

**POKAGON BAND OF POTAWATOMI INDIANS  
TRIBAL COURT**

In re: the Election held on July 9, 2022

Gayle Green,

Challenger

v.

Pokagon Band of Potawatomi Indians  
Election Board,

Respondent

**Case No. 22-180-ELE**

**Hon. Michael Petoskey**

Gayle Green

Pokagon Band of Potawatomi Indians  
Office of General Counsel  
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Pro Se

**RESPONSE TO NOTICE OF CHALLENGE**

The Election Board of the Pokagon Band of Potawatomi Indians ("Election Board", "Board", or "Respondent"), by and through its attorneys from the Pokagon Band of Potawatomi Indians Office of General Counsel, J. Edward Williams and Paul W. Shagen, provides this Response to Notice of Challenge ("Response") to the Notice of Election Challenge filed by Gayle Green ("Challenge"), regarding the July 9, 2022 General Election ("2022 Election").

**I. JURISDICTION**

The Court lacks jurisdiction of Count I of this Challenge, but has jurisdiction of Counts II, III, and IV of this Challenge, under Article XIII, Subsection 3(d) of the Pokagon Band of Potawatomi Indians' Constitution ("Constitution") and Section 14.A of the Pokagon Band of

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Potawatomi Indians' Election Code ("Election Code").<sup>1</sup> See In re: Election held on July 11, 2009, Tribal Court Case No. 09-545-ELE, at 2 ("Sec. 14(A) of the . . . Election Code . . . implements the constitutional right to appeal by providing a process for challenge before the Tribal Court.").

## **II. STANDARD OF REVIEW**

The Challenger bears the full burden of proof and must demonstrate by clear and convincing evidence that the decision of the Board has been affected by a clear error in the application of Pokagon Band election law or federal law, if applicable, or by a conflict of interest or conduct violating the Code of Ethics. Constitution, Art. XIII, subsection 3(d), Election Code, § 14.C. See In re: Election held on July 11, 2009, Tribal Court Case No. 09-545-ELE, at 2. The Respondent is not aware of any federal law or Code of Ethics that would apply to this Challenge.

For disputes involving compliance with the Election Code, "substantial, rather than complete, compliance shall be deemed adequate." Election Code, § 1.D, 14.C. Moreover, the Tribal Court must "give deference to the reasonable interpretations of Pokagon Band law by the Election Board . . ." Election Code, § 14.C.

## **III. REMEDIES**

Even if the Challenger meets the burden of proof, the Election Code establishes specific remedies and states a hierarchy of such remedies that the Court must apply, all of which is designed to preserve election results, as follows:

1. First, the Judge shall make every reasonable effort to apply remedies that would avoid the invalidation of an election result certified by the Election Board or overturning the Election Board's decision and shall give full consideration to remanding the matter back to the Election Board for reconsideration.

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<sup>1</sup> Capitalized terms that are not defined in this Response have the meanings set forth in the Election Code, except as otherwise stated.

2. Second, the Judge may only declare the outcome of an election or the decision the Election Board should have reached if it can determine with reasonable certainty what the outcome or decision should have been.
3. Third, the Judge may invalidate the election or Election Board decision only if no other remedy would eliminate the effects of irregularities on the election or decision.

Election Code, § 14.D.

#### **IV. INTRODUCTION**

##### **A. Election Code**

The Election Board is responsible for conducting elections. Constitution, Art. VI, subsection (d), Election Code, § 2.I.2. The Election Board is a five-person Board appointed by the Tribal Council. Constitution, Art. XIII, subsection 2(a), Election Code, § 2.A. The Election Code provides standards and procedures for conducting fair, legal, and impartial elections.

Election Code, § 1.A.

The Election Code provides for an Election Clerk (defined to include any Election Clerk and the Election Office Supervisor) to assist the Election Board “regarding the clerical, ministerial, and other duties and responsibilities of the Board.” Election Code, § 2.O. Additionally, the Election Board is authorized to engage contractors as needed to assist it in conducting elections and fulfilling its duties under the Election Code. Election Code, § 2.P.

A brief description of relevant provisions of the Election Code, including provisions relating to voting by Absentee Ballot or Polling Place Ballot, will assist the Court in determining that the Challenge lacks merit and must be dismissed.

##### **1. Election Day**

The Election Day for General Elections for the Tribal Council must occur on the second Saturday of July. Constitution, Art. XIII, subsection 4(b); Election Code, § 3.A.

## **2. Event Calendar**

The Election Board must publish an Event Calendar for each election, which must include the calendar dates for the election events in accordance with the requirements stated in the Election Code. Election Code, § 3.B. In relevant part, for purposes of this Challenge, the Event Calendar must include the dates for the following events:

- The deadline for the Election Board to distribute the Election Notice, which shall be at least 84 days before Election Day;
- The date that Absentee Ballots become available, which shall be at least 29 days before Election Day;
- The deadline to file a request for an Absentee Ballot by U.S. mail, fax, or electronic mail to the Election Board office, which shall be at least five business days before Election Day;
- The deadline to file a request for an Absentee Ballot by hand delivery to the Election Board Office, which shall be at least one business day (by 2:00 p.m.) before Election Day; and
- The deadline for the Election Board to receive Absentee Ballots, which shall be not later than one business day (by 4:30 p.m. (EST)) before Election Day.

Election Code, § 3.B.

## **3. Election Notice**

The Election Board must also prepare an Election Notice. Election Code, § 3.C. The Election Board must distribute the Election Notice by U.S. mail to Citizens who are 18 years of age and older as of Election Day. Election Code, § 3.E. The Election Notice must include certain information and forms, including in relevant part, the following: (1) Date of Election; (2)

Event Calendar (regarding voter and candidate activities); and (3) Absentee Ballot Request Form. Election Code, § 3.E.2.

#### **4. Eligible Voters**

Only Eligible Voters may vote in elections conducted by the Election Board.<sup>2</sup> Election Code, § 4.A. An “Eligible Voter” is a “Citizen who is at least eighteen (18) years of age as of Election Day and whose name appears on the Certified Voter List.”<sup>3</sup> Election Code, § 1.E.21.

#### **5. Ballots**

Eligible Voters may vote by Absentee Ballot or at the Polling Place. Election Code, § 6.A, 8.D. Absentee Ballots must be marked with the words “Absentee Ballot” to indicate that the Ballot can only be used for absentee voting, while Polling Place Ballots must be marked with the words “Polling Place Ballot” to indicate that the Ballot can only be cast at the Polling Place. Election Code, § 7.A.3., 7.A.4. All Ballots must “include instructions stating the number of candidates for each office for which a voter may lawfully vote.” Election Code, § 7.A.8.

#### **6. Absentee Voting**

An Eligible Voter who desires to vote by Absentee Ballot must request an Absentee Ballot by submitting a completed Absentee Ballot request form to the Election Board. Election Code, § 6.B. Absentee Ballot request forms must be mailed to Eligible Voters when the Election Notice is mailed to Eligible Voters, and such forms must also be available at the Election Board office. Election Code, § 6.C. A completed Absentee Ballot request form may be returned to the

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<sup>2</sup> Under the Constitution, any Citizen may vote in an election who “is at least eighteen (18) years of age on the date of that election and has qualified to vote in accordance with the Election Code.” Constitution, Art. XIII, subsection 4(a).

<sup>3</sup> On March 24, 2022, through Resolution No. 22-03-23-02, the Tribal Council amended to Election Code to remove the voter registration requirement, and therefore, voter registration was not required to vote in the 2022 Election. Election Code, § 4.B.

Election Board by hand delivery, U.S. mail, fax, or email. Election Code, §§6.B, 6.G.

Completed Absentee Ballot request forms must be received by the Election Board not later than five business days prior to Election Day if sent to the Election Board by U.S. Mail, fax, or electronic mail, or one business day (2:00 p.m.), if hand delivered to the Election Board office. Election Code, § 6.B.

If an Eligible Voter provides the Election Board with a valid and complete official Absentee Ballot request form in accordance with the Election Code, the Election Board must send the Eligible Voter, by U.S. mail, all necessary forms, Ballots, and instructions for the election within two business days after receipt of such request or, if such materials are not available at such time, then as soon as such materials become available. Election Code, § 6.G. For each election, the Election Board may issue only one Absentee Ballot, or set of Absentee Ballots, to each Eligible Voter who requests an Absentee Ballot in accordance with the Election Code. See Election Code, § 6.D.

The Election Board must maintain a file and log of all Absentee Ballot requests received, which shall include the method through which the request was delivered. Election Code, § 6.H. Additionally, the file shall contain “the names and addresses of all persons to whom Absentee Ballots are delivered, including the date and method of delivery (by U.S. mail or in person).” Id. Further, the signature space of the Certified Voter List shall be marked to indicate that an Eligible Voter was issued an Absentee Ballot, along with the date of issue. Election Code, § 6.O.

Importantly, because an Eligible Voter may file an Absentee Ballot request form close to the filing deadline, the Election Code places the obligation on the Absentee Voter to ensure that the Election Board receives both the Absentee Ballot request form prior to the deadline and the completed Absentee Ballot prior to the deadline. Election Code, §6.F. An Eligible Voter must

cast an Absentee Ballot in accordance with the Election Code, which must be received by the Election Board at its post office box by 4:30 p.m. (EST) one business day prior to Election Day. Election Code, § 6.J., 6.L.

An Eligible Voter who requested and was provided with an Absentee Ballot may vote in person at the Polling Place only if the Election Board records confirm that the Election Board did not receive the Absentee Ballot that was issued by mail, and the Eligible Voter: (1) hand delivers to an Election Official at the Polling Place during polling hours, the issued Absentee Ballot, which shall be considered an Invalid Ballot, or (2) the Eligible Voter executes a written affirmation that the Eligible Voter did not mail or cause to be mailed to the Election Board the issued Absentee Ballot. Election Code, § 6.M.

