GRAND TRAVERSE BAND TRIBAL COURT	ORDER AND OP				FILE NO. 8-2919-CV-EL
		D DISMISSA ENDANT'S M			
Court Address 2605 N. West Bay Shore Dr., Peshawbestown, MI 496	Ema 582 <u>tribal</u>	il court@gtbindians.co		one No. 34-7050	Fax No. (231) 534-7051
Charles James Petoskey and Lora Robert			Grand Tra	verse Band Elec	ction Board
		v.			
Plaintiffs,					Defendants.
Holly T. Bird (68122) Attorney for Plaintiffs HT Bird, PLLC 921 W. 11 <sup>th</sup> Street, Suite 1E Traverse City, MI 49684 (231)-383-4440 hollytbirdattorney@gmail.com			Attorney f Brott, Sett 51658 U.S P.O. Box 3 Acme, MI (231) 938-	les & Brott, P.C 5. 31 North 300 49610-0300	GTB Election Board

The Grand Traverse Band Tribal Judiciary, sitting en banc, herein orders the Plaintiffs' Complaint DISMISSED with prejudice, consistent with the precedent set in *Raphael v. Grand Traverse Band Election Board*, No. 13-2189-CV-CV (May 21, 2014) (en banc) and *McClellan v. GTB Election Bd.*, Case No. 2018-2904-CV-CV (March 28, 2018) (en banc). The Court remains firm that, absent amending the Tribal Constitution or creating new law, the court cannot insert itself into the recall election process.

The Tribal Judiciary issues this order without a hearing and relies on the Parties pleadings in issuance of this Order and Opinion.<sup>1</sup>

The precedent of *Raphael*, which was reaffirmed in *McClellan*, unequivocally and unambiguously clarifies that no Constitutional or Tribal laws grant the Tribal Court jurisdiction over recall matters, including creative pleadings that invoke "impropriety." The fact remains that the subject matter of the Plaintiff's complaint is a recall petition and this hurdle cannot withstand lack of subject matter jurisdiction to then move on to the question of impropriety nor to delve into the ultimate question of whether notice of the recall election was sufficient.

<sup>&</sup>lt;sup>1</sup> The facts relied on are those in the Plaintiff's complaint and those from the Defendant's Answer that were "admitted."

For this reason, we reassert that the Tribal Judiciary will not entertain the act or notion of creating laws from the bench; under our democratic system of government, the role of creating laws rests solely with the Tribal Council as set forth in our Constitution. Therefore, while Plaintiffs' assertion that proper notice was lacking (and causes us concern) the Tribal Judiciary has not, nor have we ever been, granted jurisdiction for such an allegation to be addressed.

We therefore reaffirm the holdings in *Raphael* and *McClellan* and, again, hold that the Tribal Judiciary is not empowered by the Tribal Constitution nor any Tribal laws to review Election Board decisions relating to recalls, including whether the Election Board acted improperly with regard to notice. Plaintiffs' complaint must be, and is, DISMISSED with prejudice. Defendant's pending motion is DENIED as MOOT.<sup>2</sup>

Date: 4/24/18

By:

Tanya S. Wanageshik, Chief Judge

On Behalf of the Tribal Judiciary Sitting En Banc

<sup>&</sup>lt;sup>2</sup> Defendant has properly filed a Motion for Summary Disposition. The Motion and its supporting brief have not been reviewed or considered relative to this opinion.

## GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT

2605 N. West Bay Shore Drive, Peshawbestown, MI 49682 (231)-534-7050, Main \*\* (231)-534-7051, Fax \*\* <a href="mailto:tribalcourt@gtbindians.com">tribalcourt@gtbindians.com</a>

VS. GTB ELECTION BOARD,	RA ROBERT, Plaintiffs, Defendants.	CASE NO.: 2018-2919-CV-EL Hon. Matthew Fletcher, Hon. Michael Long, Hon. Quinton Walker, and Hon. Tanya Wanageshik.
Holly T. Bird (P68122) Attorney for Plaintiff 921 W. 11 <sup>th</sup> St., Ste. 1E Traverse City, MI 49684 Telephone: (231)-392-2491		

## **PROOF OF MAILING**

I, Eric A. Placer, being duly sworn, deposes and says that on the date below I sent by:

[X] first class mail, [] certified, [] restricted, [] inter-office mail, [X] personal service, and/or [X] courtesy email

addressed to their last known address by placing a copy of the same in the United States Postal Service Mail in Suttons Bay, Michigan.

Proof of Mailing for: <u>Order and Opinion Dismissing Complaint and Dismissal of Defendant's</u> Motion.

To:	Court File	Original
	Judge Matthew Fletcher	Sent to Address and Courtesy Email on file
	Judge Michael Long	Hand Delivered and Courtesy Email of file
	√Judge Quinton Walker	Sent to Address and Courtesy Email on file
	/Judge Tanya Wanageshik	Hand Delivered and Courtesy Email on file

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: 04/24/2018 Eric A. Placer
Eric A. Placer, Clerk of the Court