

**POKAGON BAND OF POTAWATOMI INDIANS  
TRIBAL COURT**

In re: the Election held on July 9, 2022

Lois Wesaw  
Patricia Williams,

Challengers(s)

v.

Pokagon Band of Potawatomi Indians  
Election Board,

Respondent

**Case No. 22-181-ELE**

**Hon. Michael Petoskey**

Lois Wesaw, Pro Se

Patricia Williams, Pro Se

Pokagon Band of Potawatomi Indians  
Office of General Counsel  
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**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 Lois Wesaw and Patricia Williams ("Challenge"), regarding the July 9, 2022 General Election ("2022 Election") (Ms. Wesaw and Ms. Williams are collectively the "Challengers").<sup>1</sup>

<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.

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## **I. JURISDICTION**

As explained below in Section V.2.A of this Response, the Court lacks jurisdiction of this matter under Article XIII, subsection 3(d) of the Pokagon Band of Potawatomi Indians Constitution (“Constitution”) and subsection 14.C. of the Pokagon Band of Potawatomi Indians Election Code (“Election Code”). Therefore, this Challenge must be dismissed.

## **II. STANDARD OF REVIEW**

The Challengers bear 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 Challengers meet 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:

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 or the decision the Election Board should have reached if it can determine with reasonable certainty what the outcome or decision should have been.

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 will assist the Court in determining that the Court lacks jurisdiction of this matter, and 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:

- Election Day (second Saturday in July for General Elections);
- The date to post and distribute notice of the deadline for Elected Officials to file candidate declarations if their office is not already scheduled to be filled in the election and they are seeking a different elective office, which shall be at least 99 days before Election Day;<sup>2</sup>
- The deadline for Election Board members, the Election Clerk, and Alternates to file for elective office, which shall be at least 94 days before Election Day;
- The deadline to file candidate declarations for Elected Officials whose office is not already scheduled to be filled in the election and are seeking a different elective office, which shall be at least 89 days before Election Day;
- The deadline for the Election Board to distribute the Election Notice, which shall be at least 84 days before Election Day; and

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<sup>2</sup> . “Elected Officials whose current office is not already scheduled to be filled in the election and intend to seek a different elective office, must file candidate declarations prior to the required posting of the Election Notice, in order to permit the Election Board to include such office in the election.” Election Code, § 3.D. This provision of the Election Code implements Art. XV, subsection 3(c) of the Constitution, which provides that “[t]he office of any Tribal Council...member who becomes certified by the Election Board as a candidate for an elective tribal office not presently held by such member shall be deemed to be vacant as of the first Regular Meeting of the Tribal Council next following the General or Special Election involved ... The certification by the Election Board of an elected tribal official’s candidacy for another elective tribal office shall be deemed a notice of resignation by the candidate from the candidate’s current elective tribal office, which resignation shall be effective at the time the current elective tribal office becomes vacant.”

- The deadline for candidates (other than Election Board members, the Election Clerk, and Alternates, or an Elected Official seeking a different elective office) to file candidate declarations, authorization to conduct criminal background check, and candidate statements, which must be at least 64 days before Election Day; and
- The date the Election Board certifies the List of Candidates, which must be at least 44 days 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; and (2) Event Timetable (regarding voter and candidate activities). Election Code, § 3.E.2.

### **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. Barber, ¶ 4. In the 2022 Election, AES performed certain services for the Board, including mailing the initial Election Notice, mailing the subsequent notice of the addition of the Tribal Council Treasurer seat, preparing and printing all Ballots, and mailing the initial Absentee Ballots. Affidavit, T. Barber, ¶ 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; (3) Councilperson; and (4) Councilperson.<sup>3</sup> See 2022 General Election Uncertified Election Results, attached as Exhibit A.

### **3. Tribal Council Treasurer Vacancy**

The Tribal Council Treasurer seat initially was not open in the 2022 Election and did not appear in the initial listing of open seats in the Election Notice provided to Citizens who are 18 years of age and older as of Election Day. Affidavit, T. Barber, ¶ 6. However, the Tribal Council Treasurer resigned from such position effective April 24, 2022. See Tribal Council Resolution No. 22-04-25-04, attached as Exhibit B.

The next day, through Tribal Council Resolution No. 22-04-25-04, the Tribal Council filled the vacancy by appointing Alex Wesaw, a seated Tribal Councilperson, to serve in the Tribal Council Treasurer position in an acting capacity and only until the 2022 Election. See Tribal Council Resolution No. 22-04-25-04, Constitution, Art. XV, subsection 3(e) (A vacancy in the Tribal Council Treasurer position “shall be filled by Tribal Council appointment of a seated Tribal Councilperson originally elected by the membership.”). Such appointment as Acting Treasurer was only until the 2022 Election. See Tribal Council Resolution 22-04-25-04, Constitution Art. XV, subsection 3(h) (“The official who is appointed to fill a Council vacancy...shall serve in that position only until the next General Election for Tribal Council.”) Following the 2022 Election, Mr. Wesaw will return to his original Councilperson position, until the deemed resignation becomes effective. Id. (“A Council Member appointed in an acting

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<sup>3</sup> The 2022 Election included 12 ballot questions relating to amendments to the Constitution and Pokagon Band Revenue Allocation Plan. The 2022 Election also included one Salary Commission position, for which there was one Candidate, and therefore, such Candidate was deemed elected and the seat was not included on the final Ballots.

capacity to the position of...Treasurer... shall resume his/her original position if the term for that position extends beyond the next General Election of Council Members.”).

The Tribal Council also directed the Election Board to include the Tribal Council Treasurer seat in the 2022 Election. See Tribal Council Resolution No. 22-04-25-04. Because the Election Board already caused the Election Notice with available seats to be mailed, the addition of the Tribal Council Treasurer seat caused the Election Board to send a subsequent mailing to Citizens who are 18 years of age and older as of Election Day informing them that the Tribal Council Treasurer position will be open in the 2022 Election. Affidavit, T. Barber, ¶ 8.

