games, that the two race tracks are engaging in card games under that argument that it was Class II. The NIGC has taken the strong position that they believe these games are Class III. Red Lake asked for an opinion, and NIGC issued a letter that their opinion is that these are Class III games which would require a new compact. Wanting to make people aware but also asking if it would make sense to seek an amendment to the black jack compacts card games potentially get this issue off the board before trying to potentially negotiate something new with the State.

INFORMATION: Election Calendar.

Executive Director Frazer informed the Committee of the following dates for the Primary Election is April 5th, indicating that the 'one-year residency' is as of April 4, 2021.

Legislative Dinner – begin planning for mid-March 2022, plan to check COVID-19 numbers and State regulations at end of January to evaluate whether to gather or not.

Motion by Chief Executive Benjamin to adjourn the meeting at 11:59 a.m. Seconded by Chairman Jackson. 11 For, 0 Against, 0 Silent. Motion Carried

EXHIBIT E

WALLACE W. STORBAKKEN

P.O. Box 294

Walker, Minnesota 56484

Wstorbakken2003@yahoo.com

(218) 513-5444

To: Gary Frazer

MCT Executive Director

From: Wallace W. Storbakken

Date: February 9, 2021

Re: Request for Opinion

Mr. Frazer:

In December of 2006, the Leech Lake Tribal Court issued a request for opinion regarding Article IV of the MCT Revised Constitution and Bylaws. To my knowledge the request was never addressed at the Tribal Executive Committee. As a plaintiff in the case which led to the request (Leech Lake Tribal Court Case No. CV-06-07) I believe I have legal standing to resubmit the request so as to finally lay this issue to rest. I do so as a member of the Minnesota Chippewa Tribe.

Therefore, I am asking that the TEC issue an opinion regarding the Court's request and that it do so in a timely manner. I believe thirty (30) days is sufficient time to meet this request as it was first submitted over 14 years ago. I have attached a copy of the original request. Perhaps the Tribe's attorney (Phil Brodeen) could prepare a recommendation to the TEC for when it is placed on the agenda.

Respectfully,

Wallace W. Storbakken

Wallace W. Storbakken

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

Lawrence "Sandy" Gotchie,
Dale Greene, and Wallace Storbakken,
Plaintiffs,

v.

George James Goggleye, Jr., individually as the *politically* elected Chairman of the Leech Lake Reservation Business Committee,
Defendant.

Case No. CV-06-07

REQUEST FOR OPINION FROM TRIBAL EXECUTIVE COMMITTEE

TO: MINNESOTA CHIPPEWA TRIBAL EXECUTIVE COMMITTEE

WHEREAS, The Minnesota Chippewa Tribe has declared through Tribal Constitution Interpretation No. 1-80 that the Tribal Executive Committee possesses and exercises quasi-judicial powers and among said powers is the power to give official binding opinions regarding the meaning and powers possessed by tribal government under the MCT Constitution; and

WHEREAS, Tribal Constitution Interpretation No. 1-80 provides that such opinions may be requested by Tribal Judges; and

WHEREAS, Revised Article IV, Section 4 of the MCT Constitution provides, in part, that no member of the Tribe is eligible to hold office if he or she has ever been convicted of a felony of any kind; and

WHEREAS, Plaintiffs in the above matter sought a judgment from this court declaring that Leech Lake Reservation Tribal Council Chairman George Goggleye, Jr., was previously convicted of a felony by the State of Minnesota and sought an order restraining him from exercising any further elected duties; and

WHEREAS, the Leech Lake Tribal Court has entered a declaratory judgment finding that Chairman Goggleye is not precluded from holding office pursuant to the law of the State of

Minnesota, where his offense was prosecuted (See attached Findings of Fact, Conclusions of Law, and Declaratory Judgment ; and

WHEREAS, the Minnesota Court of Appeals has held that a retrospective statute will not be allowed to impair vested property rights. (*Murray v. Cisar,* 594 N.W.2d 918, 921, citing *Wichelman v. Messner*, 250 Minn. 88, 107.)

WHEREAS, the issue of the constitutionality of retrospective laws arose in the above-entitled case regarding application of revised Article IV of the MCT Constitution to Tribal Council members elected before the date of enactment; and

WHEREAS, the parties agreed that this issue is best decided by the Tribal Executive Committee as it potentially affects MCT Bands other than Leech Lake;

NOW THEREFORE, the Leech Lake Tribal Court certifies the following questions to the Tribal Executive Committee for an opinion pursuant to Tribal Constitution Interpretation No. 1-80:

> ***1. Is Revised MCT Constitution Article IV intended to apply to Tribal Council member elected to office prior to the date of enactment on January 5, 2006?***
> ***2. Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the date of enactment) constitute a retrospective application of the law?*** (A "retrospective law" is defined as one "which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights accruing, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates new a obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." (Black's Law Dictionary, 6th Edition.; see, also Baron v. Lens Crafters, Inc. 514 N.W.2d 305, 307 (Minn.App. 1994).)

RESPECTFULLY SUBMITTED THIS 8th DAY OF DECEMBER, 2006.

Korey Wahwassuck

Korey Wahwassuck, Chief Judge
Leech Lake Tribal Court

Leech Lake Tribal Court
FILED
In my office this
12/8/06
Clerk of Court

EXHIBIT F

OSBORN LAW OFFICE LLC
SERVING THE TWIN CITIES AND GREATER MINNESOTA
Princeton Office • 763.389.8881
Minneapolis Office • 612.722.8888

March 28, 2022

Via Email and USPS

Minnesota Chippewa Tribe/ Tribal Election Court of Appeals
Minnesota Chippewa Tribe Executive Committee
c/o: Gary Frazier, MCT Executive Director
Judge Ryan Simafranca
Judge Christopher D. Anderson
Judge Henry M. Buffalo Jr.
Judge Christina Deschampe
Judge Robert Blaeser
President Catherine J. Chavers
Vice President Faron Jackson, Sr.
Secretary April M. McCormick
Treasurer David C. Morrison, Sr.
Member Melanie Benjamin
Member Sheldon R. Boyd
Member Robert "Bobby" Deschampe
Member Kevin R. Dupuis, Sr.
Member Ferdinand W. Martineau, Jr.
Member Arthur LaRose
Member Michael Fairbanks
Member Leonard "Alan" Roy

15542 State Hwy 371 NW
Cass Lake, MN 56633

My name is Sharon Osborn. I am a Minnesota licensed attorney and my family is White Earth. My law practice focuses in Criminal Law and thus I am very familiar with the criminal justice system and the inequities in that system. I am especially aware of the systemic biases and disproportionate application of criminal prosecution and conviction as it relates to Native people.

Recently, Arthur Larose brought to my attention a ruling that found him ineligible for this year's election to the office of Leech Lake Secretary Treasurer based on a past conviction in the State of Minnesota. Besides the obvious issue of a native government relying on a euro-centric criminal proceeding against one of its citizens, I believe that there are other legal implications that affect the rights of Mr. Larose to fundamental Due Process.

Reply to • 209 N. Rum River Drive • Princeton MN 55371
Fax No.s • 763.389.8882 or 612.722.8889 • sharon@sosbornlaw.com • www.sosbornlaw.com
Minneapolis Office • 5140 Hiawatha Avenue • Minneapolis MN 55417

Mr. Larose has been elected by the people of Leech Lake to the Leech Lake Tribal Council for 18 years. Four of those years were as the Tribal Chairman, and 14 years were as the Secretary Treasurer. Mr. Larose currently sits as the elected Secretary Treasurer. Mr. Larose was first elected in 2002. In 2006, the Tribal Executive Committee of the Minnesota Chippewa Tribe amended the election ordinance to disqualify any person from running for Tribal Counsel who was convicted of a Felony *in State or Federal Court*. Since that amendment, Mr. Larose was certified to run for the Leech Lake Tribal Council seven times. It should be noted that the issue of prior conviction was formally raised and challenged in 2018, and, Mr. Larose successfully met the challenge and was declared eligible to run in by a five panel decision on February 7, 2018.

The current decision dated, February 16, 2022, is now construing Mr. Larose's past criminal offense to make him ineligible. I believe there is serious error with this ruling and one that will significantly taint the outcome of this election - if it is not reconsidered.

The United States and the State of MN Constitution have always recognized "ex post facto" as a barrier to criminal or civil liability - examples abound. The government cannot go to a citizen, State or Federal, and say "you did something ten years ago and it was legal but we now have decided it is illegal and now you are being punished." In civil law, we understand the concept of being "grandfathered in." If a house is built years ago with a valid building permit, but today it would not have been granted a permit, you are able to stay in your home and have not broken any laws. Examples of this in law, where certain actions or positions are grandfathered in, are too numerous to mention. Further, governmental estoppel estops this court from applying a law that Mr. LaRose has previously, in good faith, relied upon. Especially, where there has been a previous challenge and an official five judge panel advised him that his candidacy was legal - making him eligible to successfully run and become elected to the tribal council.

It is inherently unfair to punish Mr. LaRose now when he was legally certified seven times after the amendment was passed. If after this election, the council, with the aid of a lawyer well-versed in election law, wants to make a change, the council certainly has the power to do that. But the change must be applied prospectively. It cannot be applied retroactively to deprive a citizen of something legally obtained. In this case, Mr. LaRose's legal right to run for office and to serve on the Leech Lake Tribal Council for 18 years - is a right that cannot be retroactively rescinded.

I believe that this disqualification will result in a serious public relations problem - if not reversed. It is common knowledge that the opposition candidate, Mr. Leonard Fineday, is an attorney and a former tribal judge. Now, a panel of tribal judges has disqualified the only other candidate who has timely filed his candidacy – the encumbent Mr. Arthur LaRose. This ruling thus effectively eliminates the competition and hands Mr. Fineday the election. This ruling places Mr. Fineday in the office, thus telling the people of Leech Lake that "you have no choice and you cannot vote for anybody else."

That will ruling will negatively affect Mr. Fineday during his term and create a shadow over his credibility and the credibility of this court. In his years in office, Mr. LaRose has been voted on cumulatively thousands of times by Leech Lake voters. This present decision will be seen by the people of Leech Lake, and others, as a dirty legal trick for the benefit of a colleague.

The alternative, to this option is for Mr. Fineday to withdraw his challenge so that both he and Mr. LaRose will go on the ballot. If he wins fair and square, the office is his and the band will accept the

outcome. If Mr. LaRose wins, the band will accept that outcome. And the man they voted for will be Secretary Treasurer. That is the way tribal elections are supposed to be held.

There is still time before the election season to amend the order, and allow Mr. Fineday an opportunity to withdraw his challenge if he chooses.

Respectfully Yours,

Sharon Osborn
Attorney at Law

EXHIBIT G

Register of Actions
Case No. 11-KX-91-000862

The State of Minnesota vs. CHRISTOPHER DALE FINN

Case Type: **Misdemeanor**
Date Filed: **11/20/1991**
Location: **Cass**

Party Information

Defendant **FINN, CHRISTOPHER DALE**
ADDRESS & PHONE # CONFIDENTIAL

Male
DOB: 03/13/1968

Lead Attorneys
MAX J RUTTGER, III
Public Defender
218-829-3523(W)

Jurisdiction **State of Minnesota**
NONE

EARL E MAUS
218-547-7255(W)

Case Information

Charges: FINN, CHRISTOPHER DALE	Statute	Level	Date	Disposition	Level of Sentence
1. 1ST DEGREE BURGLARY (Not applicable - GOC)	609.582.1(A)	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
2. (TCIS Amended Charge) Felony Theft under $500 (Not applicable - GOC)	609.52.2 (1)	Converted: Offense Level Not Available	09/27/1991	12/28/1992 Convicted	

Events & Orders of the Court

DISPOSITIONS

11/10/1992 **Plea** (Judicial Officer: Judge, Presiding)
2. (TCIS Amended Charge) Felony Theft under $500 (Not applicable - GOC)
Guilty

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
1. 1ST DEGREE BURGLARY (Not applicable - GOC)
Dismissed

12/28/1992 **Disposition** (Judicial Officer: Judge, Presiding)
2. (TCIS Amended Charge) Felony Theft under $500 (Not applicable - GOC)
Convicted

12/28/1992 **Converted TCIS Criminal Sentence: Stay of Imposition** (Judicial Officer: Anderson, Russell)
2. (TCIS Amended Charge) Felony Theft under $500 (Not applicable - GOC)
09/27/1991 (CNVLEVEL) 609.52.2 (1) (CNVOFFENSE)

Converted Disposition:
Stay of Imposition
Converted Disposition:
Confinement NCIC: MN011013C - Cass County Jail Probation: 5 Years Probation NCIC: MN062015G - Mn. Dept. Corr/Field Service Conditional: 30 Days Length of Stay: 5 Years Probation Type: Supervised
Converted Disposition:
Fined: $150.00 Surcharge: $15.00 Costs: $7.50
Converted Disposition:
Other Court Provisions: 373: Impos Sent Stayed 365: Credit w/time Srvd 367: Work Release Nights
Converted Disposition:
Comments: 2/6/95-ADMIT/VOP-5D/CCJ/367;REINSTATE PROB; 11/27/95-DISCHARGED-REDUCED TO MISD;

OTHER EVENTS AND HEARINGS

11/20/1991 **FLD-Case Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: COMPLAINT/SUMMONS
12/02/1991 **Rule 5 Hearing** (1:00 PM) (Judicial Officer Smith,John P ,)
Location: II Mandatory Appearance: Y
Result: Converted Activity Status Flag Cancelled
12/16/1991 **Rule 5 Hearing** (1:00 PM) (Judicial Officer Smith,John P ,)
Location: II Continuance: No Show
Result: Converted Activity Status Flag Cancelled
12/20/1991 **Arraignment** (2:15 PM) (Judicial Officer Smith,John P ,)
Occurred Comment: DEF APPEARED ON HIS OWN, FIN AFF, CT APPT'D LARRY KIMBALL, RPR'D, GOOD BEH, CONTACT ATTY STAY IN TOUCH, NO CONTACT WITH ARTHUR LAROSE, KEEP PHONE AND ADDRESS CONFIDENTIAL
Result: Converted Activity Status Flag Occurred
01/02/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: REQUEST FOR DISCOVERY; NOTICE OF PROSECUTING ATTORNEY OF CNV: EVIDENCE AND IDENTIFICATION PROCEDURES PURSUANT TO RULE 7.01 CNV: BY MAUS;
01/06/1992 **Rule 8 Hearing** (9:08 AM) (Judicial Officer Haas, Michael)

Result: Converted Activity Status Flag Cancelled
01/17/1992 **Rule 8 Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Cancelled
02/03/1992 **Rule 8 Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Cancelled
02/07/1992 **SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: CHECKED WITH RUTTGER; HE HAS BEEN UNABLE TO CONTACT DEF; CNV: CO ATTY TO PROVIDE HIM WITH AN ADDRESS; TALKED WITH DONNA CNV: SHE WILL DO SO TODAY. SET FOR 3/2/91 9AM;NOTICE TO MAX;
03/02/1992 **Hearing** (3:39 PM) (Judicial Officer Haas, Michael)
Location: I Occurred Comment: BENCH WARRANT TO ISSUE ON 3/6/92 IF DEF DOES NOT APPEAR Location: I FOR APT W/CO ATTY;
Result: Converted Activity Status Flag Occurred
03/04/1992 **SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: DEF CAME INTO OFFICE GAVE HIM NEW COURT DATE OF 3/16/92 CNV: 9AM AND TOLD HIM TO CONTACT ATTY & KEEP ATTORNEY INFORMED CNV: OF HIS WHEREABOUTS SO THAT HE CAN REACH HIM ON SHORT NOTICE;
03/13/1992 **SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: CONTINUE FROM 3/16/92 TO 4/9/92 9AM;
03/16/1992 **Rule 8 Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
Location: I Continuance: Court
Result: Converted Activity Status Flag Cancelled
04/09/1992 **Rule 8 Hearing** (9:48 AM) (Judicial Officer Haas, Michael)
Location: I Occurred Comment: SET FOR OMNI 5-14-92 IF CONTESTED 1:30 P.M. Location: I CONDITIONS CONTINUED
Result: Converted Activity Status Flag Occurred
05/14/1992 **Omnibus Hearing** (9:18 AM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Cancelled
05/15/1992 **Omnibus Hearing** (9:18 AM) (Judicial Officer Haas, Michael)
Continuance: Defendant
Result: Converted Activity Status Flag Cancelled
06/02/1992 **SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: RESET FROM 6/11/92 TO6/12/92 0900
06/11/1992 **Omnibus Hearing** (9:18 AM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Cancelled
06/12/1992 **Omnibus Hearing** (9:01 AM) (Judicial Officer Haas, Michael)
Continuance: No Show
Result: Converted Activity Status Flag Cancelled
06/15/1992 **Hearing** (12:07 PM) (Judicial Officer Haas, Michael)
Location: I Occurred Comment: NO SHOW BY DEF; KIBALL ON BEHALF OF RUTTGER; BENCH WARRANT Location: I TO ISSUE IF DOES NOT APPEAR ON 7/9/92 0900;
Result: Converted Activity Status Flag Occurred
07/09/1992 **WAR-Warrant Issued** (Judicial Officer: Haas, Michael)
CNV:
07/09/1992 **Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
Location: I Occurred Comment: DEFENDANT FAIL TO APPEAR - BENCH WARRANT ISSUED
Result: Converted Activity Status Flag Occurred
11/09/1992 **WRC-Recall Warrant** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: DEF IN CHAMBERS WITH JUDGE HAAS MINUTE NOTE TO BE MADE: CNV: PULL BENCH WARRANT DEF WILL APPEAR FOR TRIAL WHEN NOTIFIED; CNV: TRIAL SET FOR 11-10-92, BE HERE
11/10/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: ORIG COMMITMENT RETURNED AT THE REQUEST OF JUDGE HAAS
11/10/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: PETITION TO PLEAD GUITY;
11/10/1992 **Plea Hearing** (11:10 AM) (Judicial Officer Anderson, Russell)
Location: II Occurred Comment: GUILTY TO AMENDED CT 2-THEFT; PAI & REPORTS AS REQUIRED BY L Location: II AW; COOPERATE W/PROBATION; NO CONTACT DIRECTLY/INDIRECTLY W/ Location: II BERT HEADBIRD,DAVID JONES OR ARTHUR LAROSE;
Result: Converted Activity Status Flag Occurred
11/17/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: DISMISSAL BY PROSECUTING AUTHORITY PURSUANT TO RULE 30.01 CNV: DISMISS CT 1 UPON PLEA TO AMENDED CT2-THEFT;
12/03/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: CERT OF RESTITUTION FROM ARTHUR LAROSE IN THE AMOUNT OF CNV: $500.00
12/28/1992 **CLO-Closed** (Judicial Officer: Judge, Presiding)
CNV:
12/28/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: TRANSCRIPT OF PLEA OF GUILTY BY ROBERT MONTAGUE (36PAGES)
12/28/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: NOTICE OF CANCELLATION OF ORDER FOR APPREHENSION TO SO;
12/28/1992 **Sentencing** (1:45 PM) (Judicial Officer Anderson, Russell)
Location: II Occurred Comment: STAY OF IMP-5YR;SERVE 30D IN CCJ;BEGIN JAIL 1/4/93 5PM; MAY Location: II HUBER; CR TIME SERVED;PAY 150FINE,15SC,7.50 LL;GEN GOOD BEH; Location: II NO CONT W/ARCHIE LAROSE,DAVID JONES,BERT HEADBIRD;KEEP APT
Result: Converted Activity Status Flag Occurred
12/29/1992 **CRS-Correspondence** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: LETTER FROM JEFFREY BECKWITH TO JUDGE ANDERSON DATED 12/9/92
12/29/1992 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: COURT'S NOTICE TO COMMISSIONER OF CORRECTIONS;
12/29/1992 **ORD-Order** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: ORDER OF APPREHENSION BY JUDGE ANDERSON;
01/11/1993 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: TRANSCRIPT OF SENTENCING FILED BY STEVE MCLEAN 14 PAGES
01/25/1993 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: COMMITMENT RETURNED TIME SERVED
08/11/1994 **CRS-Correspondence** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: LETTER FROM JUDGE ANDERSON HE SIGNED THE PROB VIOL BUT CNV: WANTS ANOTHER JUDGE TO HEAR THIS
08/11/1994 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)

CNV: Occurred Comment: PROB VIOL FILED BY RICHARD CRAWFORD ALREADY SET FOR 8-15-94 CNV: 9A.M.

08/15/1994 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: DEF COPY OF SHOW CAUSE RETURNED DEF NOT SERVED

08/15/1994 **Hearing** (8:59 AM) (Judicial Officer Smith,John P ,)
Pending Comment: 1ST APP ON PROB VIOL Occurred Comment: DEF NOT HERE BENCH WARRANT TO ISSUE HOLD UNTIL 4:30 P.M.
Result: Converted Activity Status Flag Occurred

08/17/1994 **WAR-Warrant Issued** (Judicial Officer: Smith,John P ,)
CNV:

02/06/1995 **WRC-Recall Warrant** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: WARRANT QUASHED MARY MCDONALD TOLD HIM TO COME OR TURN CNV: SELF IN SO HE APPEARED

02/06/1995 **Hearing** (10:06 AM) (Judicial Officer Smith,John P ,)
Result: Converted Activity Status Flag Cancelled

02/06/1995 **Contested Revocation Hearing** (10:06 AM) (Judicial Officer Smith,John P ,)
Location: II Occurred Comment: ADMIT-VOP;SERVE 5DAYS/CCJ;MAY HUBER;BEGIN JAIL 2/7/95 NOON; Location: II SHOW SCHEDULE TO JAIL-FULL 24HR PERIODS;REINSTAT PROB;
Result: Converted Activity Status Flag Occurred

02/09/1995 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: ORIG WARRANT RETURNED FROM SHERIFF OFFICE DEF APPEARED CNV: IN COURT

02/13/1995 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: ORIG COMMITMENT RETURNED SERVED 5 DAYS

02/22/1995 **CLO-Closed** (Judicial Officer: Judge, Presiding)
CNV:

11/27/1995 **ORD-Order** (Judicial Officer: Judge, Presiding)
CNV: Occurred Comment: RECOMMENDATION OF SUPERVISING AGENCY AND CNV: ORDER OF THE COURT DISCHARGING PROBATIONER; DEEMED A MISD CNV: UNER THE PROVISION OF MSA 609.13

02/05/1996 **ARC-Archive** (Judicial Officer: Anderson, Russell)
CNV: Pending Comment: FEL/MSD

09/07/2005 **Converted Pending Activity** (Judicial Officer: Judge, Presiding)
CNV: ARC Archive

Financial Information

Defendant FINN, CHRISTOPHER DALE

	Total Financial Assessment			172.50
	Total Payments and Credits			172.50
	Balance Due as of 04/23/2022			**0.00**
12/28/1992	Transaction Assessment			172.50
12/28/1992	Converted Payment	Receipt # 92007816	NO NAME AVAILABLE	(172.50)

EXHIBIT 1

LEECH LAKE RESERVATION TRIBAL COUNCIL

RESOLUTION NO. 2006-76

Convictions that are deemed to be misdemeanors for certification of tribal office candidates

WHEREAS, the Leech Lake Band of Chippewa Indians is a Federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934, and operating under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and

WHEREAS, the Leech Lake Reservation Tribal Council is the duly elected and authorized governing body of the Leech Lake Reservation; and

WHEREAS, the Leech Lake Tribal Council is charged with the responsibility of protecting and advocating for the health and welfare of Leech Lake Band members within the Leech Lake Reservation boundaries; and

WHEREAS, the uniform Minnesota Chippewa Tribe Election Ordinance has designated each of the Minnesota Chippewa Tribe constituent member Bands' governing bodies with the responsibility of certifying eligible candidates for tribal office in accordance with the Minnesota Chippewa Tribe Constitution; and

WHEREAS, Article IV, of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe was amended as follows "No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization"; and

WHEREAS, convicted felons are no longer eligible to either run or hold tribal office; therefore, the Leech Lake Tribal Council must have background checks performed on all tribal office candidates in order to ensure compliance with the new Constitutional amendment; and

WHEREAS, Minnesota statue provides that some convictions are deemed to be misdemeanors notwithstanding the original conviction level; and

WHEREAS, criminal background checks indicate when convictions have been deemed to be misdemeanors by including a statement that "This offense is deemed to be a misdemeanor"; and

WHEREAS, the Leech Lake Tribal Council wishes to codify a policy regarding such convictions for purposes of determining eligibility of candidates for tribal office;

NOW THEREFORE BE IT RESOLVED, that the policy of the Leech Lake Tribal Council is that convictions bearing the declaration "This offense is deemed to be a misdemeanor" on criminal background check results shall be deemed to be misdemeanors by the Leech Lake Tribal Council in determining eligibility of candidates to run for tribal council.

CERTIFICATION

WE DO HEREBY CERTIFY that the foregoing Resolution was duly presented and acted upon by a vote of 4 for, 0 against and 0 silent at a Special Meeting of the Leech Lake Tribal Council, a quorum being present, held on 2/23/06 at Cass Lake, Minnesota.

George Goggleye, Sr., Chairman
Leech Lake Tribal Council

Arthur LaRose, Secretary/Treasurer
Leech Lake Tribal Council

Leech Lake Tribal Council
Special Meeting
February 21, 2006
Tribal Chambers
Cass Lake, Minnesota

Chairman George Goggleye, Jr. called meeting to order at 9:13 A.M.

Present: George Goggleye, Jr. Chairman; Arthur LaRose, Secretary-Treasurer; Burton Wilson, District I Representative; Lyman Losh, District II Representative and Donald Finn, District III Representative

Quorum present.

Motion by Lyman Losh, second by Arthur LaRose to approve agenda. Carried 4-0.

No old business.

Motion by Donald Finn, second by Lyman Losh to amend agenda adding misdemeanor language as new business. Carried 4-0.

Motion by Lyman Losh, second by Donald Finn to adopt a resolution adopting language; " that if deemed a misdemeanor that it indeed be a misdemeanor". Carried 4-0.

Burton Wilson requested that Wally Storbakken be not certified as he failed to pass the background process.

Motion by Arthur LaRose, second by Lyman Losh to certify the Secretary/Treasurer candidates, with the exception of Wally Storbakken. Carried 4-0.

Motion by Arthur LaRose, second by Burton Wilson to certify District I candidates with the exception of Frank Bibeau, White Earth enrollee. Carried 4-0.

Motion by Lyman Losh, second by Burton Wilson to certify the District II candidates. Carried 4-0.

Motion by Burton Wilson, second by Donald Finn to adjourn. Carried 4-0.

I DO HEREBY CERTIFY, that this is a true record of the Leech Lake Tribal Council, Special Meeting, held on February 21, 2006, at Cass Lake, Minnesota.

Arthur LaRose, Secretary-Treasurer
Leech Lake Reservation

Leech Lake Tribal Council
Special Meeting
February 23, 2006
Cass Lake, Minnesota

Chairman George Goggleye, Jr. called meeting to order at10:10 A.M.

Present: George Goggleye, Jr., Chairman; Arthur LaRose, Secretary-Treasurer; Burton Wilson, District I Representative; Lyman Losh, District II Representative and Donald Finn, District III Representative. Quorum present.

Old Business:

Motion by Burton Wilson, second by Lyman Losh to approve February 14, 2006 minutes. Carried 4-0.

New Business:

TRIBAL COUNCIL RESOLUTIONS:

Motion by Burton Wilson, second by Arthur LaRose to approve Tribal Council Resolution No. 2006-74 concerning Leech Lake Band of Ojibwe in support of Irene Folstrom running for State Senate. Carried 4-0.

Motion by Lyman Losh, second by Burton Wilson to approve Tribal Council Resolution No. 2006-75 and Ordinance #2006-02 amending Ordinance 98-02 concerning Open Burning, Burn Barrel & Fire Prevention Ordinance. Carried 4-0.

Motion by Burton Wilson, second by Lyman Losh to approve Tribal Council Resolution No. 2006-76 concerning Convictions that are Deemed to be Misdemeanors for certification of Tribal Office Candidates. Carried 4-0.

Motion by Burton Wilson, second by Lyman Losh to approve Tribal Council Resolution No. 2006-77 concerning Children's Justice Art Partnership for Indian Communities Grant Application. Carried 4-0.

LAND RESOLUTIONS:

Motion by Burton Wilson, second by Arthur LaRose to approve the following Land Resolutions:

LD2006-120 concerning new lease for low-income housing purposes, Tract 33 area;

LD2006-121 concerning Michelle Hunt, rescind Resolution No. LD96-90, Old Agency area;
LD2006-122 concerning Michael O'Neil, rescind Resolution No. LD2003-92, N. Cass Lake area;
LD2006-123 concerning Dennis Staples, Jr., new lease, N. Cass Lake area;
LD2006-124 concerning Dave Quincy, rescind Resolution No. LD2004-23, S. Cass Lake area;
LD2006-125 concerning Vern Howard, new lease, S. Cass Lake area;
LD2006-126 concerning Betty Whitebird, rescind Resolution No. LD2005-90, N. Portage Lake area
LD2006-127 concerning Donald Hatfield, rescind Resolution No. LD2005-43, N. Cass Lake area;
LD2006-128 concerning Donald Hatfield, new lease, N. Portage Lake area;
LD2006-129 William Morris, new lease, Onigum-Walker Bay area;
LD2006-130 concerning Rosella Garbow, new lease, N. Cass Lake area;
LD2006-131 concerning Terrance Roseinberger, new lease, South Boy Lake area;
LD2006-132 concerning Mary Eaton, new lease, N. Cass Lake area.
Carried 4-0.

Motion by Lyman Losh, second by Burton Wilson to approve Tribal Council Resolution No. LD2006-133 concerning request BIA to place former Nyberg property in trust status, City of Cass Lake area for Health Division administrative offices. Carried 4-0.

Motion by Burton Wilson, second by Lyman Losh to approve the 2006 General Election Board. Carried 3-1. For the record Arthur LaRose opposed.

Motion by Burton Wilson, second by Lyman Losh to approve the withdrawal of Fred Jackson's name from the Election Ballot, stating health reasons. Carried 4-0.

Motion by Burton Wilson, second by Lyman Losh to approve the ballot request for April 4, 2006 Primary Election. Carried 4-0.

Motion by Burton Wilson, second by Arthur LaRose to approve the Election Board's location to be in the old Tribal Council Building. Carried 4-0.

Motion by Burton Wilson, second by Lyman Losh to adjourn. Carried 4-0.

I DO HEREBY CERTIFY, that this is a true record of the Leech Lake Tribal Council, Special Meeting, held on February 23, 2006, Cass Lake, Minnesota.

Arthur LaRose, Secretary-Treasurer
Leech Lake Reservation

EXHIBIT 2

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

Lawrence "Sandy" Gotchie,
Dale Greene, and Wallace Storbakken,
Plaintiffs,

v.

George James Goggleye, Jr., individually as the *politically* elected Chairman of the Leech Lake Reservation Business Committee,
Defendant.

Case No. CV-06-07

REQUEST FOR OPINION FROM TRIBAL EXECUTIVE COMMITTEE

TO: MINNESOTA CHIPPEWA TRIBAL EXECUTIVE COMMITTEE

WHEREAS, The Minnesota Chippewa Tribe has declared through Tribal Constitution Interpretation No. 1-80 that the Tribal Executive Committee possesses and exercises quasi-judicial powers and among said powers is the power to give official binding opinions regarding the meaning and powers possessed by tribal government under the MCT Constitution; and

WHEREAS, Tribal Constitution Interpretation No. 1-80 provides that such opinions may be requested by Tribal Judges; and

WHEREAS, Revised Article IV, Section 4 of the MCT Constitution provides, in part, that no member of the Tribe is eligible to hold office if he or she has ever been convicted of a felony of any kind; and

WHEREAS, Plaintiffs in the above matter sought a judgment from this court declaring that Leech Lake Reservation Tribal Council Chairman George Goggleye, Jr., was previously convicted of a felony by the State of Minnesota and sought an order restraining him from exercising any further elected duties; and

WHEREAS, the Leech Lake Tribal Court has entered a declaratory judgment finding that Chairman Goggleye is not precluded from holding office pursuant to the law of the State of

Minnesota, where his offense was prosecuted (See attached Findings of Fact, Conclusions of Law, and Declaratory Judgment; and

WHEREAS, the Minnesota Court of Appeals has held that a retrospective statute will not be allowed to impair vested property rights. (*Murray v. Cisar,* 594 N.W.2d 918,921, citing *Wichelman v. Messner*, 250 Minn. 88, 107.)

WHEREAS, the issue of the constitutionality of retrospective laws arose in the above-entitled case regarding application of revised Article IV of the MCT Constitution to Tribal Council members elected before the date of enactment; and

WHEREAS, the parties agreed that this issue is best decided by the Tribal Executive Committee as it potentially affects MCT Bands other than Leech Lake;

NOW THEREFORE, the Leech Lake Tribal Court certifies the following questions to the Tribal Executive Committee for an opinion pursuant to Tribal Constitution Interpretation No. 1-80:

> ***1. Is Revised MCT Constitution Article IV intended to apply to Tribal Council member elected to office prior to the date of enactment on January 5, 2006?***
> ***2. Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the date of enactment) constitute a retrospective application of the law?*** (A "retrospective law" is defined as one "which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights accruing, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates new a obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." (Black's Law Dictionary, 6th Edition.; see, also Baron v. Lens Crafters, Inc. 514 N.W.2d 305,307 (Minn.App. 1994).)

RESPECTFULLY SUBMITTED THIS 8th **DAY OF DECEMBER, 2006.**

Korey Wahwassuck

Korey Wahwassuck, Chief Judge
Leech Lake Tribal Court

Leech Lake Tribal Court
FILED
In my office this
12/8/06
Clerk of Court

EXHIBIT 3

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

Lawrence "Sandy" Gotchie,
Dale Greene, and Wallace Storbakken,
Plaintiffs,

v.

George James Goggleye, Jr., individually as the *politically* elected Chairman of the Leech Lake Reservation Business Committee,
Defendant.

Case No. CV-06-07

FINDINGS OF FACT, CONCLUSIONS OF LAW & DECLARATORY JUDGMENT

The above-entitled matter came before the undersigned Judge of the Leech Lake Tribal Court on Plaintiffs' Petition Seeking Declaratory Judgment and Injunction. Based on the pleadings filed by the parties and the arguments of counsel, the Court enters the following Findings of Fact, Conclusions of Law and Declaratory Judgment:

BACKGROUND

This action arises out of a Petition Seeking Declaratory Judgment and Injunction pursuant to Leech Lake Judicial Code Title II, Part I, Rule 3, and Part VII, Rule 32, filed on April 25, 2006. Petitioners, all enrolled members of the Leech Lake Band of Ojibwe, challenge the constitutional eligibility of Defendant George Goggleye, Jr. (hereinafter "Goggleye"), to continue to hold office as the elected Chairman of the Leech Lake Tribal Council. Specifically, Plaintiffs claim that Goggleye is a convicted felon and that Article IV, Section 4 of the Revised Constitution of the Minnesota Chippewa Tribe, effective January 5, 2006 (hereinafter Revised MCT Constitution), prevents him from holding office. Plaintiffs, at least two of whom have run for office in the past, claim that they are being prevented from enjoying "equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, which includes a felon free RBC and chance to be a candidate to fill the new vacancy for

LLRBC Chairman." (See Plaintiffs' Affidavits attached to Petition.) Plaintiffs seek a declaration from the Court that Goggleye was previously convicted of a felony by the State of Minnesota and a restraining order preventing Goggleye from exercising any further elected duties or authorities or receiving any further earnings or benefits from his elected office. [F.N. 1.]

Goggleye filed his answer to the petition on May 15, 2006, claiming that his conviction for 5th Degree Assault in Cass County, Minnesota, was deemed a misdemeanor conviction by the State of Minnesota and by Resolution of the Leech Lake Tribal Council (Resolution #2006-76). Goggleye also pointed out in his answer that Leech Lake Secretary/Treasurer Arthur "Archie" LaRose (hereinafter "LaRose") is in the same position as Defendant by virtue of the fact that LaRose was convicted of 3rd Degree Assault in Cass County, Minnesota, case number K6-91-714. [F.N. 2.]

At the June 22, 2006, Pre-Trial Hearing, Defendant's oral Motion for Summary Judgment was denied and the parties were granted leave to file Pre-Trial Briefs by August 31, 2006. The Court ordered that the briefs should address whether or not a lawsuit can be properly brought in Leech Lake Tribal Court on behalf of unnamed "other Band members similarly situated." [F.N.3.] The parties were also to analyze the applicability of Minnesota Statute 609.13 to Goggleye's situation, providing legal support for/against the contention that Goggleye's conviction should be considered a felony. Oral arguments were scheduled for September 6, 2006.

On August 25, 2006, counsel for Plaintiffs requested that the September 6 oral arguments be continued because of a conflict in his schedule. The parties filed their pre-trial briefs on August 31, 2006, and Oral Arguments were heard on September 27, 2006. [F.N. 4.] This declaratory judgment follows.

---

[1] Plaintiffs' Petition also sought a declaration that Goggleye's term of office was "extinguished." In his Answer, Goggleye claimed that Article X of the Revised Minnesota Chippewa Tribe Constitution is the only legal method by which a sitting Reservation Tribal Council member may be removed. At oral arguments, Plaintiffs conceded that this Court does not have such authority, and withdrew that particular request.

[2] Although LaRose is not a party to this action, the Court notes that the decision in this matter would apply to LaRose in the same manner as Goggleye, as LaRose's conviction was also deemed to be for a misdemeanor pursuant to Minn.Stat. 609.13.

[3] It is not necessary for the Court to address the issue of whether or not a class action may be maintained in Leech Lake Tribal Court, as Plaintiffs in their Pre-Trial Brief volunteered to amend the caption of the case to reflect only the named Plaintiffs.

[4] At oral arguments, the Court questioned whether application of the revised MCT Constitution prohibition on convicted felons running or holding office to sitting Reservation Tribal Council members would represent a retrospective application of the law. The Court was able to resolve the questions regarding Goggleye without addressing this issue. However, pursuant to MCT Ordinance, the Court has certified these two questions to the Tribal Executive Committee. (See Request for TEC Opinion, attached.)

APPLICABLE LAW

This matter was filed as a request for Declaratory Judgment, which is a statutory remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his/her legal rights. It is a binding adjudication of the rights and status of litigants even though no consequential relief is awarded. (Black's Law Dictionary, 6th Edition; *Brimmer v. Thompson, Wyo.* 521 P.2d 574, 579.) Such judgment is conclusive in a subsequent action between the parties as to the matters declared and, in accordance with the usual rules of issue preclusion, as to any issues actually litigated and determined. (*Id.*; *Seaboard Coast Line R. Co. V. Gulf Oil Corp., C.A.Fla., 409 F.2d 879.)*

Plaintiffs contend that Article IV of the revised Minnesota Chippewa Tribe Constitution, which became effective January 5, 2006, precludes Goggleye from continuing to hold his elected office of Chairman because Goggleye was convicted of a felony by the State of Minnesota. In support, Plaintiffs cite Section 4 of revised Article IV, which provides that "[n]o member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization." *MCT Constitution, Art. IV, Section 4, Effective January 5, 2006.*

Plaintiffs argue that the Court should follow federal law to resolve this matter. Plaintiffs cite two cases, *State v. Foster*, 630 N.W.2d 1, and *United States v. Matter,* 818 F.2d 653, in support of their position that under federal law Goggleye is a convicted felon subject to the prohibitions in the revised MCT Constitution. Goggleye, on the other hand, argues that state law should apply, citing *State v. Camper,* 130 N.W.2d 482.

