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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

ARTHUR DALE LAROSE,  
Secretary-Treasurer for the Leech  
Lake Band of Ojibwe of the  
Minnesota Chippewa Tribe,  
Plaintiff,

v.

UNITED STATES DEPARTMENT  
OF THE INTERIOR; DEB  
HAALAND, in her official capacity  
as Secretary of the Interior;  
MINNESOTA CHIPPEWA TRIBE;  
CATHERINE CHAVERS, in her  
official capacity as the President of  
the Minnesota Chippewa Tribe,  
Minnesota, and GARY FRAZER, in  
his official capacity as Executive  
Director Minnesota Chippewa Tribe  
and as Tribal Election Court Clerk,  
and The MINNESOTA CHIPPEWA  
TRIBE'S TRIBAL ELECTION  
COURT OF APPEALS in their  
official capacities as 2022  
certification panel,  
Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

Plaintiff LaRose is currently the *now seated*, duly elected, Secretary-Treasurer for the Leech Lake Reservation Business Committee (LLRBC). Leech Lake Reservation is one of six (6) constituent bands of the Minnesota Chippewa Tribe (MCT).<sup>1</sup> Plaintiff has held elected offices of Chairman and Secretary-Treasurer for the LLRBC over the past 18 years. Plaintiff has been certified as a candidate for Leech Lake Reservation elections 10 times, 3 times before the 2006 MCT Constitutional amendment, and won LLRBC elected office six (6) times.

In a Feb. 11, 2022, Decision & Order by the MCT Tribal Election Court of Appeals, LaRose was determined to be “convicted of a felony and therefore ineligible to be a candidate for LLRBC Secretary/Treasurer in accordance with the eligibility requirements set forth in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and the Minnesota Chippewa Election Ordinance, as amended on December 14, 2021. . . .” (Id. See, *Decision & Order* dated 2-16-22 attached to **Exhibit P-1**, *Aff. of LaRose* Ex. 4). Here, the MCT Election Court retroactively applied an ex post facto amendment, used in the MCT Uniform Election Ordinance, which amendment was obtained by election waivers from the Bureau of Indian Affairs in 2005.

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<sup>1</sup> The Minnesota Chippewa Tribe, comprised of the Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth reservations, is a federally recognized tribal government. <https://www.mnchippewatribe.org>

But for the *election waivers* granted by the Bureau of Indian Affairs (BIA) for conducting the 2005 Secretarial Election for the MCT, the ex post facto amendment achieved by violating federal and tribal law, could not have been retroactively applied to Plaintiff by Defendants MCT and MCT Tribal Election Court of Appeals. Defendants' retroactive application of the ex post facto amendment is unjustly taking his long-vested property right to continue to hold office and be a candidate for re-election, for LLRBC Secretary-Treasurer *again*. Plaintiff's property rights are significant and fundamental and are about to be imminently severed, severely and effectively banished from Plaintiff specifically now for re-election on the 2022 MCT Tribal Election held June 14, 2022, with swearing in first Friday in July 2022. But for the *election waivers* granted by the Bureau of Indian Affairs (BIA) for conducting the 2005 Secretarial Election for the MCT, the 2006 MCT constitutional amendment approved by Secretarial Election process, Defendants MCT could not have violated the MCT Const. requirement threshold for "at least 30 percent of those entitled to vote shall vote." (MCT Const., Art. XII).

Plaintiff has standing to challenge as the duly elected LLRBC Secretary-Treasurer and having filed for re-election. Plaintiff is presently seeking redress for unjust taking of Plaintiff's vested property rights, deprivation of civil rights, and due process and equal protection violations, culminating in the permanently

severing and effective banishment of Plaintiff's on-going rights to hold office from the Leech Lake Reservation, by the acts and omissions of Defendants' collectively and individually.

