IN THE COURT OF INDIAN APPEALS FOR THE MIAMI AGENCY
MIAMI, OKLAHOMA

In the Matter of the Seneca-Cayuga Nation,	)	
	)	
William L. Fisher; Jerry Crow; Sarah S. Channing; Sallie White; Lisa Spano; Calvin Cassidy; and Geneva Fletcher,	)	
	)	
Plaintiffs/Appellants,	)	Case No. APP-16-M02P
	)	Appeal of Case No. CIV-16-M04
vs.	)	
	)	
Paul Barton; Scott B. Goode; Hoyit Bacon; Cynthia Donohue; Diana Baker; Tonya Blackfox; and TeNona Kuhn,	)	
	)	
Defendants/Appellees,	)	
	)	
Seneca Price; Robert Armstrong; Jason Perry; and Charles Crow,	)	
	)	
Intervenors.	)	

PLAINTIFFS'/APPELLANTS' REPLY BRIEF

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INTRODUCTION

The Defendants/Appellees' ("Barton") Answer Brief warrants comment for multiple reasons. First, its misstatement of facts and law, including the indisputably false characterization of a U.S. Supreme Court holding and the failure to mention the express incorporation of federal constitutional guarantees in the Seneca-Cayuga Nation's Constitution ("Nation's Constitution") while claiming federal law is irrelevant, destroys the Answer Brief's credibility. Second, the failure of the Answer Brief to address the undisputed facts in the record confirm the arguments for reversal by the Plaintiffs/Appellants ("Fisher") based on those facts. Third, the Answer Brief's complete absence of applicable authority demonstrates the failure to rebut Fisher's proof of error.

As briefing concludes, the choices before this Court are clear. This Court can require that trial judges adjudicate only the issues before them and of which the parties have notice as required by due process, or else abandon that constitutional protection. This Court can require that the operation of the orders of a trial court be limited to the parties before it, as required by due process, or deny that constitutional right. This Court can uphold the legislation of the Business Committee as to the Grievance Committee election here, or it can invalidate that legislative act of sovereignty even though the Nation's Constitution and the record below fails to support such judicial cancellation of an act of political sovereignty. This Court can recognize the fundamental right of citizens to vote in a nationwide election regardless of military, employment and family obligations, physical limitation such as age, illness, infirmity or pregnancy and financial means to fund travel, or it can arbitrarily restrict the franchise to those local members actually able to travel to the nearby sole polling place on the sole voting day. Finally, this Court can enforce clear teaching as to the constitutional and legal requirements of a stay bond and vacate that bond here or compound legal error by following misstated law and fact.

REPLY TO BARTON'S VERSION OF THE FACTS

When the statement of facts by Barton is viewed with a careful eye, two significant conclusions emerge. First, the statement lacks credibility. Second, the statement fails to lay the groundwork required for affirmance of the errors inherent in the Election Order. [1]

As to credibility, Barton begins his march toward disbelief by claiming "[t]here was no 'coup' to be put down by Court Order." Answer Brief at p. 3. That argument does not deny that at the beginning of the June 4, 2016 General Council Meeting, Fisher and his colleagues were the validly serving officers of the Seneca-Cayuga Nation ("Nation"). Barton admits that an election, otherwise set for that day, had been stayed by a court order issued in an action in which one of the coupsters served as counsel. Barton does not deny that a written plan existed to take over the meeting, expel the officers from the tribe and then elect coupsters to take their places. Barton does not deny that he stipulated at the trial that the condition precedent to Barton taking power, the expulsion of Fisher from the tribe, was unlawful. Finally, Barton does not deny that the trial court rejected Barton's claim to hold office and restored Fisher and his colleagues to office. As a result, the record confirms without contradiction the knowingly falsity of the statement by Barton that "[t]here was no coup overthrowing an elected tribal government" and "[t]here was no 'coup' to be put down by Court Order" (Answer Brief at p. 3).