The statute at issue in this case, Minnesota Statute 609.13 (Convictions of Felony; When Deemed Misdemeanor or Gross Misdemeanor), provides that:

> Notwithstanding a conviction is for a felony:
> (1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02;
> (2) The conviction is deemed to be for a misdemeanor if the imposition of the sentence is stayed, the defendant is placed on probation and he is thereafter discharged without sentence.

Throughout the years, the Minnesota Chippewa Tribe has enacted various versions of its Election Ordinance to govern its member tribes in conducting elections. The most recent version, Election Ordinance #10, reflects the amendments to the Revised MCT Constitution that became effective on January 5, 2006. Although the revised MCT Constitution itself is silent as to what law should be applied in determining whether a candidate's conviction is one that disqualifies him/her from running or holding office, Election Ordinance #10 makes clear the law to be applied. Specifically, Chapter I, Section D (Ineligibility by Reason of Criminal Conviction), provides that a "felony"is a crime defined as a felony by applicable law.

"Applicable law" means the law of the jurisdiction in which a crime was prosecuted.

Despite the language of MCT Election Ordinance #10, Plaintiffs insist that the language of the applicable law provision is somehow ambiguous and that federal law should apply. In addition, although the Plaintiffs agree that MCT Ordinances are binding law, they urge the Court to look exclusively to the revised MCT Constitution, thus ignoring Election Ordinance #10 altogether. The Court does not find this argument convincing. In light of the clear language of MCT Election Ordinance #10, the Court will apply the law of the State of Minnesota in analyzing Plaintiffs' claims, as that is the jurisdiction in which Goggleye's crime was prosecuted.

ANALYSIS

The conviction at issue in this case was one for 5th degree assault, punishable by a fine of up to $10,000 and/or five (5) years in prison. *Minn.Stat. 609.224, Subd. 4(a).* According to the documents provided by the parties, Goggleye has two convictions for 5th degree assault: one in Cass County District Court case number KX93000767 (date of disposition 11/18/1993); and one in Itasca County District Court case number K691000714 (date of disposition 07/23/1991). [5] According to a Minnesota Bureau of Criminal Apprehension Criminal History Report provided by the parties, neither of Goggleye's convictions are listed as felonies. Apparently due to an oversight by the Cass County District Court, an order was never entered discharging Goggleye from probation, restoring his civil rights and deeming his offense to be a misdemeanor pursuant to Minn.Stat. 609.13. To correct this oversight, Cass County District Court Judge David F. Harrington entered an order on July 1, 2005, discharging Goggleye from probation, restoring his civil rights and deeming the offense to be a misdemeanor, retroactive to April 21, 1997, the date Goggleye's probation was terminated.

Under Minnesota criminal law, the nature of a conviction (felony, gross misdemeanor, misdemeanor, or petty misdemeanor) is ultimately based, not upon the charge itself, but upon the sentence imposed. Although offenses are defined in the first instance according to the sentence which may be imposed, Minn.Stat. 609.13 provides that a felony is deemed a misdemeanor if a sentence is imposed within the ranges of those categories. Minn.Stat. 609.13 also provides that the degree of conviction will be automatically reduced by operation of law, if imposition of sentence is stayed and the defendant successfully completes probation. In the final analysis, the answer as to whether a disposition is a conviction and, if so, for what level of offense, may vary depending upon the reason the question is being asked. Various laws, state and federal, may treat an offense as a conviction, or as a felony or gross misdemeanor, even though by operation of these general principles, it is deemed something else. *9 Minn. Prac., Criminal Law & Procedure §36.2 3d ed.; 27 HAMJPLP 1; see, also, State v. Woodruff, 608 N.W.2d 881 (Minn.2000)*(Stay of imposition a conviction for determining conditional release)*; In re Woollett, 540 N.W.2d 829*

[5] Although Plaintiffs refer to both convictions in their pleadings, arguments were concentrated on the Cass County case. Goggleye's Minnesota Bureau of Criminal Apprehension Criminal History Report indicates that the Itasca County case resulted in a conviction for a gross misdemeanor.

*(Minn.1995)(*stay of imposition; conviction remains a felony for police officer licensing*); State v. Moon, 463 N.W.2d 517 (Minn. 1990)(*firearms*); State v. Clipper, 429 N.W.2d 698 (Minn.App.1988)(*enhancement*); State v. Foster, 630 N.W.2d 1 (Minn.App. 2001)(*firearms*).*

For many years, Minnesota has been a leader in criminal sentencing policy. In 1980, Minnesota was the first state to implement a system of sentencing guidelines and in the 1960s, a legislative advisory committee attempted to affect the outcome of sentencing by changing the nature of a person's conviction in specific cases. During the era in which section 609.13 was proposed, the trend was toward lessening the restrictions on persons with convictions. *59 J.Crim.L. & Criminology 347, 356 (1968).* In revising the Minnesota criminal code, the 1962 advisory committee proposed a new law that would allow for more lenient conviction levels at the discretion of the court. This new approach was necessary because once a person is convicted of a crime, the person is subject to the consequences that flow from the conviction. The new provision, which was based on California law, eventually became Minn.Stat. 609.13. Section 609.13 gave the sentencing judge unlimited discretion by assuming the judge could enter any sentence for any offense and, consequently, reduce the conviction level whenever a punishment other than that which fit the definition of a felony was imposed. *27 HAMJPLP 1, 12.*

As indicated by the advisory committee comments accompanying the proposed law, "[i]t is believed desirable not to impose the consequences of a felony conviction if the judge decides that the punishment to be imposed will be no more than that provided for misdemeanors or gross misdemeanors." *Minn.Stat. 609.13 Advisory Committee Comment.* Thus, it would seem that the drafters of Minn.Stat. 609.13 thought that a reduced conviction level would limit the consequences for those offenders whose conduct did not seem to warrant such sanctions. Section 609.13 would be very important to ex-offenders. For example, under this reasoning, when an ex-offender is asked the question "have you ever been convicted of a felony?" if the person received a misdemeanor sentence or successfully completed probation after a stay of imposition of sentence, under 609.13 the person could truthfully say "no." *27 HAMJPLP 1, 6.*

Since the enactment of section 609.13, there has been much confusion with regard to a person's criminal record. "Conviction" is defined by Minnesota law as "any of the following accepted and recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or finding of guilty by the court" (Minn.Stat. §609.02, subd. 5 (2004)). Because section 609.13 reduces the conviction level after the fact, a person's conviction level can be recorded at both the moment of the entry of the plea or finding of guilt and at the imposition of sentence. Thus, the accuracy of the individual's criminal record may be dependent upon which conviction information is transmitted to the Bureau of Criminal Apprehension (BCA) or, if information from both events is transmitted, how the BCA interprets the information. In addition, unlike the California law after which 609.13 was patterned, 609.13 is silent as to the purposes for which a conviction for a felony offense would be deemed a misdemeanor or gross misdemeanor, thus diminishing the benefit for which the provision was designed. (*27 HAMJPLP 1; See, also In re Woollett, 540 N.W.2d 829, 833 (Minn. 1995)*(acknowledging that the effect of section 609.13 has been diminished by cases that have determined that it does not require felony convictions to be treated as misdemeanors for all purposes).

Criminal convictions are subject to a very wide range of potential dispositions. Even the decision as to whether any sentence should be imposed is a matter of judicial discretion, and the decision not to impose a sentence may have significant consequences. *27 HAMJPLP 1.* Goggleye received a stay of imposition of sentence, which differs from a continuance for dismissal in that a plea is entered, and from a stay of adjudication in that a plea is formally accepted; but sentence is not imposed. A stay of imposition may have various consequences, including reduction of a felony or gross misdemeanor to a misdemeanor. Pursuant to Minn.Stat. 609.13, when a defendant is convicted of either a felony or a gross misdemeanor but imposition of sentence is stayed, and the defendant discharged after successful completion of probation, the conviction is "deemed to be for a misdemeanor." However, despite this state law, other jurisdictions, including the federal government, may nevertheless treat the conviction as a more serious offense. In addition, the Minnesota sentencing guidelines generally classify a conviction for purposes of determining the prior record regardless of the statutory reduction, and administrative rules may provide the degree of the conviction is determined by the sentence that could potentially have been imposed. Therefore, the benefit of a stay in reducing the degree of the offense depends upon the specific purpose for which the conviction may later be considered. *9 Minn. Prac., Criminal Law & Procedure §36.3 (3d ed.); see, also, In re Woollett, 540 N.W.2d 829 (Minn. 1995); State v. Clipper, 429 N.W.2d 698, 701 (Minn.App.1988); State v. Skramstad, 433 N.W.2d 449, n. 1 (Minn.App.1988).*

As stated above, the reduction of felony convictions to misdemeanors under Minn.Stat. 609.13 is especially important to ex-offenders, because once a person is convicted of a crime, he or she will be subject to consequences that flow from the conviction. There are two types of consequences: direct and collateral. Direct consequences are "those which flow definitely, immediately, and automatically from the guilty plea, namely, the maximum sentence to be imposed and the amount of any fine." *Alanis v. State, 583 N.W.2d 573, 578 (Minn.1998).* In contrast, collateral consequences are considered to be "civil and regulatory in nature and are imposed in the interest of public safety." *State v. Kaiser, 641 N.W.2d 900, 904 (Minn.2002).*

Collateral consequences have far-reaching effects. They can alter a person's citizenship or residency status, bar a person from entire lines of employment, and impact numerous civil rights. Thus, collateral consequences can have an even greater and longer lasting impact that direct punishment. Collateral consequences are imposed in a variety of ways: by state or federal law, by administrative rule, by court rule, or by the actions of private individuals. There is a wide array of consequences, and they are triggered by different things, such as specific crimes, specific behavior, or specific events such as charging or conviction. And despite the fact that there is a recognized distinction between offenders whose situation warrants probation and offenders whose situation warrants incarceration, collateral consequences are imposed automatically on all offenders regardless of their sentence. Indeed, because most collateral consequences are triggered by the nature of the offense at the point of conviction rather than the sentence level, many offenders are unable to avoid the effect of collateral consequence even when they successfully complete probation and their convictions are deemed to be misdemeanors

pursuant to Minn.Stat. 609.13. *27 HAMJPLP 1, 31-32.* Trial courts can rarely avoid imposition of collateral consequences when sentencing. (See, e.g., *State v. Krotzer, 548 N.W.2d 252, 252-255 (Minn. 1996)*(upholding the trial court's decision to stay adjudication so the defendant would not be required to register as a sex offender.)) Rather, the courts are most often prevented from considering collateral consequences in sentencing because they are beyond the control of the district court and their imposition is uncertain. (See, *State v. Mendoza, 638 N.W.2d 480, 484 (Minn.Ct.App. 2002).*

Minnesota's appellate courts have held that imposition of consequences is dependent on whether the drafters intended to impose the consequences based on the nature of the offense for which the person was convicted or based on the subsequent treatment of the offender (i.e. the sentence imposed). *See, State v. Moon, 463 N.W.2d 517,519 (Minn. 1990).* There are scores of collateral consequences imposed under Minnesota law. For example, some lines of employment would be reopened to ex-offenders after several years have elapsed, but they would be permanently banned from several others. See, e.g. *Minn.Stat §148.261, subd.1(204*)(authorizing the indefinite denial of a nursing license for conviction of certain crimes); *Minn.Stat. §171.3215, subd. 2 (2004)*(prohibiting licensure as a school bus driver for 1-5 years after conviction of a disqualifying offense); *Minn.Stat. §§245C.14-.15 (2004)(*prohibiting licensure in any human services field for 7-15 years, or indefinitely, based on the offense committed); *Minn.Stat. 609.42, subd.2 (2004)* (Forfeiture of and disqualification from holding public office if convicted of bribery); *Minn.Const.Art.VII, Section 6 and Minn.Stat. 204B.10, subd. 6 (2004)* (Ineligibility to run for office until civil rights are restored); and *Minn.Const.Art. VII, section 1 and Minn.Stat. Section 201.014, subd. 2 (2004)* (Cannot vote until civil rights restored). In the final analysis, it appears that when convictions are deemed to be misdemeanors under 609.13, ex-offenders can only be guaranteed a restoration of two civil rights: voting and eligibility for public office.

Plaintiffs argue that the cases of *State v. Foster* and *United States v. Matter* are controlling in this matter. In the *Foster* case, a Minnesota District Court certified the question of whether a prior felony, subject to a stay of imposition which thus became a misdemeanor under Minn.Stat. §609.13, subd. 1(2)(2000), subjects the offender to criminal liability for possession of a firearm. *State v. Foster*, 630 N.W.2d 1. The issue before the Court of Appeals was whether the state could prosecute a defendant for possession of a firearm under Minn.Stat. §624.713, subd. 1(b)(2000), where the defendant had plead guilty to a felony drug offense and received a stay of imposition of sentence, then successfully completed probation resulting in the sentencing court ordering the defendant's civil rights restored and the conviction becoming a misdemeanor. The *Foster* court held that the firearms restriction was based upon the nature of the offense committed by the defendant rather than on the actual sentence imposed by the court, and that the defendant's prior felony conviction constituted a "crime of violence," thus subjecting the defendant to prosecution. Citing the Court's decision in the case of *State v. Moon*, the *Foster* court found that "a felony disposed of under section 609.13 was still a 'felony' for purposes of the weapons laws." 455 N.W.2d 509, 511 (Minn.App.1990). The court went on to say that "in order to protect the public safety, certain convicted criminals should be subject to the federal firearms prohibition even though their civil rights otherwise have been restored. In particular, the legislature mandated that persons convicted of felonious theft be subject to a 10 year firearms

restriction upon restoration to civil rights." 630 N.W.2d 1, 3-4. As the *Foster* court held:

> Section 609.13 does not preclude the legislature from imposing consequences, as it did in this case to protect the safety of the public, based on an offender's commission of criminal acts which also constitute felonies. In enacting section 609.165, subdivision 1a, the legislature intended the nature of the offense rather than the subsequent treatment of the offender to be a basis for the imposition of the *firearms restriction. 630 N.W.2d at 4.* (Emphasis added.)

The other case relied on by Plaintiffs is a decision by the United States Court of Appeals for the Eighth Circuit, *United States v. Matter,* 818 F.2d 653. The defendant in the *Matter* case appealed his conviction under 18 U.S.C. App. §1202(a)(1) for possession of a firearm after being previously convicted of a felony. The defendant in the *Matter* case had been convicted in Minnesota state court of defeating security on personalty, a crime punishable for up to two years and a fine of up to $2000 under Minn.Stat. §609.62(2)(1984). Imposition of sentence was stayed and the defendant was placed on probation for two years, which he successfully completed. In denying the defendant's motion to dismiss the indictment against him, the *Matter* court relied on its previous decisions in *United State v. Woods*, 696 F.2d 566 (8thCir.1982) and *United States v. Millender*, 811 F.2d 476 (8th Cir.1987), where the court held that federal law determines whether a person is a convicted felon for purposes of the federal firearms statutes. 818 F.2d 653, 654. The *Matter* court concluded that the defendant was a "convicted felon" and could be convicted of possession of a firearm after being previously convicted of a felony, even though under Minnesota law, the act of staying imposition of sentence made his prior felony conviction a misdemeanor. *Id at 653.*

Goggleye, on the other hand, relies upon a Minnesota Supreme Court case, *State v. Camper*, 130 N.W.2d 482. *Camper* involved a conviction for grand larceny, where the charge was reduced from a felony to a misdemeanor and the defendant was convicted. Although the Court in *Camper* involves a dispute over payment of attorneys fees, the court points out that "as the code now reads, from and after September 1, 1963, the degree of the crime is determined by the sentence imposed and not by the offense alleged in the indictment." 130 N.W.2d at 484.

As the *Matter* and *Foster* cases cited by Plaintiffs demonstrate, imposition of consequences under federal law can be even more strict than under Minnesota state law. As indicated above, many statutory and administrative provisions exist in Minnesota that affect the application of collateral consequences in a variety of circumstances, some of which do not allow an ex-offender to avoid consequences even though his/her conviction level has been reduced by Minn.Stat. 609.13. Plaintiffs claim that Goggleye is ineligible to hold office by virtue of his conviction. Thus, MCT Election Ordinance #10 dictates that the Court look to specific provisions of Minnesota law regarding eligibility to vote and for candidacy for office to resolve the question of whether or not Goggleye is holding office in violation of the revised MCT Constitution. To begin with, Article VII, section 1, of the Minnesota Constitution (Eligibility; Place of Voting, Ineligible Persons), provides *inter alia,* that "[t]he following persons shall not be entitled or permitted to vote at any election in this state:....a person who has been convicted of

a treason or felony, *unless restored to civil rights...*" (Emphasis added.) Article VII, section 6, of the Minnesota Constitution (Eligibility to Hold Office), goes on to provide that "[e]very person who....is entitled to vote at any election and is 21 year of age is eligible for any office....except as otherwise provided in this constitution, or in the constitution and law of the United States." Thus, under the Minnesota State Constitution, a person who has been convicted of treason or a felony is not eligible to hold office unless their civil rights have been restored. Such is the case with Goggleye, whose civil rights were restored (albeit retroactively due to no fault of his own) by order of the Cass County District Court.

In addition to the Minnesota Constitution, Minnesota statutes governing procedures for candidates for office also provides guidance. Minn.Stat. 204B.10, Subd. 6 (Ineligible voter) provides that "Upon receipt of a certified copy of a final judgment or order of a court of competent jurisdiction that a person who has filed an affidavit of candidacy or who has been nominated by petition: (1) has been convicted of treason or a felony *and the person's civil rights have not been restored....*the filing officer shall...not certify the person's name to be placed on the ballot." (Emphasis added.) Minnesota Statutes 201.014, Subd. 2, sets forth a list of those persons not eligible to vote: "The following individuals are not eligible to vote. Any individual...convicted of treason or any felony *whose civil rights have not been restored...*" Further, Minnesota Statute 609.42, subd. 2, provides that "[a]ny public officer who is convicted of violating or attempting to violate subdivision 1 [which sets forth acts constituting bribery] shall forfeit the public office and be forever disqualified from holding public office under the state." This Court notes that the only statutory provision providing for forfeiture of a term of office of a sitting elected official deals with convictions for bribery. Such is not the case with Goggleye.

Plaintiffs argue that during the 3 ½ years that elapsed between the date disposition and entry of the order correcting his record, Goggleye was a convicted felon, triggering the provision of the Revised MCT Constitution prohibiting a person from holding office if they have *ever* been convicted of a felony. However, it is important to note that the Court in the *Foster* case cited by Plaintiffs also held that "[p]enal statutes are to be strictly construed with all reasonable doubts concerning legislative intent to be resolved in favor of the defendant." *Id., citing State v. Wagner,* 555 N.W.2d 752, 754). Therefore, based on Minnesota law, this Court declines to adopt Plaintiffs' interpretation.

At oral arguments, Plaintiffs also claimed that the Leech Lake Tribal Council exceeded its authority in passing Resolution 2006-76. The Leech Lake Tribal Court has previously held that "RBC members are not empowered to graft new requirements onto the criteria for certification." (*LLBO, et al. v. White, et al.,* Case No. CV-03-81, internal citations omitted.) The resolution challenged in the *White* case is distinguishable from No. 2006-07, in that it denied certification to a candidate for RBC office because he was "under investigation," which was not included as one of the requirements for eligibility to run for office under the version of the MCT Constitution in effect at that time. Resolution 2006-76, on the other hand, does not "graft new requirements." Rather, it codifies the Band's policy on certification, declaring that when a

Minnesota criminal background check indicates that a conviction is deemed to be for a misdemeanor, the RBC will also deem it to be for a misdemeanor. MCT Election Ordinance #10 provides that "[e]ach Band governing body will certify eligible candidates for office in accordance with the Minnesota Chippewa Tribe Constitution, the Minnesota Chippewa Tribe Election Ordinance, and the dates and guidelines established for Minnesota Chippewa Tribe elections." (MCT Election Ordinance #10, Section 3(C)(4). This interpretation is not inconsistent with Minnesota law, the law of the jurisdiction in which Goggleye's offense was prosecuted, nor is it inconsistent with MCT Election Ordinance #10. However, should a situation arise in the future where a candidate has a conviction from a jurisdiction other than Minnesota, the law of that jurisdiction would have to be applied.

Based upon the foregoing analysis, the Court makes the following:

FINDINGS OF FACT

1. Defendant George Goggleye, Jr., was convicted of Assault-5th Degree in Cass County, Minnesota. Goggleye received a suspended imposition of sentence and was placed on probation, which he successfully completed.

2. By order of the Cass County District Court dated July 1, 2005, Goggleye's civil rights were restored retroactive to April 21, 1997, the date Goggleye was terminated from probation.

3. Goggleye's Minnesota Bureau of Criminal Apprehension Criminal History Report reflects that this conviction was for a misdemeanor.

4. By operation of Minn.Stat. 609.13, Goggleye's conviction is deemed to be for a misdemeanor rather than for a felony.

5. Leech Lake Tribal Council Resolution 2006-76 is not inconsistent with Minnesota Law or Minnesota Chippewa Tribe Election Ordinance #10.

CONCLUSIONS OF LAW

1. Based upon Minnesota law, the law of the jurisdiction in which Goggleye's crime was prosecuted, he would not be precluded from running for or holding state elective office because his civil rights have been restored.

2. Because Goggleye's conviction is deemed to be for a misdemeanor and his civil rights have been restored, he is not precluded from running for or holding office under Article IV of the Revised Constitution of the Minnesota Chippewa Tribe.

3. Plaintiffs are not entitled to an order restraining Goggleye from exercising the duties and authorities associated with holding office on the Leech Lake Reservation Business Committee.

4. The Leech Lake Tribal Council did not exceed its authority in passing Resolution #2006-76.

DECLARATORY JUDGMENT

1. Defendant, George Goggleye, Jr., has not been previously convicted of a felony such that he is precluded under Article IV of the Revised MCT Constitution from running for or holding office as Chairman of the Leech Lake Tribal Council.

2. Plaintiffs' equal protection rights under the Revised Constitution of the Minnesota Chippewa Tribe are not violated by George Goggleye, Jr., continuing to hold office.

IT IS SO ORDERED THIS 8th DAY OF DECEMBER 2006.

Korey Wahwassuck

Korey Wahwassuck, Chief Judge
Leech Lake Tribal Court

Leech Lake Tribal Court
FILED
In my office this
12/8/06
Clerk of Court

EXHIBIT 4

I Recieved
11:17 AM 2-16-22
Arthur LaRose
Mary S Fraze
Jevin LaRose

MINNESOTA CHIPPEWA TRIBE
TRIBAL ELECTION COURT OF APPEALS

In Re ARTHUR LAROSE and JAMES D. MICHAUD
Challenge to the Election Certification
Decision for Secretary/Treasurer and District 1 Representative
by the Leech Lake Reservation Business Committee

DECISION & ORDER

The Minnesota Chippewa Tribe Tribal Election Court of Appeals (the "Court") has received a challenge from Leech Lake Reservation Business Committee ("LLRBC") Secretary/Treasurer Candidate Leonard M. Fineday regarding the Leech Lake Tribal Council's decision to certify the candidacy of Mr. Arthur LaRose for the position of LLRBC Secretary/Treasurer. Based upon the records received, the Court approves Mr. Fineday's challenge finding that Mr. LaRose was convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (the "Constitution") and the Minnesota Chippewa Election Ordinance, as amended on December 14, 2021, (the "Election Ordinance").

The Court also received a challenge from LLRBC District 1 Candidate Jim Michaud asking the Court to overturn the Leech Lake Tribal Council's decision to deny his certification for District 1 Representative due to his two (2) felony convictions. The Court denies Mr. Michaud's challenge finding that his felony convictions make him ineligible pursuant to the application of the Article 4, § 4 of the Constitution and Sections 1.3(A) and 1.3(D) of the Election Ordinance.

DISCUSSION

Article IV, § 4 of the Constitution provides that:

> No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, **if he or she has ever been convicted of a felony of any kind**; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

(Emphasis added).

Section 1.3(A) of the Election Ordinance (Eligibility) provides that a candidate for office must, among other prerequisites, "meet the requirements of Article IV, Section 4 of the Constitution, as set forth in Section 1.3(D)."

Section 1.3(D)(1) of the Election Ordinance (Ineligibility by Reason of Criminal Conviction) provides in relevant part that "[n]o member of the Tribe shall be eligible as a candidate or be able to hold office **if her or she has ever been convicted of any felony of any kind....**" (Emphasis added).

A "felony" means a crime defined as a felony by applicable law. Election Ordinance, § 1.3(D)(2)(b). "Applicable law" means the law of the jurisdiction in which a crime was prosecuted. Election Ordinance, § 1.3(D)(2)(c). Any person who has filed a complete Notice of Candidacy has standing to challenge the

certification of a person who has filed a Notice of Candidacy for the same position. Election Ordinance, § 1.3(C)(6).

On or about December 28, 1992, Mr. LaRose plead guilty to and was convicted of Third Degree Assault in Cass County District Court, State of Minnesota pursuant to Minn. Stat. § 609.223.[1] Under Minnesota law, Third Degree Assault is a felony. Minn. Stat. § 609.02, Subd. 2 (1992). Mr. LaRose received a stay of imposition and completed the terms of the stay. Consequently, the Felony Third Degree Assault conviction was later deemed a misdemeanor pursuant to Minn. Stat. §§ 609.13, 609.135.

According to the Leech Lake Tribal Council's Certification Form, executed by Mr. LaRose, the Tribal Council certified Mr. Arthur LaRose (Incumbent) and Mr. Leonard M. Fineday as eligible to run for the position of Secretary/Treasurer and that their names be placed on the ballot for the June 14, 2022 Leech Lake General Election. A Criminal History Record Information report was prepared by William Ethier, LLBO Gaming Compliance Director. The report indicated that Mr. LaRose had one (1) petty misdemeanor and one (1) misdemeanor and that Mr. Fineday had three (3) petty misdemeanors and one (1) misdemeanor.

Mr. Fineday obtained the official court records of Mr. LaRose's felony criminal case from the Minnesota State Court Information System and provided a copy of those documents to the Court making it part of the record. This Court has a copy of the Complaint against Mr. Larose, dated November 20, 1991, charging him with nine (9) felony counts.

Under Minnesota law, if a person is convicted of a felony and receives a stay of imposition, that person has been "convicted" of a felony even if that person completes the terms of the stay of imposition and their criminal record later reflects that the felony conviction has been "deemed" a misdemeanor under Minn. Stat. § 609.13. *See In re Peace Officer License of Woollett*, 540 N.W.2d. 829 (Minn. 1995) (holding that a prior Minnesota conviction for third degree assault that is later deemed a misdemeanor pursuant to Minn. Stat. § 609.13 does not negate the conviction as a felony regardless of a stay of imposition or stay of execution). *See also State v. S.A.M.*, 891 N.W.2d 602 (Minn. 2017) (holding that a felony conviction later deemed a misdemeanor is still a felony conviction ineligible for statutory expungement).

Mr. LaRose was "convicted" of a felony in 1992. His criminal record now reflects that his felony conviction is deemed a misdemeanor under Minn. Stat. §§ 609.13, 609.135 but that does not change the fact that Mr. LaRose was at one time convicted of a felony.

Article IV, § 4 of the Constitution and Section 1.3(D)(1) of the Election Ordinance are clear. A person with any felony conviction is ineligible to run for office within the Minnesota Chippewa Tribe. Therefore, Mr. LaRose's felony conviction makes him ineligible as a candidate for the position of LLRBC Secretary/Treasurer. This Decision and Order is consistent with the binding precedent set forth in *In Re Guy Green III, Non-Certification for Office of District III Representative, Leech Lake Band of Ojibwe* (Minnesota Chippewa Tribe Tribal Election Court of

[1] The District Court Judge at the time allowed Mr. LaRose to receive a stay of imposition of sentence for three years on certain conditions. If Mr. LaRose met those conditions including, serving his jail time and having no additional law violations, his felony conviction would be converted to a misdemeanor on his record in 1995.

Appeals, Feb. 21, 2014) and *In re Peter Nayquonabe* (Minnesota Chippewa Tribe Tribal Election Court of Appeals, Feb. 15, 2018).

Mr. LaRose argues that this Court cannot reconsider the decisions of a prior Minnesota certification court because we are collaterally estopped from looking at the issue or it is *res judicata*. This would be a good argument if the prior courts had the information and documents, in the record, that was available to this Court. However, both Judge Rotelle and Judge Johnson make clear on the record that they had no evidence of Mr. LaRose's prior felony conviction. It was alleged by Mr. Finn in his Petition, but there was no evidence provided to the Court. The Court can only rely on evidence in the record. That is a sharp contrast to what was provided to this Court. We have the Complaint and the official records from the State of Minnesota demonstrating a felony conviction in 1992.

CONCLUSION

For the reasons stated above, this Court approves Mr. Fineday's challenge finding that Mr. LaRose was convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer.

This Court denies Mr. Michaud's challenge finding that his two (2) felony convictions made him ineligible to be a candidate for LLRBC District I Representative.

Date: February 16, 2022,

BY THE COURT:

Judge Ryan Simafranca
Judge Christopher D. Anderson
Judge Henry M. Buffalo Jr.
Judge Christina Deschampe
Judge Robert Blaeser

EXHIBIT 5

Received: 3:30 2-9-22
Arthur LaRose
Witnessed: gjb

The Minnesota Chippewa Tribe

Administration
218-335-8581
Toll Free: 888-322-7688
Fax: 218-335-8496
Home Loan
218-335-8582
Fax: 218-335-6925
Economic Development
218-335-8583
Fax: 218-335-8496
Education
218-335-8584
Fax: 218-335-2029
Human Services
218-335-8586
Fax: 218-335-8080

February 8, 2022

MEMORANDUM

TO: Arthur LaRose, Candidate LLRBC Secretary/Treasurer

FROM: Gary S. Frazer, Executive Director Gary S. Frazer

SUBJECT: Certification Challenge

At 1:20 pm today, February 9, 2022. I received a challenge to your certification as a candidate for the position of Leech Lake RBC Secretary/Treasurer in the upcoming election.

Attached is a copy of the challenge and the documentation that was provided to me.

According to Section 1.3 (C) (6) of the MCT Election Ordinance, revised on December 14, 2021, you must provide any answer with supporting documentation to the challenge to my office by 4:30 p.m. Friday, February 11, 2022. Which to the second business day following receipt of the challenge.

If you have any further questions, please call me at 218-766-0713.

Attachment(s)

Rec'd 1:20 pm
2-9-22 MST
2/9/22

Wednesday, February 9, 2022

Gary Frazer
Executive Director
Minnesota Chippewa Tribe
PO Box 217
Cass Lake, MN 56633

DELIVERED IN-PERSON BY HAND

To Executive Director Frazer or his authorized Designee:

Pursuant to Section 1.3(C)(6) of the Minnesota Chippewa Tribe Election Ordinance (Revised 12/14/2021) ("Ordinance"), I submit this challenge to the certification decision of the Leech Lake Reservation Business Committee ("LLRBC") regarding the candidacy of Arthur LaRose for the position of LLRBC Secretary/Treasurer. I filed a Notice of Candidacy on January 14, 2022 and therefore have standing to challenge the LLRBC decision.

On December 28, 1992, Mr. LaRose was convicted of Third Degree Assault under MN Statutes Section 609.223.[1] Third Degree Assault under Minnesota law provides that "[w]hoever assaults and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both." Minn. Stat. § 609.223, subd. 1. (1992). Furthermore, a felony is defined under Minnesota law as "a crime for which a sentence of imprisonment for more than one year may be imposed." Minn. Stat. § 609.02, subd. 2 (1992). According to the Criminal Minute Sheet from the December 28, 1992 sentencing hearing, Mr. LaRose was convicted of a felony. On November 27, 1995, Mr. LaRose completed the terms of his probation and his conviction was "deemed a misdemeanor" pursuant to Minnesota Statutes Section 609.13, subd. 1 (1992).[2]

Under Minnesota law, Mr. LaRose was convicted of a felony in 1992. The fact that his conviction was later deemed a misdemeanor in 1995 does not change the fact he was convicted of a felony. *See In re Peace Officer License of Woolett*, 540 N.W.2d 829 at 832 (Minn. 1995) (holding that a prior Minnesota conviction for Third Degree Assault that is later deemed a misdemeanor does not negate the conviction as a felony "regardless of a stay of imposition or stay of execution."). *See also State v. S.A.M.,* 891 N.W.2d 602 (Minn. 2017) (holding that a felony conviction later deemed a misdemeanor is still a felony conviction ineligible for statutory expungement.)

The Revised Constitution and Bylaws of the Minnesota Chippewa Tribe provide that "No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind," MCT Const. Art. IV §4. In accord with this constitutional provision, the Ordinance provides that "[n]o member of the Tribe shall be

---

[1] Attached to this challenge as documentation supporting my claims are the following: (1) a Register of Actions from the Minnesota Judicial Branch in *State v. LaRose*, File No. 11-K6-91-000714, filed 9/30/1991 (4 pages); (2) a copy of the Criminal Minute Sheet from the Sentencing Hearing on 12/28/1992 (1 page); and (3) a copy of the Amended Complaint filed 11/20/1991 (6 pages).

[2] All statutory references to 1992 are attached to this challenge for the Court's review. Importantly, the applicable provisions the court relied upon in 1992 regarding Third Degree Assault, definition of "Felony" and Stay of Imposition remain the law of Minnesota to this day.

eligible as a candidate or be able to hold office if he or she has ever been convicted of any felony of any kind," MCT Election Ordinance §1.3(D)(1). Furthermore, the Ordinance defines "Felony" as "a crime defined as a felony by applicable law." MCT Election Ordinance §1.3(D)(2)(b). Furthermore, the term "Applicable Law" is defined, in pertinent part, as "the law of the jurisdiction in which a crime was prosecuted." *Id.* at §1.3(D)(2)(c).

The Minnesota Chippewa Tribe Tribal Election Court of Appeals has addressed this situation of a Minnesota felony conviction later deemed a misdemeanor and how that applies to candidate certification in the 2014 case *In re Guy Green III* MCT Tribal Election Court of Appeals (Feb. 21, 2014). In that matter, Mr. Green was in the same position as Mr. LaRose: a felony conviction that had later been deemed a misdemeanor. The Court held: "[t]he MCT Constitution and MCT Election Ordinance #10 are clear. A person with *any* felony conviction is ineligible to run for office within the MCT." *Id.* at pg. 2 (emphasis in original).

Mr. LaRose has been an elected member of the LLRBC on and off since 2002. He has been in his current role as Secretary/Treasurer since 2014. Each time since at least 2014, the LLRBC has completed an incomplete background check that is not in compliance with section 1.3(D)(5) of the Ordinance. That section specifies that each band is to conduct a "criminal history check [] sufficient to reasonably verify the eligibility of each candidate under this section." All Leech Lake has done is provided their RBC with a summary list that identifies whether a candidate has any convictions, and if so, the current conviction level ("F" for felony; "GM" for gross misdemeanor; "MS" for misdemeanor; "PM" for petty misdemeanor.). As noted in the Leech Lake Election Contest Judge's Decision & Order in 2018:

> It is worth noting, however that the processes used to date by the Leech Lake Band are not in conformance with the Election Ordinance, and they must be modified for future elections. While the Tribal Council (LLRBC) has the authority to prescribe the form for candidates' Certification of Eligibility and Authorization and Consent to Disclosure, those documents must conform to requirements contained in Section 1.3(D)(3) & (4) of the Election Ordinance . . . The materials produced in this proceeding and the prior proceeding before the MCT Tribal Election Court of Appeals do not satisfy this requirement. The Tribal Council can not determine, for example, if an individual has been convicted of a misdemeanor involving "misappropriation or embezzlement of money," if it simply reviews a conclusory list containing the number of misdemeanors a candidate is convicted of, without reference to the precise charges that resulted in the conviction."

Finn v. Election Board, Leech Lake Election Contest Decision & Order, June 29, 2018, pgs. 4 & 5.[3] As will be made clear when the complete record of the LLRBC's decision is sent to the MCT, the Leech Lake Band used the same non-compliant process to certify candidates in this election.

[3] A copy of the Judge Routel's Order from 2018 is attached to this Challenge for the Court's review.

I respectfully ask the Minnesota Chippewa Tribe Tribal Court of Election Appeals to uphold the current MCT Constitution, the uniform MCT Election Ordinance, and their prior precedent by finding that Mr. LaRose is not eligible to be a candidate in this election.

Please let me know if you need any additional documentation or testimony to support the claims made in this challenge. Thank you for your time and attention to this important matter.

Miigwech,

Leonard M. Fineday
LLRBC Secretary/Treasurer Candidate

Attachments:
1. Register of Actions – 4 pages
2. Criminal Minute Sheet – 1 page
3. Amended Complaint – 6 pages
4. 1992 MN Statutory Provisions – 4 pages
5. 2018 Leech Lake Election Contest Court Decision & Order – 6 pages

Note: I request this challenge and all attachments constituting a total of **24** pages be sent to all 5 members of the Court of Election Appeals as all attachments are "supporting documentation" to my challenge that support my specific reasons why the decision of the LLRBC did not comply with the requirements of the Constitution as allowed pursuant to Section 1.3(C)(6) of the Ordinance.

Register of Actions
Case No. 11-K6-91-000714

The State of Minnesota vs. ARTHUR DAVID LA ROSE, [1ST D.ASSAULT;3RD D.ASSAULT-2 CTS.,ETC.