### **Background**

In 2005, the BIA conducted a Secretarial Election at the request of the MCT Tribal Executive Committee (TEC) to amend the Revised Constitution of the Minnesota Chippewa Tribe, MN (MCT Const.). The language of the 2005 amendment which ultimately became part of the MCT Const. in 2006 clearly states that

[n]o member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

MCT Const., Article IV – Tribal Elections, Sec. 4, approved by the Secretary of the Interior on January 5, 2006.

There was a timely challenge to the 2005 Secretarial Election for not meeting the 30% required eligible voters participation in the MCT Const., Art XII, which was finally decided in 2008 *Wadena v. Midwest Regional Director*.<sup>2</sup> The Interior

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<sup>2</sup> See *Wadena v. Midwest Regional Director*, 47 IBIA 21 (2008) Order Affirming Decision attached as **Exhibit P-2**. See also Appellants' opening brief for: *Wadena v. Midwest Reg. Dir. BIA*, Docket Nos. IBIA 06-41-A, 06-43-A and 06-44-A, dated June 23, 2006 attached as **Exhibit P-2**.

Board of Indian Appeals (IBIA) issued an Order Affirming Decision of Midwest Regional Director April 3, 2008. The IBIA held that *Wadena et al* lacked standing to challenge the amendment, just like Hudson did as challenger in *Hudson v Haaland* (2021)<sup>3</sup>. Here, LaRose has the required standing identified in *Hudson v Haaland*, and like in *Hudson v Zinke* (2020)(rev'd for lack of standing)<sup>4</sup>, the District Court, held that as matter of first impression, certification of tribe's secretarial election based on quorum of registered voters, as opposed to quorum of adult members of tribe, was contrary to law.

Plaintiff raised a variety of civil rights defenses to the certification challenge including the ex post facto "if . . . ever" constitutional violations of the MCT Const. and Indian Civil Rights Act of 1968 (ICRA). (See Aff. of LaRose Ex. 9, Plaintiff's Answer to Challenge and Motion for Dismissal dated Feb. 11, 2022). When the *Hudson v Zinke* decision was issued the Tribal Executive Committee (TEC) of the MCT was following the appeal for possible application to the MCT 2006 amendment at issue herein. (See **Exhibit P-3**, Plaintiff LaRose's Leech Lake Tribal Court Complaint Ex. A, MCT's Legal Counsel Brodeen Memorandum to MCT-TEC on Applicability of *Hudson v Zinke* dated 7-13-2020, including 2005 MCT Const. amendment challenge history). As the duly elected LLRBC Secretary-Treasurer

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<sup>3</sup> *Hudson v. Haaland*, 843 Fed. Appx. 336 (2021).

<sup>4</sup> *Hudson v Zinke et al*, 453 F.Supp.3d 431 (2020)

Plaintiff LaRose also is a member of the TEC, which is comprised of the Chair and Secretary-Treasurer from each of the six (6) MCT reservations.

Ultimately, Plaintiff exhausted his administrative remedies with the MCT's Tribal Executive Committee (TEC) attempting to seek/find redress without success. MCT President Chavers ultimately informed the MCT members that the LLRBC Secretary-Treasurer election was still on.

Plaintiff filed a Complaint for Injunctive and Declaratory Relief with the Leech Lake Tribal Court April 28, 2022, to enjoin the election for the MCT LLRBC Secretary-Treasurer seat. At oral arguments the Court requested a copy of the MCT Tribal Court of Appeals record for LaRose's certification challenge by candidate Leonard Fineday. (Id. see MCT Tribal Election Court exhibits for *In Re LaRose*<sup>5</sup> attached as **Exhibits P-4**, (Leech Lake Tribal Court Case No. CV-22-58 filings), including *Aff. of Gary Frazer*, MCT Ex. Dir. and MCT Election Court Administrator.) The Honorable BJ Jones for the Leech Lake Tribal Court issued an Order of Dismissal on May 5, 2022. (Id. See **Exhibit P-4**, includes *MCT et al* Response Brief and Plaintiff's Reply Brief). Plaintiff filed Motion for Reconsideration and was denied by the Honorable BJ Jones, which was denied by Order Denying Reconsideration dated May 18, 2022. (Id. See **Exhibit P-4**, includes

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<sup>5</sup> See *In Re ARTHUR DALE LAROSE* [ . . . ] Challenge to the Election Certification Decision for Secretary/Treasurer [ . . . ] by the Leech Lake Reservation Business Committee dated Feb. 16, 2022 attached to Ex. 4 to *Aff. of LaRose* dated April 18, 2022, **Exhibit P-1** herein).

