

EXHIBIT P-4

Leech Lake Tribal Court

CV-22-58

LaRose v MCT et al

Orders, Briefs and Exhibits



**LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT**

190 Sailstar Dr. NW
Cass Lake, MN 56633
218-335-3682/3586

Civil Division

In the Matter of:

Arthur David LaRose, LLBO Secretary-
Treasurer,
Petitioner

vs

Cathy Chavers, MN Chippewa Tribe
President
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,
Respondents

**CERTIFICATE OF SERVICE,
POSTING OR MAILING**

CASE NO. CV-22-58

I, Jacquelyn Wright, served a(n) **ORDER DENYING RECONSIDERATION (Dated 05-18-22)**, which is attached, on the following person(s) by ordinary mail, addressed to their last known address(es).

Arthur LaRose, LLBO Sec/Treasurer
Via email: arthur.larose@llojibwe.net

Frank Bibeau, Esq.
Via email: frankbibeau@gmail.com

Cathy Chavers, MCT President
Via email: cchavers@boisforte-nsn.gov

Gary Frazer, MCT Executive Director
Via email: gfrazer@minnesotachippewatribe.org

Phil Brodeen, Esq.
Via email: phil@brodeenpaulson.com

The above was accomplished on May 18, 2022.



Court Administrator



**LEECH LAKE BAND OF OJIBWE
IN THE TRIBAL COURT**

Arthur David LaRose, LLBO Secretary-
Treasurer,

Petitioner

vs.

Cathy Chavers, MCT President, et al.,
Respondents

Court File No. CV-22-58

**ORDER DENYING
RECONSIDERATION**

The Petitioner filed a complaint with this Court alleging that the Respondents Minnesota Chippewa Tribe President, Executive Director, and its MCT Election Court of Appeals violated his rights when it upheld a certification challenge filed by another candidate disqualifying him from running for re-election for the position he now occupies because he was allegedly “convicted of a felon”. He sought a temporary restraining order without hearing or in the alternative a preliminary injunction. This Court denied the request for a preliminary injunction in an order dated May 5, 2022 finding that the Court lacks jurisdiction to hear a challenge to a certification decision made by the MCT Election Court of Appeals, provided that Court provided due process of law to a disqualified candidate.

The Petitioner has moved for reconsideration of that order arguing that the MCT Election Court of Appeals applied a constitutional amendment passed in 2006 ex post facto to disqualify

him and that by so doing it violated his due process rights under the Indian Civil Rights Act. The Respondents responded to this motion by reemphasizing its position that this Court lacks jurisdiction to entertain this challenge, regardless of what process the Court of Appeals utilizes.

This Court finds that the MCT Election Court of Appeals' application of the 2006 constitutional amendment to uphold the challenge to the Petitioner's eligibility to run is not violative of the Indian Civil Rights Act due process clause because it is not an ex post facto law. The prohibition of ex post facto laws refers to retroactive punishment of a person and not the imposition of additional civil collateral consequences for actions taken prior to the law being passed that imposes the additional civil consequences. See Smith v. Doe, 538 US 84 (2003)(application of sex offender registry laws to persons convicted prior to passage of law not violative of due process as it is not an ex post facto law designed to punish). See also Lehman v. Pa. State Police, 576 Pa. 365 (2002)(application of firearms disqualification law to prior convictions not violative of due process).

The purpose of the 2006 amendment is not to punish persons, but instead to regulate whom may run for elective office for the MCT. Assuming that the Petitioner has been "convicted of a felony", a dubious proposition since Minnesota law deems the crime he committed a misdemeanor back to the imposition of his sentence, the 2006 amendment to the MCT Constitution is not an attempt to impose additional punishment upon him for the crime he committed, but instead to regulate his right to run for office.

WHEREFORE it is hereby

ORDERED, ADJUDGED AND DECREED that the motion for reconsideration is hereby DENIED.

Dated: May 18, 2022

Handwritten signature of B. J. June in black ink.

Deputy Tribal Court Judge

IN THE TRIBAL COURT OF THE
LEECH LAKE BAND OF OJIBWE

Arthur Dale LaRose, LLBO Secretary-
Treasurer,

Case No.: CIV-22-58

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),

**MEMORANDUM OF LAW IN
OPPOSITION TO PETITIONER'S
MOTION FOR RECONSIDERATION**

Respondents.

Cathy Chavers, Gary Frazer, and the Minnesota Chippewa Tribe Tribal Election Court of Appeals (“Respondents”), by and through the undersigned counsel, request that the Leech Lake Band of Ojibwe Tribal Court (“Tribal Court”) deny the Motion for Reconsideration filed by Petitioner on May 10, 2022. The Motion should be denied because the Motion for Reconsideration does not meet the requirements of LLBO Judicial Code, Title 2, R. Civ. Pro. 38. Furthermore, the Tribal Court lacks jurisdiction to hear the case.

Petitioner requests reconsideration under Rule 38 of the LLBO Rules of Civil Procedure. Rule 38(B) allows for motions for reconsideration to be filed within ten (10) calendar days after entry of judgment. Rule 38(D) provides the grounds upon which the court may grant relief from a judgment. The court may grant relief based upon the following grounds: (1) newly discovered evidence which could not reasonably have been discovered in time to request a new trial; (2) fraud, misrepresentation or serious misconduct of another party to the action; (3) good cause if the

requesting party was not properly served in accordance with the Rules of Service and did not appear in the action; or (4) the judgment has been satisfied, released, or discharged.

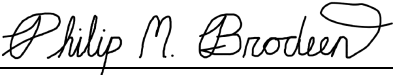
Petitioner's Motion for Reconsideration makes no mention of the grounds listed in Rule 38(D). This is because none of the grounds for reconsideration are present in this case. Instead, Petitioner argues that the Tribal Court's discussion regarding its potential jurisdiction provides an independent ground for reconsideration. The Tribal Court stated that it could have jurisdiction if "the MCT made a decision to disqualify a candidate without considering the candidate's written response such a process may violate the Indian Civil Rights Act..." Order of Dismissal, p. 4. Respondents do not concede that such jurisdiction exists. However, even if such jurisdiction did exist, the Tribal Court's pronouncements do not add to or modify the LLBO Rules of Civil Procedure to create additional grounds upon which a court can grant a motion for reconsideration. Motions for reconsideration are not an opportunity to relitigate a matter or try a new line of argument. Instead, they provide an opportunity for courts to address exceptional situations that involve fundamental fairness. This Motion for Reconsideration is neither exceptional nor a situation that involves fundamental fairness. Nor does it meet the requirements of Rule 38(D) of the LLBO R. Civ. Pro. The Motion for Reconsideration should be denied, and this matter should end.

Petitioner's Motion for Reconsideration is an attempt to relitigate arguments that were presented and decided by the IBIA in 2008 and by the MCT Election Court of Appeals in 2022.¹ The fatal flaw of the underlying Complaint is also present in the Motion for Reconsideration. The Motion skips right to the merits without first establishing subject matter jurisdiction. Respondents filed a Motion to Dismiss which contained over a dozen pages of analysis relating to the Tribal

¹ Neither of those decisions can be overturned by the Tribal Court in the present action.

Court's lack of jurisdiction. Petitioner still has not presented a cogent argument establishing jurisdiction for the Tribal Court in this matter. The Tribal Court properly decided that it lacked subject matter jurisdiction over this matter and that due process requirements were met. That decision should stand and the motion for reconsideration should be denied.

May 11, 2022


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Leech Lake Band of Ojibwe
In Tribal Court

Arthur Dale LaRose, LLBO Secretary-
Treasurer,
Petitioner,

v.

Case No. CV-22-58

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

**MOTION FOR
RECONSIDERATION**

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

Respondents,

Pursuant to LLBO Judicial Code, Title 2, R. Civ. Pro. 38(B), Petitioner, Arthur “Archie” LaRose, through his attorney, Frank Bibeau, brings his Motion for Reconsideration against the above-captioned Respondents Minnesota Chippewa Tribe (MCT) and the Minnesota Chippewa Tribal Election Court of Appeals for Elections 2022, and states and alleges as follows:

INTRODUCTION

Petitioner Arthur LaRose hereby respectfully moves for reconsideration of the Court’s Order of Dismissal dated May 5, 2022 in the above-referenced case. In the Order, the Court dismissed for lack of subject matter jurisdiction Petitioner’s Complaint alleging that Respondents violated his rights by upholding a certification challenge filed by another candidate. Order of Dismissal at 7. The Court, however, determined that this Court would have authority to intervene

in a case involving the denial of a candidate's certification, such as when "the MCT [has] made a decision to disqualify a candidate without considering the candidate's written response [as] such a process may violate the Indian Civil Rights Act due process clause and sovereign immunity would not bar a suit against the MCT officials responsible for such [actions]." *Id.* at 4. That is precisely the situation here as Petitioner raised in his written response to the certification challenge the issue of whether the 2006 Amendment may be applied retroactively to a conviction occurring *before* the Amendment's enactment, and Respondents completely failed to address this critical issue in denying Petitioner certification as a candidate for Tribal office. The question of whether the 2006 Amendment may be applied retroactively to Petitioner's prior conviction is a pure question of law. *See Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011) ("Whether a statute may be applied retroactively is a question of law"), which must be included in consideration by this Court in a 12(b) motion because Respondents have not given such consideration.

In his written response to the certification challenge, Petitioner asserted that Respondents' applying the 2006 Amendment to a 1992 conviction would constitute an unlawful *ex post facto* and retroactive application of the 2006 Amendment to his conviction that occurred long before the Amendment's enactment. Answer to Certification Challenge at 2, See Aff. of LaRose Exhibit 9 (stating that a law is "unconstitutional as an *ex post facto* law when applied to petitioner, whose crime was committed before the statute's enactment").

Petitioner also specifically cited to the Indian Civil Rights Act 1302 and included a physical copy as (A-15) with his Answer to Challenge. *Id.* at 7.

Respondents' Decision & Order of the 2022 Election Court of Appeals found LaRose ineligible explaining that

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 [Tribe] Election Ordinance as amended on December 14, 2021, (the Election Ordinance").

Id. Exhibit 4 Decision & Order.

The Election Court of Appeals makes no mention of the Indian Civil Rights Act nor any description of supporting documents attached to the Petitioner's Answer to Challenge, which Answer to Challenge is not even identified as received by the Election Court of Appeals from Petitioner. The Elections Court does explain that

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

Id. at 2. The Election Court identifies the Leech Lake Tribal Council's Certification Form and Criminal History Record Information report from Leech Lake Gaming Compliance Director. By comparison the Election Court of Appeals makes no comments as to receiving or considering any Answer to Challenge, any ex post facto or retroactivity review¹ or reference more than 50 attachments and supporting documentation from Mr. LaRose.

Respondents counsel stated during the May 3, 2022 hearing that the MCT Election Ordinance was changed to provide an "unbridled check" on the RBC certification process. But actually the unbridled check was very bridled, constrained within the MCT Constitution and the

¹ See Aff. of LaRose, page 3, Item 17 stating "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" of Answer to Challenge; and page 4, Item 19, stating "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."

MCT Election Ordinance, which further demonstrates the Election Court of Appeals did not consider the Indian Civil Rights Act and other civil rights defenses². The Decision & Order summarizes Petitioner's Answer to Challenge as

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 was no evidence provided to this 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

Id. at 2.

The primary legal analysis of the 2022 Election Court of Appeals follows the Routel Decision & Order from June 29, 2018, attached to Mr. Fineday's Certification Challenge, which does not mention the Indian Civil Rights Act, nor consider *ex post facto* application or retroactivity of the 2005 Amendment. It appears Respondents' are relying the final and unreviewable Election Ordinance law and sovereign immunity of the MCT for "the dutiful implementation of MCT laws by MCT officials".³ Dutiful implementation of a known *ex post facto* application of law by the MCT Tribal Executive Committee in violation of other federal laws and protections provided by Congress after the revision of the MCT Const. in 1964, like the Indian Civil Right Act of 1968,

² See Aff. of LaRose, page 4, Item 19 stating "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."