The undisputed factual record further demonstrates the falsity of the Barton's statement that "[t]he District Court did not take over the Nation's Election" (Answer Brief at p.4). Barton does not deny that the election had been stayed by another judge in another case at the time of their coup, and therefore the election was beyond the trial judge's jurisdiction at the time. Barton does

[1] Multiple orders identified in Fisher's Opening Brief at p.7, fn.6, combine to constitute the "Election Order" that is the subject of this appeal.

not deny that neither his own court papers nor those of Fisher sought any relief as to the stayed election. Rather, Barton admits that his action was not to cause or address a new election but was in the nature of *quo warranto* to confirm the offices unlawfully seized in his "coup" election. Barton does not deny that even though no party's pleadings asked the trial court to set a new election, appoint an election monitor, or determine the manner of voting in contradiction of the Nation's Election Ordinance, the trial court did exactly that, taking over the election by dictating when it would occur, how it would occur and what judicial officer would supervise sovereign tribal officials in controlling the election. In fact, no party would have had any incentive to litigate an upcoming election since Barton claimed that he had been lawfully elected in place of Fisher and his colleagues and Fisher claimed that he and his colleagues were the rightful officers. Simply put, Barton's statement that "[t]he District Court did not take over the Nation's Election" and that "[t]he Court did not take over the Election or improperly exercise jurisdiction" are knowingly wrong (Answer Brief pp. 4-5).

When those statements asserted by Barton as "facts" are destroyed by the truth, the real facts remain unrebutted. The election did not occur on June 4, 2015, because a court had stayed that election. Accordingly, whatever would have happened, had the meeting continued, is legally irrelevant since the election would have remained stayed. The legal effect of adjourning the meeting is of no legal consequence. The removal of Fisher and his fellow officers from tribal membership was illegal. Their replacement as officers on the false ground that they were no longer tribal members was unlawful. Fisher, seeking restoration to office, did not raise the stayed election, nor would he have any reason to do so. Barton unlawfully claiming to hold office and seeking validation of his own election had no reason to address the stayed election. The trial court restored Fisher to office, thereby putting down the coup. The trial court then, beyond the pleadings

and issues joined, in-spite of the judicial stay of election by another judge, decided election issues not before it. The trial court then imposed a financial obligation on the Nation, after having previously removed the Nation as a party in the action. The trial court then required a walk-in election in violation of the Election Ordinance, although no reason for the requirement was given by the court. The facts continue to demonstrate the error, Barton's misstatements notwithstanding. The palpability of that error remains.

Barton's statement that "[t]he Nation's Constitution mandates the General Council is the supreme governing body" (Answer Brief at p.5), is legally incomplete and therefore inaccurate. The Nation's Constitution is the supreme governing document. Accordingly, when the Nation's Constitution bestows powers on the Business Committee, such as acting for the Nation or prescribing by ordinance the Business Committee election, the General Council is not the supreme governing body.

Finally, Barton's statement that "[a] Business Committee Ordinance cannot supersede a General Council Resolution" (Answer Brief at p.5) is likewise incomplete and therefore inaccurate. If the General Council resolution usurps authority constitutionally granted to the Business Committee, the Business Committee's ordinance indeed can and does supersede a General Council resolution. Additionally, if a General Council was not lawfully convened, or if a so-called "resolution" does not accurately reflect the action of the General Council, a Business Committee ordinance does supersede a so-called General Council "resolution".[2]

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[2] The standard of review of the legal errors raised by Fisher remains de novo since they are questions of law. *Pierce v. Underwood*, 487 U.S. 552 (1988), cited by Barton, does not change that test.

ARGUMENT

PROPOSITION I: SINCE THE COURT REMOVED THE NATION AND ITS OFFICERS IN THEIR OFFICIAL CAPACITY FROM THE CASE, BARTON HAS FAILED TO NEGATE THE UNCONSTITUTIONAL LEGAL EFFECT OF NO PARTY EXISTING ON WHICH THE COURT'S ELECTION ORDERS CAN OPERATE.