#### **4. Extension of Declaration Deadline for Treasurer Position**

Through Tribal Council Resolution No. 22-04-25-05, the Tribal Council extended the deadline for any Elected Officials whose office is not already scheduled to be filled in the 2022 Election and who seek the Tribal Council Treasurer position, to file the candidate declaration until May 6, 2022 (64 days before Election Day). See Tribal Council Resolution No. 22-04-25-05, attached as Exhibit C. Tribal Council determined that this action was necessary because the Tribal Council Treasurer position was added to the Tribal Council seats available through the 2022 Election on April 25, 2022 (75 days before Election Day), which is after the Elected Official declaration date of 89 days before Election Day (April 11, 2022). See Election Code, § 3.B.

It should be noted that Tribal Council Resolution No. 22-04-25-05 was approved on April 25, 2022 (75 days before Election Day), so Tribal Council did not extend the 64 day candidate declaration deadline that applies to candidates generally (who are not Election Board members, the Election Clerk, and Alternates, or Elected Officials whose office is not already scheduled to be filled in the 2022 election and who seek a different elective office). See Election Code, § 3.B.

**5. Decision to Not Fill Subsequent Vacancies in 2022 Election**

Through Tribal Council Resolution No. 22-04-25-05, the Tribal Council also decided not to fill any subsequent Tribal Council vacancy that arises from a current Tribal Council member whose term is not already up in the 2022 Election becoming a certified candidate for the Tribal Council Treasurer position in the 2022 Election. See Tribal Council Resolution No. 22-04-25-05. The Tribal Council determined that such action was necessary to provide “certainty and in order to avoid subsequent additions regarding available elective offices” in the 2022 Election.

Id. In other words, because of time limitations, including the requirement that the Election Notice be distributed at least 84 days before Election Day, that persons be informed of and have an opportunity to declare for such position(s), and that Election Day occur on the second Saturday in July, the Tribal Council sought to avoid additional disruptions and changes to the 2022 Election that would occur if a Tribal Council member became a certified candidate on or after May 6, 2022 (64 days before Election Day). See Id.

The below table illustrates the Tribal Council’s rationale for not including in the 2022 Election, the office of any Elected Official whose office is not already scheduled to be filled in the 2022 Election, who becomes a certified candidate for the Tribal Council Treasurer position in the 2022 Election. Specifically, if the Tribal Council had included such offices in the 2022 Election, then it would have been necessary to both: (1) provide additional notice to Citizens after the 84 day deadline to post and distribute the Election Notice; and (2) extend the deadline for candidates to declare for such offices because current Elected Officials whose office are not already scheduled to be filled in the election and are seeking a different elective office had until May 6, 2022 to file a candidate declaration for the Tribal Council Treasurer position, which is the same May 6, 2022 deadline for candidates to file candidate declarations (as illustrated in the



table below). On May 5, 2022, Mr. Wesaw filed a candidate declaration for the Tribal Council Treasurer position. Affidavit, T. Barber, ¶ 9. Therefore, unless the May 6, 2022 deadline were extended, no Citizen would have been able run for the Councilperson seat from which Mr. Wesaw was deemed to have resigned (“Wesaw Vacated Seat”).

<b>Election Code Event</b>	<b>Election Code Days</b>	<b>Res No. 22-04-25-04</b>	<b>Res No. 22-04-25-05</b>
Deadline for Election Board members, Election Clerk, and Alternates to file candidate declarations	<b>99</b> days before Election Day, being <b>April 1, 2022</b>	No change to date	No change to date
Deadline for Elected Officials seeking different elective office to file candidate declarations	<b>89</b> days before Election Day, being <b>April 11, 2022</b>	No change to date	Changed the date to <b>May 6, 2022, solely as to any Elected Official whose office it not already scheduled to be filled in the 2022 Election and who seeks the Treasurer position</b> because the April 11, 2022 deadline passed
Post and Distribute the Election Notice	<b>84</b> days before Election Day, being <b>April 16, 2022</b>	No change to date	No change to date, <b>but if the Wesaw Vacated Seat were added to 2022 Election, Citizens would need notice</b>
No Event	No Date	On <b>April 25, 2022</b> , added Treasurer position to 2022 Election	On <b>April 25, 2022</b> , decided that the office of any current Elected Officials, certified as candidate for Treasurer position shall not be added to 2022 Election

<b>Election Code Event</b>	<b>Election Code Days</b>	<b>Res No. 22-04-25-04</b>	<b>Res No. 22-04-25-05</b>
Deadline for candidates (other than persons described above) to file candidate declarations	64 days before Election Day, being <b>May 6, 2022</b>	No change to date	No change to date, <b>but if the Wesaw Vacated Seat were added to 2022 Election, the deadline would need to be extended because of the May 6, 2022 deadline for candidate declarations for Treasurer position</b>

**6. Alex Wesaw Deemed Resignation**

On May 5, 2022, Mr. Wesaw, a Tribal Councilperson, whose term of office ends in 2023, filed a candidate declaration form with the Election Board office, and thereafter, was certified as a candidate in the 2022 Election for the vacant Tribal Council Treasurer position. Affidavit, T. Barber, ¶ 9. Accordingly, under the Constitution, Mr. Wesaw was deemed to have resigned from the Wesaw Vacated Seat as of the first Regular Meeting of the Tribal Council after the 2022 Election or 45 days after the 2022 Election, whichever comes first. See Constitution, Art. XIII, subsection 3(c). Thus, under the Constitution, the earliest the Wesaw Vacated Seat would be deemed vacant is August 13, 2022, the date that the first Tribal Council meeting after the 2022 Election is scheduled to be held. Affidavit, T. Barber, ¶ 10.