³ See *Respondents' Memorandum of Law in Support of Motion to Dismiss and Opposing Motion for Temporary Restraining Order and Preliminary Injunction* dated May 2, 2022, at page 6 saying "[t]he MCT Constitution does not grant subject matter jurisdiction to any judicial body, including the tribal courts of the individuals Bands, to challenge the decisions of the MCT Election Court of Appeals or the dutiful implementation of MCT laws by MCT officials. In fact, the Constitution is completely devoid of any mention of judicial bodies. Instead, the TEC has specifically stated that it has the sole authority to interpret the Constitution. See Tribal Interpretations 1-80 and 10-96."

intentionally violates the Indian Civil Rights Act (See 25 U.S.C. §§ 1301-03, specifically § 1302. Constitutional rights, No Indian tribe in exercising powers of self-government shall (9) pass any bill of attainder or ex post facto law). Consequently, the Respondents' dutiful enforcement actions of an unconstitutional law, without any obvious review of the various Indian Civil Rights Act defenses asserted by Incumbent Petitioner, can only be seen as intentional, *ultra vires* violations of significant and important protected, constitutional rights, and Respondents are not immune simply because bad law is codified by the MCT-TEC in the Election Ordinance. The only time Respondents mention the Indian Civil Rights Act in their Memorandum of Law dated May 2, 2022, is to assert ICRA does not and cannot apply here.⁴

Despite Petitioner clearly raising this issue, the MCT Election Court of Appeals made no mention of retroactivity or *ex post facto* in its decision denying Petitioner certification. Rather, the Election Court of Appeals' decision focused *solely* on whether "Mr. LaRose was 'convicted' of a felony in 1992." Decision & Order at 2. This is a far different question than whether the 2006 Amendment can be lawfully applied retroactively to convictions occurring before its enactment. Whether the 2006 Amendment can be lawfully applied retroactively does not in any way depend on Petitioner's prior conviction being a felony under Minnesota law.

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

⁴ Id. at page 9, Respondents wrongly asserting and saying "Federal law does not provide a general waiver of tribal sovereign immunity. Instead, Congress has created federal remedies against Indian tribes in very limited circumstances through the Indian Civil Rights Act. 25 U.S.C. § 1301 et seq. The only cause of action made available to litigants to challenge the actions of an Indian tribe that is exercising powers of self-government is a federal writ of habeas corpus. Plaintiff is not and cannot seek a federal writ of habeas corpus in the tribal court setting.

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. 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. In fact, Petitioner has been certified as a candidate several times—both before and after the 2006 Amendment’s enactment. The 2006 Amendment, if applied to Petitioner in the manner upheld by the Election Court of Appeals, would 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 to Petitioner’s 1992 conviction “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.

As this Court explained, a “troubling aspect of this case is the apparent flip-flop on the determination of the Petitioner’s eligibility to serve in public office.” Order of Dismissal at 5. The Election Court of Appeals’ “flip-flop” determination on Petitioner’s certification without addressing the retroactivity argument (which is dispositive of this case) violates Petitioner’s rights protected under the MCT Constitution and Indian Civil Rights Act. This is the exact scenario in which the Court found that it would have subject matter jurisdiction to review the merits of Petitioner’s claims. Because Petitioner raised the issue regarding the 2006 Amendment’s retroactivity and the Election Court of Appeals completely failed to address it, this Court should grant reconsideration and address this fundamental issue.

I. The Court Should Grant Reconsideration to Address the Issue of Whether the 2006 Amendment May Be Retroactively Applied to Petitioner’s 1992 Conviction.

Regardless of whether Petitioner’s 1992 conviction is deemed a felony or misdemeanor under Minnesota law, the 2006 Amendment cannot be lawfully applied retroactively to Petitioner’s conduct occurring before the Amendment’s enactment without clear and unambiguously expressed intent to do so. Petitioner’s relevant conduct—a criminal conviction for third-degree assault under Minnesota law—occurred in 1992—long before the 2006 Amendment’s enactment. In his written response to the certification challenge, Petitioner asserted that the 2006 Amendment could not be applied retroactively to his 1992 conviction to disqualify him from running for Tribal office. Answer to Certification Challenge at 2, See Aff. of LaRose Exhibit 9. But for unknown reasons, the Election Court of Appeals entirely failed to analyze or even mention whether the 2006 Amendment may be applied retroactively to Petitioner’s conviction that occurred prior to the Amendment’s enactment.

The retroactivity issue was also raised to the MCT and Respondents in a letter by Sharon Osborn, a Minnesota licensed attorney and White Earth descendent, who explained that the 2006 Amendment “must be applied prospectively” and “cannot be applied retroactively to deprive a citizen of something legally obtained.” Letter from Sharon Osborn to MCT et al. (Mar. 28, 2022) at 2, Complaint Exhibit F. In the letter, Ms. Osborn also stated that “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.” *Id.* Respondents provided no response to Ms. Osborn’s letter.

Moreover, in 2006, Judge Wahwassuck certified the following questions to the MCT TEC for an opinion pursuant to a Tribal Constitution Interpretation No. 1-80:

1. Is Revised MCT Constitution Article IV intended to apply to a 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. Goggeye, No. CV-06-07, *Request for Opinion From Tribal Executive Committee* at 2 (Leech Lake Tribal Ct. Dec. 8, 2006). The MCT has thus been on notice of the retroactivity issue for over 15 years. Despite Petitioner falling squarely within the category of persons elected to Tribal office prior to the 2006 Amendment's enactment, the TEC has failed to provide any interpretation on the two questions certified by Judge Wahwassuck. The MCT's failure to provide any guidance on the retroactivity of the 2006 Amendment has led Petitioner to assume that the Amendment is not to be applied retroactively to convictions occurring before its enactment, particularly considering that he has been certified as a candidate each time he has filed to run after the effective date of the amendment.

Adhering to the traditional presumption against retroactivity to application of the 2006 Amendment shows why the Court should reconsider its dismissal of Petitioner's suit. "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*, 511 U.S. at 265). The question of whether the 2006 Amendment may be applied retroactively to Petitioner's prior conviction is a pure question of law. *See Ditullio v.*

Boehm, 662 F.3d 1091, 1096 (9th Cir. 2011) (“Whether a statute may be applied retroactively is a question of law”).

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.”).⁵

Under the presumption against retroactivity, “courts read laws as prospective in application unless Congress has unambiguously instructed retroactivity.” *Vartelas*, 566 U.S. at 266; *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 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).⁶ 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*,

⁵ The presumption against retroactivity 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). While the Election Court of Appeals focused its analysis on whether Petitioner’s prior conviction constitutes a felony under Minnesota law, it fails to point out that Minnesota law follows the well-settled presumption against retroactivity.

⁶ *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.”).

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 265.⁷

“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 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. at 352 (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

⁷ *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.”).

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. Several cases have applied the presumption against retroactivity framework, which are instructive for the Court in this case.

For example, in *Vartelas*, the Court considered whether a provision of the Illegal 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*, 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 litigate prisoner suits applied to post-judgment monitoring of defendants’ compliance with remedial decrees that had been performed before the PLRA became effective. 527 U.S. 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. 527 U.S. 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 effective 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 reach 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 Varetas*, 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”).⁸ 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

⁸ *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’”).

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”).⁹ 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.* Such language could have explicitly stated that the 2006 Amendment is to apply to convictions entered on, before, or after its effective date. But they chose to not do so.

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,

⁹ *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.”).

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.

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). 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, especially since the TEC was specifically requested to decide this issue through certification by the Leech Lake Tribal Court in 2006; and in 2022 through a request for a Special TEC meeting to address this very issue. Each time, the TEC failed to address this very issue of the retroactive application of the 2006 amendment. Then, when this very issue was squarely before the MCT Court of Election Court of Appeals, that tribunal failed to even mention the issue, let alone decide it. 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 question of whether the 2006

Amendment may be applied retroactively to Petitioner's prior conviction is a pure question of law. *See Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011) ("Whether a statute may be applied retroactively is a question of law"), which must be included in consideration by this Court in a 12(b) motion because the MCT Tribal Elections Court of Appeals ignored this constitutional defense. The Court should thus reconsider its dismissal and resolve the denial of Petitioner's certification as a candidate for the 2022 election.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this Motion for Reconsideration to resolve the retroactive application of the 2006 Amendment to convictions occurring before its enactment.

Dated: May 10, 2022

Respectfully submitted,

/s/ Frank Bibeau

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**LEECH LAKE BAND OF OJIBWE
IN TRIBAL COURT**

190 Sailstar Dr. NW
Cass Lake, MN 56633
218-335-3682/3586

Civil Division

In the Matter of:

Arthur David 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,
Respondents.

**CERTIFICATE OF SERVICE,
POSTING OR MAILING**

CASE NO. CV-22-58

I, Amanda Richardson, served a(n) **Order of Dismissal (Dated 05/05/2022)**, which is attached, on the following person(s) by ordinary mail, addressed to their last known address(es).

Arthur LaRose
(Via email: Arthur.larose@llojibwe.net)

Frank Bibeau, Esq.
(Via email: frankbibeau@gmail.com)

Cathy Chavers
(Via email: cchavers@boisforte-nsn.gov)

Gary Frazer
(Via email: gfrazer@minnesotachippewatribe.org)

Phil Brodeen
(Via email: phil@brodeenpaulson.com)

The above was accomplished on May 5, 2022


Court Clerk



**LEECH LAKE BAND OF OJIBWE
IN THE TRIBAL COURT**

<p>Arthur David LaRose, LLBO Secretary-Treasurer, Petitioner</p> <p>vs.</p> <p>Cathy Chavers, MCT President, et al., Respondents</p>	<p>Court File No. CV-22-58</p> <p>ORDER OF DISMISSAL</p>
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The Petitioner filed a complaint with this Court alleging that the Respondents Minnesota Chippewa Tribe President, Executive Director, and its MCT Election Court of Appeals violated his rights when it upheld a certification challenge filed by another candidate disqualifying him from running for re-election for the position he now occupies because he was allegedly convicted of a felony. He sought a temporary restraining order without hearing or in the alternative a preliminary injunction. The Defendants filed a motion to dismiss the request for relief on numerous grounds including lack of subject matter jurisdiction and on sovereign immunity grounds. Hearing on the motion to dismiss and request for a preliminary injunction was scheduled for May 3, 2022 with the Plaintiff appearing by Zoom along with his attorney, Frank Bibeau, and the Defendants through their Director and attorney, Phil Brodeen. Both counsel presented spirited arguments.

The Defendants argue that under the MCT Election Ordinance only the MCT Court of Election Appeals can hear certification challenges and that the challenge need not be filed with the Band's Election Board or governing body. Even if a challenged candidate alleges a due process violation in denying him the right to run for office, Defendants argue that only the MCT can address that and not the Courts of the constituent Bands. They also argue that even if this Court has some subject matter jurisdiction over the actions of the MCT Court of Election Appeals the named Defendants are immune from suit.

The Plaintiff points out that he has been in an elected position with the Leech Lake Band for 16 years and that the claim that he was convicted of a felony was raised and decided in his favor in the most recent election, 2018, and the same MCT election process that has now disqualified him resulted in him being certified to run in 2018.¹ He also argues that the challenge to his candidacy was not presented first to the Band, but instead was filed initially with the MCT Election Court of Appeals and at that level because of an expedited process laid out in the MCT Election Ordinance, he was not permitted a hearing before the Court that disqualified him, but instead was only permitted to submit a written response to the challenge. He argues that this Court has authority to enjoin his disqualification because of a lack of due process provided him as well as various violations of Band law and the MCT Constitution.

In reviewing the arguments made at hearing this Court does not start with a blank slate. The issue of the Plaintiff's eligibility to run for office came before this Court in 2018 in CV-18-66 when District II representative White filed an action seeking this Court's intervention to enjoin Mr. LaRose from taking office after being certified by the MCT Election Judge, Collette

¹ In 2018 the MCT Election Court of Appeals, differently constituted, ruled that the challenge process was too expedited to really give the Court a chance to review challenges to candidates but found that there was insufficient evidence to show that the Petitioner was a convicted felon.

Routel, after the same challenge was raised to the MCT of the Petitioner being a convicted felon. That challenge was denied in 2018, but Mr. White felt that the MCT Election Judge was wrong so he sought this Court's intervention to stop Mr. LaRose from holding office. Judge Routel, in denying Mr. White's challenge to Mr. LaRose, clearly opined that she thought Mr. LaRose was ineligible to run for office but noted that the MCT Court of Election Appeals had denied the challenge because there was insufficient evidence presented to prove that Mr. LaRose was convicted of a felony. This Court denied Mr. White's request for this Court to get involved in this back and forth between the MCT Court of Election Appeals and the MCT Election Judge finding 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."

The roles appear reversed in this action as the Petitioner claims that the MCT Election Court of Appeals wrongfully disqualified him from running for re-election, despite having denied prior challenges to the Petitioner on the same ground as the challenger Mr. Fineday, presented this time. This Court has reviewed the MCT Election Ordinance, as well as the MCT Constitution and laws of the Band, and concludes that absent a clear violation of due process of law by the MCT Court of Election Appeals this Court lacks the subject matter jurisdiction to intervene into this dispute and thus grants the motion to dismiss for want of jurisdiction.

