

# QUAPAW NATION

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## Re: The Suitability of John L. Berrey's Candidacy

### Summary

The Quapaw Nation Election Committee received a challenge contesting the candidacy of John L. Berrey to the Business Committee. John Berrey submitted a response to the Election Committee. The Election Committee determined John Berrey was eligible to be a candidate. The challenging party appealed the Election Committee's decision to the Business Committee. The Business Committee, by unanimous vote with the Vice-Chairwoman abstaining, overturned the decision of the Election Committee by sustaining the challenge to disqualify John L. Berrey as a candidate for election.

### Background

The Quapaw Nation Election Committee received a challenge of candidacy by registered voters against John L. Berrey in the upcoming election of the Quapaw Nation. Mr. Berrey submitted his challenge response to the Committee. The Committee reviewed the challenge of the declaration of candidacy for Mr. Berrey and his response to the challenge. The Committee overruled the challenge of candidacy and determined that the candidate meets all requirements set forth in the Quapaw Nation Election Ordinance. An appeal to the determination was presented to the Business Committee for a determination of challenge.

### The Election and Voting Ordinance of 2004

Section 8.7 allows any registered voter to challenge the eligibility of any person to be a candidate by filing with the Election Committee a statement setting forth the grounds for the challenge.

Section 8.8 allows the challenged candidate to file a response with the Election Committee.

Section 8.8 also requires the Election Committee make a determination whether or not a person is eligible to be a candidate.

Section 8.9 allows the challenging party or the challenged candidate an appeal when they do not agree with the determination of the Election Committee, and the authority to render a determination of challenge rests with the Business Committee. The determination of the Business Committee shall be final and is not appealable to any court or tribunal.

### Challenge of Candidacy

The challenging party asserted several arguments against the candidacy of John Berrey which have been combined to include: *First*, John Berrey declared his candidacy by swearing an oath that he is unable to fulfill and *second*, precedent was set when the Business Committee requested a former Vice-Chair to step down from serving. We address each issue in turn.

#### 1. Challenge by Oath

Pursuant to Section 8.3 of the Election and Voting Ordinance, the manner in which a tribal citizen declares their candidacy requires them to swear that they support the policies and laws of the tribe. They further swear to not advocate revolution, sabotage, force, violence, or treason against the government of the tribe, and they will work diligently toward the goals and objectives of the tribe.

Here the challenging party asserts that the Quapaw Nation Business Committee has taken advisement from the Downstream Development Authority and determined that John Berrey did not follow proper policy, resolution, and charter of the DDA when he misappropriated funds to raise his compensation. The challenging party further asserts that John Berrey committed treason against the government of the Quapaw Nation when he brought civil suit against sitting members of the Business Committee before a non-

tribal court. The challenging party also asserts that John Berrey refuses to relinquish his communications that are being held on his private server regarding all Goodeagle decisions, therefore impeding the objectives of our tribe instead of working toward them.

The Business Committee is unpersuaded by the “impeding objective” argument or the “treason” argument. The Business Committee does not dispute that John Berrey maintains his own private server nor does it dispute that John Berrey filed civil suit in a non-tribal court which was subsequently dismissed for lack of jurisdiction. These actions, in and of themselves, bear little relevance here today.

However, we do find the argument based on John Berrey’s misappropriation of funds in his capacity as the former Chairman of the Downstream Development Authority highly persuasive. On June 23<sup>rd</sup>, 2020, during a monthly meeting of the Business Committee, John Berrey denied allegations of giving himself and others unapproved bonuses, when questioned by other members of the Business Committee. The Business Committee later learned the former board members frequently awarded themselves large success bonuses throughout the construction project of the Saracen Casino. When BC member Lloyd Buffalo asked John Berrey his response to the accusations, he stated “the accusations are not true...any bonuses are awarded through proper process that they have always been.”

On July 27<sup>th</sup>, 2020, the day after John Berrey was removed as Chairman of the DDA by the majority of the Quapaw Nation Business Committee, the former Chief Financial Officer of Downstream Casino Resort, at the direction of John Berrey, printed checks for severance and compensation of accrued paid time off for John Berrey and other individuals in excess of one million dollars. The former CFO passed these negotiable instruments to a former consultant who had been ejected from the gaming facility earlier that day. This occurrence was later revealed to the Business Committee members and the members elect. The General Council of the Quapaw was notified during the October meeting and is a matter of public record.

Title 17 § 114 of the Quapaw Code requires any and all compensation paid to the members of the Authority, be approved by the Business Committee. Throughout the Saracen Casino construction project, John Berrey, along with other members of executive leadership, awarded himself success bonuses without the authorization or approval of the Business Committee required in the Quapaw Code. Additionally, neither John Berrey, nor his esteemed colleagues ever struck any legal or officially binding severance agreement which would have also required prior approval by the Business Committee. Although it was standard practice of the former board to pay out severance agreements with former employees, it was done so over the course of twelve months and never in one lump sum. The answer to why John Berrey, would stray from this practice by cashing out his unapproved severance and PTO all in one instance is beyond the reach of the Business Committee, especially having already been removed from the DDA less than twenty-four hours earlier. However, what is within the reach of the Business Committee is the required approval of any and all compensation paid to the members of the DDA, which on multiple occasions, John Berrey did not follow.

The attempt to abscond from tribal property with unapproved severance and PTO or the systematic disregard for compensation approval from this Committee are issues of fact. Whether these acts are criminal or amount to a conviction that is punishable by incarceration is a matter that will be decided by the courts. The decision of this Committee in no way denies due process to the challenged candidate with regard to his criminal proceedings. However, these well evidenced facts cannot be ignored in our analysis.

