

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

No. CA-07-015

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Pascua Yaqui Tribe Court of Appeals

DOCKET NO. _____

Chairwoman Herminia Frias, Appellant,

CLERK _____

v.

Peter Yucupicio, an individual, and Vice-Chairman and Member of the Tribal Council of the Pascua Yaqui Tribe; Priscilla Flores, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Arcadio Gastelum, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Luis Gonzales, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; David Ramirez, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Robert Valencia, an individual and Member of the Tribal Council of the Pascua Tribe; Francisco Valencia, an individual, Treasurer and Member of the Tribal Council of the Pascua Yaqui Tribe; and the Tribal Council of the Pascua Yaqui Tribe, Appellees.

OPINION

Appeal of a decision of the Pascua Yaqui Tribal Council suspending and reprimanding Chairwoman Herminia Frias.

Verrin T. Kewenvoyouma, Esq., and Robert A. Rosette, Esq., Rosette & Associates, P.C., Mesa, Arizona, for the Appellant.

Kathleen Carey, Esq., Law Offices of Kathleen Carey, Phoenix, Arizona, for the Appellees.

This opinion explains this Court's order dated August 28, 2007 in this case. At issue is whether this Court has appellate jurisdiction to review the Pascua Yaqui Tribal Council's sanction and suspension rulings under 2 PYTC § 1-2-100 (2006) against the Appellant, Chairwoman Herminia Frias ("Appellant Frias"). The Tribal Council's rulings arise from Appellant Frias' alleged misconduct in office under the Tribal Council Code of Ethics and Standards of Conduct Ordinance of 2006 ("Ethics Code"), 2 PYTC §§ 1-110 (2006). This Court finds that 2 PYTC § 1-2-100 conflicts with Article VIII of the Constitution of the Pascua Yaqui Tribe ("Constitution") which limits this Court's jurisdiction to appeals of decisions of the Pascua Yaqui trial courts. We hold that Section 1-2-100 is unconstitutional;

therefore, this Court lacks appellate jurisdiction to review the appeal. The Pascua Yaqui trial court is the appropriate forum for the parties to initially bring their dispute, not the Court of Appeals. We emphasize that under Article VIII, Section 5 of the Constitution, the Pascua Yaqui Tribe Court of Appeals has the power to review "all civil and criminal matters" appealed from the trial court.

According to the parties, on July 20, 2007, six Tribal Council members lodged a written ethics complaint against Appellant Frias with Vice-Chairman Peter Yucupicio. That complaint charged Appellant Frias with twenty-two counts of ethical misconduct in office. Vice-Chairman Peter Yucupicio then joined the six council members in a new complaint under the Ethics Code. The Tribal Council met in executive session on July 21, 2007 and scheduled a hearing on the complaint for August 1, 2007. On July 24, 2007, Appellant Frias received a copy of the complaint and an agenda for that hearing. At the August 1, 2007 hearing, again in executive session, a majority of the Tribal Council found that Appellant Frias had committed six of the twenty-two claimed violations. The Tribal Council reprimanded Appellant Frias as to two violations and suspended her for three months apiece on each of the remaining four. These suspensions totaled twelve months which effectively removed Appellant Frias from office for the balance of her term.

On August 7, 2007, Appellant Frias appealed the Tribal Council's ruling, sanctions and suspension to this Court under 2 PYTC § 1-2-100 (A) and (B). On August 9, 2007, we asked both parties for briefing on whether this Court has appellate jurisdiction over Appellant Frias' appeal. We noted an apparent conflict between 2 PYTC § 1-2-100 (A) and (B) and Article VIII, Section 5 of the Constitution, which confines appellate civil jurisdiction to matters appealed from the Pascua Yaqui Tribal Court.

This Court finds an irreconcilable conflict between Article VIII, Section 5 of the Constitution and the Ethics Code provisions Appellant Frias relies on as grounds for her notice of appeal. The code provisions state as follows:

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals. (emphasis added).

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council. provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act. (emphasis added).

2 PYTC § 1-2-100 (A) and (B). By contrast, the constitutional provision, Article VIII, Section 5, that confers appellate jurisdiction in the Pascua Yaqui Tribe Court of Appeals states as follows:

The Court of Appeals of the Pascua Yaqui Tribe shall be created by the tribal council pursuant to Article VIII, Section 1. This court shall have the power of judicial review of all civil and criminal matters appealed from the Pascua Yaqui Tribal Court. Such appellate review shall not include trial de novo in any civil matter but trial de novo shall be provided in any criminal matter upon the request of any defendant. (emphasis added).

When the Pascua Yaqui Nation was constituted and organized, its people and citizens pledged to "preserve and promote the spiritual, cultural and social values of the Yaqui people." Preamble, Constitution of the Pascua Yaqui Tribe. While non-indigenous constitutional theories may sometimes offer guidance, rulings issued by this Court are framed by the Pascua Yaqui Nation's traditions and values, as drawn from within the Nation's people and their history. Rulings on jurisdictional issues before this Court, and accompanying interpretation(s) of the Nation's Constitution and laws, must first find their source in the Yaqui people's culture, values and customs as expressed through their

Constitution. Thus, the Constitution is the supreme law of the Pascua Yaqui Nation, defining and enabling all other laws.

The Constitution defines the jurisdictional authority of this Court at Article VIII, Section 5. The question is does the Tribal Council have the authority to enlarge the appellate jurisdiction of this Court, as it did in the Ethics Code? The Constitution grants the Tribal Council authority “[t]o establish rules and regulations governing its proceedings including removal of council members.” Constitution, Art. VI, Sec. 1(p). However, those rules and regulations (for example, as now found in the Ethics Code) must be “consistent with this constitution.” Constitution, Art. VI, Sec. 1(p). The Tribal Council does not have authority to amend the Constitution nor enlarge this Court’s appellate jurisdiction beyond that granted by the Constitution. Laws enacted by the Tribal Council may not conflict with any constitutional provision, including laws concerning the appellate jurisdiction of this Court. In the event of such a conflict, the constitutional provisions must prevail as the Nation’s supreme law.

Appellant Frias relies on Article VIII, Section 2 of the Constitution to argue that the Court of Appeals has appellate jurisdiction over her notice of appeal. That section states as follows:

The jurisdiction of the courts shall extend to all cases in law and equity arising under this constitution and the laws, traditions, customs or enactments of the Pascua Yaqui Tribe consistent with the provisions of this constitution. The tribal courts shall exercise jurisdiction over all civil and criminal matters wherein members or non-members of the Pascua Yaqui Tribe are parties, unless otherwise expressly prohibited by Federal or tribal laws. (emphasis added).

Appellant Frias argues that under Article VIII, Section 2, the Court of Appeals, as a “tribal court,” has jurisdiction to hear “all civil and criminal matters wherein members or non-members of the Pascua Yaqui Nation are parties.” This argument presumes the term

“tribal courts” as used in Section 2 includes this Court. We do not agree with that interpretation. If Appellant Frias’ interpretation were correct, Article VIII, Section 5 of the Constitution would be nonsensical since it would vest this Court with jurisdiction to hear appeals of its own decisions.

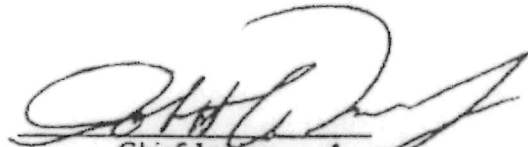
Moreover, Article VIII, Section 5 would be superfluous, if this Court’s appellate jurisdiction is already defined by Article VIII, Section 2. To interpret the term “tribal courts,” as used in Article VIII, Section 2, to include the Court of Appeals undermines the Constitution’s jurisdictional scheme. Article VIII, Section 2 is a general description of the Pascua Yaqui trial courts’ jurisdictional authority (i.e., civil, criminal, and juvenile trial courts). We find that Article VIII, Section 2 and Article VIII, Section 5, read together, clearly mandate that civil disputes, including Tribal Council sanctions, arrive on appeal only from a Pascua Yaqui trial court decision.

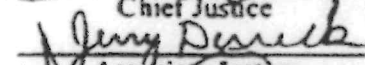
No provision in the Constitution other than Article VIII, Section 5 defines the appellate jurisdiction of the Pascua Yaqui Tribe Court of Appeals. The Constitution may only be amended by vote of the Nation’s membership, under carefully circumscribed conditions. Constitution, Art. XX. Moreover, there is no provision in the Constitution granting any organ of the Nation, including the Tribal Council, the power to enlarge or diminish the appellate jurisdiction of the Court of Appeals.

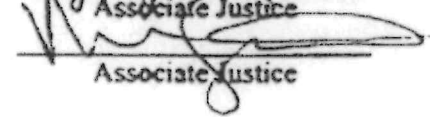
A statute may not conflict with or violate the clear mandate of the Constitution. Because 2 PYTC § 1-2-100 conflicts with the Constitution, it is unconstitutional and thus void. This ruling applies only to 2 PYTC § 1-2-100; we do not pass judgment on any other provisions of the Ethics Code. The Pascua Yaqui trial court is the appropriate forum for the

parties to initially bring their dispute, not the Court of Appeals. Appellant Frias' appeal is dismissed for lack of appellate jurisdiction.

Filed this 16th day of October, 2007.



Chief Justice


Associate Justice


Associate Justice

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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CLERK NO. _____

CLERK _____

No. CA-08-001

Pascua Yaqui Tribe Court of Appeals



**In re Certified Question to the Pascua Yaqui Court of Appeals related to the trial Court's
Jurisdiction for the Cases:**

Herminia Frias, Chairwoman, Plaintiff,

v.

Peter Yucupicio, vice Chairman, and Pascua Yaqui Tribal Council, Defendants.

Herminia Frias, Chairwoman, Plaintiff,

v.

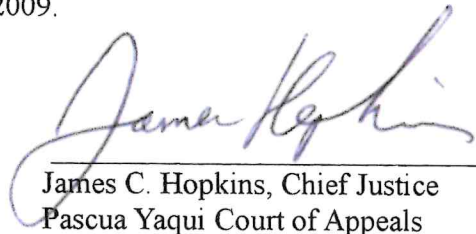
Peter Yucupicio, Vice Chairman, and Pascua Yaqui Tribe Board of Elections Supervisors.

ORDER

Certified question regarding jurisdiction of trial Court over cases Herminia Frias, Chairwoman, Plaintiff, v. Peter Yucupicio, vice Chairman, and Pascua Yaqui Tribal Council, Defendant case no. CV-008-002 and Herminia Frias, Chairwoman, Plaintiff, v. Peter Yucupicio, Vice Chairman, and Pascua Yaqui Tribe Board of Elections Supervisors, case no. CV-08-003, the Honorable Melvin R. Stoof presiding.

The Court has reviewed the record and found the issues raised in this appeal rendered moot by its decisions in CA-07-015, *Frias v. Yucupicio* and CA-08-006, *Frias v. Yucupicio*. Accordingly, this case shall be dismissed and is hereby closed.

So ORDERED this 31st day of **March**, 2009.



James C. Hopkins, Chief Justice
Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe Court of Appeals

Chairwoman Herminia Frias, Appellant,

v.

Peter Yucupicio, an individual, and Vice-Chairman and Member of the Tribal Council of the Pascua Yaqui Tribe; Priscilla Flores, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Arcadio Gastelum, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Luis Gonzales, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; David Ramirez, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Robert Valencia, an individual and Member of the Tribal Council of the Pascua Tribe; Francisco Valencia, an individual, Treasurer and Member of the Tribal Council of the Pascua Yaqui Tribe; and the Tribal Council of the Pascua Yaqui Tribe, Appellees.

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Council suspending and reprimanding Chairwoman Herminia Frias.

Verrin T. Kewenvoyouma, Esq., and Robert A. Rosette, Esq., Rosette & Associates, P.C., Mesa, Arizona, for the Appellant.

Kathleen Carey, Esq., Law Offices of Kathleen Carey, Phoenix, Arizona, for the Appellees.