## **8. Polling Place Voting**

The Election Board must designate one or more Polling Places for voting. Election Code, § 8.A.1. Eligible Voters may vote at the Polling Place through Polling Place Ballots. Election Code, § 8.D. Eligible Voters who voted by Absentee Ballot, or who were sent or given an Absentee Ballot by the Election Board office and who otherwise fail to comply with the requirements of subsection 6.M. of the Election Code, may not vote by Polling Place Ballot. Election Code, § 6.M.

## **B. 2022 Election**

### **1. AES**

Consistent with prior elections, for the 2022 Election, the Election Board engaged Automated Election Services (“AES”) of Rio Rancho, New Mexico, to perform certain services under the supervision and control of the Election Board. Affidavit, T. Rainey, ¶ 4. In the 2022 Election, AES: (1) prepared and printed all Ballots; (2) mailed the initial Absentee Ballots (both

Original Absentee Ballots and Corrected Absentee Ballots); (3) provided the polling place ballots; and (4) provided certain 2022 Election equipment and supplies, including BCVS, voting booths, etc.; and (5) provided on-site Election Day technical support. Affidavit, T. Rainey, ¶ 5.

## **2. Open Seats**

The following four (4) Tribal Council seats were open in the 2022 Election: (1) Tribal Council Vice Chairperson; (2) Tribal Council Treasurer;<sup>4</sup> (3) Councilperson; and (4) Councilperson.<sup>5</sup> See 2022 General Election Uncertified Election Results, attached as Exhibit A.

## **3. Election Notice**

On April 14, 2022, the Election Board caused the 2022 Election Notice packet to be timely mailed in accordance with the Election Code to Eligible Voters via AES and posted within the Pokagon Band community in accordance with the Election Code. Affidavit, T. Barber, ¶ 5. The 2022 Election Notice packet included all information required by the Election Code, including the Absentee Ballot request form. Affidavit, T. Barber, ¶ 6. Absentee Ballot request forms also were available at the Election Board office as required by the Election Code. Affidavit, T. Barber, ¶ 7.

## **4. Voting**

In the 2022 Election, 586 Eligible Voters out of 3,723 Eligible Voters (or 15.74% of Eligible Voters) cast ballots. Id. For the Vice Chairperson seat, there were 572 votes cast, for

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<sup>4</sup> The Tribal Council Treasurer seat was not open in the 2022 Election. However, after the Tribal Council Treasurer resigned from such position effective April 24, 2022, the Tribal Council directed the Election Board to include the Tribal Council Treasurer seat in the 2022 Election. See Tribal Council Resolution No. 22-04-25-04.

<sup>5</sup> The 2022 Election included 12 ballot questions relating to amendments to the Constitution and Pokagon Band Revenue Allocation Plan. The 2022 Election also include one Salary Commission position, for which there was one Candidate, and therefore, such seat was not included on the final Ballots.

the Treasurer, there were 562 votes cast, and for the two (2) Councilperson seats, there were 979 votes cast.<sup>6</sup> Id.

For the Vice Chairperson seat, there were six (6) Candidates. Id. The following voting for such seat occurred in the 2022 Election: 187 Winner, 180 Second, 104 Third, 71 Fourth, 16 Fifth, and 14 Sixth. See 2022 General Election Uncertified Election Results. Id. The Challenger placed sixth with 14 votes. Id.

For the Tribal Council Treasurer seat, there were five (5) Candidates. See 2022 General Election Uncertified Election Results. The following voting for such seat occurred in the 2022 Election: 272 Winner, 128 Second, 95 Third, 36 Fourth, and 31 Fifth. Id.

For the two (2) Councilperson seats, there were five (5) Candidates. Id. The following voting for such seats occurred in the 2022 Election: 287 First Winner, 235 Second Winner, 213 Third, 131 Fourth, and 113 Fifth. Id.

## **5. Corrected Absentee Ballots**

On May 26, 2022, the Election Board certified the List of Candidates for the 2022 Election. See Certified List of Candidates, attached as Exhibit B. On June 10, 2022, in accordance with subsection 6.E. of the Election Code, the Absentee Ballots were prepared and ready within fifteen (15) days following the Election Board's certification of the List of Candidates. Affidavit, T. Barber, ¶ 8.

From June 10 - 17, 2022 ("Covered Period"), AES mailed 318 Absentee Ballots, and the Election Board distributed 48 Absentee Ballots, to Eligible Voters who had completed and submitted an Absentee Ballot request form in accordance with subsection 6.G. of the Election

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<sup>6</sup> The number of votes cast for the Councilperson seats was significantly higher than the number of votes cast for the one Vice Chairperson seat and one Treasurer seat because there were two open Councilperson seats on the final Ballot.

Code (“Original Absentee Ballots”). Affidavit, T. Rainey, ¶ 6, Affidavit, T. Barber, ¶ 9. The Eligible Voters who received the 366 Original Absentee Ballot are referred to as the “Affected Eligible Voters”<sup>7</sup>.

For each Absentee Ballot request form received from an Affected Eligible Voter, the Election Board maintained a file in accordance with subsection 6.H of the Election Code, which included the names and addresses of the Affected Eligible Voters to whom the Original Absentee Ballots were delivered, including the date and method of delivery (by U.S. mail or in person at the Election Board office). Affidavit, T. Barber, ¶ 10.

On or about June 17, 2022, the Election Board discovered printing errors in the Original Absentee Ballots that were mailed during the Covered Period, including because the Original Absentee Ballot stated: “Vote For One (1)” Councilperson, when it should have stated: “Vote For Two (2)” Councilpersons. Affidavit, T. Barber, ¶ 11.

In response, the Election Board promptly took steps to correct the Absentee Ballot through a new corrected Ballot (“Corrected Absentee Ballot”) and promptly implemented a comprehensive strategy to inform Citizens of the printing errors and the requirement to vote using the Corrected Absentee Ballot, including as described below:

- The Election Board caused the Corrected Absentee Ballot to be printed, with headings that were purple in color (the Original Absentee Ballot headings were black in color). Affidavit, T. Rainey, ¶ 7. Importantly, each Ballot type contains a unique, hexadecimal code, which is tied to a Ballot style (but not a specific Ballot), and the Election Board, through AES, maintains an electronic record of the unique, hexadecimal code and the Ballot content information for the Ballots, which allowed

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<sup>7</sup> To the extent the Affidavits use the term “Affected Absentee Voters”, such use is in error and means “Affected Eligible Voters”.

the Election Board to identify a Ballot style, including Original Absentee Ballots, which were Invalid Ballots. Affidavit, T. Rainey, ¶ 8.

- On June 22, 2022, the Election Board caused a letter to be sent to each Affected Eligible Voter, which: (1) notified the Affected Eligible Voter of the printing error involving the Original Absentee Ballot; (2) had enclosed a Corrected Absentee Ballot; (3) asked the Affected Eligible Voter to use the Corrected Absentee Ballot and not the Original Absentee Ballot; (4) stated: “**Even if you have already voted and mailed the Original Absentee Ballot, please use this Corrected Absentee Ballot[;]**” (5) advised that the Election Board equipment will detect the Original Absentee Ballot and not count both the Corrected Absentee Ballot and the Original Absentee Ballot; and (6) stated: “**If you want to vote by absentee ballot in this election, you must vote with the Corrected Absentee Ballot. The Original Absentee Ballot will not be counted.**” See Affidavit, T. Barber, ¶ 12, Important Letter from the Election Board, dated June 22, 2022, attached as Exhibit C;
- On June 23, 2022, AES mailed the Corrected Absentee Ballot by expedited U.S. mail (1 to 2 day guaranteed delivery) to 318 of the Affected Eligible Voters. Affidavit, T. Rainey, ¶ 9. This Corrected Absentee Ballot mailing also included a preaddressed, postage prepaid envelope (three to four day guaranteed delivery) for the Affected Eligible Voter to return the Corrected Absentee Ballot. Affidavit, T. Rainey, ¶ 9.
- On June 23 and 24, 2022 AES mailed the Corrected Absentee Ballot by expedited U.S. mail (one to two day guaranteed delivery) to the additional 48 Affected Eligible Voters, to whom the Election Board office had distributed the Original Absentee Ballot. Affidavit, T. Rainey, ¶ 10. This Corrected Absentee Ballot mailing also

included a preaddressed, postage prepaid envelope (three to four day guaranteed delivery) for the Affected Eligible Voter to return the Corrected Absentee Ballot.

Affidavit, T. Rainey, ¶ 10. Combined, AES mailed 366 Corrected Absentee Ballots to Affected Eligible Voters through the two mailings. Affidavit, T. Rainey, ¶ 11.

- On June 23, 2022 the Election Board caused an email to be sent to the Candidates, with an Absentee Ballot Errors Have Been Corrected message (“Absentee Ballot Message”), which: (1) indicated that the Election Board discovered the printing errors with the Original Absentee Ballots; (2) explained the steps taken to correct the printing errors through the Corrected Absentee Ballots; (3) explained that Affected Eligible Voters will receive a Corrected Absentee Ballot (purple in color) through expedited U.S. mail and to watch for the mailing (and that a prepaid expedited envelope will be included for return of the Corrected Absentee Ballot. See Affidavit, T. Barber, ¶ 13, Absentee Ballot Message, attached as Exhibit D.
- On June 23, 2022 the Election Board caused the Absentee Ballot Message to posted on the Band’s website. Affidavit, A. Tribbett, ¶ 4.
- On June 27, 2022, Eric Shaer, who is an Election Board member, attended an open meeting of the Tribal Council and updated the Tribal Council on the printing errors with the Original Absentee Ballots and the steps the Election Board had taken to address the issue, including through the Corrected Absentee Ballots. Affidavit, A. Shaer, ¶ 5. Citizens attended this open Tribal Council meeting both in person and virtually, as Citizens are able to attend open Tribal Council meetings in person, or virtually by calling in, or by Microsoft TEAMS. Affidavit, A. Shaer, ¶ 7.