## **V. THE CHALLENGE**

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

On July 13, 2022, the Challengers, who allege to have voted in the 2022 Election,<sup>4</sup> timely filed a Challenge regarding the 2022 Election.<sup>5</sup> Broadly, although the Challenge recounts certain events involving the 2022 Election, including the Tribal Council's extension of the deadline for Elected Officials to declare for the open Tribal Council Treasurer seat, the Challenge ultimately centers on the following decision of Tribal Council, through Resolution No. 22-04-25-05:

In the interest of certainty and in order to avoid subsequent additions regarding available elective offices in the 2022 General Election, the office of any Elected Official whose office is not already scheduled to be filled in the 2022 General Election who becomes a certified candidate for the Tribal Council Treasurer position shall not be added to the elective office positions to be filled in the 2022 General Election.

See Challenge, at p. 4, 5, Tribal Council Resolution No. 22-04-25-05. Additionally, the Challenge states that at the June 27, 2022 Tribal Council meeting, the Challengers asked “Tribal Council to select the persons with the certified 3<sup>rd</sup> highest vote count for appointment” to the Wesaw Vacated Seat. Challenge, at ¶ 15. The Challengers even provided Tribal Council with a proposed Tribal Council Resolution (attached to the Challenge as Exhibit A), which would have approved the Challenger's request, but the Tribal Council refused to act on it. See Id.

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<sup>4</sup> “Regular Elections . . . may be challenged only by candidates for elective office or voters in the election being challenged.” Election Code, § 14.A.

<sup>5</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.

Moreover, the scope of the Challenge is defined by the Challenger's requested remedy, which seeks relief from the Tribal Council's determination under Tribal Council Resolution No. 22-04-25-05, to not fill any subsequently vacated seat in the 2022 Election. Specifically, the Challengers seek: (1) "an order requiring the Election Board to declare the candidate for Councilperson who received the certified third highest vote count in the [2022] Election as the winner" of the Wesaw Vacated Seat; or (2) if such remedy cannot be granted, then an order requiring the Election Board to "conduct a Special Election for . . . [the Wesaw Vacated Seat], comprised of only those candidates who did not win a seat for Councilperson in the 2022 General Election."<sup>6</sup> Challenge, at 4. (Emphasis added).

## **2. The Challenge Must Fail**

As explained more fully below, the Challenge must fail because: (1) the Court lacks jurisdiction of this Challenge under the Constitution and Election Code; (2) even if the Court had jurisdiction of this Challenge, the Challenge involves a nonjusticiable political question involving the manner in which to fill the Wesaw Vacated Seat, including because the Constitution clearly vests such authority in the Tribal Council, and not the Court or Election Board, and thus this Challenge is not suitable for judicial review; and (3) even if the Court had such jurisdiction of this Challenge, the Challengers have not met the burden of proof to demonstrate by clear and convincing evidence that any decision of the Election Board was

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<sup>6</sup> The Challengers' use of the language "comprised of only those candidates who did not win a seat for Councilperson in the 2022 General Election" is curious, because it appears that the Challengers seek a remedy that would limit the candidates who would be eligible to fill the Wesaw Vacated Seat through a Special Election to those persons who were candidates for the two open Tribal Councilperson seats in the 2022 Election. If granted, this remedy would deprive other eligible Citizens of their right to be a candidate in the Special Election. See Constitution, Art. X, subsection 2 (listing the qualifications for Citizens to serve on Tribal Council). The Challengers' requested remedy is inconsistent with the Challenge's stated purpose of ensuring "participation by Citizens in the electoral process and to advance fair, legal, and impartial elections." See Challenge, at p. 4.

affected by a clear error in the application of the Election Code, rather the Election Board substantially complied with the Election Code, which is adequate because complete compliance is not required. Election Code, § 14.C.

**A. The Challenge must be dismissed because the Court Lacks Jurisdiction of this Challenge under Article XIII, subsection 3(d) of the Constitution and subsection 14.C. of the Election Code.**

The Court lacks jurisdiction of this Challenge under Article XIII, subsection 3(d) of the Constitution and subsection 14.C. of the Election Code. Under the Constitution:

Decisions of the Election Board under this Article may be appealed to the Tribal Judiciary only on the grounds that the Board's decision has been affected by a clear error in the application of tribal election law or federal law, if applicable, or by a conflict of interest or conduct violating the tribal Code of Ethics.

Constitution, Art. XIII, subsection 3(d) (Emphasis added). Additionally, under the Election Code:

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 Challenger bears the full burden of proof by clear and convincing evidence. Substantial, rather than complete, compliance with this Code shall be deemed adequate. 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.

Election Code, § 14.C. (Emphasis added).

Moreover, in regard to available remedies, the Election Code focuses only on the Election Board's actions, 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.

Election Code, § 14.D. (Emphasis added).

The Challenge ultimately does not involve an Election Board decision, but rather focuses on the Tribal Council's decision, through Resolution No. 22-04-25-05, that:

In the interest of certainty and in order to avoid subsequent additions regarding available elective offices in the 2022 General Election, the office of any Elected Official whose office is not already scheduled to be filled in the 2022 General Election who becomes a certified candidate for the Tribal Council Treasurer position shall not be added to the elective office positions to be filled in the 2022 General Election.

See Tribal Council Resolution No. 22-04-25-05 (Emphasis added). For example, in relevant part, the Challenge states:

- “On April 25, 2022, Tribal Council resolved that it was extending the deadline. . .” Challenge, at ¶ 6. (Emphasis added)
- “To ‘fix’ this problem, Tribal Council changed the election process through Resolution 22-04-25-05 by extending the deadline . . .” Id. at p. 2. (Emphasis added).

