

**FILED**

**OCT 21 2021**

**IN THE SUPREME COURT  
FOR THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI  
AT FULTON, MICHIGAN**

**NHBP TRIBAL COURT**

**IN RE:** ) **Appeal No.: 2021-111-APP**  
**NHBP ELECTION BOARD DECISION,** ) **Trial No.: 21-074-AMA/ELE**  
**DISPUTE 2021-2,** ) **Chief Judge Melissa L. Pope**  
**(Administrative Appeal).** ) **OPINION**

*Before: Gregory D. Smith, Chief Justice; Holly T. Bird and Matthew L.M. Fletcher, Justices*

***Opinion By: Smith, C.J.***

This is the first of a series of election campaign dispute appeals related to the April 24, 2021 leadership election for the Nottawaseppi Huron Band of the Potawatomi, (NHBP). This opinion addresses good-faith immunity from lawsuits for tribal officials acting within the scope of their official capacity or office, (good-faith immunity). Although time renders this case moot for the specific election in dispute, guidance is needed for future election disputes. Under the facts of this case, good-faith immunity shields both the NHBP Tribal Council and the Tribal Council Attorney from suit. The Tribal Court is **AFFIRMED** in part and **VACATED** in part. Guidance will be offered for future elections.

**INTRODUCTION**

All parties to this appeal, be it the litigants, the Election Board, or the reviewing courts are branches or representatives of the NHBP Nation. The appellate record and briefs in this case amount to a paper stack that exceeds one and one-half (1.5) feet.<sup>1</sup> This mound of legal filings began as a one (1) paragraph public comment that offended a

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<sup>1</sup> To exceed eighteen (18) inches of paper, one must stack nine (9) reams of paper. A ream of paper has 500 sheets. By comparison, the 2012 edition of Cohen's Handbook of Federal Indian Law has approximately 1500 pages and is slightly less than three (3) inches thick.

political candidate. That candidate won his election. The Tribal Council Chairman and Tribal Council Attorney won their court claim that good-faith immunity protects them from liability in this matter. The Election Board decision was upheld by the Tribal Court. Basically, all parties to this appeal won some aspect of their case or position. Victory failed to vindicate and this appeal marched on. This debate now ends.

### **RELEVANT FACTS**

NHBP Tribal Council Business Meetings, (“Council Meetings”), pursuant to NHBP Code § 1.1-8C(2)(i), include a designated time segment reserved for public comment.<sup>2</sup> NHBP Constitution, Art. VII § 1(a)(1) protects NHBP Tribal Citizens’ Right to Free Speech, declaring:

The Band, in exercising the powers of self-government, shall not make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech or the press, or the right of the people to peacefully assemble and to petition for redress of grievances.

Tenbrink v. NHBP Tribal Council, Appeal No. 13-078-CV/TRO, at \*6 (NHBP Sup. Ct. 7/15/2013). NHBP Tribal Council Meetings Bylaws direct that comments from NHBP tribal members “will” be allowed.<sup>3</sup> This public comment segment allows tribal members a forum for exercising their right to free speech and the right to petition the Tribal Council to address governmental grievances.

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<sup>2</sup> NHBP Code § 1.1-8C(2)(i) states, as follows: *C. Procedures for Regular and Special Meetings. (2) Proceedings. (i) “Tribal member comments will be heard.”* This Court acknowledges that finding and following legislative intent is the “guiding star” of a court’s review of a statute or ordinance. People v. Pichitino, 59 N.W.2d 100, 101 (Mich. 1953) and Smith v. Louis Berkman Co., 894 F. Supp. 1084, 1090 (W.D. Ky. 1995).

<sup>3</sup> Terms such as “will” or “shall” are generally viewed as mandatory instructive terms for statutory construction purposes. *See e.g., Baden-Winterwood v. Life Time Fitness*, 556 F.3d 618, 631 (6<sup>th</sup> Cir. 2009) and Kalashov v. Kapture, 868 F. Supp. 882, 889 (E.D. Mich. 1994).