§
§
§
§
§
§

Case Type: **Misdemeanor**
Date Filed: **09/30/1991**
Location: **Cass**

Party Information

Defendant **LA ROSE, ARTHUR DAVID**
CASS LAKE, MN 56633

Male
DOB: 05/11/1971

Lead Attorneys
JON A MATURI
Public Defender
218-326-0321(W)

Jurisdiction **State of Minnesota**

EARL E MAUS
218-547-7255(W)

Case Information

Charges: LA ROSE, ARTHUR DAVID	Statute	Level	Date	Disposition	Level of Sentence
1. (TCIS Amended Charge) 1ST DEGREE BURGLARY (Not applicable - GOC)	609.582.1(C)	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
2. 3RD DEGREE ASSAULT (Not applicable - GOC)	609.223	Converted: Offense Level Not Available	09/27/1991	12/28/1992 Convicted	
3. (TCIS Amended Charge) AID&ABET 3RD D. ASSAULT (Aid/Abet - GOC)	609.223	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
4. (TCIS Amended Charge) 3RD DEGREE ASSAULT (Not applicable - GOC)	609.223	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
5. (TCIS Amended Charge) AID&ABET 3RD D. ASSAULT (Aid/Abet - GOC)	609.223	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
6. (TCIS Amended Charge) TRESPASS (Not applicable - GOC)	609.605.1 4	Converted: Offense Level Not Available	09/27/1991	12/28/1992 Convicted	
7. AID&ABET KIDNAPPING (Aid/Abet - GOC)	6092.5 1-.3 2-1	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
8. CRIM.SEX.COND.-2ND DEG. (Not applicable - GOC)	609.343.1 E I	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	
9. AID&ABET CRIM.SEX.COND-2D (Aid/Abet - GOC)	609.343.1 E I	Converted: Offense Level Not Available	09/27/1991	11/17/1992 Dismissed	

Events & Orders of the Court

DISPOSITIONS

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
1. (TCIS Amended Charge) 1ST DEGREE BURGLARY (Not applicable - GOC)
Not guilty

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
3. (TCIS Amended Charge) AID&ABET 3RD D. ASSAULT (Aid/Abet - GOC)
Not guilty

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
4. (TCIS Amended Charge) 3RD DEGREE ASSAULT (Not applicable - GOC)
Not guilty

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
5. (TCIS Amended Charge) AID&ABET 3RD D. ASSAULT (Aid/Abet - GOC)
Not guilty

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
7. AID&ABET KIDNAPPING (Aid/Abet - GOC)
Not guilty

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
8. CRIM.SEX.COND.-2ND DEG. (Not applicable - GOC)
Not guilty

09/21/1992 **Plea** (Judicial Officer: Judge, Presiding)
9. AID&ABET CRIM.SEX.COND-2D (Aid/Abet - GOC)
Not guilty

11/10/1992 **Plea** (Judicial Officer: Judge, Presiding)
2. 3RD DEGREE ASSAULT (Not applicable - GOC)
Guilty

11/10/1992 **Plea** (Judicial Officer: Judge, Presiding)
6. (TCIS Amended Charge) TRESPASS (Not applicable - GOC)
Guilty

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
1. (TCIS Amended Charge) 1ST DEGREE BURGLARY (Not applicable - GOC)
Dismissed

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
3. (TCIS Amended Charge) AID&ABET 3RD D. ASSAULT (Aid/Abet - GOC)
Dismissed

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
4. (TCIS Amended Charge) 3RD DEGREE ASSAULT (Not applicable - GOC)
Dismissed

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
5. (TCIS Amended Charge) AID&ABET 3RD D. ASSAULT (Aid/Abet - GOC)
Dismissed

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
7. AID&ABET KIDNAPPING (Aid/Abet - GOC)
Dismissed

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
8. CRIM.SEX.COND.-2ND DEG. (Not applicable - GOC)
Dismissed

11/17/1992 **Disposition** (Judicial Officer: Judge, Presiding)
9. AID&ABET CRIM.SEX.COND-2D (Aid/Abet - GOC)
Dismissed

12/28/1992 **Disposition** (Judicial Officer: Judge, Presiding)
2. 3RD DEGREE ASSAULT (Not applicable - GOC)
Convicted

12/28/1992 **Disposition** (Judicial Officer: Judge, Presiding)
6. (TCIS Amended Charge) TRESPASS (Not applicable - GOC)
Convicted

12/28/1992 **Converted TCIS Criminal Sentence: Stay of Imposition** (Judicial Officer: Anderson, Russell)
2. 3RD DEGREE ASSAULT (Not applicable - GOC)
09/27/1991 (CNVLEVEL) 609.223 (CNVOFFENSE)

Converted Disposition:
Stay of Imposition
Converted Disposition:
Confinement NCIC: MN011013C - Cass County Jail Probation: 5 Years Probation NCIC: MN062015G - Mn. Dept. Corr/Field
Service Conditional: 60 Days Length of Stay: 5 Years Probation Type: Supervised
Converted Disposition:
Fined: $300.00 Surcharge: $30.00 Costs: $7.50
Converted Disposition:
Other Court Provisions: 373: Impos Sent Stayed 365: Credit w/time Srvd 367: Work Release Nights
Converted Disposition:
Comments: 11/27/95-DISCHARGED-DEEMED A MISDEMEANOR

12/28/1992 **Converted TCIS Criminal Sentence: Stay of Imposition** (Judicial Officer: Anderson, Russell)
6. (TCIS Amended Charge) TRESPASS (Not applicable - GOC)
09/27/1991 (CNVLEVEL) 609.605.1 4 (CNVOFFENSE)

Converted Disposition:
Stay of Imposition Concurrent This Complaint
Converted Disposition:
Confinement NCIC: MN011013C - Cass County Jail Probation: 1 Years Probation NCIC: MN062015G - Mn. Dept. Corr/Field
Service Conditional: 10 Days Length of Stay: 1 Years Probation Type: Supervised
Converted Disposition:
Other Court Provisions: 373: Impos Sent Stayed

OTHER EVENTS AND HEARINGS

09/30/1991 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
09/30/1991 **FLD-Case Filed** (Judicial Officer: Judge, Presiding)
09/30/1991 **Rule 5 Hearing** (11:57 AM) (Judicial Officer Smith,John P ,)
Result: Converted Activity Status Flag Occurred
10/03/1991 **NOT-Notice** (Judicial Officer: Judge, Presiding)
10/07/1991 **DOC-Document Filed** (Judicial Officer: Judge, Presiding)
10/15/1991 **Rule 8 Hearing** (9:09 AM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Occurred
10/18/1991 **Hearing** (3:00 PM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Occurred
10/25/1991 **SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
10/28/1991 **Hearing** (4:00 PM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Occurred
10/28/1991 **Omnibus Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
Result: Converted Activity Status Flag Cancelled

11/04/1991	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
11/12/1991	**Omnibus Hearing** (1:00 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
11/25/1991	**MTN-Motion Filed** (Judicial Officer: Judge, Presiding)
12/04/1991	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
12/04/1991	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
12/09/1991	**Omnibus Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
12/12/1991	**Omnibus Hearing** (1:00 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
12/24/1991	**LTR-Letters** (Judicial Officer: Judge, Presiding)
01/13/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
01/16/1992	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
02/03/1992	**Omnibus Hearing** (1:00 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
02/05/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
03/10/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
03/11/1992	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
03/16/1992	**Omnibus Hearing** (1:30 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
04/13/1992	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
04/13/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
04/20/1992	**Omnibus Hearing** (2:00 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
04/21/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
05/14/1992	**Omnibus Hearing** (1:48 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Occurred
06/03/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
06/08/1992	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
06/11/1992	**RVW-Case Status Review** (Judicial Officer: Haas, Michael)
06/15/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
06/15/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
06/15/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
06/22/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
06/22/1992	**SUB-Submitted** (Judicial Officer: Haas, Michael)
07/07/1992	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
08/03/1992	**AJU-Adjudicated** (Judicial Officer: Haas, Michael)
08/03/1992	**ORD-Order** (Judicial Officer: Haas, Michael)
08/12/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
08/14/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
08/17/1992	**Plea Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
09/21/1992	**Plea Hearing** (3:10 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Occurred
09/30/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
10/03/1992	**Jury Trial** (8:02 AM) (Judicial Officer Judge Cass Cty, Presiding)
	Result: Converted Activity Status Flag Cancelled
10/13/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
10/27/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
10/27/1992	**Jury Trial** (9:02 AM) (Judicial Officer Judge Cass Cty, Presiding)
	Result: Converted Activity Status Flag Cancelled
11/03/1992	**SCH-Schedule Hearing** (Judicial Officer: Judge, Presiding)
11/07/1992	**Jury Trial** (9:02 AM) (Judicial Officer Judge Cass Cty, Presiding)
	Result: Converted Activity Status Flag Cancelled
11/08/1992	**Jury Trial** (9:02 AM) (Judicial Officer Judge Cass Cty, Presiding)
	Result: Converted Activity Status Flag Cancelled
11/10/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
11/10/1992	**Jury Trial** (9:00 AM) (Judicial Officer Anderson, Russell)
	Result: Converted Activity Status Flag Cancelled
11/10/1992	**Plea Hearing** (11:10 AM) (Judicial Officer Anderson, Russell)
	Result: Converted Activity Status Flag Occurred
11/17/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
12/21/1992	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
12/21/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
12/21/1992	**PSI-Pre-Sentence Investigation** (Judicial Officer: Judge, Presiding)
12/28/1992	**CLO-Closed** (Judicial Officer: Judge, Presiding)
12/28/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
12/28/1992	**Sentencing** (2:00 PM) (Judicial Officer Anderson, Russell)
	Result: Converted Activity Status Flag Occurred
12/29/1992	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
01/11/1993	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
01/11/1993	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
03/03/1993	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
11/15/1993	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)
11/15/1993	**Hearing** (1:41 PM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Occurred
12/10/1993	**Hearing** (9:00 AM) (Judicial Officer Haas, Michael)
	Result: Converted Activity Status Flag Cancelled
01/13/1994	**DOR-Dormant** (Judicial Officer: Judge, Presiding)
03/15/1994	**Hearing** (10:23 AM) (Judicial Officer Smith,John P ,)
	Result: Converted Activity Status Flag Occurred
03/21/1994	**DOR-Dormant** (Judicial Officer: Judge, Presiding)
04/14/1994	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
04/14/1994	**DOC-Document Filed** (Judicial Officer: Judge, Presiding)

12/02/1994	**CRS-Correspondence** (Judicial Officer: Judge, Presiding)
12/05/1994	**Hearing** (11:45 AM) (Judicial Officer Smith,John P ,)
	Result: Converted Activity Status Flag Occurred
12/07/1994	**CLO-Closed** (Judicial Officer: Judge, Presiding)
11/27/1995	**ORN-Order with Notice** (Judicial Officer: Judge, Presiding)
02/05/1996	**ARC-Archive** (Judicial Officer: Anderson, Russell)
06/09/2002	**ARC-Archive** (Judicial Officer: Judge, Presiding)
09/25/2005	**Converted Pending Activity** (Judicial Officer: Judge, Presiding)

Financial Information

	Defendant LA ROSE, ARTHUR DAVID	
	Total Financial Assessment	337.50
	Total Payments and Credits	337.50
	Balance Due as of 02/08/2022	**0.00**
10/29/1991	Transaction Assessment	337.50

CASS COUNTY DISTRICT COURT ____ Agt Officer BETTEL

Criminal Minute Sheet

Type of Hearing: Sentencing ____ Petty Misd. ____ Misdemeanor

Date: 12/28/92 Time 2:30 ____ Gross Misd. XX Felony

State of Minnesota vs. Atty: EARL MAUS ✓ Honorable ~~MICHAEL J. HAAS~~ Anderson

ARTHUR DAVID LAROSE ✓ Atty: GEORGE DUNN ✓ Reporter: STEVE Clerk [illegible]

Address: ____

DOB: ____ IN CUSTODY ____ Yes XX No BAIL/~~BOND~~ $1000 CASH

File #K6-91-714 (1) 1ST DEG BURGLARY Plea: ____ Accepted/Convicted

\# ____ 2. ASSAULT-3RD DEGREE Plea: Guilty Verdict (Accepted/Convicted)

\# ____ 3. AID/ABET ASSAULT-3RD DEG Plea: ____ Accepted/Convicted

\# ____ 4. ASSAULT 3RD DEGREE Plea: ____ Accepted/Convicted

\# ____ 5. AID/ABET ASSAULT 3RD DEG Plea: ____ Accepted/Convicted

\# ____ (6) KIDNAPPING Plea: ____ (Accepted/Convicted) [illegible]

7. AID/ABET KIDNAPPING

8. CRIM SEX COND-2ND DEG

9. AID/ABET CRIM.SEX COND-2ND DEG.

____ Complaint reading waived ____ understands charges ____ Waive Omnibus.

____ Rights on record ____ understands rights ____ Factual basis given.

PUBLIC DEFENDER ____ Petition to Plea filed.

____ Waived ____ Requested ____ Financial Aff'd Filed ____ Request for Disc. filed.

Appoint/Retained: ____ Next Appearance: ____

____ RPRD ____ BAIL ____ CASH ____ SURETY ____ REMANDED

Defendant addressed Court [illegible] in custody [illegible] made a big mistake [illegible]

Conditions of Release/Sentence

✓ Keep peace/general good behavior ____ Pay fine/costs/Restitution.

____ Contact atty ____ Stay in touch ____ Attend DWI/Drug/DIC Clinic.

____ No use, possess, purchase alc/C.S. — Leave to Probation [illegible] regarding Alcohol ____ Rule 25 make apt. w/n 10 days.

____ Don't enter establishment selling alc. ____ File w/Court w/n 30 days.

____ No like violations/behavior. ____ Information sheet given.

____ No drive until license and insured. ____ Follow recommendations.

____ No travel out of Co/State ____ ____ PSI/Rule 25 ordered.

✓ No contact directly/indirectly with [illegible] ____ Cooperate w/Probation/Counselor.

unless that person consents in writing to the Sheriff's office.

____ No ____ viol/behavior. ____ Promise to appear.

Stay of Imposition [illegible] Ct. 9 [illegible]

Sentence: (1.) $ 500 and/or 60 days. Stay $ ____ and ____ days. $500 SC ____ LL

2. $ ____ and/or ____ days. Stay $ ____ and ____ days. ____ SC ____ LL

3. $ ____ and/or ____ days. Stay $ ____ and ____ days. ____ SC ____ LL

4. $ ____ and/or ____ days. Stay $ ____ and ____ days. ____ SC ____ LL

5. $ ____ and/or ____ days. Stay $ ____ and ____ days. ____ SC ____ LL

(6.) $ ____ and/or 60 days. Stay $ ____ and ____ days. ____ SC ____ LL

Begin Jail 1/4/93 [illegible] Court Leave to

____ Pay $76 CD Assess. ____ $5 Repeat CD Off. SC $ ____ CRIM. SC $ ____ RESTITUTION

✓ CONCURRENT ____ CONSECUTIVE ✓ HUBER 32 days CR TIME SERVED BEGIN

5 Yr PROBATION ✓ SUPERVISED/UNSUPERVISED TO DOC - Subject to Rules + Regulations

TOTAL PAYMENT $ ____ PAY $ ____ MO/BIWEEKLY [illegible]

MAY DO ____ HRS OF COMMUNITY SERVICE WORK IN LIEU OF ____ FINE DAYS.

[illegible]

01 Minn.Stat.609.582 Sub.1(c)	B1233	N	FILE NO. 91-977	CONTROLLING AGENCY 011-0000	CONTROL NO. 91-9429
02 Minn.Stat.609.223	A3252	N			
03 Minn.Stat.609.223	A3252	X	COURT CASE NO.		DATE FILED
04 Minn.Stat.609.223	A3252	N	K6-91-714		11/20/91
05 Minn.Stat.609.223	A3252	X	AMENDED		
06 Minn.Stat.609.25 Sub.1(3)	K2352	N	Complaint		

✓if more than 6 counts (see attached)

X SUMMONS
WARRANT
ORDER OF DETENTION

X FELONY
GROSS MISDEMEANOR

State of Minnesota

vs. PLAINTIFF.

NAME: first, middle, last

ARTHUR DAVID LAROSE

Date of Birth

SHS COMPLAINT NUMBER

DEFENDANT.

COMPLAINT

Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable e to believe that the Defendant committed the following offense(s). The complainant states that the following establish PROBABLE CAUSE:

Your Complainant is a deputy sheriff with the Cass County Sheriff's Department and knows the following to be true and correct, to-wit: On September 27, 1991, at approximately 10:00 a.m. Cass County Sheriff's Department responded to a call at the Cass Lake Hospital. Upon arriving at the hospital, Ernie Beitel spoke with several individuals at the hospital who indicated that they did not wish to discuss an incident with him wherein an adult male, , and were severely beaten. Several of the individuals indicated it was a matter between themselves and they would not discuss it further. At approximately 2:00 p.m. on the same date, Officer Beitel again responded to the hospital, at which time he received information that wished to speak with him. Upon speaking with indicated that at approximately 4:00 a.m. on the same date, had taken a television set that belonged to ARTHUR DAVID LaROSE from LaROSE's residence and had brought it to his own residence which is located in the city of Cass Lake, Cass County, Minnesota. indicated that about 9:00 a.m. he was awakened upon the entry of ARTHUR DAVID LaROSE and indicated he did not give any of these individuals permission to enter his residence. indicated that, upon entering the residence, he was questioned concerning the theft of a television set and indicated that, at that time, ARTHUR DAVID LaROSE and all struck him with hands and fists and kicked him after he was down in the head area, severely beating him which caused a large amount of swelling as well as cuts and abrasions in his head area. indicated that, at some point during this time, left the residence and returned with and that upon coming to the residence was also severely beaten by , and ARTHUR DAVID LaROSE. also indicated that, while he was held down, one of the individuals had pulled underwear off and that one of the individuals had pulled on his testicles and had kicked the individual off; at which point someone had again pulled on his testicles during the beating. further indicated that the beating had taken place over an approximate 45 minute time period and that he had attempted to flee

Minn.Stat.609.343 Sub.1(e)(i) L3378 N
Minn.Stat.609.343 Sub.1(e)(i) L3378 X

SJIS COMPLAINT NUMBER(S):
91-988 011-0000 91-9429
11-11-0-003630

the residence but was prevented from doing so by the individuals. It should be noted that both and required medical treatment as a result of the beating for numerous bruises, abrasions, extensive swelling, and other injuries received. Officers Beitel and Arlo Vikre later spoke with ARTHUR DAVID LaROSE who confirmed the above incident and indicated that himself, and had beaten the individuals and indicated that had disrobed the residence while he was beating him and also that he had taken a scissors and had cut hair while at the residence. indicated he was brought to the residence by after being told that wanted to speak with him. After arriving at the residence, indicated he observed lying on the floor and recalls being struck and has little, if any, memory of the incident. ARTHUR DAVID LAROSE indicated they were angry over the theft of the television set and that the beating had gotten out of hand.

SAID ACTS CONSTITUTE THE OFFENSES OF:

Count #1 - Minn. Stat. 609.582 Subd. 1(c) - BURGLARY IN THE FIRST DEGREE -The defendant, ARTHUR DAVID LAROSE, did enter a building without consent and with intent to commit a crime, or entered a building without consent and committed a crime while in the building and the burglar assaulted a person within the building or on the building's appurtenant property.to-wit: residence on or about September 27, 1991, in Cass County, Minnesota.

Count #2 - Minn. Stat. 609.223 - ASSAULT IN THE THIRD DEGREE - The defendant, ARTHUR DAVID LAROSE, did assault another and inflicted substantial bodily harm, to-wit: upon adult male, on or about September 27, 1991, in Cass County, Minnesota.

EFORE. Complainant requests that said Defendant, subject to bail or conditions of release be:
(1) arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings;
at said Defendant otherwise be dealt with according to law.

AINANT'S NAME: COMPLAINANT'S SIGNATURE:

Being duly authorized to prosecute the offense(s) charged. I hereby approve this Complaint.

PROSECUTING ATTORNEY'S SIGNATURE:

CUTING ATTORNEY:
ITLE: ADDRESS/TELEPHONE:

SJIS COMPLAINT NUMBER(S):

~~91-977-011-0000 91-9429~~
11-11-0-003630

Count #3 - Minn. Stat. 609.223 and Minn. Stat. 609.05 Subd. 1 - [redacted] - The defendant, ARTHUR DAVID LAROSE, did assault another and inflicted substantial bodily harm, to-wit: upon adult male, on or about September 27, 1991, in Cass County, Minnesota.

Minn. Stat. 609.05 Subd. 1 - **LIABILITY FOR CRIMES OF ANOTHER** - A person is liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Count #4 - Minn. Stat. 609.223 - [redacted] - The defendant, ARTHUR DAVID LAROSE, did assault another and inflicted substantial bodily harm, to-wit: upon on or about September 27, 1991, in Cass County, Minnesota.

Count #5 - Minn Stat. 609.223 and Minn. Stat. 609.05 Subd. 1 - [redacted] - The defendant, ARTHUR DAVID LAROSE, did assault another and inflicted substantial bodily harm, to-wit: upon , on or about September 27, 1991, in Cass County, Minnesota.

Minn. Stat. 609.05 Subd. 1 - [redacted] - A person is liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Amend 5-14-92

Count #6 - Minn. Stat. 609.25 Subd. 1(3) and Subd. 2 (2) - KIDNAPPING - The defendant, ARTHUR DAVID LAROSE, did confine or remove from one place to another, a person without his/her consent or, if the person is under the age of 16 years, without the consent of his/her parents or other legal guardian, to commit great bodily harm or to terrorize the victim or another, and the victim was released in a safe place without great bodily harm during the course of the kidnapping, to-wit: upon , and/or adult male, , on or about September 27, 1991, in Cass County, Minnesota.

X

EREFORE. Complainant requests that said Defendant, subject to bail or conditions of release be:
(1) arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings;
that said Defendant otherwise be dealt with according to law.

PLAINANT'S NAME:

COMPLAINANT'S SIGNATURE:

Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.

E.

PROSECUTING ATTORNEY'S SIGNATURE:

SECUTING ATTORNEY:
E/TITLE:

ADDRESS/TELEPHONE:

SJIS COMPLAINT NUMBER(S):

91-977 011-0000 91-9429
11-11-0-003630

Amd 5-14-92

[redacted] Minn. Stat. 609.25 Subd. 1(3) and Subd. 2(2) and Minn. Stat. 609.05 Subd. 1 - [redacted] - The defendant, ARTHUR DAVID LAROSE, did confine or remove from one place to another, a person without his/her consent or, if the person is under the age of 16 years, without the consent of his/her parents or other legal guardian, to commit great bodily harm or to terrorize the victim or another, and the victim was released in a safe place without great bodily harm during the course of the kidnapping, to-wit: upon [redacted] and/or adult male, on or about September 27, 1991, in Cass County, Minnesota.

Minn. Stat. 609.05 Subd. 1 - **LIABILITY FOR CRIMES OF ANOTHER** - A person is liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

[redacted] - Minn. Stat. 609.343 Subd. 1 (e)(i) - [redacted] - The defendant, ARTHUR DAVID LAROSE, did engage in sexual contact with another person and the actor causes personal injury to the complainant, and the actor uses force or coercion to accomplish the sexual contact, to-wit: upon adult male, on or about September 27, 1991, in Cass County, Minnesota.

[redacted] - Minn. Stat. 609.343 Subd. 1(e)(i) and Minn. Stat. 609.05 Subd. 1 - [redacted] - The defendant, ARTHUR DAVID LAROSE, did engage in sexual contact with another person and the actor causes personal injury to the complainant, and the actor uses force or coercion to accomplish the sexual contact, to-wit: upon adult male, on or about September 27, 1991, in Cass County, Minnesota.

Minn. Stat. 609.05 Subd. 1 - **LIABILITY FOR CRIMES OF ANOTHER** - A person is liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

HEREFORE. Complainant requests that said Defendant, subject to bail or conditions of release be:
(1) arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings;
d that said Defendant otherwise be dealt with according to law.

OMPLAINANT'S NAME: COMPLAINANT'S SIGNATURE:

Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.

ATE: PROSECUTING ATTORNEY'S SIGNATURE:

OSECUTING ATTORNEY:
AME/TITLE: ADDRESS/TELEPHONE:

SJIS COMPLAINT NUMBER(S):

91-977 011-0000 91-9429
11-11-0-003630

MAXIMUM SENTENCE:

Count #1 - 20 years/$35,000.00 or both
Count #2 - 5 years/$10,000.00 or both
Count #3 - 5 years/$10,000.00 or both
Count #4 - 5 years/$10,000.00 or both
Count #5 - 5 years/$10,000.00 or both
Count #6 - 20 years/$35,000.00 or both
Count #7 - 20 years/$35,000.00 or both
Count #8 - 20 years/$35,000.00 or both
Count #9 - 20 years/$35,000.00 or both

HEREFORE. Complainant requests that said Defendant, subject to bail or conditions of release be:
(1) arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings:
nd that said Defendant otherwise be dealt with according to law.

'OMPLAINANT'S NAME: Randy Fisher

COMPLAINANT'S SIGNATURE: Randy Fisher

Being duly authorized to prosecute the offense(s) charged I hereby approve this Complaint.

)ATE: November 19, 1991

PROSECUTING ATTORNEY'S SIGNATURE: Earl E. Maus

ROSECUTING ATTORNEY:

!AME, TITLE: Earl E. Maus, Cass County Attorney, Walker, MN 56484 (218) 547-3300

ADDRESS/TELEPHONE:

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant (s) arrest or other lawful steps be taken to obtain Defendant (s) appearance in Court, or his detention, if already in custody, pending further proceedings. The Defendant (s) is/are thereof charged with the above stated offense.

SUMMONS

THEREFORE You, THE ABOVE-NAMED DEFENDANT(S, ARE HEREBY SUMMONED to appear on the day of , 19 at AM/PM before the above-named court at to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

EXECUTE IN MINNESOTA ONLY

To the sheriff of the above-named county; or other person authorized to execute this WARRANT; I hereby order, in the name of the State of Minnesota, that the above-named Defendant (s) be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

ORDER OF DETENTION

Since the above-named Defendant (s) is/are already in custody;

I hereby order; subject to bail or conditions of release, that the above-named Defendant (s) continue to be detained pending further proceedings.

Bail:

Conditions of Release: Amended

This COMPLAINT – SUMMONS, ~~WARRANT~~, ~~ORDER OF DETENTION~~ was sworn to subscribed before, and issued by the undersigned authorized Issuing Judicial Officer this 20 *day of* November *, 19*91

JUDICIAL OFFICER:

Name: Michael J. Haas *Signature:* [signature]

Title: Judge of District Court

Sworn testimony has been given before the Judicial Officer by the following witnesses:

STATE OF MINNESOTA *COUNTY of*

Cass

State of Minnesota

Plaintiff.

vs.

ARTHUR DAVID LAROSE
P.O. Box 604
Cass Lake, MN 56633

Defendant (s)

Clerk's Signature or File Stamp:

RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this COMPLAINT - SUMMONS, WARRANT, ORDER OF DETENTION upon the Defendant (s) herein-named.

Signature of Authorized Service Agent:

Crimes, Criminals

CHAPTER 609

CRIMINAL CODE

MINNESOTA STATUTES 1992

Subd. 2. **Dangerous weapon; substantial bodily harm.** Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

History: *1979 c 258 s 5; 1984 c 628 art 3 s 11; 1985 c 53 s 1; 1989 c 290 art 6 s 9; 1992 c 571 art 4 s 7*

609.223 ASSAULT IN THE THIRD DEGREE.

Subdivision 1. **Substantial bodily harm.** Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

Subd. 2. **Past pattern of child abuse.** Whoever assaults a minor may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both, if the perpetrator has engaged in a past pattern of child abuse against the minor. As used in this subdivision, "child abuse" has the meaning given it in section 609.185, clause (5).

History: *1979 c 258 s 6; 1984 c 628 art 3 s 11; 1989 c 290 art 6 s 10; 1990 c 542 s 17*

609.2231 ASSAULT IN THE FOURTH DEGREE.

Subdivision 1. **Peace officers.** Whoever assaults a peace officer licensed under section 626.845, subdivision 1, when that officer is effecting a lawful arrest or executing any other duty imposed by law and inflicts demonstrable bodily harm is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $4,000, or both.

Subd. 2. **Firefighters and emergency medical personnel.** Whoever assaults a member of a municipal or volunteer fire department or emergency medical services personnel unit in the performance of the member's duties, or assaults an employee of the department of natural resources who is engaged in forest fire activities, and inflicts demonstrable bodily harm is guilty of a gross misdemeanor.

Subd. 3. **Correctional employees.** Whoever assaults an employee of a correctional facility as defined in section 241.021, subdivision 1, clause (5), while the employee is engaged in the performance of a duty imposed by law, policy or rule, and inflicts demonstrable bodily harm, is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $4,000, or both.

Subd. 4. **Assaults motivated by bias.** (a) Whoever assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

(b) Whoever violates the provisions of paragraph (a) within five years of a previous conviction under paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than one year and a day or to payment of a fine of not more than $3,000, or both.

Subd. 5. **School official.** Whoever assaults a school official while the official is engaged in the performance of the official's duties, and inflicts demonstrable bodily harm, is guilty of a gross misdemeanor. As used in this subdivision, "school official" includes teachers, school administrators, and other employees of a public or private school.

Subd. 6. **Public employees with mandated duties.** A person is guilty of a gross misdemeanor who:

(1) assaults an agricultural inspector, child protection worker, public health nurse, or probation or parole officer while the employee is engaged in the performance of a duty mandated by law, court order, or ordinance;

MINNESOTA STATUTES 1992

GENERAL PRINCIPLES

609.01 NAME AND CONSTRUCTION.

Subdivision 1. **Purposes.** This chapter may be cited as the criminal code of 1963. Its provisions shall be construed according to the fair import of its terms, to promote justice, and to effect its purposes which are declared to be:

(1) To protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires; and

(2) To protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited, authorizing sentences reasonably related to the conduct and character of the convicted person, and prescribing fair and reasonable postconviction procedures.

Subd. 2. [Repealed, 1983 c 216 art 1 s 76]

History: *1963 c 753 art 1 s 609.01*

609.015 SCOPE AND EFFECT.

Subdivision 1. Common law crimes are abolished and no act or omission is a crime unless made so by this chapter or by other applicable statute, but this does not prevent the use of common law rules in the construction or interpretation of the provisions of this chapter or other statute. Crimes committed prior to the effective date of this chapter are not affected thereby.

Subd. 2. Unless expressly stated otherwise, or the context otherwise requires, the provisions of this chapter also apply to crimes created by statute other than in this chapter.

History: *1963 c 753 art 1 s 609.015*

609.02 DEFINITIONS.

Subdivision 1. **Crime.** "Crime" means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.

Subd. 2. **Felony.** "Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed.

Subd. 3. **Misdemeanor.** "Misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than $700, or both, may be imposed.

Subd. 4. **Gross misdemeanor.** "Gross misdemeanor" means any crime which is not a felony or misdemeanor. The maximum fine which may be imposed for a gross misdemeanor is $3,000.

Subd. 4a. **Petty misdemeanor.** "Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than $200 may be imposed.

Subd. 5. **Conviction.** "Conviction" means any of the following accepted and recorded by the court:

(1) A plea of guilty; or

(2) A verdict of guilty by a jury or a finding of guilty by the court.

Subd. 6. **Dangerous weapon.** "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

As used in this subdivision, "flammable liquid" means Class I flammable liquids as defined in section 9.108 of the Uniform Fire Code, but does not include intoxicating liquor as defined in section 340A.101.

Subd. 7. **Bodily harm.** "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

MINNESOTA STATUTES 1992

609.13 CONVICTIONS OF FELONY OR GROSS MISDEMEANOR; WHEN DEEMED MISDEMEANOR OR GROSS MISDEMEANOR.

Subdivision 1. Notwithstanding a conviction is for a felony:

(1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02; or

(2) The conviction is deemed to be for a misdemeanor if the imposition of the prison sentence is stayed, the defendant is placed on probation, and the defendant is thereafter discharged without a prison sentence.

Subd. 2. Notwithstanding that a conviction is for a gross misdemeanor, the conviction is deemed to be for a misdemeanor if:

(1) The sentence imposed is within the limits provided by law for a misdemeanor as defined in section 609.02; or

(2) If the imposition of the sentence is stayed, the defendant is placed on probation, and the defendant is thereafter discharged without sentence.

History: *1963 c 753 art 1 s 609.13; 1971 c 937 s 21; 1986 c 435 s 6; 1986 c 444*

609.131 CERTIFICATION OF MISDEMEANOR AS PETTY MISDEMEANOR.

Subdivision 1. **General rule.** Except as provided in subdivision 2, an alleged misdemeanor violation must be treated as a petty misdemeanor if the prosecuting attorney believes that it is in the interest of justice that the defendant not be imprisoned if convicted and certifies that belief to the court at or before the time of arraignment or pretrial hearing, and the court approves of the certification motion. The defendant's consent to the certification is not required. When an offense is certified as a petty misdemeanor under this section, the defendant's eligibility for court-appointed counsel must be evaluated as though the offense were a misdemeanor.

Subd. 1a. **Petty misdemeanor schedule.** Prior to August 1, 1992, the conference of chief judges shall establish a schedule of misdemeanors that shall be treated as petty misdemeanors. A person charged with a violation that is on the schedule is not eligible for court-appointed counsel.

Subd. 2. **Certain violations excepted.** Subdivision 1 does not apply to a misdemeanor violation of section 169.121; 609.224; 609.226; 609.324, subdivision 3; 609.52; or 617.23, or an ordinance that conforms in substantial part to any of those sections. A violation described in this subdivision must be treated as a misdemeanor unless the defendant consents to the certification of the violation as a petty misdemeanor.

Subd. 3. **Use of conviction for enhancement.** Notwithstanding any other law, a conviction for a violation that was originally charged as a misdemeanor and was treated as a petty misdemeanor under subdivision 1 or the rules of criminal procedure may not be used as the basis for charging a subsequent violation as a gross misdemeanor rather than a misdemeanor.

History: *1987 c 329 s 6; 1992 c 513 art 4 s 48*

609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

Subdivision 1. **Terms and conditions.** Except when a sentence of life imprisonment is required by law, or when a mandatory minimum term of imprisonment is required by section 609.11, any court may stay imposition or execution of sentence and (a) may order intermediate sanctions without placing the defendant on probation, or (b) may place the defendant on probation with or without supervision and on the terms the court prescribes, including intermediate sanctions when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony or gross misdemeanor, by the commissioner of corrections, or in any case by some other suitable and consenting person. No intermediate sanction may be ordered performed at a location that fails to observe applicable requirements or standards of chapter 181A or 182, or any rule promulgated under

LEECH LAKE ELECTION CONTEST COURT

Donald "Mick" Finn,

DECISION & ORDER

v.

Leech Lake Election Board.

On January 5, 2006, the Secretary of the Interior approved an amendment to the Minnesota Chippewa Tribe's ("MCT") Constitution, which had previously been adopted by the MCT membership at a duly called election. That amendment limits the ability of persons to hold office if they have certain prior criminal convictions. More specifically, it provides that:

> [n]o member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

MCT Constitution, Art IV, § 4.

To implement this new Constitutional provision, the MCT amended its Election Ordinance. Section 1.3(D)(1) of the Election Ordinance reiterates that no Tribal member "shall be eligible as a candidate or be able to hold office if he or she has ever been convicted of any felony of any kind." The Election Ordinance continues by stating that a felony is any crime that is defined as such under "the law of the jurisdiction in which [the] crime was prosecuted." Election Ordinance, § 1.3(D)(2)(c).

The Election Ordinance also establishes a detailed process by which a person's eligibility to hold office under these provisions shall be verified. Each candidate must submit a notarized document stating that he or she has not been convicted of a disqualifying crime. Election Ordinance, § 1.3(D)(3). Each candidate must also authorize the Band's governing body to conduct a criminal history background check to verify his or her eligibility. *Id.* at § 1.3(D)(4). The Band's governing body may create the form for this authorization, but it must require "such information as may be reasonably necessary to conduct the criminal history check, including all jurisdictions in which the person has resided or has been convicted of a felony or lesser crime and all names the person has used." *Id.*

After receiving these documents from the candidate, it is the responsibility of the Band's governing body to contract with an entity to conduct a criminal history check. The governing body must ensure that "each criminal history check shall be sufficient [in scope] to reasonably verify the eligibility of each candidate." Election Ordinance, § 1.3(D)(5). Following review of this background check, the Band's governing body must then decide whether to certify a candidate as eligible to hold office. "Certification decisions must adhere to the requirements of the Constitution and this Ordinance." *Id.* at § 1.3(C)(4).

The only persons who have standing to challenge the certification of a candidate are those persons who are themselves running for the same elected position. Election Ordinance, § 1.3(C)(6). A challenge must be submitted on the second business day following receipt by MCT's

Executive Committee of the notice of certification or non-certification. If a challenge is filed, the Band's governing body must submit "a complete record of all documents related to the challenge determination" on the next business day. *Id.* at § 1.3(C)(6). Then, the Tribal Election Court of Appeals has just twenty-four hours to issue a decision "based on the record provided by the Band governing body." The Election Ordinance clearly states that "[t]he decision of the Tribal Election Court of Appeals shall be final." *Id.*

Findings of Fact

1. Donald "Mick" Finn and Arthur LaRose were both candidates for Secretary-Treasurer of the Leech Lake Band in the 2018 election cycle.

2. In 1992, Mr. LaRose pled guilty to Third Degree Assault under Minnesota law.

3. Third Degree Assault under Minnesota law provides that "[w]hoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both." Minn. Stat. § 609.22, subd. 1. The pertinent sections of this statute have not changed since 1992. Third Degree Assault was considered a felony under Minnesota law in 1992, and it remains so today.

4. Mr. LaRose received a stay of imposition. He successfully completed the terms of the stay, which included minimal jail time and several years of probation. As a result, his Third Degree Assault conviction was later deemed a misdemeanor pursuant to Minn. Stat. §§ 609.13, 609.135.

5. As has been its prior practice, in 2018, the Leech Lake Tribal Council retained its gaming division to conduct the background investigation required of all candidates.

6. The gaming division's background investigation did not use forms that were created specifically for candidates for Tribal office. Rather, it used forms typically used to determine the eligibility of a person to be a gaming employee under the Tribal-State Compact. Therefore, the forms Mr. LaRose (and presumably the other candidates) completed are not notarized, only ask about misdemeanor convictions over the past 10 years and include irrelevant references to gaming-related crimes.

7. Attorney McConkey-Greene entered an appearance on behalf of the Leech Lake Election Board in these proceedings, and during the June 29, 2018 conference call with the Court, indicated that she was also representing the Leech Lake Tribal Council. Despite being ordered multiple times to produce the complete criminal background check for Mr. LaRose, those entities never provided the Court with a document listing the crimes that Mr. LaRose has been charged with, convicted of, and/or sentenced to in each jurisdiction.

8. In response to the Court's repeated attempts to obtain the background check for Mr. LaRose, the Leech Lake Tribal Council and Leech Lake Election Board produced two one-page summary sheets. One sheet, dated January 23, 2018, and signed by Jackie Tibbets, contains an entry for "11-K6-91-000714-questionable whether was FE/GM deemed to be MS." On the bottom of the page, next to Ms. Tibbets' signature, it states: "[n]ot sure on 'deemed to be MS,' no knowledge on MN Statues [sic] 638/394."

9. On the other background check sheet produced by the Leech Lake Tribal Council and the Leech Lake Election Board, dated January 29, 2018, the entry for Mr. LaRose simply states "(1) MS (deemed)."

10. Prior to making their certification decisions for the 2018 election cycle, Leech Lake Tribal Council members were not provided with a document listing the crimes that Mr. LaRose has been charged with, convicted of, and/or sentenced to in each jurisdiction.

11. Tribal Council members were permitted to make additional inquiries of the gaming division and review documentation in the division's possession regarding the criminal history of each candidate. At least one Tribal Council member – Steve White – reviewed Mr. LaRose's criminal history and ultimately voted against his certification.

12. Donald Finn attended a Leech Lake Tribal Council meeting prior to certification of candidates in the 2018 election cycle, and he presented the Tribal Council with documentation indicating that Mr. LaRose had pled guilty to Third Degree Assault, a felony charge, and received a stay of imposition.

13. On January 30, 2018, the Leech Lake Tribal Council voted 3-2 in favor of certification of Mr. LaRose as a candidate for Secretary Treasurer. Mr. LaRose did not recuse himself; rather, he voted in favor of his own certification.

14. On January 31, 2018, Mr. Finn filed a challenge to the certification of Mr. LaRose with the Minnesota Chippewa Tribe. Mr. Finn's challenge included documentation showing Mr. LaRose's Third Degree Assault conviction.

15. On February 5, 2018, the Leech Lake Tribal Council was notified of Mr. Finn's challenge and was asked to provide a "complete record" of all documents it considered in deciding to certify Mr. LaRose as a candidate for Secretary-Treasurer.

16. On February 6, 2018, the Leech Lake Tribal Council submitted documents it purported to be the complete record. Those documents did not include a list of any crimes that Mr. LaRose had been convicted of. Additionally, the submitted record did not include any documents reviewed by Council member White, nor any of the documents Mr. Finn previously provided the Tribal Council.

17. The MCT Tribal Election Court of Appeals was not provided the documentation Mr. Finn submitted regarding Mr. LaRose's criminal conviction.

18. This Court was not provided with any evidence that documents were not provided to the MCT Tribal Election Court of Appeals because of bad faith by either the Leech Lake Tribal Council or the MCT Executive Committee.

19. The MCT Tribal Court of Appeals upheld the certification decision, noting that the only evidence it had that Mr. LaRose might be ineligible to run for office were the unsupported statements of Mr. Finn in his three-page challenge. The Court stated that it was hampered by the timelines contained in the Election Ordinance and the materials submitted.

20. Mr. Finn and Mr. LaRose were the two highest vote-getters for Secretary-Treasurer in the Primary Election.

21. Mr. Finn did not file an election protest to challenge the Primary Election results.

22. Mr. LaRose won the popular vote for Secretary-Treasurer in the General Election.

23. Mr. Finn filed a timely challenge to the General Election by hand delivering a copy to the MCT at 2:15 p.m. on Tuesday, June 19, 2018, and providing a copy to the undersigned on the same day.

