

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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**PHILIP C. BELLFY**

**Plaintiff,**

**v**

**MICHAEL T. EDWARDS and  
HON. JOCELYN K. FABRY**

**Defendants.**

**CASE NO.: 2:23-CV-51**

**HON. PAUL L. MALONEY**

**Mag. Judge Maarten Vermaat**

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**THE HONORABLE JOCELYN K. FABRY'S RESPONSE  
TO PLAINTIFF BELLFY'S MOTION FOR SUMMARY JUDGMENT**

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**NOW COMES** Defendant, the Honorable Jocelyn K. Fabry, by and through her attorneys, GREWAL LAW PLLC, and for her Response to Plaintiff Bellfy's Motion for Summary Judgment, states as follows:

**STATEMENT OF FACTS**

Plaintiff is a former lay advocate that filed an “election challenge” in the Sault Ste. Marie Tribe of Chippewa Indians (the “Tribe”) Tribal Court.<sup>1</sup> At the time of the allegations contained within Plaintiff’s Complaint, Mr. Michael T. Edwards was the attorney representing the Tribe’s Election Commission and the Honorable Jocelyn Fabry, the Chief Tribal Court Judge, was the presiding judge in the “election challenge.”<sup>2</sup>

Plaintiff filed his Complaint in this matter alleging that Mr. Edwards and the Hon. Fabry “conspired to deprive [Plaintiff of his] 14<sup>th</sup> Amendment Constitutional rights to due process and equal protection by failing to ‘notice’ [Plaintiff] of an alleged ‘hearing’” in the Tribal Court election challenge.<sup>3</sup> Both Mr. Edwards and Hon. Fabry filed Motions to Dismiss Plaintiff’s Complaint in its entirety, which remain pending before this Honorable Court.

On April 26, 2023, Judge Fabry filed her Motion to Dismiss Pursuant to Rule 12(b), arguing that she has immunity from suit, that the Court lacks subject matter jurisdiction, and that Plaintiff failed to state a claim under the 14<sup>th</sup> Amendment or 18 USC § 242 upon which relief can be granted.<sup>4</sup> One day later, on April 27, 2023, Mr. Edwards filed his Motion to Dismiss Pursuant to Rule 12(b)(6).<sup>5</sup> Pursuant to Local Rule 7.2(c), Plaintiff had 28 days to respond to Defendants’ dispositive Motions to Dismiss, meaning no later than May 24, 2023, and May 25, 2023, respectively. Plaintiff did not file a response to either Motion to Dismiss.

Instead of responding to either Motion to Dismiss and addressing the legal challenges in this matter, Plaintiff has now filed his third dispositive motion.<sup>6</sup> Like his first two Motions, Plaintiff’s

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<sup>1</sup> **ECF 1:** Plaintiff’s Complaint, PageID.1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at PageID.2.

<sup>4</sup> **ECF 8:** Hon. Fabry’s Motion to Dismiss, PageID.15-19.

<sup>5</sup> **ECF 10:** Defendant Edwards’ Motion to Dismiss, PageID.45-46.

<sup>6</sup> *See ECF 15, ECF 25, ECF 31.*

third Motion is also in error.<sup>7</sup> Moreover, Plaintiff's current Motion is filed in violation of this Court's Order staying discovery,<sup>8</sup> and is filed with the sole intent to continue to harass Defendants. This Response timely follows, and will show that Plaintiff's Motion should be denied.

### **STANDARD OF REVIEW**

Summary Judgement under Rule 56 may only be granted if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.<sup>9</sup> A movant asserting that a fact is genuinely disputed *must* support the assertion by citing to particular parts of material in the record.<sup>10</sup> This Honorable Court cannot resolve issues of fact and can instead only determine whether there are issues in dispute to be decided in a trial on the merits.<sup>11</sup>

### **APPLICABLE LAW AND ARGUMENT**

Rather than reiterating the same legal arguments, Judge Fabry incorporates by reference her previous responses to Plaintiff's Motions (**ECF 22; ECF 24; ECF 26**) as if fully restated herein. The remainder of this Response will address only Plaintiff's new arguments.