Although the route taken by the challenging party is faintly different from that of the Business Committee, the same conclusion is still reached. For these reasons afore mentioned, and the many other reasons we are unable to disclose at this time, the Business Committee agrees with the assertion of the challenging party that John Berrey could not in good faith declare his candidacy because his previous actions run contrary to the very laws and policies he swore to uphold in his declaration for candidacy.

## *2. Challenge by Precedent*

The challenging party asserted that the Business Committee set precedence in 2017 by requesting the resignation of a former member of the Business Committee so the personal matter did not interfere with the work of the tribal government. The assertion by the challenging party is that when it comes to the best interest of the Quapaw Nation, it matters not if there is a conviction or pending charges brought against a sitting member. The challenging party further asserts that similar to the circumstance of the previous board member who was asked to resign, the best interest of the Nation is to see that a personal matter does not interfere with the work of the tribal government, which would be challenging considering John Berrey is currently charged civilly and criminally in the Quapaw Nation Tribal Courts.

The Business Committee finds this argument unpersuasive. The circumstances surrounding the resignation of a then sitting Business Committee member and the challenged candidate are unlike. Although the former member did resign from his position, there was no requirement from this Committee that he step down before being convicted, but was only insisted upon by the former Chairman and remaining Committee members.

The challenging party also asserted there is a high likelihood that John Berrey may be faced with disenrollment and potential conviction for his previous actions which are crimes of moral turpitude. Although the Business Committee agrees that the former chairman's actions will most likely cause him to face potential conviction in some court of law, it would be premature to disqualify any candidate based solely on something that has not occurred.

## **Candidate Response**

### *1. The Challenge is Untimely*

Section 8.3 of the Ordinance states that all challenges must be received five calendar days from the close of the filing period. The Election Committee is required to post an official and complete list of all candidates along with their respective office of candidacy 3 business days following the close of the filing period.

The timeliness of the challenge is not in question because the Election Committee reviewed and determined the time requirements must have been met in order to even initiate this process. The Election Committee sent notice to the challenged candidate and the response contended that the challenge was untimely. As this matter comes before the Business Committee, we review the determination of the Election Committee and see that it still did not address the issue of timeliness in its response. Therefore, the issue of timeliness is moot.

### *2. Candidate Meets all Requirements for Candidacy*

Pursuant to Section 8.1 of the Election and Voting Ordinance a person is eligible to run for and hold elected office of the government of the Quapaw Nation if at the time of filing their Declaration of Candidacy meets all of the following requirements. First, an individual seeking to be a candidate must be a member of the Quapaw Nation. Second, the candidate may not be an elected official of any other tribe. Third, the candidate must be registered to vote in Quapaw Nation election. Fourth, the candidate must be twenty-five. Fifth, the candidate must not have been convicted of a felony involving moral turpitude or a serious crime involving moral turpitude within the last seven years.

The challenged candidate asserted that nothing contained in the challenge alleges that he does not meet the five requirements for candidacy. The challenged candidate further asserted there is no legal basis for the Election Committee to remove his name from the ballot.

The Business Committee acknowledges that nothing in the challenge alleged that John Berrey does not meet the five requirements for candidacy but the challenge was rooted in his sworn declaration to become a candidate. The Business Committee also agrees there is no legal basis for which the Election Committee could remove his name from the ballot based on the information it received because the authority of the Election Committee is limited in scope by the Election and Voting Ordinance. At this point the only authority to have any legal basis to remove John Berrey's name as a candidate is the Business Committee which is affirmed under Section 8.9 of the Election and Voting Ordinance, and states the determination of the Business Committee shall be final and is not appealable to any court or tribunal. Thus, this Committee is vested with the ultimate power of quasi-judicial review and interpretation on the matter of candidate qualification.

## **Election Committee Decision**

The Election Committee reviewed the challenge of the declaration of candidacy for John Berrey and independently determined that the candidate meets all enumerated requirements set forth under Section 8 of the Voting and Election Ordinance.

While the Election Committee enjoys broad power in the overall election process, its scope of authority is limited to certain duties in the Election and Voting Ordinance which also includes preparing a reasonable budget for each election, safeguarding the ballot box during an election, maintaining order at the polls and enforcing election laws. The authority of the Election Committee to

render a decision of eligibility is final and not appealable except in the event their decision is appealed to the Business Committee which is where this challenge has lead.

### **Business Committee Decision**

The issue before the Quapaw Nation Business Committee is not whether John Berrey meets the minimum requirements for candidacy. The issue for the Business Committee is whether to affirm the decision of the Election Committee allowing John Berrey to continue as a candidate in this upcoming election or overturn the decision of the Election Committee and remove him as a candidate. The Business Committee takes into account a totality of the circumstances.

In a much more official capacity than a declaration of candidacy, each elected member of the Business Committee, upon installment, swears to support the policies, as well as the laws of this Tribe. Each of us serving on the Business Committee took an oath that we would work diligently toward the goals and objectives of the Tribe and to fully commit ourselves to the responsibilities of our positions for the purpose of which it was established. It is this oath of office, by which we tether our decision. The Governing Resolution delegates authority to the Quapaw Nation Business Committee to speak and act on behalf of the Quapaw Nation. In our roles as elected officials, we are required to exercise its powers in the best interest of the Tribe.

It is the decision of the Business Committee to overturn the determination of the Election Committee by declaring John L. Berrey unsuitable for candidacy to the Quapaw Nation Business Committee. The Business Committee hereby disqualifies John L. Berrey from this election and orders the Election Committee to remove his name as a candidate.

It is so ordered on June 8, 2021.