- “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.” Challenge, at p. 3. (Emphasis added).
- “Tribal Council chose not to add those offices of Vacating Officials to be filled in the 2022 General Election for reasons of ‘certainty’.” Id. (Emphasis added).
- “With the altered declaration deadline, Tribal Council had already ordered the election process changed.” Id. (Emphasis added).
- “There is no evidence the Election Board deliberated whether the demands of Tribal Council were appropriate under tribal election law.” Id. at p. 4. (Emphasis added).
- “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.” Id. (Emphasis added).
- “There is no evidence the Election Board determined if leaving the vacated Tribal Councilperson position off the Ballot was consistent with election practices . . .” Id. (Emphasis added).<sup>7</sup>

As illustrated above, the Challenge centers on the Tribal Council’s decision, and not the Election Board’s decision and, only “[d]ecisions of the Election Board” may be

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<sup>7</sup> The Challenge also asserts that the Election Board “should have” taken certain action, specifically that the Election Board should have: (1) “placed the . . . [Wesaw Vacated Seat] . . . on the Ballot for the Election”; (2) “notified citizens there were 3 open Councilperson seats”; and (3) “deliberated Tribal Council’s Resolution not to place the . . . [Wesaw Vacated Seat] on the Ballot”. Challenge, at p. 4. However, none of Challenger’s “should have[s]” qualify as an “Election Board decision.”

challenged under Article XIII, subsection 3(d) of the Constitution and subsection 14.D. of the Election Code.

Additionally, the Challenge does not relate to any Election Board decision because the Challengers only seeks relief from the Tribal Council's decision to not include the Wesaw Vacated Seat on the Ballot for the 2022 Election, by requesting: (1) “an order requiring the Election Board to declare the candidate for Councilperson who received the certified third highest vote count in the [2022] Election as the winner of . . . [Wesaw Vacated Seat]”; or (2) if such remedy cannot be granted, then an order requiring the Election Board to “conduct a Special Election for . . . [the Wesaw Vacated Seat], comprised of only those candidates who did not win a seat for Councilperson in the 2022 General Election.” Challenge, at 4. (Emphasis added).

Importantly, the Challenger's requested relief is fatal to the Challenge. In this regard, the Challenge unambiguously contemplates that the 2022 Election results be “certified” and seeks relief from the Court only after such certification. See Id. Under the Election Code, the 2022 Election results can only be “certified” and posted after the Court has resolved the Challenge. See Election Code, § 3.B. Therefore, the Court lacks jurisdiction of this matter under Article XIII, subsection 3(d) of the Constitution and subsection 14.C. of the Election Code.

For the reasons stated above, the Challenge must fail.

**B. The Challenge must be dismissed because it involves a nonjusticiable political question involving the manner in which to fill the Wesaw Vacated Seat, including because the Constitution clearly vests such authority in the Tribal Council, and not the Court or Election Board, and thus this Challenge is not suitable for judicial review.**



The Court must dismiss the Challenge because it involves a nonjusticiable political question and is not suitable for judicial review, but rather the manner in which to fill the Wesaw Vacated Seat must be decided solely by the Tribal Council, the governing body. The Constitution embodies the concept of “separation of powers”, including between the Tribal Council, the elected branch, and the Tribal Court system, the appointed branch.

Without limitation, the Constitution defines the Tribal Council’s role to include: “Except as governing powers are conferred upon others by this Constitution, the Tribal Council shall be the governing body of the Pokagon Band.” In relevant part (as discussed more fully below), the Constitution grants the Tribal Council, and not the Court or Election Board, the authority to decide the manner (either by appointment or in an election) to fill the Wesaw Vacated Seat, which was vacated because Mr. Wesaw became certified candidate for an elective tribal office not presently held by Mr. Wesaw. Constitution, Art. XV, subsection 3(f).

In contrast, in regard to the Tribal Court system, the Constitution states: “The judicial power of the Pokagon Band shall be vested in a tribal court system.” Constitution, Art. XII, Section 1. Additionally, the Tribal Court system shall “resolve legal controversies properly put before it, to apply tribal law and exercise tribal jurisdiction, and to enforce the rights and remedies provided in the Constitution.” Constitution, Art. VI, subsection (e). Thus, the Constitution expressly establishes separate and distinct spheres of authority for the Tribal Council and the Tribal Court system, especially regarding the manner in which to fill the Wesaw Vacated Seat.

A review of the Tribal Court system jurisprudence did not locate any case law involving the political question doctrine, under which “certain matters are really political in nature and best resolved by the body politic rather than suitable for judicial review.” John E. Nowak, Ronald D. Rotunda, Constitutional Law, § 2.15 (7<sup>th</sup> ed. 2004). In the absence of such case law, it is

appropriate to look to federal case law to guide determinations of justiciability under the Constitution.

The U.S. Supreme Court has recognized that “[t]he nonjusticiability of a political question is primarily a function of the separation of powers.” Baker v. Carr, 369 U.S. 186, 201 (1962) (holding that allegations that a state statute effected an apportionment that deprived plaintiffs of equal protection of the laws in violation of the Fourteenth Amendment presented a justiciable constitutional cause of action, and the right asserted was within reach of judicial protection under the Fourteenth Amendment and did not present a nonjusticiable political question). Additionally, the U.S. Supreme Court has noted the complexity of the political question doctrine, stating: “Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation . . .” Id. at 211.

In Baker, to determine whether the political question doctrine applied, the Court set forth the following test:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. at 217. See Nixon v. United States, 506 U.S. 224 (1993) (holding that the case involved a nonjusticiable political question because the U.S. Constitution grants the Senate, rather than the courts, the power to decide the rules for an impeachment trial).