- On June 27, 2022, the last known telephone number on file for each Eligible Voter was called with the Absentee Ballot Message. Specifically, approximately 75% of calls were answered, as follows: (1) 4,246 calls were attempted; (2) 3,203 calls were answered (either in person or answering service); (3) 1,043 calls were not answered for various reasons. Affidavit, A. Tribbett, ¶ 5.
- On June 27, 2022, the Absentee Ballot Message was emailed as a Bodewadmik Blast E-Newsletter to the last known email address on file for each Citizen. Affidavit, A. Tribbett, ¶ 6.
- On July 1, 2022, the Absentee Ballot Message was included in the Chairwoman's Corner of the Newsletter and mailed to the last known address on file for each Citizen and was included in the Chairwoman's Biweekly Update that is posted on the Citizen's portal on the Pokagon Band website. Affidavit, A. Tribbett, ¶ 7.
- The Election Board caused a Ballot Insert to be prepared and provided to Eligible Voters other than Affected Eligible Voters, which: (1) informed the Eligible Voter of the printing error involving the Original Absentee Ballots; (2) indicated that the Election Board corrected the errors and caused the Corrected Absentee Ballots to be printed; (3) stated "Please know that the enclosed ballot (purple in color) is the CORRECT, updated ballot . . . [and] you can vote with confidence using this ballot." See Affidavit, T. Barber, ¶ 14, Ballot Insert, attached as Exhibit E.

The above strategy ensured that Affected Eligible Voters were aware of the printing error involving the Original Absentee Ballot, must use the Corrected Absentee Ballot to vote in the 2022 Election, and had sufficient time to receive, complete, and return the Corrected Absentee Ballot prior to the July 8, 2022, 4:30 p.m. (EST) deadline, as indicated in the below tables:

## OUTBOUND CORRECTED ABSENTEE BALLOT

Date Mailed by AES	Date Received by Affected Eligible Voter	Number of Affected Eligible Voters Who Received the Mailing
June 23, 2022	June 24, 2022	254
June 23, 2022	June 25, 2022	77
June 23, 2022	June 27, 2022	1
June 23, 2022	June 30, 2022	1
June 23, 2022	July 5, 2022	1
June 24, 2022	June 24, 2022	28
June 24, 2022	June 28, 2022	1
		363 Total

Affidavit, T. Rainey, ¶ 12.<sup>8</sup>

The Outbound Corrected Absentee Ballot Table establishes that the Election Board's decision to mail the Corrected Absentee Ballots by expedited U.S. mail (one to two day guaranteed delivery) allowed the Affected Eligible Voters to receive the Corrected Absentee Ballots with sufficient time to complete and return the Corrected Absentee Ballots by the July 8, 2022 4:30 p.m. (EST) deadline by using the U.S. mail preaddressed, postage prepaid envelope (three to four day guaranteed delivery) envelope that was included in the Corrected Absentee Ballot mailing. Affidavit, T. Rainey, ¶ 13. Thus, all Affected Eligible Voters (except four) received the Corrected Absentee Ballot by June 25, 2022 (13 days before the deadline), and of these four: (1) one received it by June 27, 2022 (11 days before the deadline); (2) one received it by June 28, 2022 (10 days before the deadline); (3) one received it by June 30, 2022 (eight days before the deadline); and (4) one received it by July 5, 2022 (three days before the deadline).

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<sup>8</sup> A total of 366 Corrected Absentee Ballots were mailed by AES through the two mailings, but only 363 were tracked for delivery because two Corrected Absentee Ballots were returned to the Election Board as undeliverable and one was delivered and returned by the Affected Eligible Voter but was not scanned by the U.S. Post Office when it was delivered to the Affected Eligible Voter, and therefore, the Outbound Corrected Absentee Ballots Table accounts for 363 Corrected Absentee Ballots instead of 366 Corrected Absentee Ballots. Affidavit, T. Rainey, ¶ 11.

Affidavit, T. Rainey, ¶ 14. Importantly, Affected Eligible Voters who received the Corrected Absentee Ballots still had the right to vote in person at the Polling Place in accordance with subsection 6.M. of the Election Code. See Election Code, § 6.M.

### INBOUND CORRECTED ABSENTEE BALLOT

Date Mailed by Affected Eligible Voter	Date Received by Post Office	Number Returned to the Election Board Post Office Box
June 24, 2022	June 25, 2022	2
June 24, 2022	June 30, 2022	1
June 25, 2022	June 27, 2022	25
June 25, 2022	June 28, 2022	3
June 26, 2022	July 27, 2022	1
June 27, 2022	June 28, 2022	32
June 27, 2022	June 29, 2022	26
June 27, 2022	June 30, 2022	1
June 27, 2022	July 1, 2022	1
June 27, 2022	July 5, 2022	1
June 28, 2022	June 28, 2022	3
June 28, 2022	June 29, 2022	18
June 28, 2022	June 30, 2022	23
June 28, 2022	July 1, 2022	1
June 29, 2022	June 29, 2022	1
June 29, 2022	June 30, 2022	14
June 29, 2022	July 1, 2022	12
June 30, 2022	July 1, 2022	7
June 30, 2022	July 2, 2022	8
June 30, 2022	July 1, 2022	1
July 1, 2022	July 2, 2022	2
July 1, 2022	July 5, 2022	9
July 2, 2022	July 2, 2022	4
July 2, 2022	July 5, 2022	15
July 2, 2022	July 6, 2022	1
July 2, 2022	July 7, 2022	1
July 5, 2022	July 6, 2022	15
July 5, 2022	July 7, 2022	9
July 5, 2022	July 8, 2022	2

<b>Date Mailed by Affected Eligible Voter</b>	<b>Date Received by Post Office</b>	<b>Number Returned to the Election Board Post Office Box</b>
July 6, 2022	July 6, 2022	1
July 6, 2022	July 7, 2022	5
July 6, 2022	July 8, 2022	4
July 7, 2022	July 8, 2022	8
July 8, 2022	July 8, 2022	2
		259 Total Received On-Time
July 8, 2022	LATE	1
July 7, 2022	LATE	1
July 8, 2022	LATE	2
July 11, 2022	LATE	1
		5 Total Received Late
		264 Total Received

Affidavit, T. Rainey, ¶ 15.

The Inbound Corrected Absentee Ballot Table illustrates that only five of the Corrected Absentee Ballots that were returned were received late by the U.S. Post Office. Affidavit, T. Rainey, ¶ 16. However, the late return of the five Corrected Absentee Ballots should not be attributed to the Election Board because, as discussed above, the Outbound Corrected Absentee Ballot Table establishes that: (1) all Affected Eligible Voters (except four), received the Corrected Absentee Ballot by June 25, 2022 (thirteen days before the deadline); and (2) of these four, only one Affected Eligible Voter received the Corrected Absentee Ballot potentially outside the timeline to ensure return by expedited U.S. mail (three to four day guaranteed delivery), because it was received by the Affected Eligible Voter on July 5, 2022 (three days before the deadline, which potentially was outside the timeline to ensure return by expedited U.S. mail (three to four day guaranteed delivery)). Affidavit, T. Rainey, ¶ 14. Accordingly, the Election Board's solution to printing errors involving the Original Absentee Ballots did not cause the late return of the five Corrected Absentee Ballots.

## **6. Ballot Returns**

In the 2022 Election, 47 Original Absentee Ballots were timely returned to the Election Board post office box and placed into the Absentee Ballot box in accordance with the Election Code. Affidavit, T. Rainey, ¶ 17. The Original Absentee Ballots were returned in black and white envelopes with a unique packet identification number, which allowed the Election Board to identify the Original Absentee Ballots and not count them. Affidavit, T. Rainey, ¶ 18. Thus, none of the Original Absentee Ballots were counted in the 2022 Election. Affidavit, T. Rainey, ¶ 18.

In the 2022 Election, 432 Corrected Absentee Ballots were distributed. Affidavit, T. Barber, ¶ 15. AES mailed 366 Corrected Absentee Ballots through the two mailings. Affidavit, T. Rainey, ¶ 11. Additionally, the Election Board office distributed 66 Corrected Absentee Ballots. Affidavit, T. Barber, ¶ 15. 332 of the Corrected Absentee Ballots were timely returned to the Election Board post office box.<sup>9</sup> Affidavit, T. Rainey, ¶ 20.

## **7. Unrecorded Absentee Ballot Request Form**

The Challenger submitted an Absentee Ballot request form (“Request Form”) to the Election Board office in accordance with the Election Code. See Absentee Ballot Request Form, attached as Exhibit F. The Request Form is stamped “RECEIVED” by the Election Board office on May 4, 2022, and contains the initials “DS”, which are the initials of Dana Sturgeon, Enrollment and Elections Supervisor. Affidavit, T. Barber, ¶ 16. On May 4, 2022, Ms. Sturgeon emailed the Challenger and confirmed receipt of the Challenger’s 2022 Election related documents, which included the Request Form. Affidavit, T. Barber, ¶ 17.

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<sup>9</sup> Six of the 332 Corrected Absentee Ballots that were timely returned were Spoiled Ballots (as defined under subsection 1.E.38. of the Election Code), and therefore, 326 Corrected Absentee Ballots were counted in the 2022 Election (316 plus 10 Hand Tally). Affidavit, T. Rainey, ¶ 20.

Unfortunately, the Request Form was not logged or filed as required under subsection 6.H of the Election Code. Affidavit, T. Barber, ¶ 18. Therefore, the Election Board office did not mail, by U.S. mail, all necessary forms, ballots, and instructions as soon as they became available on June 10, 2022, as required under subsection 6.G. of the Election Code. Affidavit, T. Barber, ¶ 18.

On July 5, 2022, the Election Board office became aware that the Election Board office had not complied with subsections 6.H. and 6.G. of the Election Code in regard to the Request Form. Affidavit, T. Barber, ¶ 19. On July 5, 2022, Theresa Barber, Enrollment and Elections Lead Clerk, spoke with the Challenger who indicated that she would vote in person at the Polling Place. Affidavit, T. Barber, ¶ 20.