NHBP tribal citizen, Paula Stuck,<sup>4</sup> took issue with re-election campaign claims made by incumbent NHBP Tribal Councilman, Dr. Jeff Chivis, during the lead-in to the April 24, 2021 NHBP Tribal Council Election. Paula Stuck submitted the following comment, that was read aloud at the January 21, 2021 Council Meeting's public comment segment:

In the January 2021 Turtle Press[,] I read and viewed the proud winners of the Big Buck Contest. A couple weeks later I received [a] Special Edition Meet the Candidates[.] Much to my dismay, incumbent candidate Jeff Chivis's bio stated he implemented the Big Buck Contest. What a huge red flag!!!! How can a council person design a contest and not only enter it[,] but win 3<sup>rd</sup> place[?] Your bio states you adhere to traditional religion and life ways. You need to revisit the Seven Grandfathers teachings. Your [sic] taking credit for many accomplishments that were in place or in the works 5+ years ago. Shame on you. I would love to hear in your humble spirit what the definition of lying to you.<sup>5</sup>

Both the NHBP Election Board and the NHBP Tribal Court, (the Honorable Chief Judge Melissa L. Pope), found as fact that the record now before this Court lacks any direct proof that anyone encouraged, facilitated, recruited or directed Paula Stuck to submit the above-cited public comment. This Court does not dispute this finding.

Paula Stuck's public comment was received and circulated to the NHBP Tribal Council on January 20, 2021. A legal opinion was requested by the Council from Tribal Council Attorney, John Swimmer, ("Attorney Swimmer"), who advised the Council that

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<sup>4</sup> Ms. Stuck is the mother of NHBP Tribal Council Chairman Jamie Stuck, ("Chairman Stuck").

<sup>5</sup> Parenthetical added for clarity. The "Seven Grandfathers Teachings" is a reference to the guiding principles of good citizenship for NHBP tribal citizens that include: "1) Wisdom, 2) Love, 3) Respect, 4) Bravery, 5) Honesty, 6) Humility, and 7) Truth. These principles go hand-in-hand with "MnoBmadzewen," which roughly translates "the good path for living life." For a detailed definition of MnoBmadzewen, see Spurr v. Tribal Council, Appeal No. 12-005-APP, at \*6 (NHBP Sup. Ct. 2/12/2012).



Paula Stuck's public comment must be publicly read at the NHBP Council Meeting according to NHBP Code § 1.1-8C(2)(i), even though Paula Stuck's comment discusses an election campaign issue. Attorney Swimmer further advised that the Tribal Council Meeting is not the proper forum to allow Council Member rebuttal for Paula Stuck's unflattering public comment of Dr. Chivis according to NHBP Election Code § 3.1-90, which bars Council Members from conducting campaign activities while performing official duties.

The January 21, 2021 Council Meeting was being conducted via Zoom, (with Chairman Jamie Stuck presiding), due to COVID-19 protocols. This meeting included Paula Stuck's public comment. After Paula Stuck's public comment was read aloud at the Tribal Council Meeting, the following exchange took place between Dr. Chivis, Chairman Stuck, and Attorney Swimmer:

**Dr. Chivis:** John, and I will - would like to respond to that.

**Chairman Stuck:** I would be careful responding while you're in your duties as Council Member. {Cross-talk} to closed session and discuss. We don't have another [internet] link set up for an executive session.

**Dr. Chivis:** So what's the issue with me responding to a question directed at me?

**Chairman Stuck:** It is – It is as you – directed to you as a candidate, and you're operating right now within your duties of a council member, which goes against the election code.

**Mr. Swimmer:** And we've [the NHBP Tribal Council] adopted a policy that – on the conflicts of interest that we are not responding – during the election the candidates are not responding to election matters during the election period. There – There may be another forum for you to respond to this directly, but we

would ask you not to respond at Council meeting today.

**Chairman Stuck:** I mean if there's some way, Jeff [Dr. Chivis], you want to respond to Miss Stuck's comments and questions outside your duties of Tribal Council, you know, that's your, you know, choice as a candidate, but just want to make sure we're not in any violation of any codes or policies right now as we're in a duly called public meeting.<sup>6</sup>

Dr. Chivis did not respond to Paula Stuck's public comment at the Council Meeting, but on January 26, 2021, Dr. Chivis filed a campaign grievance with the NHBP Election Board against Paula Stuck for defamation, and against Chairman Stuck and Attorney Swimmer for purportedly campaigning at the January 21, 2021 Council Meeting. Dr. Chivis claimed Chairman Stuck and Attorney Swimmer were facilitating the reading of Paula Stuck's public comment, while hindering Dr. Chivis' ability to respond to Paula Stuck's unflattering comments about Dr. Chivis.