Fisher asserts, with accompanying legal authority, that if the Nation and its officers in their official capacities are not parties, then there are no parties on which the trial judge's order controlling the election can operate and the order is unconstitutional. Barton does not dispute that premise or address that authority. Fisher provided this Court with the record of the trial court's realignment of the parties dropping the Nation as a party plaintiff or defendant and recasting the individuals in their personal, as opposed to official, capacities. Barton does not address, much less deny, that judicial action. Barton's concessions of those two assertions should end the matter as to the lack of a party on which the Court's Election Order can operate.

Rather than concede the obvious, Barton offers five arguments in an attempt to convince this Court that the trial court's realignment did not occur. First, Barton focuses on how the parties appeared **prior** to the trial judge's realignment of the parties. That subsequent judicial action rendered prior party status legally irrelevant.

Second, Barton mischaracterizes a post-judgment minute order as "recit[ing] that Fisher appears in their official capacity" (Answer Brief p.6). When actually read, that minute order, quoted at p.6 of the Answer Brief, makes clear that it references the initial status position of the parties **before** judicial realignment. The minute order fails to support Barton.

Third, Barton vaguely claims that the nature of the action, *quo warranto*, somehow erases the judicial realignment which dropped the Nation as a party plaintiff or defendant and recast the individuals to their personal, rather than official, capacities. Barton offers no authority for his

assertion.[3]

Fourth, Barton claims that "the Election Committee intervened in the District Court case" (Answer Brief at p.7), and somehow became a party in an official capacity, the Court's Election Order notwithstanding. That intervention had nothing to do with the stayed Election, but instead was to regain the offices for which they had been unlawfully removed. Since those individuals were trying title to their offices, the Voting Ordinance cited by Barton is legally irrelevant. The Election Committee members were individual capacity parties.

Fifth, the fact that the Nation posted a stay bond in this appeal does not change the trial court's realignment of the parties eliminating the Nation and its officers in their official capacity as parties. Barton again offers no citation to authority to support his argument, identifies no requirement that only parties can post a stay bond, and overlooks the common practice of non-parties such as insurance companies, relatives and friends posting bonds in judicial proceedings.

As briefing ends on appeal, the uncontestable fact remains that because of the judicial realignment of the parties in the Barton-labelled *quo warranto* action, neither the Nation nor a person in the capacity as its officer was a party. Therefore, no party existed on which the trial court's election order could operate. Those orders were legally erroneous.

PROPOSITION II: BARTON HAS FAILED TO REBUT FISHER'S SHOWING THAT THE TRIAL JUDGE VIOLATED DUE PROCESS BY HIS *SUA SPONTE* INJECTION OF ISSUES CONCERNING THE ELECTION PREVIOUSLY STAYED BY JUDICIAL ORDER.

Fisher has established that judicial determination of issues not before the trial court violates the due process requirement that parties be informed of the matters pending before the court. *See*,

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[3] Counsel for Barton first identified the action as in the nature of *quo warranto*. (Tr. 8/13-16). *Quo warranto* is an action by a person excluded from office to try title to office. *McKee v. Adair County Election Bd.*, 1912 OK 762. It has been expressly recognized as an action to challenge usurpation of office. *Byrd v. State*, 1924 OK 535.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), cited by Fisher in his Opening Brief at p.9. Barton does not address *Mullane* or deny that general legal principle. By conceding through silence, Barton has recognized that if the election issues were not raised by the pleadings and therefore Fisher had no pre-trial notice of them, adjudication of those issues violated due process.

The issue then becomes whether the election issues were joined to give pre-trial notice of them. Fisher has clearly demonstrated by facts not denied by Barton that issues as to future elections were not joined for adjudication at the June 21, 2016 trial. Initially, Fisher has established that the pre-trial pleadings did not mention issues concerning the then judicially-stayed future election. Barton does not deny that fact. Additionally, Fisher demonstrated that the consolidated cases were for claims of *quo warranto* trying title to office, as Barton's counsel admitted at trial. Barton does not deny his counsel's characterization and, in fact, in their Answer Brief quotes a post-trial court minute so characterizing the case as filed. That minute order's quoted description mentions nothing about future election issues (Answer Brief p.7).[4]

Against that clear record, Barton offers no language in any pleadings that raise future election issues. Barton offers nothing that shows Fisher raised or consented to the trial of future election issues at the June 21, 2016 trial. Barton omits the objection raised by Fisher at the trial and quoted in Fisher's Opening Brief (Answer Brief p.8) from Barton's false implication that Fisher consented to the trial of such issues.