## **V. THE CHALLENGE**

### **1. Summary of the Challenge**

On July 12, 2022, the Challenger, who was a candidate for the Tribal Council Vice Chairperson seat in the 2022 Election,<sup>10</sup> timely filed a Challenge regarding the 2022 Election.<sup>11</sup>

The specific claims stated in the Challenge are summarized below.

(1) Count I – The Original Absentee Ballots had to be corrected and Tribal Council did not address the issue until the Tribal Council meeting held on June 27, 2022 that was attended by an Election Board member.

(2) Count II – There was insufficient time for the Affected Eligible Voters to return the Corrected Absentee Ballots by the July 8, 2022, 4:30 p.m. (EST) deadline even with

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<sup>10</sup> “Regular Elections . . . may be challenged only by candidates for elective office or voters in the election being challenged.” Election Code, § 14.A.

<sup>11</sup> A Notice of Challenge must be filed by 5:00 p.m. of the third business day following the day Election Day, which was July 9, 2022, for the 2022 Election. Id.

expedited U.S. mail, including because of the July 4<sup>th</sup> holiday and some Affected Eligible Voters live outside of the area.

(3) Count III – Challenger was deprived of votes because not all of the Affected Eligible Voters received the Corrected Absentee Ballots.

(4) Count IV – Challenger submitted an Absentee Ballot request form but did not receive an Absentee Ballot.

## **2. Each Count Must Fail**

Broadly, each Count must fail, and the Court should dismiss the Challenge. The Court lacks jurisdiction of Count I, and for Counts II, III, and IV, the Challenger has not met the burden of proof to demonstrate by clear and convincing evidence that the decision of the Election Board was affected by a clear error in the application of the Election Code. See Election Code, § 14.C. The Election Board substantially complied with the Election Code, which is adequate because complete compliance is not required. See Id. The Election Board's interpretation of the Election Code in connection with matters related to this Challenge was reasonable, and the Tribal Court must defer to such interpretation. See Id. The Election Board's resolution of the printing error involving the Original Absentee Ballots was reasonable, and the Affected Eligible Voters were not deprived of the right to vote in the 2022 Election. Moreover, the Challenger was not deprived of the right to vote at the Polling Place in the 2022 Election. Finally, the Challenger has not alleged, and cannot demonstrate, that there was any actual effect on the outcome of the election.

Counts 1-IV are addressed below.

**1. Count I – The Original Absentee Ballots had to be corrected and Tribal Council did not address the issue until the Tribal Council meeting held on June 27, 2022 that was attended by an Election Board member.**

**A. Claim**

The Challenge alleges: “Absentee ballots had to be corrected and tribal council did not address the issue till their meeting June 27, 2022 along with Election Board representative”.

Challenge at 1. (Emphasis added). The Challenge also states: “Election board knew of printing errors. They had already sent out 1<sup>st</sup> ballots but had to correct errors it was my understanding tribal council was aware of situation but did nothing till June 27, 2022”. Id. (Emphasis added).

**B. Response**

Count I must be dismissed because the Court lacks jurisdiction of Count I under Article XIII, subsection 3(d) of the Constitution and subsection 14.C. of the Election Code because Count I alleges that the Tribal Council failed to act but does not challenge any decision of the Election Board.

Under the Election Code, “All Challenges other than Ballot Recount requests shall be addressed pursuant to Chapter 14.” Election Code, § 11.B. The standards regarding election challenges set forth in the Election Code make clear that only decisions of the Election Board, which is charged with administering elections, can be challenged under Chapter 14 of the Election Code, stating:

Decisions of the Election Board may be challenged in Tribal Court only on the grounds that the Board’s decision has been affected by a clear error in the application of Pokagon Band election law or federal law, if applicable, or by a conflict of interest or conduct violating the Code of Ethics.

\* \* \*

The Court shall give deference to the reasonable interpretations of Pokagon Band law by the Election Board, which is designated under the Constitution and this Code to conduct Pokagon Band elections and to interpret and implement Pokagon Band election law.

Subsection 14.C. (Emphasis added).

Additionally, the remedies regarding election challenges set forth in the Election Code support the position that only decisions of the Election Board can be challenged under Chapter 14, stating:

First, the Judge shall make every reasonable effort to apply remedies that would avoid the invalidation of an election result certified by the Election Board or overturning the Election Board's decision and shall give full consideration to remanding the matter back to the Election Board for reconsideration.

Second, the Judge may only declare the outcome of an election [administered by the Election Board] or the decision the Election Board should have reached if it can be determined with reasonable certainty what the outcome or decision should have been.

Third, the Judge may invalidate the election [administered by the Election Board] or Election Board decision only if no other remedy would eliminate the effects of irregularities on the election or decision.

Subsection 14.D. (Emphasis added).

Contrary to Chapter 14 of the Election Code, Count I of the Challenge alleges that Tribal Council did not act until the June 27, 2022 Tribal Council meeting, and does not reference any decision of the Election Board that would be subject to the remedies set forth in the Election Code.

Moreover, even if the Court had such jurisdiction, the Tribal Council did not make any decision regarding the 2022 Election at the June 27, 2022 Tribal Council meeting. Affidavit, E. Shaer, ¶ 6. Rather, Eric Shaer, who is an Election Board member, attended such meeting and updated the Tribal Council on the printing errors with the Original Absentee Ballots and the steps the Election Board had taken to address the issue, including through the Corrected Absentee Ballots. Affidavit, E. Shaer, ¶ 5.

For the reasons stated above, Count I must fail.

**2. Count II – There was insufficient time for Affected Eligible Voters to return the Corrected Absentee Ballots by the July 8, 2022, 4:30 p.m. (EST) deadline even with expedited U.S. mail, including because of the July 4<sup>th</sup> holiday and some Affected Eligible Voters live outside of the area.**

**A. Claim**

The Challenge alleges: “Not enough time for citizens who requested absentee to complete ballot and get back to election board by 4:30 p.m. (EST) July 8 2022 and this was the holiday weekend 4<sup>th</sup> of July even with overnight because where the outside service area lives.”

Challenge at 1. The Challenge also states: “Of the (11) days given to correct the errored absentee ballot, one of those days was a legal Holiday thereby losing other days in an already accelerated absentee circulation to a new timetable of just (10) days for an absentee ballot circulation.” Id. at 2. Further, the Challenge states: “Once the error was identified, an extension equal to the original Election Boards timetable of (28) days for a mailing process should have been given over to the process or an extension equal to the already misused (18) days spent in error.” Id.

**B. Response**

The Original Absentee Ballots that were mailed by AES to Affected Eligible Voters had a printing error, including incorrectly stating the number of candidates for Councilperson that an Eligible Voter may lawfully vote.<sup>12</sup> After the Election Board became aware of the printing error, “the Election Board did the only thing that it could have possible done” within the context of the pending 2022 Election to correct the problem by issuing the Corrected Absentee Ballot. See In re: Election held on July 11, 2009, Tribal Court Case No. 09-545-ELE, at 5. The Corrected Absentee Ballot resolved the printing errors, thereby eliminating the effects of such irregularity

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<sup>12</sup> All Ballots must “include instructions stating the number of candidates for each office for which a voter may lawfully vote.” Election Code, § 7.A.8.

on the 2022 Election by ensuring that the Ballots for the 2022 Election met the express requirements of the Election Code. Additionally, the Election Board promptly implemented a comprehensive strategy to inform Citizens of the printing errors and the requirement to vote using the Corrected Absentee Ballot.

As stated previously, the Outbound Corrected Absentee Ballot Table establishes that the Election Board's decision to mail the Corrected Absentee Ballots by expedited U.S. mail (one to two day guaranteed delivery) allowed the Affected Eligible Voters to receive the Corrected Absentee Ballots with sufficient time to complete and return the Corrected Absentee Ballots by the July 8, 2022 4:30 p.m. (EST) deadline by using the U.S. mail preaddressed, postage prepaid envelope (three to four day guaranteed delivery) envelope that was included in the Corrected Absentee Ballot mailing. As stated above, all Affected Eligible Voters (except four), received the Corrected Absentee Ballot by June 25, 2022 (13 days before the deadline), and of these four: (1) one received it by June 27, 2022 (11 days before the deadline); (2) one received it by June 28, 2022 (10 days before the deadline); (3) one received it by June 30, 2022 (eight days before the deadline); and (4) one received it by July 5, 2022 (three days before the deadline, which potentially was outside the timeline to ensure return by expedited U.S. mail (three to four day guaranteed delivery)). Affidavit, T. Rainey, ¶ 14. Of course, the Affected Eligible Voters had the right to vote at the Polling Place in accordance with subsection 6.M. of the Election Code. See Election Code, § 6.M.

Moreover, as discussed previously, the Inbound Corrected Absentee Ballot Table illustrates that only five of the Corrected Absentee Ballots that were returned by Affected Eligible Voters were received late, and therefore, were not counted in the 2022 Election, but as discussed above, the Outbound Corrected Absentee Ballot Table establishes that the late return

of the five Corrected Absentee Ballots should not be attributed to the Election Board.

Accordingly, the Election Board's decision to issue Corrected Absentee Ballots with the expedited mailing to resolve the printing errors involving the Original Absentee Ballots did not cause the late return of the five Corrected Absentee Ballots.

Further, while the Challenge speculates that there was "insufficient time" for the Affected Eligible Voters to return the Corrected Absentee Ballots, as described above, the evidence overwhelmingly demonstrates that there was sufficient time, and all Affected Eligible Voters (except five) did return the Corrected Absentee Ballots before the deadline. The Challenge does not allege, and the Challenger cannot "present any witnesses or evidence that there was any actual effect on the outcome of the Election [but rather, the Challenger] . . . merely . . . [makes] a speculative argument." See *In re: Election held on July 11, 2009*, Tribal Court Case No. 09-545-ELE, at 6. Additionally, the Challenger does not allege, and cannot establish, that the Election Board's strategy to address the printing errors involving the Original Absentee Ballots had any actual effect on the outcome of the 2022 Election.