The NHBP Election Board heard evidence on February 19, 2021. Chairman Stuck and Attorney Swimmer both reserved arguments on good-faith, legislative, absolute, and/or attorney-client immunity issues until after testimony was presented because the NHBP Election Board procedures do not offer a formal pretrial motion process. The Election Board found that Chairman Stuck and Attorney Swimmer were acting within the scope of their official capacity duties on January 21, 2021 and were therefore entitled to good-faith qualified immunity. The Election Board, in *dicta* after finding that qualified immunity applied in this matter, scolded Chairman Stuck and

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<sup>6</sup> Parentheticals added for clarity.

Attorney Swimmer for violating the spirit of a fair election process,<sup>7</sup> if not the letter of said law. The Election Board also suggested that the very Tribal Council that was bickering over this scenario could (and should) revise the NHBP Code to address this issue. Chairman Stuck and Attorney Swimmer appealed the March 5, 2021 decision of the NHBP Election Board to the NHBP Tribal Court, arguing that any comments made in the Election Board decision after the finding that qualified immunity existed were improper and should be stricken.

The Tribal Court reviewed the record from the Election Board and heard argument of all parties. On April 7, 2021, the Tribal Court affirmed the Election Board decision. Specifically, the Tribal Court found that Chairman Stuck and Attorney Swimmer deserve good-faith qualified immunity for their actions (or inactions) at the January 21, 2021 NHBP Council Meeting. This Court agrees that immunity exists for the actions of Chairman Stuck and Attorney Swimmer, which were made in good-faith as part of their official duties, on January 21, 2021.

On April 24, 2021, Dr. Jeff Chivis was re-elected as a member of the NHBP Tribal Council. On May 3, 2021, Chairman Stuck and Attorney Swimmer appealed the Tribal Court's order to this Honorable Court challenging the scolding received from the Election Board as improper *dicta*. While on appeal to this Court, Dr. Chivis, for the first time, inserts a cross-appeal. Chairman Stuck and Attorney Swimmer filed a motion to dismiss Dr. Chivis' cross-appeal. The Election Board filed their own motion to dismiss the cross-appeal, and a brief. Paula Stuck's one-paragraph public comment, about an

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<sup>7</sup> This Court has previously acknowledged the constitutional mandate and duty to ensure the NHBP election process meets fundamental fairness. Spurr v. Tribal Council, Appeal No. 12-005APP, at \*3 (NHBP Sup. Ct. 2/12/2012).



election that has already been won by the person offended by Paula Stuck's unflattering public comment, is now a foot and one-half thick stack of papers sitting before this Honorable Court.

This appeal pits two potentially contradictory NHBP ordinances against each other. NHBP Code § 1.1-8C(2)(i) allows public comment from NHBP tribal members at Tribal Council Meetings. NHBP Code § 3.1-9M prohibits election campaigning using "NHBP government or enterprise property," which Appellees claim includes the Zoom link used at the January 21, 2021 Tribal Council Meeting.<sup>8</sup> This Court will now weigh in on this version of "A House Divided."<sup>9</sup> This aspect of NHBP election law is a matter of first impression for this Honorable Court.

### **JURISDICTION**

This Honorable Court has jurisdiction to consider this matter pursuant to NHBP Constitution, Art. XI § 3(c), which says:

Appellate Jurisdiction. The Tribal Supreme Court shall have jurisdiction to review a final judgment, order or decree as provided in appellate rules adopted by the Tribal Judiciary or applicable Tribal law.

Accord, NHBP R. App. Pro. 9 § 3(a).

### **STANDARD OF REVIEW**

When NHBP law is not clear on a legal matter, this Court may look to other jurisdictions for persuasive, but non-binding, guidance. See e.g., Chivis v. Tribal

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<sup>8</sup> Appellees did not explain how Ms. Stuck was to present her public comment at the Tribal Council's Zoom Meeting without using the NHBP Zoom link provided. To focus on this technicality, which was totally beyond Paula Stuck's control, would amount to a *de facto* censorship of tribal member comments.

<sup>9</sup> While most Americans associate the phrase of "A house divided against itself cannot stand" with Abraham Lincoln's unsuccessful 1858 U.S. Senate campaign against Stephen A. Douglas, the quote originates much earlier. Compare, Filippi v. Filippi, 818 A. 2d 608, 611 n.1 (R.I. 2003), and Pellgrino v. Ampco Sys. Parking, 789 N.W.2d 777, 815 (Mich. 2010), Corrigan, dissenting.