*MCT et al* Response Brief and Plaintiff’s Reply Brief). Plaintiff filed Notice of Appeal and Plaintiff-Appellant’s Brief May 23, 2022, which was granted expedited review and the appeal was denied June 8, 2022. (Id. See **Exhibit P-5**, (Leech Lake Tribal Court of Appeals Case No. AP-22-01) includes *MCT et al* Response Brief).

The Minnesota Chippewa Tribe’s Tribal Election Court of Appeals decision did not consider or mention Plaintiff LaRose’s constitutional and ICRA expressly raised defenses against retroactive application of the 2006 *ex post facto* amendment for a 1992 conviction. (See **Exhibit P-1**, *Aff. of LaRose* at p. 3, item 17). Plaintiff has exhausted his tribal remedies and now seeks declaratory, injunctive and habeas relief. Plaintiff LaRose’s rights to hold office and seek re-election have been effectively, permanently banished by the acts and omissions of Defendants.

### **Ex post facto amendment obtained in violation of federal and tribal law**

The *ex post facto* “if . . . ever” MCT Constitutional amendment language was obtained by a Secretarial Election with BIA tribal election waivers, which resulted in about 18% MCT eligible voter participation<sup>6</sup>, thereby circumventing and violating

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<sup>6</sup> See *Wadena v. Midwest Regional Director*, 47 IBIA 21, 26 (2008). Attached as **Exhibit P-2** (See FN 12 “According to Appellants’ theory, the calculation for Amendment A might be 4,986 (total number of ballots cast) ÷ 27,702 (number of election packets mailed to potentially eligible voters). Pursuant to this calculation, voter turnout was 18%.” However, in *Wadena*, the IBIA “conclude[d], as to Appellants’ calculation of the required 30% voter turnout, which presents a purely legal issue, that the Regional Director correctly determined that voter turnout was more than sufficient for the election to be valid. Finally, we reject Appellants’ due process and equal protection claims as meritless.”)(See FN 13, “According to the Regional Director, the calculation for Amendment A would be 4,986 total votes cast ÷ 6,547 total number of registered voters = .76 [76%] voter participation.”))

the MCT Constitutional requirement of at least 30% eligible voter participation in Article XII, the same as legally analyzed and described in *Hudson v Zinke*<sup>7</sup> (2020) decision (overturned by *Haaland* in 2021 for Hudson's *lack of standing*).

Here, Plaintiff has been certified as a candidate for Leech Lake Reservation elections 10 times, 3 times before the 2006 MCT Constitutional amendment, and won LLRBC elected office six (6) times. Defendant's collective, substantial and fundamental unconstitutional deprivations and injuries caused by retroactive application of a clearly ex post facto amendment in 2006 (obtained by BIA waivers circumventing MCT Const, Art XII), to a 1992 conviction, in 2022, after 18 years of election certifications, winning and holding office, makes Plaintiff's claims timely and *now* ripe.