The Pascua Yaqui Court of Appeals reviewed the appeal in this case and finds as follows:

- 1). On July 20, 2007, Appellant Chairwoman Herminia Frias was charged with twenty-two counts of ethical misconduct while in office; on July 24, 2007, she was served with the complaint;
- 2). On August 1, 2007, the Pascua Yaqui Tribal Council, with nine council members present and one absent, held a hearing on the complaint in executive session;
- 3). At the end of the hearing, the majority of the council members found that Chairwoman Frias had committed six of the twenty-two alleged violations in the complaint;

4). The tribal council reprimanded Chairwoman Frias on two violations and suspended her without pay for three months on each of the remaining four violations; all the suspensions totaled twelve months;

5). On August 7, 2007, Chairwoman Frias appealed the tribal council's findings of ethical violations and sanctions to this Court, pursuant to 2 PYTC § 1-2-100 (A) and (B) (2006) which states in relevant part as follows:

(A) Any Council Member who is found to have violated this ordinance [ethics code] and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council;

6). On August 9, 2007, the Court of Appeals asked for briefing on the Court's jurisdiction over this kind of appeal because the above cited code provision apparently conflicts with a constitutional provision that states as follows:

The Court of Appeals of the Pascua Yaqui Tribe shall be created by the tribal council. ... This court shall have the power of judicial review of all civil and criminal matters appealed from the Pascua Yaqui Tribal Court. Pascua Yaqui Tribe Constitution, Art. VIII, Sec. 5;

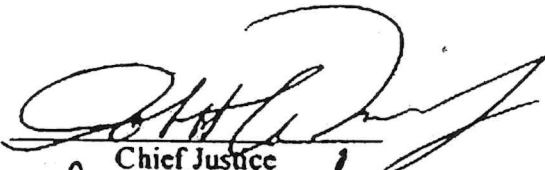
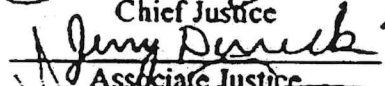
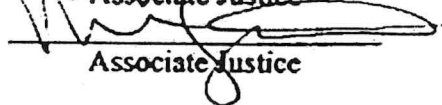
7). After reviewing the briefs on the jurisdictional issue, we hold that this Court has jurisdiction only over "civil and criminal matters appealed from the Pascua Yaqui Tribal Court," as directed by the Constitution; the term "Pascua Yaqui Tribal Court" in Article VIII, Section 2 of the Constitution means the Pascua Yaqui trial court; and

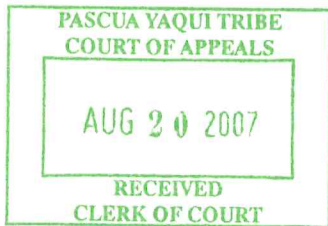
8). A statute cannot conflict with the clear mandate of a constitutional provision; therefore, the statute cited as 2 PYTC § 1-2-100 must be held unconstitutional.

Accordingly, this Court holds that the jurisdictional statute cited as 2 PYTC § 1-2-100 is unconstitutional in its entirety and therefore has no validity. This ruling applies only to 2

PYTC § 1-2-100; this Court does not pass judgment at this time on the other statutes in the “Tribal Council Code of Ethics and Standards of Conduct.” We further hold that this Court lacks jurisdiction over this appeal. The notice of appeal is hereby dismissed. Upon dismissal, the trial court is the appropriate forum for the Appellant to bring her claims, and as the Pascua Yaqui Tribe Constitution, Art. VIII, Sec. 5, makes clear, the Court of Appeals of the Pascua Yaqui Tribe is the appropriate forum for “judicial review of all civil and criminal matters appealed from the trial court.” An opinion will be issued at a later date.

So ORDERED this 28th day of August, 2007.


Chief Justice

Associate Justice

Associate Justice



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME
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11
12 **PASCUA YAQUI TRIBE COURT OF APPEALS**
13 **IN AND FOR THE PASQUA YAQUI RESERVATION**
14

15 PETER YUCUPICIO, an individual, and }
16 Vice Chairman and Member of the Tribal }
17 Council of the Pascua Yaqui Tribe; }
18 PRISCILLA FLORES, an individual and }
19 Member of the Tribal Council of the Pascua }
20 Yaqui Tribe; ARCADIO GASTELUM, an }
21 individual and Member of the Tribal Council }
22 of the Pascua Yaqui Tribe; DAVID }
23 RAMIREZ, an individual and Member of the }
24 Tribal Council of the Pascua Yaqui Tribe; }
25 ROBERT VALENCIA, an individual and }
26 Member of the Tribal Council of the Pascua }
27 Yaqui Tribe; and the TRIBAL COUNCIL }
28 OF THE PASCUA YAQUI TRIBE. }

Case No.: CA - 07 - 015

RESPONSE TO
APPELLANT'S
OPENING BRIEF
REGARDING (1)
JURISDICTION AND
(2) DUE PROCESS

29
30 Appellees,

31 vs.

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34 Chairwoman Herminia Frias,

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36 Appellant
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1 COMES NOW, Appellees, by and through undersigned counsel, files this Response
2 to the Pascua Yaqui Court of Appeals, in response to Appellant's Opening Brief Regarding
3 Jurisdiction and Due Process.

4 **I. STATEMENT OF FACTS**

5 On August 10, 2007, the Pascua Yaqui Tribal Council met to replace the Chairwoman
6 of the Tribe by a "vote of no confidence" pursuant to Const. Art. V, Section 3. The motion
7 passed.

8 By Appellant's admission, a "no confidence" vote is not subject to review, it can be
9 made at any time, for any reason or no reason at all. It had the effect of terminating her
10 position as Chairwoman and, as it happened in the instant case, conferring the authority of
11 Chairman upon the person previously serving as Vice-Chairman.

12 The chairman and vice-chairman shall serve to that capacity for a term of four
13 (4) years provided, however, that the tribal council may select a different
14 chairman or vice-chairman at any time but only upon a vote of no confidence
15 of at least two-thirds of the tribal council.

16 Art. V, Section 3

17 **II. STATEMENT OF THE ISSUES**

- 18 A. Whether the "no confidence vote" of the Pascua Yaqui Tribal Council terminating the
19 position of the Appellant, who had served as Chairwoman, mooted this Appeal.
20 B. Whether the Court of Appeals for the Pascua Yaqui Tribe has jurisdiction over this
21 Appeal.
22 C. Whether the Appellant had a property right in her office that could privilege a claim
23 for violation of "due process" with respect to Council's prior action to suspend her
24 position for violation of Ordinance 1-2-110.

25 **III. ARGUMENT**

26 A. **The "no confidence" vote of the Pascua Yaqui Tribal Council terminated**
27 **Appellant's position and made this Appeal moot.**

28 Even were Appellant to establish the jurisdiction of the Court of Appeals to hear this
29 Appeal, and then prevail on the merits, the Appeal is moot, because the remedy she is
30 seeking, reinstatement of her position as Chairwoman and its attendant salary, is no longer
31 available.

1 Any Constitutional defects that may have attended the implementation of the
2 Ordinance under which Appellant was suspended have been rectified by the Council's
3 subsequent "no confidence" vote under Art. V, Section 3, which ended all possible doubt that
4 her removal is now Constitutionally authorized.

5 Whether Appellant's Brief was written in ignorance of the "no confidence" vote, or is
6 purposefully avoiding discussion of it, the vote acted to nullify any remedy Appellant could
7 seek and thus terminated any reason for the Court to give this Appeal further consideration.

8 **B. The Court of Appeals has no jurisdiction to hear this Appeal, as it is only**
9 **Constitutionally authorized to hear Appeals from the Trial Court.**

10 *1. The Court of Appeals only has jurisdiction to hear appeals from the Trial Court.*

11 Jurisdiction of the Pascua Yaqui Court of Appeals is defined, and strictly limited, in
12 Article VIII, Section 5 of the Pascua Yaqui Constitution:

13 The Court of Appeals of the Pascua Yaqui Tribe shall be created by the tribal
14 council pursuant to Article VIII, Section 1. This court shall have the power of
15 judicial review of all civil and criminal matters appealed from the Pascua
16 Yaqui Tribal Court. Such appellate review shall not include trial de novo in
17 any civil matter but trial de novo shall be provided in any criminal matter
18 upon the request of any defendant.

19 As the text makes clear, such jurisdiction is restricted to the review of appeals
20 from the Pascua Yaqui Tribal Court (with the exception of certain criminal matters
21 not at issue in this dispute). As such, it is derivative, and wholly contingent upon
22 jurisdiction of the Tribal Court. Jurisdiction of the Tribal Court itself is defined, and
23 strictly limited, within Article VIII, Section 2:

24 The jurisdiction of the courts shall extend to all cases in law and equity arising
25 under this constitution and the laws, traditions, customs or enactments of the
26 Pascua Yaqui Tribe consistent with the provisions of this constitution. The
27 tribal courts shall exercise jurisdiction over all civil and criminal matters
28 wherein members or non-members of the Pascua Yaqui Tribe are parties,
29 unless otherwise expressly prohibited by Federal or tribal laws.

30 Contrary to Appellant's argument, this passage does not confer any direct
31 jurisdiction whatsoever on the Court of Appeals. While Article VIII, Section 2,

1 defines the general jurisdiction of the judicial branch, the specific jurisdiction of the
2 Court of Appeals, and its limitations, are given in Article VIII, Section 5, which also
3 grants the Council power to create the Court of Appeals, and thus establishes both its
4 existence and its purpose.

5 Were Appellant's reading correct, the definition within Article VIII, Section
6 5, would be superfluous, as the Court of Appeals would have already had jurisdiction
7 over appeals from the Tribal Court, by virtue of its having jurisdiction over "all cases
8 in law and equity arising under this constitution and the laws, traditions, customs or
9 enactments of the Pascua Yaqui Tribe consistent with the provisions of this
10 constitution."

11 Further, this purported interpretation would give the Tribal Court and the
12 Court of Appeals overlapping jurisdiction over everything. Nothing, save common
13 sense and the rules of statutory construction¹, would prevent any case from being
14 filed initially at the Court of Appeals (whose jurisdiction, in the Appellant's view,
15 would include, but not be limited to, appeals from the Tribal Court). As this
16 contravenes the clear purpose of the definition of jurisdiction made with Article VIII,
17 section 5, as well as the meaning of the words "trial" and "appellate" used within
18 Article VIII, section 1, it must be rejected.

19 The question would be settled at that but for the Tribal Council's attempt, 2
20 PYTC Section 1-2-100, to confer such jurisdiction on the Court of Appeals. This
21 attempt must fail, as nothing within the Constitution grants the Tribal Council the
22 power to enlarge, or diminish, the jurisdiction of either the Tribal Court or the Court
23 of Appeals. Not only is the definition of Court jurisdiction made explicit, and
24 complete, within the Constitution, but so are the powers of the Tribal Council (Article
25 VI), which are strictly enumerated, and confer no authority to grant, modify, or
26 reduce Tribal or Appellate Court jurisdiction over any matter whatsoever.
27 Appellant's fanciful argument that the power conferred upon the Council to
28 "establish" a Court of Appeals in Article VIII, section 5, also gave it the authority to
29 define the Court's jurisdiction, flies in the face of not only the Constitution's own

¹ Such as that the general controls over the specific in cases of apparent conflict or ambiguity, or that provisions of statutes are always presumed to have been included for some purpose.

1 definition of jurisdiction, but the plain meaning of the word “establish” and the
2 separation of powers recognized in Article IV. Such a distortion of the word
3 “establish” would make the Court the creature of the Council, contravening the
4 judicial independence recognized in Article IV, the enumeration of Council powers in
5 Article VI, and the clear declarations of Article VIII, Section 5.

6 Article VI, Section 2, makes clear that all powers not “expressly entrusted to
7 the tribal council” are “reserved to the people,” not to the Council, which is given
8 nowhere the authority to assign itself new powers or magnify what powers it does
9 have, defined wholly within Article VI, Section 1.

10 While the Tribal Council does have the authority to create “offices,
11 committees, boards, and associations” and “define their powers and duties” (Article
12 VI, section 1 (n)), and may “establish rules and regulations governing its proceedings
13 including removal of council members consistent with this constitution” (Article VI,
14 section 1 (p)), it has no authority to modify the jurisdiction of the Court of Appeals,
15 which exists as a separate entity, in a separate branch, whose powers and
16 responsibilities are defined by the Constitution alone, not subject to alteration by the
17 Council. Had the Tribal Council wished to create a separate Ethics Review Board, or
18 similar body, and charged it with the task of reviewing decisions in matters such as
19 the instant case, it could have done so consistently with the powers enumerated in
20 Article VI, Section 1. The Council’s attempt to shift such responsibility onto the
21 Court of Appeals must fail and be considered as having no effect.