First, the Challenge is barred by the political question doctrine because the Constitution contains a “textually demonstrable constitutional commitment of the issue” to the Tribal Council, and the Tribal Council did not exceed its authority under the Constitution (or impair any individual right protected under the Constitution) when it exercised its discretion to determine the manner in which to fill the Wesaw Vacated Seat.

The Tribal Council, and not the Court or the Election Board, is empowered under the Constitution to determine the manner in which to fill Tribal Councilperson vacancies, including the Wesaw Vacated Seat, subject to the Constitution. In this regard, the Constitution expressly grants the Tribal Council discretion whether to fill such vacancies, including the Wesaw Vacated Seat, stating that such vacancy “may be filled in the same General or Special Election filling the other office.”<sup>8</sup> See Constitution, Art. Subsection 3(c). (Emphasis added). The text, context, and purpose of “may” establishes that it is permissive rather than mandatory, and therefore, the Tribal Council has discretion to decide to fill such vacancy “in the same General or Special Election filling the other office.” Id.

Unless the Tribal Council elects to “fill in the same General or Special Election filling the other office”, a Tribal Councilperson vacancy that is created when a Tribal Councilperson is certified as a candidate for another elective tribal office, such as the Wesaw Vacated Seat, the first five Tribal Councilperson vacancies that occur between regularly scheduled elections for the Tribal Council “shall be filled by Tribal Council appointment.” See Constitution, Art. Subsection 3(f). (Emphasis added). In contrast to “may”, the text, context, and purpose of “shall” indicates it is mandatory rather than permissive, and therefore, the Tribal Council must fill the vacancy by

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<sup>8</sup> It should be noted that the Tribal Council has incorporated into the Tribal Council Procedures Act the vacancy provisions of Article XV, Section 3 of the Constitution. See Tribal Council Procedures Act, § 12.03. Because the political question doctrine focuses on separation of powers under the Constitution, this Response focuses on Article XV, Section 3 of the Constitution, but discusses the Tribal Council Procedures Act when warranted.

Tribal Council appointment, because the Tribal Council chose not to fill the vacancy “in the same General or Special Election filling the other office.” See Id.

Additionally, when a Tribal Councilperson vacancy is “required” to be filled by appointment, because the Tribal Council elected to not fill the vacancy “in the same General or Special Election filling the other office”, the Tribal Council must make a good faith effort to fill the vacancy within 45 days of the vacancy, or as soon as possible in the manner stated in the Tribal Council Procedures Act, but the Tribal Council “may choose to waive its authority to make an appointment” to a vacant Tribal Councilperson seat and refer the vacancy to be filled through a Special Election.” See Constitution, Art. Subsection 3(g). Thus, the Tribal Council “may choose” to fill the Wesaw Vacant Seat through a Special Election or appointment, in accordance with the Constitution. Id. Therefore, the Constitution unambiguously commits to the Tribal Council, and not the Tribal Court or Election Board, the manner in which to fill a Tribal Councilmember vacancy created when a Tribal Councilperson is certified as a candidate for another elective tribal office, including the Wesaw Vacated Seat.

Importantly, the Tribal Council has exercised its authority under the Constitution to enact Band law to prescribe procedures to fill Tribal Council vacancies occurring between regularly scheduled elections. See Tribal Council Procedures Act, § 12.02(d), 12.03(d) – (f). Broadly, the procedures require the Tribal Council to post notice of the vacancy within the community, interested eligible Citizens to submit written statements of interest, and the Tribal Council to make a reasonable effort to fill the vacancy within 45 days after the effective date of the vacancy. See Id., Constitution, Art. XV, subsection 3(c). Thus, granting the Challenger’s requested relief would violate both the Constitution and Tribal Council Procedures Act.

Second, the granting of the request relief would express “the lack of respect” for the Tribal Council and result in “embarrassment from multifarious pronouncements by various departments on one question”, including among the Court, Tribal Council and Election Board. Recall, the Tribal Council, pursuant to its unambiguous authority granted under the Constitution, determined through Resolution No. 22-04-25-05 that the Wesaw Vacated Seat would not be filled in the 2022 Election “[i]n the interest of certainty and in order to avoid subsequent additions regarding available elective offices in the 2022 Election . . .” See Tribal Council Resolution No. 22-04-25-05, See also Constitution, Art. XV, Section 3. Thus, granting the Challenger’s requested relief would violate the above Baker prudential factors governing nonjusticiable political questions.

Moreover, the Challengers’ unsuccessful attempt to obtain their desired result through the political processes further supports the position that the Court must dismiss the Challenge because it involves a nonjusticiable political question and is not suitable for judicial review. The Challengers attended the June 27, 2022 Tribal Council meeting, and “discussed ballot and elections concerns with Tribal Council, asking the Tribal Council to select the person with the certified 3<sup>rd</sup> highest vote count for appointment to the . . . [Wesaw Vacated Seat].” Challenge, at ¶ 15. The Challengers even provided the Tribal Council with a proposed Tribal Council Resolution (attached to the Challenge as Exhibit A), which if approved, would have achieved the Challenger’s desired political result. Id. However, the Tribal Council refused to approve the proposed Tribal Council Resolution, including because it was contrary to the Tribal Council Procedures Act. See Complaint, at p. 3., Tribal Council Procedures Act, § 12.03. The Challenger’s actions demonstrate that they are aware that: (1) the Constitution vests with the Tribal Council the authority to fill the Wesaw Vacated Seat (they asked Tribal Council to do so); and (2) the Constitution and Tribal Council Procedures Act state the requisite process to fill the Wesaw Vacated Seat (they were

informed of such). The Court must reject the Challenger's attempt to obtain a political result that was disallowed by the Tribal Council.

