

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN

March 2, 2015



George Patton
Superintendent
Salt River Agency
Bureau of Indian Affairs
10000 E. McDowell Road,
Scottsdale, AZ 85256

Re: Request for Election to Ratify Amendments to the Pascua Yaqui Constitution

Dear Superintendent Patton:

In the past year, you have consulted with us on many occasions by phone, correspondence, and in-person regarding the Bureau of Indian Affairs (B.I.A.) process for tribes who are considering adopting constitutional amendments (25 C.F.R. § 81). You cleared up many questions about the process and provided important technical assistance. Thank you for your help, your courteous and timely support has been invaluable. Sir, after careful deliberation, legal research, outreach, consultation, and no less than fifteen (15) community meetings, we are pleased to notify you that the Pascua Yaqui Tribe is officially requesting that the Secretary call and hold an election to ratify three (3) amendments to our Constitution.

On February 25, 2015, the Pascua Yaqui Tribal Council held a public council meeting and pursuant to Article XX of the Pascua Yaqui Constitution (the Constitution) and the Indian Reorganization Act of June 28, 1934 (IRA), as amended, enacted Resolutions No. C02-33-15 and No. C02-35-15. (Attached as Exhibits A and B) Resolution No. C02-33-15, formally requests that the Secretary call and hold an election to ratify three (3) proposed amendments to the Constitution. *See* 25 U.S.C. § 476(a). (Proposed Amendments attached as Exhibit C)

Resolution No. C02-35-15, in accordance with Article XX and XIV of the Constitution and 25 C.F.R. § 1.2, in order to maximize Yaqui voter participation, requests that the Secretary waive provisions of 25 C.F.R. § 81.9(a), to permit off reservation polling places and 25 C.F.R. § 81.6(b)(2), to permit absentee voting consistent with the Pascua Yaqui Election Ordinance. *See* 2 PYTC § 6-2-240 (Exhibit D); *see also Wadena v. Midwest Regional Director*, 47 IBIA 21 (2008) (25 C.F.R. § 81.9 waived to permit off reservation polling places). Section 1.2 of Title 25 C.F.R. provides that the Secretary “retains the power to waive or make exceptions to his

regulations as found in chapter I of Title 25 C.F.R. in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.”

Historical Context:

Our Yaqui ancestors walked the earth by the grace of the creator, as we still do today. Yaqui ancestors were indigenous and roamed aboriginal territory from Durango in Southern Mexico, north to Colorado, and west to California. The Tribe settled, prospered, and endured in the Rio Yaqui homeland since time immemorial. Authority was inherent and derived in part by our elders’ ability to protect and provide for the needs of the Yaqui people. The Yaqui people fought the Spanish from earliest contact in the 1530s, and later fought the Mexican government for the protection and control of their homelands. Our ancestors established trade with other Arizona tribes, and lived and worked at missions and in settlements in Arizona.

Fundamentally, the last 400 years have only superficially changed the Yaqui people. Our culture endures. Today, the Pascua Yaqui people mostly live in recognized tribal communities from South Tucson to Scottsdale. In 1964, Congressman Morris K. Udall introduced a bill in Congress authorizing the transfer of 202 acres of federal desert land, southwest of Tucson to our Yaqui elders. This became the Tribe’s reservation. However, 75% of our tribal population lives off reservation in our traditional local Yaqui villages. On January 26, 1988, the Tribe voted and ratified the Pascua Yaqui Tribe’s current Constitution. Historically, tribal elections have included polling sites at our off reservation local communities.

Proposed Constitutional Amendments:

(a) Proposed Amendment A-Article I Bill of Rights

The intent of this proposed amendment is to increase public safety on our Reservation. The amendment will change Article I, Section 1(g) to a simplified version without any time limits. This will allow the Tribe to impose sentences greater than one year, but won’t limit the Tribe to any specific time frame in case federal law changes again in the future. It will help the Tribe fully implement the Tribal Law & Order Act (TLOA) and the Violence Against Women Act (VAWA), it will strengthen justice and safety on the Reservation, and enhance tribal criminal jurisdiction. This amendment is also consistent with ongoing Tribal efforts to protect residents of the Reservation and federal policy that supports increased authority and recognition for tribal justice systems. (See Exhibit E for tribal policy and justice efforts)