22 The Council’s putative grant of jurisdiction to the Court of Appeals in fact
23 constituted a usurpation of power that, if allowed, would abrogate Article VI’s
24 enumeration of powers (Section 1) and reservations of power (Section 2) as well as
25 the definition of jurisdiction made with Article VIII, Section 5. No change of such
26 magnitude could be made except through an Amendment to the Constitution, enacted
27 in accordance with the provisions of Article XX, Amendments:

28 The constitution may be amended by a majority vote of the registered voters
29 of the tribe voting at an election called for that purpose by the Secretary of the
30 Interior and conducted pursuant to federal regulations, provided that at least
31 thirty percent (30%) of those entitled to vote shall vote in such election, but no

1 amendment shall become effective until approved by the Secretary of the
2 Interior or his authorized representative. It shall be the duty of the Secretary of
3 the Interior to call an election on any proposed amendment at the request of a
4 majority of the tribal council or upon receipt of a petition signed by at least
5 thirty percent (30%) of the registered voters of the tribe.

6 As 2 PYTC Section 1-2-100 was not passed in accordance with the
7 requirements of Article XX, and could not have been made law otherwise, it is a
8 nullity, of no effect.

9 *2. The Court of Appeals has no more original jurisdiction to hear cases purporting*
10 *to raise Constitutional issues than it does to hear any others.*

11 Appellant's claim that the Court of Appeals has jurisdiction over this case
12 because the Court has jurisdiction over "all cases arising under the laws of the Tribe"
13 and thus over cases "arising under the Tribe's Constitution," is a rehash of her claim
14 that the Court has jurisdiction over this case because it has jurisdiction over "all cases
15 arising under the laws of the Tribe." Nothing new is added to the argument but the
16 word Constitution, and it fails for the same reasons using that word as it did in the
17 word's absence.

18 In any case, the Constitutional objections purportedly underlying this claim
19 may be reduced to:

- 20 1. The fact that Appellant was suspended (effectively removed) by a
21 majority (6), rather than two-thirds (7), of the Council members
22 qualified to vote.

23 As we saw earlier with the "no confidence" vote, Appellant is either writing in
24 ignorance of the facts, or willfully avoiding them:

25 One Council member was absent during the voting, so the six who voted for
26 Appellant's suspension constituted two-thirds of those present, satisfying Article X's
27 requirement that removal be supported by a two-thirds majority vote of the Council.

28 Article XVIII, Section 3 makes clear that a majority of the Tribal Council
29 members (not the entire council) constitute a quorum for the official transaction of
30 business:

1 A majority of the tribal council members shall constitute a quorum for the
 2 official transaction of business. Vacant council seats shall not be counted
 3 towards the establishment of a majority.

4 Article XVIII, Section 4, establishes that a vacant council position shall not be
 5 counted towards the establishment of a majority in cases requiring a two-thirds
 6 majority vote:

7 In all instances in this constitution wherein a majority vote or a two-thirds
 8 majority vote of the tribal council is required, a vacant council position shall
 9 not be counted towards the establishment of a majority

10 And, of course, Article X, Section 1, prohibits “any tribal council member from
 11 participating in any vote considering his or her removal.” Therefore, of the ten
 12 Council members who were qualified to vote, one was absent, leaving nine, a
 13 majority, which had a quorum to conduct business, and six of these nine voted to
 14 suspend (effectively remove) the Chairwoman. As the vacant council seat should not
 15 be counted for purposes of establishing the two-thirds majority count, the vote was
 16 6/9, not 6/10, and the Constitutional requirement that two-thirds of the Council
 17 authorize the Chairwoman’s (effective) removal was satisfied.

18
 19 **D. Appellant had no property right in her office, thus no claim for violation of “due**
 20 **process” with respect to Council’s action to suspend this position for violation of**
 21 **Ordinance 1-2-110.**

22 Appellant’s entire argument derives from a “due process” claim that is not
 23 only spurious but does violence to the Pascua Yaqui Constitution.

24 The “due process” obligations applicable to the Tribal Council are not the
 25 sweeping, somewhat vague, standards defined within the body of United States
 26 Constitutional jurisprudence, but the narrow requirements of 25 U.S.C. section 1302
 27 (8):

28 [No Indian tribe in exercising powers of self-government shall]
 29 deny to any person within its jurisdiction the equal protection of its laws or
 30 deprive any person of liberty or property without due process of law;
 31 as reiterated within Pascua Yaqui Constitution, Article I, Section 1 (h):

1 [Consistent with the provisions of this Constitution, the Pascua Yaqui Tribe in
2 exercising its powers of self-government shall not:]

3 Deny to any person within its jurisdiction the equal protection of its laws or
4 deprive any person of liberty or property without due process of law.

5 Contrary to the unsubstantiated assertion of the Appellant in her Motion, she
6 had no property interest whatsoever in the perpetuation of her salary, and, since she
7 was deprived of nothing else, has incurred no actionable harm, and thus no violation
8 of any rights to "due process."

9
10 Although United States Constitutional law has no formal authority in
11 determining the issue, it may have persuasive or instructive application. The default
12 Federal rule was established by the Supreme Court in Taylor v Beckham, 178 US 548
13 (1900), "the nature of the relation of a public officer to the public is inconsistent with
14 either a property or a contract right," "public offices are mere agencies or trusts, and
15 not property," (Id. at 577) though the Court acknowledged that States, in their
16 discretion, could choose to attach such contractual or property rights to various
17 offices, it made clear that this must be done explicitly, by more than merely setting a
18 term of office:

19 The decisions are numerous to the effect that public offices are mere agencies
20 or trusts, and not property as such. Nor are the salary and emoluments
21 property, secured by contract, but compensation for services actually
22 rendered. Nor does the fact that a constitution may forbid the legislature from
23 abolishing a public office or diminishing the salary thereof during the term of
24 the incumbent change its character or make it property. True, the restrictions
25 limit the power of the legislature to deal with the office, but even such
26 restrictions may be removed by constitutional amendment. In short, generally
27 speaking, the nature of the relation of a public officer to the public is
28 inconsistent with either a property or a contract right.

29 Id.

30 This was given further clarification in Board of Regents of State Colleges v
31 Roth 408 US 564 (1972),

1 To have a property interest in a benefit, a person clearly must have more than
2 an abstract need or desire for it. He must have more than a unilateral
3 expectation of it. He must, instead, have a legitimate claim of entitlement to it.
4 Id. at 577.

5 While a State or other sovereign entity may create such a right in a public
6 office, the right is not inherent in office; it may only come into being if that was
7 clearly intended by the body that created the office.

8 The Pascua Yaqui Constitution clearly intended Appellant's position to be a
9 public trust, not the property of its holder, thus any expectation of entitlement to
10 salary associated with this position must be illegitimate. Appellant served wholly at
11 the discretion of the Tribal Council, not as a contractual employee. At any time
12 during her term of office, the Tribal Council, in accordance with Article V, Section 3,
13 of the Constitution, could have terminated her position with a simple no confidence
14 vote (as it in fact did on August 10, 2007), vitiating all possibility that she could have
15 had any legitimate claim of entitlement to it, let alone a claim rising to the level of a
16 property right:

17 ... The chairman and vice-chairman shall serve to that capacity for a term of
18 four (4) years **provided, however, that the tribal council may select a**
19 **different chairman or vice-chairman at any time but only upon a vote of**
20 **no confidence of at least two-thirds of the tribal council.** The no confidence
21 vote by the tribal council is solely for the purpose of removal of such tribal
22 council member in their capacity as chairman or vice-chairman. Nor is the
23 two-thirds vote required in this election related to the complete removal of a
24 tribal council member as contemplated in Article X, Section 1. A chairman or
25 vice-chairman removed from his post in this manner shall continue to serve as
26 a member of the tribal council.

27 Article V, Section 3 (emphasis added)

28 Furthermore, the Council could have removed her, in its discretion, from this
29 position in accordance with the provisions of Article X, Section 1, as it effectively
30 did:

1 Any elected official, which includes tribal council members, chairman and
2 vice-chairman or any appointed tribal official and as defined in Article VII,
3 Section 1 of this constitution, or any judge of the tribal courts, who, during the
4 term for which he or she has been elected or appointed to serve in tribal
5 government is convicted of a felony or of any crime involving deceit, fraud or
6 misappropriation of funds, **or who engages in gross neglect of duty or**
7 **misconduct in office may be removed from office by a two-thirds**
8 **majority vote of the tribal council.** The two-thirds vote required in this
9 section does not abridge the council's right to select a different chairman or
10 vice-chairmen as provided for in Article V, Section 3. Before any vote for
11 removal is taken, the accused shall be given a written statement of the charges
12 against him or her at least ten days before the meeting of the tribal council
13 called to consider the removal action. No removal action may be taken
14 pursuant to this article until appeals of convictions, if any, are exhausted. No
15 member of the tribal council shall preside over the meeting considering his or
16 her removal; nor may any tribal council member participate in any vote
17 considering his or her removal. The elected or appointed official whose
18 removal is sought shall have the opportunity at the designated council meeting
19 to answer any and all charges, to present documentation and to call witnesses
20 on his or her behalf.

21 Article X, Section 1 (emphasis added)

22 Appellant does not allege that the Tribal Council failed to meet any of the
23 various procedural requirements contained within Article X, Section 1, prior to voting
24 on her effective removal, she instead fabricates new requirements derived from a
25 fanciful assertion of a property right to something that she did not own.

26 Having made the brazen declaration that she owned her salary for the duration
27 of her term of office, when in fact she owned nothing, she then claims further that the
28 Council owed her a panoply of "due process" rights, namely the right to "a fair and
29 impartial hearing," prior to the termination, or even suspension, of this salary.

30 This declaration makes a mockery of the clear intent of Article X, Section 1,
31 which confers upon the Tribal Council both the authority and the responsibility to

1 determine in its sole discretion the suitability, or lack thereof, of its own leadership
2 for continued employment. While Appellant is more than happy to have the Council
3 exceed of the bounds of its Constitutional authority by attempting to alter the
4 jurisdiction of the Court of Appeals, she seems to think the Council inherently
5 incompetent to perform a function the Constitution explicitly assigns it: self-
6 governance.

7 Were Appellant's misguided and self-serving view of Council powers and
8 competence to prevail, Article X, Section 1, would be essentially stricken from the
9 Constitution, as, while the Council could certainly be "fair" it could hardly be
10 "impartial" when attempting to adjudicate a question concerning the "gross neglect of
11 duty or misconduct in office" of its own leader. Indeed, the procedural concerns with
12 "fairness" Appellant is using to disqualify Council action under Article X were
13 contemplated within it, to the extent they could be consistently with Council self-
14 governance:

15 Before any vote for removal is taken, the accused shall be given a written
16 statement of the charges against him or her at least ten days before the
17 meeting of the tribal council called to consider the removal action. No
18 removal action may be taken pursuant to this article until appeals of
19 convictions, if any, are exhausted. No member of the tribal council shall
20 preside over the meeting considering his or her removal; nor may any tribal
21 council member participate in any vote considering his or her removal. The
22 elected or appointed official whose removal is sought shall have the
23 opportunity at the designated council meeting to answer any and all charges,
24 to present documentation and to call witnesses on his or her behalf.

25 As, by Appellant's tacit admission, these requirements were met, the Council
26 acted appropriately and consistently with the procedural safeguards stipulated by the
27 Constitution for action in such matters. Further, the fact that the Ethics Ordinance, 2
28 PYTC Section 1-2-60 (b)(6), legislation in support of Article X, Section 1, requires a
29 "hearing" does not transform the hearing required from one of the Council proper to
30 something different, something that would, in Appellant's reading, have required by

1 nature the substitution of an alternate trier of fact for the Council, whose members
2 were necessarily participants to the dispute.

3 Appellant was not deprived of liberty or property within the instant case, and
4 thus suffered no “due process” depredation; furthermore, to the extent she was
5 deprived of anything at all, this deprivation was proper, made in full accordance with
6 the procedural requirements defined within the Pascua Yaqui Constitution.