The MCT Election Ordinance, as revised on December 14, 2021 lays out two different procedures for challenging candidate who seek to run for office and for contesting election results. For certification issues the Ordinance at 1.C(3)(6) permits any certified candidate to challenge the certification of another candidate seeking that office by notifying the MCT Executive Director of the challenge and then the ED notifies the Band's governing body of the challenge, if timely, and then sends the challenge to the candidate being challenged advising him

he has two days to respond to the challenge. The ED also sends the challenge to the MCT Election Board of Appeals, which is constituted differently each election by each Band designating a Judge. The Judge from the Band with a challenged candidate is recused and the remaining Judges preside. The ED provides to the MCT Court of Election Appeals the record compiled by the Band involved in the challenge, the contestor's contest and the contested person's written response, if any. No hearing is required but instead the MCT Court must convene and issue a decision within 48 hours. The record compiled by the Band is not a record of any challenge heard first by the Band, but instead is the information provided by the Election Board, the contestor and the contested candidate.

For contests of elections each Band may either agree to permit its Court of Appeals to decide election contests or the MCT Election Court of Appeals. This Court takes no position on whether a candidate disqualified by the MCT Election Court of Appeals can file an election contest as that is not before this Court.

The Defendants argue that the Band's courts lack any authority to entertain suits against the MCT for its election decisions and actions under the Indian Civil Rights Act or the MCT Constitution. The exclusive remedy is the MCT Executive Board and its Director, according to the Defendants, and the Plaintiff has already exhausted those efforts. This Court is not prepared to find that this Court lacks the authority to intervene in all circumstances. If, for example, the MCT made a decision to disqualify a candidate without considering the candidate's written response such a process may violate the Indian Civil Rights Act² due process clause and sovereign immunity would not bar a suit against the MCT officials responsible for such. See

² It is ironic that in 2018 when the MCT Court of Election Appeals denied a certification challenge to LaRose it seemed to hold that the process for hearing such challenges did not comport with due process because it was too expedited. It does not appear that the process changed much from 2018.

Michigan v. Bay Mills Indian Community, 134 S.Ct 670 (2013)(“As this Court has stated before, analogizing to Ex parte Young, 209 U. S. 123 (1908), tribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct. See Santa Clara Pueblo, 436 U. S., at 59.” Disagreeing with the legal analysis of a court, however, is not evidence of a due process violation.

The more troubling aspect of this case is the apparent flip-flop on the determination of the Petitioner’s eligibility to serve in public office. After serving in public office for 16 years Petitioner has now been told he is ineligible to run again for something that happened prior to his public service. The MCT Court of Election Appeals is a Court constituted differently every election cycle and is apparently not bound by prior precedents of the Court as the 2022 Court paid no deference to prior rulings of its own Court and prior rulings of other Courts addressing this same issue of whether the Petitioner was convicted of a felony. The 2022 Court held that even though the Petitioner herein does not have a felony conviction on his record now - because he successfully served out his probation and thus pursuant to Minnesota Stat. §609.13³his conviction is deemed a misdemeanor under state law - he did have a conviction at one time prior

3

Subdivision 1. *Felony*. — 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. *Gross misdemeanor*. — 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.

to serving out his probation and such disqualifies him from running for office. Minnesota law on this issue is a bit confounding as some cases hold that a person convicted of a felony who has the charge lowered to a misdemeanor after serving out probation has no longer been convicted of a felony for purposes of the Minnesota career-offender statute, see State v. Franklin, 861 NW2d 67,68 (Minn. 2015). The Court there noted that the determination of whether a person had a felony conviction is effective at the time the issue is being assessed and not at the time the original conviction was entered. Thus, if the conviction was altered by subsequent events (vacated on appeal, expunged, pardoned, or reduced pursuant to statute) the conviction would no longer be considered disqualifying under the law.

The MCT Court of Appeals applied the Minnesota Supreme Court's analysis in State v. S.A.M., 891 NW2d 602 (Minn. 2017) however to hold that the use of the term "was convicted" in a Minnesota statute referencing eligibility for expungement of felonies more closely approximates the term "ever been convicted of a felony" under the MCT Constitution. In S.A.M. the Court held that the term was utilized to refer back to the time of initial conviction and that this was the relevant point in determining status and not the current status of the individual involved there. Similarly the MCT Court of Election Appeals held that "ever been convicted of a felony" refers back to the date of original prosecution and although even though Minnesota law "deems" the conviction a misdemeanor now since it was charged out as a felony it is deemed a felony conviction. The dissent in S.A.M. by Justice Lillehaug, and joined by now Justice Mckeig of the Minnesota Supreme Court points out the folly in the majority opinion however because it actually grants felons more expungement rights under Minnesota law than misdemeanants. This dissent points out the problem with interpreting "ever been convicted of a felony" without consideration of what happened since the conviction and how the law applied nunc pro tunc to

change the classification of the offense. Had Mr. LaRose been convicted of a felony and had the conviction overturned on appeal, he still apparently would not be able to run for office under the logic of the MCT Court of Election Appeals because at some finite point in history he was convicted of a felony.

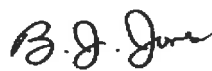
Minnesota Stat. §609.13 clearly means that once a person serves out probation successfully his original conviction is altered nunc pro tunc and it becomes a misdemeanor. Otherwise a Defendant is being convicted twice for the same offense- initially as a felon and then as a misdemeanant- and such would seem to violate double jeopardy.

It is not this Court's province however to wax on and on about this however as this Court needs to be consistent with its prior precedent in White v. LaRose, CV-18-66, where it held it has no jurisdiction to intervene into this matter. Continuing to rehash this issue makes it seem like political theater instead of informed judicial decision-making. The MCT Court of Appeals received a challenge to the Petitioner's eligibility, it gave him notice of the challenge and the right to respond, and then it considered the challenge and his response to conclude that he was ineligible. This constitutes due process and simply because other Judges on that Court in the past, as well as other Judges that work for the respective Bands, interpret these issues differently does not mean the MCT Court of Election Appeals violated due process.

WHEREFORE it is hereby

ORDERED, ADJUDGED AND DECREED that this action be and hereby is dismissed for lack of subject matter jurisdiction.

Dated: May 5, 2022



Deputy Tribal Court Judge

IN THE TRIBAL COURT OF THE
LEECH LAKE BAND OF OJIBWE

Arthur Dale LaRose, LLBO Secretary-
Treasurer,

Case No.: CIV-22-58

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),

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS
AND OPPOSING MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Respondents.

INTRODUCTION

Cathy Chavers, Gary Frazer, and the Minnesota Chippewa Tribe Tribal Election Court of Appeals (“Respondents”), by and through the undersigned counsel, respectfully request that the Leech Lake Band of Ojibwe Tribal Court (“Tribal Court”) deny the Motion for Temporary Restraining Order and Preliminary Injunction (“TRO Motion”) and dismiss the Complaint filed by Arthur Dale Larose (“Plaintiff”) with prejudice. The TRO Motion should be denied, and the Complaint should be dismissed because the Tribal Court lacks jurisdiction to hear the case. Neither the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (“MCT Constitution”) nor the Amended Election Ordinance (revised on 12/14/21) support the exercise of tribal court jurisdiction to contest a decision issued by the MCT Election Court of Appeals. The lack of jurisdiction of the Tribal Court is dispositive to the TRO Motion and the Complaint itself. For this

reason, Respondents have drafted this memorandum to address the lack of jurisdiction. This memorandum also addresses the TRO Motion.

PROCEDURAL AND FACTUAL BACKGROUND

On February 16, 2022, the Minnesota Chippewa Tribal Election Court of Appeals issued a Decision and Order which held that Plaintiff was ineligible to be a candidate for LLRBC Secretary/Treasurer. Since then, Plaintiff has attempted to undermine the MCT Election Court of Appeals decision by continually requesting the Tribal Executive Committee (“TEC”) of the MCT to overturn the decision. The TEC has not acted on the request and has issued multiple statements to Plaintiff that the Election Ordinance provides that the MCT Election Court of Appeals decision is final. Nevertheless, Plaintiff once again attempts to undermine the uniform election process by filing this Complaint before a judicial body that has no role in MCT election certification matters, the Leech Lake Tribal Court.

Plaintiff initiated this action on April 29, 2022, in the Tribal Court against Respondents. All of the Respondents were served through counsel on the same date. Respondent Chavers is the duly elected Chairperson of the Bois Forte Reservation Business Committee and President of the Minnesota Chippewa Tribe (“MCT”). Respondent Frazer is the Executive Director of the MCT. Respondent MCT Election Court of Appeals is the judicial body specifically appointed by the six Bands to decide matters related to the 2022 MCT Elections.

The Complaint specifies that Plaintiff is suing Respondents in their official capacities relative to the 2022 election certification process. The Complaint alleges that the actions of Respondents, specifically the non-certification of Plaintiff, violate Plaintiff constitutional rights. Plaintiff seeks an order declaring that Petitioners civil rights have been violated and requiring Respondents to cease going forward with the 2022 MCT Election without Plaintiff on the ballot.

ARGUMENT

The Complaint should be dismissed with prejudice because the Tribal Court lacks jurisdiction under MCT law to hear this matter. Furthermore, the Complaint suffers from the following jurisdictional defects, each of which is dispositive to this Motion to Dismiss: 1.) the Tribal Court lacks subject matter jurisdiction to hear the Complaint; 2.) Respondents, acting in their official capacity, are immune from suit due to tribal sovereign immunity and absolute immunity; 3.) Plaintiff failed to state a claim upon which relief can be granted; and 4.) the Plaintiff failed to join the Minnesota Chippewa Tribe (“MCT”) as a necessary and indispensable party.¹

Even if the Tribal Court did have jurisdiction over this matter, which it does not, the TRO Motion should be denied. Plaintiff fails to meet the significant burdens placed on a litigant when moving for a temporary restraining order and preliminary injunction. Plaintiff cannot show irreparable harm, the balance of the equities weigh against Plaintiff, Plaintiff is unlikely to succeed on the merits, and denying injunctive relief advances the public interest.

I. THE TRIBAL COURT LACKS JURISDICTION TO HEAR THIS CASE

The Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (the “Constitution”) provides that “[a]ll 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.” MCT Constitution, Article IV, Section 1. The TEC enacted a uniform Election Ordinance that governs all tribal elections. The Election Ordinance is the primary source of authority for election related matters.

¹ For purposes of analysis throughout this memorandum, the Respondents will utilize Rules 12(b)(1), 12(b)(6) and 12(b)(7) of the Federal Rules of Civil Procedure pursuant to Chapter VII, Section 6 of the Judicial Code.

Section 1.3(C)(6) of the Election Ordinance governs candidate certification challenges and requires such challenges to be decided by the MCT Election Court of Appeals. Jurisdiction over candidate certification challenges pursuant to Section 1.3(C)(6) **lies exclusively** with the MCT Election Court of Appeals. Bands do not have to opt-in and do not have the ability to opt-out of the MCT Election Court of Appeals' exercise of jurisdiction over certification challenges.

The Election Ordinance also provides that “[t]he decision of the Tribal Election Court of Appeals shall be final.” Election Ordinance, Section 1.3(C)(6). The individual courts of the Bands do not have jurisdiction to hear candidate certification challenges, nor can they overturn the decisions of the Tribal Election Court of Appeals as a matter of MCT law. The Tribal Court does not have jurisdiction to render judgment on the Complaint or to grant the relief requested. Nor does this Court have a prescribed role in any MCT election related matters.

A. THE TRIBAL COURT LACKS SUBJECT MATTER JURISDICTION TO HEAR CLAIMS AGAINST THE RESPONDENTS

1. STANDARD FOR MOTION TO DISMISS BASED ON LACK OF SUBJECT MATTER JURISDICTION

Challenges to subject matter jurisdiction as applied by the Federal Rules is outlined in Rule 12(b)(1), which contains two types of challenges: (1) a facial attack; or (2) a factual attack. *Smith v. Babbitt*, 875 F.Supp. 1353 (D. Minn. 1995). In a facial attack, the Court restricts itself to “the face of the pleadings,” and the nonmovant receives the same protections as it would defending against a motion brought under Federal Rule 12(b)(6). *Osborn v. United States*, 918 F.2d 724, 729 n. 6 (8th Cir. 1990). In a factual attack, the court considers matters outside the pleading, the non-moving party does not have the benefit of Federal Rule 12(b)(6), and no presumption of truthfulness applies to the factual allegations. *Osborn*, 918 F.2d at 729 n. 6; *Ohio Nat’l Ins. Corp v. United States*, 922 F.2d 320 (6th Circuit 1990). A Federal Rule 12(b)(1) motion to dismiss is a

“factual attack” when the truth of the jurisdictional facts alleged by the plaintiff are challenged. *Smith*, 875 F.Supp. 1358, quoting 2A Moore’s Federal Practice, ¶ 12.07[2.-1] at 12-52. (2nd ed. 1994). In this case, Respondents are challenging the jurisdictional facts alleged by Plaintiff, thus resulting in a factual attack with an analysis similar to Federal Rule 12(b)(1).