Against that undisputed record, Barton offers five unsuccessful arguments. First, Barton claims Fisher is "estopped" from raising the issue that the future election issues were not properly

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[4] The adjournment of the General Council Meeting of June 4, 2016 did not prevent the election. The judicial stay prevented the election. Even if the meeting had continued on, no election would have been held at that time.

before the trial court before judgment. Barton bases his argument on Fisher's participation in post-judgment hearings. Not surprisingly, Barton offers no decision supporting his "estoppel" argument. The fact that Fisher objected at trial is sufficient to preserve the issue.

Next, Barton wrongfully claims that the "District Court did what the litigants requested – determine the lawfulness of the adjournment of the June 4, 2016 General Council meeting, issued orders to reconvene it, and assisted the Nation's conduct of its election with judicial oversight." No party sought such relief in their pleadings and Fisher certainly did not request such action at trial, as Barton's failure to cite the record demonstrates.

Further, Barton wrongfully claims, in defending the clear violation of due process, that the Election Order does not effect candidates. As to the effect of the court orders outlawing the mail-in election for the Grievance Committee, Barton does not deny that the Election Ordinance authorized mail-in voting and that the Election Order prohibited such voting by requiring only in-person voting. Barton cannot deny that such a change has a fundamental impact on an election. Instead, Barton states "no candidates ... interest was effected." If the order will have no impact on the election, why is Barton arguing so strenuously to prevent franchise-expanding mail-in voting? The answer is clear. The order limiting voting by a national electorate to those physically present at only one poll, on one day, at fixed hours does indeed effect not only voters, but also candidates who otherwise would receive votes from effected voters.

Finally, Barton does not deny that voters and candidates are entitled to due process notice and hearing on the change to the Election Ordinance ordered by the trial court. Instead, Barton states that "[a]t the June 21, 2016 hearing, the Court addressed the General Council election of the Grievance Committee members by walk-in voting." What Barton failed to mention is that no notice was given to anyone, including the parties, that such an issue would be addressed much less

decided. Likewise, the reference to two subsequent hearings fails to mention that no public notice was given of such hearings and, of course, that voters and other candidates were not parties. Most significantly, Barton confirmed the absence of due process for voters and candidates by boldly stating in his Answer Brief at p.9 that "Fisher and the Election Committee do not speak for candidates". By so doing, Barton precisely confirmed the absence of due process for the candidates and the voters at their hearings in question.

Barton has not refuted the clear showing from the record that the election issues were not joined for trial, that Fisher had no pretrial notice of them, that he objected to their adjudication and, as a result, due process was violated by their adjudication at the trial.

PROPOSITION III: CONTRARY TO BARTON'S STATEMENT TO THIS COURT, THE DISTRICT COURT DID NOT FIND MAIL-IN VOTING NOT REQUIRED BY THE NATION'S CONSTITUTION AND ELECTION ORDINANCE, NOR SHOULD THIS COURT SO FIND.

Barton claims that the "District Court properly found mail-in voting for election of the Grievance Committee was not required by the Nation's Constitution and Election Ordinance"[5] (Answer Brief at p.10). The trial judge made no such finding and issued no order addressing the Nation's Constitution and Election Ordinance requirements, as the Election Order confirms. In fact, and significantly for appellate review, the trial judge gave no explanation for his Election Order invalidating the use of franchise-expanding mail ballots for the Grievance Committee election.