Conclusions of Law & Mixed Questions of Fact and Law

1. Under Minnesota law, if a person pleads guilty to a felony and receives a stay of imposition, they have been "convicted" of a felony. This is true, even though if they successfully complete the terms of the stay of imposition, their record will indicate that the conviction has been "deemed" a misdemeanor under Minn. Stat. § 609.13. *State v. S.A.M.*, 891 N.W.2d 602 (Minn. 2017); *State v. Anderson*, 733 N.W.2d 128 (Minn. 2007); *In re Peace Officer License of Woollett*, 540 N.W.2d 829 (Minn. 1995).

2. The Election Ordinance states that a felony is any crime that is defined as such under "the law of the jurisdiction in which [the] crime was prosecuted." Minnesota state courts consider a guilty plea to a felony charge -- irrespective of successful completion of the terms of the stay of imposition -- as a felony conviction, and therefore, such convictions bar a Tribal member from holding office under the current legal structure.

3. The decision of the MCT Tribal Election Court of Appeal in *In re the Matter of the Appeal of Guy Green, III*, Decision & Order (2014) (Hon. Margaret Treuer, Chief Judge) is in accord with Conclusions of Law 1 & 2 above, and it is binding precedent. While well-reasoned at the time, the prior decision of the Leech Lake Tribal Court in *Gotchie v. Goggleye* (2006), is no longer good law, as it is inconsistent with both *Guy Green* and current Minnesota case law.

4. The Leech Lake Reservation Business Committee's February 21, 2006 Resolution stating convictions under Minnesota law that are "deemed a misdemeanor" are "indeed [considered to] be a misdemeanor" for purposes of candidate certification decisions, is inconsistent with the provisions of the MCT Election Ordinance and controlling MCT Tribal Election Court of Appeals' precedent, and is therefore invalid.

5. Mr. LaRose's guilty plea to Third Degree Assault is considered a felony conviction under the MCT Election Ordinance, and he is ineligible to hold office in the Band.

6. The Leech Lake Tribal Council did not provide a complete record of all the documents it considered when deciding whether to certify Mr. LaRose as a candidate for Secretary-Treasurer to the Minnesota Chippewa Tribe.

7. The MCT Election Court of Appeals' decision is final and cannot be reviewed by this Court. Election Ordinance, § 3.2(B)(10).

8. This Court does not possess jurisdiction to adjudicate Mr. Finn's claim that his due process rights under Article XIII of the MCT Constitution were violated by the prior proceedings in the MCT Tribal Election Court of Appeals.

Memorandum

Judges cannot rewrite constitutions or statutes; they must faithfully interpret them, and they are bound by prior precedent.

Mr. LaRose pled guilty to Third Degree Assault, a felony-level offense, in 1992, when he was a young man. He received a stay of imposition, and when he successfully completed the terms thereof, the conviction was deemed a misdemeanor. Yet fourteen years later, after Mr. LaRose was already serving as an elected official of the Leech Lake Band, the Minnesota Chippewa Tribe's Constitution was amended in a way that now precludes him from holding office. While no one alleges that he has been convicted of a felony since he was college-aged, and despite the fact that he has held a position as an elected official for many years and received thousands of votes by Band members, he cannot be certified as a candidate after this election cycle without, at a minimum, a change in the MCT Election Ordinance.

But even though Mr. LaRose is not legally entitled to hold office as Secretary-Treasurer now, this Court is without the power to invalidate the election. While Mr. Finn did everything in his power to get the information regarding Mr. LaRose's prior criminal convictions before the decisionmakers on the Tribal Council and the MCT Tribal Election Court of Appeals, his information was not received by the latter. It should be the Court itself that decides what is within the scope of the record, and it is common for parties to argue about whether the record needs to be supplemented with additional documents that were considered by the decisionmakers but not initially provided to the court. Here, because the Election Ordinance provides only 24 hours for the MCT Tribal Election Court of Appeals to render its decision on certification challenges, all of these decisions needed to be made in haste, and it was impossible for the court to ensure that it was truly reviewing the complete record. There is no indication that bad faith was involved in withholding documents from the MCT Tribal Election Court of Appeals.

Regardless, the Election Ordinance is clear that the decision of the MCT Tribal Election Court of Appeals is final. This Court has no power to review that decision. *See* Election Ordinance § 1.3(C)(6). Challenges to the General Election include only the person(s) contesting the election and the Election Board as parties. As such, they must focus on the activities of the Election Board in conducting the election, not on the decisions made by the Tribal Council in certifying candidates. This is seen in provisions throughout the Election Ordinance which, for example, allow the Court to compel the production of discovery from the Election Board – but not the Tribal Council. *See, e.g.*, Election Ordinance, § 3.2(A)(2).

It is worth noting, however, that the processes used to date by the Leech Lake Band are not in conformance with the Election Ordinance, and they must be modified for future elections. While the Tribal Council has the authority to prescribe the form for candidates' Certification of Eligibility and Authorization and Consent to Disclosure, those documents must conform to requirements contained in Section 1.3(D)(3) & (4) of the Election Ordinance. Even more

importantly, the Tribal Council is responsible for ensuring that candidates meet the constitutional and statutory requirements to run and hold office. It is the Tribal Council that must ensure that "[t]he scope of each criminal history check shall be sufficient to reasonably verify the eligibility of each candidate." Election Ordinance, § 1.3(D)(5). The materials produced in this proceeding and the prior proceeding before the MCT Tribal Election Court of Appeals do not satisfy this requirement. The Tribal Council can not determine, for example, if an individual has been convicted of a misdemeanor involving "misappropriation or embezzlement of money," if it simply reviews a conclusory list containing the number of misdemeanors a candidate is convicted of, without reference to the precise charges that resulted in the conviction. While the Band's gaming division can gather such information, it is the Tribal Council that is charged with reviewing it to ensure that the MCT Constitution and Election Ordinance are faithfully implemented.

For the above-stated reasons, the election contest filed by Donald "Mick" Finn is hereby denied.

IT IS SO ORDERED THIS 29TH DAY OF JUNE, 2018

Colette Routel
Leech Lake Election Contest Judge

EXHIBIT 6

LEECH LAKE ELECTION CONTEST COURT

Donald "Mick" Finn,

DECISION & ORDER

v.

Leech Lake Election Board.

On January 5, 2006, the Secretary of the Interior approved an amendment to the Minnesota Chippewa Tribe's ("MCT") Constitution, which had previously been adopted by the MCT membership at a duly called election. That amendment limits the ability of persons to hold office if they have certain prior criminal convictions. More specifically, it provides that:

> [n]o member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

MCT Constitution, Art IV, § 4.

To implement this new Constitutional provision, the MCT amended its Election Ordinance. Section 1.3(D)(1) of the Election Ordinance reiterates that no Tribal member "shall be eligible as a candidate or be able to hold office if he or she has ever been convicted of any felony of any kind." The Election Ordinance continues by stating that a felony is any crime that is defined as such under "the law of the jurisdiction in which [the] crime was prosecuted." Election Ordinance, § 1.3(D)(2)(c).

The Election Ordinance also establishes a detailed process by which a person's eligibility to hold office under these provisions shall be verified. Each candidate must submit a notarized document stating that he or she has not been convicted of a disqualifying crime. Election Ordinance, § 1.3(D)(3). Each candidate must also authorize the Band's governing body to conduct a criminal history background check to verify his or her eligibility. *Id.* at § 1.3(D)(4). The Band's governing body may create the form for this authorization, but it must require "such information as may be reasonably necessary to conduct the criminal history check, including all jurisdictions in which the person has resided or has been convicted of a felony or lesser crime and all names the person has used." *Id.*

After receiving these documents from the candidate, it is the responsibility of the Band's governing body to contract with an entity to conduct a criminal history check. The governing body must ensure that "each criminal history check shall be sufficient [in scope] to reasonably verify the eligibility of each candidate." Election Ordinance, § 1.3(D)(5). Following review of this background check, the Band's governing body must then decide whether to certify a candidate as eligible to hold office. "Certification decisions must adhere to the requirements of the Constitution and this Ordinance." *Id.* at § 1.3(C)(4).

The only persons who have standing to challenge the certification of a candidate are those persons who are themselves running for the same elected position. Election Ordinance, § 1.3(C)(6). A challenge must be submitted on the second business day following receipt by MCT's

Executive Committee of the notice of certification or non-certification. If a challenge is filed, the Band's governing body must submit "a complete record of all documents related to the challenge determination" on the next business day. *Id.* at § 1.3(C)(6). Then, the Tribal Election Court of Appeals has just twenty-four hours to issue a decision "based on the record provided by the Band governing body." The Election Ordinance clearly states that "[t]he decision of the Tribal Election Court of Appeals shall be final." *Id.*

Findings of Fact

1. Donald "Mick" Finn and Arthur LaRose were both candidates for Secretary-Treasurer of the Leech Lake Band in the 2018 election cycle.

2. In 1992, Mr. LaRose pled guilty to Third Degree Assault under Minnesota law.

3. Third Degree Assault under Minnesota law provides that "[w]hoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both." Minn. Stat. § 609.22, subd. 1. The pertinent sections of this statute have not changed since 1992. Third Degree Assault was considered a felony under Minnesota law in 1992, and it remains so today.

4. Mr. LaRose received a stay of imposition. He successfully completed the terms of the stay, which included minimal jail time and several years of probation. As a result, his Third Degree Assault conviction was later deemed a misdemeanor pursuant to Minn. Stat. §§ 609.13, 609.135.

5. As has been its prior practice, in 2018, the Leech Lake Tribal Council retained its gaming division to conduct the background investigation required of all candidates.

6. The gaming division's background investigation did not use forms that were created specifically for candidates for Tribal office. Rather, it used forms typically used to determine the eligibility of a person to be a gaming employee under the Tribal-State Compact. Therefore, the forms Mr. LaRose (and presumably the other candidates) completed are not notarized, only ask about misdemeanor convictions over the past 10 years and include irrelevant references to gaming-related crimes.

7. Attorney McConkey-Greene entered an appearance on behalf of the Leech Lake Election Board in these proceedings, and during the June 29, 2018 conference call with the Court, indicated that she was also representing the Leech Lake Tribal Council. Despite being ordered multiple times to produce the complete criminal background check for Mr. LaRose, those entities never provided the Court with a document listing the crimes that Mr. LaRose has been charged with, convicted of, and/or sentenced to in each jurisdiction.

8. In response to the Court's repeated attempts to obtain the background check for Mr. LaRose, the Leech Lake Tribal Council and Leech Lake Election Board produced two one-page summary sheets. One sheet, dated January 23, 2018, and signed by Jackie Tibbets, contains an entry for "11-K6-91-000714-questionable whether was FE/GM deemed to be MS." On the bottom of the page, next to Ms. Tibbets' signature, it states: "[n]ot sure on 'deemed to be MS,' no knowledge on MN Statues [sic] 638/394."

9. On the other background check sheet produced by the Leech Lake Tribal Council and the Leech Lake Election Board, dated January 29, 2018, the entry for Mr. LaRose simply states "(1) MS (deemed)."

10. Prior to making their certification decisions for the 2018 election cycle, Leech Lake Tribal Council members were not provided with a document listing the crimes that Mr. LaRose has been charged with, convicted of, and/or sentenced to in each jurisdiction.

11. Tribal Council members were permitted to make additional inquiries of the gaming division and review documentation in the division's possession regarding the criminal history of each candidate. At least one Tribal Council member – Steve White – reviewed Mr. LaRose's criminal history and ultimately voted against his certification.

12. Donald Finn attended a Leech Lake Tribal Council meeting prior to certification of candidates in the 2018 election cycle, and he presented the Tribal Council with documentation indicating that Mr. LaRose had pled guilty to Third Degree Assault, a felony charge, and received a stay of imposition.

13. On January 30, 2018, the Leech Lake Tribal Council voted 3-2 in favor of certification of Mr. LaRose as a candidate for Secretary Treasurer. Mr. LaRose did not recuse himself; rather, he voted in favor of his own certification.

14. On January 31, 2018, Mr. Finn filed a challenge to the certification of Mr. LaRose with the Minnesota Chippewa Tribe. Mr. Finn's challenge included documentation showing Mr. LaRose's Third Degree Assault conviction.

15. On February 5, 2018, the Leech Lake Tribal Council was notified of Mr. Finn's challenge and was asked to provide a "complete record" of all documents it considered in deciding to certify Mr. LaRose as a candidate for Secretary-Treasurer.

16. On February 6, 2018, the Leech Lake Tribal Council submitted documents it purported to be the complete record. Those documents did not include a list of any crimes that Mr. LaRose had been convicted of. Additionally, the submitted record did not include any documents reviewed by Council member White, nor any of the documents Mr. Finn previously provided the Tribal Council.

17. The MCT Tribal Election Court of Appeals was not provided the documentation Mr. Finn submitted regarding Mr. LaRose's criminal conviction.

18. This Court was not provided with any evidence that documents were not provided to the MCT Tribal Election Court of Appeals because of bad faith by either the Leech Lake Tribal Council or the MCT Executive Committee.

19. The MCT Tribal Court of Appeals upheld the certification decision, noting that the only evidence it had that Mr. LaRose might be ineligible to run for office were the unsupported statements of Mr. Finn in his three-page challenge. The Court stated that it was hampered by the timelines contained in the Election Ordinance and the materials submitted.

20. Mr. Finn and Mr. LaRose were the two highest vote-getters for Secretary-Treasurer in the Primary Election.

21. Mr. Finn did not file an election protest to challenge the Primary Election results.

22. Mr. LaRose won the popular vote for Secretary-Treasurer in the General Election.

23. Mr. Finn filed a timely challenge to the General Election by hand delivering a copy to the MCT at 2:15 p.m. on Tuesday, June 19, 2018, and providing a copy to the undersigned on the same day.

Conclusions of Law & Mixed Questions of Fact and Law

1. Under Minnesota law, if a person pleads guilty to a felony and receives a stay of imposition, they have been "convicted" of a felony. This is true, even though if they successfully complete the terms of the stay of imposition, their record will indicate that the conviction has been "deemed" a misdemeanor under Minn. Stat. § 609.13. *State v. S.A.M.*, 891 N.W.2d 602 (Minn. 2017); *State v. Anderson*, 733 N.W.2d 128 (Minn. 2007); *In re Peace Officer License of Woollett*, 540 N.W.2d 829 (Minn. 1995).

2. The Election Ordinance states that a felony is any crime that is defined as such under "the law of the jurisdiction in which [the] crime was prosecuted." Minnesota state courts consider a guilty plea to a felony charge -- irrespective of successful completion of the terms of the stay of imposition -- as a felony conviction, and therefore, such convictions bar a Tribal member from holding office under the current legal structure.

3. The decision of the MCT Tribal Election Court of Appeal in *In re the Matter of the Appeal of Guy Green, III*, Decision & Order (2014) (Hon. Margaret Treuer, Chief Judge) is in accord with Conclusions of Law 1 & 2 above, and it is binding precedent. While well-reasoned at the time, the prior decision of the Leech Lake Tribal Court in *Gotchie v. Goggleye* (2006), is no longer good law, as it is inconsistent with both *Guy Green* and current Minnesota case law.

4. The Leech Lake Reservation Business Committee's February 21, 2006 Resolution stating convictions under Minnesota law that are "deemed a misdemeanor" are "indeed [considered to] be a misdemeanor" for purposes of candidate certification decisions, is inconsistent with the provisions of the MCT Election Ordinance and controlling MCT Tribal Election Court of Appeals' precedent, and is therefore invalid.

5. Mr. LaRose's guilty plea to Third Degree Assault is considered a felony conviction under the MCT Election Ordinance, and he is ineligible to hold office in the Band.

6. The Leech Lake Tribal Council did not provide a complete record of all the documents it considered when deciding whether to certify Mr. LaRose as a candidate for Secretary-Treasurer to the Minnesota Chippewa Tribe.

7. The MCT Election Court of Appeals' decision is final and cannot be reviewed by this Court. Election Ordinance, § 3.2(B)(10).

8. This Court does not possess jurisdiction to adjudicate Mr. Finn's claim that his due process rights under Article XIII of the MCT Constitution were violated by the prior proceedings in the MCT Tribal Election Court of Appeals.

Memorandum

Judges cannot rewrite constitutions or statutes; they must faithfully interpret them, and they are bound by prior precedent.

Mr. LaRose pled guilty to Third Degree Assault, a felony-level offense, in 1992, when he was a young man. He received a stay of imposition, and when he successfully completed the terms thereof, the conviction was deemed a misdemeanor. Yet fourteen years later, after Mr. LaRose was already serving as an elected official of the Leech Lake Band, the Minnesota Chippewa Tribe's Constitution was amended in a way that now precludes him from holding office. While no one alleges that he has been convicted of a felony since he was college-aged, and despite the fact that he has held a position as an elected official for many years and received thousands of votes by Band members, he cannot be certified as a candidate after this election cycle without, at a minimum, a change in the MCT Election Ordinance.

But even though Mr. LaRose is not legally entitled to hold office as Secretary-Treasurer now, this Court is without the power to invalidate the election. While Mr. Finn did everything in his power to get the information regarding Mr. LaRose's prior criminal convictions before the decisionmakers on the Tribal Council and the MCT Tribal Election Court of Appeals, his information was not received by the latter. It should be the Court itself that decides what is within the scope of the record, and it is common for parties to argue about whether the record needs to be supplemented with additional documents that were considered by the decisionmakers but not initially provided to the court. Here, because the Election Ordinance provides only 24 hours for the MCT Tribal Election Court of Appeals to render its decision on certification challenges, all of these decisions needed to be made in haste, and it was impossible for the court to ensure that it was truly reviewing the complete record. There is no indication that bad faith was involved in withholding documents from the MCT Tribal Election Court of Appeals.

Regardless, the Election Ordinance is clear that the decision of the MCT Tribal Election Court of Appeals is final. This Court has no power to review that decision. *See* Election Ordinance § 1.3(C)(6). Challenges to the General Election include only the person(s) contesting the election and the Election Board as parties. As such, they must focus on the activities of the Election Board in conducting the election, not on the decisions made by the Tribal Council in certifying candidates. This is seen in provisions throughout the Election Ordinance which, for example, allow the Court to compel the production of discovery from the Election Board – but not the Tribal Council. *See, e.g.*, Election Ordinance, § 3.2(A)(2).

It is worth noting, however, that the processes used to date by the Leech Lake Band are not in conformance with the Election Ordinance, and they must be modified for future elections. While the Tribal Council has the authority to prescribe the form for candidates' Certification of Eligibility and Authorization and Consent to Disclosure, those documents must conform to requirements contained in Section 1.3(D)(3) & (4) of the Election Ordinance. Even more

importantly, the Tribal Council is responsible for ensuring that candidates meet the constitutional and statutory requirements to run and hold office. It is the Tribal Council that must ensure that "[t]he scope of each criminal history check shall be sufficient to reasonably verify the eligibility of each candidate." Election Ordinance, § 1.3(D)(5). The materials produced in this proceeding and the prior proceeding before the MCT Tribal Election Court of Appeals do not satisfy this requirement. The Tribal Council can not determine, for example, if an individual has been convicted of a misdemeanor involving "misappropriation or embezzlement of money," if it simply reviews a conclusory list containing the number of misdemeanors a candidate is convicted of, without reference to the precise charges that resulted in the conviction. While the Band's gaming division can gather such information, it is the Tribal Council that is charged with reviewing it to ensure that the MCT Constitution and Election Ordinance are faithfully implemented.

For the above-stated reasons, the election contest filed by Donald "Mick" Finn is hereby denied.

IT IS SO ORDERED THIS 29TH DAY OF JUNE, 2018

Colette Routel
Leech Lake Election Contest Judge

EXHIBIT 7

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

6530 U. S. Highway 2 NW
Cass Lake, MN 56633
218-335-3682/3586

Civil Division

Steven Wayne White, LLBO District II Representative, Petitioner vs. Arthur David LaRose, Respondent	**ORDER DENYING TRO/DIRECTING RESPONSES** **CASE NO. CV-18-66**

The above-entitled matter was assigned to this Deputy Judge by the Chief Judge. The Petitioner asks that this Court enter an ex parte restraining order preventing the Respondent from being sworn into a new term as Secretary/Treasurer of the Band and an order removing him from Band offices and requiring him to resign his current elected seat as Secretary/Treasurer. Representative White bases his claim for relief upon a decision entered by Leech Lake Election Contest Judge Routel[1], who on June 29, 2018 **denied** a contest of the general election results for Secretary/Treasurer, won by Respondent LaRose, filed by losing candidate Donald Finn. Although she denied the election contest by Finn, Judge Routel opined in a June 29, 2018 decision and order that in her opinion Respondent LaRose is a convicted felon and thus should not have been certified to run for elective office under the Minnesota Chippewa Tribe's Constitution at Article IV, section 4. It does not appear that this opinion expressed by Judge Routel was essential to the resolution of the election contest, but instead appears to be obiter dictum, a legal term for superfluous information in a Court decision that carries no precedential value.

Based upon Judge Routel's ruling Petitioner White now files this current action seeking to enforce the dictum in Judge Routel's decision that respondent LaRose is not eligible to serve as the Secretary/Treasurer. This Court denies the request for a TRO, but requests that the Parties provide this Court with additional information by July 11, 2018 to enable this Court to determine its jurisdiction in this case and to assess whether a preliminary injunction would be appropriate.

The Court denies the TRO request for several reasons. First, this Court is greatly concerned that this Court not be used to circumvent the process laid out by the MCT and the

[1] It should be noted that Judge Routel was one of the members of the MCT Tribal Election Court of Appeals who on February 7, 2018 denied a certification challenge to Respondent LaRose on the same grounds as those presented in the general election contest filed by Finn, but she did not participate in that appeal decision.

Band for entertaining certification and election contest issues. That process permits a candidate to challenge another candidate's eligibility to run for office and was used by candidate Finn to challenge LaRose on the felony disqualification issue. Candidate Finn lost that certification challenge, but attempted to raise it anew after he lost the general election to LaRose. This time it appears that the Leech Lake Election Contest Judge was provided with additional evidence of LaRose's prior criminal history that the MCT Tribal Election Court of Appeals was not provided with and it was based upon the review of this new evidence that Judge Routel apparently disagreed with the MCT Tribal Election Court of Appeals on the issue of whether LaRose should have been permitted to run for office. However, after stating that LaRose "is not legally entitled to hold office as Secretary-Treasurer" she goes on to conclude that the election results are not subject to challenge and are therefore final. Were this Court to grant the Petitioner a TRO it would in essence be granting the relief that Judge Routel ruled could not be granted.

Second, this Court does not find Judge Routel's finding regarding the Respondent's legal right to occupy the seat he was elected to of any legal import. This Court can certainly understand the consternation created in the Community and amongst the other elected officials when confronted with a decision such as that rendered by Judge Routel. She appears to be ruling that LaRose is not eligible to be seated as the Secretary-Treasurer, but there is no mechanism in place to stop him from being seated. In general a Court should not engage in legal analysis that is not necessary to the resolution of a case before that Judge because such analysis is deemed dicta and not entitled to any legal weight in a Court of law. See Hoffman v. Colville Confederated Tribes, Colville Ct of Appeals, 1997 Colville App. LEXIS 7 (1997).

Judge Routel essentially found that the issue of LaRose's eligibility had already been settled by the MCT Tribal Election Court of Appeals and could not be re-litigated via an election contest. Why she went on to opine that LaRose was obviously ineligible to run and be seated as an elected official is not clear from her opinion. However, it is clear to this Court that the opinion she expressed was not necessary to the ultimate resolution of the election contest and thus not entitled to full faith and credit or preclusive effect in this Court.

Third, Judge Routel relied upon a prior decision of the MCT Tribal Election Court of Appeals decision regarding Guy Green III and several decisions of the Minnesota Courts to rule that Defendants who receive suspended imposition of sentences in Minnesota on felonies, that are later reduced to misdemeanor convictions after complying with the conditions of the suspended, have nonetheless been convicted of felonies. It appears that this interpretation of the law is based upon a strict interpretation of the language used in Article IV, Section 4 of the MCT Constitution that any felony conviction, although later modified or vacated, nonetheless serves as a disqualifying felony. Therefore, under this interpretation if a Defendant is convicted of a felony, but that conviction is later reversed or pardoned, the fact that he is no longer a convicted felon is irrelevant to the issue of whether he was ever convicted of a felony. This interpretation of the law may run contrary to several federal court decisions on the issue, including United States v. Stalling, 301 F.3d 919 (8th Cir. 2002), interpreting suspended impositions of sentences as not being convictions at all. By concluding that he is a convicted felon by dicta but ruling for him on the issue of whether he can be challenged may actually result in him being condemned by faint praise because LaRose is not able to challenge the statement that he iis a convicted felon and thus not eligible for office because he prevailed before Judge Routel and thus has not standing to appeal her favorable decision to him.

WHEREFORE based upon the foregoing analysis it is hereby

ORDERED, ADJUDGED AND DECREED that the motion for an ex parte temporary restraining order is DENIED. The Court will take under advisement the issuance of a preliminary injunction in this case and direct the Respondent to submit his response to the petition on or before July 11, 2018. The Court would also appreciate being advised of what appeal rights Mr. Finn may have to appeal Judge Routel's decision denying his election contest and would also welcome the input of the MCT on this issue.

IT IS SO ORDERED this 3rd day of July 2018.

B. J. Jones

Hon. B. J. Jones, Conflict Judge
Leech Lake Tribal Court

EXHIBIT 8

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

6530 U. S. Highway 2 NW
Cass Lake, MN 56633
218-335-3682/3586

Civil Division

Steven Wayne White, LLBO District II Representative, Petitioner vs. Arthur David LaRose, Respondent	**ORDER DISMISSING PETITION** **CASE NO. CV-18-66**

The above-entitled matter was assigned to this Deputy Judge by the Chief Judge. The Petitioner requested that this Court enter a restraining order preventing the Respondent from being sworn into a new term as Secretary/Treasurer of the Band and an order removing him from Band offices and requiring him to resign his current elected seat as Secretary/Treasurer. Representative White bases his claim for relief upon a decision entered by Leech Lake Election Contest Judge Routel[1], who on June 29, 2018 **denied** a contest of the general election results for Secretary/Treasurer, won by Respondent LaRose, filed by losing candidate Donald Finn. Although she denied the election contest by Finn, Judge Routel opined in a June 29, 2018 decision and order that in her opinion Respondent LaRose is a convicted felon and thus should not have been certified to run for elective office under the Minnesota Chippewa Tribe's Constitution at Article IV, section 4. It does not appear that this opinion expressed by Judge Routel was essential to the resolution of the election contest, but instead appears to be obiter dictum, a legal term for superfluous information in a Court decision that carries no precedential value.

This Court denied the request for an ex parte temporary restraining order on July 3, 2018 but requested a response from the Respondent as well as the Minnesota Chippewa Tribe regarding the existence, or not, of an appeal from Judge Routel's order and the right of the

[1] It should be noted that Judge Routel was one of the members of the MCT Tribal Election Court of Appeals who on February 7, 2018 denied a certification challenge to Respondent LaRose on the same grounds as those presented in the general election contest filed by Finn, but she did not participate in that appeal decision.

losing candidate for Secretary/Treasurer to appeal Judge Routel's order refusing to overturn the results of the Band's general election. The Court received a response from both with the Respondent asserting that this Court lacks jurisdiction over the issues raised in the petition because they pertain to a Band election governed by a separate process for appeal. The MCT also advised the Court that Mr. Finn did not appeal Judge Routel's order denying his contest and thus the general election results were final.

This Court incorporates the legal findings made in the July 3, 2018 order denying TRO into this order as if set forth hereinafter and dismisses this application for a restraining order on the ground that this Court lacks the jurisdiction to interject itself into an election that is governed by other processes set up by the MCT and approved of by the Band. Judge Routel's decision denying Mr. Finn's election contest was appealable through the process set up by the MCT and endorsed by the Band, but he opted not to file an appeal. This Court finds that by exercising jurisdiction over this dispute it would in essence be permitting a separate process for election contests other than that countenanced by the Band. This would violate the clear process agreed to by the Band to permit the MCT to hear and resolve election appeals. Although the Court understands the concerns expressed by the Petitioner in his filing of this action and can also appreciate the Respondent's concern with the taint that may have been placed upon his office by the dictum used in Judge Routel's order, this Court cannot offer an opinion on a legal matter that is not appropriately before the Court.

WHEREFORE based upon the foregoing analysis it is hereby

ORDERED, ADJUDGED AND DECREED that petition for a restraining order in this action be and hereby is DENIED for want of jurisdiction and for failure to state a claim upon which relief can be granted in this Court.

IT IS SO ORDERED this 12th day of July 2018.

B. J. Jones

Hon. B. J. Jones, Conflict Judge
Leech Lake Tribal Court

ATTEST: Jacquelyn Weaselman
Clerk of Courts

EXHIBIT 9

THE MINNESOTA CHIPPEWA TRIBE
Executive Director, and Election Judge, and the Tribal Election Court of Appeals, Minnesota Chippewa Tribe

DELIVERED IN-PERSON BY HAND

In Re the Matter of:
Arthur David LaRose
Re:
Certification for Office,
Leech Lake Band of Ojibwe,
(2022 Regular Election)

Case No. _____
Answer to Challenge and Motion for Dismissal/Denial of Challenge for Failure to State a Claim for Relief and Failure to State a Claim for Which Relief May be Granted

1. Respondent Arthur D. LaRose brings this Motion and Response, first to the Executive Director as a response to the challenge, and as a separate and preliminary motion, but in conjunction with his Administrative Law Response and Legal Argument Response, which is incorporated herein and reserved in all respects.

2. Respondent respectfully requests the Court to address the motion as a preliminary motion to other matters as decision in Respondent's favor would promote a smooth and lawful election process to proceed and be conclusive as to the challenge. See, *Minn. Court R. Civ. Procedures, Rule 41. Dismissal of Actions, 41.02 Involuntary Dismissal; Effect Thereof (a) ...or upon motion of a party, ...dismiss an action or claim...or to comply with these rules or order of the court*(A-1).

3. Respondent LaRose requests the Court to find the challenge does not state a claim for relief or claim may be granted, and dismiss the challenge. See, *Federal Rules of Civil Procedure, Rule 12(b)(6)*(A-2); *Grisham v. United States, 103 F.3d 24, 25 (5th) Cir. 1997 on "enough facts to state claim to relief that is plausible on its face."*(A-3); *Hon. MCT Chief Judge Johnson 2018 Decision & Order*(A-4); and *MCT Election Ordinance Section 3.4(C)(6) the decision of the Court is final and unappealable*(A-5).

4. The MCT Election Ordinance, latest version of 12-14-21, provides, *inter alia* (among other things), in Section 3.2(B)(2) the contest alleging violations of the Election Ordinance must be violations that "must have taken place in the contested election." See, *MCT Elec. Ord. 1.3(D)(2)(c) "Applicable Law" on p. 24*(A-5); *Hon. MCT Court of Appeals Chief Judge Johnson 2018 Decision & Order on final and unappealable decision*(A-4); *Weaver v. Graham 450 U.S. 24 (1981)* on ex post facto(A-6); *United States v. Stalling, 301 F.3d 919 (8th Cir. 2002) on suspended impositions not being convictions at all*(A-7); *Laws of Minnesota 78th Legislature* on deemed Misdemeanor history on *Minn. Stat. 609.13 Subd. 3* conviction is deemed to be for a misdemeanor under *1993 c 326 art 2 s 10*(A-8): *1963 c 753 art 1 s 609, 13; 1971 c 937 s 21; 1976 c 435 s 6; 1986 c 444; 1993 c 326 art 2 s 10; 59 J.Crim.L. & Criminology 347, 356 (1968)* lessening convictions(A-9); *9 Minn. Prac., Criminal Law & Procedure 36.2 3d ed.*(A-10); *27*

HAMJPLP 1; see, also, *State v. Woodruff, 608 N.W.2d 881 (Minn. 2000), (Stay of imposition on a conviction for determining conditional release)*(A-11); see *Minn. Stat. 609.02(A-12); Minn. Stat. Subd. 3.* Misdemeanors means(A-12); *609.13(1)* Misdemeanor sentence imposed by law for a misdemeanor(A-13); *609.13 Subd. 3.* on conviction is deemed for misdemeanor(A-14); *Indian Civil Rights Act 1302 (a) 1., 3., 8., 9.* on civil rights(A-15); *MCT Const. Article XIII, Rights of Members will be afforded equal rights, equal protection, guarantees under the U.S., and due process of law*(A-16); *Minnesota Const. Art. 1. Bill of rights, Section 7. Due Process, 8. Redress of injuries and wrongs, 11. Attainders, ex post facto laws*(A-17); and *U.S. Constitution* is the supreme law, the *Bill of Rights, First Amendment on petition, and Fifth Amendment on Due Process*(A-18) of *"Applicable Law" on final and unappealable decisions under the MCT Election Ord. 3.4(C)(6) on p. 27*(A-5):

a. The Leonard M. Fineday Certification Challenge of LaRose on February 9, 2022(A-19) mirrors the Donald "Mick" Finn Challenge to the Certification of Arthur LaRose on January 31, 2018(A-20). The MCT Election Ordinance 3.4(C)(6) on p. 27(A-5), The decision of the Court is final and unappealable. This matter was decided by the MCT Tribal Election Court of Appeals Decision & Order by the Court, the Hon. Chief Judge Johnson (2018)(A-4).

b. MCT Election Ordinance 1.3(D)(1) on p. 7, …if he or she has ever been convicted of any felony of any kind…(A-5) See, 2021 Minn. Stat. 609.02 Subd. 5. "Conviction" means any of the following accepted and recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilt by the court; and 1992 c 571 art 6 s 10(A-21).

c. I had a stay of imposition, **convicted for misdemeanor in 1992** and discharged-**deemed a misdemeanor on November 27, 1995.** I had paid a $337.50 fine and served approximately 40 days in jail(; State of Minnesota v. Arthur D. LaRose (1992); 2018 MN BCA, Seq# 2753 criminal history on Arthur David LaRose, D.O.B. 05/11/1971 states criminal history, no felony conviction, and for a misdemeanor(A-22); Matter of Woollett 540 N.W.2d (1995) **was heard, considered and decided by the court en banc on December 22, 1995** and/or any case cited after November 27, 1995 in ref to State of Minn. v. Larose (1992) conviction, see U.S. Const. Art. I, sect. 10(A-51) and Minn. Const. Art. I, sect. 11 prohibit the state from enacting *ex post facto* laws; [redacted]vs…d[redacted]w; Weaver v. Graham 450 U.S. 24 (1981) opinion of the Court is unconstitutional as an *ex post facto* law when applied to petitioner, whose crime was committed before the statute's enactment(A-48); [redacted] And [redacted]1. Nor shall any State deprive any person of life, liberty, or property without due process of law; nor to deny any person within its jurisdiction the equal protection of the laws; Goldberg v. Kelly (1970) on violating procedural due process(A-23); and Murray's Lesser v. Hoboken Land & Improvement Co., 59 U.S. 18 How. 272 272 (1856) 'by law of the land' in Magna Carter…(A-24); and 18 U.S. Code 242 – Deprivation of rights under color of law – deprivation of any

rights, privileges, or immunities secured or protected by the Constitution or laws of the United States(A-25).

d. MCT Election Ordinance 1.3(D)(2)(c) on p. 7 "Applicable law" means the law of the jurisdiction in which a crime was prosecuted(A-5). State of Minn. v. LaRose (1992) was a stay of imposition for a misdemeanor. I was discharged from the judicial system on November 27, 1995. S[redacted]) that includes l[redacted]ct, C[redacted] V[redacted]k states, "Under the Minnesota criminal law, the nature of a conviction (felony, gross misdemeanor, misdemeanor, or petty misdemeanor) is ultimately based, not upon the charge itself, but upon the sentence imposed, ref in Minn.Stat. 609.13 is deemed a misdemeanor if the sentence is imposed within the ranges of those categories, 9 Minn. Prac., Criminal Law & Procedure 36.2 3d ed.(A-26); 27 HAMJPLP 1; see, also, State v. Moon (1990)(A-49), 463 N.W.2d 517 (Minn. 1990); 1993 c 326 art 2 s 10 of the Minn. Sess. Law – 1993, 78th Legislature on Subd. 3. **MISDEMEANORS**. If defendant is convicted of a misdemeanor…for purposes of determining the penalty for a subsequent offense; I[redacted], MCT Elec. Ord. on p.2 *"Band governing body" means a RBC, Reservation Tribal Council, or other entity recognized by the TEC as the lawful governing body of a constituent Band of the MCT; and United States v. Stallings, 301 F.3d 919 (8th Cir. 2002), interpreting suspended impositions of sentences as not being convictions at all(A-7).

e. MCT Elec. Ord. 1.3(C)(4) on p. 5 Each Band governing body must certify eligible candidates for office in accordance with MCT Const., the MCT Elec. Ord.(A-5) and 1.3(D)(5) on p. 9 Conducting Criminal History Check(A-5). See, LLBO Regulatory Board of Director letter dated Feb. 7, 2022 to LLBO Tribal Council with the process of Background Investigations as it pertains to the 2022 LLBO Election cycle. They contracted with Negen's Investigative Services to conduct the full 50 State and Federal reviews. A nationwide check was reviewed and created CHRI summary report that had been submitted to the Leech Lake Tribal Council. A 2022 Political Candidates Report for Arthur LaRose, D.O.B. 5/11/1971, and C[redacted]. The LLBO Certification Form for Sec.-Treas. position was approved at a Special Meeting of the LL Tribal Council on Feb. 9, 2022 and approved and carried by a vote of 3 for, and 1 against(A-27).

f. MCT Elec. Ord. 3.4(C)(6) The decision of the Court is final and unappealable. A challenge was submitted by Leonard M. Fineday on Feb. 9, 2022(A-19) that cited [redacted]) was decided and ordered by MCT Tribal Election of Court of Appeals on Feb. 7, 2018(A-4); and a copy of the Leech Lake Contest Judge Routel's Order from June 29, 2018 is attached to Leonard M. Finday's Challenge for court review that denied Finn's Election Contest (2018); [redacted], [redacted]n, a[redacted]

[redacted] and [redacted], Conflict Judge(A-29); and Leech Lake Tribal Court Hon. B.J. Denying TRO/Directing Responses [redacted] the MCT Tribal Court of Appeals who on Feb. 7, 2018 denied a certification challenge to Respondent LaRose [redacted]. It does not appear that [redacted] was essential to the resolution of the election contest, but instead [redacted], a legal term for [redacted] information in a Court decision that carries [redacted]. ...[redacted]... [redacted], this Court does not find Judge Routel's finding regarding the Respondent's legal right to occupy the seat he was elected to any legal import. ...[redacted] See Hoffman v. Colville Confederated Tribes, (1997). [redacted]. However, [redacted] and thus not entitled to full faith and credit or preclusive effect in this Court. [redacted], Judge [redacted]...he was ever convicted of felony. This [redacted], including United States v. Stalling, 301 F.3d 919 (8th Cir. 2002), interpreting suspended impositions of sentences as not being convictions at all(A-28). By concluding that he is a convicted felon by dicta but ruling for him on the issue of whether he can be challenged...Hon. B.J. Jones had clarified the *opine* and *dicta* for the record, that Judge Routel's conclusion of law on absolute convictions. See, *Benton v. Maryland, U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969) on due process(A-30).*

g. Register of Actions on Case No. 11-K6-91-000714, Case Type: **Misdemeanor**, Date Filed: **09/30/1991,** LaRose v. State of Minn. (1992) was filed on 09/30/1991 as case type – Misdemeanor(A-31). Point of Information, this case action type was a direct result of legal actions reported by the other defendant's attorney Harry Eliason to the Minnesota Attorney General's office on the circumstances of this case. [redacted] while his family slept, and the police had asked if he wanted to press charges first, Mr. [redacted]

5. The 2022 Tribal Election Calendar (**A-32**) sets out the election calendar period from December 28, 2021 to July 22, 2022 (re *Court of Appeals Decision 2018*).