Plaintiff makes two assertions: 1) Defendants have failed to follow Federal Rule of Civil Procedure 26 by not providing Rule 26 disclosures; and 2) due to that failure, and the failure to provide any discovery to Plaintiff, Defendants have failed to "make a showing sufficient to establish the existence of an element essential"<sup>12</sup> to their case, which mandates that summary judgment be granted in Plaintiff's favor. Both arguments are misplaced.<sup>13</sup>

On September 1, 2023, this Court entered an Order staying discovery in this matter until the

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<sup>7</sup> **ECF 15:** Plaintiff's Motion for Summary Disposition, PageID.243-246.

<sup>8</sup> **ECF 30.**

<sup>9</sup> Fed.R.Civ.P.56(a).

<sup>10</sup> Fed.R.Civ.P.56(c)(1) (emphasis added).

<sup>11</sup> *Lansing Mercy Ambulance Serv. v. Tri-Cnty. Emergency Med. Control Auth., Inc.*, 893 F. Supp. 1337, 1342 (W.D. Mich. 1995).

<sup>12</sup> **ECF 31:** Plaintiff's Motion for Summary Judgment, PageID.2.

<sup>13</sup> For both the reasons stated herein in addition to the reasons stated in Judge Fabry's Motion to Dismiss and her previous Responses to Plaintiff's Motions.

resolution of Defendants' Motions to Dismiss.<sup>14</sup> As such, no discovery is due to Defendant. Likewise, there has been no Rule 26 Conference in this matter because of the Motions to Dismiss, and Rule 26 disclosures are not yet due.

Rule 26 states, in pertinent part:

A party must make the initial disclosures at or within 14 days *after* the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan.<sup>15</sup>

In this case, no Rule 26 conference has taken place, nor have the parties stipulated to, nor the Court ordered, timing for the exchange of Rule 26 disclosures. As such, Plaintiff's Motion is not properly founded in fact or law.<sup>16</sup>

Finally, Plaintiff argues that the email search he allegedly did on his own computer is indisputable evidence that he can prove his case.<sup>17</sup> Aside from mountains of legal hurdles Plaintiff fails to address, Plaintiff fails to acknowledge the fact that this evidence is inadmissible.

A party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."<sup>18</sup> "Rule 56(e)(2) leaves no doubt about the obligation of a summary judgment opponent to make her case with a showing of facts that can be established by evidence *that will be admissible at trial.*"<sup>19</sup>

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<sup>14</sup> **ECF 30.**

<sup>15</sup> Fed.R.Civ.P.26 (emphasis added).

<sup>16</sup> It should also be noted that Plaintiff's cited jurisprudence is either inconsistent with or inapplicable to the facts and issues in this matter.

<sup>17</sup> **ECF 31:** Plaintiff's Motion for Summary Judgment, PageID.3.

<sup>18</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)

<sup>19</sup> *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009) (citing Fed.R.Civ.P. 56(e)(2)).

In this case, Plaintiff relies on a screenshot of his alleged email account. As of now, this is hearsay, and inadmissible evidence. There is no foundation that could even be inferred to allow Plaintiff's alleged proof as evidence in support of a Rule 56 Motion. As such, along with the other arguments herein and in the incorporated Motions and Responses, Plaintiff's Motion should be denied, and Defendants should be awarded fees and costs for having to defend the same.

**CONCLUSION AND REQUEST FOR RELIEF**

For the reasons stated in Hon. Fabry's Motion to Dismiss and those reiterated herein, Plaintiff's claims under the 14<sup>th</sup> Amendment and 18 USC § 242 legally fail and Plaintiff is not entitled to any relief as a matter of law. Plaintiff did not attempt to address these legal issues in response to Hon. Fabry's Motion, nor does he attempt to do so here. Instead, Plaintiff relies on factual allegations only, which are not properly supported by citations to particular parts of materials in the record, nor are they supported by admissible evidence.

**WHEREFORE**, Defendant, Hon. Judge Jocelyn Fabry, respectfully requests this Honorable Court to:

- A. Deny Plaintiff's Motion for Summary Judgment in its entirety;
- B. Award Hon. Fabry fees and costs for having to defend this matter; and
- C. Grant her any further relief this Honorable Court deems equitable and just.

Respectfully submitted,

**GREWAL LAW PLLC**

Dated: October 12, 2023

*/s/ Daniel V. Barnett*

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**Certificate of Compliance**

I hereby certify that this Brief contains 1,227 words, including headings and footnotes, as computed by Microsoft Word.

Respectfully submitted,

**GREWAL LAW PLLC**

Dated: October 12, 2023

/s/ Daniel V. Barnett

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