Accordingly, the Challenge is barred by the political question doctrine, including because the Constitution contains a "textually demonstrable constitutional commitment of the issue" to the Tribal Council, and the granting of the request relief would express "the lack of respect" for the Tribal Council and result in "embarrassment from multifarious pronouncements by various departments on one question", including among the Court, Tribal Council and Election Board.

For the reasons stated above, the Challenge must fail.

**C. Even if the Court had jurisdiction of this Challenge, the Challengers have not met the burden of proof to demonstrate by clear and convincing evidence that any decision of the Election Board was affected by a clear error in the application of the Election Code, and the Election Board substantially complied with the Election Code, which is adequate because complete compliance is not required.**

The Challengers have not met the requisite burden of proof to demonstrate by clear and convincing evidence that any decision of the Election Board was affected by a clear error in the application of the Election Code. Rather, the Challenge conflates the distinct roles of the Tribal Council and Election Board under the Constitution and faults the Election Board for complying with Tribal Council Resolution No. 22-04-25-05, which constituted a lawful Tribal Council enactment.

The Challenge correctly recognizes that under the Constitution, the Election Board is charged with conducting elections. See Challenge, at p. 4, Constitution, Article XIII, subsection 3(a). However, the Challenge incorrectly asserts that because of this responsibility, the Election Board "should have placed" the Wesaw Vacated Seat on the Ballot for the 2022 Election. Challenge, at p. 4. Of course: (1) this assertion is flawed because it ignores the authority and discretion expressly granted to the Tribal Council (and not the Election Board) to fill, by

appointment or in an election, the Wesaw Vacated Seat; and (2) the Challenge fails to identify any source of authority that would empower the Election Board to take such action because none exists.

To the contrary, consistent with the express grant of authority and discretion under the Constitution, the Tribal Council approved Tribal Council Resolution No. 22-04-25-05, and in doing so, determined that the Wesaw Vacated Seat would not be filled in the 2022 Election, including “[i]n the interest of certainty and in order to avoid subsequent additions regarding available elective offices in the 2022 Election . . .” See Tribal Council Resolution No. 22-04-25-05, See also, Constitution, Art. XV, Section 3. The Election Board did not make this determination, but the Election Board was required to follow it because the Tribal Council, not the Election Board, is empowered under the Constitution to determine the manner in which to fill the Wesaw Vacated Seat, whether by appointment or in an election. See Id., Constitution, Art. XIII, subsection 3(f).

Accordingly, the Challengers have not met the burden of proof to demonstrate by clear and convincing evidence that any decision of the Election Board was affected by a clear error in the application of the Election Code. To the contrary, as required, the Election Board complied with the Tribal Council’s directive in Resolution No. 22-04-25-05 regarding the filling of the Wesaw Vacated Seat, and Election Board substantially complied with the Election Code, which is adequate because complete compliance is not required.

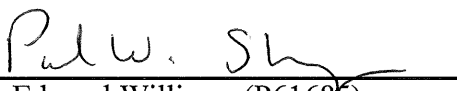
For the reasons stated above, the Challenge must fail.

**VI. REQUESTED REMEDY**

Respondent requests that the Court: (1) deny the Challengers 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:   
J. Edward Williams (P61685)  
Paul W. Shagen (P57389)  
Pokagon Band of Potawatomi Indians  
Office of General Counsel  
Attorneys for Respondent  
58620 Sink Road  
Dowagiac, Michigan 49047  
(269) 783-0970



## **APPENDIX**

### **Exhibits**

Exhibit A General Election Uncertified Election Results

Exhibit B Tribal Council Resolution No. 22-04-25-04

Exhibit C Tribal Council Resolution No. 22-04-25-05

### **Affidavits**

Affidavit of Theresa Barber



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

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**EXHIBIT**

A

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>306</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>262</b>	<b>562</b>	<b>100.00%</b>

COUNCILPERSON (MEMBER AT LARGE)	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
VICTOR STEPHEN WARREN	74	3	54	131	23.38%
ANITA LOUISE MORALES	115	3	95	213	38.46%
RHONDA LOUISE KEENE	147	7	133	287	51.21%
MARK HUDSON PARRISH	124	6	105	235	42.00%
TRACY ANNETTE WESAW	50	0	63	113	20.49%
<b>VOTE TOTALS</b>	<b>510</b>	<b>19</b>	<b>460</b>	<b>979</b>	<b>100.00%</b>

PROPOSAL TO AMEND #1	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	185	6	176	367	64.23%
NO	108	4	75	187	33.76%
<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	80.38%
NO	42	4	71	117	21.61%
<b>VOTE TOTALS</b>	<b>322</b>	<b>10</b>	<b>254</b>	<b>566</b>	<b>100.00%</b>

PROPOSAL TO AMEND #3	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	273	7	200	480	84.84%
NO	27	3	49	79	14.15%
<b>VOTE TOTALS</b>	<b>300</b>	<b>10</b>	<b>249</b>	<b>559</b>	<b>100.00%</b>

TOTAL BALLOTS CAST	316	10	260
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VOTER PARTICIPATION	ELIGIBLE VOTERS	TOTAL VOTERS	%
15%	3723	558	15.74%
One sixth (1/6)	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	62.42%
NO	114	5	84	203	36.58%
<b>VOTE TOTALS</b>	<b>296</b>	<b>10</b>	<b>249</b>	<b>565</b>	<b>100.00%</b>

PROPOSAL TO AMEND #6	BY MAIL	HAND TALLY	POLLING PLACE	TOTAL	%
YES	198	4	171	373	66.06%
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	416	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>560</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	64	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

*Marcus Gligan*





**Pokégnek Bodéwadmik**  
POKAGON BAND OF POTAWATOMI  
TRIBAL COUNCIL

EXHIBIT

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13

## TRIBAL COUNCIL

### RESOLUTION NO. 22-04-25-04

**WHEREAS:** The Pokagon Band of Potawatomi Indians of Michigan and Indiana ("Pokagon Band") is a sovereign, federally-recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994; and

