

**BEFORE THE ELECTION BOARD  
OF THE  
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS**

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In the matter of Election Dispute filed by Gary John.

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**DECISION AND DETERMINATION DISMISSING ELECTION DISPUTE**

Petitioner Gary John filed an Election Dispute related to two letters sent by Tribal Chairman Thurlow “Sam” McClellan. Pursuant to the Election Regulations, notice was sent to Mr. McClellan, as well as to all general election candidates as they could potentially be affected by the outcome. A hearing took place on May 30, 2018, during which time the Election Board heard from the Petitioner, Respondent, several affected candidates, as well as took public comment. After deliberation in closed session, the Election Board issued the outcome of its decision by motion, with this more detailed opinion issued subsequent to the hearing. The decision of the Election Board was unanimous.<sup>1</sup>

A letter was sent by Mr. McClellan to certain Tribal members prior to the primary election (which included the issue of whether Mr. McClellan should be recalled). The second letter was sent by Mr. McClellan to certain Tribal members prior to the general election. At the time of the sending of the second letter, the primary/recall election had been settled and the results certified. Respondent McClellan did not dispute that he sent the letters, but denied that he violated any Tribal laws or Election Regulations.

Initially, the Election Board has determined that the first letter, having been sent prior to the primary and recall election, should not be considered regarding any potential violations, as the matter was not raised before the Election Board in a timely manner. The Election Regulations require that any potential violations be filed with the Election Board within five (5) business days of the violation occurring. Since more than five business days passed with no election dispute having been filed, the Election Board elected not to review any potential violations regarding the first letter sent by Mr. McClellan. Thus, the Election Board makes no factual findings or determinations as to the first letter as any potential violations were brought before the Election Board in a timely manner regarding that first letter, and only makes its findings and determinations below as to the second letter, which was timely raised before the Election Board. A copy of the second letter is attached to this opinion.

Mr. John further alleged that Mr. McClellan violated Article XII, Section 5(b) of the Election Regulations, which states: “No person who is an employee or contractor of the Grand Traverse Band government or any Tribally chartered or owned business entity shall engage in any campaign activities during his/her assigned working hours. Any person may engage in campaign activities on their own personal time, while on vacation, etc., provided said

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<sup>1</sup> Election Board Secretary Diane Sullivan did not participate in the hearing or the decision of this matter due to illness.

campaigning complies with these regulations.” Mr. John presented no evidence to show that Mr. McClellan created the second letter during his working hours, and Mr. McClellan adamantly denied having done so, indicating the letter was created during off hours on his home computer. The Election Board concluded that clear and convincing evidence of a violation of this section was not presented.

Mr. John alleged that Mr. McClellan violated Article XII, Section 5(c) of the Election Regulations which indicates that: “No person shall use any Tribal government or Tribal enterprise property or funds for campaign activities, including, but not limited to, the use of any telephone, facsimile, e-mail, website, office supplies, vehicles, bulk mailing permit, etc.” Mr. John alleged that Mr. McClellan’s purchase of mailing labels in mailing the second letter amounted to use of Tribal property. Mr. McClellan disagreed. Mr. John also at least implied that Mr. McClellan used Tribal property to generate the letter, which Mr. McClellan firmly denied, indicating he had created the letter at home, after hours, and without utilizing any Tribal property whatsoever. The Election Board did not find clear and convincing evidence of a violation of this section under the circumstances.

Mr. John also alleged that Mr. McClellan violated Article XII, Section 5(d) of the Election Regulations, which states: “No person who is an employee of the Grand Traverse Band government or any Tribally chartered or owned business entity shall make express endorsements for or against any candidate or slate of candidates, or for or against any issue on the election ballot, at any public meeting attended in his/her employment capacity, or in any newsletter, report, mailing or other document distributed by the Tribe or which uses Tribal funds or property.” Mr. John argued that Mr. McClellan’s endorsement of certain candidates and statements about Tribal matters in the second letter violated this section. Mr. McClellan argued he has the right to free speech, and that the letter did not violate the Election Regulations. The Election Board noted that the second letter did not ever mention that Mr. McClellan is the Tribal Chairman, nor did the Board find that clear and convincing evidence was presented that a violation of this section occurred.

Mr. John also argues that because Mr. McClellan is the Tribal Chairman, his letter carried great influence and influenced the outcome of the election. Mr. McClellan again argued that he has the right to freedom of speech, and that he had the right to send out the letter concerning the general election. The Election Board noted that not every person endorsed by Mr. McClellan in the second letter were successful; in fact, only two of the four people he endorsed were elected. Further, there was not clear and convincing evidence presented that Mr. McClellan’s second letter had any appreciable effect on the outcome of the general election.

Mr. John argued as well that Mr. McClellan should be considered a “candidate” and subject to the rules related to a candidate as to both letters. Again, the Election Board makes no findings as to the first letter, but as to the second letter, by the time it was written the recall election had been decided in Mr. McClellan’s favor, and Mr. McClelland was not on the ballot for the general election. Therefore, at the time of the writing of the second letter, Mr. McClellan could not be considered a “candidate” under the Election Regulations.

Mr. John requested that due to the alleged violations, the entire election process (including the results of the primary election and the general election) be reversed. The Election Board, having found that there was not clear and convincing evidence presented of any violations of the Election Regulations by Mr. McClellan, let alone the candidates who were successful in the general election, declines the request to invalidate the results of the 2018 General Election and the will of the voters. The Election Board therefore dismisses the election dispute, and has voted to certify the results of the 2018 general election.

Dated: June 5, 2018

/s/ Shawn R. Koon-Nolff  
Shawn R. Koon-Nolff  
Election Board Chair