### **I. Ripeness**

Before 2022, Plaintiff was without an injury-in-fact to claim or seek redress of the retroactive application of the 2006 amendment obtained with BIA election waivers to avoid the MCT Const. requirement of at least 30% voter participation for a valid election. Plaintiff and the LLRBC relied in good faith on the 2006 decision

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<sup>7</sup> See *Hudson v Haaland* (U.S. Court of Appeals filed April 6, 2021), on Appeal from the United States District Court for the District of Columbia, *Hudson v Zinke* (2020)(No. 1:15-cv-01988). *Haaland* reversed, remanded and ordered dismissal for *Hudson v Zinke* due to Hudson's lack of standing as only an eligible voter, because Hudson needed to be a duly elected office holder on the Reservation Business Committee, like Plaintiff LaRose herein to have standing to appeal due to injury and unjust taking of vested property rights in the public office and liberty interests, due process deprivations impacting his rights to hold office.



by Judge Wahwassuck in *Goggeley* and the subsequent resolution 2006-76 (**Exhibit P-1**) to codify LLRBC Resolution 2006-76 entitled *Convictions that deemed to be misdemeanors for certification of tribal office candidates*, which declared that the Leech Lake Tribal Court's determination that convictions deemed to be a misdemeanor under Minnesota criminal law was now codified as Leech Lake Band law. (See **Exhibit P-1**, *Aff. of LaRose* Ex. 1, Res. 2006-76 with Minutes).

Plaintiff has *now* sustained personal and economic injuries, constitutional deprivations, unjust taking of property and liberty rights to hold office by the acts and omissions of Defendants, and his property rights to continue to hold elected office have been banished from him and the Leech Lake Reservation by Defendants. Therefore Plaintiff has the necessary standing to challenge the unconstitutional 2006 amendment, obtained in violation of the MCT Constitutional amendment process expressly required in Art. XII, whereby "the constitution may be revoked by Act of Congress or amended or revoked by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior if at least 30 percent of those entitled to vote shall vote." *Id.*

#### JURISDICTION AND VENUE

1. This action arises under the 1855 Treaty with the Chippewa, 10 Stat., 1165 (1855). (Article 9 provides in part that "[t]he said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or

wrong upon other Indians, or upon citizens of the United States; to conduct themselves at all times in a peaceable and orderly manner; to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same, and to respect and observe the laws of the United States, so far as the same are to them applicable.)

2. This action arises under the Indian Reorganization of 1934 (IRA), Chapter 576, June 18, 1934. | [S. 3645.] 48 Stat., 984.
3. Jurisdiction is therefore proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), which provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
4. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202, and its inherent authority to issue equitable relief.
5. Injunctive relief also is authorized under the Indian Civil Rights Act of 1968 (ICRA). 25 U.S. Code § 1303 - Habeas corpus - The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. (Pub. L. 90–284, title II, § 203, Apr. 11, 1968, 82 Stat. 78.)
6. Venue is proper pursuant to 28 U.S.C. § 1391 because the actions challenged herein took place in this judicial District of Minnesota. The 2005 Secretarial

elections were conducted by BIA for the Minnesota Chippewa Tribe, Minnesota (at MCT HQ 15542 State Hwy 371 NW, Cass Lake, MN 56633) within the exterior boundaries of the Leech Lake Reservation.

7. Venue also is proper because Plaintiff resides on the Leech Lake Reservation in the District of Minnesota.

#### THE PARTIES

8. Plaintiff ARTHUR DALE LAROSE is an enrolled member of the Minnesota Chippewa at Leech Lake Reservation where he resides. Plaintiff is currently the now seated, duly elected, Secretary-Treasurer for the Leech Lake Reservation Business Committee (LLRBC). Leech Lake Reservation is one of six (6) constituent bands of the Minnesota Chippewa Tribe (MCT). Plaintiff has held elected offices of Chairman and Secretary-Treasurer for the LLRBC over the past 18 years. Plaintiff has been certified as a candidate for Leech Lake Reservation elections 10 times, 3 times before the 2006 MCT Constitutional amendment, and won LLRBC elected office six (6) times.
9. Defendant MINNESOTA CHIPPEWA TRIBE, MINNESOTA is a federally-recognized Indian Tribe 85 Fed. Reg. 5,462, 5464 (Jan. 30, 2020). Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band). The Minnesota Chippewa Tribe (MCT) is

organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

10. Defendant CATHERINE CHAVERS (“President Chavers”) is sued in her official capacity as the President of the Minnesota Chippewa Tribe’s Tribal Executive Committee (TEC). Pres. Chavers presides at all regular and special meetings of the TEC and at any meeting of the MCT in general council. Pres. Chavers assumes responsibility for the implementation of all resolutions and ordinances of the Tribal Executive Committee.