“For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101-102 (1998). “The requirement that jurisdiction be established as a threshold matter is inflexible and without exception for jurisdiction is power to declare the law, and without jurisdiction the court cannot proceed at all in any cause. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 577 (1999). “[T]here is no unyielding jurisdictional hierarchy” *Ruhrgas AG*, 526 U.S. at 578, *see Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 431 (2007) (“While *Steel Co.* confirmed that jurisdictional questions ordinarily must precede merits determinations in dispositional order, *Ruhrgas* held that there is no mandatory sequencing of jurisdictional issues.”).

2. THE MCT CONSTITUTION DOES NOT AUTHORIZE SUITS AGAINST RESPONDENTS IN TRIBAL COURTS

The MCT is a federally recognized Indian tribe comprised of six constituent Bands: Bois Forte; Fond du Lac; Grand Portage; White Earth; Mille Lacs; and White Earth. The duly elected governing body of the MCT is the TEC. Each of the six Bands are federally recognized and exercise inherent sovereign powers of self-determination over the trust and reservation lands within or near their reservation boundaries.

The unique structure of the MCT and the legislative and administrative actions of the Federal Government has resulted in a complicated governance structure for the MCT. This governance structure is premised on separations of authority between the MCT and the constituent

Bands. This complicated governance structure is controlled by and outlined in the MCT Constitution. The Constitution is controlling on all matters of tribal law. Similarly, the duly enacted Ordinances and Resolutions of the TEC are controlling for matters that are specifically delegated to the TEC pursuant to the MCT Constitution. In the present Complaint, Plaintiff is suing Respondents for dutifully following the Election Ordinance. Plaintiff's Complaint is a direct challenge to the MCT Election Ordinance.²

The MCT Constitution does not grant subject matter jurisdiction to any judicial body, including the tribal courts of the individuals Bands, to challenge the decisions of the MCT Election Court of Appeals or the dutiful implementation of MCT laws by MCT officials. In fact, the Constitution is completely devoid of any mention of judicial bodies.³ Instead, the TEC has specifically stated that it has the sole authority to interpret the Constitution. *See* Tribal Interpretations 1-80 and 10-96. Although the creation of a judicial body through the Constitution would be beneficial and is currently being considered in the constitutional reform process, the result of that process is still unknown and not subject to this proceeding. For now, neither the Tribal Court nor any judicial body outside of the TEC has subject matter jurisdiction to hear a

² Plaintiff seeks to modify the duly enacted Constitution and laws of the MCT through judicial fiat. The MCT Constitution provides the sole remedy for tribal members who seek to modify the duly enacted laws of the TEC. Article XIV, Section 1 of the MCT Constitution provides that a referendum must be called on any enacted or proposed resolution or ordinance of the TEC upon receipt of a petition signed by twenty percent (20%) of the resident voters of the MCT or an affirmative vote of eight (8) members of the TEC. Importantly, a referendum has not been triggered by an affirmative vote of eight (8) members of the TEC. Nor does Plaintiff allege that he has submitted a duly executed petition for a referendum or even that he has obtained a significant number of signatures on such a petition. Instead, he attempts to circumvent the referendum process by filing the Complaint currently pending before this Court.

³ Although the Constitution does not mention judicial bodies, the individual Bands are still free to exercise their inherent sovereign authority to create their own tribal courts to decide matters of importance that do not interfere with those powers reserved by the Constitution to the TEC.

challenge to a duly enacted law of the MCT or the dutiful implementation of those laws by tribal officials. Jurisdiction over this specific controversy, election certification challenges, was expressly vested in the MCT Election Court of Appeals pursuant to MCT law.

The Constitution defines authorities that are to be exercised by the MCT TEC members and appointed officials and by the individual Bands. The authorities exercised by the TEC members and appointed officials are separate and distinct from the authorities exercised by the individual Bands through their governing bodies. Under the current structure created by the Constitution, a Band cannot exercise its authority to negate the duly enacted laws of the TEC. Nor can a Band create a manner of redress against the TEC or MCT officials that is not provided for in the Constitution. Similarly, a tribal court of an individual Band should not exercise jurisdiction to hear a case that challenges the actions of the TEC or MCT officials unless the Constitution confers such jurisdiction.

Pursuant to the Constitution and out of respect for the unique governance structure of the MCT, the Tribal Court should dismiss the Complaint for lack of subject matter jurisdiction. A tribal court of an individual constituent Band of the MCT is an inappropriate and inadequate forum to review the duly enacted laws of the TEC or the actions of MCT officials dutifully implementing those laws.

B. SOVEREIGN IMMUNITY PREVENTS SUIT AGAINST THE MCT, TEC MEMBERS, AND APPOINTED OFFICIALS

As elected and appointed officials, Respondents share the Minnesota Chippewa Tribe's sovereign immunity. The Plaintiff has not pleaded that any Band, the MCT, or Congress has waived that immunity. Therefore, the Complaint should be dismissed with prejudice on the grounds of tribal sovereign immunity.

A motion to dismiss on sovereign immunity grounds is analyzed under Rule 12(b)(1). *Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8th Cir. 2000). (discussing sovereign immunity in the context of Federal Rule 12(b)(1) motions). In this case, Respondents are challenging the jurisdictional facts alleged by Plaintiff based on the doctrine of tribal sovereign immunity, thus resulting in a factual attack under Federal Rule 12(b)(1).

“[T]ribal sovereign immunity is a threshold jurisdictional question.” *Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 684 (8th Cir. 2011); *Fort Yates Pub. Sch. Dist. No. 4 v. Murphy ex rel. C.M.B.*, 786 F.3d 662, 670 (8th Cir. 2015). “[I]f the Tribe possesses sovereign immunity, then the district court had no jurisdiction.” *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244 (8th Cir. 1995). “[I]t is of course true that once a court determines that jurisdiction is lacking, it can proceed no further and must dismiss the case on that account.” *Sinochem Int’l Co. Ltd. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 434 (2007).

1. THE MCT, MEMBERS OF THE TEC, AND MCT OFFICIALS ARE IMMUNE FROM SUIT

Indian tribes are “domestic dependent nations” that exercise “inherent sovereign authority.” *Oklahoma Tax Comm’n v. Citizen Band of Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991) (quoting *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831)). Tribes are subject to the plenary authority of Congress, but they have also been recognized as “separate sovereigns pre-existing the Constitution.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). “Thus, unless and ‘until Congress acts, the tribes retain’ their historic sovereign authority.” *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014) (quoting *United States v. Wheeler*, 435 U.S. 313, 323 (1978)).

One of the foundational aspects of sovereignty that tribes possess, subject to Congressional action, is the “common law immunity from suit traditionally enjoyed by sovereign powers.” *Santa*

Clara Pueblo, 436 U.S. at 58. The Supreme Court has specifically held that tribal sovereign immunity is “a necessary corollary to Indian sovereignty and self-governance.” *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng’g, P.C.*, 476 U.S. 877, 890 (1986).

The MCT, as a federally recognized Indian tribe, possesses sovereign immunity from suit. *See* 84 FR 1200, 1202. “tribal officers are clothed with the Tribe’s sovereign immunity.” *Baker Elec. Co-op v. Chaske*, 28 F.3d 1466, 1471 (8th Cir. 1994). Naming a Tribal official as a defendant does not operate as an end around sovereign immunity:

A suit against the Tribe and its officials in their official capacities is a suit against the tribe and is barred by tribal sovereign immunity unless that immunity has been abrogated or waived. Tribal sovereign immunity extends to tribal officials when acting in their official capacity and within the scope of their authority. A plaintiff cannot circumvent tribal immunity by the simple expedient of naming an officer of the Tribe as a defendant, rather than a sovereign entity.

Miller v. Wright, 705 F.3d 919, 927-28 (9th Cir. 2013).

In this instance, members of the TEC, the MCT Executive Director, and the MCT Election Court of Appeals share the MCT’s sovereign immunity when acting in their official capacities. The only way around tribal sovereign immunity is if such immunity has been abrogated by Congress or the Tribe itself has waived such immunity. As detailed in the following paragraphs, neither of these factors are present in this case.

Federal law does not provide a general waiver of tribal sovereign immunity. Instead, Congress has created federal remedies against Indian tribes in very limited circumstances through the Indian Civil Rights Act. 25 U.S.C. § 1301 *et seq.* The only cause of action made available to litigants to challenge the actions of an Indian tribe that is exercising powers of self-government is a federal writ of habeas corpus. Plaintiff is not and cannot seek a federal writ of habeas corpus in the tribal court setting.

The Minnesota Chippewa Tribe has not waived its sovereign immunity for suits brought by tribal members seeking to undo TEC actions or to second guess the lawful decisions of MCT officials. The MCT has waived its sovereign immunity in limited instances. MCT Ordinance No. 6 provides a limited waiver of sovereign immunity related to liability insurance coverages, contract bonds, performance bonds, and payment bonds for MCT subdivisions and business corporations. MCT Ordinance No. 14 provides a limited waiver of sovereign immunity related to the Minnesota Chippewa Tribal Housing Corporation. None of these Ordinances apply to the case at bar. Nor can Plaintiff point to a valid waiver of sovereign immunity that would allow his Complaint to go forward.

C. ABSOLUTE IMMUNITY PREVENT SUITS AGAINST HIGH-RANKING TRIBAL OFFICIALS

Even if sovereign immunity had been abrogated or waived, other immunity doctrines would apply to bar the Complaint. Absolute immunity applies to high-level executive officers of an Indian tribe. *Diver v. Peterson*, 524 N.W.2d 288, 291 (Minn. Ct. App. 1995). Absolute immunity is “designed to aid in the effective functioning of government.” *Carradine v. Minnesota*, 511 N.W.2d 733, 735 (Minn. 1994). While the effect is to protect an official from civil liability, the Minnesota Supreme Court has explained that “unless the officer in question is absolutely immune from suit, the officer will timorously, instead of fearlessly, perform the function in question and, as a result, government – that is, the public – will be the ultimate loser.” *Diver*, 524 N.W.2d at 291.

TEC Members, the MCT Executive Director, and the MCT Election Court of Appeals constitute the highest executive officers under Tribal law. Other courts have determined that high-level executive officials are entitled to absolute immunity. *See e.g., Johnson v. Dirkswager*, 315 N.W.2d 215 (Minn. 1982); *Bd. of Regents of the Univ. of Minn. v. Reid*, 522 N.W.2d 344 (Minn.

1994). In this instance, the Respondents are entitled to absolute immunity in a similar fashion to other high-level executive officials.

D. PLAINTIFF FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Plaintiff attempts to relitigate matters that were properly presented to the MCT Election Court of Appeals. Those arguments were dismissed, and the MCT Election Court of Appeals ruled against Plaintiff. As previously mentioned, the MCT Constitution and Election Ordinance provide exclusive jurisdiction to the MCT Election Court of Appeals to determine matters related to candidate certification. Plaintiff now asks this Court to overturn the decision of the MCT Election Court of Appeals and to direct tribal officials to place Plaintiff's name on the ballot or cease going forward with the 2022 MCT Election. Nowhere in tribal law is such an extraordinary remedy contemplated. In fact, such relief runs directly against the explicit language of the Election Ordinance. The lack of Tribal Court jurisdiction and the explicit language of the Election Ordinance related to the finality of the MCT Election Court of Appeals decision require the Complaint to be dismissed for failure to state a claim upon which relief can be granted.

E. PLAINTIFF HAS FAILED TO JOIN THE MCT AS A NECESSARY AND INDISPENSABLE PARTY

The Minnesota Chippewa Tribe is a necessary and indispensable party in any litigation challenging the validity of duly enacted laws of the MCT or the implementation of such laws by appointed officials. The Plaintiff has not joined the MCT nor can he due to tribal sovereign immunity. Therefore, the Complaint should be dismissed with prejudice on the grounds of failure to join an indispensable party.

The MCT is a federally recognized Indian tribe comprised of six constituent Bands: Bois Forte; Fond du Lac; Grand Portage; White Earth; Mille Lacs; and White Earth. The duly elected

governing body of the MCT is the TEC. The TEC is comprised of the Chairperson and Secretary/Treasurer of the constituent Bands.