(b) Proposed Amendment B-Article III-Membership In the Pascua Yaqui Tribe

The intent of this proposed amendment is to remove restrictions from Article III and allow the Tribe to determine our own membership. In the 1978 Congressional bill recognizing the Pascua Tribe, Congress stated that membership would be limited to “all those persons of Yaqui blood who are citizens of the United States and who, **within two years** from September 18,

1978, apply for enrollment in the Pascua Yaqui Tribe...”, 25 U.S.C. 1300f-2. In 1994, Congress passed an amendment to the Pascua Yaqui Recognition Act that added language allowing persons of Yaqui blood to apply for enrollment **within three years** of October 14, 1994, 25 U.S.C. 1300f-2. Even though in 1978 a two year period of enrollment, which was expanded by the 1994 open enrollment period to allow another three years of application, there are still Yaqui people who were not able, or were not aware of the time restraint for application. Those people are currently barred from enrollment today. They may be members of our community, live on our reservation, participate in our ceremonies, and identify in every way as Pascua Yaqui, but they cannot enroll in the Pascua Yaqui Tribe, nor can their descendants because of the limitations that were imposed by the federal recognition act and our Constitution. Limitations of these kinds do not exist for most other Indian tribes.

In addition, the Tribe lacks the benefit of jurisdiction over these individuals. They live and interact with Tribal members every day, are related to them by blood, and their actions affect the community in both good and bad ways. However, because they lack the status of tribal members, they are not subject to the jurisdiction of the Tribe. This lack of jurisdiction can and does have a negative impact upon our community. When the Tribe lacks jurisdiction over these individuals, the Tribe fails to protect its members, and adds to the uncertainty and mistrust experienced by victims and the community alike.

In 2012, the Tribe went back to Congress and once again asked that our Recognition Act be amended, this time to remove any limitations on the Tribe’s authority to determine membership. On Thursday, December 20, 2012, President Obama signed into law H.R. 3319, which finally modified our Recognition Act to allow the Tribe to determine the requirements for tribal membership. This proposed Constitutional Amendment will address the final restriction on the Tribe’s ability to start the conversation about our future. This amendment is about fairness; it was supported through law by the U.S. Congress and the President, and it promotes sovereignty and self-governance principles. (See Exhibit F for Tribal efforts to determine membership authority)

(c) Proposed Amendment C-Article XX-Amendments

The intent of this proposed amendment is to remove the Secretary of the Interior approval process for amendments to the Constitution from Article XX. The federal Secretarial Election (B.I.A. oversight) requirement is removed so that future changes to the constitution are conducted through a tribal election process. Besides the removal of the Secretary, the amendment process remains substantially the same, including the ability of tribal members to petition for future amendments. This Amendment will support and bolster the Tribe’s inherent powers of tribal self-government and remove an unnecessary layer of bureaucracy. The Pascua Yaqui Tribe possesses the right to form our own government, make and enforce our own laws, and regulate activities within our jurisdiction. Congress has recognized the rights of tribes by enacting legislation that embodies the important concepts of tribal self-determination and self-

governance through the Indian Self-determination and Education Assistance Act of 1975, as amended (25 U.S.C. 450 et seq.) and the Tribal Self-Governance Act of 1994 (25 U.S.C. 458aa et seq.).

Conclusion:

The Pascua Yaqui Tribal Council hereby submits the attached proposed Constitutional Amendments to the Secretary of the Interior and respectfully requests that the Secretary call and hold an election to ratify the proposed amendments. Additionally, in order that as many members of the Pascua Yaqui electorate as possible will have the opportunity to exercise their right to vote, that the Secretary waive provisions of 25 C.F.R. § 81.9(a) and 25 C.F.R. § 81.6(b)(2). Finally, we also request that this important process be expedited and that it comport with the timeframes set by 25 C.F.R. § 81. Should you need any further information or clarification, you may contact me or set-up a meeting. Please contact us by both regular U.S. Postal Service and electronic mail and copy the Pascua Yaqui Office of the Attorney General:

Alfred Urbina, Esq.
Attorney General
Pascua Yaqui Tribe
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Tucson, Arizona 85757
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On behalf of the Pascua Yaqui Tribal Council, thank you kindly for your time and assistance with helping us to secure the future of our Tribe.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Yucupicio', is written over a horizontal line. The signature is stylized and somewhat cursive.

Peter Yucupicio
Chairman
Pascua Yaqui Tribe

cc:

The Honorable Kevin Washburn
Assistant Secretary
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240