6. The challenge is therefore not within the scope of the Election Ordinance as an alleged violation in the current election period. See, *MCT Elec. Ord. 3.2(B)(2)*(A-5).

7. The Executive Director and the Election Judge, Election Court, Court of Appeals and courts of the Minnesota Chippewa Tribe and Leech Lake Band of Ojibwe may dismiss the challenge and/or contest if it does not state a claim for relief. See, *Minn. R. Civ. P. 12.03* on sufficient claim for relief(A-33); *Barton v. Moore, 558 N.W.2d 746, 749 (Minn. 1997)* sets forth a legally insufficient claim for relief(A-34); and *Entzion v. Ill. Farmers Ins. Co., 675 N.W.2d 925, 928 (Minn. Ct. App. 2004) on statute of limitations which a lawsuit must be started*(A-35).

8. T[redacted], I[redacted]l, where the election contest filed by Donald Finn was denied by Leech Lake Contest Judge Colette Routel. See, *Abbott v. McNeff, 171 F. Supp. 2d 935, 939 (D. Minn. 2001) on statutes of limitation on endless litigation and old claim*(A-36).

9. On January 30th, 2018 the Leech Lake Tribal Council had voted in favor of certification of Mr. LaRose, who thereafter became the duly elected Secretary-Treasurer and is now the incumbent in office. Emphasis added, Mr. LaRose was certified on February 9, 2022 by the Leech Lake Tribal Council. The Leech Lake People have continued to vote as the *electorate* in electing Mr. LaRose in many election(s).

10. The MCT Court of Appeals had upheld the certification in 2018. The MCT Court of Appeals decision was final and could no longer be reviewed. The MCT Election Ordinance Sec. 3.2(B)(10). Decision and Order, Hon. Tadd M. Johnson, Chief Judge, February 7, 2018. See, *Abbott v. McNeff, 171 F. Supp. 2d 935, 939 (D. Minn. 2001)* on statutes of limitation on endless litigation and old claim(A-36); and *Wong v. Minnesota Dept. of Human Services (2016) on suit for statute of limitations*(A-37).

11. The Leech Lake Band of Ojibwe Tribal Court, per Conflict Judge B.J. Jones. Ordered in t[redacted]n, i[redacted]ur [redacted]3), dismissed a related collateral restraining order attempt in *CV-18-66*, in part for "failure to state a claim upon which relief can be granted(A.29)."

12. The Minnesota Chippewa Tribe, Executive Director, may dismiss a challenge that does not contain a claim for relief under the Election Ordinance, and t[redacted]f. This is by authority of the *Leech Lake Band court rules*, and analogous to *Rule 12(B)(6) of the Federal Rules of Civil Procedure* allowing dismissal for failure to state a claim(A-38), and analogous to the *Minnesota Rules of Civil Procedure* providing for the same; federal, state, and tribal case law all has extensive case law upholding such dismissals on *sua sponte* "of one's own accord." See, *Carlisle v United States, 517 US 416 (1996)(A-39)*; *Trest v. Cain, 522 US 87 (1997)(A-40)*; and *5A Charles A Wright & Arthur R. Miller, Federal Practice and Procedure 1356, at 296 (2d Ed. 1990)(A-41)*.

13. The Election Court of Appeals decision in 2018 was non-appealable by rule of the MCT Election Ordinance 3.4(C)(6)(A-5), and *res judicata* (the thing is decided) and is not,

cannot be a fresh or new challenge in the current election period. Therefore, it is not a challenge allowed by the MCT Election Ordinance at this later election (four years later). See, *Thompson v. Myrick, 24 Minn. 4 (Minn. 1877) on a valid and final judgment extinguishes the claims and precludes any subsequent actions on tort claims*(A-42).

14. C[redacted] brought by another party or name with standing, if the same decided issues and claims now barred by *res judicata* are attempted to be presented (r[redacted] or [redacted] to pretend it's a new matter or case). See, *Mach, Jr. v. Wells Concrete Prods. Co., N.W.2d (Minn. 2015)*(A-43); *Gollner v. Cram, 258 Minn. 8 (1960)*(A-50); and *Kaiser v. N. States Power Co., N.W. 2d 899, 902 (Minn. 1984)*(A-44) *(quoting Montana v. United States, 440 U.S. 147, 153 (1979)*(A-45).

Wherefore, Respondent respectfully requests the MCT Executive Director and the MCT Election Court of Appeals and Courts of the Leech Lake Band to order the following relief:

1. Dismiss the challenge and/or contest for failure to state a claim and failure to state a claim for which relief can be granted, being as this is the 2022 election, and no new alleged violations or cause can be or is presented other than attempting to relitigate barred claims. See, *8 C.F.R. 3.2(b)(2)(c)(2) (1999) that are time barred*(A-46).

2. Apply the doctrine of c[redacted] if necessary to any other persons with standing attempting t[redacted] 18 (noted above in *Hon. Johnson, MCT Appellate Court Decision & Order (2018)*)(A-4). See, *Benton v. Maryland, U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969) on due process*(A-30).

Date: 2-11-22

Arthur David LaRose, Respondent

Address: PO Box 370
Cass Lake, MN 56633

Attachments: Table of Attachments & Attachment Cover Sheet No's.

TABLE OF ATTACHMENTS: ATTACHMENT COVER SHEET NO.:

TABLE OF ATTACHMENTS: ATTACHMENT COVER SHEET NO.:

EXHIBIT 10

Received 2:21 pm
2-17-2022
Mary Straza
2/17/22 Jordan Smith
Arthur LaRose 2-17-22

Arthur "Archie" LaRose, LLBO Secretary-Treasurer
190 Sailstar Dr NW
Cass Lake, MN 56633

February 17, 2022

Cathy Chavers, MCT President
PO Box 217
Cass Lake, 56633

RE: Requesting an "Emergency" Special Meeting of the Minnesota Chippewa Tribe, TEC

Dear Honorable President Chavers:

I am cordially requesting an emergency Special Meeting of the Minnesota Chippewa Tribe, Tribal Executive Committee in the next two (2) weeks. In addition, I am praying for RECONSIDERATON of the decision & order and MCT Const. Article IV-Tribal Elections, Sec. 4., and MCT Const. Article XIII-Rights of Members shall be accorded by the governing body equal rights, equal protection, …no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the U.S., including …the right to petition for action or the redress of grievances, and due process of law. I am citing the following actions to be considered by the MCT, TEC:

1. MCT Election Ord. 1.3(C)(6) clearly states that the CHALLENGER'S timeline and deadline had been adhered to; the CANDIDATE had to answer the challenge in accordance to the timeline and deadline; however, the MCT Tribal Election Court of Appeal's had failed in following their timeline and deadline of convening and within forty-eight (48) hours of receiving the challenge, record, answer, decide the issue of certification or non-certification based on the materials described above. See, *A.L. Answer to Challenge was received at 2:15 p.m. on Feb. 11, 2022 and MCT Tribal Elec. Court of Appeal's Decision & Order was received at 11:17 a.m. on Feb. 16, 2022 to A.L.*

2. MCT Election Ord. 1.3(C)(6) clearly states that the decision of the Tribal Election Court of Appeals must be in writing and whom was designated as the Chief Judge and be signed by this person. See, *MCT Tribal Election Court of Appeals Decision & Order does not designate the Chief Judge or their signature on Feb. 16, 2022.*

3. MCT Election Ord. 3.2(B)(10) clearly states that the judge will not have jurisdiction to rule on questions relating to interpretation of the Rev. Const. and Bylaws of the MCT. See, *MCT Tribal Election Court of Appeals Decision & Order on p. 1 clearly states, "DISCUSSION Article IV, Sec. 4 of the Constitution provides that: No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer,* ***if he or she has ever been convicted of a felony of any kind****; or…"*

4. The appearance of a "Conflict of Interest" may need to be disclosed by MCT Tribal Election Court of Appeals Judge Robert Blaeser's relationship with Leonard Fineday.

5. The appearance of a "Conflict of Interest" may need to be disclosed by MCT Tribal Election Court of Appeals Judge Robert Blaeser. His wife (L.S.) may have interned at the same law firm Best & Flannigan as Leonard Fineday.

6. Rev. Const. and Bylaws of the MCT, MN, Article IV-Tribal Elections, Sec. 4 was as amended under protest, challenged, by resolution in Dec. of 2021set for re-examination; however, in the footnote, As amended per Amendment IV, approved by the Secretary of the Interior on January 5, 2006. When is the Amendment IV effective date because normally under the Sec. 4 it should *note* the effective date of when its applied, such, grandfather clause, retro-cede, time and day of enactment, or how its applied.

7. MCT Election Ord. 3.4(C)(6) states that the decision of the Court is final and unappealable. See, (*LaRose MCT Cr Appl. 2018) and (LaRose MCT Cr. Appl. 2022)).*

8. Arthur LaRose's decision & order was tainted and calls into question Mr. LaRose's due process by combining another Challenger's conclusion in distorting the truth.

Once again, I am sincerely requesting an emergency special meeting on reconsideration to duly discuss these item enumerated in 1 through 8. The question before the MCT, TEC is whether the Rev. MCT Const. and Bylaws and Rev. MCT Elect. Ord. have to be followed by all parties, the language within those documents describe in clear language the process, and the timelines, deadlines, and procedures. This immediate emergency special meeting is imperative to maintain justice and welfare of ourselves and descendants.

Sincerely,

Arthur LaRose

Arthur LaRose, Secretary-Treasurer
Leech Lake & MCT Member

Cc: Leech Lake RBC Members
MTC, TEC Members
Gary Frazer, Executive Director

Att: Rev. Const. and Bylaws of the MCT, MN
Rev. MCT Elect. Ord.
MCT Trib. Court of Appeals letter at 11:17 a.m., 2/16/22
Arthur LaRose Answer to Challenge at 2:15 p.m., 2/11/22
Arthur LaRose Letter on Due Process at 11:07 am, 2/16/22
MCT Trib. Court of Appeals letter 2018

EXHIBIT 11

The Minnesota Chippewa Tribe

Administration
218-335-8581
Toll Free: 888-322-7688
Fax: 218-335-8496
Home Loan
218-335-8582
Fax: 218-335-6925
Economic Development
218-335-8583
Fax: 218-335-8496
Education
218-335-8584
Fax: 218-335-2029
Human Services
218-335-8586
Fax: 218-335-8080

February 18, 2022

Arthur LaRose
190 Sailstar Drive NW
Cass Lake, MN 56633

Mr. LaRose,

I am in receipt of your February 17, 2022, request for an "Emergency" Special meeting of the Minnesota Chippewa Tribe, TEC.

You are requesting the meeting for reconsideration of the MCT Tribal Election Court of Appeals Decision and Order regarding your eligibility to run for the Leech Lake Band of Ojibwe Secretary-Treasurer position in the upcoming election.

Section 1.3 (C) (6) of the Election Ordinance as amended clearly states that the Court's decision is final and therefore, not subject to appeal or reconsideration.

Because the Court's decision is final I am denying your request for an "Emergency" Special meeting of the MCT TEC.

Sincerely,

Catherine Chavers
President

cc: TEC members
LLRBC Members

EXHIBIT 12

8:44am Received 2/24/2022

TO: Catherine Chavers, President of the MCT/TEC

From: Faron Jackson, Vice President of the MCT/TEC

Arthur LaRose, MCT/TEC Member

Kevin R. Dupuis, Sr., MCT/TEC Member

Leonard Alan Roy, MCT/TEC Member

Date: February 22, 2022

Subject: Requesting a Special Meeting of the MCT/TEC

PER MCT BYLAWS ARTICLE II – TRIBAL EXECUTIVE COMMITTEE MEETINGS Section 3. The President shall call a special meeting of the Tribal Executive Committee upon a written request of at least one-third of the Tribal Executive Committee.

CC: Leech Lake RBC Members

We would like the meeting scheduled no later than March 4, 2022

Agenda

1. The Minnesota Chippewa Tribe administration of elections and Election Ordinance
   a. Arthur LaRose Letter dated February 17, 2022
   b. Arthur LaRose Letter dated February 16, 2022
   c. MCT Trib. Elec. Crt., of Appeals Decision & Order February 17, 2022

Special Emergency MCT/TEC Meeting Request

February 22, 2022

Pursuant to MCT Bylaws, ARTICLE II - TRIBAL EXECUTIVE COMMITTEE MEETINGS, Sec. 3. The President shall call a special meeting of the Tribal Executive Committee upon a written request of at least one-third of the Tribal Executive Committee. The President shall also call a special meeting of the Tribal Executive Committee when matters of special importance pertaining to the Tribe arise for which he deems advisable the said Committee should meet.

We the undersigned TEC members do hereby request an emergency TEC meeting to address the civil rights deprivations impacting our elections and are constitutional violations of Revise Minnesota Chippewa Constitution, Minnesota. And the U.S. Constitution and the Indian Civil Rights Act of 1968.

Concur:

Alan Roy,

Kevin DuPuis,

Faron Jackson,

Archie LaRose,

The Minnesota Chippewa Tribe

Administration
218-335-8581
Toll Free: 888-322-7688
Fax: 218-335-8496
Home Loan
218-335-8582
Fax: 218-335-6925
Economic Development
218-335-8583
Fax: 218-335-8496
Education
218-335-8584
Fax: 218-335-2029
Human Services
218-335-8586
Fax: 218-335-8080

March 16, 2022

MEMORANDUM

TO: Minnesota Chippewa Tribe Enrollees

FROM: Catherine J. Chavers, President

RE: Emergency TEC Meeting

The emergency Minnesota Chippewa Tribe Tribal Executive Committee meeting held on Thursday, March 10, 2022, regarding the certification of Arthur LaRose for Secretary/Treasurer of the Leech Lake Reservation Tribal Council was adjourned after hearing presentations from Mr. LaRose as well as audience members. This means the Appellate Courts decision to not certify Mr. LaRose for the upcoming 2022 election still stands.

EXHIBIT 13

Gmail

Frank Bibeau <frankbibeau@gmail.com>

TEC Emergency Special Mtg - 3 questions and responses

1 message

Frank Bibeau <frankbibeau@gmail.com> Wed, Mar 9, 2022 at 12:38 PM
To: Catherine Chavers <cchavers@boisforte-nsn.gov>, David Morrison <david.morrison@boisforte-nsn.gov>, Faron Jackson <faron.jackson@llojibwe.net>, robertdeschampe@grandportage.com, April McCormick <aprilm@grandportage.com>, Melanie Benjamin <melanie.benjamin@millelacsband.com>, sheldon.boyd@millelacsband.com, Mike Fairbanks <Michael.Fairbanks@whiteearth-nsn.gov>, Alan Roy <alan.roy@whiteearth-nsn.gov>, kevindupuis@fdlrez.com, Ferdinand W Martineau Jr <FerdinandMartineau@fdlrez.com>, Steve White <steve.white@llojibwe.net>, Robbie Howe <robbie.howe@llojibwe.net>, Leroy Fairbanks III <leroy.fairbanks@llojibwe.net>, Archie LaRose <arthur.larose@llojibwe.net>
Cc: dale greene <dale_greene@hotmail.com>, Walleye Storbotten <wstorbakken2003@yahoo.com>, Phil Brodeen <phil@brodeenpaulson.com>, Jane Rea-Bruce <jbruce@mnchippewatribe.org>, Gary Frazer <gfrazer@mnchippewatribe.org>, Joel Smith <jsmith@mnchippewatribe.org>
Bcc: Frank Bibeau <frankbibeau@gmail.com>, Randy Finn <randyf@paulbunyan.net>, Riley Plumer Esq <rileyfplumer@gmail.com>, Joe Plumer <jplumer@paulbunyan.net>

Good afternoon,

Please find attached *Responses to the 3 Questions from TEC members* sent to the Four TEC members who requested the Special Meeting. I am assisting Archie LaRose and I have attached responses to the 3 questions, a draft TEC resolution to consider to fix the problem, and Legal Memorandum explaining Hudson v Zinke (2020) (Phil's 2020 memo) and Hudson v Haaland (Zinke) (2021) and implications for MCT Constitution, and Rights of Members.

Possible Agenda

1. Does the MCT Election Ordinance apply the same for candidates, voters and judges as to time frames, signatures on decision, identifying who is Chief Judge. Brief history by Archie LaRose

2. TEC discussion about whether, how and if and when the unconstitutional felon amendment will EVER be invalidated, or not result in different decisions (non-certification without any new evidence or known convictions) from one election cycle to another.

Questions for the TEC

3. What does final and unappealable mean if no new evidence is brought to the RBC in 2022?

4. Should the 2018 LaRose certification decision stand as final and unappealable?

5. Should the LLRBC have a different decision too? or follow the ruling of the Leech Lake Tribal Court decision in 2006?

6. If the amendment is unconstitutional as ex post facto here, and obtained in an unconstitutional (less than 30%) secretarial election with waivers, in violation of Indian Civil Rights Act of 1968 and Art. XIII Rights of Members, is it lawful to continue to enforce an unconstitutional law?

Discussion about draft TEC resolution - Phil Brodeen and Frank Bibeau

Miigwitch,

Frank

2 attachments

TEC Sp Mtg 3 Qs and Responses, draft resolution w- legal memo Exhibits 3-9-22.pdf
4765K

TEC draft resolution to severe unconstitutional felon amendment 3-8-2022.docx
23K

Special TEC Meeting - March 10, 2022

TEC Questions and Responses by Frank Bibeau

1. Define the action that is being requested of the TEC?

   Ultimately, to recognize that the if ever convicted amendment is un-constitutional as violating *ex post facto* laws under MCT Constitution, Art XIII Rights of Members, rights of all the other citizens of the United States, the U.S. Bill of Rights (Constitution) and Indian Civil Rights Act of 1968, and was obtained
   BY
   Using an unconstitutional secretarial election process as found in Hudson v Zinke (2020), not meeting the 30% protection threshold, waived by the BIA AND, LaRose has standing under Hudson v. Haaland (2021) to sue
   AND
   Using TEC quasi-judicial authority to invalidate the amendment in conformance Zinke and Haaland by using tribal sovereignty (see draft resolution attached) to correct a BIA/DOI mistake.

2. Define the legal question

   When and how will the TEC take action to correct the known unconstitutional ex post facto amendment obtained by unconstitutional (Zinke) methods, both in violation MCT members' rights and TEC oath of office?

   (The 2006 ex post facto certified question from Judge Wahwassuck at Leech Lake Tribal Court was RE-SERVED on the TEC in 2020. LaRose was certified in 2018.)

3. Define the matter of special importance pertaining to the Tribe as a whole.

   1. Issue repeats every election cycle, now different results for same old issues
   2. Members are disenfranchised from running for office
   3. Voters are disenfranchised from previously certified candidate/office holder
   4. This amendment is almost the sole cause for election certification challenges
   5. LaRose has property rights to remain in office, due process rights and other constitutional violations that are likely to end up in federal court as LaRose v TEC (MCT) and-or MCT election court panel

Please find the DRAFT TEC Resolution attached to invalidate an unconstitutional law, obtained in an unconstitutional way, along with Legal Memorandum on unconstitutional 30% requirement in Zinke and proper standing in Haaland decisions, and application to the MCT Constitution.

RESOLUTION NO. XX-22

WHEREAS, the Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe (MCT), comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth); and

WHEREAS, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe provides that the purposes of the tribal organization under the Act of June 18, 1934 (48 Stat. 984) include the preservation of individual rights of members and otherwise exercise all powers granted and provided the Indians for the general welfare of members of the Tribe; and

WHEREAS, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe provides for Tribal Elections in Art. VI, and Section 1, Right to Vote, requires all elections held on the six (6) Reservations shall be held in accordance with a uniform election ordinance to be adopted by the Tribal Executive Committee and

WHEREAS, in the 1990's several Reservation Business Committee members had been federally convicted for theft or misapplication of tribal funds, money laundering, obstructing justice, conspiracy, theft or bribery concerning programs receiving federal funds, willful misapplication of tribal funds, and conspiracy to oppress free exercise of election rights

WHEREAS, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe did not provide any limitations or preventions on candidacy to prevent tribal members convicted crimes involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization, the Tribal Executive Committee sought assistance from the Bureau of Indian Affairs (BIA) to amend the constitution,

WHEREAS, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe was amended by Secretarial Election approved by the Secretary of the Interior on January 5, 2006, to now provide in Section 4, that "No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization."

WHEREAS, the Tribal Executive Committee obtained certain election waivers from the BIA for the 2005 secretarial election, which circumvented the long standing 30% constitutional requirement under Article XII Amendment, Sec. 1, "This constitution may be . . . amended or revoked 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 if at least 30 percent of those entitled to vote shall vote. No amendment shall be effective until approved by the Secretary of the Interior."

WHEREAS, the amendment was properly and timely challenged by MCT voters for the MCT constitution by violating the 30% requirement and ex post facto "retroactive" violation using the "if ever convicted" to the Interior Board of Indian Appeals which found and held that

> On appeal to the Board of Indian Appeals (Board), Appellants maintain that (1) the Tribe's resolution requesting the Secretarial election was invalid; (2) insufficient notice of the election was provided; (3) BIA failed to notify tribal members that various regulations for the conduct of a Secretarial election had been waived; (4) voters improperly were permitted to register to vote on Election Day; (5) an insufficient number of votes were cast for the election to be valid; and (6) that Appellants' due process and equal protection rights were violated by these deficiencies. We conclude that Appellants lack standing to challenge the Tribe's resolution requesting the Secretarial election, that BIA properly determined that voter turnout was sufficient, that Appellants' remaining challenges fail for lack of substantiating evidence, and that Appellants fail to show any violation of their due process and equal protection rights. Therefore, we affirm the Regional Director's decisions. See Wadena et al v. Midwest Regional Director, Bureau of Indian Affairs, 47 IBIA 21 (04/23/2008).

WHEREAS, the federal district court decided on April, 10, 2020, in Hudson v. Zinke that "having determined that Article X of the [the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota] Tribal Constitution conflicts with the BIA's regulations, the court need not address whether Defendants' regulations in 25 C.F.R. § 81 are a reasonable interpretation of the IRA . . ." and invalidated the amendment to their constitution, which violates identical 30% MCT constitutional requirements.

WHEREAS, the Circuit Court of Appeals for *Hudson v Haaland (Zinke)* held Hudson lacked standing and explained

> [t]he "irreducible constitutional minimum of standing" is that (i) the plaintiff suffered an "injury in fact[,]" meaning "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (ii) the injury must be "fairly traceable to the challenged action of the defendant"; and (iii) a favorable decision by the court must be likely to redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992) (formatting modified); see also *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018) (To present a justiciable claim for relief in

> federal court, a plaintiff must establish that "he has standing to do so, including that he has a personal stake in the outcome, distinct from a generally available grievance about government.")

Here, as the presently seated, duly elected Secretary-Treasurer for the Leech Lake Band of Ojibwe (MCT), LaRose meets the constitutional minimum for standing with important constitutionally protected rights, which retroactive application may, but will not necessarily, violate the Ex Post Facto Clauses, one of the Due Process Clauses, the Takings Clause, or the Obligation of Contracts Clause of the U.S. Constitution, or similar provisions in tribal constitutions.

WHEREAS, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe provides in Article XIII, Rights of Members that

> All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

WHEREAS, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe does not expressly mention ex post facto laws, however, the Indian Civil Rights Act of 1968 does state at Sect. 9 that "No Indian tribe in exercising powers of self-government shall— pass any bill of attainder **or ex post facto law**, (ex post facto adj. Latin for "after the fact," which refers to laws adopted after an act is committed making it illegal although it was legal when done, or increases the penalty for a crime after it is committed.) and such laws are specifically prohibited by the U. S. Constitution, Article I, Section 9.

WHEREAS, the amendment states **if he or she has ever been convicted** of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization, clearly violates the ex post facto protection, and which Chief Judge of LLBO Tribal Court did certify the following questions to the Tribal Executive Committee for opinion pursuant to Tribal Constitution Interpretation 1-80:

1. **Is Revised MCT Constitution Article IV intended to apply to Tribal council member elected to office prior to the date of enactment on January 5, 2006?**

2. **Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the date of enactment) constitute a retrospective application of the law?**

   See Gotchie et al v Goggleye, LLBO Tribal Court File No. CV-06-07, *Request for Opinion from Tribal Executive Committee* by the Honorable Judge Wahwassuck dated December 8, 2006.

WHEREAS, the Leech Lake Tribal Court decision in Gotchie v Goggleye specifically considered and concluded in Foot Note 2 that

> Although LaRose is not a party to this action, the Court notes that the decision in this matter would apply to LaRose in the same manner as Goggleye, as LaRose's conviction was also deemed to be for a misdemeanor pursuant to Minn. Stat. 609.13.

And that the Leech Lake Band of Ojibwe has relied on the hard fought legal battle tribal court decision as part of certification of candidates since 2006, and

WHEREAS, the Executive Director for the MCT verbally denied at an open TEC Meeting that the MCT never received the certified questions from the LLBO Tribal Court in 2006, which were *RE-SERVED* on the TEC at an open meeting by a Wally Storbakken, an eligible MCT voter (and co-Plaintiff with Gotchie above) in 2020 to restart the certified questions process before the TEC.

WHEREAS, the TEC has the constitutional obligations by oath to "preserve, support and protect the Constitution of the United States and the Constitution of the Minnesota Chippewa Tribe, and execute my duties as a member of the Tribal Executive Committee to the best of my ability, so help me God" and the adjudicatory responsibility for the MCT membership in the absence of a MCT Tribal court, and

WHEREAS, the TEC *FINDS*, that the amendment by Secretarial Election approved by the Secretary of the Interior on January 5, 2006, was and is a direct violation of the US Constitution Bill of Rights, MCT Constitution Article XIII Rights of Members, Indian Civil Rights Act of 1968 and; that *but for* the BIA conducting a secretarial election for unconstitutional amendments, using waivers to circumvent the 30% eligible voter turnout constitutional protections in the MCT Const. like explained in Zinke, and

WHEREAS, the Tribal Executive Committee *FINDS*, that almost every MCT election cycle, has had MCT challenges based on the ex post facto application of the 2006 amendment, causing years of time and money spent and tribal members' disenfranchised from rights of candidacy, resulting in differing and inconsistent Tribal Election Court of Appeals decisions, and

NOW THEREFORE BE IT FURTHER RESOLVED that the Tribal Executive Committee *CONCLUDES* that Section 4 "No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization." violates long standing federal and tribal laws prohibiting ex post facto applications and unconstitutional secretarial election process not meeting the minimum 30% required eligible voter participation for the 2005 Secretarial Election ballot initiative to be valid; and

BE IT FINALLY RESOLVED that the Tribal Executive Committee hereby *ORDERS* and DECLARES Section 4 above happened by mistake or fraud and is invalid from the beginning as *ab initio* for violating several constitutionally protected Rights of Members' and rights of candidacy and Section 4 is hereby removed from the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe consistent with the federal court decisions in Hudson v Zinke 2020 and Hudson v Haaland (2021).

CERTIFICATION

We do hereby certify that the foregoing resolution was duly acted upon by a vote of ____ For, _____ Against, _____ Silent, at a Regular meeting of the Tribal Executive Committee, a quorum being present, held on _____ at Minnesota.

_____
, President
THE MINNESOTA CHIPPEWA TRIBE

_____
, Secretary
THE MINNESOTA CHIPPEWA TRIBE

Frank Bibeau
ATTORNEY AT LAW

LEGAL MEMORANDUM

TO: Alan Roy, Kevin DuPuis, Faron Jackson, and Archie LaRose

FROM: Frank Bibeau, Tribal Attorney

DATE: February 20, 2022

SUBJECT: Ex Post Facto and Haaland (Zinke) 30%

Zinke 2020 explains how the similar IRA 30% MCT Constitutional threshold requirement should have been controlling in the 2005 Secretarial Election. After BIA Secretary Haaland became Secretary of the Interior, she replaced Sec. Zinke in the federal case caption, which became *Hudson v Haaland*, and is the name of the DC Circuit Appellate decision in 2021.

ISSUES

The Minnesota Chippewa Tribe's Tribal Election Court of Appeals began its Discussion in their *In Re LaRose Decision & Order* dated 2-16-22 with Article IV, § 4 of the Constitution which provides that the *ex post facto* application of "**'if he or she has ever been convicted of a felony of any kind . . . .'** (Emphasis added)." (Emphasis in original order, second time quoting Election Ordinance).

In LaRose's *Answer to Challenge* dated 2-11-22, LaRose specifically raises the *ex post facto* defense under the Indian Civil Rights Act of 1968 and Rights of Members under Article XIII. While the MCT Election Court did twice emphasize by bold "**if . . . ever**" the Order is void of any *ex post facto* analysis. Only discussion of the definition of a felon under Minnesota State law.

LaRose requested an Emergency TEC meeting again challenging the ". . . ***if he or she has ever been convicted of a felony of any kind; or …***" (emphasis in original), and asking about "effective date of when it's applied" or ex post facto.

MCT President Chavers denied the request 2-18-22 citing "Section 1.3 (C)(6) of the Election Ordinance as amended clearly states that the Court's decision is final and therefore, not subject to appeal or reconsideration."

The Problem is the ex post facto "if . . . ever" language was obtained by a Secretarial Election with waivers, in violation of the 30% MCT Constitutional requirement as described in Zinke.

LaRose is being deprived of his *various civil rights* (due process, property, etc.) because the MCT Election Court and TEC will not recognize and address the ex post facto defenses, privileges and immunities protections of Article XIII Rights of Members in the MCT Constitution and Indian Civil Rights Act of 1968.

ANALYSIS

On April 6, 2021, the United States Court of Appeals for the District of Columbia Circuit *vacated* and *remand* for *Dismissal*, the lower court Hudson v (Zinke) Haaland decision from April 14, 2020, for Hudson's lack of standing to bring the challenge. The decision did not warrant publishing, so no new federal case law was created. (See 2021 Haaland (Zinke) decision attached).

Zinke federal court decision stood for the 30% voter requirement participation for a valid IRA constitutional quorum to amend an IRA constitution, like the MCT constitution. The DC Circuit Court of Appeals held Hudson, in Hudson v Haaland now, as a person lacked standing as a voter to argue the 30% requirement, so Hudson v Zinke was dismissed. However, the DC Court of Appeals in Haaland clearly distinguished and explained that

> the "irreducible constitutional minimum of standing" is that (i) the plaintiff suffered an "injury in fact[,]" meaning "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (ii) the injury must be "fairly traceable to

> the challenged action of the defendant"; and (iii) a favorable decision by the court must be likely to redress the injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992) (formatting modified); see also Gill v. Whitford, 138 S. Ct. 1916, 1923 (2018) (To present a justiciable claim for relief in federal court, a plaintiff must establish that "he has standing to do so, including that he has a personal stake in the outcome, distinct from a generally available grievance about government.") (formatting modified).

The DC Appellate Court in *Haaland* went on to explain that

> Hudson was not injured by the substantive changes effected by the constitutional amendments. Hudson [was] not a member of the Tribal Business Council and could not be injured by the new rules providing for the recall of its members or for their potential discharge from the Business Council after a felony conviction.

(Id. yellow highlight for prospective, not ex post facto application)

Here, LaRose would have standing where Hudson does not, because LaRose meets the "irreducible constitutional minimum of standing" because he is currently the duly elected Secretary-Treasurer to the Tribal RBC, and is now in-fact injured by the new interpretation by the MCT Tribal Election Court of Appeals decision, to not certify his candidacy for re-election. LaRose requested an Emergency meeting of the TEC 2-17-2022, clearly emphasizing the "if he or she has ever been convicted of a felony of any kind" at the bottom of the page. The next day 2-18-22, the request was denied by MCT President Catherine Chavers.

LaRose has been previously certified as MCT candidate several times since the 2005 felon amendment, in part because the meaning of convicted felon under Minnesota Law was decided by the Leech Lake Tribal Court in Gotchie v Goggleye, after months of written and oral arguments (instead of 48 hours). The Goggleye Decision ultimately stated that neither George Goggleye or Archie LaRose were convicted felons under Minnesota State laws for purposes of remaining in tribal office. See Order CV-06-07.

While the Goggleye case dealt with the meaning of convicted felon, the Honorable Judge Wahwassuck, Chief Judge of LLBO Tribal Court did

> certify the following questions to the Tribal Executive Committee for opinion pursuant to Tribal Constitution Interpretation 1-80:
>
> > **1. Is Revised MCT Constitution Article IV intended to apply to Tribal council member elected to office prior to the date of enactment on January 5, 2006?**
> > **2. Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the date of enactment) constitute a retrospective application of the law?**
>
> See Gotchie et al v Gogglye, LLBO Tribal Court File No. CV-06-07, ***Request for Opinion from Tribal Executive Committee*** by the Honorable Judge Wahwassuck dated December 8, 2006.

Years later at a TEC meeting (and a few years ago in the past now), the Executive Director for the MCT verbally denied the MCT ever receiving the certified questions from the LLBO Tribal Court in 2006. Consequently, the certified questions were then *re-served* on the TEC at a TEC meeting by a Wally Storbakken, an eligible MCT voter (and co-Plaintiff Gotchie v Goggleye above) in 2020 to restart the certified questions process before the TEC.

The TEC has had 2 years to answer the certified questions and or eliminate the unconstitutional deprivations of ex post facto application of state laws. To date, the TEC has not taken steps necessary to explain in an opinion or an answer to either question. The questions simply ask if the "if he or she has ever been convicted of a felony of any kind" (express language) is unconstitutionally retroactively applied or ex post facto?

Ex Post Facto

Ex post facto laws, like the "if ever convicted" felon amendment language expressly violates the U.S. Constitution, MCT Constitution and the Indian Civil Rights Act of 1968. Specifically, §1302 provides that

> No Indian tribe [like the MCT] in exercising powers of self-government shall
> (8) deny to any person within its jurisdiction the equal protection of its laws or ***deprive any person of*** liberty or ***property without due process of law***;
> (9) pass any bill of attainder or ***ex post facto law***;

See *Indian Civil Rights Act of 1968* (25 U.S.C. §§ 1301-03).

Here, because the TEC is exercising powers of self-government by creating and adopting a uniform election ordinance the TEC has a clear duty and responsibility as

> a representative Chippewa tribal organization, [to] maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare of ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota . . .

to Declare whether the "if ever convicted" felon amendment is unconstitutional because it violates the MCT Constitution (1964), ICRA 1968 and decided LL Tribal case law (2006). (See also *Retroactivity of Statutes* by Minnesota House Research Department Updated: Feb. 2016 attached, What Constitutional Limits Are There on the Retroactive Application of Laws? Any enacted state law must follow the federal and state constitutions in order to be enforceable. There are three provisions in the U.S. and Minnesota Constitutions that can invalidate retroactive legislation. These provisions are: the prohibition against the impairment of contract rights, the protection of vested interests under the due process clause, and the prohibition against ex post facto laws.) Therefore, these same three (3) provisions could invalidate retroactive MCT language of the amendment.

It is unfortunate, but does not matter whether the *Request for Opinion from Tribal Executive Committee* by the Honorable Judge Wahwassuck dated December 8, 2006, was NOT received 15 years ago. What matters is that the same certified questions request was re-served on the TEC, and whether TEC will actually respond or acquiesce quietly allowing the continued unconstitutional, ex post facto language to deprive MCT members of their constitutionally protected rights and guarantees.

MALFEASANCE?

Is it malfeasance as a TEC member to understand the felon amendment is unconstitutional when applied retroactively before Jan. 5, 2006, and to allow the ex post facto offensive language continue to unconstitutionally deprive MCT members' rights of candidacy still today in other MCT election certifications and into the future?

LaRose has a property right and vested interest in his duly elected MCT official Secretarial-Treasurer that has been repeatedly granted by the Leech Lake voters[1] and by Tribal Court order comments in the Leech Lake Tribal Court Order in Goggleye. The TEC knows and should take action to eliminate this unconstitutional, retroactive, ex post facto violation and civil rights deprivations.

Under principles of tribal sovereignty, self-determination and self-governance, like an act of Congress quasi-over ruling the United States Supreme Court in Duro v Riena, the Congressional Duro Fix stopped what was going to be endlessly confusing civil rights deprivations and litigation over rights of different Indians on different Indian reservations.

The TEC may consider, in an adjudicatory fashion with the benefit of hindsight to recognize the unconstitutionality and years of MCT election candidacy civil rights deprivations and costly legal challenges. And because the "if ever convicted" felon language is unconstitutional since before the secretarial election in 2005, the TEC can declare mistake or fraud as *ab initio* meaning "from the beginning" through legislation resolution. This is the difference between Hudson v Zinke facts and MCT secretarial election 2005 facts **because the BIA granted waivers to change, for the first time in an MCT election, the definition of quorum of eligible voters circumventing the constitutional 30% minimum protections of all MCT voters**.

Please review the attached draft TEC resolution to legislatively vacate an unconstitutional, ex post facto law on its face.

---

[1] See also INTERIOR BOARD OF INDIAN APPEALS, Richard A. Jones, Jr. v. Acting Minneapolis Area Director, Bureau of Indian Affairs, 31 IBIA 58, 60 (07/14/1997) where "there is no dispute as to the facts underlying the charges in the petition. The charges are based on acts taken in 1988. Although the acts were subsequently widely known in the community, [the accused councilman] was reelected by his constituent district in 1996. Based on these undisputed facts, * * * [l]ike the Tribal Council, we are persuaded that the tribal electorate has already expressed its will in this matter. Thus, we also deem the charges contained in the petition to be not "substantial" as that term is used in Section 5." Adding "Like the Area Director, the Board is reticent to interpret the Tribe's Constitution in the absence of an interpretation from the Tribal Executive Committee. However, Article X, Section 5, vests the Secretary with significant responsibilities. In the absence of a tribal interpretation of Article X, Section 5, the Board concludes that the Secretary has not only the authority, but also the duty, to interpret this section as necessary to carry out those responsibilities."

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5160 **September Term, 2020**

FILED ON: APRIL 6, 2021

CHARLES K. HUDSON,
APPELLEE

v.

DEBRA HAALAND, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE INTERIOR, ET AL.,
APPELLANTS

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01988)

Before: SRINIVASAN, *Chief Judge*, MILLETT and KATSAS, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia, briefed and argued by counsel. We have accorded the issues full consideration and determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the judgment of the United States District Court for the District of Columbia be **VACATED** and the case be **REMANDED FOR DISMISSAL**.

I

Charles Hudson is a Native American and a member of the federally recognized Three Affiliated Tribes of the Fort Berthold Reservation ("Three Tribes") in North Dakota. The Indian Reorganization Act of 1934, 25 U.S.C. § 5101 *et seq.*, which applies to the Three Tribes, provides for self-government by tribes through the adoption of their own constitutions and bylaws, *id*. § 5123.

In 2013, Hudson voted in an election to determine whether the Three Tribes' Constitution should be amended (i) to expand the number of members of the Tribal Business Council, (ii) to

require the Business Council to vote on the removal of any member convicted of a felony, and (iii) to allow members of the Three Tribes to recall sitting members of the Business Council. Pursuant to the Reorganization Act, that election was conducted by the Secretary of the Interior in what is known as a "Secretarial election." *See* 25 U.S.C. § 5123. Importantly, Secretarial elections under the Reorganization Act "are federal—not tribal—elections," as the Reorganization Act "explicitly reserves to the federal government the power to hold and approve the elections that adopt or alter tribal constitutions." *Thomas v. United States*, 189 F.3d 662, 667 (7th Cir. 1999).