Respondents constitute one elected leader, one appointed administrative official, and the MCT Election Court of Appeals itself. Any order issued in the underlying case would only apply to the officials named in the Complaint. Put differently, the only relief that can be granted in the underlying case is against the Respondents named in the Complaint and they lack the authority to place Plaintiff on the ballot. The joinder of the MCT or the entire TEC would be necessary in order for Plaintiff to obtain complete relief and a “permanent prohibitory injunction be issued against Respondents from continuing the 2022 LLRBC Secretarial-Election without Petitioner LaRose on the ballot.” Complaint, p. 25. For this reason, the MCT or the TEC as a whole is a necessary and indispensable party to this action. The failure to join the MCT is fatal and requires dismissal of the Complaint.

Each TEC member is uniquely positioned to advocate at the TEC level for the unique needs of their reservation. Filing suit against a few members of the TEC and appointed tribal officials, without joining the other TEC members or the MCT as a whole, does not allow for each Band to advocate for the needs of its reservation. Each member of the TEC or the MCT as a whole must be present to protect the collective interests of the MCT and the individual interests of the reservations. This also illustrates why the Individual Bands’ tribal courts are inappropriate forums for challenging TEC decisions.

II. PLAINTIFF IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER NOR A PRELIMINARY INJUNCTION

“A preliminary injunction is an extraordinary remedy, and the burden establishing the propriety of an injunction is on the movant.” *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003), *see Winter v. Natural Res. Def. Council*, 129 S. Ct. 365, 376 (2008) (“A preliminary

injunction is an extraordinary remedy never awarded as of right.” “Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigating; (3) the probability that movant will succeed on the merits; and (4) the public interest.” *Dataphase Sys. Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). Plaintiff is unable to meet his burden because the Court lacks jurisdiction nor can he show irreparable harm, a balance of equities, a probability of success on the merits, or that the public interest supports the granting of a TRO.

A. PLAINTIFF HAS NOT DEMONSTRATED THAT HE WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION

“[A] party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.” *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 425 (8th Cir. 1996). Plaintiff’s failure to sustain his burden of proving irreparable harm is sufficient to deny the motion for a temporary restraining order. *See Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (“Failure to show irreparable harm is an independently sufficient ground upon which to deny a preliminary injunction.”); *Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994) (“No single factor in itself is dispositive . . . [h]owever, a party moving for a preliminary injunction is required to show the threat of irreparable harm.”) (internal quotation and citation omitted); *Dish Network*, 725 F.3d at 882 (“the absence of irreparable injury is by itself sufficient to defeat a motion for a preliminary injunction”). It is well established that speculative harm does not constitute harm sufficient to justify injunctive relief. *See Winter v. Natural Res. Def. Council*, 555 U.S. at 22 (“Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction. Issuing a preliminary injunction based only on a possibility of irreparable harm is

inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”); *Minn. Chapter of Associated Builders & Contractors, Inc.*, 825 F. Supp. 238, 242 (D. Minn. 1993) (denying temporary injunctive relief where allegations of harm were “speculative”).

In the present case, Plaintiff was deemed ineligible to run for office pursuant to the prohibitory language of the MCT Constitution. To be clear, Plaintiff is not being removed from office based upon the aforementioned constitutional prohibition. Instead, the constitutional requirements for eligibility to run for office are being applied to his candidacy fairly and evenly.

Plaintiff argues that he will suffer irreparable harm because he is being deprived of office unfairly and provides as evidence the fact that he has been certified to run in previous elections. However, this election cycle is the first time in my tenure as MCT attorney that the evidence that served as the basis for the certification decision was properly presented to the MCT Election Court of Appeals. Up until recently, the MCT Executive Director was limited in what it could submit to the MCT Election Court of Appeals and relied upon the individual RBCs to provide the record upon which the certification decisions were made. In 2018, the last time that Plaintiff was certified to run for office, there was considerable disagreement amongst the Leech Lake RBC regarding what constituted the official record. After being stuck in the middle of that process, MCT staff recommended that the Election Ordinance be amended to provide an individual challenging certification to supply documentation that would be considered by the MCT Election Court of Appeals independent of what was certified as the record by the RBCs. The Election Ordinance was amended and an individual subject to the certification decision and an individual challenging the certification decision were both given an opportunity to supplement the record. *See generally*, MCT Election Ordinance, Section 1.3(C)(6).

The decision to not certify the Plaintiff is not a result of changing legal standards but instead is the result of the constitutional requirements being applied to Plaintiff after the development of a full and complete record. There is no irreparable harm with uniform requirements established by the voters of the MCT being applied to Plaintiff based upon a full and complete record.

B. THE BALANCE OF EQUITIES WEIGHS AGAINST PLAINTIFF

“Once the court has determined that there is a threat of irreparable harm to the moving party, it must balance this harm with any injury an injunction would inflict on other interested parties.” *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Engineers*, 826 F.3d 1030, 1039 (8th Cir. 2016).

The balance of the equities weighs against Plaintiff in the current instance. Plaintiff seeks judicial intervention so that he can run for the office. In so doing, Plaintiff asks the Tribal Court to ignore the will of the MCT members that voted on November 22, 2005, to amend the MCT Constitution. Plaintiff also asks the Tribal Court to ignore the procedures included in the duly enacted Election Ordinance and replace the decision of the MCT Election Court of Appeals with its own decision in favor of Plaintiff. Sound public policy requires established legal procedures to be followed. Furthermore, it requires the rule of law to be upheld. Plaintiff's efforts to remain in office to the contravention of the Constitution and duly enacted MCT law does not outweigh the rule of law and the will of the voters that enacted the constitutional amendment in 2005. To summarize the balance of the equities, the Tribal Court need look no further than the numbers involved: one (1) man seeks to remain in office; four thousand one hundred and thirty-three (4,133) MCT members voted in 2005 in favor of a constitutional amendment that would exclude him from office. The balance of the equities is decidedly against Plaintiff.

C. PLAINTIFF IS UNLIKELY TO SUCCEED ON THE MERITS

Even if the Tribal Court were to reach the merits of this case, which it should not, Plaintiff is unlikely to succeed on the merits. “The probability of the moving party’s success on the merits [is] the ‘most significant’ preliminary injunction factor.” *Dish Network Serv. LLC v. Laducer*, 725 F.3d 877, 882 (8th Cir. 2013) quoting *S&M Constructors, Inc. v. Foley Co.*, 959 F.2d 97, 98 (8th Cir. 1992)).

Plaintiff’s constitutional claim relies on arguments that contain incorrect factual or legal contentions or relate to issues that have already duly decided or overturned by courts of competent jurisdiction. Plaintiff’s main contention is that the 2005 Constitution amendment process is unconstitutional because it did not receive the requisite number of votes pursuant to the MCT Constitution. This argument was raised in an IBIA case contemporaneous to enactment of the 2005 Constitutional amendments and resoundingly denied.

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 ever 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.

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

In establishing the procedures for Secretarial elections, Congress specifically decreed that “the total vote cast shall not be less than 30 per centum of those entitled to vote.” [25 U.S.C. § 478a](#); *see also* [25 C.F.R. § 81.7](#) (“[t]he total vote cast ... must be at least 30 percent of those *entitled* to vote.” (Emphasis added.)); *cf.* Tribe's Constitution, 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.” (Emphasis added.)). The conduct of Secretarial elections is governed by regulations found at 25 C.F.R. Part 81, unless directed otherwise. *See, e.g.*, [25 C.F.R. §§ 1.2](#) (governing waivers of regulations), 81.7 (provisions in tribal constitutions may alter certain procedures governing Secretarial elections to amend the tribe's constitution).

Id. at 31. “Appellants' argument is contrary to the plain language of the regulations, which state that ‘all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters.’” *Id.* The exact arguments raised by Plaintiff now were raised and adjudicated in the proper forum in 2008.

Plaintiff also incorrectly states that a waiver from the BIA was required relative to calculating the percentage of votes necessary to satisfy the 30% requirements. Such a waiver did not exist. Instead, the requirements were and still are included in federal law.

Plaintiff then relies on a case that was overturned and has no precedential value to argue that a tribe can determine what constitutes the 30% requirement. In *Hudson v. Zinke*, the United States District Court for the District of Columbia held that the certification of a tribe's secretarial election based on a quorum of registered voters was contrary to law. 453 F.Supp.3d 431 (D.D.C. 2020). However, the entire decision was vacated and remanded for dismissal by the D.C. Circuit Court of Appeals. *Hudson v. Haaland*, 843 Fed.Appx. 336 (D.C. Cir. 2021). Any reliance placed on *Hudson v. Zinke* is misplaced. Even if the case could be relied upon, that case is factually and

legally distinguishable to the controversy at bar. In *Hudson*, the challenge immediately followed the Secretarial Election that took place a few months prior to the case being filed. In the present case, the legality and legitimacy of the 2005 Constitutional amendments was decided and has been recognized for nearly fifteen (15) years. An attempt to relitigate the issues presented in *Wadena* would be blocked by *res judicata*, issue preclusion, and claim preclusion.

Plaintiff also argues that the word “ever” is ambiguous and is meant to apply only prospectively. This contention is laughable. Ever defined to include “at any time” or “in any way.”⁴ There are no temporal limitations to the term ever and it applies to everything before and everything after its usage.

Finally, the Plaintiff creates a constitutional violation out of whole cloth by arguing that constitutionally prescribed eligibility requirements for office that apply to prior convictions amount to an *ex post facto* law. No jurisdiction has ever reached such a conclusion. This is because the eligibility to run for office is a civil matter. *Ex post facto* laws are applied in a criminal context. The Supreme Court has provided the appropriate analysis for *ex post facto* laws.

We must “ascertain whether the legislature meant the statute to establish civil’ proceedings.” *Kansas v. Hendricks*, 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997). If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is “ ‘so punitive either in purpose or effect as to negate [the State’s] intention’ to deem it ‘civil.’ ” *Ibid.* (quoting *United States v. Ward*, 448 U.S. 242, 248–249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)). Because we “ordinarily defer to the legislature’s stated intent,” *Hendricks, supra*, at 361, 117 S.Ct. 2072, “ ‘only the clearest proof’ will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty,” (internal citations omitted).

⁴ Merriam-Webster Dictionary, available online at <https://www.merriam-webster.com/dictionary/ever> (last retrieved 5/2/22).

Smith v. Doe, 538 U.S. 84, at 92 (2003).

The MCT Constitution and the candidate eligibility requirements apply specifically in the civil context and governs eligibility to run for office in elections occurring after the 2005 Constitutional amendment. Legislative intent is clear and was intended to guard future RBC's against having convicted felons representing the Bands. Nothing in the applicable language or its application is punitive. The 2005 Constitutional amendment does not create or add additional penal penalties to Plaintiff's underlying conviction. Instead, it creates an eligibility requirement that must be satisfied in future elections.

Plaintiff is unlikely to succeed on the merits because his arguments have already been adjudicated by a court of competent jurisdiction and the rights he alleges have been violated have never been recognized in any jurisdiction.

D. DENYING THE REQUESTED PRELIMINARY INJUNCTION WILL ADVANCE THE PUBLIC INTEREST

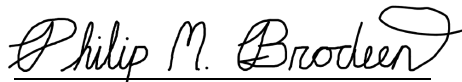
The public interest requires denial of the request for a preliminary injunction. The MCT Constitution requires elections to occur pursuant to a uniform Election Ordinance. It also prohibits anyone ever convicted of a felony from serving in office. The duly enacted Election Ordinance establishes a process for candidate certification challenges. That process vests exclusive jurisdiction with the MCT Election Court of Appeals. Plaintiff requests that the Tribal Court ignore the MCT Constitution and duly enacted Election Ordinance and grant him the opportunity to remain in office. Such relief would create a constitutional crisis and result in an immediate disruption in the well-established election process. As we have seen in national politics, the undermining of established electoral procedures and continued questioning of election results create long-lasting and far-reaching division amongst the populace. The public interest clearly favors denial of the preliminary injunction.

CONCLUSION

The Complaint should be dismissed with prejudice because the Tribal Court lacks jurisdiction to hear this matter. Further, Respondents, acting in their official capacity, are immune from suit due to tribal sovereign immunity and absolute immunity; Plaintiff failed to state a claim upon which relief can be granted; and Plaintiff failed to join the Minnesota Chippewa Tribe (“MCT”) as a necessary and indispensable party.

Even if the Tribal Court did have jurisdiction over this matter, which it does not, the TRO Motion should be denied. Plaintiff fails to meet the significant burdens placed on a litigant when moving for a temporary restraining order and preliminary injunction. Plaintiff cannot show irreparable harm, the balance of the equities weigh against Plaintiff, Plaintiff is unlikely to succeed on the merits, and denying injunctive relief advances the public interest.

