

**NOTICE TO CHALLENGE**

**In Re General Election Held on July 9, 2022**

We, Patricia Williams and Lois Wesaw, voters in the General Election (“Election”) held on July 9, 2022, file this challenge to the Election for the following reasons:

BACKGROUND

1. Under tribal law, the Pokagon Band Election Board is responsible for conducting tribal elections under the Pokagon Band of Potawatomi Indians Election Code (“Election Code”).
2. Under Section 3(A) of the Code, “the election process for General Elections shall follow a timetable that allows for adequate public notice of the election and an opportunity for the Pokagon Band electorate to participate in the election to the fullest extent.”
3. Under Section 3(B) of the Code, “[t]he Election Board shall establish an Event Calendar in their initial meeting for each election, a copy of which shall be provided to the Tribal Council.” The Event Calendar sets calendar dates for specified Election events.
4. Candidate declaration deadlines are specified events. The deadline for Elected Officials whose office is not already scheduled to be filled in the election and are seeking a different elective office to file candidate declarations is a minimum of 89 days before the election. (For the Election, the date was April 11, 2022.) The deadline to file candidate declarations, authorization to conduct criminal background check, and candidate statements for all others is a minimum of 64 days before the election (For the 2022 Election – May 06, 2022)
5. On or about April 14, 2022, Tribal Treasurer John Morseau informed Tribal Council that he would be resigning his Tribal Council Treasurer seat. He formally resigned his seat on April 24, 2022.
6. On April 25, 2022, Tribal Council resolved that it was extending the deadline for any elected official whose office was not already scheduled to be filled in the election (“Vacating Officials”) to declare for the Treasurer position by 4:30 p.m. on May 6, 2022. Resolution 22-04-25-05 (“Resolution”). This new deadline was 25 days after the deadline established under the Election Code. (Tribal Council is behind weeks, if not months, on approving meeting minutes. It is also behind in releasing approved resolutions.)
7. Also in the Resolution, Tribal Council stated that it was not going to add those offices of Vacating Officials to be filled in the 2022 General Election for reasons of certainty.
8. The Election Notice is to be distributed at a minimum of 84 days before the election. On or about April 26, 2022, the Pokagon Bend Election Board (“Election Board”) distributed to eligible Tribal Citizens the 2022 General Election (“Election”) packet (“Packet”), which included the Tribal Council open position seats and the Events Calendar for the Election. Along with some referenda issues on the ballot, the packet informed Tribal Citizens that the

following seats were up for election: Vice-Chairperson position, Councilperson (2), Treasurer, and Salary Commissioner.

9. Tribal Councilperson Wayne Alex Wesaw (“Mr. Wesaw”) was certified as a candidate for Treasurer by the Election Board. This certification deemed him to have resigned his current Tribal Councilperson position, with the resignation becoming effective at the time the current elective tribal office becomes vacant as of the first Regular Meeting of the Tribal Council next following the General or Special Election involved or forty-five (45) days following the General or Special Election involved, whichever comes first. Pokagon Band Constitution (“Constitution”), Article XV, Subsection 3(c).
10. The Certified Candidates list for the Tribal Councilperson positions had six (6) candidates listed on it. One candidate later withdrew, leaving five (5) candidates from which the voters could choose.
11. Absentee ballots began being distributed on or about June 10, 2022.
12. On or about June 17, 2022, it was discovered the Ballot had several errors including, but not limited to, the number of Councilperson candidates to vote for, with the Ballot instructing voters to vote for just one (1) Councilperson candidate.
13. It was also about this time that some voters began expressing confusion about the number of open Tribal Councilperson seats. Given the past practice of placing the seat of a Vacating Official on the ballot, some believed, including We the Challengers, that instruction to vote for up to 3 candidates should have been placed on the Ballot.
14. Revised Ballots instructing voters to vote for up to two (2) Councilperson candidates began to be distributed on or about June 21, 2022.
15. On June 27, 2022, We the Challengers discussed ballot and elections concerns with Tribal Council, asking Tribal Council to select the person with the certified 3<sup>rd</sup> highest vote count for appointment to the seat vacated by Mr. Wesaw. (See Exhibit A for proposed resolution).
16. The Election took place on July 9, 2022. The Uncertified Election results posted that evening.

#### THE ISSUES

Arguably, the timing of Mr. Morseau’s resignation as Treasurer on April 24, 2022 proved problematic because it was after the start of the Election season, and elected officials whose office was not already scheduled to be filled in the election and wanted to seek a different elective office **must** have done so a minimum of eighty-nine (89) days before Election Day (April 11, 2022). Section 5(E)(4) of the election Code.

To “fix” this problem, Tribal Council changed the election process through Resolution 22-04-25-05 by extending the deadline for any elected official whose office was not already scheduled to be

filled in the election to declare for the Treasurer position by 4:30 p.m. on May 6, 2022. Tribal Council did not amend the Election Code to make this change.

It should be noted that Tribal Council did not extend the deadline for Election Board members, the Election Clerk, and Alternates to file for the Treasurer position. While this may have been believed to be problematic, if Tribal Council felt it could change the rule for elected officials, which included Tribal Council, then out of fairness, it should have allowed such change for the others.

Tribal Council chose not to add those offices of Vacating Officials to be filled in the 2022 General Election for reasons of “certainty”. The idea of “certainty” is unclear. It appears to be an argument to benefit Tribal Council’s ability to appoint a losing Tribal Councilperson rather than allowing tribal citizens to vote for the candidate to fill the vacancy. When We the Challengers requested Tribal Council address the additional open Councilperson seat, General Counsel stated the Tribal Council Procedures Act could be amended to allow “weight” to be given to that candidate. Some Councilperson, including Mr. Wesaw, stated he did not want to change things mid-process. Of course, Mr. Wesaw would not want the candidate who received the 3<sup>rd</sup> highest votes for the Councilperson position to be appointed because that would exclude him from being appointed if he lost the Treasurer position.