**WHEREAS:** The Pokagon Band is organized under a constitution, which was adopted on November 1, 2005 and became effective on December 16, 2005 ("Constitution"); and

**WHEREAS:** In accordance with P.L. 103-323 and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Pokagon Band; and

**WHEREAS:** The Tribal Council is vested with the sovereign powers of the Pokagon Band not inconsistent with any provisions of the Constitution, including the enumerated powers set forth in Article IX, Section 2, of the Constitution; and

**WHEREAS:** The Tribal Council Treasurer delivered notice of resignation in accordance with Article XV, Subsection 3(b) of the Constitution, stating that such resignation shall be effective as of Sunday, April 24, 2022 ("Vacancy Date"); and

**WHEREAS:** There will be a vacancy in the Tribal Council Treasurer position as of the Vacancy Date; and

**WHEREAS:** Article XV, Subsection 3(e) of the Constitution and the Tribal Council Procedures Act requires that the vacancy in the office of the Tribal Council Treasurer be filled by Tribal Council appointment of a seated Councilperson originally elected by the Citizens and that such appointee serve in an acting capacity only; and

**WHEREAS:** Article XV, Subsection 3(h) of the Constitution requires that any such Councilperson that is appointed shall serve only until the next general election of the Tribal Council and the balance of any unexpired term in the vacated position shall then be filled at the next General Election; and

**WHEREAS:** Under Article X, Subsection 5(e)(vi) of the Constitution, the Tribal Council Treasurer is required to "acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council, covering administration of the Band's fiscal affairs"; and

**WHEREAS:** Under Subsection 12(c)(3) of the Election Code, “the Treasurer shall not be permitted to assume office until the Treasurer has complied with Article X, subsection 5(e)(vi) of the Constitution, and at the Band’s expense, acquired a surety bond, in an amount and with a surety company satisfactory to the Tribal Council, covering administration of the Band’s fiscal affairs.”

**WHEREAS:** The Tribal Council desires to appoint Councilperson Alex Wesaw to serve as acting Treasurer until the next general election of the Tribal Council, and after which Alex Wesaw will return to his Councilperson position for the remainder of the term, in accordance with Article XV, subsection 3(h) of the Constitution and the Tribal Council Procedures Act; and

**WHEREAS:** The Tribal Council acknowledges the limited timeframe for persons to declare for the Treasurer position in the next general election of the Tribal Council held on July 9, 2022 (“2022 General Election”), but the Tribal Council has considered the requirements of the Constitution, the importance of the responsibilities of the Treasurer position, and the opportunity for Pokagon Band voters to select the Treasurer in the 2022 General Election and determined that the best course of action for the Pokagon Band is to fill the balance of the unexpired term of the Treasurer position in the 2022 General Election; and

**WHEREAS:** The Tribal Council desires prompt notice be provided that the balance of the unexpired term of the Tribal Council Treasurer will be filled in the 2022 General Election: (1) from the Communications Department to Pokagon Band citizens and (2) to the Election Board.

**NOW, THEREFORE, BE IT RESOLVED** that effective as of the Vacancy Date, the Tribal Council appoints Councilperson Alex Wesaw as acting Tribal Council Treasurer to fill the vacant Tribal Council Treasurer position, provided that:

1. Alex Wesaw shall not assume the office of acting Treasurer unless and until he has complied with Article X, Subsection 5(e)(vi) of the Constitution; and
2. Alex Wesaw shall serve as acting Treasurer only until the 2022 General Election; and

**BE IT FURTHER RESOLVED** that the Government Manager shall cause the Communications Department to provide notice to Pokagon Band citizens that the Tribal Council Treasurer position will be filled in the 2022 General Election; and

**BE IT FURTHER RESOLVED** that Tribal Council directs the Election Board to include the Treasurer position in the 2022 General Election.

**CERTIFICATION**

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened Special Meeting of the Tribal Council held on the 25th day of April 2022 by a vote of 7 in favor, 0 opposed, 2 absent, and 1 abstaining.



Rebecca Richards  
Tribal Council Chairwoman



Samuel Morseau  
Tribal Council Secretary





**Pokégnek Bodéwadmik**  
POKAGON BAND OF POTAWATOMI  
TRIBAL COUNCIL

EXHIBIT

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## TRIBAL COUNCIL

### RESOLUTION No. 22-04-25-05

**WHEREAS:** The Pokagon Band of Potawatomi Indians of Michigan and Indiana ("Pokagon Band") is a sovereign, federally-recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994; and

**WHEREAS:** The Pokagon Band is organized under a constitution, which was adopted on November 1, 2005 and became effective on December 16, 2005 ("Constitution"); and

**WHEREAS:** In accordance with P.L. 103-323 and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Pokagon Band; and

**WHEREAS:** The Tribal Council is vested with the sovereign powers of the Pokagon Band not inconsistent with any provisions of the Constitution, including the enumerated powers set forth in Article IX, Section 2, of the Constitution; and

**WHEREAS:** The Tribal Council Treasurer delivered notice of resignation in accordance with Article XV, Subsection 3(b) of the Constitution, stating that such resignation shall be effective as of Sunday, April 24, 2022; and

**WHEREAS:** In accordance with the requirements of the Constitution, the Tribal Council, by Resolution number 22-04-25-04 filled the vacant Tribal Council Treasurer position by appointment of a seated Councilperson originally elected by the Citizens and such appointee serves in such position in an acting capacity only until the next general election of the Tribal Council, and that the Election Board include the Treasurer position in the 2022 General Election; and

**WHEREAS:** Article XV, Subsection 3(h) of the Constitution requires that any such Councilperson that is appointed to serve in the vacant Tribal Council Treasurer position shall serve only until the next general election of the Tribal Council and the balance of any unexpired term in such position shall then be filled at the next general election; and