7 As Appellant had no property right in her salary, the Council’s suspension of
8 her pay created no actionable harm. Further, while Appellant bandies about
9 unpleasant descriptions of that suspension in her claim of “irreparable” harm,
10 (“unconstitutional, arbitrary, capricious”), these amount to empty words,
11 substantiated by nothing, like the assertion of a property right itself.

12 Apart from her supposed loss of property, the vast bulk of the harm claimed
13 by Appellant to be irreparable barring the granting of her motion does not concern her
14 at all, but the Tribe, which it would appear Appellant considers incapable, absent her
15 august personage, of governing its own affairs.

16 Of course, Appellant has no standing whatsoever to claim any harm to the
17 Tribe from failure to grant her Motion as an argument in its favor, and such claims,
18 even were they not as bereft of merit as the rest of her argument, should be dismissed
19 out of hand as irrelevant.

20 The entire litany of supposed harms the Tribe would suffer barring her
21 reinstatement would be avoided in any case were: a. The Vice Chairman to be
22 recognized as acting Chairman during the duration of the Chairwoman’s suspension,
23 something clearly contemplated within Article X (suspension being a lesser included
24 form of removal for purposes of Article XI, Section 1, “All vacancies which occur on
25 the Pascua Yaqui Tribal Council, the office of the chairman or vice-chairman or with
26 the judiciary as a result of recall, removal, death or resignation,” and Article XI,
27 Section 2. “In the event of a vacancy, for any cause, in the office of the chairman, the
28 vice-chairman shall assume the duties of the chairman for the remainder of the
29 unexpired term or until a successor has been chosen by the tribal council.”), or, failing
30 that, were b. the Council, in its discretion, to complete her removal altogether in
31 accordance with either Article X, Section 1., or Article V, Section 3.

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Primary responsibility for preventing any harm that might arise to the Tribe from a failure to reinstate the Appellant should be borne by the Tribal Council, acting as the legislative branch of the Pascua Yaqui Tribe, not this Court, whose interference would only aggravate the situation further by compromising the independence of the Council and subverting the fundamental structure of the Pascua Yaqui Constitution.

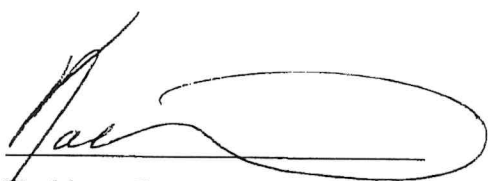
In conclusion, however harmful Appellant finds her loss of wages personally, she had no property right to those wages and thus has no legal basis to claim harm should they not be reinstated. Her further attempt to arrogate supposed harms the Tribe would suffer to herself should her claim fail must also be rejected utterly, for lack of standing, and lacking standing should be dismissed out of hand as an extralegal piece of political verbiage.

III. CONCLUSION

For the reasons stated above, the Court should dismiss Appellant's appeal as moot, or in the alternative, for lack of jurisdiction. Should it find relevance and jurisdiction, it should dismiss the Appellant's Motion for Stay, and Appeal, for lack of merit.

RESPECTFULLY SUBMITTED this 20th day of August,

2007

By: 
Kathleen Carey, Esq.

1 Certificate of Service
2 An electronic filing via Fax
3 Transmission and/or email this
4 20th day of August, 2007 and
5 The original via overnight delivery
6 To the Court and U.S. Mail to the
7 Appellant:
8
9 Court of Appeals
10
11 Verrin T. Kewnvoyouma
12 (480) 889-8997

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

07 AUG 14 AM 7:57

DOCKET NO. CA-07-015

CLERK TS

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PASCUA YAQUI TRIBE COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI RESERVATION

PETER YUCUPICIO, an individual, and Vice
Chairman and Member of the Tribal Council of
the Pascua Yaqui Tribe; PRISCILLA FLORES,
an individual and Member of the Tribal Council
of the Pascua Yaqui Tribe; ARCADIO
GASTELUM, an individual and Member of the
Tribal Council of the Pascua Yaqui Tribe; LUIS
GONZALES an individual and Member of the
Tribal Council of the Pascua Yaqui Tribe;
DAVID RAMIREZ, an individual and Member of
the Tribal Council of the Pascua Yaqui Tribe;
ROBERT VALENCIA, an individual and
Member of the Tribal Council of the Pascua
Yaqui Tribe; FRANCISCO VALENCIA, an
individual, Treasurer and Member of the Tribal
Council of the Pascua Yaqui Tribe; and the
TRIBAL COUNCIL OF THE PASCUA YAQUI
TRIBE,

Appellees,

vs.

Chairwoman Herminia Frias,

Appellant.

Case No.: CA-07-015

**APPELLANT'S REQUEST FOR
ORDER SETTING DEADLINE TO
FILE REPLY BRIEF PURSUANT TO
3 PYTRAP RULE 11(C)**

1 Chairwoman Herminia Frias (“Appellant”), by and through undersigned counsel,
2 respectfully requests this Court to set a deadline for Appellant to file a reply brief in accordance
3 with 3 PYTRAP Rule 11(C), which provides:

4 *The appellant may file a reply brief, but it shall be confined strictly to rebuttal of*
5 *points argued in the appellee’s brief. No further briefs may be filed except in*
6 *cases of crossappeal or by leave of the appellate court.*

7 (Emphasis added).

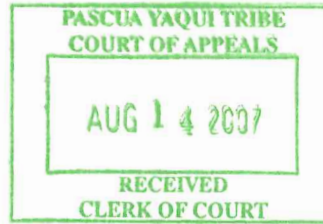
8 The Court’s Order setting forth the briefing schedule for this appeal does not appear to
9 permit Appellant the opportunity to reply to arguments raised by Appellees’ responsive brief
10 (See Order Re Briefing Schedule dated August 9, 2007, attached hereto as Exhibit “B”). In
11 accordance with 3 PYTRAP Rule 11(C), this Court permits the filing of a reply brief pursuant to
12 an expedited briefing schedule (See Briefing Schedule in Pascua Yaqui Tribe v. Baltazar (No.
13 CA-05-002), attached hereto as Exhibit “A”).

14 Moreover, if the Appellee is not permitted to file a reply, the Appellants will have an
15 undue advantage because they will have an opportunity to respond to the Appellant’s arguments.
16 but the Appellant will not have the opportunity of rebuttal. This is the reason why 3 PYTRAP
17 Rule 12 provides the Appellant the right to file a reply. Given the gravity of the consequence of
18 this appeal—namely, the governance of the Pascua Yaqui Tribe—the Court should allow
19 Appellant to file a reply brief to ensure it is fully advised on the issues.
20

21 For all of the reasons stated above, Appellant requests the Court to set a deadline to file
22 its reply brief.
23
24
25

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3 Two North Central Avenue
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8 Attorney for Appellees



9
10 IN THE PASCUA YAQUI COURT OF APPEALS
11
12 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

13 PETER YUCUPICIO, an individual, and Vice)
14 Chairman and Member of the Tribal Council of)
15 the Pascua Yaqui Tribe; PRISCILLA FLORES,)
16 an individual and Member of the Tribal Council)
17 of the Pascua Yaqui Tribe; ARCADIO)
18 GASTELUM, an individual and Member of the)
19 Tribal Council of the Pascua Yaqui Tribe; LUIS)
20 GONZALES, an individual and Member of the)
21 Tribal Council of the Pascua Yaqui Tribe;)
22 DAVID RAMIREZ, an individual and Member)
23 of the Tribal Council of the Pascua Yaqui Tribe;)
24 ROBERT VALENCIA, an individual and)
25 Member of the Tribal Council of the Pascua)
Yaqui Tribe; FRANCISCO VALENCIA, an)
individual, Treasurer and Member of the Tribal)
Council of the Pascua Yaqui Tribe; and the)
TRIBAL COUNCIL OF THE PASCUA)
YAQUI TRIBE,)

Case No.: CA-07-015

NOTICE OF APPEARANCE

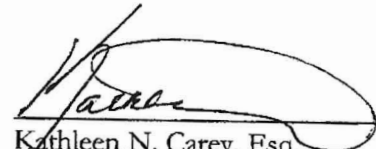
Appellees,
vs.

CHAIRWOMAN HERMINIA FRIAS,

Appellant.

1 COMES NOW Kathleen N. Carey, undersigned counsel, and respectfully enters her Notice
2 of Appearance on behalf the Appellee's in the above-captioned matter.

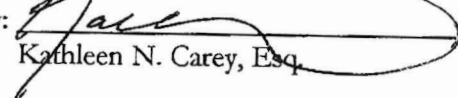
3 LAW OFFICE OF KATHLEEN N. CAREY

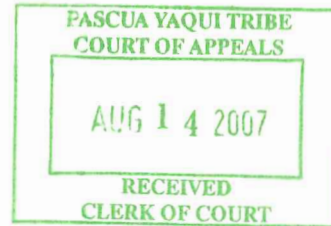
4
5 
6 Kathleen N. Carey, Esq.
7 Attorney for Appellees

8 ORIGINAL hand-delivered this date to
9 Pascua Yaqui Court of Appeals;

10 COPY of the foregoing delivered via U.S. mail
11 this date to Counsel for the Appellant:

12 Verrin T. Kewenvoyouma
13 Robert A. Rosette
14 Rosette & Associates, P.C.
15 6124 East Brown Road, Suite 101
16 Mesa, Arizona 85205

17 By: 
18 Kathleen N. Carey, Esq.



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Counsel for Chairwoman Herminia Frias

**PASCUA YAQUI TRIBE COURT
IN AND FOR THE PASCUA YAQUI RESERVATION**

PETER YUCUPICIO, an individual, and
Vice Chairman and Member of the Tribal
Council of the Pascua Yaqui Tribe;
PRISCILLA FLORES, an individual and
Member of the Tribal Council of the
Pascua Yaqui Tribe; ARCADIO
GASTELUM, an individual and Member
of the Tribal Council of the Pascua Yaqui
Tribe; LUIS GONZALES an individual
and Member of the Tribal Council of the
Pascua Yaqui Tribe; DAVID RAMIREZ,
an individual and Member of the Tribal
Council of the Pascua Yaqui Tribe;
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VALENCIA, an individual, Treasurer and
Member of the Tribal Council of the
Pascua Yaqui Tribe; and the TRIBAL
COUNCIL OF THE PASCUA YAQUI
TRIBE,

Appellees,

vs.

Case No.: CA-07-015

**APPELLANT'S OPENING
BRIEF REGARDING (1)
JURISDICTION AND (2)
DUE PROCESS**

1 Chairwoman Herminia Frias,
2 Appellant.

3
4 **I. STATEMENT OF FACTS**

5 At a regular Council meeting on June 22, 2005, certain members of the
6 Council sought to replace the Chairwoman of the Tribe by a “vote of no
7 confidence” pursuant to Const. Art. V § 3. The motion to remove the Chairwoman
8 failed because two-thirds of the Council did not support it (*See* Council meeting
9 minutes, attached hereto as Exhibit “1”).

10 On January 18, 2006, a majority of the Council enacted Ordinance 2 PYTC
11 §§ 1-2-1-110 (the “Ordinance”) which provides, among other things, that the
12 Council may by majority vote:

13
14 ...impose a sanction or sanctions against any Council member who is
15 found to have engaged in unethical conduct.... [including] Suspension
16 without pay provided that the suspension shall not exceed three
months for any specific violation....

17 PYTC §§ 1-2-90(c).

18 On July 20, 2007, six Council members sent a complaint (“Complaint #1) to
19 Vice-Chairman Peter Yucupicio (“Yucupicio”) alleging the Chairwoman violated
20 the Ordinance (*See* Complaint #1, attached hereto as Exhibit “1”). In response,
21 Yucupicio sent a “Complaint for removal of Chairwoman Frias pursuant to the
22 Pascua Yaqui Tribe Constitution – Article X” (“Complaint #2”) to the
23 Chairwoman (*See* Complaint #2, attached hereto as Exhibit “3.”) Complaint #2
24 lists the six Council members identified in Complaint #1 as well as Yucupicio as
25 the Complainants (collectively the “Complainants”).