11. Defendant GARY FRAZER is sued in his official capacity as the Executive Director of the Minnesota Chippewa Tribe and designated MCT Tribal Election Court of Appeals Court Administrator, and present and actively engaged as Ex. Dir. before, during and after the 2005 Secretarial election for the MCT, including the election challenge.

12. Defendants MCT TRIBAL COURT OF ELECTION APPEALS is the panel established by the MCT Election Ordinance to decide election challenges for certification of candidates, primary and general election results.

13. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is a federal agency. The Interior Department conserves and manages the United States’ natural resources and cultural heritage, has a trust responsibility to Tribes and Indians, and is charged with conducting Secretarial elections for

tribes under the IRA. The Interior Department houses the Bureau of Indian Affairs, whose actions are at issue in this Complaint. The Interior Department receives, reviews, and approves or denies requests for Secretarial elections under the IRA, and is responsible for enforcing those provisions. As a federal agency, the Interior Department is obligated to act in accordance with all federal treaties, laws, and regulations, and to uphold its duties to the Tribes and members pursuant to the United States' trust responsibility and the treaties.

14. Defendant DEB HAALAND (“Secretary Haaland”) is sued in her official capacity as the Secretary of the Department of the Interior. Secretary Haaland is the present Secretary of the Bureau of Indian Affairs and named as the proper agency head or designee for this civil case. The Secretary of Interior is required to ensure that the Interior Department complies with all federal treaties, laws, and regulations, and upholds its duties to the Tribes pursuant to the treaties.

15. Collectively, the Interior Department, Secretary Haaland, Minnesota Chippewa Tribe, President Chavers and Gary Frazer are referred to as “Defendants.”

#### FACTUAL ALLEGATIONS

16. The Tribal Executive Committee of the Minnesota Chippewa Tribe requested a Secretarial Election in 2005 to amend the MCT Const., Art. IV with the following section that provides that

[n]o member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.

17. The TEC requested election waivers from the Bureau of Indian Affairs (BIA) which the BIA granted, and the BIA conducted the election.

18. The 2005 Secretarial Election was challenged by three (3) MCT members for violation of MCT Const., Art XII which requires

This constitution may be revoked by Act of Congress or amended or revoked by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior if at least 30 percent of those entitled to vote shall vote.

19. The IBIA issued an *Order Affirming Decision* of the BIA and upheld the use of election waivers under Part 81 to effectively substitute the term “registered” voters for the term “eligible” voters in Article XII of the MCT Const. in *Wadena v. Midwest Regional Director*, 47 IBIA 21 (2008)(**Exhibit P-2**).

20. Amendment to Art. IV of the MCT Const. was approved by the Secretary of the Interior on January 5, 2006.

21. Soon after Leech Lake Tribal members filed action in Tribal Court seeking the removal of then Chairman Goggeye for being a convicted felon, which

resulted in an order by the Honorable Judge Wahwassuck of the Leech Lake Tribal Court who determined in *Gotchie v Gogleye* (CV-06-07), that both Plaintiff LaRose herein and then seated Chairman George Gogleye were not convicted felons under Minnesota's criminal law. (See **Exhibit P-1**, *Aff. of LaRose* Ex. 3, Findings of Fact, Conclusions of Law & Declaratory Judgment by the Honorable Judge Wahwassuck dated 12-8-2006 at FN2).

22. On Feb. 23, 2006 the Leech Lake Reservation Business Committee (LLRBC) adopted Resolution 2006-76 *Convictions that are deemed misdemeanors for certification of tribal office candidates*. (**Id.** Ex. 1). The Tribal Court found that the Res. 2006-76 was not inconsistent with Minnesota Law or MCT Election Ord. No. 10, and concluded that the LLRBC did not exceed its authority by passing Res. #2006-76. (**Id.** Ex. 3).

