

QUAPAW NATION

P.O. Box 765
Quapaw, OK 74363-0765

(918) 542-1853
FAX (918) 542-4694

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

Summary

The Quapaw Nation Election Committee received two (2) challenges contesting the candidacy of John L. Berrey ("Berrey") to serve on the Quapaw Nation Business Committee. Berrey did not submit a response to those challenges to the Election Committee. The Election Committee, nonetheless, determined John Berrey was eligible to be a candidate. The challenging parties appealed the Election Committee's decision to the Business Committee. The Business Committee voted on each appeal received. In the matter of the first appeal, by unanimous vote with the Secretary-Treasurer Supernaw abstaining, overturned the decision of the Election Committee by sustaining the challenge to disqualify John L. Berrey as a candidate for election. In the matter of the second appeal, by unanimous vote with the Secretary-Treasurer Supernaw and Member Newton abstaining, overturned the decision of the Election Committee by sustaining the challenge to disqualify John L. Berrey as a candidate for election. Both votes have the same effect and outcome. The Business Committee overturned the decision of the Election Committee by sustaining the challenge to disqualify John L. Berrey.

The merits of that decision are explained below:

The Election and Voting Ordinance of 2004

While the Business Committee considered the entire Election and Voting Ordinance of 2004 in its determination of Berrey's candidacy, the following sections were of particular importance:

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 provides "The challenged candidate shall file a typed or written response with the Election Committee no later than 3 business days after the delivery of the statement by the Board to the challenged candidate." After which, the Election Committee must then proceed to reach a determination as to candidacy eligibility.

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 shall not be appealable to any court or tribunal." *Quapaw Nation Election Ordinance.*

Challenge of Berrey Candidacy

The challenging parties asserted several arguments against the candidacy of John Berrey which the Business Committee summarizes as: *First*, the Election Committee ignored the precedent set by the Business Committee's 2021 decision finding Berrey ineligible for membership to the Business Committee. *Second*, the facts and circumstances related to Berrey's candidacy for Chair, as they exist in 2023, still render him unable to fulfill his duties and uphold his oath to the Nation if elected. The Business Committee, however, finds the lack of a response from Berrey deems this matter confessed regardless of the merits of those challenges. While precedent concerning Berrey's eligibility for office would have resulted in the same outcome regardless, the mandate for candidates to be responsive to challenges reflects a similar obligation a potential candidate will face on the Business Committee to meet deadlines imposed by the federal government, litigation, and other

business affairs of the Nation. That is to say, the mandate for a candidate to respond to a challenge is as much a test for their ability to meet mandatory deadlines as it is an opportunity for them to present their defense.

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.

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. The Election Ordinance § 8.8 states that “[t]he challenged candidate *shall file* a typed or written response” to the challenge (emphasis added). Because the election ordinance mandates the candidates file a response prior to a determination as to candidacy eligibility, and because that obligation is a mandatory duty of the candidate, a challenge to candidacy is deemed confessed when a response is not filed.

Consequently, Berrey is ineligible for candidacy for failing to comply with the Election Ordinance and dispute the allegations raised by the challengers. Although the Business Committee considers the challenges to his candidacy as deemed confessed and valid on their face without a response, the Business Committee will, nonetheless, explain why its 2021 precedential decision would have barred further consideration regardless:

1. *Berrey is Barred from Candidacy by Precedent Regardless.*

In 2021 John Berrey declared candidacy for Vice-Chairman. At that time the Election Committee certified his candidacy, a valid challenge was submitted, the candidate submitted a rebuttal, and the Election Committee upheld his candidacy. Upon receiving an appeal request, the Business Committee overturned the determination of the Election Committee by declaring John L. Berrey unsuitable for candidacy to the Quapaw Nation Business Committee. The Business Committee disqualified John L. Berrey from that election and ordered the Election Committee to remove his name as a candidate.

As explained in 2021, Berrey was an opposing civil party and criminal defendant against the Nation in several lawsuits at the time. That litigation arose from allegations that Berrey and others misappropriated tribal funds for personal benefit. These allegations led to the suspension of Berrey’s license, pending investigation, issued by the Quapaw Nation Gaming Agency. The summation of these allegations, the lawsuits, the lack of necessary credentials, would have made it impossible for Berrey to uphold his oath to the Nation, fulfill his duties as Vice Chair, and would have potentially resulted in a Vice Chair that is legally averse to the Nation it serves.

Berrey accepted the Business Committee’s decision as final in 2021, and the Vice Chair election occurred without Berrey being listed as a candidate.

2. *The Circumstances and Facts Surrounding Berrey’s Candidacy Remain Unchanged.*

Since the Business Committee’s 2021 decision, the material circumstances and facts remain unchanged. The same criminal and civil charges against John Berrey are pending in Quapaw Nation Tribal Court as of the date of this decision. His eligibility to hold a gaming license remains unchanged. Further, the Business Committee has recently been engaged with the National Indian Gaming Commission (“NIGC”) on its investigation into the misappropriation described above. In summation, Berrey is ineligible to hold office for the same reasons provided in 2021, as well as the ongoing NIGC

investigation into his misappropriation of funds, making it functionally impossible to serve on the Business Committee and fulfill the duties required.

IT IS SO ORDERED!



Callie Bowden, Vice-Chair
Quapaw Nation Business Committee



Wena Kathryn Supernaw, Secretary-Treasurer
Quapaw Nation Business Committee



Michelle Newton, Member
Quapaw Nation Business Committee



Larry Mercer, Member
Quapaw Nation Business Committee



Linda Davis, Member
Quapaw Nation Business Committee