Barton's other attempts to refute the error demonstrated by Fisher fare no better. First, Barton tells this Court that "irrelevant federal law" dealing with the fundamental federal constitutional right to due process for voters does not apply. In so stating, Barton fails to inform

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[5] There is no dispute that the Election Ordinance required mail-in voting. If it did not so require, the parties would not be here.

this Court that the Nation's Constitution Article XII (quoted in Fisher's Opening Brief at pp. 8-9, n.7) does in fact make federal constitutional law highly relevant:[6]

> All members of the Seneca-Cayuga Nation shall be accorded equal protection of the law under this constitution. **No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States**, including, but not limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. (emphasis added)

Additionally, the section specifically incorporates as part of the Nation's Constitution, the protection of the federal Indian Civil Rights Act:[7]

> The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of an Indian entity in the exercise of its powers of self-government shall apply to the members of the Seneca-Cayuga Nation.

Barton's attempt, albeit ill-fated, to avoid federal due process and equal protection is understandable. Barton cannot deny the discriminatory nature of the trial judge's requirement of in-person voting at only one place, on only one day, at a fixed time in a national election. Tribal citizens unable to travel to the only poll due to military, family or employment obligations, illness, disability, age or pregnancy, or lack of wealth to make the trip are simply disenfranchised, as Barton apparently hopes. The violation of equal protection and due process flowing from the Election Order limiting Grievance Committee elections to in-person voting remains obvious,

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[6] Barton cites *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Talta v. Mayes*, 163 U.S. 376 (1896); *Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation*, 507 F.2d 1079 (8th Cir. 1975); and *Howlett v. Salish & Kootenai Tribes of Flathead Reservation, Montana*, 529 F.2d 233 (9th Cir. 1976), for the proposition that federal constitutional protection does not apply to tribal elections. Not one of those decisions involved a tribal constitution expressly providing federal constitutional guarantees, such as the Seneca-Cayuga Nation's Constitution. Those decisions are therefore distinguishable and of no utility here.

[7] Barton acknowledges in the Answer Brief at p. 10, that tribes are bound by the Indian Civil Rights Act ("the Ninth Circuit Federal Court of Appeals held that so long as Indian tribes do not violate the Indian Civil Rights Act, they may structure their government in any manner they please.")

illegal and unrebutted.

Barton's last attempt to foster unlawful discrimination among his fellow-citizens is his statement "[t]here is no right in the Nation's Constitution to vote by mail or by absentee ballot" (Barton's Answer Brief at p.11). However, there is no right to force the disadvantaged to forgo their right to vote because they cannot get to the poll. What is paramount of course is that the specific examples of rights within equal protection and due process are not expressed in the Nation's or the federal constitution or in the Indian Civil Rights Act. It is beyond dispute that those rights nevertheless exist, as they clearly do here.

Finally, Barton's argument raises two simple yet profoundly troubling questions. Why is he fighting so hard to effectively destroy the attempt at expanding universal suffrage fostered by mail ballots and why would the courts endorse that democracy-inhibiting destruction?

PROPOSITION IV: BARTON HAS FAILED TO PROVE THAT THE BUSINESS COMMITTEE LACKED THE AUTHORITY TO ENACT AN ELECTION AND VOTING ORDINANCE APPLICABLE TO THE GRIEVANCE COMMITTEE ELECTION.

Barton cannot dispute that the Nation's Constitution empowers the Business Committee to act for the Nation. Article VI of the Nation's Constitution provides:

> There shall be a Business Committee which shall consist of the officers and councilmen as provided in Article V. The Business Committee shall have power to transact business and otherwise speak or act on behalf of the Seneca-Cayuga Nation in all matters on which the Nation is empowered to act.

Likewise, Barton cannot dispute that the Nation's Constitution creates a Grievance Committee.

Barton cannot dispute that the Nation's Constitution does not provide when or how the Nation's members vote to elect the Grievance Committee members. Unlike the officers of the Nation created by Article V of the Nation's Constitution, which the Nation's Constitution requires to be elected at a specific meeting of the General Council, no date is constitutionally identified for

the Grievance Committee election. Against that constitutional backdrop, the authority of the Business Committee to enact an ordinance providing how the Grievance Committee is elected should be beyond legitimate dispute.