After the proposed amendments passed, Hudson administratively challenged the Department of the Interior's decision to certify the election. Hudson alleged, in relevant part, that the Reorganization Act and the Three Tribes' Constitution each prohibit Interior from certifying elections unless 30 percent of all adult members of the Three Tribes vote. As only 5.5 percent of adult members voted in the election, Hudson contended that certification of the election violated the Act. Interior took the position that the 30 percent quorum requirement was satisfied because a quorum may be computed based on the (smaller) number of registered voters in the Three Tribes. For that reason, Interior denied Hudson's challenge and his subsequent administrative appeal.

Hudson sought judicial review in the United States District Court for the District of Columbia, alleging that Interior's decision was arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). The district court awarded summary judgment to Hudson on the ground that the Three Tribes' Constitution set the quorum requirement at 30 percent of all adult members of the Three Tribes. Interior filed a timely notice of appeal.

II

Because Hudson lacks standing to press his APA challenges, we cannot address the merits of his claims and must dismiss the appeal.

While no party raised standing as an issue in this court or in the district court, we have "an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). The "irreducible constitutional minimum of standing" is that (i) the plaintiff suffered an "injury in fact[,]" meaning "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (ii) the injury must be "fairly traceable to the challenged action of the defendant"; and (iii) a favorable decision by the court must be likely to redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992) (formatting modified); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018) (To present a justiciable claim for relief in federal court, a plaintiff must establish that "he has standing to do so, including that he has a personal stake in the outcome, distinct from a generally available grievance about government.") (formatting modified).

Hudson lacks standing because he has not suffered a cognizable injury-in-fact. He provides no explanation as to how the certification of the 2013 election harmed him in a concrete and particularized manner.

Hudson was not injured by the substantive changes effected by the constitutional amendments. Hudson is not a member of the Tribal Business Council and could not be injured by the new rules providing for the recall of its members or for their potential discharge from the Business Council after a felony conviction. *Cf. Carney v. Adams*, 141 S. Ct. 493, 499–501 (2020) (holding that Delaware lawyer who was interested in becoming a judge but not a registered member of any political party was not injured by State's requirement that courts be politically balanced because he failed to show that he was "'able and ready' to apply for a judgeship in the reasonably foreseeable future").

The expansion of the Tribal Business Council worked no harm to Hudson either. The Supreme Court has held that injuries may arise from apportionment decisions where the weight of one's vote is impaired relative to other citizens of the same polity. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 207–208 (1962). But Hudson claims no such relative injury here. Under the 2013 amendment (as relevant here), the Business Council went from seven single-member districts to seven two-member districts. *See* J.A. 234. That transition equally affected the potency of Hudson's and every other member of the Three Tribes' vote. In other words, the power of Hudson's vote was the same as those cast by all other voters. *Cf. In re U.S. Catholic Conference*, 885 F.2d 1020, 1028 (2d Cir. 1989) ("[T]he wrong that plaintiffs sought to vindicate in *Baker v. Carr* and in those cases that construed it was the dilution of their vote relative to the vote of other citizens of the same state—a direct, cognizable injury."). An alleged vote dilution harm requires a "point of comparison." *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020). Yet Hudson suffered no loss of voting power from the expansion relative to the other members of the Three Tribes.

In any case, the expansion of the Business Council authorized by the ballot never went into effect because the original Council structure was soon restored by a constitutional amendment. *See* J.A. 365 (2016 election "largely restore[d] the pre-2013 status quo, especially respecting the number of Business Council members serving the Tribes."). So Hudson's claims as to the expansion in the size of the Business Council are also moot. *See* J.A. 95 (amended complaint seeking only declaratory and injunctive relief); *see also McBryde v. Committee to Review Circuit Council Conduct & Disability Orders of Judicial Conf. of U.S.*, 264 F.3d 52, 55 (D.C. Cir. 2001) ("If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot.").

Nor has Hudson shown that the election process itself gave rise to a cognizable injury. The only injury asserted by Hudson is the supposed "diminishment of his vote" opposing the amendments. Oral Arg. Recording at 12:25–12:46. Hudson seems to mean that, if a larger quorum of voters were required, the amendments would have been harder to pass (and indeed would not have passed in 2013).

But that injury is shared by all those who voted against the amendments. It is a byproduct of the voting scheme; it is not an injury particularized to Hudson. *Cf. Wood*, 981 F.3d at 1314–1315 ("'[N]o single voter is specifically disadvantaged' if a vote is counted improperly, even if the error might have a 'mathematical impact on the final tally and thus on the proportional effect of every

vote.' Vote dilution in this context is a 'paradigmatic generalized grievance that cannot support standing.'") (quoting *Bognet v. Secretary Commonwealth of Pa.*, 980 F.3d 336, 356–357 (3d Cir. 2020)). In other words, this is not the sort of vote dilution theory that courts have found to support standing. *See Wood*, 981 F.3d at 1314 ("[I]n the racial gerrymandering and malapportionment contexts, vote dilution occurs when voters are harmed compared to 'irrationally favored' voters from other districts.") (quoting *Baker*, 369 U.S. at 207–208). The votes of all those who participated in the 2013 election weighed and were counted equally.

Hudson also argues that Interior's regulation allowing voters to challenge certification decisions, 25 C.F.R. § 81.22 (2012), conferred upon him a particularized injury. Oral Arg. Recording at 11:10–11:39 (injury particularized because only "qualified voter[s]" may challenge certification). But a regulation allowing individuals to pursue an *administrative* challenge says nothing about the existence of Article III standing to proceed in federal court. *See Massachusetts v. EPA*, 549 U.S. 497, 516–517 (2007) (parties with procedural authorization to pursue challenge to agency action must still demonstrate injury-in-fact to establish standing in federal court); *see also Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (same).

In that regard, this case is altogether different from cases in which a plaintiff's ability to serve in office is diminished by an election, or her individual interests have otherwise been uniquely affected. *See Rosales v. United States*, 477 F. Supp. 2d 119, 125–126 (D.D.C. 2007) (plaintiffs suffered an injury where referendum deprived them of the tribal offices they sought), *aff'd*, 275 F. App'x 1 (D.C. Cir. 2008); *Feezor v. Babbitt*, 953 F. Supp. 1, 4 (D.D.C. 1996) (members of a tribe had standing to challenge the tribe's enactment of an ordinance when "they were subjected to an unfair and arbitrary appeal process[,]" and "their voting rights and per capita shares have been diluted by the result of that process"). Hudson alleges no such personalized injury here.

At bottom, Hudson is asserting an interest in the proper administration of the law by the Secretary of the Interior. But "a plaintiff cannot establish standing by asserting an abstract general interest common to all members of the public, no matter how sincere or deeply committed a plaintiff is to vindicating that general interest on behalf of the public[.]" *Carney*, 141 S. Ct. at 499 (formatting modified); *see also Lance v. Coffman*, 549 U.S. 437, 442 (2007) (There is no standing where "[t]he only injury plaintiffs allege is that the law * * * has not been followed.").

Because Hudson lacks standing, and because mootness renders his claim as to the Business Council's expansion judicially unredressable in any event, we vacate the judgment of the district court and remand with instructions to dismiss the case.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41."

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

I Recieved
11:17 AM 2-16-22
Arthur LaRose
Mary S Fraze
Jevin LaRose

MINNESOTA CHIPPEWA TRIBE
TRIBAL ELECTION COURT OF APPEALS

In Re ARTHUR LAROSE and JAMES D. MICHAUD
Challenge to the Election Certification
Decision for Secretary/Treasurer and District 1 Representative
by the Leech Lake Reservation Business Committee

DECISION & ORDER

The Minnesota Chippewa Tribe Tribal Election Court of Appeals (the "Court") has received a challenge from Leech Lake Reservation Business Committee ("LLRBC") Secretary/Treasurer Candidate Leonard M. Fineday regarding the Leech Lake Tribal Council's decision to certify the candidacy of Mr. Arthur LaRose for the position of LLRBC Secretary/Treasurer. Based upon the records received, the Court approves Mr. Fineday's challenge finding that Mr. LaRose was convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (the "Constitution") and the Minnesota Chippewa Election Ordinance, as amended on December 14, 2021, (the "Election Ordinance").

The Court also received a challenge from LLRBC District 1 Candidate Jim Michaud asking the Court to overturn the Leech Lake Tribal Council's decision to deny his certification for District 1 Representative due to his two (2) felony convictions. The Court denies Mr. Michaud's challenge finding that his felony convictions make him ineligible pursuant to the application of the Article 4, § 4 of the Constitution and Sections 1.3(A) and 1.3(D) of the Election Ordinance.

DISCUSSION

Article IV, § 4 of the Constitution provides that:

> No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, **if he or she has ever been convicted of a felony of any kind**; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

(Emphasis added).

Section 1.3(A) of the Election Ordinance (Eligibility) provides that a candidate for office must, among other prerequisites, "meet the requirements of Article IV, Section 4 of the Constitution, as set forth in Section 1.3(D)."

Section 1.3(D)(1) of the Election Ordinance (Ineligibility by Reason of Criminal Conviction) provides in relevant part that "[n]o member of the Tribe shall be eligible as a candidate or be able to hold office **if her or she has ever been convicted of any felony of any kind....**" (Emphasis added).

A "felony" means a crime defined as a felony by applicable law. Election Ordinance, § 1.3(D)(2)(b). "Applicable law" means the law of the jurisdiction in which a crime was prosecuted. Election Ordinance, § 1.3(D)(2)(c). Any person who has filed a complete Notice of Candidacy has standing to challenge the

certification of a person who has filed a Notice of Candidacy for the same position. Election Ordinance, § 1.3(C)(6).

On or about December 28, 1992, Mr. LaRose plead guilty to and was convicted of Third Degree Assault in Cass County District Court, State of Minnesota pursuant to Minn. Stat. § 609.223.[1] Under Minnesota law, Third Degree Assault is a felony. Minn. Stat. § 609.02, Subd. 2 (1992). Mr. LaRose received a stay of imposition and completed the terms of the stay. Consequently, the Felony Third Degree Assault conviction was later deemed a misdemeanor pursuant to Minn. Stat. §§ 609.13, 609.135.

According to the Leech Lake Tribal Council's Certification Form, executed by Mr. LaRose, the Tribal Council certified Mr. Arthur LaRose (Incumbent) and Mr. Leonard M. Fineday as eligible to run for the position of Secretary/Treasurer and that their names be placed on the ballot for the June 14, 2022 Leech Lake General Election. A Criminal History Record Information report was prepared by William Ethier, LLBO Gaming Compliance Director. The report indicated that Mr. LaRose had one (1) petty misdemeanor and one (1) misdemeanor and that Mr. Fineday had three (3) petty misdemeanors and one (1) misdemeanor.

Mr. Fineday obtained the official court records of Mr. LaRose's felony criminal case from the Minnesota State Court Information System and provided a copy of those documents to the Court making it part of the record. This Court has a copy of the Complaint against Mr. Larose, dated November 20, 1991, charging him with nine (9) felony counts.

Under Minnesota law, if a person is convicted of a felony and receives a stay of imposition, that person has been "convicted" of a felony even if that person completes the terms of the stay of imposition and their criminal record later reflects that the felony conviction has been "deemed" a misdemeanor under Minn. Stat. § 609.13. *See In re Peace Officer License of Woollett*, 540 N.W.2d. 829 (Minn. 1995) (holding that a prior Minnesota conviction for third degree assault that is later deemed a misdemeanor pursuant to Minn. Stat. § 609.13 does not negate the conviction as a felony regardless of a stay of imposition or stay of execution). *See also State v. S.A.M.*, 891 N.W.2d 602 (Minn. 2017) (holding that a felony conviction later deemed a misdemeanor is still a felony conviction ineligible for statutory expungement).

Mr. LaRose was "convicted" of a felony in 1992. His criminal record now reflects that his felony conviction is deemed a misdemeanor under Minn. Stat. §§ 609.13, 609.135 but that does not change the fact that Mr. LaRose was at one time convicted of a felony.

Article IV, § 4 of the Constitution and Section 1.3(D)(1) of the Election Ordinance are clear. A person with any felony conviction is ineligible to run for office within the Minnesota Chippewa Tribe. Therefore, Mr. LaRose's felony conviction makes him ineligible as a candidate for the position of LLRBC Secretary/Treasurer. This Decision and Order is consistent with the binding precedent set forth in *In Re Guy Green III, Non-Certification for Office of District III Representative, Leech Lake Band of Ojibwe* (Minnesota Chippewa Tribe Tribal Election Court of

[1] The District Court Judge at the time allowed Mr. LaRose to receive a stay of imposition of sentence for three years on certain conditions. If Mr. LaRose met those conditions including, serving his jail time and having no additional law violations, his felony conviction would be converted to a misdemeanor on his record in 1995.

Appeals, Feb. 21, 2014) and *In re Peter Nayquonabe* (Minnesota Chippewa Tribe Tribal Election Court of Appeals, Feb. 15, 2018).

Mr. LaRose argues that this Court cannot reconsider the decisions of a prior Minnesota certification court because we are collaterally estopped from looking at the issue or it is *res judicata*. This would be a good argument if the prior courts had the information and documents, in the record, that was available to this Court. However, both Judge Rotelle and Judge Johnson make clear on the record that they had no evidence of Mr. LaRose's prior felony conviction. It was alleged by Mr. Finn in his Petition, but there was no evidence provided to the Court. The Court can only rely on evidence in the record. That is a sharp contrast to what was provided to this Court. We have the Complaint and the official records from the State of Minnesota demonstrating a felony conviction in 1992.

CONCLUSION

For the reasons stated above, this Court approves Mr. Fineday's challenge finding that Mr. LaRose was convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer.

This Court denies Mr. Michaud's challenge finding that his two (2) felony convictions made him ineligible to be a candidate for LLRBC District I Representative.

Date: February 16, 2022,

BY THE COURT:

Judge Ryan Simafranca
Judge Christopher D. Anderson
Judge Henry M. Buffalo Jr.
Judge Christina Deschampe
Judge Robert Blaeser

Received 2:21 pm
2-17-2022
Mary Strazzanti
2/17/22 Jordan Smith
Arthur LaRose 2-17-22

Arthur "Archie" LaRose, LLBO Secretary-Treasurer
190 Sailstar Dr NW
Cass Lake, MN 56633

February 17, 2022

Cathy Chavers, MCT President
PO Box 217
Cass Lake, 56633

RE: Requesting an "Emergency" Special Meeting of the Minnesota Chippewa Tribe, TEC

Dear Honorable President Chavers:

I am cordially requesting an emergency Special Meeting of the Minnesota Chippewa Tribe, Tribal Executive Committee in the next two (2) weeks. In addition, I am praying for RECONSIDERATON of the decision & order and MCT Const. Article IV-Tribal Elections, Sec. 4., and MCT Const. Article XIII-Rights of Members shall be accorded by the governing body equal rights, equal protection, …no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the U.S., including …the right to petition for action or the redress of grievances, and due process of law. I am citing the following actions to be considered by the MCT, TEC:

1. MCT Election Ord. 1.3(C)(6) clearly states that the CHALLENGER'S timeline and deadline had been adhered to; the CANDIDATE had to answer the challenge in accordance to the timeline and deadline; however, the MCT Tribal Election Court of Appeal's had failed in following their timeline and deadline of convening and within forty-eight (48) hours of receiving the challenge, record, answer, decide the issue of certification or non-certification based on the materials described above. See, *A.L. Answer to Challenge was received at 2:15 p.m. on Feb. 11, 2022 and MCT Tribal Elec. Court of Appeal's Decision & Order was received at 11:17 a.m. on Feb. 16, 2022 to A.L.*

2. MCT Election Ord. 1.3(C)(6) clearly states that the decision of the Tribal Election Court of Appeals must be in writing and whom was designated as the Chief Judge and be signed by this person. See, *MCT Tribal Election Court of Appeals Decision & Order does not designate the Chief Judge or their signature on Feb. 16, 2022.*

3. MCT Election Ord. 3.2(B)(10) clearly states that the judge will not have jurisdiction to rule on questions relating to interpretation of the Rev. Const. and Bylaws of the MCT. See, *MCT Tribal Election Court of Appeals Decision & Order on p. 1 clearly states, "DISCUSSION Article IV, Sec. 4 of the Constitution provides that: No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer,* ***if he or she has ever been convicted of a felony of any kind****; or…"*

4. The appearance of a "Conflict of Interest" may need to be disclosed by MCT Tribal Election Court of Appeals Judge Robert Blaeser's relationship with Leonard Fineday.

5. The appearance of a "Conflict of Interest" may need to be disclosed by MCT Tribal Election Court of Appeals Judge Robert Blaeser. His wife (L.S.) may have interned at the same law firm Best & Flannigan as Leonard Fineday.

6. Rev. Const. and Bylaws of the MCT, MN, Article IV-Tribal Elections, Sec. 4 was as amended under protest, challenged, by resolution in Dec. of 2021set for re-examination; however, in the footnote, As amended per Amendment IV, approved by the Secretary of the Interior on January 5, 2006. When is the Amendment IV effective date because normally under the Sec. 4 it should *note* the effective date of when its applied, such, grandfather clause, retro-cede, time and day of enactment, or how its applied.

7. MCT Election Ord. 3.4(C)(6) states that the decision of the Court is final and unappealable. See, (*LaRose MCT Cr Appl. 2018) and (LaRose MCT Cr. Appl. 2022)).*

8. Arthur LaRose's decision & order was tainted and calls into question Mr. LaRose's due process by combining another Challenger's conclusion in distorting the truth.

Once again, I am sincerely requesting an emergency special meeting on reconsideration to duly discuss these item enumerated in 1 through 8. The question before the MCT, TEC is whether the Rev. MCT Const. and Bylaws and Rev. MCT Elect. Ord. have to be followed by all parties, the language within those documents describe in clear language the process, and the timelines, deadlines, and procedures. This immediate emergency special meeting is imperative to maintain justice and welfare of ourselves and descendants.

Sincerely,

Arthur LaRose

Arthur LaRose, Secretary-Treasurer
Leech Lake & MCT Member

Cc: Leech Lake RBC Members
MTC, TEC Members
Gary Frazer, Executive Director

Att: Rev. Const. and Bylaws of the MCT, MN
Rev. MCT Elect. Ord.
MCT Trib. Court of Appeals letter at 11:17 a.m., 2/16/22
Arthur LaRose Answer to Challenge at 2:15 p.m., 2/11/22
Arthur LaRose Letter on Due Process at 11:07 am, 2/16/22
MCT Trib. Court of Appeals letter 2018

The Minnesota Chippewa Tribe

Administration
218-335-8581
Toll Free: 888-322-7688
Fax: 218-335-8496
Home Loan
218-335-8582
Fax: 218-335-6925
Economic Development
218-335-8583
Fax: 218-335-8496
Education
218-335-8584
Fax: 218-335-2029
Human Services
218-335-8586
Fax: 218-335-8080

February 18, 2022

Arthur LaRose
190 Sailstar Drive NW
Cass Lake, MN 56633

Mr. LaRose,

I am in receipt of your February 17, 2022, request for an "Emergency" Special meeting of the Minnesota Chippewa Tribe, TEC.

You are requesting the meeting for reconsideration of the MCT Tribal Election Court of Appeals Decision and Order regarding your eligibility to run for the Leech Lake Band of Ojibwe Secretary-Treasurer position in the upcoming election.

Section 1.3 (C) (6) of the Election Ordinance as amended clearly states that the Court's decision is final and therefore, not subject to appeal or reconsideration.

Because the Court's decision is final I am denying your request for an "Emergency" Special meeting of the MCT TEC.

Sincerely,

Catherine Chavers
President

cc: TEC members
LLRBC Members

BRODEEN & PAULSON, P.L.L.P.

MEMORANDUM

TO: Minnesota Chippewa Tribe, Tribal Executive Committee

FROM: Philip Brodeen, Legal Counsel

DATE: July 13, 2020

SUBJECT: Applicability of *Hudson v. Zinke*

I. HUDSON V. ZINKE

On April 10, 2020, the United States District Court for the District of Columbia issued a decision in *Hudson v. Zinke*.[1] The case involved a challenge by a member of the Three Affiliated Tribes to constitutional amendments that were purportedly enacted by voters during a Secretarial Election which occurred on July 30, 2013. The dispute focused on differing language in the Secretarial Election regulations and the provisions in the Three Affiliated Tribes Constitution and Bylaws. A brief overview of the Indian Reorganization Act of 1934 ("IRA") and its accompanying regulations will help frame the issues presented in *Hudson*.

A. THE INDIAN REORGANIZATION ACT

The IRA established a mechanism whereby tribes could reorganize through the enactment and ratification of constitutions and bylaws[2]. The IRA and its accompanying regulations set out procedures for tribes to amend tribal constitutions through Secretarial elections. Secretarial elections are "federal – not tribal" elections.[3] A tribe must ask the Secretary of the Interior to call and conduct a Secretarial Election to amend an IRA constitution. For an amendment to be ratified, the IRA requires a majority vote in favor and a quorum of voters participating in the election.[4] The quorum requirement of the IRA states that "the total vote cast shall not be less than 30 per centum of those entitled to vote."[5] This language also appears in many tribal constitutions adopted pursuant to the IRA.

Following the passage of the IRA, the quorum requirement was applied in a straightforward manner. Essentially, the quorum was calculated by taking into consideration all adult members entitled to vote. This was codified in the 1964 regulations related to Secretarial elections which defined a tribal member "entitled to vote" as "any adult member regardless of residence."[6] However, the Department of the Interior ("DOI") changed course drastically in 1967 to implement

---

[1] *Hudson v. Zinke*, CIV. No. 1:15-CV-01988-TSC (D.D.C. Nov. 12, 2015).
[2] 25 U.S.C. § 5123.
[3] *Thomas v. United States*, 189 F.3d 662, 667 (7th Cir. 1999).
[4] 25 U.S.C. § 5127.
[5] Id. at § 5123(c)(1)(B).
[6] 29 Fed. Reg. 14,359, 14,360 (Oct. 17, 1964).

a voter registration requirement for Secretarial elections. This was done by redefining "entitled to vote" to mean "only voters who are duly registered."[7] This principle was bolstered in 1981 when the regulations were again amended to state that "[o]nly 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."[8] The DOI vigorously defended its regulations related to quorum requirements and many Secretarial elections have been ratified based on quorums established in the aforementioned manner.

B. Secretarial Election at Three Affiliated Tribes

The DOI conducted at least six Secretarial Elections at Three Affiliated Tribes that utilized the voter registration requirement for determining quorum. These elections occurred in 1974, 1975, 1985, 1986, 2008, and 2010. The number of registered voters in these Secretarial elections ranged from approximately 1,000 to 2,500. In 2013, Three Affiliated Tribes conducted another Secretarial Election with only 1,249 members registered to vote. The total number of adult members of the Tribe at the time was 9,270. The voting occurred and the DOI determined that approximately 510 people voted, and the 30% registered-voter quorum requirement was met. The Tribal Business Council immediately passed a resolution criticizing the election's low turnout and asked the DOI to decertify the 2013 Secretarial election. This request was rejected by the BIA and the proposed amendments were approved and appended to the tribal constitution.

Three Affiliated Tribal Member Charles Hudson challenged the results of the Secretarial Election through the Interior Board of Indian Appeals ("IBIA"). He argued that constitutional amendments could only be ratified pursuant to the Three Affiliated Tribe Constitution if 30% of all tribal member eligible to vote in fact voted. The DOI countered by relying on its voter registration requirement and stated that the quorum requirement is established by looking at the number of tribal members registered to vote. The IBIA ruled in favor of the DOI and held that Hudson's challenge was "legally unsound."[9] Hudson then filed suit pursuant to the Administrative Procedures Act in United States District Court.

As previously mentioned, the Federal District Court ruled in favor of Hudson by finding that the explicit language in the Tribe's Constitution conflicted with the BIA's regulations. The District Court relied on 25 C.F.R. § 81.2(b) to find that the tribe's interpretation of its own constitution trumps to DOI's regulations.[10] The BIA appealed the *Hudson v. Zinke* decision to the D.C. Circuit Court of Appeals on June 5, 2020. The immediate impact of the *Hudson* decision will not be known until the appeal is decided. However, a brief discussion of its potential application would be beneficial for the current MCT Constitutional Amendment process.

---

[7] 32 Fed. Reg. 11,777, 11,778 (Aug. 16, 1967)(codified at 25 C.F.R. § 52.6(c)).

[8] 46 Fed. Reg. 1,672 (Jan. 7, 1981), codified at 25 C.F.R. § 52.11. The part 52 regulations were subsequently redesignated as 25 C.F.R. Part 81.

[9] *Hudson v. Great Plains Regional Director*, Bureau of Indian Affairs, 61 IBIA 253 (Sept. 15, 2015).

[10] 25 C.F.R. § 81.2(b) states that deference will be given to a Tribe's interpretation of its own constitution,

II. MCT CONSTITUTION

Article XII of the MCT Constitution provides that the constitution may be amended by a majority vote of the qualified voters of the Tribe voting at a Secretarial Election "if at least 30 percent of those entitled to vote shall vote." This language is nearly identical to the provision at issue in *Hudson v. Zinke*. The remainder of this memorandum will discuss the potential impacts of the *Hudson v. Zinke* case on the MCT Constitutional Amendment process.

A. PROSPECTIVE APPLICABILITY

The quorum requirement was discussed by the Tribal Executive Committee at the beginning of the MCT Constitutional Amendment process. The TEC determined at that time that the MCT Constitution requires 30% of all eligible voters to vote in order to enact amendments to the constitution. If the *Hudson v. Zinke* case is affirmed on appeal, the MCT's interpretation of the constitution will be given deference. This means that 30% of all tribal members will be required to vote in order to ratify amendments to the MCT Constitution. If *Hudson v. Zinke* is overturned on appeal, the BIA's regulations pertaining to registered voters could once again serve as the basis for deciding quorum requirements. The outcome and holding of the appeal will have a significant impact on the MCT Constitutional Amendment process.

B. RETROACTIVE APPLICABILITY

At the last TEC meeting, I was tasked with analyzing the impact that *Hudson v. Zinke* could have on prior constitutional amendments ratified using the BIA's method for calculating quorum based on registered voters. Of particular concern were the felony disqualification provisions adopted and ratified through a Secretarial Election in 2005/2006.

In February 2005, the TEC adopted Resolution No. 70-05 which requested a Secretarial Election on two amendments to the MCT Constitution. One of the amendments disqualified anyone convicted of a felony of any kind or of a lesser crime involving theft, misappropriation or embezzlement of money, funds, assets, or property of an Indian tribe or organization from running for public office. A Secretarial Election was held on November 22, 2005. A total of 6,552 members of the MCT registered to vote. Approximately 5,000 ballots were cast for each of the ballot questions. Total enrollment for the MCT at the time was approximately 34,000. The election results were certified and posted by the Secretarial Election Board and ratified by the Regional Director of the BIA. Shortly thereafter, MCT members Anthony Wadena, Darrell Wadena, and Frank Bibeau challenged the results of the Secretarial Election. One of their primary contentions related to a lack of the requisite 30% quorum of MCT members. The IBIA issued a decision on the challenge in 2008 and ruled that the BIA properly ratified the results of the Secretarial Election based upon the registered voter quorum requirements established in the Secretarial Election regulations.[11]

It is unlikely that *Hudson v. Zinke* can be used to challenge or invalidate the constitutional

[11] *Wadena v. Midwest Regional Director*, 47 IBIA 21 (2008).

amendments adopted and ratified in previous Secretarial Elections.[12] As a general matter, the decisions of federal courts are presumed to apply retroactively. However, there are important limits to such retroactivity. The United States Supreme Court has said that "a rule of federal law, once announced and applied ...must be given full retroactive effect by all courts adjudicating federal law," but that command only applies to "cases still open on direct appeal."[13] Importantly, the pronouncement of a new rule by a federal court does not require other courts to re-open or re-decide every case ever litigated to which a new rule might apply. A rule's retroactivity does not extend to cases that have proceeded to:

> Such a degree of finality that the rights of the parties should be considered frozen...[T]hat moment should be when the transaction is beyond challenge either because the statute of limitations has run or the rights have been fixed by litigation and have become res judicata.[14]

Res judicata means a thing adjudicated and is generally understood to mean that the same parties may not pursue the matter further. In a later case, the Supreme Court stated that "the res judicata consequences of a final, unappealable judgment on the merits [are not] altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case."[15]

CONCLUSION

The quorum issues related to the 2006 amendments to the MCT Constitution were litigated to a final, unappealable judgment on the merits in *Wadena v. Midwest Regional Director*. The subsequent ruling in *Hudson v. Zinke*, if it is upheld on appeal, will not automatically impact the validity of the 2006 Constitutional amendments unless a court takes the extraordinary step of entertaining a collateral attack to the final judgment. In rare cases, parties may collaterally attack otherwise final judgments, however, this only happens in truly exceptional cases. Rule 60(b) of the Federal Rules of Civil Procedure includes the following grounds for relief from a final judgment: 1.) mistake, inadvertence, surprise, or excusable neglect; 2.) newly discovered evidence, that with reasonable diligence, could not have been discovered in the time to move for a new trial; 3.) fraud; 4.) the judgment is void; 5.) the judgment has been satisfied, released, or discharged; or 6.) any other reason that justifies relief. Such a motion "must be made within a reasonable time" and generally within one year. F.R.C.P. Rule 60(c)(1). Thus, in practice, this type of relief is very unusual. Notwithstanding an extraordinary exception, it is fair to say that the presumptive retroactive effect of civil judgments reaches back only to controversies still open to judicial resolution. In conclusion, a challenge to the constitutional amendments adopted by the MCT in 2006 based on *Hudson v. Zinke* is likely to fail.

---

[12] Another important thing to note in *Hudson v. Zinke* is that the District Court was only singularly focused on the Secretarial Election that occurred in 2013. The six previous Secretarial Elections at Three Affiliated Tribes conducted using the BIA's registered voter quorum requirements were not mentioned.

[13] *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 87 (1993).

[14] *United States v. Estate of Donnely*, 397 U.S. 397 U.S. 286, 296 (1970) (Harlan, J., concurring). *See also James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 549 (1991).

[15] *Fed. Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

INFORMATION BRIEF
Research Department
Minnesota House of Representatives
600 State Office Building
St. Paul, MN 55155

Mary Mullen, Legislative Analyst
651-296-9253

Updated: February 2016

Retroactivity of Statutes

New laws enacted by the legislature usually affect only future conduct. Sometimes, however, legislation affects cases that are pending in the court system or conduct that occurred before the law was passed, these cases are known as "retroactive laws."

This information brief defines what a retroactive law is, explains constitutional limits on retroactivity, and addresses how a law must be drafted to be retroactive. This information is primarily intended to assist individuals who draft legislation in Minnesota. It also may be helpful to individuals who, as legislators, legislative staff, attorneys, or lobbyists, are involved in the legislative process in Minnesota.

Contents

New laws enacted by the legislature usually affect only future conduct. Sometimes, however, legislation affects cases that are pending in the court system or conduct that occurred before the law was passed, these cases are known as "retroactive laws."

Criminal conduct occurring before a law is enacted, or criminal cases pending at the time a law becomes effective, may be impacted by the new law. Similarly, civil causes of action that arose or civil cases that are pending at the time the law is enacted may also be affected by a new law. However, not every law that appears to be retroactive will be applied retroactively by the courts. A new law must satisfy a number of rules in order to be given retroactive effect. These rules are derived from state and federal constitutional limitations on retroactivity, from the Minnesota statute governing retroactive application of laws, and from court decisions interpreting these constitutional and statutory provisions.

What Is a "Retroactive Law"?

In the case *Cooper v. Watson*,[1] the Minnesota Supreme Court defined a retroactive law as a law that, in respect to past transactions or considerations, does one of the following:

- takes away or impairs vested rights acquired under existing laws
- creates a new obligation and imposes a new duty
- attaches a new disability

The court in this case gave a second definition of retroactive statutes, finding that a retroactive statute is a law that:

- intended to affect transactions that occurred, or rights that accrued, before the law became operative; and
- ascribes effects to the transactions or rights not inherent in their nature, in view of the law in force at the time they occurred.

The court focused on how the retrospective application of a law could destroy a right or create a duty where one did not previously exist. Retroactive laws have a wide variety of applications, including judicial and administrative procedures,[2] legal remedies,[3] pension benefits,[4] insurance

[1] 290 Minn. 362, 369, 187 N.W.2d 689, 693 (1971).

[2] *Holen v. Mpls.-St. Paul Metro. Airports Comm'n*, 250 Minn. 130, 84 N.W.2d 282 (1957); *Polk County Social Services v. Clinton*, 459 N.W.2d 362 (Minn. App. 1990).

[3] *See, e.g., Brotherhood of Ry. & Steamship Clerks, etc. v. State*, 303 Minn. 178, 229 N.W.2d 3 (1975) (law altering types of relief available under Human Rights Act); *Peterson v. City of Minneapolis*, 285 Minn. 282, 173 N.W.2d 353 (1969) (application of new comparative negligence law); *Reinsurance Assoc. v. Dunbar Kapple, Inc.*, 443 N.W.2d 242 (Minn. App. 1989) (statute changing the right to seek contribution and indemnity against a tortfeaser); *Olsen v. Special School District No. 1*, 427 N.W.2d 707 (Minn. App. 1988) (application of new discounted damages law).

[4] *See, e.g., Duluth Firemen's Relief Assoc. v. Duluth*, 361 N.W.2d 381 (Minn. 1985); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305 (Minn. App. 1994) (unemployment benefits).

coverage,[5] criminal violations,[6] and property rights.[7] The one thing they all have in common is the purpose or effect of altering a person or entity's preexisting rights or duties.

In accordance with the *Cooper* definitions, not every new law that affects past situations is retroactive. For example, in *Halper v. Halper*,[8] the court ruled that it is not a retroactive action to apply new statutory child support guidelines to parties whose divorce proceedings were not finalized before the new law became effective. The court ruled this way because the right to receive court-ordered child support (and the obligation to pay it) does not accrue until a court issues a final decree that dissolves the marriage.[9] Similarly, courts have held that a law is not retroactive if it is entirely procedural and merely changes the means to vindicate existing rights.[10] This is because a law affecting how to enforce rights (a procedural law) is not the same as affecting the rights themselves (a substantive law).

What Statutory Limits Are There on the Retroactive Application of Laws?

Minnesota Statutes, section 645.21, contains the specific statutory rule on retroactivity:

> *No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.*

Therefore, new statutes enacted by the Minnesota Legislature are presumed to apply prospectively, not retroactively, unless explicitly stated otherwise. The courts will not give a statute retroactive application unless it is intended by the legislature and the legislature's intent is expressed clearly and manifestly in the law.[11]

---

[5] *Holman v. All Nation Ins. Co.*, 288 N.W.2d 244 (1980); *Schoening v. U.S. Aviation Underwriters, Inc.*, 265 Minn. 119, 120 N.W.2d 859 (1963).

[6] *See e.g. Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955); *State v. Johnson*, 411 N.W.2d 267 (Minn. App. 1987); *State v. French*, 400 N.W.2d 111 (Minn. App. 1987) (*pet. for rev. denied*, Mar. 25, 1987).

[7] *Peterson v. Humphrey*, 381 N.W.2d 472 (Minn. App. 1986) (*pet. for rev. denied*, Apr. 11, 1986); *In Re Estate of O'Keefe*, 354 N.W.2d 531 (Minn. App. 1984) (*pet for rev. denied*, Jan. 4, 1985).

[8] 348 N.W.2d 360 (Minn. App. 1984).

[9] *See also Midwest Family Mutual Insurance Co. v. Bleick*, 486 N.W.2d 435 (Minn. App. 1992) (*remanded on other grounds*, July 27, 1992) (claim to automobile insurance benefits did not arise before new law's effective date); and *Olsen v. Special School District No. 1*, 427 N.W.2d 707 (Minn. App. 1988); *and compare Leonard v. Parrish*, 435 N.W.2d 842 (Minn. App. 1989) (right to court judgment had vested because all avenues of appeal were exhausted before new law's effective date).

[10] *See American Family Mut. Ins. Co. v. Lindsay*, 500 N.W.2d 807, 808 (Minn. Ct. App. 1993).

[11] *See e.g. State v. Traczyk*, 421 N.W.2d 299 (Minn. 1988); *Parish v. Quie*, 294 N.W.2d 317 (Minn. 1980); *In re Estate of Murphy*, 293 Minn. 298, 198 N.W.2d 570 (1972); *Cooper v. Watson*, 290 Minn. 362, 187 N.W.2d 689 (1971); *Chapman v. Davis*, 233 Minn. 62, 45 N.W.2d 822 (1951); *State v. Industrial Tool & Die Works, Inc.*, 220 Minn. 591, 21 N.W.2d 31 (1945) (*rehearing denied* Jan. 2, 1946); *State Dept. Of Labor v. Wintz Parcel Dr.*, 555 N.W.2d 908 (Minn. App. 1996); *Larson v. Wilcox*, 525 N.W.2d 589 (Minn. App. 1994); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305 (Minn. App. 1994); *Ind. Sch. Dist. No. 622 v. Keene Corp.*, 495 N.W.2d 244 (Minn. App. 1993) (*rev'd, in part, on other grounds*, 511 N.W.2d 728 (Minn. 1994)); *Thompson Plumbing Co., Inc. v. McGlynn*

Exception for Clarifying or Curative Laws

There is one major exception to the rule that legislative intent on retroactivity must be "clear and manifest." This exception applies to laws found by the courts to be "merely clarifying or curative." A clarifying law corrects a previously enacted law to reflect that law's original, preexisting intent. These corrections are often made for the following reasons:

- The existing law inadvertently failed to expressly cover a particular issue.[12]
- The earlier law contained a manifest error or was ambiguous in its coverage and, therefore, needed language refinement.[13]
- The existing law contained general language that was later found to need more specificity.[14]
- The courts have misinterpreted the construction of the existing law.[15]

Co., Const. Mort. Inv. Co., Inc., 486 N.W.2d 781 (Minn. App. 1992) (*rev'd on other grounds*, 1993 WL 536099); *In re Estate of Edhlund*, 444 N.W.2d 861 (Minn. App. 1989); *State v. Harstad*, 397 N.W.2d 419 (Minn. App. 1986); *Lee v. Industrial Electric Co.*, 375 N.W.2d 572 (Minn. App. 1985) (*aff'd without opinion*, 389 N.W.2d 205 (Minn. 1986)).

[12] *See Strand v. Special School District No. 1*, 392 N.W.2d 881 (Minn. 1986); *Schoening v. U.S. Aviation Underwriters, Inc.*, 265 Minn. 119, 120 N.W.2d 859 (1963). However, the courts may refuse to imply retroactive legislative intent where the legislature omitted certain types of transactions in the scope of a new law's coverage and it is unclear whether the omission was purposeful or inadvertent. As the Court of Appeals recently stated, "[A court] cannot supply that which the legislature purposely omits or inadvertently overlooks." (citing *Wallace v. Comm'r of Taxation*, 289 Minn. 220, 230, 184 N.W.2d 588, 594 (1971). *Farm Credit Bank of St. Paul v. Ahrenstorff*, 479 N.W.2d 102, 104 (Minn. App. 1992) (*pet. for rev. denied*, Feb. 27, 1992) (new statute of limitations clearly applied to mortgages entered into before the effective date but did not clearly apply to mortgages foreclosed before the effective date but still subject to deficiency judgment action).

[13] *See Rural Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702 (Minn. 1992); *Polk County Social Services v. Clinton*, 459 N.W.2d 362 (Minn. App. 1990); *Jewett v. Deutsch*, 437 N.W.2d 717 (Minn. App. 1989).