Council, Appeal No. 12-192-CR, at \*4-\*5 (NHBP Sup. Ct. 5/10/2013). Tribal courts generally agree that sufficiency of evidence factual findings issues in civil cases, (including administrative appeals), must be sustained unless those factual findings are clearly erroneous, but a lower court's legal conclusions are reviewed *de novo* with no presumption of correctness. *See e.g., Neptune Leasing, Inc. v. Mt. States Petroleum Corp.*, 2013 Navajo Sup. Ct. Lexis 3, at \*7 (Navajo Sup. Ct. 5/13/2013); *Brosset v. Grand Casinos of La.*, 1998 Tunica-Biloxi Trib. Lexis 2, at \*5-\*7 (Tunica-Biloxi Ct. App. 5/27/1998); and *Wolf Point Organization v. Investment Centers of America, Inc.*, 2001 ML 4758, 2001 Mont. Fort Peck Tribe Lexis 3, at \*10 (Ft. Peck Ct. App. 2/6/2001). This Court adopts the above-mentioned standards of review.

### **ANALYSIS**

**Dr. Jeff Chivis' Claims:** Irrespective of abandonment/waiver of issues due to Dr. Chivis not pursuing claims until the appeal came before this Court; Dr. Chivis won his election on April 24, 2021. *See NHBP Election Bd. Decision – Election Challenge 2021-A*, at \*2 (NHBP Tribal Ct. 7/6/2021), *Pope, C.J.* Any potential error by the lower tribunals relating to Dr. Chivis' successful 2021 election campaign would be harmless error. *See e.g., Raphael v. Grand Traverse Band of Ottawa & Chippewa Indians*, Appeal No. 90-01-CV, 1999 Grand Traverse Band App. Lexis 7, at \*2-\*3 (G.T.B. Ct. App. 10/15/1999); *United States v. Hastings*, 461 U.S. 499, 509-510 (1983); *Tobias-Chaves v. Garland*, 999 F.3d 999, 1003 (6<sup>th</sup> Cir. 2021); and *Maier v. Maier*, 874 N.W.2d 725, 731 (Mich. App. 2015). Further analysis regarding Dr. Chivis' arguments as appellant is unnecessary.



**Good-Faith Immunity for Chairman Stuck and Attorney Swimmer:** The NHBP Election Board and the NHBP Tribal Court both made factual findings that Chairman Stuck and Attorney Swimmer were acting in their official capacity at the NHBP Council Meeting dated January 21, 2021. Chairman Stuck was acting as the presiding officer of the properly called Tribal Council Meeting and Chairman Stuck was attempting to follow rules of procedure for said meeting by allowing public comment, as mandated by NHBP Code § 1.1-8C(2)(i), according to factual findings by the Tribal Court and Election Board. According to factual findings by both the Election Board and the Tribal Court, Attorney Swimmer's comments and opinions of January 21, 2021 were legitimate actions in his official role of providing Tribal Council with requested legal advice. This Court agrees with the Election Board and Tribal Court on these factual findings. Both the Election Board and the Tribal Court made factual findings that neither Chairman Stuck, nor Attorney Swimmer, had any part in Paula Stuck's public comment of January 21, 2021, except to read the comments during the designated NHBP Code § 1.1-8C(2)(i) Public Comment time slot. The appellate record supports this factual finding. Chairman Stuck and Attorney Swimmer advised the Tribal Council, (primarily Dr. Chivis), that the Council Meeting was not the proper forum for responding to Paula Stuck's comments – all of which are part of "official duties." While these factual findings may appear inequitable; these factual findings were not actively challenged by any litigant to this appeal and therefore are now, by default, binding on this Court. Spurr v. Spurr, Appeal No. 17-287-APP, at \*22-\*24 (NHBP Sup. Ct. 1/25/2018). See also, Tenbrick v. Tenbrick, Appeal No. 13-078-CV/TRO, at \*4 n.4 (NHBP Sup. Ct. 7/15/2013).

Dr. Chivis argues in his brief that since the Election Board complaint was leveled at Chairman Stuck and Attorney Swimmer as individuals; the claim is outside of good-faith immunity consideration. In the alternative, Dr. Chivis argues, (but points to no supporting fact in the appellate record), that by acting, Chairman Stuck and Attorney Swimmer must be acting beyond the scope of their official duties (*ultra vires*). Both arguments are wrong. Merely declaring that an official is being sued as an individual does not automatically remove the application of good-faith immunity<sup>10</sup> if said public official is acting in good faith within the scope of their official capacity. Mullenix v. Luna, 577 U.S. 7, 11 (2015); Watson v. Pearson, 928 F.3d 507, 510 (6<sup>th</sup> Cir. 2019); Holeton v. City of Livonia, 935 N.W.2d 601, 609 (Mich. App. 2019); and Strickland v. Decoteau, Appeal No. TMAC-04-003, 2005 Turtle Mt. App. Lexis 10, at \*4 (Turtle Mtn. Ct. App. 3/14/2005).