May 2, 2022



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Attorney for Respondents

IN THE TRIBAL COURT OF THE
LEECH LAKE BAND OF OJIBWE

Arthur Dale LaRose, LLBO Secretary-
Treasurer,

Case No.: CIV-22-58

Petitioner,

v.

Cathy Chavers, Minnesota Chippewa Tribe
President, 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),

**AFFIDAVIT OF GARY FRAZER,
EXECUTIVE DIRECTOR,
MINNESOTA CHIPPEWA TRIBE**

Respondents.


Gary Frazer, Executive Director, Minnesota Chippewa Tribe, being first duly sworn upon
oath, deposes and states as follows to wit:

1. My name is Gary Frazer and I am the Executive Director of the Minnesota Chippewa Tribe.
2. I have served as Executive Director of the Minnesota Chippewa Tribe since 1988.
3. I have personal knowledge of the contents of this affidavit and am willing and able to testify if necessary.
4. Pursuant to the MCT Election Ordinance, I directed the submission of the full and complete record identified herein regarding certification challenges stemming from tribal elections at the Leech Lake to the Minnesota Chippewa Tribe Tribal Election Court of Appeals on February 14, 2022.
5. Following the hearing on May 3, 2022, and pursuant to the Tribal Court's request, I directed Minnesota Chippewa Tribe staff to submit the following documents to the Tribal Court: Election Certification Record, comprising of six separate email attachments; and a copy of the 2022 Election Calendar. Those documents were duly submitted and received by the Tribal Court.

6. Attached hereto as **Exhibit A** is a true and correct copy of the 2022 decision of the Minnesota Chippewa Tribe Tribal Election Court of Appeals.
7. Attached hereto as **Exhibit B** is a true and correct copy of the 2018 decision of the Minnesota Chippewa Tribe Tribal Election Court of Appeals.
8. The Tribal Executive Committee of the Minnesota Chippewa Tribe conducts a review of the Election Ordinance in non-election years. This process is led by an ad-hoc Committee that is comprised of one or two representatives from each of the Reservation Business Committees of the Bands of the Minnesota Chippewa Tribe. The ad-hoc committee usually conducts several working sessions related to the Election Ordinance and drafts amendments to the Election Ordinance. Once the workgroup sessions are complete, the draft Election Ordinance is submitted to the Legislative Sub-Committee of the Minnesota Chippewa Tribe and ultimately to the Tribal Executive Committee as a whole. We have utilized this process for quite some time and each of the Bands is provided the opportunity to send representatives to the ad-hoc meetings. The Leech Lake Band of Ojibwe had traditionally sent at least one representative to the working sessions of the ad-hoc committee.
9. Attached hereto as **Exhibit C** is a true and correct copy of the TEC meeting packet that was distributed prior to the most recent adoption of the MCT Election Ordinance in 2021.
10. The candidate certification challenge process was not changed in 2021 but instead stemmed from amendments that occurred in 2019.
11. Attached hereto as **Exhibit D** is a true and correct copy of a memorandum that I submitted to the six Bands dated June 14, 2019, which began the Election Ordinance Review process in 2019.
12. Attached hereto as **Exhibit E** is a true and correct copy of a memorandum that I submitted to the six Bands dated August 7, 2019, related to the Election Ordinance Review process in 2019.
13. Attached hereto as **Exhibit F** is a true and correct copy of the Draft Election Ordinance, dated 08-21-19, that included a new provision 1.3(D)(6) that was added based on input submitted by representatives from the Leech Lake Band of Ojibwe which addressed certification issues and felony convictions in the present case.
14. The Draft Election Ordinance, including the new provisions included in Section 1.3(D)(6), were considered by the Tribal Executive Committee on December 9, 2019.
15. Attached hereto as **Exhibit G** is a true and correct copy of Tribal Executive Committee meeting minutes on December 9, 2019.
16. The Tribal Executive Committee voted to approve the election ordinance without the language included in the new provision 1.3(D)(6) by a vote of 11 to 0.

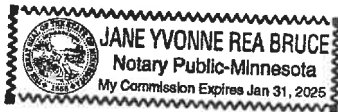
17. In 2019, the Tribal Executive Committee considered the matter that is central to this case and denied efforts by Plaintiff to resolve the present issue through amendments to the Election Ordinance. Plaintiff knew or should have known of the process in the Election Ordinance and was in fact present during the working sessions and TEC meetings in 2019 that created the process he complains of now.
18. Prior to the 2019 changes to the Election Ordinance, the record that was submitted to the MCT Election Court of Appeals consisted exclusively of the "record" that was provided to me by the Reservation Business Committee.
19. The Election Ordinance amendments in 2019 changed this and allowed challengers and those whose certification was being challenged to supplement the record through written filings, which provided an additional layer of due process through a fair and equitable opportunity to present arguments to the Tribal Election Court of Appeals.

I declare under penalty of perjury that everything I have stated in this affidavit is true and correct. Your affiant states nothing further.


Gary S. Frazer

Subscribed and sworn to this 4th day
of May 2022.





**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

THE MINNESOTA CHIPPEWA TRIBE
TRIBAL ELECTION COURT OF APPEALS

In Re the Matter of the Appeal of:
ARTHUR "ARCHIE" LAROSE,
Certification for the office of
Secretary/Treasurer, Leech Lake
Band of Ojibwe.

Decision & Order

BACKGROUND

On February 1, 2018, the Leech Lake Tribal Council certified Arthur "Archie" LaRose and found him eligible to run for office and placed his name on the ballot for the April 3, 2018, Leech Lake Primary Election. Donald "Mick" Finn, Sr., also a candidate for Secretary/Treasurer of the Leech Lake Reservation served his Challenge to the Certification of Arthur LaRose dated January 31, 2018, on Gary Frazer, Executive Director of the Minnesota Chippewa Tribe. (The Finn Challenge to Certification is signed with a date of 2/5/18).

On February 6, 2018, Gary Frazer, Executive Director informed "the Tribal Election Court of Appeals shall convene within twenty-four (24) hours of said notice to decide the issue of certification or non-certification based on the record provided." Frazer provided notice of Certification Appeal, 2014 non-Certification decisions and Record from Band Governing Body including:

1. MCT Election Ordinance (Revised 12/14/2017)(32 pages)
2. Challenge to the Certification of Arthur LaRose by Donald Finn directed to Gary Frazer, Executive Director of the MCT signed and dated Feb. 5, 2018. (3 pages)
3. 2014 MCT Election candidate challenge for Guy Green III, (32 pages)
4. 2014 MCT Election candidate challenge for Herb Weyaus, (58 pages)
5. 2014 MCT Election candidate challenge for Michelle Peer, (29 pages)
6. 2014 MCT Election candidate challenge for Peter Nayquamabe, (13 pages)
7. Letter from Leech Lake Band governing body dated Feb. 6, 2018
8. *Findings of Fact, Conclusions of Law & Declaratory Judgment* Case No. CV-06-07, Gotchie et al v. George James Gogleye, Jr., individually as the politically elected Chairman of the Leech Lake Reservation Business Committee dated Dec. 8, 2006 by the Honorable Chief Judge Korey Wahwassuck. (11 pages)
9. Leech Lake Reservation Tribal Council Resolution #2006-76.
10. Minutes from the Leech Lake Tribal Council Special Meeting of Feb. 21, 2006.
11. Minutes from the Leech Lake Tribal Council Special Meeting of Feb. 23, 2006 adopting Resolution 2006-76.
12. Minutes from the Leech Lake Tribal Council Special Meeting of January 30, 2018, with Meeting Agenda.
13. Candidate Certification Roster Spreadsheet for criminal background check for all candidates for MCT elections at Leech Lake Reservation. (4 pages)

DISCUSSION

The Constitution requires that a uniform election ordinance to be adopted by the Tribal Executive Committee, which Election Ordinance was revised and adopted on 12/14/2017. The Election Ordinance at Section 1.3(C)(4) provides that

Each 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 as established for Minnesota Chippewa Tribe elections.

Within 21 days after the filing deadline the band governing body must notify the tribal executive committee of the eligible and in eligible candidates in the position for which they have filed. Certification decisions must adhere to the requirements of the constitution in this ordinance. The band governing body show make it certification decision based on all information available at the time for determination including information provided by the person who filed the notice of candidacy.

Aside from the three (3) page personal letter *Challenge to the Certification of Arthur LaRose* by Donald Finn directed to Gary Frazer Feb. 5, 2018, there is insufficient evidence provided in the various documents and Record from Band Governing Body to support overturning the candidate certification by the band governing body for the Leech Lake Reservation.

This Court notes that the Election Ordinance does not provide sufficient time for a proper review of Certification determinations. The Court further notes that the Election Ordinance should require that all evidence submitted in support of the Band's decision to Certify the candidate, and all evidence submitted in support of the challenge to the Certification, should be required to be submitted to this tribunal.


CONCLUSION

For the reasons stated above, this Court confirms the decision of the Leech Lake Band to certify LaRose as a candidate for the office of Secretary/Treasurer.

WHEREFORE IT IS HEREBY ORDERED that the appeal of the decision of the Leech Lake Band to certify LaRose as a candidate for the office of Secretary/Treasurer is denied.

Dated this 7th day of February, 2018

By the Court



Tadd M. Johnson
Chief Judge

Judge Christina Deschampe Concurring
Judge Brandee J. Kowalzyk Concurring
Judge Quintin Sam Concurring
Judge Frank Bibeau Concurring
Judge Collette Routel did not participate in this decision

CATHERINE J. CHAVERS, PRESIDENT
 FARON JACKSON, SR., VICE PRESIDENT

GARY S. FRAZER, EXECUTIVE DIRECTOR

APRIL McCORMICK, SECRETARY
 DAVID C. MORRISON, SR., TREASURER



The Minnesota Chippewa Tribe

Administration
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 Economic Development
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 Fax: 218-335-8496
 Education
 218-335-8584
 Fax: 218-335-2029
 Human Services
 218-335-8586
 Fax: 218-335-8080

TRIBAL EXECUTIVE COMMITTEE SPECIAL MEETING

Tuesday, December 14, 2021
 InterContinental Hotel St. Paul Riverfront
 St. Paul, Minnesota

AGENDA

- 9:00 a.m. - Call to Order
- Invocation:
- Approval of Agenda
- Draft Election Ordinance: Phil Brodeen
- Options on enrollment for upcoming referendum: MCT Constitution Delegates
- Tentative 2022 meeting schedule
- Information: Election Calendar (approved 10/2021)
- Adjourn

Draft Election Ordinance

Election Ordinance Amendments 12/14/2021

<u>Page</u>	<u>Section</u>	<u>Changes (added language)</u>
3	1.2(D)	<p>Postponing Elections.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
13	1.7(D)	<p>Inclusion of Oath of Office.</p> <p style="padding-left: 40px;">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.</p>
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**

As Amended on ~~December 9, 2019~~ December XX, 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~~will 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~~will 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~~will 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~~will set the second Tuesday in June of even numbered years for Regular Elections.

1.2(A)(2). The Tribal Executive Committee ~~must~~will 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~~will prepare the Election Announcement of each Regular Election and its associated Primary. Each Band governing body* ~~must~~will 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~~^{will} 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~~ will 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~~ 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. Each Band governing body ~~must~~ will 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 ~~will~~ 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~~will 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~~will 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~~ will prepare for each Band governing body a Notice of Regular election. This notice ~~must~~ will 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~~ will 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~~ will prepare for each Band governing body a Notice of Primary Election. This notice ~~must~~ will 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~~ will 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~~ will prepare for each Band governing body a Notice of Regular Election. This notice ~~must~~ will 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 ~~will~~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 ~~will~~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 ~~will~~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~~~~will~~ appoint at least four (4) eligible voters of the reservation as the General Reservation Election Board. One member of the Board ~~must~~~~will~~ be appointed the Chair. The appointments ~~must~~~~will~~ 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~~~~will~~ 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 ~~will~~~~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 ~~will~~~~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~~~~will~~ 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~~will 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~~will 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~~will take his/her place. The Election Contest Judge and Alternate Election Contest Judge ~~will~~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 ~~will~~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, ~~will~~ 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 ~~will~~ 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 ~~will~~ 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 ~~will~~ 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 ~~will~~ 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 ~~will~~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), ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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, ~~will~~must turn same top down to show that no ballots are contained therein, and ~~will~~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

~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~must write the word "Disqualified" across the ballot and sign his/her name beneath it, have another ballot issued in lieu thereof and ~~will~~must place the spoiled ballot in a large envelope marked "mutilated ballots." The envelope containing all mutilated ballots ~~will~~must be placed in the ballot box at the end of the voting. All such spoiled ballots ~~will~~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 ~~will~~must be bundled together, and the bundle ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~must give immediate attention to all such requests and ~~will~~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 ~~will~~must be required to cast the ballot with the General Reservation Election Board on the same day. Documents which ~~will~~must be given or mailed to the voter requesting an absentee ballot under this section ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~must be declared invalid and ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~must be rejected. A rejected ballot ~~will~~must be marked “rejected” in ink. Each member of the Reservation Election Board ~~will~~must sign their name below this marking. Rejected ballots ~~will~~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 ~~will~~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 ~~will~~must deliver the still sealed ballots to the remaining members of the General Reservation Election Board, who ~~will~~must deposit them in a special locked ballot box.