To the contrary, the Election Board's decision to issue the Corrected Absentee Ballots with expedited mailing, coupled with the extensive communication efforts regarding the Corrected Absentee Ballots, was reasonable under the circumstances, resulted in the least amount of disruption to the election process and requirements under the Election Code, and ensured compliance with the requirement under the Constitution that General Elections be held on the second Saturday in July each year, being July 9, 2022, for the 2022 Election. Constitution, Art. XIII, subsection 4(b) ("The Election process shall follow a timetable that allows for a General Election to be conducted on the second Saturday in July each year to maintain staggered terms mandated by the Constitution."). Significantly, moving the deadline for returning Absentee

Ballot would also result in having to move Election Day, contrary to the mandate set forth in the Constitution.

Accordingly, Challenger's suggestion that the July 8, 2022, 4:30 p.m. (EST) deadline to return the Corrected Absentee Ballots should have been extended to provide 28 days to return the Corrected Absentee Ballots measured from the date of mailing would violate the Constitution and the Election Code and result in a significant disruption to the election process, the candidates, and voters, and is wholly unreasonable.

For the reasons stated above, Count II must fail.

**3. Count III – The Challenger was deprived of votes because not all Affected Eligible Voters received Corrected Absentee Ballots.**

**A. Claim**

The Challenge alleges: "Though I was a candidate I missed votes from others because of absentee ballots not reaching everyone." Challenge at 1.

**B. Response**

As stated previously, the Outbound Corrected Absentee Ballot Table establishes that the Election Board's decision to mail the Corrected Absentee Ballots by expedited U.S. mail (one to two day guaranteed delivery) caused the Affected Eligible Voters to receive the Corrected Absentee Ballots with sufficient time to complete and return the Corrected Absentee Ballots by the July 8, 2022 4:30 p.m. (EST) deadline by using the U.S. mail preaddressed, postage prepaid envelope (three to four day guaranteed delivery) to return envelope that was included in the mailing. As stated above, all Affected Eligible Voters (except four), received the Corrected Absentee Ballot by June 25, 2022 (13 days before the deadline), and of these four: (1) one received it by June 27, 2022 (11 days before the deadline); (2) one received it by June 28, 2022 (10 days before the deadline); and (3) one received it by June 30, 2022 (eight days before the

deadline); and (4) one received it by July 5, 2022 (three days before the deadline, which potentially was outside the timeline to ensure return by expedited U.S. mail (three to four day guaranteed delivery). Affidavit, T. Rainey, ¶ 14. Importantly, the Affected Eligible Voters who received the Corrected Absentee Ballots still had the right to vote in person at the Polling Place in accordance with subsection 6.M. of the Election Code. See Election Code, § 6.M.

Additionally, the Challenge simply alleges that the Challenger “missed votes”. The Challenge does not allege, and the Challenger cannot “present any witnesses or evidence that there was any actual effect on the outcome of the Election [but rather, the Challenger] . . . merely . . . [makes] a speculative argument.” See In re: Election held on July 11, 2009, Tribal Court Case No. 09-545-ELE, at 6.

Furthermore, the 2022 Election returns derail Count III. See 2022 General Election Uncertified Election Results. As a candidate for the Tribal Council Vice Chairperson seat, the Challenger finished in sixth place, garnering 14 votes. Id. The Challenger finished 173 votes behind the winner of the Tribal Council Vice Chairperson seat, who accumulated 187 votes (second place received 180 votes). Id.

In the 2022 Election, 432 Corrected Absentee Ballots were distributed, and 332 Corrected Absentee Ballots were returned, and therefore, 100 Corrected Absentee Ballots were not returned. Affidavit, T. Rainey, ¶ 19. For the sake of argument, even if all 100 Affected Eligible Voters who did not return a Corrected Absentee Ballot had voted for the Challenger, the Challenger would still have lost the seat by finishing in third place with 114 votes (73 votes less than the winner).

For the reasons stated above, Count III must fail.

- 4. Count IV – The Challenger submitted an Absentee Ballot request form but did not receive an Absentee Ballot.**

**A. Claim**

The Challenge alleges: “I sent in and received verification of receipt for my requested absentee ballot as specified in Section 6(f) of the Pokagon Band Election Code.” Challenge at 2. Also, the Challenge asserts: “However, when the absentee ballots were sent out, I did not receive my absentee ballot.” Id. Further, the Challenge states: “However due to the very limited time frame allowed for the second mailing process, insufficient time existed for the election board to properly expedite my absentee ballot to me and therefore [it] was not sent.”<sup>13</sup> Id.

**B. Response**

As stated above, the Challenger submitted a Request Form to the Election Board office in accordance with the Election Code. See Absentee Ballot Request Form. The Request Form is stamped “RECEIVED” by the Election Board office on May 4, 2022, and contains the initials “DS”, which are the initials of Dana Sturgeon, Enrollment and Elections Supervisor. Affidavit, T. Barber, ¶ 16. On or about May 4, 2022, Ms. Sturgeon emailed the Challenger and confirmed receipt of her 2022 Election related documents, which included the Request Form. Affidavit, T. Barber, ¶ 17

Unfortunately, the Request Form was not logged or filed as required under subsection 6.H of the Election Code. Affidavit, T. Barber, ¶ 18. Therefore, the Election Board office did not mail, by U.S. mail, all necessary forms, ballots, and instructions as soon as they became available on June 10, 2022, as required under subsection 6.G. of the Election Code. Affidavit, T. Barber, ¶ 18.

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<sup>13</sup> The Challenge does not expressly allege that any other Eligible Voter, who timely submitted and completed Absentee Ballot request form, did not receive an Absentee Ballot.

On July 5, 2022, the Election Board office became aware that the Election Board office had not complied with subsections 6.H. and 6.G. of the Election Code in regard to the Request Form. Affidavit, T. Barber, ¶ 19. On July 5, 2022, Theresa Barber, Enrollment and Elections Lead Clerk, spoke with the Challenger who indicated that she would vote in person at the Polling Place. Affidavit, T. Barber, ¶ 20.

For Count IV, the Challenger does not assert that the Challenger or any voter was denied the right to vote in the 2022 Election. The Challenger was aware that she had not been issued an Absentee Ballot as required, and in response, indicated that she would vote in person at the Polling Place. See Affidavit, T. Barber, ¶ 20.

Moreover, regardless of whether the Challenger voted in person at the Polling Place in the 2022 Election, the Challenger's vote could not have changed the results for the Tribal Council Vice Chairperson seat. As stated above, the Challenger finished in sixth place with 14 votes, which is 173 votes less than the 187 votes received by the winner of the seat. As to Count IV, there was no actual effect on the outcome of the 2022 Election.

For the reasons stated above, Count IV must fail.

## **VI. REQUESTED REMEDY**

The Challenge does not expressly identify the remedy sought. Regardless, as established above, the only remedy that is appropriate is for the Court to dismiss Counts I-IV. Accordingly, Respondent requests that the Court: (1) deny the Challenger any relief; (2) dismiss the Challenge with prejudice; (3) award the Respondent its costs in this action, including attorneys' fees; and (4) grant such other relief as the Court deems appropriate.

Respectfully submitted July 19, 2022

POKAGON BAND OF POTAWATOMI INDIANS  
OFFICE OF GENERAL COUNSEL

By: Paul W. Shagen  
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## **APPENDIX**

### **Exhibits**

Exhibit A General Election Uncertified Election Results

Exhibit B Certified List of Candidates

Exhibit C Important Letter from the Election Board, dated June 22, 2022

Exhibit D Absentee Ballot Message

Exhibit E Ballot Insert

Exhibit F Absentee Ballot Request Form

### **Affidavits**

Affidavit of Terry Rainey

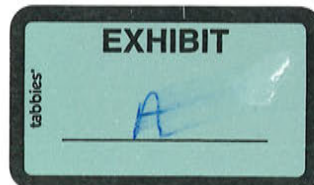
Affidavit of Theresa Barber

Affidavit of Amy Tribbett

Affidavit of Eric Shaer



**POKAGON BAND OF POTAWATOMI INDIANS**  
**2022 GENERAL ELECTION**  
 July 9, 2022  
 UNOFFICIAL ELECTION RESULTS



VICE CHAIRPERSON	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
GAYLE (RUSTY) GREEN	7	0	7	14	2.45%
GARY LEE MORSEAU, SR	78	4	105	187	32.69%
DONALD JAMES SUMNERS	33	1	37	71	12.41%
ROBERTA (ROBIN) SNYDER	4	2	10	16	2.80%
ANDREW LEE BENNETT	133	1	46	180	31.47%
JAMES ROBERT OLDS	51	2	51	104	18.18%
<b>VOTE TOTALS</b>	<b>305</b>	<b>10</b>	<b>266</b>	<b>572</b>	<b>100.00%</b>

TREASURER	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
DEBORAH MARIE WILLIAMS	55	1	72	128	22.78%
WAYNE ALEX WESAW	149	5	118	272	48.40%
RONALD GARY PURULESKI	16	1	14	31	5.62%
TAYLOR CHRISTINE GONZALEZ	19	0	17	36	6.41%
MICHAEL LEE ZIMMERMAN, SR	61	3	31	95	16.90%
<b>VOTE TOTALS</b>	<b>300</b>	<b>10</b>	<b>282</b>	<b>582</b>	<b>100.00%</b>

COUNCILPERSON (MEMBER AT LARGE)	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
VICTOR STEPHEN WARREN	74	3	54	131	13.38%
ANITA LOUISE MORALES	115	3	95	213	21.78%
RHONDA LOUISE KEENE	147	7	133	287	29.32%
MARK HUDSON PARRISH	124	6	105	235	24.00%
TRACY ANNETTE WESAW	50	0	63	113	11.54%
<b>VOTE TOTALS</b>	<b>510</b>	<b>19</b>	<b>480</b>	<b>979</b>	<b>100.00%</b>