1 The next day, the Council met in Executive Session. Notably absent were
2 the Chairwoman, Council member Benito Valencia, and Secretary Catalina
3 Alvarez. The Complainants determined to forgo an investigation into the
4 complaints filed against the Chairwoman. Instead, they scheduled a hearing to
5 determine whether the Chairwoman violated the Ordinance.

6 On July 24, 2007, the Chairwoman received a copy of Complaint #2 and an
7 agenda for the hearing scheduled for August 1, 2007 (See Agenda, attached hereto
8 as Exhibit "4."). The Complaint #2 and agenda were not sent via certified mail as
9 required by Ordinance § 1-2-60(B)(4).

10 A hearing took place on August 1, 2007. The hearing was conducted by
11 Complainant Yucupicio. All Council members were not in attendance at hearing
12 as required by Ordinance § 1-2-60(B)(6). Secretary Catalina Alvarez arrived late
13 to the meeting. Council member Benito Valencia did not attend.

14 At the hearing, the Chairwoman was denied the right to be represented by
15 legal counsel, which she had retained at her expense. When the Chairwoman
16 requested Complainants recuse themselves from the proceedings, they refused (*See*
17 *Motion to Disqualify*, attached hereto as Exhibit 5."). A video camera was set up
18 to record the hearing, but Yucupicio ordered the camera to be turned off.

19 Complainants failed to introduce any evidence at the hearing in support of
20 the allegations in Complaint #2. They called no witnesses. Additionally, the
21 Complainants only referenced one document during the entire hearing, which was
22 a letter from the Chairwoman to the Tribe (*See Correspondence from Chairwoman*
23 *to Tribe*, attached hereto as Exhibit "6."). That letter states, in relevant part:

24 I have repeatedly stated that each decision we make as a Council to
25 utilize our resources must be done with your best interest in mind, nor

1 ours. My administration remains dedicated to these principles. On
2 July 18, consistent with these principles, I rescinded my previous
3 executive order which delegated certain Casino related duties to the
4 Vice Chairman. In addition, I ordered a complete financial audit of
5 the Casino.

6 Complainants never explained how this letter constituted an ethical violation. The
7 Chairwoman questioned each Complainant, asking if they had *any* evidence in
8 support of the allegations in Complaint #2, but *none* was provided at the hearing.

9 At the hearing the Chairwoman introduced evidence that Complainants were
10 biased against her. For example, the Chairwoman introduced a memorandum from
11 her to Complainant Priscilla Flores regarding the use of a tribal credit card for
12 personal expenses, and requesting justification for said expenses (*See*
13 Memorandum from Chairwoman to Flores, attached hereto as Exhibit "7.").

14 Additionally, the Chairwoman examined Complainant Luis Gonzales
15 regarding a confrontation between the Chairwoman and Gonzales' wife. It was
16 revealed that Gonzales' wife was charged with give crimes by tribal policy in
17 connection with the confrontation.

18 Furthermore, the Chairperson presented evidence that Complainant
19 Yucupicio was biased against her due to her gender. Specifically, Yucupicio told
20 the Chairperson that she was "destroying thousands of years of culture" by serving
21 as a female Chairperson of the Pascua Yaqui Tribe.

22 At the conclusion of the hearing, all Complainants participated in the
23 decision to determine whether the Chairperson violated the Ordinance. All
24 Complainants determined the Chairperson violated at least one of the allegations in
25 Complaint #2. Ultimately, a majority of the Complainants determined the
 Chairperson committed six of the alleged violations stated in Complaint #2. The
 Chairperson received "reprimands" for two of the alleged violations. She was

1 sanctioned to serve four consecutive 3 month suspensions for the remaining four
2 violations, thereby removing her from office for the remainder of her term. Two-
3 thirds of the Council never voted in favor of removing the Chairperson based on
4 any of the allegations as required by the Constitution. See Exhibit 8.

5
6 **II. STATEMENT OF THE ISSUES**

- 7 A. Whether the Pascua Yaqui Tribe Court has jurisdiction over this Appeal.
8 B. Whether the Chairwoman was denied due process at the hearing to remove
9 her from office as required by Constitution Art. I § 1(h).

10
11 **III. ARGUMENT**

12 **A. The Court Has Jurisdiction Because the Case Arises Under the Laws of**
13 **the Tribe, and Under the Constitution and the Ordinance, It Has**
14 **Jurisdiction to Review a Determination of a Violation of the Ordinance.**

15 *1. The Court has jurisdiction because the Constitution gives the Court*
16 *jurisdiction over all cases arising under the laws of the Tribe.*

17 Constitution Art. VIII § 2 gives the Court Jurisdiction to Review All Cases
18 Arising under the Constitution and Laws of the Pascua Yaquai Tribe. Article VIII
19 § 2 provides:

20 The jurisdiction of the courts shall extend to *all cases* in law and
21 equity *arising under*, this constitution and *the laws*, traditions,
22 customs or enactments *of the Pascua Yaqui Tribe* consistent with the
23 provisions of this constitution. The tribal courts shall exercise
24 jurisdiction over all civil and criminal matters wherein members or
25 non-members of the Pascua Yaqui Tribe are parties, unless otherwise
expressly prohibited by Federal or tribal laws.

1 Under Art. VIII § 2, the Court has jurisdiction to review the decision of the action
2 to remove the Chairwoman pursuant the Ordinance, because the Ordinance is a law
3 of the Tribe, and the Court has jurisdiction over *all cases* arising under the laws of
4 the Tribe.

5 Moreover, the Ordinance, as enacted by the Council, explicitly grants the
6 Court jurisdiction to hear appeals of determinations of ethical violations under the
7 Ordinance. Ordinance § 100 (Appeals) (2 PYTC § 1-2-100) states:

8 (A) Any Council Member who is found to have violated this
9 ordinance and against whom sanctions have been imposed by the
10 Council *shall have the right to appeal such determination to the*
11 *Pascua Yaqui Tribal Court.*

12 (B) *The Court is hereby granted jurisdiction to hear appeals* of the
13 *issuance of such sanctions by the Council*

14 (Emphasis added). The above provisions unequivocally state that any Council
15 Member determined to have violated the Ordinance “shall have the right to appeal
16 such determination to the Court. Further, the Ordinance explicitly provides that
17 the Court has jurisdiction to hear appeals of ethical violation determinations.

18 Thus, even if the Constitution did not already grant the Court jurisdiction
19 over “all cases... arising under... the laws... of the Pascua Yaqui Tribe” (which it
20 does), the Council conferred jurisdiction to the Court to hear appeals of ethical
21 violation determinations by the Ordinance.¹

22 Constitution Art. VIII § 2 and the Ordinance are not inconsistent with Const.
23 Art. VIII § 5, which states in relevant part:

24 ¹ Const. Art. VIII section 5 states the Tribal Council has authority to create the Court of the
25 Pascua Yaqui Tribe. It follows that the Tribal Council has the constitutional authority to confer
jurisdiction to the Court.

1 ...This court shall have the power of judicial review of all civil and
2 criminal matters appealed from the Pascua Yaqui Tribal Court. Such
3 appellate review shall not include trial de novo in any civil matter but
4 trial de novo shall be provided in any criminal matter upon the request
of any defendant.

5 The above provision gives the Court jurisdiction to review decisions of the Pascua
6 Yaqui Tribal Court, and provides the standard of review in those proceedings.
7 However, Const. Art. VIII § 5 does not provide any language of limitation
8 restricting the Court's jurisdiction to review of Tribal Court decisions. For
9 instance, Art. VIII § 5 does not state that the jurisdiction of the Court shall be
10 "limited to," "restricted to" or "shall only include" review of Tribal Court
11 decisions. Further, the standard of review set forth in Art. VIII § 5 is not
12 inconsistent with the Ordinance, because the Ordinance does not provide for *de*
13 *novo* review of a determination of an ethical violation.

14 Therefore, Art. VIII § 5 must be read consistently with Art. VIII § 2, which
15 provides the Court shall have jurisdiction over *all cases arising under the laws of*
16 *the Tribe*. Because the Ordinance is a law of the Tribe, this Court has jurisdiction
17 to hear this appeal.

18 2. *Alternatively, the Court has jurisdiction because this cases raises issues*
19 *of the Constitutionality of the Ordinance and sanctions against Appellee,*
20 *and the Court has jurisdiction to determine issues arising under the*
21 *Constitution.*

22 Independent of reasons stated above, the Court has jurisdiction over this
23 action because this case raises serious questions regarding the Constitutionality of
24 the sanctions against Appellee imposed under the Ordinance. As argued above, the
25 Court has jurisdiction over all cases arising under the laws of the Tribe, which
necessarily includes cases arising under the Tribe's Constitution.

1 In this case, the sanctions against Appellee imposed by a majority of the
2 Council pursuant to the Ordinance violate the Constitution. The Constitution
3 provides the Chairman of the Tribe shall serve a four year term,² subject only to
4 removal by the Council under Article X § 1 if the Chairman is:

5 ...convicted of a felony or of any crime involving deceit, fraud or
6 misappropriation of funds, or who engages in gross neglect of duty or
7 misconduct in office may be removed from office *by a two-thirds*
8 *majority vote of the tribal council.*

9 Constitution Art. VI § 1(p) limits the power of the Council to remove the
10 Chairwoman:

11 To establish rules and regulations governing its proceedings including
12 removal of council members *consistent with this constitution.*

13 The Ordinance, as enacted by the Council, has been utilized by a *majority* (but less
14 than 2/3) of the Council in a manner violative of the Constitution. In fact, a *mere*
15 *majority* of the Council has effectively removed the Chairwoman from office for
16 the remainder of her term without establishing she committed any of the acts
17 identified in Art. X § 1, or obtaining a 2/3 vote of the Council as required for
18 removal under the Constitution.

19 The Council may not legislate an end-run to remove the Chairwoman in a
20 manner inconsistent with the Constitution. Art. VI §(p). A legislative body may
21 not pass a law that causes a violation of the Constitution. U.S. v. Odneal, 565 F.2d
22 598 (1977). In this case, a majority of the Council has purportedly “suspended”
23 the Chairwoman from office, but the Constitution does not authorize the Council to
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25 ² Art. V § 1 provides, in relevant part: “The chairman... shall serve to that capacity for a *term of four (4) years....*” (emphasis added).

1 suspend the Chairwoman for any reason. The Chairwoman may only be removed
2 from office by a 2/3 vote of the Council for the reasons stated in Art. X § 1.
3 Alternatively, the Council may replace the Chairwoman with another Council
4 member under Art. IV § 3, but even such demotion requires a 2/3 vote of the
5 Council.

6 A majority of the Council has attempted to circumvent the constitutional
7 requirements for removal through the Ordinance. Depriving the Appellant of due
8 process and fundamental fairness, the Majority has sanctioned a *de facto* removal if
9 the Chairwoman in violation of the Constitution. The semantic distinction between
10 “removal” and “suspension” is particularly meaningless here, where the majority
11 has purportedly imposed *consecutive 3 month suspensions*, thereby *removing* the
12 Chairwoman from performing her elected duties for the remainder of her term.

13 To the extent the sanctions imposed by the majority of the Council fail to
14 meet the removal requirements of Art. X § 1, the action taken violates the
15 Constitution.³ Yet by legislation, a mere majority of Council has, in fact, removed
16 the Chairwoman from office in contravention of the Constitution. The Court has
17 jurisdiction to determine what is Constitutional, and to the extent the Ordinance
18 violates the Constitution, it is void. Therefore, because the decision to remove the
19 Chairwoman violates the Constitution, the decision must be reversed.

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21
22 ³ In addition to violating the Constitutional requirements for removal, the sanctions against the
23 Chairperson violate the Constitutional separation of powers set forth in Art. IV, which states:
24 “The powers of the Government of the Pascua Yaqui Tribe shall be divided into three separate
25 branches: the Legislative, the Executive and the Judicial....” It is a fundamental principle of a
three-branch system of government that the Legislature cannot usurp the powers of the executive
by limiting its functions through legislation. Barrenblatt v. U.S. 360 U.S. 109, 79 S. Ct. 1081
(1959).

1 **B. The Council Violated the Chairwoman’s Right to Due Process When it Failed**
2 **to Comply with the Ordinance.**

3 **1. The Council Did Not Comply with the Ordinance, which sets forth the**
4 **procedures for ethics complaints against Council Members.**

5 The Chairwoman’s due process rights were violated because a majority of the
6 Council (the Complainants) failed to comply with several provisions of the Ordinance.

