

# **ELECTION COMMITTEE CONTEST DECISION**

**For**

## **DETERMINATION OF ELIGIBILITY OF MICHELLE COLLINS**

Contestant: Michelle Collins

January 31, 2023

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### **BACKGROUND**

On January 24, 2023, the Election Committee declared Michelle Collins ineligible to run for a Unit I seat on the Sault Ste. Marie Tribe of Chippewa Indians' Board of Directors. The decision was made based upon Ms. Collins' failure to disclose necessary information relating to her criminal history in the background investigation packet. Sections 10.110(1)(k) and 10.111(1)(e) of the Sault Ste. Marie Tribe Election Ordinance require candidates to accurately and truthfully provide the necessary information relating to his or her background investigation under oath and subject to penalty of perjury. During the investigation of Ms. Collins' background, the Election Committee discovered a conviction that was not disclosed in her background investigation packet. Our investigation revealed a 1998 Michigan charge for Driving Under the Influence, in which she pled guilty and was sentenced. Ms. Collins disclosed a 2015 DUI charge and conviction from San Antonio, Texas, but she failed to disclose the 1998 Michigan DUI charge and conviction. Additionally, Ms. Collins affirmed that the reported information in the background investigation packet was true and correct, and that she did not withhold any relevant information.

Due to Ms. Collins' failure to accurately and truthfully disclose the 1998 Michigan conviction, the Election Committee determined that she had failed to satisfy the requirements of Sections 10.110(1)(k) and 10.111(1)(e) of the Election Ordinance and violated her sworn statements relating to the veracity and completeness of the background investigation packet. Accordingly, the Election Committee determined that Ms. Collins was ineligible to run for the Unit I seat.

Later, on January 24, 2023 and January 25, 2023, Ms. Collins submitted by email an Election Contest to dispute the Election Committee's determination that she is ineligible for candidacy based on her failure to disclose information in her background investigation packet. In addition to the email correspondence, Ms. Collins also submitted the Election Committee Contest Decision for Determination of Eligibility of Sheila Berger from 2014 ("Berger Decision") in support of her position.

The Election Committee, finding that Ms. Collins timely submitted an Election Contest, held a meeting on January 30, 2023 pursuant to Section 10.120 of the Election Ordinance to review the Election Contest and the documentation provided and to issue a decision on the matter. The Election Committee voted unanimously to deny the Election Contest and to affirm its initial decision determining that Ms. Collins is ineligible for candidacy for failure to accurately and completely disclose her criminal history.

## ANALYSIS

The Election Committee finds that Ms. Collins did not submit sufficient evidence or arguments to justify or overcome her failure to disclose the information. To review, Ms. Collins submitted the following explanations/arguments:

- The conviction was over 25 years old. The charge was initiated when she was a minor and her conviction occurred when she was an adult.
- The charge was pled down from a DUI to reckless driving and she was given probation.
- Ms. Collins successfully completed probation and no points were taken from her driver's license.
- The charge would not constitute a disqualifying criminal conviction under the Election Ordinance.
- Ms. Collins forgot to disclose the charge, and her disclosure of a later 2015 DUI demonstrates, as she alleges, a lack of intent to mislead or hide any part of her history.
- Ms. Collins questions the veracity of the background check as she claims a 2018 check revealed a reckless driving conviction.
- Ms. Collins submitted a 2014 Election Committee decision regarding a similar incident in which the Election Committee overturned its initial ineligibility determination.
- Ms. Collins submitted a *second* background investigation packet which now discloses the previously undisclosed charge.

We address each issue in turn.

**Age of Undisclosed Criminal Charge.** The age of the conviction has no bearing on a candidate's duty to disclose such information. There is no exception for crimes over 25 years old. All criminal charges and conviction must be disclosed, and Ms. Collins failed to do so.

**Disposition of Undisclosed Criminal Charge.** The facts that the charge was pled down to a lesser charge, that Ms. Collins completed probation, and that no points were taken from Ms. Collins driver's license are also equally irrelevant to a candidate's duty to accurately and completely disclose his or her criminal history.