PROPOSAL TO AMEND #1	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	185	6	176	367	66.25%
NO	108	4	75	187	33.75%
<b>VOTE TOTALS</b>	<b>293</b>	<b>10</b>	<b>261</b>	<b>554</b>	<b>100.00%</b>

PROPOSAL TO AMEND #2	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	280	6	183	449	79.33%
NO	42	4	71	117	20.67%
<b>VOTE TOTALS</b>	<b>302</b>	<b>10</b>	<b>254</b>	<b>556</b>	<b>100.00%</b>

PROPOSAL TO AMEND #3	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	273	7	200	480	85.87%
NO	27	3	49	79	14.13%
<b>VOTE TOTALS</b>	<b>300</b>	<b>10</b>	<b>249</b>	<b>559</b>	<b>100.00%</b>

<b>TOTAL BALLOTS CAST</b>	<b>316</b>	<b>10</b>	<b>260</b>
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VOTER PARTICIPATION	ELIGIBLE VOTERS	TOTAL VOTERS	%
15%	3723	596	15.74%
One sixth (1/6)	558		
	621		

PROPOSAL TO AMEND #4	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	271	7	202	480	86.18%
NO	28	3	46	77	13.82%
<b>VOTE TOTALS</b>	<b>299</b>	<b>10</b>	<b>248</b>	<b>567</b>	<b>100.00%</b>

PROPOSAL TO AMEND #5	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	182	5	165	352	63.42%
NO	114	5	84	203	36.58%
<b>VOTE TOTALS</b>	<b>296</b>	<b>10</b>	<b>249</b>	<b>555</b>	<b>100.00%</b>

PROPOSAL TO AMEND #6	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	198	4	171	373	66.86%
NO	98	6	81	185	33.15%
<b>VOTE TOTALS</b>	<b>296</b>	<b>10</b>	<b>252</b>	<b>558</b>	<b>100.00%</b>

PROPOSAL TO AMEND #7	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	194	3	170	367	65.77%
NO	103	7	81	191	34.23%
<b>VOTE TOTALS</b>	<b>297</b>	<b>10</b>	<b>251</b>	<b>558</b>	<b>100.00%</b>

PROPOSAL TO AMEND #8	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	226	7	179	412	74.37%
NO	70	3	69	142	25.63%
<b>VOTE TOTALS</b>	<b>296</b>	<b>10</b>	<b>248</b>	<b>554</b>	<b>100.00%</b>

PROPOSAL TO AMEND #9	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	233	5	178	410	75.36%
NO	62	5	69	136	24.64%
<b>VOTE TOTALS</b>	<b>295</b>	<b>10</b>	<b>247</b>	<b>552</b>	<b>100.00%</b>

PROPOSAL TO AMEND #10	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	247	8	207	462	82.50%
NO	51	2	45	98	17.50%
<b>VOTE TOTALS</b>	<b>298</b>	<b>10</b>	<b>252</b>	<b>580</b>	<b>100.00%</b>

PROPOSAL TO AMEND #11	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	233	6	164	403	73.14%
NO	60	4	84	148	26.86%
<b>VOTE TOTALS</b>	<b>293</b>	<b>10</b>	<b>248</b>	<b>551</b>	<b>100.00%</b>

PROPOSAL TO AMEND #12	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	255	7	193	455	80.67%
NO	46	3	60	109	19.33%
<b>VOTE TOTALS</b>	<b>301</b>	<b>10</b>	<b>253</b>	<b>564</b>	<b>100.00%</b>

**CERTIFICATION**

We the undersigned Election Officials of the Pokagon Band of Potawatomi Indians do hereby certify the above to be a true and accurate abstract of the votes cast in the General election held on July 9, 2022.  
 We further certify that said election was conducted in accordance with the Election Ordinance and Rules and Regulations of the Pokagon Band of Potawatomi Indians.

SIGNED

*[Signature]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

July 9, 2022 General Election  
CERTIFIED List of Candidates

Vice Chairperson

Andrew Lee Bennett	Gayle (Rusty) Green	Gary Lee Morseau Sr
James Robert Olds	Roberta (Robin) Snyder	Donald James Sumners

Treasurer

Taylor Christine Gonzalez	Ronald Gary Puruleski	Wayne Alex Wesaw
Deborah Marie Williams	Michael Lee Zimmerman Sr	

Councilperson (Member At Large)

Rhonda Louise Keene	Anita Louise Morales	
Mark Hudson Parrish	Victor Stephen Warren	Tracy Annette Wesaw

Salary Commission

Michaelina Irene Martin

The Election Board has determined that the individuals listed above on this CERTIFIED List of Candidates meet all the eligibility requirements under Pokagon Band law for candidacy in the upcoming 2022 General Election and no challenges were filed regarding the Election Board's determination.

Nicole M Holloway  
Nicole Holloway, Election Board Vice Chairperson

Originally Posted: May 26, 2022



**Pokégnek Bodéwadmik**  
POKAGON BAND OF POTAWATOMI  
ELECTIONS



**IMPORTANT LETTER FROM THE ELECTION BOARD. PLEASE READ  
IMMEDIATELY.**

June 22, 2022

Dear Eligible Voter,

The Election Board discovered printing errors in the absentee ballots mailed by the Election Office on or before June 17, 2022. You are receiving this letter because the Election Board records reflect that the Election Office mailed your absentee ballot on or before June 17, 2022, and the absentee ballot you received contained printing errors ("Original Absentee Ballot").

The Election Board has corrected the printing errors. Enclosed is a corrected absentee ballot ("Corrected Absentee Ballot").

Please use this Corrected Absentee Ballot and not the Original Absentee Ballot. **Even if you have already voted and mailed the Original Absentee Ballot, please use this Corrected Absentee Ballot.** The Election Board equipment is able to detect an Original Absentee Ballot and will not count both the Corrected Absentee Ballot and the Original Absentee Ballot.

**If you want to vote by absentee ballot in this election, you must vote with the Corrected Absentee Ballot. The Original Absentee Ballot will not be counted.**

We apologize for the error and inconvenience. If you have any questions regarding this letter, please contact the Election Office at (269) 782-1763.

**Ed Williams**

**From:** Theresa Barber  
**Sent:** Thursday, June 23, 2022 10:22 AM  
**To:** Theresa Barber  
**Cc:** Election.Board  
**Subject:** Update re Absentee Ballot Error

Dear 2022 General Election Candidate:

The following information is being posted to the Pokagon Band website, **Citizens Services Portal/Election 2022:**

**Absentee Ballot Errors Have Been Corrected**

The Election Board discovered printing errors in the absentee ballots mailed by the Election Office on or before June 17, 2022.

Immediately, the Election Board corrected the printing errors and had corrected ballots printed. The corrected absentee ballots are purple in color. If your absentee ballot is not purple in color, you received an absentee ballot with printing errors.

Eligible voters who received an absentee ballot with printing errors will receive a corrected absentee ballot through expedited mail from the United States Post Office. Please watch your mail for a large, 10 x 13 cardboard envelope containing your corrected ballot.

The Election Board also agreed to provide postage for expedited return of the purple ballots (3-4 day delivery guarantee).

All other absentee ballots will be mailed directly from the Election Board office via regular mail.

It is important that you know you can vote with confidence using this corrected ballot. If you have any questions, please contact the Election Office at (269) 782-1763.

Sincerely,  
Pokagon Band Election Board

Migwëtth Thank you,

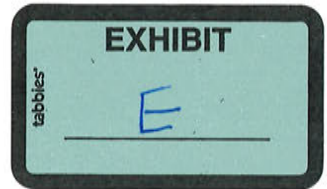
Theresa (Teri) Barber  
**Tribal Enrollment & Elections Lead Clerk**

**Pokegnek Bodewadmik**  
Pokagon Band of Potawatomi

PO Box 180 • 58620 Sink Road  
Dowagiac, MI 49047  
(269) 782-1763 office



**Pokégnek Bodéwadmik**  
POKAGON BAND OF POTAWATOMI  
ELECTIONS



Dear Eligible Voter,

Thank you for requesting an absentee ballot. You may have heard that the original Absentee Ballots were printed with errors. When the mistakes were identified, the Election Board immediately corrected the printing errors and had corrected ballots printed.

Please know that the enclosed ballot (purple in color) is the CORRECT, updated ballot. It is important that you know you can vote with confidence using this ballot.

If you have any questions regarding this letter, please contact the Election Office at (269) 782-1763.

Thank you.

The Election Board



**Pokégnek Bodéwadmik**  
POKAGON BAND OF POTAWATOMI  
ELECTIONS

### Absentee Ballot Request Form

Complete this form and submit it to the Election Office if you wish to vote by absentee ballot in the July 09, 2022 General Election. This completed form must be mailed faxed, emailed or hand delivered to the Election Office as indicated at the bottom of this form.

1. Please list your name, mailing address and phone number here:

Gayle L. Green

TRIBAL ENROLLMENT NUMBER

3. Please clearly print your full name. Then sign and date this absentee ballot request certification statement.

1. Gayle Green hereby certify that I am a Citizen of the  
(PRINT NAME)  
Pokagon Band of Potawatomi Indians and that I am a registered voter with the Band. Please mail an absentee ballot

to me so I can vote by mail in the General Election to be held on July 09, 2022.

Signature: Gayle Green Date: May 3, 2022

You may return this Request by U.S. Mail, Fax, Email, or by Hand Delivery to the Election Board office. If you are returning the Request by U.S. Mail, Fax, or Email it must be received by the Election Board no later than 4:30 P.M. EST, July 01, 2022. If you are returning the Request by Hand Delivery to the Election Board office, it must be received by 2:00 P.M. EST, July 08, 2022. When returning your Absentee Ballot Request form, you must ensure that you have allowed enough time for you to receive and return the absentee ballot. To receive an absentee ballot directly at the Election Board office, you must present this completed form and photo identification.