7 Specifically, the Ordinance requires:

- 8
- 9 • All Council members must be present in a hearing to determine whether an
10 ethical violation occurred (§1-2-60(B)(6));
 - 11 • The hearing must be recorded (§1-2-60(B)(6));
 - 12 • Complainants must be excused from the hearing during deliberations, (§1-2-
13 70(A));
 - 14 • The Council must vote in open session on whether a violation occurred (§1-
15 2-70(B)); and
 - 16 • If a determination of violation is made, the Council must vote separately on
17 any sanctions that are imposed (§1-2-70(B)).
 - 18
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21 *a. The Ordinance Requires the Hearing to be Conducted with All Council*
22 *Members Present.*

23 Only 8 members of Council were present at the beginning of the hearing.

24 Yucupicio’s decision to conduct the hearing without all Council members being
25

1 present violated the Ordinance, and violated the Chairwoman's due process rights. §1-
2 2-60(B)(6).

3 *b. The Ordinance Requires the Hearing to be Recorded.*

4
5 The purpose of recording the hearing is to document the conduct of the hearing,
6 including all testimony, documentary evidence, and rulings by the tribunal. The record
7 is also necessary for the Court to review the Council's decision to determine whether it
8 is arbitrary or capricious upon appeal (§ 1-2-100(B)). Yucupicio violated the
9 Ordinance when he ordered the video camera to be turned off. Without a record of the
10 hearing, the Chairwoman was denied her ability to effectively pursue her appeal,
11 thereby violating her due process rights.
12

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14 *c. Complainants Must be Excused from the Deliberations.*

15 The Ordinance requires the complainants be excused from the Council's
16 deliberations regarding the accusations at the conclusion of the hearing (§1-2-70(A)).
17 Nonetheless, Yucupicio allowed the Complainants to participate in the deliberations.
18 If the Council had followed the law, there would have been no one to deliberate,
19 except those Council members present who were not also Complainants. Allowing the
20 Council members who were also Complainants to participate in the deliberations not
21 only violated the Ordinance, but also a fundamental of due process rights—the right to
22 a fair and impartial adjudicator.
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1 *d. The Ordinance Requires the Council to Vote in Open Session on Violations*
2 *and Sanctions.*

3 Taking action against a Council member under the Ordinance requires that
4 Council to act in open session. § 1-2-70(B). Specifically, the Ordinance requires two
5 votes in open session: the Council must vote on whether the Ordinance was violated;
6 then the Council must conduct a second vote on the sanctions.
7

8 However, when Council came back into open session after the hearing and its
9 deliberations, Yucupicio only conducted one vote—for sanctions.
10

11 The Council did not vote in open session on whether the Chairwoman was in
12 violation of the Ordinance. The Council’s decision that the Chairwoman violated the
13 Ordinance occurred in violation of the Ordinance.
14

15 **2. Yucupicio Failed to Provide Due Process to the Chairwoman at the Hearing**

16 Const. I § 1(h) place procedural constraints on government actions that deprive
17 individuals of their legitimate property interests. *See also Mathews v. Ethridge*, 424
18 U.S. 319, 332 (1976). Process is due when a person whose property interests are at
19 staeke will suffer a “grievous loss.” *Joint Anti-Fascist Refugee Committee v.*
20 *McGrath*, 341 U.S. 123, 168 (1951); *Cafeteria & Restaurant Workers Union v.*
21 *McElroy*, 367 U.S. 886, 895 (1961). Here, the Chairwoman, an elected official of the
22 Tribe and the Tribe’s CEO, has been suspended from her duties without pay.
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1 When there is the risk of such grievous loss, fundamental due process requires,
2 at a minimum: 1) timely and adequate notice detailing the charges; 2) an opportunity to
3 be heard at a meaningful time and in a meaningful manner; 3) the opportunity to
4 confront and cross-examine adverse witnesses and evidence; 4) the ability to present
5 her own arguments and evidence; 5) the right to be heard by counsel; 6) the decision
6 makers' conclusions must rest solely on the legal rules and evidence adduced at the
7 hearing, with stated reasons for the determination and the evidence relied upon; and 7)
8 of course, an impartial decision maker. Goldberg v. Kelly, 397 U.S. 254, 267-270
9 (1970).

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11
12 In Goldberg, the Court defined the minimum process due for welfare benefits
13 recipients who ran the risk of having their benefits cut off. The Court held that even
14 before the recipients could be cut off from their benefits—at the pre-termination
15 stage—the recipients were entitled to a quasi-judicial hearing. The Court rejected the
16 notion that this type of hearing was too time consuming or expensive for the
17 government.

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20 The Ordinance itself promotes the protection of due process rights by: (1)
21 including provisions for two separate reviews of any complaint; allowing for an
22 independent investigation of the claims; requiring that all Council members attend the
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1 hearing; allowing for representation by counsel; requiring impartial deliberations, and
2 allowing for a review of the Council's decision to the Tribe's Court.

3 Many of the allegations against the Chairwoman are vague and
4 incomprehensible. There is not sufficient detail given—such as specific examples,
5 citations to the laws violated, evidence to support the allegations—for the Chairwoman
6 to fairly and reasonably understand the nature of all the charges against her. For
7 example, one of the allegations the Council found was a violation of the Ordinance
8 was “designation of signatory authority.” It is wholly unclear what this means. The
9 same issues arise with almost all the allegations. Based on the vagueness of most of
10 the allegations in the complaint, it cannot be said that the Chairwoman received
11 adequate notice detailing the charges against her.
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15 Furthermore, the Chairwoman and her attorneys were not advised of any
16 hearing procedures despite attempts to obtain them. Failure to provide any information
17 about how the hearing would be conducted did not allow the Chairwoman to
18 adequately prepare for the hearing. Moreover, the Chairwoman was not given the
19 opportunity to be heard in a meaningful manner.
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22 Additionally, the Chairwoman was denied the opportunity to confront adverse
23 witnesses and evidence because the Complainants, the seven Council members
24 themselves, did not have any witnesses or any evidence. This Court has determined
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1 that one critical element of due process includes the ability to have access to evidence
2 against the accused. See Pascua Yaqui Tribe v. Soto, CA-06-010 (Ct of App. 2007);
3 Pascua Yaqui Tribe v. Molina, CA-04-002 (Ct of App. 2006). The Chairwoman
4 attempted to obtain information from the Council about any documents, evidence, or
5 witnesses to be called at the hearing. (See Request for Information, July 27, 2007 and
6 Second Request for Information for Special Council Meeting and Hearing on August
7 1, 2007 (July 30, 2007), attached hereto as exhibits 9 and 10). Despite these attempts,
8 Complainant did not provide any such information. Nor did the Complainants provide
9 such information at the hearing itself. On several occasions, the Chairwoman
10 requested specific evidence to support the allegations. On several occasions, the
11 Chairwoman asked specific questions of the Council member Complainants in an
12 attempt to cross examine them as witnesses. On many occasions, there was a lack of
13 response.

14 Not only does this lack of evidence deny the Chairwoman her right to due
15 process, but it also results in an arbitrary and capricious decision by the Council.
16 Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 414 (1971).

17 While the Chairwoman was given the right to present her own case, as argued
18 above, her presentation was hampered by not knowing the details of the charges and
19 the evidence against her. In addition, Yucupicio prevented the Chairwoman's legal
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1 counsel from presenting her case for her. As the U.S. Supreme Court found in
2 Goldberg, “[c]ounsel can help delineate the issues, present the factual contentions in an
3 orderly manner, conduct cross-examination, and generally safeguard the interests [of
4 his client].” Goldberg, 397 U.S. at 270-271. The Chairwoman was effectively denied
5 her right to counsel in violation of the Ordinance and minimum due process
6 requirements. The Chairwoman was forced to present her own case, which resulted in
7 great prejudice to her because of her lack of legal skills and training. While she did a
8 commendable job, Yucupicio’s arbitrary decision to deny her effective use of her
9 counsel denied her due process.
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13 Since there were no findings of fact, nor was there any discussion by the
14 Council in open session about the basis for its decision to find the Chairwoman in
15 violation of the Ordinance, it is impossible to tell whether Council relied upon any
16 evidence to reach its conclusions. The Council member Complainants did not present
17 any evidence to the Chairwoman, either before or during the hearing. The
18 Chairwoman presented evidence on her own behalf at the hearing, but only in regards
19 to certain allegations. If the Council member Complainants had evidence to support
20 their allegations, that evidence was not produced at the hearing. If the Council
21 member Complainants relied on evidence not produced at the hearing, then this was a
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1 violation of the Chairwoman's right to due process because she did not have the ability
2 to confront that evidence.

3 Lastly, the Council was not an impartial adjudicator of the allegations against
4 the Chairwoman. It was impossible for the Chairwoman to obtain a fair and impartial
5 hearing because her accusers, the Complainants, are also the Council Members who
6 sat as her judges. *See* Marshall v. Jerrico, Inc., 446 U.S. 238, (1980) (a fair trial in a
7 fair tribunal is a basic requirement of due process); Nebraska Press Ass'n v. Stuart, 427
8 U.S. 539(1976). The Ethics Complaint served on the Chairwoman on July 20, 2007
9 listed seven Council members, including the Yucupicio, as the Complainants. *See*
10 Complaint for Removal of Chairwoman Herminia Frias pursuant to the Pascua Yaqui
11 Tribe Constitution – Article X – Removal, Recall and Resignation from Office, July
12 20, 2007 (Attachment 3). All seven of these Complainants participated in the hearing
13 conducted on August 1, 2007, deliberated on the allegations and voted against the
14 Chairwoman. *See* Special Council Meeting, August 1, 2207, Council Motion/Vote
15 Records (Attachment 4).

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21 The Chairwoman sought to have the Council member Complainants recused
22 from the hearing and from voting. *See* Motion to Disqualify Complainants from
23 Presiding Over or Participating in Special Council Meeting and Hearing on August 1,
24 2007 (July 30, 2007). Yucupicio refused to grant the motion, and the Council member
25

1 Complainants refused to disqualify themselves. By sitting in judgment of their own
2 complaint, reviewing their own evidence, and participating in the final decision, the
3 Complainants denied the Chairwoman the most fundamental aspect of due process—
4 the right to a fair and impartial hearing.
5

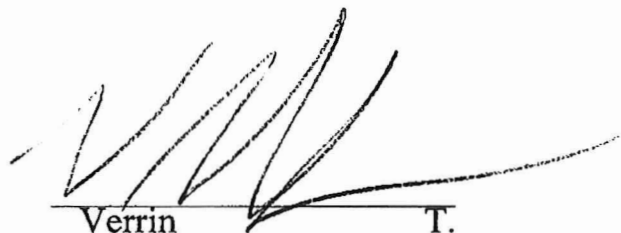
6 All of these above stated actions add up to grossly inadequate due process
7 protections from the Complainants. Given the Chairwoman's property interest in her
8 position and her pay, the fact that she is the chief executive officer of the Tribe with
9 many duties and obligations attendant with that position, and the highly important and
10 impactful effect of taking action against a Council member under the Ordinance, the
11 Complainants should have afforded the Chairwoman considerable due process. Those
12 due process procedures should have taken the form of a judicial type hearing—just as
13 the Council has decided is due to every tribal government employee who has had an
14 adverse employment action taken against them.
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18 **V. CONCLUSION**

19 For the reasons stated above, the Chairwoman respectfully requests the
20 Court enter an immediate Stay of the sanctions pending this Court's consideration
21 of the Chairwoman's Appeal, or in the alternative, to reverse the decision to
22 remove the Chairwoman in violation of the Constitution.
23
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RESPECTFULLY SUBMITTED this 14th day of
August, 2007

By:



Verrin T.
Kewenvoyouma
Robert A. Rosette
Rosette & Associates, PC
Counsel for Chairwoman
Herminia Frias

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EXHIBIT

1

TRIBAL COUNCIL MINUTES

JUNE 22, 2005

Opening Prayer – Francisco Valencia

CALL TO ORDER, Item 1:

Chairwoman Herminia Frias called the Wednesday, June 22, 2005 Tribal Council Meeting to order. The meeting convened at 6:00 p.m.