Barton further attacks the Business Committee's authority to create the election procedures for the Grievance Committee by quoting Article VII of the Nation's Constitution in his Answer Brief at p. 12, where Barton provides (with added emphasis):

> **Election of officers will also be held at such annual meeting, provided that such election is appropriate under this Amendment.**

Unfortunately, Barton fails to mention that "officers" is a term defined in the Nation's Constitution Article V and that such a definition does not include the Grievance Committee. As a result, Barton has no authority for his claim that the Nation's Constitution requires Grievance Committee members be elected at the June General Council meeting by in-person voting.[8]

Barton's additional claim that the Nation's Constitution prohibits the Business Committee from providing by Ordinance the manner of Grievance Committee elections, likewise fails since the Nation's Constitution contains no such prohibition. Rather, the Nation's Constitution merely addresses election of the Business Committee pursuant to a Nation ordinance prescribed by the Business Committee. Barton offers no authority that, in light of the Business Committee's express constitutional power to act for the Nation, the positive mention of Business Committee Election Ordinances somehow strips constitutional authority from the Business Committee over all other elections thereby leaving no entity to prescribe the conduct of those other elections. No legal basis

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[8] Barton's argument that the Grievance Committee election must be only by in-person voting because the Nation's Constitution provides that the Business Committee meeting occur at the June meeting misses the mark for an additional reason. The Business Committee election, which has historically included absentee mail ballots and this year was by mail ballot, occurs at that meeting because that is where the ballots are delivered and counted.

exists to deny the Business Committee its constitutional authority to act for the Nation in providing a procedure for Grievance Committee elections. The trial court's order invalidating that sovereign legislative act of the Business Committee providing in its Election or Voting Ordinance for the Grievance Committee elections was unconstitutional error.

PROPOSITION V: BARTON HAS FAILED TO DEMONSTRATE AN EVIDENTIARY BASIS FOR THE VALIDITY OF THE SO-CALLED GENERAL COUNCIL RESOLUTION OF JUNE 7, 2008 NOT MENTIONED BY THE TRIAL COURT IN ITS ELECTION ORDER AND IMPEACHED BY MULTIPLE EXHIBITS.

Fisher demonstrated from the transcript that there was no evidence that the so-called General Council Resolution of June 7, 2008 was ever adopted, is a valid tribal record or is legally effective. Barton does not demonstrate from the record any evidence to the contrary.[9] As a result of that failure to proof, the so-called General Council Resolution of June 7, 2008 cannot control in this action. Even if the Court was somehow inclined to credit the authenticity of the so-called General Council Resolution of June 7, 2008, its efficacy is impeached by the record. Barton does not deny that the Nation has elected officers using mail-in ballots, that with court assistance the Nation has used absentee ballots, that mail absentee ballots have been regularly used in the elections of the Grievance Committee without objection and that the Nation's district court invalidated the meeting at which the so-called General Council Resolution of June 7, 2008 was purportedly adopted. In other words, that uncontroverted evidence shows that the Nation and

[9] Although Barton claims that the so-called General Council Resolution of June 7, 2008 "is certified by the Chief and attested by the Secretary/Treasurer", Barton offers no testimony to this effect, nor does any exist in the record.

courts[10] do not credit the so-called "resolution" and do not require in-person voting.[11]

PROPOSITION VI: BARTON'S ARGUMENT MISLABELING THE STAY BOND AS AN "APPEAL BOND" AND MISREPRESENTING A SUPREME COURT HOLDING FAILS TO REBUT THE LEGAL ERROR IN THE ORDER REQUIRING THE STAY BOND.

Fisher has established that the trial court imposed a stay bond that no party sought and without evidence of necessity or required amount. Barton does not dispute that showing. Fisher further showed that the party seeking the bond has the duty to make that showing and the court should not impose a bond in the absence of proof as to potential damages. Barton does not dispute that law. Fisher, by quoting the language of the trial court's order as to a stay bond, made clear that the bond is in fact a stay bond. Barton does not address, much less dispute, that language.