**WHEREAS:** In Resolution number 22-04-25-04 the Tribal Council acknowledged the limited timeframe for persons to declare for the Treasurer position in the next general election of the Tribal Council held on July 9, 2022 ("2022 General Election"), but the Tribal Council has considered the requirements of the Constitution, the importance of the responsibilities of the Treasurer position, and the opportunity

for Pokagon Band voters to select the Treasurer in the 2022 General Election and determined that the best course of action for the Pokagon Band is to fill the balance of the unexpired term of the Treasurer position in the 2022 General Election; and

**WHEREAS:** Subsection 5(E)(4) of the Election Code requires that "Elected Officials whose office is not already scheduled to be filled in the election and are seeking a different elective office must file their candidate declarations and authorizations to conduct criminal background check a minimum of eighty-nine (89) days before Election Day" ("Elected Official Declaration Date"); and

**WHEREAS:** Subsection 3(D) of the Election Code requires the Election Board to provide notice to all elected officials informing them of the specific date by which they must file candidate declarations if the Elected Official's current term of office is not already scheduled to be filled in the election and they intend to seek a different elective office; and

**WHEREAS:** Because the addition of the Tribal Council Treasurer position to the elective offices available in the 2022 General Election was after the Elected Official Declaration Date, elected officials whose current term of office is not already scheduled to be filled in the 2022 General Election who may desire to seek the Tribal Council Treasurer position in the 2022 General Election are not able to do so under the Election Code; and

**WHEREAS:** The Tribal Council desires to extend the deadline for any Elected Officials whose office is not already scheduled to be filled in the 2022 General Election who intend to seek the Tribal Council Treasurer position to 4:30 pm, May 6, 2022, the deadline for all others to file a candidate declaration in the 2022 General Election; and

**WHEREAS:** Because there remains sufficient time for all others to become aware of and file a candidate declaration for the Tribal Council Treasurer position before the 4:30 pm, May 6, 2022 deadline, the Tribal Council has determined not to extend the deadline for others to file a candidate declaration for the Tribal Council Treasurer position; and

**WHEREAS:** Under the Constitution and the Election Code, any person who holds an elective office and becomes a certified candidate for another elective office shall be deemed to have resigned from his or her current elective office as provided in Article XV, Subsection 3(c) of the Constitution; and

**WHEREAS:** In the interest of certainty and in order to avoid subsequent additions regarding available elective offices in the 2022 General Election, the office of any Elected Official whose office is not already scheduled to be filled in the 2022 General Election who becomes a certified candidate for the Tribal Council Treasurer

position shall not be added to the elective office positions to be filled in the 2022 General Election.

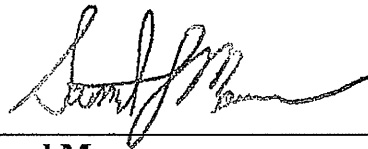
**NOW, THEREFORE, BE IT RESOLVED** that for the 2022 General Election, any Elected Official whose office is not already scheduled to be filled in the 2022 General Election and who seeks the Tribal Council Treasurer position, such Elected Official must file his or her candidate declaration and authorization to conduct criminal background check by 4:30 pm, May 6, 2022, and in accordance with all other requirements of the Election Code.

### CERTIFICATION

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened Special Meeting of the Tribal Council held on the 25th day of April 2022 by a vote of 8 in favor, 0 opposed, 2 absent, and 0 abstaining.



**Rebecca Richards**  
Tribal Council Chairwoman



**Samuel Morseau**  
Tribal Council Secretary



**TRIBAL COURT**

**Case No. 22-181-ELE**

Patricia Williams, Pro Se

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.
4. I have been the Lead Clerk for approximately four and one half years.

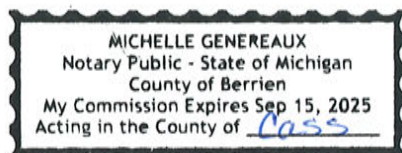
5. Consistent with prior elections, for the 2022 Election, the Election Board engaged AES to perform certain services under the supervision and control of the Election Board.
6. In the 2022 Election, AES performed certain services for the Board, including mailing the initial Election Notice, mailing the subsequent notice of the addition of the Tribal Council Treasurer seat, preparing and printing all Ballots, and mailing the initial Absentee Ballots.
7. The Tribal Council Treasurer seat initially was not open in the 2022 Election and did not appear in the initial listing of open seats in the Election Notice provided to Citizens who are 18 years of age and older as of Election Day.
8. Tribal Council Resolution No, 22-04-25-04, indicates that the Tribal Council Treasurer resigned from such position effective April 24, 2022, and pursuant to such Resolution, the Tribal Council appointed Tribal Councilperson Alex Wesaw as acting Tribal Council Treasurer only until the 2022 General Election and directed the Election Board to include the Treasurer position in the 2022 General Election.
9. Because the Election Board already caused the Election Notice with available seats to be mailed, the addition of the Tribal Council Treasurer seat caused the Election Board to send a subsequent mailing to Citizens who are 18 years of age and older as of Election Day informing them that the Tribal Council Treasurer position will be open in the 2022 Election.
10. On May 5, 2022, Mr. Wesaw, a Tribal Councilperson, whose term of office ends in 2023, filed a candidate declaration form with the Election Board office, and thereafter, was certified as a candidate in the 2022 Election for the vacant Tribal Council Treasurer position.
11. Under the Constitution, the earliest the Wesaw Vacated Seat would be deemed vacant is August 13, 2022, the date that the first Tribal Council meeting after the 2022 Election is scheduled to be held

Further, the Affiant sayeth not.

Signed by:

Theresa Barber  
Theresa Barber

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



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