ROLL CALL, Item 2:

Tribal Council Secretary Catalina Alvarez conducted roll call:

Herminia Frias, Chairwoman	Present
Peter Yucupicio, Vice-Chairman,	Present
Catalina Alvarez, Council Secretary	Present
Francisco Valencia, Council Treasurer	Present
Priscilla Flores, Council Member	Present
<i>Arcadio Gastelum, Council Member</i>	<i>Absent - PTO</i>
Luis L. Gonzales, Council Member	Present
Francisco D. Munoz, Sr.	Present
David G. Ramirez, Council Member	Present
Benito Valencia, Council Member	Present
Robert Valencia, Council Member	Present

Ten Tribal Council Members were present, constituting a quorum.

APPROVAL OF COUNCIL MINUTES, Item 3:

Councilman Munoz motioned to approve the May 18, 2005 Tribal Council Minutes with corrections. Vice-Chairman Yucupicio seconded the motion. The motion passed by a roll call vote of **TEN** in favor, **ZERO** opposed, and **ZERO** abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco D. Munoz	YES
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	YES
Priscilla Flores	YES	Robert Valencia	YES

Councilwoman Flores motioned to approve the June 8, 2005 Tribal Council Minutes. Councilman Munoz seconded the motion. The motion passed by a roll call vote of **SEVEN** in favor, **ZERO** opposed, and **THREE** abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	Abstain	Francisco D. Munoz	YES
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	Abstain	Benito F. Valencia	YES
Priscilla Flores	YES	Robert Valencia	Abstain

SPECIAL REPORTS, Item 4:

A. Chairwoman's Report

Chairwoman Frias reported that the last Tribal Council Meeting was held in Marana. The Tribe is in the process of developing the new budget. All directors and departments are working diligently on the budgets, the current budget year ends on September 30th. The departmental budget hearings will begin in August. The departments submitted their first 6-month reports and by mid-July, the departments will give another 6-month report and provide information on future projects. The Chairwoman reported that departments are continuing with their community focus groups. A preliminary report will be prepared by mid summer; it should be ready on Tribal Recognition Day in September.

B. Executive and Tribal Council Oversight Committee Reports

Public Safety Oversight Committee Chairman, Robert Valencia Chief Seligman gave a brief report. The Chief reported that the family movie night at the Fire Station had a good crowd two weeks ago. He invited the community to come to the movie night on the 23rd, there will be games, free hot dogs, popcorn, and sodas during the showing of the Incredibles.

Development Services Oversight Committee Chairman, Francisco Munoz reported that the committee is looking at diversifying the Tribe's enterprises - they are looking at the possibility of bringing in a franchise. Once the appointments are made to the Economic Committee they can begin looking at investments. Carl Russell introduced himself and reported that he has started to work on an Economic Development Strategy. The focus will be building businesses - getting tribal members into those businesses. Staff has been working at Holy Hope cemetery. Although the previous micro-loan program was disbanded, it is hoped that the tribe can partner with other organizations and get the program started again.

Health/Member Services Committee Chairman, Luis Gonzales asked Rebecca Martinez to give an update on the recent Wellness Conference. Councilman Gonzales announced the upcoming Social Services forums and reported on the elder's trip to Rio Yaqui; 73 elders plus eight staff and four volunteers will go on the June 29th - July 3rd trip. Irma Valencia from the TANF Program addressed the issue of child care. Enrollment Director, Marisela Nunez updated Council on the recruitment for the Enrollment Screening Committee which will review and provide recommendations on the remaining open enrollment applicants.

Treasurer Francisco Valencia reported that this year's concert series has been doing well and increased slot play before and after the concerts has been reported. He said that he hopes Council makes appointments to the boards so that planning can continue and so that they can move forward.

Vice-Chairman Peter Yucupicio thanked the many volunteers and the co-chairs for the Wellness Conference. He informed the audience that some of the Council met with a few members representing the Obregon Economic Development. He also spoke on the need and importance of economic diversification.

Housing Oversight Committee Chairman, David G. Ramirez reported on the Housing Conference he recently attended. He said that they met with representatives from Washington Mutual National Bank of Arizona, and they will send out information to the membership when it becomes available. Councilman Ramirez also reported on the successful celebrations that were held in honor of the elders for Mother's and Father's Day. The 2005 Indian Housing Plan will be submitted to HUD.

Education Oversight Committee Chairwoman, Priscilla Flores reported that they are busy getting ready for the next school year – work is continuing on the policies; they will address the dropout issues; a possible Intergovernmental Agreement with TUSD is under consideration. Councilwoman Flores reported on the upcoming Back to School Bash and the Tools for Success Program. Contact the Education Department for applications. The Education Department Director informed the audience that Headstart was participating in a program at Johnson to help the student's transition into Kindergarten. For the benefit of the audience, Councilman Gonzales asked the director to elaborate on Tools for Success. The Director gave a brief update and also informed the audience that TUSD can help those families who do not qualify for the Tools for Success Program. Councilwoman Flores informed the audience that the committee is continuing work on the Charter School – there are still a few openings.

Tribal Council Secretary, Catalina Alvarez announced that copies of the flyers for youth summer activities were available, as well as a summer meeting schedule for the upcoming Tribal Council Meetings. The Secretary informed the audience that the July 6th Tribal Council Meeting would be held in Old Pascua; the following meeting will be held in the Tribal Council Chambers on July 20th. Secretary Alvarez also announced that the Council would be holding a meeting in July for the approval of the Resolutions for conveyances of 40-8 homes. The Secretary also announced that the Pascua Yaqui Tribe's website is up and running. She reported that there is a resolution up for adoption to enact codification and code revision ordinances.

ACTION/DISCUSSION, Item 5:

A. Resolution No. C06-244-05

Vice-Chairman Yucupicio motioned to approve Resolution No. C06-244-05 authorizing the Pascua Yaqui Fire Department to submit an application to the Department of Homeland Security Office of Domestic Preparedness, "Staffing for Adequate Fire and Emergency Response" (SAFER") Grant Program. Treasurer Valencia seconded the motion. The motion passed by a roll call vote of NINE in favor, ONE opposed, and ZERO abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco D. Munoz	NO
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	YES
Priscilla Flores	YES	Robert Valencia	YES

B. Resolution No. C06-245-05

Vice-Chairman Yucupicio motioned to approve Resolution No. C06-245-05 approving an amendment to Behavioral Health Services contract with M. Scott Ferrell, M.D., P.C. for psychiatric services. Councilwoman Flores seconded the motion. The motion passed by a roll call vote of TEN in favor, ZERO opposed, and ZERO abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco D. Munoz	YES
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	YES
Priscilla Flores	YES	Robert Valencia	YES

C. Resolution No. C06-246-05

Vice-Chairman Yucupicio motioned to approve Resolution No. C06-246-05 adopting Land Code Policies and Procedures. Councilman Ramirez seconded the motion. The motion passed by a roll call vote of TEN in favor, ZERO opposed, and ZERO abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco D. Munoz	YES
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	YES
Priscilla Flores	YES	Robert Valencia	YES

D. Resolution No. C06-247-05 (Ordinances 6 & 7)

Councilwoman Flores motioned to approve Resolution No. C06-247-05 enacting Codification and Code Revision Ordinances. Councilman Munoz seconded the motion. The motion passed by a roll call vote of TEN in favor, ZERO opposed, and ZERO abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco Munoz, Sr.	YES
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	YES
Pricilla Flores	YES	Robert Valencia	YES

E. Resolution No. C06-248-05

Vice-Chairman Yucupicio motioned to approve Resolution No. C06-248-05 authorizing the submission of the 2005 Indian Housing Plan to the Office of Housing and Urban Development's Office of Native American Programs. Councilman Ramirez seconded the motion. The motion passed by a roll call vote of **TEN** in favor, **ZERO** opposed, and **ZERO** abstaining:

Herminia Frias	YES	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco Munoz, Sr.	YES
Catalina Alvarez	YES	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	YES
Pricilla Flores	YES	Robert Valencia	YES

CALL TO THE AUDIENCE, Item 6:

Vice-Chairman Yucupicio and Treasurer Valencia had a lengthy discussion on their dissatisfaction and concern about the recent action taken by Chairwoman that they felt lessened their authority and took away their signatory power. Several other Council Members voiced their concerns also. The Chairwoman explained the rationale behind the recent steps that she took, and explained that she had the authority under the Constitution. She explained the memorandum that went out and explained again that she was charged with taking care of and protecting tribal resources. A discussion was held on what process they should take to remove the Chairwoman – remove by vote of no confidence or recall.

Treasurer Francisco Valencia motioned to remove Chairwoman Herminia Frias on a “no confidence” vote. Councilman Gonzales seconded the motion. The motion failed to receive the required two-thirds majority vote of the Tribal Council. The motion failed by a roll call vote of **FIVE** in favor of removal, **FOUR** opposed to removal, and **ONE** abstained:

Herminia Frias	Abstain	Luis L. Gonzales	YES
Peter Yucupicio	YES	Francisco Munoz, Sr.	NO
Catalina Alvarez	NO	David G. Ramirez	YES
Francisco Valencia	YES	Benito F. Valencia	NO
Priscilla Flores	NO	Robert Valencia	YES

Frank Garcia asked if the Marana education issues had been followed up on and was told that the Treasurer's secretary is researching the proposal. Councilman Gonzales asked if the Education Department had made contact with the community, and the Education Director responded that she hadn't. Mr. Garcia asked if the shed had been moved. Councilman Ramirez informed him that the shed would be relocated by

Friday and that estimates were being made for the lighting for the basketball court and park. He also inquired about tribal water rights and was informed by the Chairwoman that the tribe does have water rights – and has been working on it and yes, it is important to the tribe – the tribe’s water rights were recently addressed in Washington, D.C. Assistant Attorney General, Pilar Thomas informed the audience that she has been working on the water rights and the tribe currently has a lawyer working on a law suit that was filed in 1988. The tribe also has water rights in Tortuga Ranch; and the tribe also has a CAP water allocation. Ms. Thomas reported that within 30 days a proposal should be ready to submit to Council so that we can start using our water rights. Mr. Garcia inquired about a recent memorandum that went to tribal employees from Human Resources. Human Resources Director, Jacinta Figueroa explained that we, as employees, are all in the position of public trust and are governed by the handbook. She and the Chairwoman explained the intent and content of the memorandum addressing confidentiality in detail.

The Chairwoman expressed the importance of financial accountability and updated the audience on some of the financial issues facing the tribe. Chairwoman Frias stated that the community should know how much money the government makes, and how much it spends. She explained how the money the Casino generates is used to run the government side of the Tribe. She stated that it costs 50 million dollars to run the government. This information will be presented to the communities in the form of a report. Vice-Chairman Yucupicio informed the audience that two things will impact the Casino’s revenue in the future – the Valencia Road construction project will impact the casinos and also the fact that our competition - the Tohono O’odham will be building a hotel/casino in the near future. A heated discussion about the Tribe’s financial status ensued. Anselmo Frias expressed his opinion that the Council should give up their raises and cars. He commented on his concern that some of the Council have extra jobs and that they should be focusing on their positions as Council members. Several Council members voiced their concern about the recent purchase of new cars and the practice of scheduling off-site meetings at hotels and resorts rather than utilizing the facilities here at the tribe. Councilman Gonzales expressed his concern about \$30,000 that he said Penjamo had not received yet. The Treasurer said that “It was passed by six of us – we did approve it.” Frank Garcia suggested that Council should go back to just receiving stipends for the actual meetings that Council Members attend and show the community that they are serious about cutting expenses. He also admonished the Council to stop bickering.

Ana and Vincent Valenzuela came before Council with concerns regarding Social Services and foster care – they were advised to make an appointment to meet with Mr. Flores and to make an appointment with Council Secretary Catalina Alvarez.

Rafael Madrid stated that he felt the resolutions should be read in their entirety. He also complained that Council doesn't answer their phones or return calls.

Jose Matus, Capitan of the Guadalupe Kolencia, asked the Chairwoman to clarify rumors that are going around in Guadalupe that she wanted to run the cultural societies.

The Chairwoman assured him that it has never been her intention to run the cultural societies.