Return this form by U.S. Mail to:

Pokagon Band Election Board  
P.O. Box 696  
Dowagiac, MI 49047

OR

Return this form by Hand Delivery  
Pokagon Band Election Board Office  
58620 Sink Road  
Dowagiac, MI 49047  
Fax: (269) 462-4308  
Email: [election.board@pokagonband-nsn.gov](mailto:election.board@pokagonband-nsn.gov)

#### Election Board Use Only

Date/manner absentee ballot request received:

Absentee ballot request form received by:

Tribal citizen age and enrollment number verified:

Enrollment Department/Date

RECEIVED

MAY 04 2022

Per DS

1. I submit this affidavit based on my personal knowledge and if sworn as a witness, I can and will testify competently to the facts stated in this affidavit.
2. Unless otherwise stated, capitalized terms that are not defined in this Affidavit have the meaning set forth in the Response.
3. I am President of AES.
4. Consistent with prior elections, for the 2022 Election, the Election Board engaged AES to perform certain services under the supervision and control of the Election Board.

**Affidavit of Terry Rainey**  
**Page 2 of 6**

5. In the 2022 Election, AES: (a) prepared and printed all Ballots; (b) mailed the initial Absentee Ballots (both Original Absentee Ballots and Corrected Absentee Ballots); (c) provided the polling place ballots; and (d) provided certain 2022 Election equipment and supplies, including BCVS, voting booths, etc.; and (e) provided on-site Election Day technical support.
6. From June 10 - 17, 2022, AES mailed a total of 318 Original Absentee Ballots to Eligible Voters.
7. The Election Board caused the Corrected Absentee Ballot to be printed, with headings that were purple in color (the Original Absentee Ballot headings were black in color).
8. Each Ballot type contains a unique, hexadecimal code, which is tied to a Ballot style (but not a specific Ballot), and AES maintains an electronic record of the unique, hexadecimal code and the Ballot content information for the Ballots, which allows the Election Board to identify a Ballot style, including Original Absentee Ballots, which were Invalid Ballots.
9. On June 23, 2022, AES mailed the Corrected Absentee Ballot by expedited U.S. mail (1 to 2 day guaranteed delivery) to each of the 318 Affected Eligible Voters, and this Corrected Absentee Ballot mailing also included a preaddressed, postage prepaid envelope (three to four day guaranteed delivery) for the Affected Eligible Voter to return the Corrected Absentee Ballot.
10. On June 23 and 24, 2022 AES mailed the Corrected Absentee Ballot by expedited U.S. mail (one to two day guaranteed delivery) to the additional 48 Affected Eligible Voters, to whom the Election Board office had distributed the Original Absentee Ballot, and this Corrected Absentee Ballot mailing also included a preaddressed, postage prepaid envelope (three to four day guaranteed delivery) for the Affected Eligible Voter to return the Corrected Absentee Ballot.
11. AES mailed a total of 366 Corrected Absentee Ballots through the two mailings, but only 363 were tracked for delivery because two Corrected Absentee Ballot were returned to the Election Board as undeliverable and one was delivered and returned by the Affected Eligible Voter but was not scanned by the U.S. Post Office when it was delivered to the Affected Eligible Voter, and therefore, the Outbound Corrected Absentee Ballots Table accounts for 363 Corrected Absentee Ballots instead of 366 Corrected Absentee Ballots.

12. The below Outbound Corrected Absentee Ballot Table accurately reflects the following information for the Corrected Absentee Ballots mailed by AES: (a) Date Mailed by AES; (b) Date Received by Affected Eligible Voter; and (c) Number of Affected Eligible Voters Who Received the Mailing.

**OUTBOUND CORRECTED ABSENTEE BALLOT**

<b>Date Mailed by AES</b>	<b>Date Received by Affected Eligible Voter</b>	<b>Number of Affected Eligible Voters Who Received the Mailing</b>
June 23, 2022	June 24, 2022	254
June 23, 2022	June 25, 2022	77
June 23, 2022	June 27, 2022	1
June 23, 2022	June 30, 2022	1
June 23, 2022	July 5, 2022	1
June 24, 2022	June 24, 2022	28
June 24, 2022	June 28, 2022	1

13. The Outbound Corrected Absentee Ballot Table establishes that the Election Board's decision to mail the Corrected Absentee Ballots by expedited U.S. mail (one to two day guaranteed delivery) allowed the Affected Eligible Voters to receive the Corrected Absentee Ballots with sufficient time to complete and return the Corrected Absentee Ballots by the July 8, 2022 4:30 p.m. (EST) deadline by using the U.S. mail preaddressed, postage prepaid envelope (three to four day guaranteed delivery) envelope that was included in the Corrected Absentee Ballot mailing.
14. All Affected Absentee Voters (except four) received the Corrected Absentee Ballot by June 25, 2022 (13 days before the deadline), and of these four: (1) one received it by June 27, 2022 (11 days before the deadline); (2) one received it by June 28, 2022 (10 days before the deadline); (3) one received it by June 30, 2022 (eight days before the deadline); and (4) one received it by July 5, 2022 (three days before the deadline, which potentially was outside the timeline to ensure return by expedited U.S. mail (three to four day guaranteed delivery)).
15. The below Inbound Corrected Absentee Ballot Table accurately reflects the following information for the Corrected Absentee Ballots returned by expedited U.S. mail (three to four day guaranteed delivery): (a) Date Mailed by Affected Eligible Voter; (b) Date

Received by Post Office; and (c) Number of Returned to the Election Board Post Office Box.

**INBOUND CORRECTED ABSENTEE BALLOT**

<b>Date Mailed by Affected Eligible Voter</b>	<b>Date Received by Post Office)</b>	<b>Number Returned to the Election Board Post Office Box</b>
June 24, 2022	June 25, 2022	2
June 24, 2022	June 30, 2022	1
June 25, 2022	June 27, 2022	25
June 25, 2022	June 28, 2022	3
June 26, 2022	July 27, 2022	1
June 27, 2022	June 28, 2022	32
June 27, 2022	June 29, 2022	26
June 27, 2022	June 30, 2022	1
June 27, 2022	July 1, 2022	1
June 27, 2022	July 5, 2022	1
June 28, 2022	June 28, 2022	3
June 28, 2022	June 29, 2022	18
June 28, 2022	June 30, 2022	23
June 28, 2022	July 1, 2022	1
June 29, 2022	June 29, 2022	1
June 29, 2022	June 30, 2022	14
June 29, 2022	July 1, 2022	12
June 30, 2022	July 1, 2022	7
June 30, 2022	July 2, 2022	8
June 30, 2022	July 1, 2022	1
July 1, 2022	July 2, 2022	2
July 1, 2022	July 5, 2022	9
July 2, 2022	July 2, 2022	4
July 2, 2022	July 5, 2022	15
July 2, 2022	July 6, 2022	1
July 2, 2022	July 7, 2022	1
July 5, 2022	July 6, 2022	15
July 5, 2022	July 7, 2022	9
July 5, 2022	July 8, 2022	2
July 6, 2022	July 6, 2022	1

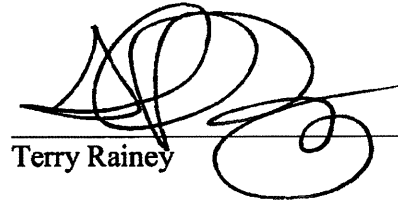
<b>Date Mailed by Affected Eligible Voter</b>	<b>Date Received by Post Office)</b>	<b>Number Returned to the Election Board Post Office Box</b>
July 6, 2022	July 7, 2022	5
July 6, 2022	July 8, 2022	4
July 7, 2022	July 8, 2022	8
July 8, 2022	July 8, 2022	2
		259 Total Received On-Time
July 8, 2022	LATE	1
July 7, 2022	LATE	1
July 8, 2022	LATE	2
July 11, 2022	LATE	1
		5 Total Received Late
		264 Total Received

16. The Inbound Corrected Absentee Ballot Table illustrates that only five of the Corrected Absentee Ballots that were returned by Affected Eligible Voters were received by the U.S. Post Office after the deadline.
17. In the 2022 Election, 47 Original Absentee Ballots were timely returned to the Election Board post office box and placed into the Absentee Ballot box in accordance with the Election Code.
18. The Original Absentee Ballots were returned in black and white envelopes with a unique packet identification number, which allowed the Election Board to identify the Original Absentee Ballots and not count them, and therefore, none of the Original Absentee Ballots were counted in the 2022 Election.
19. In the 2022 Election, 432 Corrected Absentee Ballots were distributed, and 332 Corrected Absentee Ballots were returned, and therefore, 100 Corrected Absentee Ballots were not returned.
20. Of the 332 of the Corrected Absentee Ballots that were timely returned to the Election Board post office box, six were Spoiled Ballots (as defined under subsection 1.E.38. of the Election Code), and therefore, 326 Corrected Absentee Ballots were counted in the 2022 Election (316, plus 10 Hand Tally).

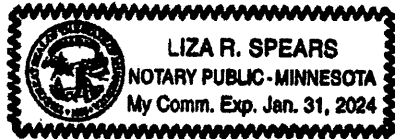
Further, the Affiant sayeth not.

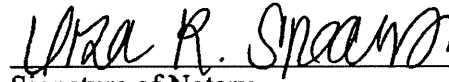
Affidavit of Terry Rainey  
Page 6 of 6

Signed by:

  
Terry Rainey

Subscribed and sworn to before me this 19th day of July 2022, by Terry Rainey.