The United States Court of Appeals for the Second Circuit explains the problem with Dr. Chivis' argument, (that merely declaring a case against a public official "an individual suit," instead of a suit against a sovereign government, removes the possibility of good-faith immunity), stating the following:

A government official sued in his individual capacity is entitled to qualified immunity (1) if the conduct attributed to him was not prohibited by federal law, [citations]; or (2) where that conduct was so prohibited, if the plaintiff's right not to be subjected to such conduct by the defendant was not clearly established at the time it occurred, [citations]; or (3) if the defendant's action was "objective[ly], legal[ly] reasonable[...in light of the legal rules that were clearly established at the time it was taken. [citation].

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<sup>10</sup> Often called "qualified immunity" by courts.

Manganiello v. City of New York, 612 F.3d 149, 164 (2<sup>nd</sup> Cir. 2010), (citations omitted. Other parentheticals in original text). Accord, Watson v. Pearson, 928 F.3d 507, 510 (6<sup>th</sup> Cir. 2019). Dr. Chivis failed to show how the actions of Chairman Stuck and Attorney Swimmer were outside of the scope of their official duties. Dr. Chivis did not show how/why said actions of January 21, 2021 had an evil motive, or were a part of a conspiracy with Paula Stuck to circumvent NHBP election ordinances, thus good-faith immunity bars Dr. Chivis' claim. See, Kanuszewski v. Michigan H.H.S., 927 F.3d 396, 422-423 (6<sup>th</sup> Cir. 2019). Dr. Chivis, as the plaintiff at the Election Board, had the duty of overcoming Chairman Stuck and Attorney Swimmer's claim of good-faith immunity. See, Lavinge v. Forshee, 861 N.W.2d 635, 643 (Mich. App. 2014), citing Pearson v. Callahan, 555 U.S. 223, 231-232 (2009). Both the Election Board and the Tribal Court found, as fact, that Chairman Stuck and Attorney Swimmer acted within the scope of their official capacity duties; meaning that Dr. Chivis did not negate their good-faith immunity bar to being sued for performing their official duties on January 21, 2021. This Court affirms the factual findings of both the Election Board and Tribal Court.

Now, having addressed the focal point of this case, the Court will reluctantly address the some of collateral issues as guidance for future cases.

**Legislative Immunity:** The United States Supreme Court, in Tenney v. Brandhove, 341 U.S. 367, 377 (1951), discussed legislative immunity, (a/k/a legislative privilege), and how that immunity should apply to legislators' debate or actions in the good-faith performance of official duties declaring:

The claim of unworthy purpose [of a legislator's motive/action] does not destroy the privilege.



Legislators are immune from the deterrents of the uninhabited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. This privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of a pleader, or the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in Fletcher v. Peck, 6 Cranch 87, 130 [1810], that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned.

Parentheticals added. This concept exists in Indian Country. *See e.g., Smith v. Confederated Salish & Kootenai Tribes*, Appeal No. AP-94-027-CV, 1996 Mont. Salish & Kootenai Tribe Lexis 5, at \*6 (Conf. S&K Ct. App. 8/8/1996). To overcome this high hurdle of legislative immunity, a plaintiff must show the following:

To deny good faith immunity to tribal officers, a plaintiff would have to show specific facts that demonstrate the officers violated a “clearly established” right. It is not sufficient simply to make a conclusory allegation of a general violation of a broad right.” The contours of the right must be sufficiently clear that a reasonable officer would understand what he is doing is wrong.” [citation].

*Id.*, at \*8. While legislative immunity is not *carte blanche* absolute protection for political actors during a Tribal Council meeting; it is an extremely high threshold to meet before immunity is lost by said political actors. Said threshold was not met in this case.<sup>11</sup>

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<sup>11</sup> During oral arguments before this Court, Appellees argued that friction exists between a plain reading of the NHBTP Tribal Council Meeting's Public Comment ordinance and the NHBTP Election ordinance. Apparently contradictory legislative instructions do not amount to a clear legislative mandate. Therefore, Appellees' own argument undermines their position that either ordinance was deliberately breached on January 21, 2021.