**Non-Disqualifying Criminal Charge.** As addressed more thoroughly below, the fact that the undisclosed criminal charge is a non-disqualifying criminal offense is not determinative. The Election Committee finds that Ms. Collins failed to disclose pertinent information and violated her sworn statement certifying the accuracy and completeness of her submission. These violations are entirely separate and unrelated to whether or not the undisclosed criminal charge is in itself disqualifying.

**Lack of Intent to Mislead or Hide Information.** The Election Committee lacks sufficient evidence to determine Ms. Collins' intent. Accordingly, the Election Committee makes no findings regarding whether or not the failure to disclose was intentional or done with the purpose to mislead. However, Ms. Collins' submissions do demonstrate that she either had knowledge or should have known of the undisclosed criminal charge. Namely, Ms. Collins did report a substantially similar criminal charge and did acknowledge that a recent 2018 MVR Check reflected a reckless driving

charge. These factors support a finding that Ms. Collins knew or should have known of the criminal charge.

**Veracity of Background Check.** Ms. Collins disputes the veracity of the background check based on her contention that the charge resulted in a reckless driving conviction and not a DUI or other DUI-related offense. As stated in the Election Committee’s Ineligibility Letter, our finding was as follows:

“During our investigation of your background, we discovered a conviction that was not disclosed in your background investigation packet. Our investigation revealed a 1998 Michigan charge for Driving Under the Influence, in which you pled guilty and was sentenced.”

This is an accurate statement based on the results of our investigation. Our investigation used, in part, the Michigan Internal Criminal History Access Tool (“ICHAT”). ICHAT returned the following information: (1) an arrest and charge on 11/7/98 for violation of Michigan Statute 257.6251-A, a misdemeanor offense for Operating While Intoxicated (*i.e.*, OWI); and (2) a conviction by guilty plea on 1/26/99 for violation of Michigan Statute 257.6353-A, a misdemeanor offense for Operating While Visibly Impaired (*i.e.*, OWVI). An OWI (colloquially known as a “DUI”) is more serious charge than an OWVI. Based on this information, the Election Committee determined that Ms. Collins was *charged* with DUI and subsequently entered a guilty plea and was sentenced. The fact that Ms. Collins was sentenced to a lesser charge (be it OWVI or reckless driving as she contends) does not negate the fact that Ms. Collins was actually sentenced and received a criminal judgment on the matter. So, whether or not the DUI charge resulted in a conviction of reckless driving (something we cannot verify) or some other lesser charge is not relevant. What is relevant is that a criminal conviction did result, and Ms. Collins failed to disclose this. Furthermore, the background investigation packet requires potential candidates to disclose both *charges* and *criminal judgments*. Ms. Collins did neither in regard to the 1998 DUI case.

**Berger Decision.** Next, we wish to address the Berger Decision. Ms. Collins submitted the Berger Decision as support for a determination that the Election Committee should overturn its decision and find her eligible for office.

First, it should be noted that nothing in the Election Ordinance *requires* the current Election Committee to bound by prior decisions of former Election Committees (assuming those prior decisions present the same legal issues and facts). Thus, the Election Committee finds that it is not bound by the Berger Decision as a general matter.

Second, even if the Election Committee were bound by prior Election Committee decisions, the Election Committee finds that the Berger Decision is distinguishable from Ms. Collins’ case. Notably, in Berger, it was determined that Berger knew of the prior criminal charge, that Berger held credible belief that the charge may no longer have existed, and that Berger took the calculated risk of not disclosing the prior criminal charge on hopes that it in fact no longer existed. Here, Ms. Collins’ situation is different. Ms. Collins submitted that she failed to disclose the charge because she forgot of the prior criminal charge, but she did not provide any credible basis to believe that the criminal charge no longer existed. In fact, she acknowledged that criminal disposition resulted in conviction of a lesser charge. Additionally, she did report a 2015 DUI – a charge that is substantially similar as the undisclosed charge. The Election Committee finds that it

is reasonable to believe that, based on Ms. Collins' more recent DUI charge or her knowledge that the charge did result in some conviction of a lesser charge, she knew or should have known that she had a prior criminal record from 1998 that needed to be disclosed.