[14] *See State, by Spannaus v. Coin Wholesalers, Inc.*, 311 Minn. 346, 250 N.W.2d 583 (1976); *Brotherhood of Ry. & Steamship Clerks, etc. v. State*, 303 Minn. 178, 229 N.W.2d 3 (1975); *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831 (Minn. App. 1994) (*pet. for rev. denied*, June 29, 1994).

[15] *See Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987); *Hoben v. City of Minneapolis*, 324 N.W.2d 161 (1982). In contrast, comments by two legislators at committee hearings that the intent of the new law was to clarify rather than change existing law were not persuasive to the court in *Thompson Plumbing Co., Inc. v. McGlynn Co., Const. Mort. Inv. Co., Inc.*, 486 N.W.2d. 781 (Minn. App. 1992) (*rev'd on other grounds*, 1993 WL 536099), where the law change was made in response to changing industry conditions rather than misapplication of the law by the courts.

What Constitutional Limits Are There on the Retroactive Application of Laws?

Any enacted state law must follow the federal and state constitutions in order to be enforceable. There are three provisions in the U.S. and Minnesota Constitutions that can invalidate retroactive legislation. These provisions are: the prohibition against the impairment of contract rights, the protection of vested interests under the due process clause, and the prohibition against *ex post facto* laws.

Prohibition Against the Impairment of Contract Rights

Both the federal and state constitutions limit the power of the state to impair or modify contract rights.[16] However, the courts have not interpreted these provisions to create an absolute prohibition against contract impairments; rather, they have ruled that the state reserves some power to modify contract terms when the public interest requires.[17]

The United States Supreme Court has used a test to determine if an impairment of contract rights is sufficiently required by the public interest has three parts. If the legislation can survive scrutiny under each of the parts, then it will be found constitutional. This three-part test has been applied by the Minnesota Supreme Court:

- Is the impairment substantial?
- If so, has the state demonstrated a significant and legitimate public purpose behind the legislation?
- If so, is the adjustment of rights and responsibilities of the contracting parties based on reasonable conditions and of a character appropriate to the public purpose justifying adoption of the law?[18]

This three-part test is applied with more scrutiny where the state itself is one of the contracting parties than when the law regulates a private contract, because deference to a legislative assessment of reasonableness and necessity is not appropriate when the state's self-interest is at stake.[19]

---

[16] *See* U.S. Const. art. 1, § 10, cl. 1; Minn. Const. art. I, § 11.

[17] *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 98 S. Ct. 2716, 57 L.Ed. 2d 727 (1978); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983).

[18] *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 – 13, 103 S.Ct. 697, 704 – 05; *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983); *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643 (Minn. Ct. App. 2010) *aff'd*, 806 N.W.2d 820 (Minn. 2011).

[19] United *States Trust Co. v. New Jersey*, 431 U.S. 1, 26, 97 S.Ct. 1505, 1519 (1977) ("[A]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake."); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740, 751 (Minn. 1983); *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643, 652 (Minn. Ct. App. 2010) *aff'd*, 806 N.W.2d 820 (Minn. 2011).

Protection of Rights under the Due Process Clause

Courts also may refuse to give a statute retroactive application if doing so will deprive a person of a right in violation of the due process protections of the federal or state constitution.[20] A law will violate the Due Process Clause if it divests a constitutionally protected interest and does not "rationally relate to a legitimate government purpose."[21] However, a statute that merely affects the statute of limitations for a legal claim may be altered retroactively.[22] The courts have recognized the legislature's power to retroactively lengthen or shorten a statute of limitations, but have ruled that the legislature may not cut off existing causes of action without providing a reasonable period in which the party can assert the claim before it is time-barred.[23] This "reasonable period" may not be so short as to amount to a practical denial of the opportunity to pursue a claim.[24] The courts have found that a statute of repose, a limit not related to when a cause of action arises but related to an event fixed in time, is a substantive limit on a legal claim, and therefore can violate the Due Process Clause if it retroactively applied and does not relate to a legitimate government purpose.[25] Thus, the courts have distinguished between a statute of limitations and a statute of repose as respectively, procedural and substantive limitations, which affects whether or not a constitutionally protected interest has vested.

---

[20] *See* U.S. Const. amend. XIV, § 1; Minn. Const. art I, § 8.

[21] *See United States v. Carlton*, 512 U.S. 26, 30 (1994); *In re Individual 35W Bridge Litig*., 806 N.W.2d 820, 829 (Minn. 2011).

[22] *See Donaldson v. Chase Sec. Corp.*, 216 Minn. 269, 276, 13 N.W.2d 1, 5 (1943) *aff'd sub nom. Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945) (providing no protectable property interest in a statute of limitations defense); *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 833 (Minn. 2011) (noting that there is no protectable property interest in a statute of limitations defense); *Application of Q Petroleum*, 498 N.W.2d 772, 782 (Minn. App. 1993) (noting that a private vested right is required for a due process violation, and that no private vested right is acquired in this instance until a final judgment is entered).

[23] *Kozisek v. Brigham*, 169 Minn. 57, 60, 210 N.W. 622, 623 (1926) ("Statutes of limitation . . . 'are to be applied to all cases thereafter brought, irrespective of when the cause of action arose, subject, of course, to the universally recognized rule that they cannot be used to cut off causes of action without leaving a reasonable time within which to assert them.'") (quoting *Osborne v. Lindstrom*, 9 N. D. 1, 81 N. W. 72 (1899)); *Wichelman v. Messner*, 250 Minn. 88, 107, 83 N.W.2d 800, 817 (1957) ("The constitutional prohibitions against retrospective legislation do not apply to statutes of limitation . . . provided that a reasonable time is given a party to enforce his right.'") (quotations and citations omitted); *City of Willmar v. Short-Elliott-Hendrickson, Inc.*, 475 N.W.2d 73, 77 (Minn. 1991).

[24] *Kozisek v. Brigham*, 169 Minn. 57, 60, 210 N.W. 622, 623 (1926) ("Statutes of limitation . . . 'are to be applied to all cases thereafter brought, irrespective of when the cause of action arose, subject, of course, to the universally recognized rule that they cannot be used to cut off causes of action without leaving a reasonable time within which to assert them.'") (quoting *Osborne v. Lindstrom*, 9 N. D. 1, 81 N. W. 72 (1899)); *Wichelman v. Messner*, 250 Minn. 88, 107, 83 N.W.2d 800, 817 (1957) ("The constitutional prohibitions against retrospective legislation do not apply to statutes of limitation . . . provided that a reasonable time is given a party to enforce his right.'") (quotations and citations omitted); *City of Willmar v. Short-Elliott-Hendrickson, Inc.*, 475 N.W.2d 73, 77 (Minn. 1991); *State v. Messenger*, 27 Minn. 119, 125, 6 N.W. 457, 459 (1880) ("[T]he time limited must be so short as . . . to amount to a practical denial of the right itself.").

[25] *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 831 (Minn. 2011) ("we conclude that when the repose period expires, a statute of repose defense ripens into a protectable property right."); *Larson v. Babcock & Wilcox*, 525 N.W.2d 589, 591 (Minn. Ct. App. 1994) ("Babcock & Wilcox and Detroit Stoker have obtained a vested right not to be sued under the statute of repose.").

Prohibition Against *Ex Post Facto* Laws

The legislature's power to enact laws with retroactive effect is sharply limited in the criminal law area. Both the federal and state constitutions specifically prohibit states from enacting any *ex post facto* law.[26] An *ex post facto* law is a law that:

- applies to events occurring before its enactment; and
- disadvantages the offender affected by it.[27]

The purpose of this constitutional limitation, according to the courts, is to ensure that individuals have fair warning of legislative acts and to restrain arbitrary and, potentially, vindictive prosecution.[28]

Thus, a law is *ex post facto* if it has the purpose or effect of creating a new crime that can apply to past conduct, increase the punishment for a crime committed in the past, deprive a defendant of a defense available at the time the act was committed, or otherwise render an act punishable in a different, more disadvantageous manner than was true at the time the act was committed. In contrast, a law is not *ex post facto* if it merely changes trial procedures or rules of evidence, and operates in only a limited and unsubstantial manner to the accused's disadvantage. Additionally, a law is not *ex post facto* if it is a civil, regulatory law and is not sufficiently punitive in purpose or effect to be considered criminal.

How Can the Legislature Indicate that a Law Applies Retroactively?

Court cases provide guidance on how the legislature can effectively express its intent that a law be given retroactive effect. For example, using some form of the word "retroactive" in the law's effective date can be a sufficiently clear and manifest expression of legislative intent.[29] Similarly, language in the bill's effective date which makes the bill applicable to "causes of action arising before" or "proceedings commenced or pending on or after" a certain date has been found to be a clear indication that the legislature intends the new law to apply to legal claims arising before the effective date, as long as a claim has not yet exhausted all avenues of appeal.[30]

---

[26] U.S. Const. art. I, § 10; Minn. Const. art I. § 11.

[27] *Weaver v. Graham*, 450 U.S. 24, 101 S. Ct. 960, 67 L.Ed.2d 17 (1981); *Welfare of B.C.G.*, 537 N.W.2d 489 (Minn. App. 1995); *State v. Moon*, 463 N.W.2d 517 (Minn. 1990). (Although the Minnesota Supreme Court relied on the *Weaver* test in *Moon*, it expressly left open the question whether the Minnesota Constitution's *ex post facto* clause was more protective than the federal constitution because the issue was not raised by appellant in that case.) *See also Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955).

[28] *State v. Moon*, 463 N.W.2d 517, 521 (Minn. 1990).

[29] *Duluth Firemen's Relief Ass'n v. Duluth*, 361 N.W.2d 381 (Minn. 1985).

[30] *See LaVan v. Community Clinic of Wabasha*, 425 N.W.2d 842 (Minn. App. 1988) (*pet. for rev. denied*, Aug. 24, 1988); *Olsen v. Special School Dist. No. 1*, 427 N.W.2d 707 (Minn. App. 1988).

Importance of a Clear Indication of Legislative Intent

One simple lesson to be drawn from many "legislative intent" cases is that it is important for legislators and drafters of legislation to consider how they want or expect a proposed law to be applied and, then, to express that intention clearly and explicitly in the legislation. If retroactive application is intended, the law's effective date should say so, by using the word "retroactive" and other phrases explaining the scope of the law's application. The following are common examples of phrases indicating retroactive intent:

- "This act applies to cases filed before... and pending [specify date or time period to be covered]..."
- "This act applies to former and current employees retiring [specify date or time period to be covered]..."
- "This act applies to proceedings conducted [specify date or time period to be covered]..."

Moreover, if a new law is intended to clarify or correct an existing statute and is meant to affect transactions undertaken or occurring before the passage of the clarification, it would be wise to make that intent explicit by language in the bill title stating the clarifying purpose of the new law.

Similarly, if only prospective application of the law is intended, it may be worthwhile to make that intent clear and explicit as well. Such explicit language is particularly helpful if the legislature wants to avoid a later court decision implying retroactive application under the "clarifying or curative law" exception.

Prospective application can be indicated clearly by the following types of language in the law's effective date:

- "This act applies to causes of action accruing on or after..."
- "This act applies to proceedings commenced on or after..."
- "This act applies to agreements entered into on or after..."

For more information about legislation, visit the legislature area of our website, www.house.mn/hrd/.

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

Lawrence "Sandy" Gotchie,
Dale Greene, and Wallace Storbakken,
Plaintiffs,

v.

George James Goggleye, Jr., individually as the *politically* elected Chairman of the Leech Lake Reservation Business Committee,
Defendant.

Case No. CV-06-07

REQUEST FOR OPINION FROM TRIBAL EXECUTIVE COMMITTEE

TO: MINNESOTA CHIPPEWA TRIBAL EXECUTIVE COMMITTEE

WHEREAS, The Minnesota Chippewa Tribe has declared through Tribal Constitution Interpretation No. 1-80 that the Tribal Executive Committee possesses and exercises quasi-judicial powers and among said powers is the power to give official binding opinions regarding the meaning and powers possessed by tribal government under the MCT Constitution; and

WHEREAS, Tribal Constitution Interpretation No. 1-80 provides that such opinions may be requested by Tribal Judges; and

WHEREAS, Revised Article IV, Section 4 of the MCT Constitution provides, in part, that no member of the Tribe is eligible to hold office if he or she has ever been convicted of a felony of any kind; and

WHEREAS, Plaintiffs in the above matter sought a judgment from this court declaring that Leech Lake Reservation Tribal Council Chairman George Goggleye, Jr., was previously convicted of a felony by the State of Minnesota and sought an order restraining him from exercising any further elected duties; and

WHEREAS, the Leech Lake Tribal Court has entered a declaratory judgment finding that Chairman Goggleye is not precluded from holding office pursuant to the law of the State of

Minnesota, where his offense was prosecuted (See attached Findings of Fact, Conclusions of Law, and Declaratory Judgment ; and

WHEREAS, the Minnesota Court of Appeals has held that a retrospective statute will not be allowed to impair vested property rights. (*Murray v. Cisar,* 594 N.W.2d 918, 921, citing *Wichelman v. Messner*, 250 Minn. 88, 107.)

WHEREAS, the issue of the constitutionality of retrospective laws arose in the above-entitled case regarding application of revised Article IV of the MCT Constitution to Tribal Council members elected before the date of enactment; and

WHEREAS, the parties agreed that this issue is best decided by the Tribal Executive Committee as it potentially affects MCT Bands other than Leech Lake;

NOW THEREFORE, the Leech Lake Tribal Court certifies the following questions to the Tribal Executive Committee for an opinion pursuant to Tribal Constitution Interpretation No. 1-80:

> ***1. Is Revised MCT Constitution Article IV intended to apply to Tribal Council member elected to office prior to the date of enactment on January 5, 2006?***
> ***2. Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the date of enactment) constitute a retrospective application of the law?*** (A "retrospective law" is defined as one "which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights accruing, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates new a obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." (Black's Law Dictionary, 6th Edition.; see, also Baron v. Lens Crafters, Inc. 514 N.W.2d 305, 307 (Minn.App. 1994).)

RESPECTFULLY SUBMITTED THIS 8th DAY OF DECEMBER, 2006.

Korey Wahwassuck

Korey Wahwassuck, Chief Judge
Leech Lake Tribal Court

Leech Lake Tribal Court
FILED
In my office this
12/8/06
Clerk of Court

REVISED CONSTITUTION AND BYLAWS
OF THE
MINNESOTA CHIPPEWA TRIBE, MINNESOTA

PREAMBLE

We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare of ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law.

ARTICLE I - ORGANIZATION AND PURPOSE

Section 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Sec. 2. The name of this tribal organization shall be the "Minnesota Chippewa Tribe."

Sec. 3. The purpose and function of this organization shall be to conserve and develop tribal resources and to promote the conservation and development of individual Indian trust property; to promote the general welfare of the members of the Tribe; to preserve and maintain justice for its members and otherwise exercise all powers granted and provided the Indians, and take advantage of the privileges afforded by the Act of June 18, 1934 (48 Stat. 984) and acts amendatory thereof or supplemental thereto, and all the purposes expressed in the preamble hereof.

Sec. 4. The Tribe shall cooperate with the United States in its program of economic and social development of the Tribe or in any matters tending to promote the welfare of the Minnesota Chippewa Tribe of Indians.

ARTICLE II – MEMBERSHIP

Section 1. The membership of the Minnesota Chippewa Tribe shall consist of the following:

(a) Basic Membership Roll. All persons of Minnesota Chippewa Indian blood whose names appear on the annuity roll of April 14, 1941, prepared pursuant to the Treaty with said Indians as enacted by Congress in the Act of January 14, 1889 (25 Stat. 642) and Acts amendatory thereof, and as corrected by the Tribal Executive Committee and ratified by the Tribal Delegates, which roll shall be known as the basic membership roll of the Tribe.

(b) All children of Minnesota Chippewa Indian blood born between April 14, 1941, the date of the annuity roll, and July 3, 1961, the date of approval of the membership ordinance by the Area Director, to a parent or parents, either or both of whose names appear on the basic membership roll, provided

an application for enrollment was filed with the Secretary of the Tribal Delegates by July 4, 1962, one year after the date of approval of the ordinance by the Area Director.

(c) All children of at least one quarter (1/4) degree Minnesota Chippewa Indian blood born after July 3, 1961, to a member, provided that an application for enrollment was or is filed with the Secretary of the Tribal Delegates or the Tribal Executive Committee within one year after the date of birth of such children.

Sec. 2. No person born after July 3, 1961, shall be eligible for enrollment if enrolled as a member of another tribe, or if not an American citizen.

Sec. 3. Any person of Minnesota Chippewa Indian blood who meets the membership requirements of the Tribe, but who because of an error has not been enrolled, may be admitted to membership in the Minnesota Chippewa Tribe by adoption, if such adoption is approved by the Tribal Executive Committee, and shall have full membership privileges from the date the adoption is approved.

Sec. 4. Any person who has been rejected for enrollment as a member of the Minnesota Chippewa Tribe shall have the right of appeal within sixty days from the date of written notice of rejection to the Secretary of the Interior from the decision of the Tribal Executive Committee and the decision of the Secretary of Interior shall be final.

Sec. 5. Nothing contained in this article shall be construed to deprive any descendant of a Minnesota Chippewa Indian of the right to participate in any benefits derived from claims against the U.S. Government when awards are made for and on behalf and for the benefit of descendants of members of said tribe.

ARTICLE III - GOVERNING BODY

The governing bodies of the Minnesota Chippewa Tribe shall be the Tribal Executive Committee and the Reservation Business Committees of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations, and the Nonremoval Mille Lac Band of Chippewa Indians, hereinafter referred to as the six (6) Reservations.

Section 1. Tribal Executive Committee. The Tribal Executive Committee shall be composed of the Chairman and Secretary-Treasurer of each of the six (6) Reservation Business Committees elected in accordance with Article IV. The Tribal Executive Committee shall, at its first meeting, select from within the group a President, a Vice-President, a Secretary, and a Treasurer who shall continue in office for the period of two (2) years or until their successors are elected and seated.

Sec. 2. Reservation Business Committee. Each of the six (6) Reservations shall elect a Reservation Business Committee composed of not more than five (5) members nor less than three (3) members. The Reservation Business Committee shall be composed of a Chairman, Secretary-Treasurer, and one (1), two (2), or three (3) Committeemen. The candidates shall file for their respective offices and shall hold their office during the term for which they were elected or until their successors are elected and seated.

ARTICLE IV - TRIBAL ELECTIONS

Section 1. Right to Vote. All elections held on the six (6) Reservations shall be held in accordance with a uniform election ordinance to be adopted by the Tribal Executive Committee which shall provide that:

(a) All members of the tribe, eighteen (18) years of age or over, shall have the right to vote at all elections held within the reservation of their enrollment.[1]

(b) All elections shall provide for absentee ballots and secret ballot voting.

(c) Each Reservation Business Committee shall be the sole judge of the qualifications of its voters.

(d) The precincts, polling places, election boards, time for opening and closing the polls, canvassing the vote and all pertinent details shall be clearly described in the ordinance.

Sec. 2. Candidates. A candidate for Chairman, Secretary-Treasurer and Committeeman must be an enrolled member of the Tribe and reside on the reservation of his or her enrollment for one year before the date of election.[2] No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, until he or she has reached his or her twenty-first (21) birthday on or before the date of election.[3]

Sec. 3. Term of Office.

(a) The first election of the Reservation Business Committee for the six (6) Reservations shall be called and held within ninety (90) days after the date on which these amendments became effective in accordance with Section 1, of this Article.

(b) For the purpose of the first election, the Chairman and one (1) Committeeman shall be elected for a four-year term. The Secretary-Treasurer and any remaining Committeemen shall be elected for a two-year term. Thereafter, the term of office for officers and committeemen shall be four (4) years. For the purpose of the first election, the Committeeman receiving the greatest number of votes shall be elected for a four-year term.

Sec. 4. No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.[4]

ARTICLE V - AUTHORITIES OF THE TRIBAL EXECUTIVE COMMITTEE

Section 1. The Tribal Executive Committee shall, in accordance with applicable laws or regulations of the Department of the Interior, have the following powers:

(a) To employ legal counsel for the protection and advancement of the rights of the Minnesota Chippewa Tribe; the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative.

---

[1] As amended per Amendment I, approved by the Secretary of the Interior on November 6, 1972.
[2] As amended per Amendment III, approved by the Secretary of the Interior on January 5, 2006.
[3] As amended per Amendment II, approved by the Secretary of the Interior on November 6, 1972.
[4] As amended per Amendment IV, approved by the Secretary of the Interior on January 5, 2006.

(b) To prevent any sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other assets including minerals, gas and oil.

(c) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Minnesota Chippewa Tribe, except where such appropriation estimates or projects are for the benefit of individual Reservations.

(d) To administer any funds within the control of the Tribe; to make expenditures from tribal funds for salaries, expenses of tribal officials, employment or other tribal purposes. The Tribal Executive Committee shall apportion all funds within its control to the various Reservations excepting funds necessary to support the authorized costs of the Tribal Executive Committee. All expenditures of tribal funds, under the control of the Tribal Executive Committee, shall be in accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. The Tribal Executive Committee shall prepare annual budgets, requesting advancements to the control of the Tribe of any money deposited to the credit of the Tribe in the United States Treasury, subject to the approval of the Secretary of the Interior or his authorized representative.

(e) To consult, negotiate, contract and conclude agreements on behalf of the Minnesota Chippewa Tribe with Federal, State and local governments or private persons or organizations on all matters within the powers of the Tribal Executive Committee, except as provided in the powers of the Reservation Business Committee.

(f) Except for those powers hereinafter granted to the Reservation Business Committees, the Tribal Executive Committee shall be authorized to manage, lease, permit, or otherwise deal with tribal lands, interests in lands or other tribal assets; to engage in any business that will further the economic well being of members of the Tribe; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes, or to loan the money thus borrowed to Business Committees of the Reservations and to pledge or assign chattel or income, due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative, when required by Federal law or regulations.

(g) The Tribal Executive Committee may by ordinance, subject to the review of the Secretary of the Interior, levy licenses or fees on non-members or non-tribal organizations doing business on two or more Reservations.

(h) To recognize any community organizations, associations or committees open to members of the several Reservations and to approve such organizations, subject to the provision that no such organizations, associations, or committees may assume any authority granted to the Tribal Executive Committee or to the Reservation Business Committees.

(i) To delegate to committees, officers, employees or cooperative associations any of the foregoing authorities, reserving the right to review any action taken by virtue of such delegated authorities.

ARTICLE VI - AUTHORITIES OF THE RESERVATION BUSINESS COMMITTEES

Section 1. Each of the Reservation Business Committees shall, in accordance with applicable laws or regulations of the Department of the Interior, have the following powers:

(a) To advise with the Secretary of the Interior with regard to all appropriation estimates on Federal projects for the benefit of its Reservation.

(b) To administer any funds within the control of the Reservation; to make expenditures from Reservation funds for salaries, expenses of Reservation officials, employment or other Reservation purposes. All expenditures of Reservations funds under the control of the Reservation Business Committees shall be in accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. The Business Committees shall prepare annual budgets requesting advancements to the control of the Reservation of tribal funds under the control of the Tribal Executive Committee.

(c) To consult, negotiate and contract and conclude agreements on behalf of its respective Reservation with Federal, State and local governments or private persons or organizations on all matters within the power of the Reservation Business Committee, provided that no such agreements or contracts shall directly affect any other Reservation or the Tribal Executive Committee without their consent. The Business Committees shall be authorized to manage, lease, permit or otherwise deal with tribal lands, interests in lands or other tribal assets, when authorized to do so by the Tribal Executive Committee but no such authorization shall be necessary in the case of lands or assets owned exclusively by the Reservation. To engage in any business that will further the economic well being of members of the Reservation; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes or to loan the money thus borrowed to members of the Reservation and to pledge or assign Reservation chattel or income due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative when required by Federal law and regulations. The Reservation Business Committee may also, with the consent of the Tribal Executive Committee, pledge or assign tribal chattel or income.

(d) The Reservation Business Committee may by ordinance, subject to the review of the Secretary of the Interior, levy licenses or fees on non-members or non-tribal organizations doing business solely within their respective Reservations. A Reservation Business Committee may recognize any community organization, association or committee open to members of the Reservation or located within the Reservation and approve such organization, subject to the provision that no such organization, association or committee may assume any authority granted to the Reservation Business Committee or to the Tribal Executive Committee.

(e) To delegate to committees, officers, employees or cooperative associations any of the foregoing authorities, reserving the right to review any action taken by virtue of such delegated authorities.

(f) The powers heretofore granted to the bands by the charters issued by the Tribal Executive Committee are hereby superceded by this Article and said charters will no longer be recognized for any purposes.

ARTICLE VII - DURATION OF TRIBAL CONSTITUTION

Section 1. The period of duration of this tribal constitution shall be perpetual or until revoked by lawful means as provided in the Act of June 18, 1934 (48 Stat. 984), as amended.

ARTICLE VIII - MAJORITY VOTE

Section 1. At all elections held under this constitution, the majority of eligible votes cast shall rule, unless otherwise provided by an Act of Congress.

ARTICLE IX - BONDING OF TRIBAL OFFICIALS

Section 1. The Tribal Executive Committee and the Reservation Business Committees, respectively, shall require all persons, charged by the Tribe or Reservation with responsibility for the custody of any of its funds or property, to give bond for the faithful performance of his official duties. Such bond shall be furnished by a responsible bonding company and shall be acceptable to the beneficiary thereof and the Secretary of the Interior or his authorized representative, and the cost thereof shall be paid by the beneficiary.

ARTICLE X - VACANCIES AND REMOVAL

Section 1. Any vacancy in the Tribal Executive Committee shall be filled by the Indians from the Reservation on which the vacancy occurs by election under rules prescribed by the Tribal Executive Committee. During the interim, the Reservation Business Committee shall be empowered to select a temporary Tribal Executive Committee member to represent the Reservation until such time as the election herein provided for has been held and the successful candidate elected and seated.

Sec. 2. The Reservation Business Committee by a two-thirds (2/3) vote of its members shall remove any officer or member of the Committee for the following causes:

(a) Malfeasance in the handling of tribal affairs.

(b) Dereliction or neglect of duty.

(c) Unexcused failure to attend two regular meetings in succession.

(d) Conviction of a felony in any county, State or Federal court while serving on the Reservation Business Committee.

(e) Refusal to comply with any provisions of the Constitution and Bylaws of the Tribe.

The removal shall be in accordance with the procedures set forth in Section 3 of this Article.

Sec. 3. Any member of the Reservation from which the Reservation Business Committee member is elected may prefer charges by written notice supported by the signatures of no less than 20 percent of the resident eligible voters of said Reservation, stating any of the causes for removal set forth in Section 2 of this Article, against any member or members of the respective Reservation Business Committee. The notice must be submitted to the Business Committee. The Reservation Business Committee shall consider such notice and take the following action:

(a) The Reservation Business Committee within fifteen (15) days after receipt of the notice or charges shall in writing notify the accused of the charges brought against him and set a date for a hearing. If the Reservation Business Committee deems the accused has failed to answer charges to its satisfaction or fails to appear at the appointed time, the Reservation Business Committee may remove as provided in Section 2 or it may schedule a recall election which shall be held within thirty (30) days after the date set for the hearing. In either event, the action of the Reservation Business Committee or the outcome of the recall election shall be final.

(b) All such hearings of the Reservation Business Committee shall be held in accordance with the provisions of this Article and shall be open to the members of the Reservation. Notices of such hearings shall be duly posted at least five (5) days prior to the hearing.

(c) The accused shall be given opportunity to call witnesses and present evidence in his behalf.

Sec. 4. When the Tribal Executive Committee finds any of its members guilty of any of the causes for removal from office as listed in Section 2 of this Article, it shall in writing censor the Tribal Executive Committee member. The Tribal Executive Committee shall present its written censure to the Reservation Business Committee from which the Tribal Executive Committee member is elected. The Reservation Business Committee shall thereupon consider such censure in the manner prescribed in Section 3 of this Article.

Sec. 5. In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article, the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter before the Reservation electorate for their final decision.

ARTICLE XI – RATIFICATION

Section 1. This constitution and the bylaws shall not become operative until ratified at a special election by a majority vote of the adult members of the Minnesota Chippewa Tribe, voting at a special election called by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote, and until it has been approved by the Secretary of the Interior.

ARTICLE XII – AMENDMENT

Section 1. This constitution may be revoked by Act of Congress or amended or revoked 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 if at least 30 percent of those entitled to vote shall vote. No amendment shall be effective until approved by the Secretary of the Interior. It shall be the duty of the Secretary to call an election when requested by two-thirds of the Tribal Executive Committee.

ARTICLE XIII - RIGHTS OF MEMBERS

All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

ARTICLE XIV – REFERENDUM

Section 1. The Tribal Executive Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Minnesota Chippewa Tribe, or by an affirmative vote of eight (8) members of the

Tribal Executive Committee, shall submit any enacted or proposed resolution or ordinance of the Tribal Executive Committee to a referendum of the eligible voters of the Minnesota Chippewa Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Executive Committee. The Tribal Executive Committee shall call such referendum and prescribe the manner of conducting the vote.

Sec. 2. The Reservation Business Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Reservation, or by an affirmative vote of a majority of the members of the Reservation Business Committee, shall submit any enacted or proposed resolution or ordinance of the Reservation Business Committee to a referendum of the eligible voters of the Reservation. The majority of the votes cast in such referendum shall be conclusive and binding on the Reservation Business Committee. The Reservation Business Committee shall call such referendum and prescribe the manner of conducting the vote.

ARTICLE XV - MANNER OF REVIEW

Section 1. Any resolution or ordinance enacted by the Tribal Executive Committee, which by the terms of this Constitution and Bylaws is subject to review by the Secretary of the Interior, or his authorized representative, shall be presented to the Superintendent or officer in charge of the Reservation who shall within ten (10) days after its receipt by him approve or disapprove the resolution or ordinance.

If the Superintendent or officer in charge shall approve any ordinance or resolution it shall thereupon become effective, but the Superintendent or officer in charge shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of approval, rescind the ordinance or resolution for any cause by notifying the Tribal Executive Committee.

If the Superintendent or officer in charge shall refuse to approve any resolution or ordinance subject to review within ten (10) days after its receipt by him he shall advise the Tribal Executive Committee of his reasons therefor in writing. If these reasons are deemed by the Tribal Executive Committee to be insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its referral, approve or reject the same in writing, whereupon the said ordinance or resolution shall be in effect or rejected accordingly.

Sec. 2. Any resolution or ordinance enacted by the Reservation Business Committee, which by the terms of this Constitution and Bylaws is subjected to review by the Secretary of the Interior or his authorized representative, shall be governed by the procedures set forth in Section 1 of this Article.

Sec. 3. Any resolution or ordinance enacted by the Reservation Business Committee, which by the terms of this Constitution and Bylaws is subject to approval by the Tribal Executive Committee, shall within ten (10) days of its enactment be presented to the Tribal Executive Committee. The Tribal Executive Committee shall at its next regular or special meeting, approve or disapprove such resolution or ordinance.

Upon approval or disapproval by the Tribal Executive Committee of any resolution or ordinance submitted by a Reservation Business Committee, it shall advise the Reservation Business Committee within ten (10) days, in writing, of the action taken. In the event of disapproval the Tribal Executive Committee shall advise the Reservation Business Committee, at that time, of its reasons therefore.

BYLAWS

ARTICLE I - DUTIES OF THE OFFICERS OF THE TRIBAL EXECUTIVE COMMITTEE

Section 1. The President of the Tribal Executive Committee shall:

(a) Preside at all regular and special meetings of the Tribal Executive Committee and at any meeting of the Minnesota Chippewa Tribe in general council.

(b) Assume responsibility for the implementation of all resolutions and ordinances of the Tribal Executive Committee.

(c) Sign, with the Secretary of the Tribal Executive Committee, on behalf of the Tribe all official papers when authorized to do so.

(d) Assume general supervision of all officers, employees and committees of the Tribal Executive Committee and, as delegated, take direct responsibility for the satisfactory performance of such officers, employees and committees.

(e) Prepare a report of negotiations, important communications and other activities of the Tribal Executive Committee and shall make this report at each regular meeting of the Tribal Executive Committee. He shall include in this report all matters of importance to the Tribe, and in no way shall he act for the Tribe unless specifically authorized to do so.

(f) Have general management of the business activities of the Tribal Executive Committee. He shall not act on matters binding the Tribe until the Tribal Executive Committee has deliberated and enacted appropriate resolution, or unless written delegation of authority has been granted.

(g) Not vote in meetings of the Tribal Executive Committee except in the case of a tie.

Sec. 2. In the absence or disability of the President, the Vice-President shall preside. When so presiding, he shall have all rights, privileges and duties as set forth under duties of the President, as well as the responsibility of the President.

Sec. 3. The Secretary of the Tribal Executive Committee shall:

(a) Keep a complete record of the meetings of the Tribal Executive Committee and shall maintain such records at the headquarters of the Tribe.

(b) Sign, with the President of the Tribal Executive Committee, all official papers as provided in Section 1 (c) of this Article.

(c) Be the custodian of all property of the Tribe.

(d) Keep a complete record of all business of the Tribal Executive Committee. Make and submit a complete and detailed report of the current year's business and shall submit such other reports as shall be required by the Tribal Executive Committee.

(e) Serve all notices required for meetings and elections.

(f) Perform such other duties as may be required of him by the Tribal Executive Committee.

Sec. 4. The Treasurer of the Tribal Executive Committee shall:

(a) Receive all funds of the Tribe entrusted to it, deposit same in a depository selected by the Tribal Executive Committee, and disburse such tribal funds only on vouchers signed by the President and Secretary.

(b) Keep and maintain, open to inspection by members of the Tribe or representatives of the Secretary of the Interior, at all reasonable times, adequate and correct accounts of the properties and business transactions of the Tribe.

(c) Make a monthly report and account for all transactions involving the disbursement, collection or obligation of tribal funds. He shall present such financial reports to the Tribal Executive Committee at each of its regular meetings.

Sec. 5. Duties and functions of all appointive committees, officers, and employees of the Tribal Executive Committee shall be clearly defined by resolution of the Tribal Executive Committee.

ARTICLE II - TRIBAL EXECUTIVE COMMITTEE MEETINGS

Section 1. Regular meetings of the Tribal Executive Committee shall be held once in every 3 months beginning on the second Monday in July of each year and on such other days of any month as may be designated for that purpose.

Sec. 2. Notice shall be given by the Secretary of the Tribal Executive Committee of the date and place of all meetings by mailing a notice thereof to the members of the Tribal Executive Committee not less than 15 days preceding the date of the meeting.

Sec. 3. The President shall call a special meeting of the Tribal Executive Committee upon a written request of at least one-third of the Tribal Executive Committee. The President shall also call a special meeting of the Tribal Executive Committee when matters of special importance pertaining to the Tribe arise for which he deems advisable the said Committee should meet.

Sec. 4. In case of special meetings designated for emergency matters pertaining to the Tribe, or those of special importance warranting immediate action of said Tribe, the President of the Tribal Executive Committee may waive the 15-day clause provided in Section 2 of this Article.

Sec. 5. Seven members of the Tribal Executive Committee shall constitute a quorum, and Robert's Rules shall govern its meetings. Except as provided in said Rules, no business shall be transacted unless a quorum is present.

Sec. 6. The order of business at any meeting so far as possible shall be:

(a) Call to order by the presiding officer.

(b) Invocation.

(c) Roll call.

(d) Reading and disposal of the minutes of the last meeting.

(e) Reports of committees and officers.

(f) Unfinished business.

(g) New business.

(h) Adjournment.

ARTICLE III – INSTALLATION OF TRIBAL EXECUTIVE COMMITTEE MEMBERS

Section 1. New members of the Tribal Executive Committee who have been duly elected by the respective Reservations shall be installed at the first regular meeting of the Tribal Executive Committee following election of the committee members, upon subscribing to the following oath:

> "I, _____, do hereby solemnly swear (or affirm) that I shall preserve, support and protect the Constitution of the United States and the Constitution of the Minnesota Chippewa Tribe, and execute my duties as a member of the Tribal Executive Committee to the best of my ability, so help me God."

ARTICLE IV – AMENDMENTS

Section 1. These bylaws may be amended in the same manner as the Constitution.

ARTICLE V – MISCELLANEOUS

Section 1. The fiscal year of the Minnesota Chippewa Tribe shall begin on July 1 of each year.

Section 2. The books and records of the Minnesota Chippewa Tribe shall be audited at least once each year by a competent auditor employed by the Tribal Executive Committee, and at such times as the Tribal Executive Committee or the Secretary of the Interior or his authorized representative may direct. Copies of audit reports shall be furnished the Bureau of Indian Affairs.

ARTICLE VI - RESERVATION BUSINESS COMMITTEE BYLAWS

Section 1. The Reservation Business Committee shall by ordinance adopt bylaws to govern the duties of its officers and Committee members and its meetings.

Section 2. Duties and functions of all appointive committees, officers, and employees of the Reservation Business Committee shall be clearly defined by resolution of the Reservation Business Committee.

CERTIFICATION OF ADOPTION

Pursuant to an order approved September 12, 1963, by the Assistant Secretary of the Interior, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe was submitted for ratification to the qualified voters of the reservations, and was on November 23, 1963, duly adopted by a vote of 1,761 for and 1,295

against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

(sgd) Allen Wilson, President
Tribal Executive Committee

(sgd) Peter DuFault, Secretary
Tribal Executive Committee

(sgd) H.P. Mittelholtz, Superintendent
Minnesota Agency

APPROVAL

I, John A. Carver, Jr., Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approved the attached Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota.

John A. Carver, Jr.,
Assistant Secretary of the Interior
Washington, D.C.
(SEAL) Date: March 3, 1964

APPENDIX F

SELECTED MODERN CONGRESSIONAL ACTS

Indian Civil Rights Act of 1968

(25 U.S.C. §§ 1301-03)

§ 1301. *Definitions*

For purposes of this subchapter, the term -

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense.

§ 1302. *Constitutional rights*

No Indian tribe in exercising powers of self-government shall -

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any private property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and [1] a fine of $5,000, or both;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. pass any bill of attainder or ex post facto law; or
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

§ 1303. *Habeas corpus*

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT

Lawrence "Sandy" Gotchie,
Dale Greene, and Wallace Storbakken,
Plaintiffs,

v.

George James Goggleye, Jr., individually as the *politically* elected Chairman of the Leech Lake Reservation Business Committee,
Defendant.

Case No. CV-06-07

FINDINGS OF FACT, CONCLUSIONS OF LAW & DECLARATORY JUDGMENT

The above-entitled matter came before the undersigned Judge of the Leech Lake Tribal Court on Plaintiffs' Petition Seeking Declaratory Judgment and Injunction. Based on the pleadings filed by the parties and the arguments of counsel, the Court enters the following Findings of Fact, Conclusions of Law and Declaratory Judgment:

BACKGROUND

This action arises out of a Petition Seeking Declaratory Judgment and Injunction pursuant to Leech Lake Judicial Code Title II, Part I, Rule 3, and Part VII, Rule 32, filed on April 25, 2006. Petitioners, all enrolled members of the Leech Lake Band of Ojibwe, challenge the constitutional eligibility of Defendant George Goggleye, Jr. (hereinafter "Goggleye"), to continue to hold office as the elected Chairman of the Leech Lake Tribal Council. Specifically, Plaintiffs claim that Goggleye is a convicted felon and that Article IV, Section 4 of the Revised Constitution of the Minnesota Chippewa Tribe, effective January 5, 2006 (hereinafter Revised MCT Constitution), prevents him from holding office. Plaintiffs, at least two of whom have run for office in the past, claim that they are being prevented from enjoying "equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, which includes a felon free RBC and chance to be a candidate to fill the new vacancy for

LLRBC Chairman." (See Plaintiffs' Affidavits attached to Petition.) Plaintiffs seek a declaration from the Court that Goggleye was previously convicted of a felony by the State of Minnesota and a restraining order preventing Goggleye from exercising any further elected duties or authorities or receiving any further earnings or benefits from his elected office. [F.N. 1.]