**After a Finding of Immunity:** Good-faith immunity and legislative immunity serve as a **bar from suit**, not just a defense to a legal claim. Mitchell v. Forsyth, 472 U.S. 511, 525-526 (1985); Johnson v. VanderKooi, 903 N.W.2d 843, 854 (Mich. App. 2017), (partially rev'd on other grounds); and Beillo v. E. Band of Cherokee Indians, 3 Cher. Rep. 47, 50 (E. Band Cher. Tribal Ct. 1/30/2003). Both the NHBP Election Board and the NHBP Tribal Court made factual findings that Chairman Stuck and Attorney Swimmer were entitled to good-faith immunity in this case. This Court affirms that finding.

Good-faith immunity allows public officials “breathing room to make reasonable, but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law.” Messerschmidt v. Millender, 565 U.S. 535, 546 (2012). Once a finding is made that good-faith immunity, qualified immunity, or legislative immunity exists, the reviewing tribunal’s inquiry into other aspects of the case ceases. Saucier v. Katz, 533 U.S. 194, 201 (2001). This Court has previously noted that any NHBP Election Board decision must include sufficiently specific findings of fact to allow legitimate appellate review. Tenbrink v. Tribal Council, Appeal No. 13-078 CV/TRO, at \*4 n.4 (NHBP Sup. Ct. 7/15/2013). Therefore, the Election Board did not err in addressing **some** of the facts set forth in their ruling when reaching their decision that good-faith immunity existed in the current case.

In the case at hand, the Election Board’s scolding of Chairman Stuck and Attorney Swimmer was **dicta** made after the Election Board had already ruled that immunity existed for Chairman Stuck and Attorney Swimmer. The *impromptu* editorial should not have been included in the Election Board’s opinion. Said error was harmless

because the Election Board as a body, or the members of the Election Board as individual NHBP tribal citizens, could have exercised their NHBP Constitution, Art. VII § 1(a)(1) Right of Free Speech and Assembly to call upon the Tribal Council to address their concerns of NHBP election law inequity through the legislative and/or rule-making process. This call for action could even be done as a public comment at a regularly scheduled Tribal Council meeting – just as Paula Stuck utilized the public comment segment of the Tribal Council Meeting of January 21, 2021. Upon a finding that immunity existed, the Election Board’s review discussion should have ended. All comments made by the NHBP Election Board beyond that needed to determine that immunity existed shall be stricken from the record.

### **CONCLUSION**

The Election Board and Tribal Court are affirmed in their laudable handling of a delicate situation. The litigants are all trustees of the funds and best interests of the NHBP people. Thin-skins for those in the arena of politics tend to cause continued strife. *Accord, Commonwealth v. Acquaviva*, Case Nos. 129, 130, 131 and 132, 1958 Pa. Dist. & Cnty. Dec. Lexis 401 at \*10-\*11 (Pa. Common. Pleas. 3/20/1958).<sup>12</sup> Any debate over regulating public comment at NHBP Tribal Council meetings should be reserved for the legislative branch of NHBP government to set, reset, revise, or re-assert the current NHBP election and/or public comment rules. This Court *applies* laws. It does not *write* laws. That role is reserved for the NHBP Tribal Council. Every concern presented in this appeal can more efficiently and economically be addressed in a NHBP Tribal

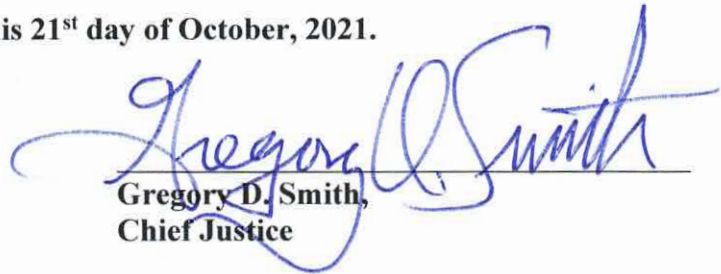
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<sup>12</sup> This is not a new concept. *See e.g., Conner v. Mid S. Ins. Agency*, 943 F. Supp. 647, 659 n.11 (W. D. La. 1995), (quoting Rudyard Kipling’s poem “If”), and Titus 3:9.



Council legislative arena – ironically, where the focal parties to this appeal all already are sitting. The decisions of the NHBP Election Board and NHBP Tribal Court are ***VACATED*** to the extent that either conflict with this ruling. All other aspects of the decisions below are hereby ***AFFIRMED***.

**Entered this 21<sup>st</sup> day of October, 2021.**



Gregory D. Smith,  
Chief Justice

***Bird & Fletcher concur.***

cc: Attorneys for all parties