Fisher noted that a stay bond is to serve Fed.R.Civ.P. 62 (c)'s purpose of protecting the rights of the parties opposing the stay. Barton does not dispute that purpose, nor does he deny that none of Defendants/Appellees are candidates for the Grievance Committee election and accordingly have no rights to protect from a stay. Most significantly, Barton does not deny that his right, or lack of right, to attorney fees is unaffected by the stay. Barton has effectively conceded the legal error of the stay bond.[12] The stay bond should be discharged.

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[10] Significantly, the trial judge did not reference, much less rely on that so-called General Council Resolution of June 7, 2008 in his judgment. In fact, there is no judicial reference to that so-called resolution in any order comprising the Election Order.

[11] Although Barton suggests that Fisher is fabricating those facts, the Exhibits cited in Fisher's Opening Brief, pp. 5-6, pp 13-14, demonstrate the undeniable reality of those statements. Barton's unauthenticated, unsponsored piece of paper, which the trial court did not mention much less cite as an evidentiary basis for its decision, does not overcome those undisputed facts.

[12] Barton wrongfully claims that the stay bond is an "appeal bond" and improperly invokes Fed.R.App.P. 7, dealing with appeal bonds. A stay bond is solely for a stay of a judgment or order pending appeal. It has nothing to do with the right to appeal. If the stay bond is not posted, the appeal proceeds with the judgment or order remaining effective. *See, Strong v. Laubach*, 443 F.3d 1297, 1299 (10th Cir. 2006) ("A judgment debtor who is unable or unwilling to post a supersedes bond retains the right to appeal even if the judgment is executed"). An appeal bond pursuant to

CONCLUSION

The abuse of judicial power by the trial court requires a remedy by this Court. There is no doubt that the trial court took over the Grievance Committee election by invalidating a sovereign political process and imposing the court's own process. The trial judge raised, without notice, the Grievance Committee election procedure. The trial judge, over objection, imposed his own election procedure on a sovereign political process. The trial judge imposed his process on an entity and officers whom where not before him. The trial judge decided where, when and how the citizens would vote and effectively which citizens could vote. In so doing, he restricted the franchise previously expanded by the Nation's legislature, the Business Committee. Most significantly, and belying his legal error, the trial judge provided no explanation for this usurpation. Finally, the trial court erroneously imposed a stay bond requirement, without hearing as to necessity and amount, that had nothing to do with potential stay-related damages. The Election Order constitutes one due process violation after another. Reversal is required to assure the Nation's citizens that indeed their Nation is one of constitutional law and not one of unconstitutional judicial control.

Fed.R.App.P. p.7, is a condition to an appeal. If an appeal bond to secure the costs of the appeal is not posted, the appeal cannot proceed. *See*, *Fed. Prescription Service Inc. v. America Pharmaceutical Assn.*, 636 F.2d 755, 757, n.2 (D.C. Cir. 1980). Here the language of the stay orders make clear that the bond is for a stay, as demonstrated not only by the use of the word "stay" but also by the reference to Fed.R.Civ.P. 62 (c), which provides for the suspension of the effect of any injunction on appeal upon posting of a bond. Accordingly, Barton's characterization of the stay bond as an "appeal bond" is wrong.

Further, *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), did not involve an "appeal bond", Barton's characterization notwithstanding. ("Fisher cited, *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), where the U.S. Supreme Court held that one of the considerations for requiring an appeal bond is protecting the public interest." Barton Answer Brief at p. 19.) Barton's statement to this Court is simply false. *Hilton* did not involve any bond much less an "appeal bond" and the Supreme Court did not hold that one of the considerations for requiring an appeal bond is protecting the public interests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2017, a true, correct and exact copy of the above and foregoing instrument was sent via Electronic Mail and U.S. Postal Mail with postage prepaid to:

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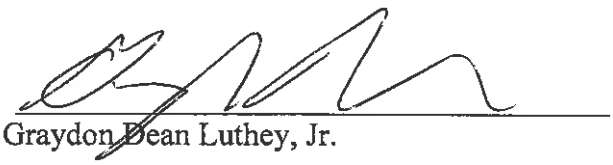

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