2.3(E)(2). Prior to counting the absentee ballots, the General Reservation Election Board ~~will~~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 ~~will~~must then count and register absentee votes after all other ballots have been counted and ~~will~~must include such votes in the results of the election. The provisions of Section 2.3(B) and Section 2.3(C) ~~will~~must apply to the counting of the absentee ballots, except that the General Reservation Election Board ~~will~~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 ~~will~~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 ~~will~~must certify the return of the absentee votes.

2.4(B). The General Reservation Election Board ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~must consider the Request for Recount of the contesting candidate and ~~will~~must make a decision on the Request within five (5) days following the day the Request is filed with the Board. A recount ~~will~~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 ~~will~~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 ~~will~~ 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 contestor 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 contestor has met his or her burden of proof.

3.2(B)(2). The contestor ~~will~~ 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 ~~will~~ 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 ~~will~~must abide by all rules and regulations applicable to the proceeding.
- 3.2(B)(4). The contester ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~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 ~~will~~must be prepared and forwarded to the Court at least two (2) days prior to the hearing date. The record ~~will~~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 ~~will~~must be forwarded to the Court of Appeals by regular mail, electronic mail or facsimile. The Executive Director ~~will~~must schedule a hearing date within one week from the date of receipt of the Notice of Appeal.

3.4(C)(4). The Court ~~will~~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

Tentative 2022 Meeting Schedule

PREVIOUS MEETING DATES & LOCATIONS

2019

February 20, 2019 - Fortune Bay - BF
April 24, 2019 - Grand Portage
July 8, 2019 - Northern Lights - LL
October 30, 2019 - Grand Casino Hinckley – ML

2020

January 31, 2020 – Shooting Star -WE
July 13, 2020 – Committee (Zoom) - Fortune Bay – BF (was originally scheduled for FDL)
October 23, 2020 – Committee (Zoom) - Grand Portage - GP

2021

January 28/29, 2021 – FDL
March 4, 2021 – ML special
April 29/30, 2021 – LL
June 22, 2021 – BF special
July 12, 2021 – ML
October 28/29, 2021 – WE

PROPOSED MEETING DATES & LOCATIONS

2022

January 27/28, 2022 – GP

April 28/29, 2022 - BF

July 11, 2022 – FDL

October 27/28, 2022 - LL

INFORMATION

**ELECTION CALENDAR
2022 Regular Election**

- December 28, 2021: Last day for sitting RTC member to give notice of resignation to file for other RTC office.
- January 7, 2022: Last day for sitting RTC member to give notice of resignation to file for vacated RTC seat.
- January 13: Election Announcement
- January 14: 8:00 a.m. - Opening of period for filing for office.
- January 24: Close of filing period
- February 3: Selection of Election Court of Appeals Judge (For certification of candidate)
- February 10: Deadline for Notice of Certifications to TEC.
- February 14: Challenge certification or non-certification to MCT by 4:30 p.m. on the second business day following receipt of certification.
- February 15: Deadline for appointment of Election Boards.
- February 15: Deadline for appointment of Election Contest Judge and alternate Election Contest Judge.
- February 16: Complete record of all documents related to challenge submit to Minnesota Chippewa Tribe by 4:30 p.m.
- February 18: Answer to challenge from the person whose certification is being challenged to the MCT by 4:30 p.m.
- February 22: Deadline for Decision of certification or non-certification by Tribal Court of Appeals.
- February 24: Notice of Primary Election and Posting.
- February 28: TEC provides ballots for Primary Election.
- March 31: Notify MCT on choice of appellate forum.
- April 5: Primary (Polling places open from 8:00 a.m. until 8:00 p.m.)

- April 6: General Reservation Election Board certifies Primary Results.
(Prior to 8:00 p.m.)
- April 7: General Reservation Election Board publishes Primary Results.
- April 8: Deadline for Request for Recount. (Filed with General
Election Board prior to 5:00 p.m.)
- April 8: Deadline to Post Regular Election Notice without Primary
- April 12: 4:30 p.m. - Deadline for Contest of Primary Election.
(Filed with Reservation Election Judge and Executive Director
of the Minnesota Chippewa Tribe).
- April 13: *(Results, if
Allowed or 11th or 12th
If earlier request)* Deadline for Decision on Request for Recount and Results of
Recount, if allowed.
- April 22: Deadline for Decision on Contest
- April 25 *(or within
3 days of decision
on Contest)* 4:30 p.m. - Deadline for Appeal to Court of Election Appeals.
(Filed with the Executive Director of the Minnesota Chippewa
Tribe and with Reservation Tribunal rendering Decision).
- April 28 *(at least
two (2) days prior to
the hearing date):* Record of Contest forwarded to Court of Election Appeals.
- May 2 *(hearing within
7 days of notice of appeal).* Last Day for Hearing on Appeal
- May 12 *(10 days from
hearing on appeal).* Last Day for Decision on Appeal
- May 13: Notice of General Election (or earlier if no appeal).
- May 13: TEC provides ballots for General Election (or earlier if no appeal).
- June 14: General Election
(Polling Places open from 8:00 a.m. until 8:00 p.m.)
- June 15: General Reservation Election Board certifies results of Election.
Prior to 8:00 p.m.
- June 16: General Reservation Election Board publishes Election results.
- June 17: Deadline for Request for Recount. (Filed with General Election
Board prior to 5:00 p.m.)

June 21:	4:30 p.m. - Deadline for Notice of Contest. (Filed with Reservation Election Judge and Executive Director of the Minnesota Chippewa Tribe.)
June 22 (<i>or 21, if request for Recount is filed before deadline</i>):	Decision on Request for Recount and Results of Recount, if allowed.
July 1st:	Deadline for Decision on Contest for General Election.
July 5th (<i>or within 3 days of decision on Contest</i>):	4:30 p.m. - Deadline for appeal to Court of Election Appeals. (Filed with Executive Director of the Minnesota Chippewa Tribe and Reservation Tribunal rendering Decision).
July 8th (<i>at least two (2) days prior to the hearing date</i>):	Record of contest forwarded to Court of Election Appeals.
July 12th (<i>hearing within 7 days of notice of appeal</i>).	Last Day for Hearing on Appeal.
July 12 th :	Winning candidates assume office by operation of law, unless sooner seated, or the election is subject of appeal to the Court of Election Appeals.
July 22 (<i>or Ten days from Hearing on Appeal</i>):	Deadline for decision of the Court of Elections Appeal.
Day following Decision of Appeal:	Winning candidate prevailing on appeal takes office.

EXHIBIT C

December 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28 Last day for sitting RTC member to give notice of resignation to file for other RTC office.	29	30	31	

EXHIBIT C

January 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7 Last day for sitting RTC member to give notice of resignation to file for vacated RTC seat.	8
9	10	11	12	13 Election Announcement	14 8:00 a.m. Opening of period for filing for office.	15
16	17	18	19	20	21	22
23	24 Close of filing period	25	26	27	28	29
30	31					

February 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3 Selection of Election Court of Appeals Judge (For Certification of candidate)	4	5
6	7	8	9	10 Deadline for Notice of Certifications to TEC.	11	12
13	14 Challenge certification or non-certification to MCT by 4:30 p.m. on the second business day following receipt of certification.	15 Deadline for appointment of Election Contest Judge and alternate Election Contest Judge.	16 Complete record of all documents related to challenge, submit to MCT by 4:30 p.m.	17	18 Answer to challenge from the person whose certification is being challenged to the MCT by 4:30 p.m.	19
20	21	22 Deadline for Decision of certification or non-certification by Tribal Court of Appeals	23	24 Notice of Primary Election and Posting.	25	26
27	28 TEC provides ballots for Primary Election.					

EXHIBIT C

March 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31 Notify MCT on choice of appellate forum.		

April 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 Primary (Polling places open from 8:00 a.m. until 8:00 p.m.)	6 General Reservation Election Board certifies Primary Results. (Prior to 8:00 p.m.)	7 General Reservation Election Board publishes Primary Results.	8 Deadline for Request for Recount. (Filed with General Election Board prior to 5:00 p.m.) Deadline to Post Regular Election Notice without Primary.	9
10	11	12 4:30 p.m. - Deadline for Contest of Primary Election. (Filed with Reservation Election Judge and Executive Director of the Minnesota Chippewa Tribe).	13 (Results, if allowed or 11h or 12th if earlier request) Deadline for Decision on Request for Recount and Results of Recount, if allowed.	14	15	16
17	18	19	20	21	22 Deadline for Decision on Contest	23
24	25 (or within 3 days of decision on Contest) 4:30 p.m. - Deadline for Appeal to Court of Election Appeals. (Filed with the Executive Director of the Minnesota Chippewa Tribe and with Reservation Tribunal rendering Decision).	26	27	28 (at least two (2) days prior to hearing date) Record of Contest forwarded to Court of Election Appeals.	29	30

EXHIBIT C

May 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2 (Hearing within 7 days of notice of Appeal) Last Day for Hearing on Appeal.	3	4	5	6	7
8	9	10	11	12 (10 days from hearing on appeal) Last Day for Decision on Appeal	13 Notice of General Election TEC provides ballots for General Election. <i>(or earlier if no appeal)</i>	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

EXHIBIT C

June 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
5	6	7	8	9	10	11
12	13	14 General Election (Polling Places open from 8:00 a.m. until 8:00 p.m.)	15 General Reservation Election Board certifies results of Election. Prior to 8:00 p.m.	16 General Reservation Election Board publishes Election results.	17 Deadline for Request for Recount. (Filed with General Election Board prior to 5:00 p.m.)	18
19	20	21 4:30 p.m. - Deadline for Notice of Contest. (Filed with Reservation Election Judge and Executive Director of the Minnesota Chippewa Tribe.)	22 ^(or 21st if request for Recount is filed before deadline) Decision on Request for Recount and Results of Recount, if allowed.	23	24	25
26	27	28	29	30		

July 2022

EXHIBIT C

Sun	Mon	Tue	Wed	Thu	Fri	Sat
3	4	5 <i>(or within 3 days of decision on Contest)</i> 4:30 p.m. - Deadline for appeal to Court of Election Appeals. (Filed with Executive Director of the Minnesota Chippewa Tribe and Reservation Tribunal rendering Decision)	6	7	8 <i>(at least two (2) days prior to hearing date)</i> Record of contest forwarded to Court of Election Appeals.	9
10	11	12 <i>(hearing within 7 days of notice of appeal)</i> Last Day for Hearing on Appeal. Winning candidates assume office by operation of law, unless sooner seated, or the election is subject of appeal to the Court of Election Appeals.	13	14	15	16
17	18	19	20	21	22 <i>(or Ten days from Hearing on Appeal)</i> Deadline for decision of the Court of Elections Appeal.	23
24	25	26	27	28	29	30
31						

CATHERINE J. CHAVERS, PRESIDENT
FARON JACKSON, SR. VICE PRESIDENT

GARY S. FRAZER, EXECUTIVE DIRECTOR

APRIL MCCORMICK, SECRETARY
DAVID C. MORRISON, SR., TREASURER



The Minnesota Chippewa Tribe

June 14, 2019

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

MEMORANDUM

To: Tribal Executive Committee Members

From: Executive Director

Subject: Election Ordinance Review

As discussed at the TEC meeting held on April 24, 2019, we would like to begin the process of revising the current Election Ordinance. The first working session is scheduled to be held at the Minnesota Chippewa Tribe (MCT) headquarters in Cass Lake, MN on Tuesday, June 25, 2019 beginning at 10:00 a.m.

The representatives from each Reservation should consist of two delegates with a knowledge of the MCT Election Ordinance as well as the election process. Possible suggestions would be Tribal Attorneys, Election Board Chairs as well as Elected Leaders.

We are asking that your Reservation provide our office with the names of your delegates along with their contact information as soon as possible in order to get information to them prior to the first working session. It is anticipated that there will be two to three working sessions prior to bringing a draft to Tribal Leadership for approval.