23. The *Gogleye* case dealt with the meaning of convicted felon and the Honorable Judge Wahwassuck, Chief Judge of LLBO Tribal Court did certify the following questions to the Tribal Executive Committee for opinion pursuant to Tribal Constitution Interpretation 1-80:

1. Is Revised MCT Constitution Article IV intended to apply to Tribal council member elected to office prior to the date of enactment on January 5, 2006?
2. Does application of Revised MCT Constitution Article IV to sitting Tribal Council members (elected prior to the

date of enactment) constitute a retrospective application of the law?

Id. See **Exhibit P-3**, Tribal Court *Complaint*, Ex. 2, *Request for Opinion from Tribal Executive Committee* by the Honorable Judge Wahwassuck dated December 8, 2006.

24. The TEC never responded to the Leech Lake Tribal Court.

25. Plaintiff was certified and reelected several times over the past 18 years.

26. Due process revisions in the MCT Election Ordinance in 2019 and 2021 enabled candidates for the same seat to challenge the certification of other candidates, after being certified by the Reservation Business Committee (RBC) which resulted in disqualifying Plaintiff from being eligible to be a candidate for re-election in 2022. (See **Exhibit P-1**, *In Re LaRose*, Decision & Order dated Feb. 16, 2022 attached to *Aff. of LaRose* Ex. 4).

27. Plaintiff attempted to find relief appealing to the President of the Minnesota Chippewa Tribe, Catherine Chavers, who denied Plaintiff's first request for a Special TEC Meeting, but then scheduled a Special TEC Meeting at the request of four (4) TEC members per the MCT Const. and Bylaws.

28. Pres. Chavers adjourned the Special Meeting early at the motion and vote of the majority TEC members, and issued a memorandum to MCT members the LLRBC Secretary-Treasurer MCT election was still going forward.



29. Plaintiff, having exhausted administrative remedies with the TEC, filed

Complaint for Injunctive and Declaratory Relief with the Leech Lake Tribal Court against 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) on April 28, 2022.

30. On May 5, 2022, the Honorable BJ Jones issued an *Order of Dismissal* of

Plaintiff's request in CV-22-58, primarily for lack of subject matter jurisdiction. (See **Exhibit P-4**, Leech Lake Tribal Court Case No. CV-22-58 with orders, briefs and exhibits filed by the parties and court).

31. On May 10, 2022, Plaintiff filed Motion for Reconsideration, which was

denied by the Honorable BJ Jones on May 18, 2022, in his *Order Denying Reconsideration* of Plaintiff's request in CV-22-58, attached herein as **Exhibit P-5**.

32. On May 23, 2022, Plaintiff filed Notice of Appeal with the Leech Lake Tribal

Court of Appeals, with Appellant-Defendant's Brief and a request for expedited appeal process.

33. On June 6, 2022, the Leech Lake Tribal Court of Appeals issued its Opinion

which denied Plaintiff's appeal, primarily for lack of subject matter

jurisdiction. (See **Exhibit P-5**, Leech Lake Tribal Court of Appeals Case No. AP-22-01 with orders, briefs and exhibits filed by the parties and court).

34. The Plaintiff has exhausted his administrative and judicial remedies that may have existed within the MCT and now files in federal court.

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

### **COUNT 1**

#### **Defendants' Certification of the 2005 Secretarial Election Without a 30 Percent Tribal Quorum Violated the IRA and MCT Constitution.**

35. The Indian Reorganization Act, and its accompanying regulations, set out the procedures for a tribe to amend its constitution through Secretarial elections.