Goggleye filed his answer to the petition on May 15, 2006, claiming that his conviction for 5th Degree Assault in Cass County, Minnesota, was deemed a misdemeanor conviction by the State of Minnesota and by Resolution of the Leech Lake Tribal Council (Resolution #2006-76). Goggleye also pointed out in his answer that Leech Lake Secretary/Treasurer Arthur "Archie" LaRose (hereinafter "LaRose") is in the same position as Defendant by virtue of the fact that LaRose was convicted of 3rd Degree Assault in Cass County, Minnesota, case number K6-91-714. [F.N. 2.]

At the June 22, 2006, Pre-Trial Hearing, Defendant's oral Motion for Summary Judgment was denied and the parties were granted leave to file Pre-Trial Briefs by August 31, 2006. The Court ordered that the briefs should address whether or not a lawsuit can be properly brought in Leech Lake Tribal Court on behalf of unnamed "other Band members similarly situated." [F.N.3.] The parties were also to analyze the applicability of Minnesota Statute 609.13 to Goggleye's situation, providing legal support for/against the contention that Goggleye's conviction should be considered a felony. Oral arguments were scheduled for September 6, 2006.

On August 25, 2006, counsel for Plaintiffs requested that the September 6 oral arguments be continued because of a conflict in his schedule. The parties filed their pre-trial briefs on August 31, 2006, and Oral Arguments were heard on September 27, 2006. [F.N. 4.] This declaratory judgment follows.

---

[1] Plaintiffs' Petition also sought a declaration that Goggleye's term of office was "extinguished." In his Answer, Goggleye claimed that Article X of the Revised Minnesota Chippewa Tribe Constitution is the only legal method by which a sitting Reservation Tribal Council member may be removed. At oral arguments, Plaintiffs conceded that this Court does not have such authority, and withdrew that particular request.

[2] Although LaRose is not a party to this action, the Court notes that the decision in this matter would apply to LaRose in the same manner as Goggleye, as LaRose's conviction was also deemed to be for a misdemeanor pursuant to Minn.Stat. 609.13.

[3] It is not necessary for the Court to address the issue of whether or not a class action may be maintained in Leech Lake Tribal Court, as Plaintiffs in their Pre-Trial Brief volunteered to amend the caption of the case to reflect only the named Plaintiffs.

[4] At oral arguments, the Court questioned whether application of the revised MCT Constitution prohibition on convicted felons running or holding office to sitting Reservation Tribal Council members would represent a retrospective application of the law. The Court was able to resolve the questions regarding Goggleye without addressing this issue. However, pursuant to MCT Ordinance, the Court has certified these two questions to the Tribal Executive Committee. (See Request for TEC Opinion, attached.)

APPLICABLE LAW

This matter was filed as a request for Declaratory Judgment, which is a statutory remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his/her legal rights. It is a binding adjudication of the rights and status of litigants even though no consequential relief is awarded. (Black's Law Dictionary, 6th Edition; *Brimmer v. Thompson, Wyo.* 521 P.2d 574, 579.) Such judgment is conclusive in a subsequent action between the parties as to the matters declared and, in accordance with the usual rules of issue preclusion, as to any issues actually litigated and determined. (*Id.*; *Seaboard Coast Line R. Co. V. Gulf Oil Corp., C.A.Fla., 409 F.2d 879.)*

Plaintiffs contend that Article IV of the revised Minnesota Chippewa Tribe Constitution, which became effective January 5, 2006, precludes Goggleye from continuing to hold his elected office of Chairman because Goggleye was convicted of a felony by the State of Minnesota. In support, Plaintiffs cite Section 4 of revised Article IV, which provides that "[n]o member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization." *MCT Constitution, Art. IV, Section 4, Effective January 5, 2006.*

Plaintiffs argue that the Court should follow federal law to resolve this matter. Plaintiffs cite two cases, *State v. Foster*, 630 N.W.2d 1, and *United States v. Matter,* 818 F.2d 653, in support of their position that under federal law Goggleye is a convicted felon subject to the prohibitions in the revised MCT Constitution. Goggleye, on the other hand, argues that state law should apply, citing *State v. Camper,* 130 N.W.2d 482.

The statute at issue in this case, Minnesota Statute 609.13 (Convictions of Felony; When Deemed Misdemeanor or Gross Misdemeanor), provides that:

> Notwithstanding a conviction is for a felony:
> (1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02;
> (2) The conviction is deemed to be for a misdemeanor if the imposition of the sentence is stayed, the defendant is placed on probation and he is thereafter discharged without sentence.

Throughout the years, the Minnesota Chippewa Tribe has enacted various versions of its Election Ordinance to govern its member tribes in conducting elections. The most recent version, Election Ordinance #10, reflects the amendments to the Revised MCT Constitution that became effective on January 5, 2006. Although the revised MCT Constitution itself is silent as to what law should be applied in determining whether a candidate's conviction is one that disqualifies him/her from running or holding office, Election Ordinance #10 makes clear the law to be applied. Specifically, Chapter I, Section D (Ineligibility by Reason of Criminal Conviction), provides that a "felony"is a crime defined as a felony by applicable law.

"Applicable law" means the law of the jurisdiction in which a crime was prosecuted.

Despite the language of MCT Election Ordinance #10, Plaintiffs insist that the language of the applicable law provision is somehow ambiguous and that federal law should apply. In addition, although the Plaintiffs agree that MCT Ordinances are binding law, they urge the Court to look exclusively to the revised MCT Constitution, thus ignoring Election Ordinance #10 altogether. The Court does not find this argument convincing. In light of the clear language of MCT Election Ordinance #10, the Court will apply the law of the State of Minnesota in analyzing Plaintiffs' claims, as that is the jurisdiction in which Goggleye's crime was prosecuted.

ANALYSIS

The conviction at issue in this case was one for 5th degree assault, punishable by a fine of up to $10,000 and/or five (5) years in prison. *Minn.Stat. 609.224, Subd. 4(a).* According to the documents provided by the parties, Goggleye has two convictions for 5th degree assault: one in Cass County District Court case number KX93000767 (date of disposition 11/18/1993); and one in Itasca County District Court case number K691000714 (date of disposition 07/23/1991). [5] According to a Minnesota Bureau of Criminal Apprehension Criminal History Report provided by the parties, neither of Goggleye's convictions are listed as felonies. Apparently due to an oversight by the Cass County District Court, an order was never entered discharging Goggleye from probation, restoring his civil rights and deeming his offense to be a misdemeanor pursuant to Minn.Stat. 609.13. To correct this oversight, Cass County District Court Judge David F. Harrington entered an order on July 1, 2005, discharging Goggleye from probation, restoring his civil rights and deeming the offense to be a misdemeanor, retroactive to April 21, 1997, the date Goggleye's probation was terminated.

Under Minnesota criminal law, the nature of a conviction (felony, gross misdemeanor, misdemeanor, or petty misdemeanor) is ultimately based, not upon the charge itself, but upon the sentence imposed. Although offenses are defined in the first instance according to the sentence which may be imposed, Minn.Stat. 609.13 provides that a felony is deemed a misdemeanor if a sentence is imposed within the ranges of those categories. Minn.Stat. 609.13 also provides that the degree of conviction will be automatically reduced by operation of law, if imposition of sentence is stayed and the defendant successfully completes probation. In the final analysis, the answer as to whether a disposition is a conviction and, if so, for what level of offense, may vary depending upon the reason the question is being asked. Various laws, state and federal, may treat an offense as a conviction, or as a felony or gross misdemeanor, even though by operation of these general principles, it is deemed something else. *9 Minn. Prac., Criminal Law & Procedure §36.2 3d ed.; 27 HAMJPLP 1; see, also, State v. Woodruff, 608 N.W.2d 881 (Minn.2000)*(Stay of imposition a conviction for determining conditional release)*; In re Woollett, 540 N.W.2d 829*

[5] Although Plaintiffs refer to both convictions in their pleadings, arguments were concentrated on the Cass County case. Goggleye's Minnesota Bureau of Criminal Apprehension Criminal History Report indicates that the Itasca County case resulted in a conviction for a gross misdemeanor.

*(Minn.1995)(*stay of imposition; conviction remains a felony for police officer licensing*); State v. Moon, 463 N.W.2d 517 (Minn. 1990)(*firearms*); State v. Clipper, 429 N.W.2d 698 (Minn.App.1988)(*enhancement*); State v. Foster, 630 N.W.2d 1 (Minn.App. 2001)(*firearms*).*

For many years, Minnesota has been a leader in criminal sentencing policy. In 1980, Minnesota was the first state to implement a system of sentencing guidelines and in the 1960s, a legislative advisory committee attempted to affect the outcome of sentencing by changing the nature of a person's conviction in specific cases. During the era in which section 609.13 was proposed, the trend was toward lessening the restrictions on persons with convictions. *59 J.Crim.L. & Criminology 347, 356 (1968).* In revising the Minnesota criminal code, the 1962 advisory committee proposed a new law that would allow for more lenient conviction levels at the discretion of the court. This new approach was necessary because once a person is convicted of a crime, the person is subject to the consequences that flow from the conviction. The new provision, which was based on California law, eventually became Minn.Stat. 609.13. Section 609.13 gave the sentencing judge unlimited discretion by assuming the judge could enter any sentence for any offense and, consequently, reduce the conviction level whenever a punishment other than that which fit the definition of a felony was imposed. *27 HAMJPLP 1, 12.*

As indicated by the advisory committee comments accompanying the proposed law, "[i]t is believed desirable not to impose the consequences of a felony conviction if the judge decides that the punishment to be imposed will be no more than that provided for misdemeanors or gross misdemeanors." *Minn.Stat. 609.13 Advisory Committee Comment.* Thus, it would seem that the drafters of Minn.Stat. 609.13 thought that a reduced conviction level would limit the consequences for those offenders whose conduct did not seem to warrant such sanctions. Section 609.13 would be very important to ex-offenders. For example, under this reasoning, when an ex-offender is asked the question "have you ever been convicted of a felony?" if the person received a misdemeanor sentence or successfully completed probation after a stay of imposition of sentence, under 609.13 the person could truthfully say "no." *27 HAMJPLP 1, 6.*

Since the enactment of section 609.13, there has been much confusion with regard to a person's criminal record. "Conviction" is defined by Minnesota law as "any of the following accepted and recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or finding of guilty by the court" (Minn.Stat. §609.02, subd. 5 (2004)). Because section 609.13 reduces the conviction level after the fact, a person's conviction level can be recorded at both the moment of the entry of the plea or finding of guilt and at the imposition of sentence. Thus, the accuracy of the individual's criminal record may be dependent upon which conviction information is transmitted to the Bureau of Criminal Apprehension (BCA) or, if information from both events is transmitted, how the BCA interprets the information. In addition, unlike the California law after which 609.13 was patterned, 609.13 is silent as to the purposes for which a conviction for a felony offense would be deemed a misdemeanor or gross misdemeanor, thus diminishing the benefit for which the provision was designed. (*27 HAMJPLP 1; See, also In re Woollett, 540 N.W.2d 829, 833 (Minn. 1995)*(acknowledging that the effect of section 609.13 has been diminished by cases that have determined that it does not require felony convictions to be treated as misdemeanors for all purposes).

Criminal convictions are subject to a very wide range of potential dispositions. Even the decision as to whether any sentence should be imposed is a matter of judicial discretion, and the decision not to impose a sentence may have significant consequences. *27 HAMJPLP 1.* Goggleye received a stay of imposition of sentence, which differs from a continuance for dismissal in that a plea is entered, and from a stay of adjudication in that a plea is formally accepted; but sentence is not imposed. A stay of imposition may have various consequences, including reduction of a felony or gross misdemeanor to a misdemeanor. Pursuant to Minn.Stat. 609.13, when a defendant is convicted of either a felony or a gross misdemeanor but imposition of sentence is stayed, and the defendant discharged after successful completion of probation, the conviction is "deemed to be for a misdemeanor." However, despite this state law, other jurisdictions, including the federal government, may nevertheless treat the conviction as a more serious offense. In addition, the Minnesota sentencing guidelines generally classify a conviction for purposes of determining the prior record regardless of the statutory reduction, and administrative rules may provide the degree of the conviction is determined by the sentence that could potentially have been imposed. Therefore, the benefit of a stay in reducing the degree of the offense depends upon the specific purpose for which the conviction may later be considered. *9 Minn. Prac., Criminal Law & Procedure §36.3 (3d ed.); see, also, In re Woollett, 540 N.W.2d 829 (Minn. 1995); State v. Clipper, 429 N.W.2d 698, 701 (Minn.App.1988); State v. Skramstad, 433 N.W.2d 449, n. 1 (Minn.App.1988).*

As stated above, the reduction of felony convictions to misdemeanors under Minn.Stat. 609.13 is especially important to ex-offenders, because once a person is convicted of a crime, he or she will be subject to consequences that flow from the conviction. There are two types of consequences: direct and collateral. Direct consequences are "those which flow definitely, immediately, and automatically from the guilty plea, namely, the maximum sentence to be imposed and the amount of any fine." *Alanis v. State, 583 N.W.2d 573, 578 (Minn.1998).* In contrast, collateral consequences are considered to be "civil and regulatory in nature and are imposed in the interest of public safety." *State v. Kaiser, 641 N.W.2d 900, 904 (Minn.2002).*

Collateral consequences have far-reaching effects. They can alter a person's citizenship or residency status, bar a person from entire lines of employment, and impact numerous civil rights. Thus, collateral consequences can have an even greater and longer lasting impact that direct punishment. Collateral consequences are imposed in a variety of ways: by state or federal law, by administrative rule, by court rule, or by the actions of private individuals. There is a wide array of consequences, and they are triggered by different things, such as specific crimes, specific behavior, or specific events such as charging or conviction. And despite the fact that there is a recognized distinction between offenders whose situation warrants probation and offenders whose situation warrants incarceration, collateral consequences are imposed automatically on all offenders regardless of their sentence. Indeed, because most collateral consequences are triggered by the nature of the offense at the point of conviction rather than the sentence level, many offenders are unable to avoid the effect of collateral consequence even when they successfully complete probation and their convictions are deemed to be misdemeanors

pursuant to Minn.Stat. 609.13. *27 HAMJPLP 1, 31-32.* Trial courts can rarely avoid imposition of collateral consequences when sentencing. (See, e.g., *State v. Krotzer, 548 N.W.2d 252, 252-255 (Minn. 1996)*(upholding the trial court's decision to stay adjudication so the defendant would not be required to register as a sex offender.)) Rather, the courts are most often prevented from considering collateral consequences in sentencing because they are beyond the control of the district court and their imposition is uncertain. (See, *State v. Mendoza, 638 N.W.2d 480, 484 (Minn.Ct.App. 2002).*

Minnesota's appellate courts have held that imposition of consequences is dependent on whether the drafters intended to impose the consequences based on the nature of the offense for which the person was convicted or based on the subsequent treatment of the offender (i.e. the sentence imposed). *See, State v. Moon, 463 N.W.2d 517,519 (Minn. 1990).* There are scores of collateral consequences imposed under Minnesota law. For example, some lines of employment would be reopened to ex-offenders after several years have elapsed, but they would be permanently banned from several others. See, e.g. *Minn.Stat §148.261, subd.1(204*)(authorizing the indefinite denial of a nursing license for conviction of certain crimes); *Minn.Stat. §171.3215, subd. 2 (2004)*(prohibiting licensure as a school bus driver for 1-5 years after conviction of a disqualifying offense); *Minn.Stat. §§245C.14-.15 (2004)(*prohibiting licensure in any human services field for 7-15 years, or indefinitely, based on the offense committed); *Minn.Stat. 609.42, subd.2 (2004)* (Forfeiture of and disqualification from holding public office if convicted of bribery); *Minn.Const.Art.VII, Section 6 and Minn.Stat. 204B.10, subd. 6 (2004)* (Ineligibility to run for office until civil rights are restored); and *Minn.Const.Art. VII, section 1 and Minn.Stat. Section 201.014, subd. 2 (2004)* (Cannot vote until civil rights restored). In the final analysis, it appears that when convictions are deemed to be misdemeanors under 609.13, ex-offenders can only be guaranteed a restoration of two civil rights: voting and eligibility for public office.

Plaintiffs argue that the cases of *State v. Foster* and *United States v. Matter* are controlling in this matter. In the *Foster* case, a Minnesota District Court certified the question of whether a prior felony, subject to a stay of imposition which thus became a misdemeanor under Minn.Stat. §609.13, subd. 1(2)(2000), subjects the offender to criminal liability for possession of a firearm. *State v. Foster*, 630 N.W.2d 1. The issue before the Court of Appeals was whether the state could prosecute a defendant for possession of a firearm under Minn.Stat. §624.713, subd. 1(b)(2000), where the defendant had plead guilty to a felony drug offense and received a stay of imposition of sentence, then successfully completed probation resulting in the sentencing court ordering the defendant's civil rights restored and the conviction becoming a misdemeanor. The *Foster* court held that the firearms restriction was based upon the nature of the offense committed by the defendant rather than on the actual sentence imposed by the court, and that the defendant's prior felony conviction constituted a "crime of violence," thus subjecting the defendant to prosecution. Citing the Court's decision in the case of *State v. Moon*, the *Foster* court found that "a felony disposed of under section 609.13 was still a 'felony' for purposes of the weapons laws." 455 N.W.2d 509, 511 (Minn.App.1990). The court went on to say that "in order to protect the public safety, certain convicted criminals should be subject to the federal firearms prohibition even though their civil rights otherwise have been restored. In particular, the legislature mandated that persons convicted of felonious theft be subject to a 10 year firearms

restriction upon restoration to civil rights." 630 N.W.2d 1, 3-4. As the *Foster* court held:

> Section 609.13 does not preclude the legislature from imposing consequences, as it did in this case to protect the safety of the public, based on an offender's commission of criminal acts which also constitute felonies. In enacting section 609.165, subdivision 1a, the legislature intended the nature of the offense rather than the subsequent treatment of the offender to be a basis for the imposition of the *firearms restriction. 630 N.W.2d at 4.* (Emphasis added.)

The other case relied on by Plaintiffs is a decision by the United States Court of Appeals for the Eighth Circuit, *United States v. Matter,* 818 F.2d 653. The defendant in the *Matter* case appealed his conviction under 18 U.S.C. App. §1202(a)(1) for possession of a firearm after being previously convicted of a felony. The defendant in the *Matter* case had been convicted in Minnesota state court of defeating security on personalty, a crime punishable for up to two years and a fine of up to $2000 under Minn.Stat. §609.62(2)(1984). Imposition of sentence was stayed and the defendant was placed on probation for two years, which he successfully completed. In denying the defendant's motion to dismiss the indictment against him, the *Matter* court relied on its previous decisions in *United State v. Woods*, 696 F.2d 566 (8thCir.1982) and *United States v. Millender*, 811 F.2d 476 (8th Cir.1987), where the court held that federal law determines whether a person is a convicted felon for purposes of the federal firearms statutes. 818 F.2d 653, 654. The *Matter* court concluded that the defendant was a "convicted felon" and could be convicted of possession of a firearm after being previously convicted of a felony, even though under Minnesota law, the act of staying imposition of sentence made his prior felony conviction a misdemeanor. *Id at 653.*

Goggleye, on the other hand, relies upon a Minnesota Supreme Court case, *State v. Camper*, 130 N.W.2d 482. *Camper* involved a conviction for grand larceny, where the charge was reduced from a felony to a misdemeanor and the defendant was convicted. Although the Court in *Camper* involves a dispute over payment of attorneys fees, the court points out that "as the code now reads, from and after September 1, 1963, the degree of the crime is determined by the sentence imposed and not by the offense alleged in the indictment." 130 N.W.2d at 484.

As the *Matter* and *Foster* cases cited by Plaintiffs demonstrate, imposition of consequences under federal law can be even more strict than under Minnesota state law. As indicated above, many statutory and administrative provisions exist in Minnesota that affect the application of collateral consequences in a variety of circumstances, some of which do not allow an ex-offender to avoid consequences even though his/her conviction level has been reduced by Minn.Stat. 609.13. Plaintiffs claim that Goggleye is ineligible to hold office by virtue of his conviction. Thus, MCT Election Ordinance #10 dictates that the Court look to specific provisions of Minnesota law regarding eligibility to vote and for candidacy for office to resolve the question of whether or not Goggleye is holding office in violation of the revised MCT Constitution. To begin with, Article VII, section 1, of the Minnesota Constitution (Eligibility; Place of Voting, Ineligible Persons), provides *inter alia,* that "[t]he following persons shall not be entitled or permitted to vote at any election in this state:....a person who has been convicted of

a treason or felony, *unless restored to civil rights...*" (Emphasis added.) Article VII, section 6, of the Minnesota Constitution (Eligibility to Hold Office), goes on to provide that "[e]very person who....is entitled to vote at any election and is 21 year of age is eligible for any office....except as otherwise provided in this constitution, or in the constitution and law of the United States." Thus, under the Minnesota State Constitution, a person who has been convicted of treason or a felony is not eligible to hold office unless their civil rights have been restored. Such is the case with Goggleye, whose civil rights were restored (albeit retroactively due to no fault of his own) by order of the Cass County District Court.

In addition to the Minnesota Constitution, Minnesota statutes governing procedures for candidates for office also provides guidance. Minn.Stat. 204B.10, Subd. 6 (Ineligible voter) provides that "Upon receipt of a certified copy of a final judgment or order of a court of competent jurisdiction that a person who has filed an affidavit of candidacy or who has been nominated by petition: (1) has been convicted of treason or a felony *and the person's civil rights have not been restored*....the filing officer shall...not certify the person's name to be placed on the ballot." (Emphasis added.) Minnesota Statutes 201.014, Subd. 2, sets forth a list of those persons not eligible to vote: "The following individuals are not eligible to vote. Any individual...convicted of treason or any felony *whose civil rights have not been restored...*" Further, Minnesota Statute 609.42, subd. 2, provides that "[a]ny public officer who is convicted of violating or attempting to violate subdivision 1 [which sets forth acts constituting bribery] shall forfeit the public office and be forever disqualified from holding public office under the state." This Court notes that the only statutory provision providing for forfeiture of a term of office of a sitting elected official deals with convictions for bribery. Such is not the case with Goggleye.

Plaintiffs argue that during the 3 ½ years that elapsed between the date disposition and entry of the order correcting his record, Goggleye was a convicted felon, triggering the provision of the Revised MCT Constitution prohibiting a person from holding office if they have *ever* been convicted of a felony. However, it is important to note that the Court in the *Foster* case cited by Plaintiffs also held that "[p]enal statutes are to be strictly construed with all reasonable doubts concerning legislative intent to be resolved in favor of the defendant." *Id., citing State v. Wagner,* 555 N.W.2d 752, 754). Therefore, based on Minnesota law, this Court declines to adopt Plaintiffs' interpretation.

At oral arguments, Plaintiffs also claimed that the Leech Lake Tribal Council exceeded its authority in passing Resolution 2006-76. The Leech Lake Tribal Court has previously held that "RBC members are not empowered to graft new requirements onto the criteria for certification." (*LLBO, et al. v. White, et al.,* Case No. CV-03-81, internal citations omitted.) The resolution challenged in the *White* case is distinguishable from No. 2006-07, in that it denied certification to a candidate for RBC office because he was "under investigation," which was not included as one of the requirements for eligibility to run for office under the version of the MCT Constitution in effect at that time. Resolution 2006-76, on the other hand, does not "graft new requirements." Rather, it codifies the Band's policy on certification, declaring that when a

Minnesota criminal background check indicates that a conviction is deemed to be for a misdemeanor, the RBC will also deem it to be for a misdemeanor. MCT Election Ordinance #10 provides that "[e]ach Band governing body will certify eligible candidates for office in accordance with the Minnesota Chippewa Tribe Constitution, the Minnesota Chippewa Tribe Election Ordinance, and the dates and guidelines established for Minnesota Chippewa Tribe elections." (MCT Election Ordinance #10, Section 3(C)(4). This interpretation is not inconsistent with Minnesota law, the law of the jurisdiction in which Goggleye's offense was prosecuted, nor is it inconsistent with MCT Election Ordinance #10. However, should a situation arise in the future where a candidate has a conviction from a jurisdiction other than Minnesota, the law of that jurisdiction would have to be applied.

Based upon the foregoing analysis, the Court makes the following:

FINDINGS OF FACT

1. Defendant George Goggleye, Jr., was convicted of Assault-5th Degree in Cass County, Minnesota. Goggleye received a suspended imposition of sentence and was placed on probation, which he successfully completed.

2. By order of the Cass County District Court dated July 1, 2005, Goggleye's civil rights were restored retroactive to April 21, 1997, the date Goggleye was terminated from probation.

3. Goggleye's Minnesota Bureau of Criminal Apprehension Criminal History Report reflects that this conviction was for a misdemeanor.

4. By operation of Minn.Stat. 609.13, Goggleye's conviction is deemed to be for a misdemeanor rather than for a felony.

5. Leech Lake Tribal Council Resolution 2006-76 is not inconsistent with Minnesota Law or Minnesota Chippewa Tribe Election Ordinance #10.

CONCLUSIONS OF LAW

1. Based upon Minnesota law, the law of the jurisdiction in which Goggleye's crime was prosecuted, he would not be precluded from running for or holding state elective office because his civil rights have been restored.

2. Because Goggleye's conviction is deemed to be for a misdemeanor and his civil rights have been restored, he is not precluded from running for or holding office under Article IV of the Revised Constitution of the Minnesota Chippewa Tribe.

3. Plaintiffs are not entitled to an order restraining Goggleye from exercising the duties and authorities associated with holding office on the Leech Lake Reservation Business Committee.

4. The Leech Lake Tribal Council did not exceed its authority in passing Resolution #2006-76.

DECLARATORY JUDGMENT

1. Defendant, George Goggleye, Jr., has not been previously convicted of a felony such that he is precluded under Article IV of the Revised MCT Constitution from running for or holding office as Chairman of the Leech Lake Tribal Council.

2. Plaintiffs' equal protection rights under the Revised Constitution of the Minnesota Chippewa Tribe are not violated by George Goggleye, Jr., continuing to hold office.

IT IS SO ORDERED THIS 8th DAY OF DECEMBER 2006.

Korey Wahwassuck

Korey Wahwassuck, Chief Judge
Leech Lake Tribal Court

Leech Lake Tribal Court
FILED
In my office this
12/8/06
Clerk of Court

INTERIOR BOARD OF INDIAN APPEALS

Richard A. Jones, Jr. v. Acting Minneapolis Area Director, Bureau of Indian Affairs

31 IBIA 58 (07/14/1997)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

RICHARD A. JONES, JR., Appellant	:	Order Docketing Appeal and Affirming Decision
v.	:	
	:	Docket No. IBIA 97-109-A
ACTING MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	July 14, 1997

On March 20, 1997, the Board of Indian Appeals (Board) received a notice of appeal signed by Richard A. Jones, Jr. (Appellant), as Chairman, Local Indian Council. By order dated March 24, 1997, the Board informed Appellant that there were several problems with the appeal and gave him an opportunity to address those problems.

Appellant's response was timely received on June 20, 1997. Most of the materials which Appellant submitted at that time were duplicates of previous submissions which had not addressed the problems the Board had noted. However, a letter dated May 24, 1997, did address those problems.

The first problem identified was that Appellant had not indicated what decision he was appealing. Appellant has now indicated that he is appealing a February 20, 1997, letter written by the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA). In this letter, the Area Director declined to call a Secretarial election for the removal of a member of the Leech Lake Reservation Tribal Council. The Leech Lake Band (Band) is a constituent band of the Minnesota Chippewa Tribe (Tribe).

The second problem concerned Appellant's failure to serve interested parties. The Board concludes that Appellant has now served interested parties.

The third problem concerned Appellant's standing to bring this appeal. In his May 24, 1997, letter, Appellant, first states that he is Ojibwe and an enrolled tribal member. He then claims rights under Article XIII of the Tribe's Revised Constitution. Article XIII, Rights of Members, provides:

> All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

The Board notes that Appellant seeks action by BIA under Article X, Section 5, of the Tribe's Constitution, which provides:

> In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article [in response to a petition for removal of a member of the Reservation Business Committee], the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter [of removal] before the Reservation electorate for their final decision.

A decision as to whether or not Appellant has standing as a tribal member to bring an appeal under either Article X, Section 5, or Article XIII of the Tribe's Constitution would require the Board to interpret those provisions in the absence of a tribal interpretation. In this particular case, the Board finds it need not interpret these provisions because it concludes that, even if Appellant has standing, it would not disturb the Area Director's decision. Under these circumstances, the Board also concludes that this appeal can and should be addressed without additional delay.

On appeal, Appellant contends that a Secretarial election should have been called because the petition presented to BIA was valid and set forth adequate grounds for removal.

In his February 20, 1997, letter, the Area Director found that, when it received the petition, the Tribal Council scheduled a hearing, verified the signatures on the petition, and received comments from the accused councilman. He further found that, following this review, the Tribal Council concluded that the petition contained the necessary number of signatures, but that the charges upon which it was based were a matter of public record, had occurred prior to the most recent regular tribal election, and had been fully aired during that election. The Area Director stated that the Tribal Council dismissed the petition, declined to take further action against the accused councilman, and canceled the hearing.

Citing Wadena v. Acting Minneapolis Area Director, 30 IBIA 130 (1996), the Area Director noted that, when he received the petition for a Secretarial election, he requested an interpretation of Article X from the Tribal Executive Committee in accordance with Tribal Constitutional Interpretation No. 1-80. Because his request had been pending for 30 days without reply, the Area Director determined that he would have to issue a decision regarding the petition without a tribal interpretation and based upon his understanding of Article X. He cited Cheyenne River Sioux Tribe v. Aberdeen Area Director, 24 IBIA 55 (1993), for the proposition that he was required to undertake his review in a way that avoided unnecessary interference with tribal self-government. The Area Director held:

> Section 3 of the Constitution requires removal or a recall election only if the Tribal Council determines that the accused has failed to answer the charges to its satisfaction. A Secretarial election is required by Section 5 only when the Tribal

> Council failed to act as provided for in Sections 3 and 4 and when the charges presented are "substantial."
>
> Our review indicates that the Tribal Council acted on the petition. Resolution No. 97-69 shows that the Tribal Council reviewed the charges against [the accused councilman], considered the facts and circumstances upon which the charges are based, and dismissed the petition. We believe that the Tribal Council's review, consideration and dismissal actions constitute the "action" on the petition that satisfies the requirements in Article X, Section 3.
>
> Further, there is no dispute as to the facts underlying the charges in the petition. The charges are based on acts taken in 1988. Although the acts were subsequently widely known in the community, [the accused councilman] was reelected by his constituent district in 1996. Based on these undisputed facts, * * * [l]ike the Tribal Council, we are persuaded that the tribal electorate has already expressed its will in this matter. Thus, we also deem the charges contained in the petition to be **not** "substantial" as that term is used in Section 5.

Decision at 3.

Like the Area Director, the Board is reticent to interpret the Tribe's Constitution in the absence of an interpretation from the Tribal Executive Committee. However, Article X, Section 5, vests the Secretary with significant responsibilities. In the absence of a tribal interpretation of Article X, Section 5, the Board concludes that the Secretary has not only the authority, but also the duty, to interpret this section as necessary to carry out those responsibilities.

The Board concludes that the Area Director properly considered both the tribal response to the petition presented to it and the facts of the matter in determining whether or not a Secretarial election should be called. It further concludes that the Area Director's decision that a Secretarial election should not be called under the circumstances of this case was reasonable.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Minneapolis Area Director's February 20, 1997, decision is docketed and that decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

EXHIBIT 14

LEECH LAKE BAND OF OJIBWE

Faron Jackson, Sr., Chairman
Arthur LaRose, Secretary-Treasurer

Robbie Howe, District I Representative
Steve White, District II Representative
LeRoy Staples Fairbanks III, District III Representative

March 31, 2022

To: Gary Frazer, Executive Director
Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, MN 566633

NOTICE OF BAND APPELLATE COURT JURISDICTION

It has become apparent to me, after a thorough search for and finding none, that no official action was ever taken by the Leech Lake Tribal Council, as governing body of the Leech Lake Band, to confer any final jurisdiction on the Tribal Election Court of Appeals, in regard to deciding any past or future issues concerning the 2022 Election Calendar period.

Pursuant to Section 3.4(B)(2) of the Election Ordinance, the governing body must notify the Tribe of a decision to use the Court of Election Appeals, with official action taken, before the date of a scheduled primary election, and no such decision by official action exists. If no such notice is given, appeals shall be to the Band's appellate court. Therefore, also referring to Election Ordinance Section 3.4(B)(2), since no such notice was given or official action taken, jurisdiction for appeals shall be to the Band's appellate court.

It is my duty as Chairman of the Leech Lake Band of Ojibwe Tribal Council to bring this to your attention and hereby give you notice of the above fact, pursuant to my duties under Ordinance No. 1, Article I, Section 1 (e).

Miigwech,

Faron Jackson, Chairman
LLBO RBC

Received
3/31/22 8:28am

Cc:
TEC Members
LLBO RBC Members
Leech Lake Tribal Court
MCT Appellate Judges

EXHIBIT 15

The Minnesota Chippewa Tribe

Administration
218-335-8581
Toll Free: 888-322-7688
Fax: 218-335-8496
Home Loan
218-335-8582
Fax: 218-335-6925
Economic Development
218-335-8583
Fax: 218-335-8496
Education
218-335-8584
Fax: 218-335-2029
Human Services
218-335-8586
Fax: 218-335-8080

April 1, 2022

Chairman Faron Jackson
Leech Lake Band of Ojibwe
190 Sailstar Drive NW
Cass Lake, MN 56633

VIA EMAIL

Re: Notice of Band Appellate Court Jurisdiction

This letter acknowledges receipt of the correspondence you submitted on March 31, 2022, titled *Notice of Band Appellate Court Jurisdiction* (hereinafter "Notice"). This response is being provided to explain the mechanics of the Amended Election Ordinance and to respond to incorrect statements you made in the aforementioned Notice.

In your Notice, you state that Section 3.4(B)(2) of the Amended Election Ordinance requires a Band governing body to notify the Minnesota Chippewa Tribe ("MCT") that it has decided to use the Tribal Election Court of Appeals for final appeals. You state that the absence of official action by the Leech Lake Band of Ojibwe ("LLBO") means that the Election Court of Appeals lacks jurisdiction to decide "any past or future issues concerning the 2022 Election Calendar period." Notice, paragraph 1.

Section 3.4(B)(2) of the Election Ordinance allows a Band to use the MCT's Election Court of Appeals for election contests. Election contests occur after primary or general elections and provide candidates with an opportunity to challenge the results of the election in question. The showing necessary to overturn the results of an election is quite high. Band governing bodies can opt-in and confer jurisdiction over election contests to the Election Court of Appeals. The decision to opt-in must be submitted to the MCT before the date of the scheduled primary election. Section 3.4(B)(3) states that "[t]he Court may only take appeal from the decision of the Reservation Election Contest Judge…" The LLBO can choose to confer jurisdiction on the Election Court of Appeals at any time prior to the scheduled primary election for election contests. LLBO may also choose not to use the Election Court of Appeals for election contests. Section 3.4, including the provisions cited above, relate specifically to election contests that occur after candidate certifications.

Your Notice incorrectly states that the opt-in requirements in Section 3.4(B)(2) also apply to candidate certification challenges. To be clear, the certification of candidates is governed by an entirely different chapter of the Election Ordinance with entirely different requirements.

Section 1.3(C)(6) of the Election Ordinance governs candidate certification challenges and requires such challenges to be decided by the Tribal Election Court of Appeals. In fact, jurisdiction over candidate certification challenges **lies exclusively** with the Tribal Election Court of Appeals. Bands do not have to opt-in and do not have the ability to opt-out of Tribal Election Court of Appeals jurisdiction for certification challenges. The Band governing body of LLBO knew or should have known this when you affirmatively designated a judge to sit on the Tribal Election Court of Appeals for certification challenges and election appeals.

The public policy rationale for conferring exclusive jurisdiction over certification challenges with the Election Court of Appeals is sound. There is no step in the election process more subject to political gamesmanship than the certification of candidates. An incumbent could use candidate certification to unfairly impact tribal elections in an effort to remain in office. By conferring exclusive jurisdiction to the Election Court of Appeals, the Tribal Executive Committee provided an appropriate check on the Reservation Business Committee's otherwise unbridled authority over candidate certifications.

As I have stated on numerous occasions, the Election Ordinance grants jurisdiction over candidate certification challenges to the Election Court of Appeals. It also provides that all decisions are final. The certification challenges from LLBO have been decided fairly by the Election Court of Appeals. Neither your correspondence nor any of the other correspondences submitted in this matter change our analysis of this issue – the decision of the Election Court of Appeals is final and should be recognized as such.

Sincerely,

Philip Brodeen
General Legal Counsel of the Minnesota Chippewa Tribe

for Gary Frazer
Executive Director of the Minnesota Chippewa Tribe

CC TEC Members
LLBO RBC Members
Leech Lake Tribal Court
MCT Tribal Election Court of Appeals

EXHIBIT 16

LEECH LAKE BAND OF OJIBWE

Faron Jackson, Sr., Chairman
Arthur LaRose, Secretary-Treasurer

Penny DeVault, District I Representative
Steve White, District II Representative
LeRoy Staples Fairbanks III, District III Representative

February 6, 2018

Dear Honorable Judges,

Please find enclosed the entire official record of decision utilized by the Leech Lake Band of Ojibwe Reservation Committee in the certification of candidates on Tuesday, January 30, 2018. You will find the BCA background check (clear), and Access (1 MS deemed) dated 1/23/2018, and certification letters for signature. This constitutes the entire record of decision that the RBC reasonably relied on. Any consideration of documents outside the record of decision violates the Minnesota Chippewa Tribe Election Ordinance.

The RBC is aware of and their decision was informed by the following law:
RBC Meeting Minutes February 21, 2006. Motion by Lyman Losh, second by Donald Finn to adopt a Resolution holding, "that if deemed a misdemeanor that it indeed be a misdemeanor." Carried 4-0

RBC Meeting Minutes February 23, 2006. Motion by Burton Wilson, second by Lyman Losh to approve Tribal Council Resolution No. 2006-76 concerning Convictions that are Deemed to be Misdemeanors for certification of Tribal Candidates. Carried 4-0

LLBO Resolution No. 2006-76 ….NOW THEREFORE BE IT RESOLVED, that the policy of the Leech Lake Tribal Council is that convictions bearing the declaration "This offence is deemed to be a misdemeanor" on criminal background check results shall be deemed to be misdemeanors by the Leech Lake Tribal Council in determining eligibility of candidates to run for Tribal Council. 4-0

Leech Lake Tribal Court Case No. CV-06-07, CONCLUSIONS OF LAW 2. Because Goggleye's conviction is deemed to be for a misdemeanor and his civil rights have been restored, he is not precluded from running for or holding office under Article IV of the Revised Constitution of the Minnesota Chippewa Tribe.

The Minnesota Chippewa Tribe Election Ordinance (Revised 12/14/2017) Section 1.3(C)(4). "…The Band governing body shall make its certification decision based on all information available at the time for determination including information provided by the person who filed the Notice of Candidacy."

Public policy demands that in matters relating to the certification of candidates where there is the potential for any ambiguity the RBC must favor inclusion so that the true

decision makers, the constituents, right to vote for who they want to represent them is protected.

Sincerely,

2/6/18

2-6-18

2-6-18