If you have any questions, please contact Phil Brodeen, Legal Counsel or myself. Thank you for your assistance.

cc: Phil Brodeen
Jane Rea-Bruce
Joel Smith

CATHERINE J. CHAVERS, PRESIDENT
 FARON JACKSON, SR. VICE PRESIDENT

GARY S. FRAZER, EXECUTIVE DIRECTOR

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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

August 7, 2019

MEMORANDUM

TO: Election Ordinance Review Committee

FROM: Gary S. Frazer, Executive Director

SUBJECT: Election Ordinance Review

The second working session to revise the Minnesota Chippewa Tribe Election Ordinance is scheduled for Thursday, August 22, 2019 at 10:00 a.m. to be held at the Minnesota Chippewa Tribe Headquarters in Cass Lake, Minnesota.

This meeting is to review the attached first draft version (edits included) as discussed at the first meeting. If you have any other recommendation to the ordinance, please bring them on August 22, 2019.

If you have any question, please feel free to contact me at 218-335-8581.

Attachment:

**MINNESOTA CHIPPEWA TRIBE
ELECTION ORDINANCE**

As Amended on _____

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 will 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 will conduct a Recount within 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 will 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 will set the second Tuesday in June of even numbered years for Regular Elections.

1.2(A)(2). The Tribal Executive Committee will 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 will prepare the Election Announcement of each Regular Election and its associated Primary. Each Band governing body* will 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 will 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.

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 in parenthesis on the ballot, provided that the Band governing body certifies that such nickname is appropriate for listing on the ballot. A filing fee will 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 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. Each Band governing body will 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 ~~on the next~~ by 4:30 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 on the second business day following receipt of the challenge; and (3) ~~notify~~ 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 ~~twenty-four~~ forty-eight (48) hours of receiving the challenge, record, and answer, said notice decide the issue of certification or non-certification based on the ~~record provided by the Band governing body.~~

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 will 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 regards 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(D)(6) Proof of Criminal Record. The disqualification of a candidate by reason of criminal conviction shall be determined based upon the criminal history records obtained by the Band governing body pursuant to Section 1.3(D)(5). The Band governing body shall make its certification decision based upon the convictions listed on the criminal history records. A crime that was charged as a felony but later reduced on criminal history records to a misdemeanor due to any plea, stay of adjudication, or stay of imposition shall be considered a conviction of the lesser crime provided that the criminal history records list the conviction in a similar manner.

1.3(D)(67). Fees. A Band governing body may charge a reasonable fee for the cost of a criminal history check required by the Ordinance.

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 will 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), will 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 will prepare for each Band governing body a Notice of Regular election. This notice will 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 will 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 will prepare for each Band governing body a Notice of Primary Election. This notice will 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 will 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 will prepare for each Band governing body a Notice of Regular Election. This notice will 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 will 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 will 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 will 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~~**must** 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. A 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 will appoint at least four (4) eligible voters of the reservation as the General Reservation Election Board. One member of the Board will be appointed the Chair. The appointments will 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 will 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 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 will 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 will 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 will 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 will 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 will 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 will take his/her place. The Election Contest Judge and Alternate Election Contest Judge will 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 will 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.

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, will 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.

Beginning of New Terms.

1.10(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.

1.10(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.

1.10(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 will 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 will 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 will 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 will 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 will 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), will 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 will 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 will only be released in accordance with, and for the express purposes(s) set forth in this Ordinance.

- 2.1(B). Security in Voting Areas.
- 2.1(B)(1). The District Election Board will 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 will 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 will 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 will 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 will 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, will turn same top down to show that no ballots are contained therein and will 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 will 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 will 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 will 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 will 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 will write the word "Disqualified" across the ballot and sign his/her name beneath it, have another ballot issued in lieu thereof and will place the spoiled ballot in a large envelope marked "mutilated ballots." The envelope containing all mutilated ballots will be placed in the ballot box at the end of the voting. All such spoiled ballots will 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 will be bundled together, and the bundle will 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 will 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 will 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 signed written requests by hand delivery, by mail, or by fax or other electronic means. Under no circumstances shall the General Reservation Election Board hand-deliver absentee ballots off-site. The General Reservation Election Board will give immediate attention to all such requests and will 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 will be required to cast the ballot with the General Reservation Election Board on the same day. Documents which will be given or mailed to the voter requesting an absentee ballot under this section will 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 will appear an affidavit as ~~follows:~~ described in Appendix II of this 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

- 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 will 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 will be declared invalid and will 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 will 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 will 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 will 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 will 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 will be rejected. A rejected ballot will be marked “rejected” in ink. Each member of the Reservation Election Board will sign their name below this marking. Rejected ballots will 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 will 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 will deliver the still sealed ballots to the remaining members of the General Reservation Election Board, who will deposit them in a special locked ballot box.

2.3(E)(2). Prior to counting the absentee ballots, the General Reservation Election Board will 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 will then count and register absentee votes after all

other ballots have been counted and will include such votes in the results of the election. The provisions of Section 2.3(B) and Section 2.3(C) will apply to the counting of the absentee ballots, except that the General Reservation Election Board will 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 will 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 will certify the return of the absentee votes.

- 2.4(B). The General Reservation Election Board will 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 will also be forwarded to the Minnesota Chippewa Tribe within the same time period.

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 will 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 will 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 will 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 will consider the Request For Recount of the contesting candidate and will make a decision on the Request within five (5) days following the day the Request is filed with the Board. A recount will 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 will 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 filing fee of \$300 shall be submitted to the Executive Director by the contestor. 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 and filing fee 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 will 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 will 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 will 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 will abide by all rules and regulations applicable to the proceeding.
- 3.2(B)(4). The contester will 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 will 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 will 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 will 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 will 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 will 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 will be prepared and forwarded to the Court at least two (2) days prior to the hearing date. The record will 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 will be forwarded to the Court of Appeals by regular mail, electronic mail or facsimile. The Executive Director will schedule a hearing date within one week from the date of receipt of the Notice of Appeal.
- 3.4(C)(4). The Court will 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.

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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.

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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

THE MINNESOTA CHIPPEWA TRIBE
Tribal Executive Committee
Special Meeting
December 9, 2019

A Special meeting was called to order at 10:46 a.m. by President Catherine Chavers, at Black Bear Casino Hotel, Carlton, Minnesota.

Invocation: Charlie Smith

President Chavers requested a moment of silence for Mark Anderson former Minnesota Chippewa Tribe attorney.

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

Quorum Present

Sheldon Boyd, Secretary-Treasurer, Mille Lacs arrives at 11:12 a.m.

Others: Roger Smith, Rep. Fond du Lac; Wally Dupuis, Rep., Fond du Lac; Peter Boney, Rep., Bois Forte; Travis Morrison, Rep., Bois Forte; Eugene Tibbetts, Rep., White Earth; Randy Goodwin, Executive Director, White Earth; Faith Algren, Nijjii Radio, White Earth; Steve White, Rep., Leech Lake; Tammy LaRose, Enrollment Coordinator, Leech Lake; Wally Storbakken, Leech Lake; Syngen Kanassataga, Legal and Policy Counsel, Mille Lacs; Emily Johnson, Strategic Initiatives Coordinator/Deputy Assistant, Mille Lacs; Shena Matrious, Government Affairs Area Relations/Special Projects, Mille Lacs; Nora Benjamin, Special Events Coordinator, Mille Lacs; Shelly Day, Mille Lacs; MCT Staff and other interested parties.

President Chavers informed the Committee that the agenda was specifically for approving the Election Ordinance and calendar and stated the Sandy Lake - East Lake informational presentation would follow the Tribal Executive Committee meeting.

Motion by Secretary-Treasurer Morrison to approve agenda specifically for approval of Election Ordinance and calendar. Seconded by Secretary-Treasurer Martineau. 11 For, 0 Against, 0 Silent. Carried.

Tribal Executive Committee
December 9, 2019
Page 2 of 4

Phil Brodeen informed the Tribal Executive Committee of the changes presented in the drafted revision of the Election Ordinance. Phil described the process of the group of appointed individuals by each band to review the Election Ordinance: the first meeting was for brainstorming and the second meeting focused on specific language recommendations to be added to the Election Ordinance. The current Election Ordinance revision was enacted on 12/14/2017 and would still be in effect if this draft is not acted on today.

Phil described changes proposed in the draft Election Ordinance as presented in redlined text within the draft.

Discussion and question and answer session regarding the process for verifying criminal record proof, on Page 8 – in regards to criminal record proof for certification. Phil restated these are proposed amendments. If the Tribal Executive Committee doesn't act on the Election Ordinance it would remain as-is. Further discussion on defining conviction, felony, and the impacts of revising the ordinance in relationship to past decisions of Minnesota Chippewa Tribe Court of Appeals. After additional questions and answers were presented, President Chavers stated we need more clarification. We can remove this revision if we need to; the intent was to define the felony issue. We can move on to the rest of these changes come back to this one and then decide what to do.

Discussion on maintaining a published address for Election Board by each Band, citing 1.7 (B) (1) for election related documents to be sent.

Discussion on Independent Investigations on Page 14, responsibilities of the Election Board including protocol and electioneering.

Discussion on eligible voter residency and proof of identification within voting districts (applies to reservations who have districts).

Discussion on Vacancies in Office Page 16, Phil explained way the ordinance reads in this section is if a seated tribal council member submits a resignation to run for a vacant seat, the resignation isn't in effect until the position they filed for is filled. Meaning their resignation is effective the date the position (filed for, that is vacant) is filled.

Discussion on the value of the filing fee for contesting election results as recommended by the proposed draft, because each band incurs cost for the appeals court and hearing process. Page 24 – remove recommended language in Section 3.2(A)(1) regarding charging a filing fee of \$300 for contesting election.

Tribal Executive Committee
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Secretary/Treasurer McCormick asked for each Band's thoughts on keeping the recommendation to include a filing fee for contesting an election: Mille Lacs, Fond du Lac, White Earth, Bois Forte, and Leech Lake were not in favor of keeping proposed language in revision.

Motion by Chief Executive Benjamin to remove filing fee. Seconded by Chairman Jackson. 11 For, 0 Against, 0 Silent. Carried.

Tribal Executive Committee returned to discussion on Proof of Criminal Record, Page 8.

Motion by Secretary-Treasurer Roy to approve the ordinance with omitting proposed language in Section 1.3 (D)(6) Proof of Criminal Record and Section 1.3(D)(7) Fees for candidate criminal history checks. Seconded by Secretary-Treasurer Martineau. 11 For, 0 Against, 0 Silent. Carried.

Discussion on establishing the Election Calendar. Motion by Secretary-Treasurer Morrison to approve the proposed Calendar with the first date of December 27, 2019. Seconded by Chairman Dupuis. 11 For, 0 Against, 0 Silent. Carried.

Motion by Secretary-Treasurer McCormick to adjourn the meeting at 1:44 p.m. Seconded by Secretary-Treasurer Morrison. 11 For, 0 Against, 0 Silent. Carried.

Tribal Executive Committee

December 9, 2019

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Notes on the content/sections covered/not minutes:

Page 4 – (name), Ensure legitimate nickname. (how names will appear on ballot)

Page 6 – Challenges to get certified. Built in more to process for candidate and challenger. This portion was made more responsive to needs that it is being used for. Submitted to Executive Director the 2nd business day, the timeframe was expanded to 48 hours to convene, as 24 hours is just not enough time.

Page 6 – referred back to documentation.

Page 8 – in regards to criminal record proof for certification.

Page 11. 1.6 (C) – not involved this much. By the time information was sent back and forth with mailing. If a person does not specify district, they would vote only At-Large positions. Phil stated if you show up you have the right to declare that district right then and there. This language is more for the person that sends in an absentee ballot request for the first time. Further clarification given on voting only on the at large positions.

Section 1.7 (E) – specified language.

Section 1.8 – clarifying language.

Section 1.10 – Independent Investigations. Inclusion other violations. Specify to band governing body.

Page 16 –Vacancies, Phil explained way the ordinance reads in this section is if a seated tribal council member submits a resignation to run for a vacant seat, the resignation isn't in effect until the position they filed for is filled. Meaning their resignation is effective the date the position (filed for, that is vacant) is filled.

Page 16 – All Election records and correspondences.

Page 19 – Absentee ballot voting – designate district – if not designated, only at large positions can be voted on.

Page 23, Section 2.5 Election signage. The area, when and how long signage can be posted and taken down.

Section 3.2 –Contest of primary/regular election.

Filing fee – limiting contest. Individuals are able to file themselves.

Page 26 – record established. Court reporter, evidence can be offered and received document by audio or video. Turn around period for court reporter was too short.

Page 27 – as determined by the band.

Page 9, remove recommendation.

Page 24 – remove recommended language in Section 3.2(A)(1) regarding charging a filing fee of \$300 for contesting election.