25 U.S.C.A. § 5123.

36. The Indian Reorganization Act expressly requires a Tribal quorum of 30 percent (%) to amend a Tribal constitution.

37. The MCT Constitution, Article XII expressly requires a Tribal quorum of 30 percent (%) for amendment.

38. Defendants Bureau of Indian Affairs and MCT-TEC used election waivers to circumvent the Indian Reorganization Act required process in Part 81 for Secretarial elections and requirement for at least 30% of eligible MCT voter's participation and Defendants' subsequent departure from that legal requirement directly interferes with the IRA's text and Congress' intent to promote tribal self-government and majoritarian values. 25 U.S.C.A. § 5127.

39. Defendants Bureau of Indian Affairs and MCT-TEC used election waivers to circumvent the MCT Const., Art. XII requirement for at least 30% of eligible MCT voters' participation, and substituted registered voters to enable the amendment to pass with maybe 18% of the eligible MCT voters participating.

40. The Tribal Constitution controls over conflicting BIA regulations in the event of any conflict between Part 81 and a tribal constitution's amendment article:

(b) Secretarial elections will be conducted in accordance with the procedures in this part unless the amendment article of the tribe's governing document provides otherwise and is not contrary to Federal voting qualifications or substantive provisions, in which case the provisions of those documents shall rule, where applicable. 25 C.F.R. § 81.2 (*emphasis added*).

41. Indian Canons of Construction require interpretation of ambiguous statutes in favor of Indians and the Indian canon dictates that the Court should reject Defendants' interpretation in favor of the plain and contemporaneous interpretation of the tribal quorum which reflects majoritarian values.

42. Here, the appropriate remedy is Decertification of the MCT 2005 Secretarial Election, approved by the Secretary Jan. 5, 2006, because Defendant's violated federal and tribal law to circumvent the MCT Constitutional and IRA rights and voting protections of MCT members.

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

## **COUNT 2**

### **Defendants Retroactive Application of the 2006 Amendment to Plaintiff's Prior Conviction Occurring Before the Amendment's Enactment**

**Violates ICRA and Entitles Plaintiff to Habeas Relief.**

43. Defendants' collectively have unjustly taken important and significant vested property rights to hold, and be re-elected to, public office on the Leech Lake Reservation and have jointly, severely severed Plaintiff's vested property rights and caused de facto banishment of Plaintiff's rights from Leech Lake Reservation.

44. But for the election waivers granted by the Bureau of Indian Affairs (BIA) for conducting the 2005 Secretarial Election for the MCT and the 2006 MCT constitutional amendment approved by Secretarial Election process, MCT Defendants could not have violated the MCT Const. requirement threshold for "at least 30 percent of those entitled to vote shall vote." (MCT Const., Art. XII).

45. In this case the 2006 amendment has been retroactively applied to Plaintiff for the first time in this 2022 election cycle, decertifying Plaintiff from candidacy and re-election by Defendants MCT Tribal Election Court of Appeals, for his 1992 conviction.

46. Plaintiff has held elected offices of Chairman and Secretary-Treasurer for the LLRBC over the past 18 years.

47. Plaintiff has been certified as a candidate for MCT Leech Lake Reservation elections 10 times, 3 times before the 2006 MCT Constitutional amendment, and won LLRBC elected office six (6) times.
48. There is no clear indication that the 2006 amendment was intended to be applied to convictions taking place before to its enactment.
49. Following *Gotchie v Googleye* (2006) the MCT was requested to weigh in on the retroactivity issue in 2006 by the Leech Lake Tribal Court, which certified two (2) questions for constitutional interpretations by the MCT and to date, the MCT has said absolutely nothing about the retroactive application of 2006 amendment to the Leech Lake Tribal Court and for the parties.
50. Plaintiff responded to the Feb. 2022 certification challenge within 48 hours on Feb. 11, 2022, as required by the MCT Election Ordinance.
51. Plaintiff's Answer to Challenge and Motion to Dismiss included a six (6) page Answer with some 50 exhibits attached.
52. Plaintiff's Answer included direct reference to the Indian Civil Rights Act of 1968 §1302 protections (citing 1, 5, 8 and 9 ex post facto laws).
53. Defendants have not included any reference to the ICRA applications in the MCT Election Ord.
54. The Decision & Order dated Feb. 16, 2022, was not issued within the 48 hours required by the MCT Election Ordinance.