Additionally, it was unclear which “process” to which Mr. Wesaw was referring – the election process or the appointment process. With the altered declaration deadline, Tribal Council had already ordered the election process changed. The appointment process had not yet begun. Mr. Wesaw’s comments lacked objectivity and impartiality.

Article XIII, Section 3(a) of the Constitution states “[t]he Election Board shall conduct and certify the results of all elections of the Band and carry out the requirements of the Election Code. Section 2(I)(2) of the Election Code states:

The Election Board shall conduct and certify the results of the Pokagon Band elections described in subsection 1.C.1 of this Code and in accordance with the requirements of the Constitution, this Code, and such rules and procedures the Board may establish in writing.

Section 1 (A) of the Election Code states the purpose of the Election Code:

1. To facilitate full participation by the Citizens in the electoral process through the enactment of standards and procedures for conducting fair, legal, and impartial tribal elections that are consistent with the requirements of applicable law;
2. To advance the Pokagon Band’s compelling interest in protecting and promoting the Pokagon Band’s tradition and culture free from political interference; and
3. To advance the Pokagon Band’s compelling interest in preserving fair, legal and impartial tribal elections.

It should be noted that the principles of *fair, legal and impartial* tribal elections is noted twice in this Subsection.

Under the Constitution and the Election Code, the Election Board, and not Tribal Council, conducts tribal elections to ensure participation by Citizens in the electoral process and to advance fair, legal, and impartial elections.

- There is no evidence the Election Board deliberated whether the demands of Tribal Council were appropriate under tribal election law.
- There is no evidence the Election Board decided the ability of elected officials to declare for another position after the deadline stated in the Code.
- There is no evidence the Election Board determined if leaving the vacated Tribal Councilperson position off the Ballot was consistent with election practices; that is, placing the vacated position of the Vacating Official on the ballot to allow tribal voters to participate in the election of certain officials.

The Election Board simply did what it was told to do by Tribal Council during an *election process that had already started*.

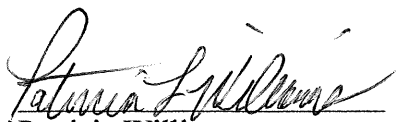
The Election Board should have placed the Tribal Councilperson position resigned by Mr. Wesaw on the Ballot for the Election. It knew of the vacancy when Mr. Wesaw declared for the Treasurer position. In the April 26 Notice of Election, the Election Board should have notified citizens there were 3 open Councilperson seats. And it certainly had the ability to change the number from one (1) to three (3) when it had to correct the Ballot in June, especially as there were more than 2 certified Councilperson candidates. The Election Board should have deliberated Tribal Council's Resolution not to place the resigned Councilperson seat on the Ballot and decided in favor an impartial election allowing participation by Tribal Citizens in the electoral process. This is what had been done in the past.

#### REMEDY

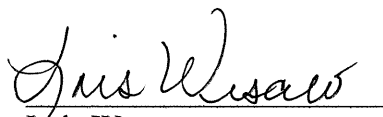
Under tribal election law, the Election Board, and not Tribal Council, conducts tribal elections to ensure participation by Citizens in the electoral process and to advance fair, legal, and impartial elections. The Election Board failed to ensure the Election was conducted impartially and under the requirements of tribal election laws. It allowed Tribal Council to decide aspects of the Election in an unfair and partial manner.

We the Challengers hereby request Your Honor order the Election Board to declare the candidate for Councilperson who received the certified third highest vote count in the Election as the winner of the seat vacated by Mr. Wesaw. Alternately, if Your Honor does not decide that remedy appropriate, we request Your Honor order the Election Board conduct a Special Election for that vacant position, comprised of only those candidates who did not win a seat for Councilperson in the 2022 General Election.

Respectfully Submitted,

  
Patricia Williams

July 13, 2022

  
Lois Wesaw

July 13, 2022

Whereas, Article XIII, Section 1, of the Pokagon Band Constitution establishes the principle that the Pokagon Band shall encourage participation by the membership in the electoral process; and

Whereas, Tribal Council decided by resolution not to place any seat of any Councilperson deciding to run for the vacant Treasurer position ("Treasurer Position" on the 2022 General Election ballot ("Ballot"); and

Whereas, the Election Board had time to include the Treasurer position on the Ballot and in the election materials and did place any Tribal Councilperson's name wanting to run for Treasurer on the Ballot; and

Whereas, the Election Board had time to include the Treasurer position on the Ballot and in election materials, it also had time to place the the position vacated by Alex Wesaw ("Vacated Position") on the Ballot; and

Whereas the Vacated Position created three open Councilperson positions to be filled; and

Whereas, at least three Citizens were certified to run for Councilperson positions in the 2022 General Election; and

Whereas, upon Tribal Council direction the Pokagon Band Election Board has instructed voters to select only two candidates to fill the three open seats; and

Whereas, Tribal Council's "saving" the open Tribal Councilperson position vacated by Mr. Wesaw for appointment appears to manipulate or impede the electoral process so that Tribal Council may appoint who it wants in that seat rather than providing Tribal Citizens the opportunity to vote on who they want in that seat; and

Now, Therefore, Be It Resolved, Tribal Council shall appoint the candidate who receives the certified third highest number of votes for the Tribal Councilperson position in the 2022 General Election to the remaining term for the Vacated Position; and

Be It Further Resolved, Tribal Council shall make such appointment in time to coincide with the installation of the 2022 Elected Officials at the first Regular Meeting in August following the 2022 General Election.