Third, the Election Committee disagrees with the Berger Decision in its determination that an injustice would occur if the ineligibility determination is upheld. The Election Committee finds that the Berger Decision failed to adequately consider all of the requirements for candidacy and, instead, placed an unjustified emphasis on the requirement to not have any disqualifying criminal offenses. To be sure, neither of Ms. Collins' criminal offenses—the unreported 1998 DUI or the reported 2015 DUI—would constitute a disqualifying criminal conviction under Section 10.110(1)(i) of the Election Ordinance. That is not at issue here. Rather, what is at issue here and as explained in our letter dated January 24, 2023, is her failure to satisfy the requirements of Sections 10.110(1)(k) and 10.111(1)(e) of the Election Ordinance and the violation of her sworn statements relating to the veracity and completeness of the background investigation packet. Sections 10.110(1)(k) and 10.111(1)(e) of the Election Ordinance touch on an entirely different type of qualification for candidacy than the criminal conviction requirement. These sections require candidates to submit the necessary information to the Election Committee for it to determine eligibility and to affirm, under oath and penalty of perjury, that such information is complete and accurate. Nothing Ms. Collins has submitted provides justification for her failure to accurately and completely make the required disclosures. The Election Committee finds that an injustice would occur if it permitted some candidates to violate such qualifications of candidacy while holding others to a higher standard.

**Submission of Second Background Investigation Packet.** Lastly, the Election Committee wishes to address Ms. Collins' proposed solution of resubmitting a new background investigation packet which contains the previously undisclosed information. The Election Committee finds this proposed solution to be wholly inadequate and, therefore, rejects it. First, nothing in the Election Ordinance permits candidates a second or further chance to make the appropriate background disclosures. Second, permitting such a process would completely nullify the statutory requirement that such information be submitted to the Election Committee “under oath and penalty of perjury.” Third, the Election Committee finds that such a process would encourage abuse and threaten the integrity of the candidate qualification process. The Election Committee does not have the resources or ability to adequately determine if such failures to disclose are done intentionally or unintentionally. Accordingly, Ms. Collins' proposed solution would lend itself to potential abuse whereby a bad actor may attempt to intentionally not disclose disqualifying or embarrassing information on hopes that it is not discovered and, in the event it is discovered, that a second opportunity to cure the nondisclosure would be provided.

## **FINDINGS**

The Election Committee, by unanimous vote, makes the following findings:

1. Sections 10.110(1)(k) and 10.111(1)(e) of the Sault Ste. Marie Tribe Election Ordinance require candidates to accurately and truthfully provide the necessary information relating to his or her background investigation under oath and subject to penalty of perjury.
2. Ms. Collins certified by sworn statement that all the information contained in her background investigation packet was true and correct to the best of her knowledge and that she did not withhold any information.
3. Ms. Collins failed to disclose in her background investigation packet a 1998 criminal charge and the resulting criminal judgment issued against her.
4. By her failure to fully disclose her criminal history, Ms. Collins violated Sections 10.110(1)(k) and 10.111(1)(e) of the Election Ordinance and her sworn statement certifying the accuracy and completeness of her background investigation packet.
5. As explained herein, the Election Committee finds that Ms. Collins failed to submit sufficient evidence to justify her failure to disclose her criminal history.
6. Based on the foregoing, Michelle Collins is ineligible for candidacy.

## **ORDER**

NOW, THEREFORE BE IT ORDERED, that the Election Committee affirms its initial determination that Ms. Collins is ineligible for candidacy in 2023 Special Advisory Election for Unit 1 seat for the Sault Ste. Marie Tribe of Chippewa Indians' Board of Directors.

BE IT FINALLY ORDERED, that this decision be published as required by Section 10.120(2)(c) of the Election Ordinance.

Sault Ste. Marie Tribe Election Committee

January 31, 2023