55.The Decision & Order dated Feb. 16, 2022, was not issued within the 48 hours required by the MCT Election Ordinance.

56.The Decision & Order dated Feb. 16, 2022, was not signed by a panel judge as required by the MCT Election Ordinance.

57.The Decision & Order dated Feb. 16, 2022, by the MCT's Tribal Election Court of Appeals does not comment on ICRA applications and constitutional defenses raised by Plaintiff including unjust taking, lack of due process and equal protection for the retroactive application of an ex post facto to Plaintiff.

58.Defendants' acts and omissions have cause a significant restraint on Plaintiff's property rights and liberty interests, actual and potential, severely severing those long-vest property rights to hold elected office that predate the 2006 amendment.

59.Defendants have effectively deprived Plaintiff of his various significant and fundamental civil rights and important vest property rights and liberty interests in elected office under the U.S. Const., MCT Const. and the ICRA §1303 – Habeas Relief.

60.Defendants' have effectively banished those rights from Plaintiff and the voter's permanently.

61.The MCT 2022 election was held June 14, 2022, and swearing in of new officers is imminent, customarily the first Friday in July.

62. Time is of the essence.

63. Here, the appropriate and lawful remedy is for this Court to order Defendant BIA to *Decertify* the 2005 Secretarial Election and withdraw the 2006 Secretary approval, and order the BIA to discontinue its misapplication of the Indian Reorganization Act in order to preclude this ongoing problem from recurring for the MCT Elections and tribal citizens.

64. Here, the appropriate remedy for the unjust taking, severing and banishing Plaintiff from his vested property rights to hold and run again for re-election is to order MCT Defendants' to cancel the present 2022 MCT LLRBC Secretary-Treasurer election and vacate the Decision & Order by the MCT Tribal Election Court of Appeals disqualifying Plaintiff as a certified candidate by the LLRBC, return Plaintiffs full civil rights and liberties under the pre-amendment MCT Const. and restart the 2022 MCT LLRBC Secretary-Treasurer election with Plaintiff LaRose named on the ballot.

#### RELIEF REQUESTED

WHEREFORE, Plaintiff requests that the Court:

1. Declare that Defendants violated the IRA as described in this complaint;
2. Declare that Defendants violated and the MCT Const., Art. XII as described in this complaint;
3. Declare that Defendants violated ICRA as described in this complaint;

4. Declare that Defendants violated Fifth (5<sup>th</sup>) Amendment to the United States Constitution for unjust taking as described in this complaint;
5. Declare that Defendants violated federal and Tribal laws and interfered with rights of MCT Members and public interest to free and fair elections as described in this Complaint and accompanying Motion for Injunction and Declaratory Judgement;
6. Issue injunctive relief rescinding, setting aside, and holding unlawful Defendants' 2005 MCT Secretarial election and Approval by the Secretary Jan. 5, 2006, requiring Defendants to fully comply with the IRA, MCT Const., and the ICRA, and prohibiting any activity in furtherance of the 2022 MCT election for the LLRBC Secretary-Treasurer including swearing in of the other candidate;
7. Award Plaintiffs fees and costs pursuant to 28 U.S.C. § 2412 and otherwise authorized by law; and
8. Grant such other relief as the Court deems fair, just and proper.

Dated: June 18, 2022

Respectfully submitted,

/s/ Frank Bibeau  
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Plaintiff has six (6) sets of **Exhibits P-1 through P-6**, which are filed separately, but intended to be attached, for use with this Complaint for Injunctive and Declaratory Relief and Petition for Injunctive and Declaratory Relief due to size for combining as a single PDF file for e-filing. Exhibits are from IBIA, Leech Lake Tribal Court, Leech Lake Tribal Court of Appeals filings by parties, along with orders and other exhibits.