  
Signature of Notary  
Printed Name of Notary Liza R. Spears  
Commissioned in Beltrami County, MN  
My Commission expires: Jan 31, 2024  
Acting in Beltrami County, MN

**POKAGON BAND OF POTAWATOMI INDIANS**  
**TRIBAL COURT**

In re: The Election held on July 9, 2022	)	<b>Hon. Michael Petoskey</b>
	)	<b>Case No. 22-180-ELE</b>
Gayle Green,	)	
	)	
Challenger	)	
	)	
v.	)	
	)	
Pokagon Band of Potawatomi Indians	)	
Election Board,	)	
	)	
<u>Respondent</u>	)	

Gayle Green, Pro Se

Pokagon Band of Potawatomi Indians  
Office of General Counsel  
J. Edward Williams (P61685)  
Paul W. Shagen (P57389)  
Attorneys for Respondent  
58620 Sink Road  
Dowagiac, MI 49047  
(269) 783-0970

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**AFFIDAVIT OF THERESA BARBER**

This Affidavit is given on July 19, 2022, by the undersigned, Theresa Barber, who being first duly sworn on her oath deposes and says:

1. I submit this affidavit based on my personal knowledge and if sworn as a witness, I can and will testify competently to the facts stated in this affidavit.
2. Unless otherwise stated, capitalized terms that are not defined in this Affidavit have the meaning set forth in the Response.
3. I am the Lead Enrollment and Elections Lead Clerk ("Lead Clerk) for the Pokagon Band of Potawatomi Indians ("Pokagon Band").
4. I have been the Lead Clerk for approximately four and one half years.

5. On April 14, 2022, the Election Board caused the 2022 Election Notice packet to be timely mailed in accordance with the Election Code to Eligible Voters via AES and posted within the Pokagon Band community in accordance with the Election Code.
6. The 2022 Election Notice packet included all information required by the Election Code, including the Absentee Ballot request form.
7. In the 2022 Election, Absentee Ballot request forms also were available at the Election Board office as required by the Election Code.
8. On June 10, 2022, in accordance with subsection 6.E. of the Election Code, the Absentee Ballots were prepared and ready within fifteen (15) days following the Election Board's certification of the List of Candidates.
9. From June 10 - 17, 2022, the Election Board office had distributed 48 Original Absentee Ballots.
10. For each Absentee Ballot request form received from an Affected Eligible Voter, the Election Board maintained a file in accordance with subsection 6.H of the Election Code, which included the names and addresses of the Affected Eligible Voters to whom the Original Absentee Ballots were delivered, including the date and method of delivery (by U.S. mail or in person at the Election Board office).
11. On or about June 17, 2022, the Election Board discovered printing errors in the Original Absentee Ballots that were mailed during the Covered Period, including because the Original Absentee Ballot stated: "Vote For One (1)" Councilperson, when it should have stated: "Vote For Two (2)" Councilpersons.
12. On June 22, 2022, the Election Board caused a letter to be sent to each Affected Eligible Voter, which letter is attached to the Response as Exhibit C.
13. On June 23, 2022, the Election Board caused an email to be sent to the Candidates, with the Absentee Ballot Message, which is attached to the Response as Exhibit D.
14. The Election Board also caused a Ballot Insert to be prepared and provided to Eligible Voters other than Affected Eligible Voters, which is attached to the Response as Exhibit E.

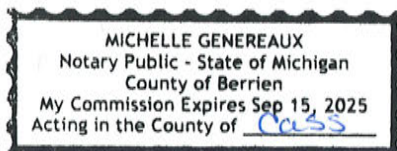
15. In the 2022 Election, 432 Corrected Absentee Ballots were distributed, as AES mailed 366 Corrected Absentee Ballots through the two mailings, and the Election Board office distributed 66 Corrected Absentee Ballots.
16. The Challenger submitted an Absentee Ballot request form ("Request Form") to the Election Board office in accordance with the Election Code, which is stamped "RECEIVED" by the Election Board office on May 4, 2022, and contains the initials "DS", which are the initials of Dana Sturgeon, Enrollment and Elections Supervisor.
17. On May 4, 2022, Ms. Sturgeon emailed the Challenger and confirmed receipt of the Challenger's 2022 Election related documents, which included the Request Form.
18. Unfortunately, the Request Form was not logged or filed as required under subsection 6.H of the Election Code, and therefore, the Election Board office did not mail, by U.S. mail, all necessary forms, ballots, and instructions as soon as they became available on June 10, 2022, as required under subsection 6.G. of the Election Code.
19. On July 5, 2022, the Election Board office became aware that the Election Board office had not complied with subsections 6.H. and 6.G. of the Election Code in regard to the Request Form.
20. On July 5, 2022, I spoke with the Challenger who indicated that she would vote in person at the Polling Place.


Further, the Affiant sayeth not.

Signed by:

  
Theresa Barber

Subscribed and sworn to before me this 19th day of July 2022, by Theresa Barber.



  
Signature of Notary  
Printed Name of Notary Michelle Genereaux  
Commissioned in Cass County, MI  
My Commission expires: Sept 15, 2025  
Acting in Cass County, MI

**POKAGON BAND OF POTAWATOMI INDIANS**  
**TRIBAL COURT**

In re: The Election held on July 9, 2022	)	<b>Hon. Michael Petoskey</b>
	)	<b>Case No. 22-180-ELE</b>
Gayle Green,	)	
	)	
Challenger	)	
	)	
v.	)	
	)	
Pokagon Band of Potawatomi Indians	)	
Election Board,	)	
	)	
Respondent	)	

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Gayle Green, Pro Se

Pokagon Band of Potawatomi Indians  
Office of General Counsel  
J. Edward Williams (P61685)  
Paul W. Shagen (P57389)  
Attorneys for Respondent  
58620 Sink Road  
Dowagiac, MI 49047  
(269) 783-0970

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**AFFIDAVIT OF AMY TRIBBETT**

This Affidavit is given on July 19, 2022, by the undersigned, Amy Tribbett, who being first duly sworn on her oath deposes and says:

1. I submit this affidavit based on my personal knowledge and if sworn as a witness, I can and will testify competently to the facts stated in this affidavit.
2. Unless otherwise stated, capitalized terms that are not defined in this Affidavit have the meaning set forth in the Response.
3. I am the Communications Director for the Pokagon Band.
4. On June 23, 2022, the "Absentee Ballot Errors Have Been Corrected" message ("Absentee Ballot Message") was posted on the Pokagon Band's website. A copy of the Absentee Ballot message is attached to the Response as Exhibit D.

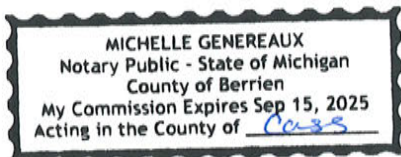
5. On June 27, 2022, the last known telephone number on file for each Eligible Voter was called with the Absentee Ballot Message. Specifically, approximately 75% of calls were answered, as follows: (a) 4,246 calls were attempted; (b) 3,203 calls were answered (either in person or answering service); (c) 1,043 calls were not answered for various reasons.
6. On June 27, 2022, the Absentee Ballot Message was emailed as a Bodewadmik Blast E-Newsletter to the last know email address on file for each Citizen.
7. On July 1, 2022, the Absentee Ballot Message was included in the Chairwoman's Corner of the Newsletter and mailed to the last known address on file for each Citizen and was included in the Chairwoman's Biweekly Update that is posted on the Citizen's portal on the Pokagon Band website.


Further, the Affiant sayeth not.

Signed by:

  
Amy Tribbett

Subscribed and sworn to before me this 19th day of July 2022, by Amy Tribbett.



  
Signature of Notary  
Printed Name of Notary  
Commissioned in Berrien County, MI  
My Commission expires: Sept 15, 2025  
Acting in Cass County, MI

**POKAGON BAND OF POTAWATOMI INDIANS  
TRIBAL COURT**

In re: The Election held on July 9, 2022	)	<b>Hon. Michael Petoskey</b>
	)	<b>Case No. 22-180-ELE</b>
Gayle Green,	)	
	)	
Challenger	)	
	)	
v.	)	
	)	
Pokagon Band of Potawatomi Indians	)	
Election Board,	)	
	)	
Respondent	)	

---

Gayle Green, Pro Se

Pokagon Band of Potawatomi Indians  
Office of General Counsel  
J. Edward Williams (P61685)  
Paul W. Shagen (P57389)  
Attorneys for Respondent  
58620 Sink Road  
Dowagiac, MI 49047  
(269) 783-0970

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**AFFIDAVIT OF ERIC SHAER**

This Affidavit is given on July 19, 2022, by the undersigned, Eric Shaer, who being first duly sworn on his oath deposes and says:

1. I submit this affidavit based on my personal knowledge and if sworn as a witness, I can and will testify competently to the facts stated in this affidavit.
2. Unless otherwise stated, capitalized terms that are not defined in this Affidavit have the meaning set forth in the Response.
3. I am a member of the Election Board.
4. I have served on the Election Board for approximately 15 years.

5. On June 27, 2022, in my capacity as a member of the Election Board, I attended an open meeting of the Tribal Council and updated the Tribal Council on the printing errors with the Original Absentee Ballots and the steps the Election Board had taken to address the issue, including through the Corrected Absentee Ballots.
6. The Tribal Council did not make any decision regarding the 2022 Election at the June 27, 2022 Tribal Council meeting.
7. Citizens attended this open Tribal Council meeting both in person and virtually, as Citizens are able to attend open Tribal Council meetings in person, or virtually by calling in, or by Microsoft TEAMS.

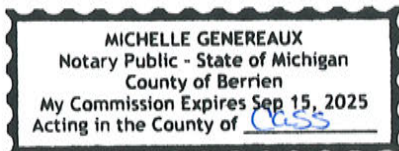
Further, the Affiant sayeth not.


Signed by:



Eric Shaer

Subscribed and sworn to before me this 19th day of July 2022, by Eric Shaer.



  
Signature of Notary  
Printed Name of Notary Michelle Genereaux  
Commissioned in Cass County, MI  
My Commission expires: Sept 15, 2025  
Acting in Cass County, MI