Sally Gonzales readdressed her concerns about the scholarship allocations/reductions in the allocations for the various educational levels. The Chairwoman discussed the reasoning behind the scholarship allocations. An audience member suggested mandating the college/university students who receive scholarships to tutor the younger students. A lengthy discussion was held on the higher education scholarship amounts; the importance of community input; the need to pass the policies; and the need to also focus on the K-12 students.

Natalie Hernandez approached Council regarding an incident that occurred at the Casino where an employee was taken from work to the hospital. Even though it was an emergency situation points were still given, resulting in a firing. Chairwoman Frias informed her that the employee needed to go through the appeal process. Treasurer Valencia said that he would forward the information to Councilman Gastelum, Human Resources Oversight Committee Chairman for investigation.

George Duarte, a cook at Mobey's came before Council to voice his grave concerns about the working environment at the Casino and the unfair treatment and lack of respect shown to him and other employees by their supervisors in the Food and Beverage Department. A discussion was held about the role the Gaming Board has taken or lack of action by the board when it comes to employee/supervisor problems. Several Council members said that these concerns have been addressed with the Board and with Edmund Miranda.

Gloria Urbalejo approached Council regarding the availability/unavailability of a van. The paperwork was submitted in March and she was led to believe that it was 'pre-approved' and would be ready for her use. When she came to pick it up she was told she couldn't use it – she asked if there was a written policy regarding van usage. She was informed that guidelines have been set up for van usage, and when certain criteria have been met, the vans are lent out. It was Council consensus to provide a vehicle for her use after the meeting.

Steve Alvarez approached Council regarding assistance for a baseball team for lodging to attend a tournament. He was referred to the Treasurer's Administrative Assistant for assistance.

Juan Alvarez addressed Council via video conferencing from Old Pascua regarding a Human Resources issue that he felt was still unresolved; and his concern about being treated unfairly; and his feeling that he has been 'blackballed' for future employment at the tribe; and also for not being contacted by H.R. He said "the former Council and Chairman made a final decision to close my case. At the Courts I was informed that I could not proceed with my case." He said he wanted to clear his name and personnel file. Chairwoman Frias told him that she recalled receiving a call from him thanking her for setting up a meeting for him with H.R. The Chairwoman told him that another meeting can be set up for him.

Rebecca Matus approached Council on behalf of her sister, Delia. Delia had concerns about being assigned to cover for other employees lunch breaks at the Casinos. Her concerns will be turned over to the Gaming Board for follow-up.

The Chairwoman reiterated that she didn't feel that the public Council Meeting was the forum to discuss Casino issues.

Ms. Gonzales denied allegations that she had written a recent newsletter, stating that if she had, she would have signed it.

A young man in the audience told the Council that he had applied for "a lot of jobs and have not gotten nothing."

Margie Ramirez spoke to the Council and audience about how and when her father and others, those he trusted – and those he didn't, worked together to get the tribe recognized. She said, "I am ashamed of each and every one of you. My father must be turning in his grave. We, "the people", are your bosses." She told the Council that they should be working with each other.

NEW BUSINESS/ANNOUNCEMENTS, Item 7:

No new business or announcements.

ADJOURNMENT, Item 8:

The motion was made and seconded to adjourn the June 22, 2005 Tribal Council Meeting. It was Council consensus to adjourn the Council Meeting at 11:40 p.m.

Page 9
June 22, 2005
Tribal Council Minutes

Submitted By: _____
Vesta E. Stewart
Executive Assistant

Date Approved: July 6, 2005

Recorded By: _____
Catalina Alvarez
Tribal Council Secretary

EXHIBIT

2

CONFIDENTIAL
MEMORANDUM

To: Vice Chairman Yucupicio

From: Francisco Valencia, David Ramircz, Robert Valencia, Priscilla Flores, Arcadio Gastelum, Luis Gonzales

Date: July 20, 2007

Re: **Complaint pursuant to Tribal Council Code of Ethics Ordinance of 2006. Title 2, Chapter 1-2, Sections 1 – 110. Chairwoman Herminia Frias**

In accordance with the Tribal Council Code of Ethics Ordinance, please accept this document as the written complaint that is required to be submitted to the Vice Chairman in order to begin the procedure to investigate allegations of unethical or improper misconduct as defined by the Ordinance.

For several reasons, we believe that the Chairwoman has engaged in unethical and improper conduct as defined by the Code of Ethics Ordinance. As required by the Ordinance, the following actions are specific examples of the Chairwoman's unethical and improper conduct.

(1) The Chairwoman failed to consult with the Tribal Council regarding the appointment of the Finance Director in violation of 2 PYTC § 5-1-100. (A8)

(2) The Chairwoman failed to carry out, or cause to be carried out resolutions in March 2006 in violation of Article XV of the Constitution of the Pascua Yaqui Tribe. (A8)

(3) The Chairwoman has failed to report to the Tribal Council regarding the status of tribal matters and make such recommendations to the Tribal Council as she deemed advisable in the best interest of the tribe, in violation of Article XV, Section 1 of the Constitution of the Pascua Yaqui Tribe. No reports as required by the Constitution. (A8)

(4) Designation of signatory authority. (A8)

(5) Violation of Fiscal Management Ordinance→ No enforcing reporting requirements on Finance Director. Monthly and Quarterly Reports. Finance Director has not given budget information to the Tribal Council. (A8)

Section 330 Reports (2 PYTC § 5-1-330)

(A) Monthly Reports:

- (1) The Finance Director shall provide a written monthly report to the Chairman, Treasurer and Financial Management Oversight Committee on or before the 20th day of each month, which shall reflect the

amounts provided for in the adopted budget, as adjusted by additions, carryovers and other adjustments, in detail, and the amounts of expenditures made against such appropriations.

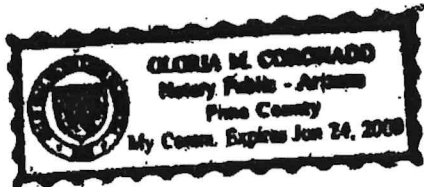
(B) Quarterly Reports:

- (1) The Finance Director shall present a formal financial and budget status report through the Chairman to the Tribal Council within 30 days after the end of each fiscal quarter.
- (6) TGO reports are not being received. (A8)
- (7) Refusing to allow the Treasurer to view the financial records of the Tribe. (A8)
- (8) Neglect → Failing to delegate signatory authority to anyone for weeks at a time. (A8)
- (9) Without Council approval, cut the budget without approving the cuts. (A5)
- (10) Restructure of the tribal government divisions, offices. This is an authority expressly reserved to the Tribal Council. (A8)
- (11) Budget – Moving appropriated funds from one budget to another. (A5)
Ex. Back to school bash → Money approved for it, and was not used or was moved.
Ex. Enrollment – Money for printer was transferred to IT Division instead.
Ex. Miss Yaqui funds reduced.
Ex. Cultural Events budget → Council approved budget, but total was reduced afterwards.
Ex. Council has its' own budget and programs → Council decision on how to spend money, this is not a Chair authority.
Ex. Authority over approving Tribal Council member travel.
- (12) Not following OAG Ordinance. No review of Farley Reports by OAG. Providing reports to the Tribal Council. (A8)
- (13) Denying access to the Election Chairperson to her office resulting in not being able to fulfill election duties and requests from tribal constituents thus violating the election ordinance. (A8).
- (14) Relinquishment of duties of Chair to Vice-Chair. Not being involved in the affairs of the Gaming Enterprise Division. Failing to attend Gaming Enterprise Division meetings on a regular basis. (Neglect)
- (15) Did not mandate/require Finance Department and Office of the Attorney General to attend Gaming Enterprise Division meetings. (Neglect)
- (16) Refusing to spend money that has already been allocated. Ex. ITCA funding is Tribal Council authority and not Chairwoman's decision. (A5)
- (17) When approved donations budget, recommended for \$25,000 per community. Chairwoman refused to allow the funding to be passed through. (A5)

- (18) Memo directing Directors to refuse to speak to Tribal Council members. (A5)
- (19) Denied councilmans' right to make a motion on a resolution. (A8)
- (20) Violations of the Yaqui Preference Act in hiring of key employees. (A8)
- (21) Has violated the Yaqui Preference Act by failing to protect the rights of tribal member employees who were laid off and not given preference in rehiring while giving non-tribal employees in similar situations the benefit of employment. (A8)
- (22) Has created instability in tribal government due to lack of leadership and creating excessive turnover in critical positions resulting in resignations or terminations of qualified individuals while replacing them with unqualified interim director positions in excess of one year. (A8)



SUBSCRIBED AND SWORN TO BEFORE ME
THIS 20 DAY OF July, 2007
BY Peter Yucupico
Gloria M. Coronado
NOTARY PUBLIC



EXHIBIT

3

CONFIDENTIAL
MEMORANDUM

To: Herminia Frias, Chairwoman
Pascua Yaqui Tribe

From: Peter Yucupicio, Francisco Valencia, David Ramirez, Robert Valencia, Priscilla Flores, Arcadio Gastelum, Luis Gonzales

Date: July 20, 2007

Re: **Complaint for removal of Chairwoman Herminia Frias pursuant to the Pascua Yaqui Tribe Constitution – Article X – Removal, Recall and Resignation from Office**

In accordance with the Constitution of the Pascua Yaqui Tribe – Article X – Removal, Recall and Resignation from office, please accept this document as the written complaint that is required to be submitted to Herminia Frias as the accused in order to begin the procedure to investigate allegations of unethical or improper misconduct as stated in the Constitution..

For several reasons, we believe that the Chairwoman has engaged in unethical and improper conduct as defined by the Code of Ethics Ordinance. As required by the Ordinance, the following actions are specific examples of the Chairwoman's unethical and improper conduct.

- (1) The Chairwoman failed to consult with the Tribal Council regarding the appointment of the Finance Director in violation of 2 PYTC § 5-1-100. (A8)
- (2) The Chairwoman failed to carry out, or cause to be carried out resolutions in March 2006 in violation of Article XV of the Constitution of the Pascua Yaqui Tribe. (A8)
- (3) The Chairwoman has failed to report to the Tribal Council regarding the status of tribal matters and make such recommendations to the Tribal Council as she deemed advisable in the best interest of the tribe, in violation of Article XV, Section 1 of the Constitution of the Pascua Yaqui Tribe. No reports as required by the Constitution. (A8)
- (4) Designation of signatory authority. (A8)
- (5) Violation of Fiscal Management Ordinance→ No enforcing reporting requirements on Finance Director. Monthly and Quarterly Reports. Finance Director has not given budget information to the Tribal Council. (A8)

Section 330 Reports (2 PYTC § 5-1-330)

- (A) Monthly Reports:

- (1) The Finance Director shall provide a written monthly report to the Chairman, Treasurer and Financial Management Oversight Committee on or before the 20th day of each month, which shall reflect the amounts provided for in the adopted budget, as adjusted by additions, carryovers and other adjustments, in detail, and the amounts of expenditures made against such appropriations.
- (B) Quarterly Reports:
- (1) The Finance Director shall present a formal financial and budget status report through the Chairman to the Tribal Council within 30 days after the end of each fiscal quarter.
- (6) TGO reports are not being received. (A8)
- (7) Refusing to allow the Treasurer to view the financial records of the Tribe. (A8)
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- (10) Restructure of the tribal government divisions, offices. This is an authority expressly reserved to the Tribal Council. (A8)
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- (12) Not following OAG Ordinance. No review of Farley Reports by OAG. Providing reports to the Tribal Council. (A8)
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- (14) Relinquishment of duties of Chair to Vice-Chair. Not being involved in the affairs of the Gaming Enterprise Division. Failing to attend Gaming Enterprise Division meetings on a regular basis. (Neglect)
- (15) Did not mandate/require Finance Department and Office of the Attorney General to attend Gaming Enterprise Division meetings. (Neglect)
- (16) Refusing to spend money that has already been allocated. Ex. ITCA funding is Tribal Council authority and not Chairwoman's decision. (A5)

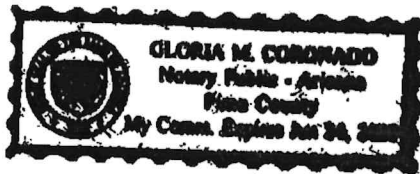
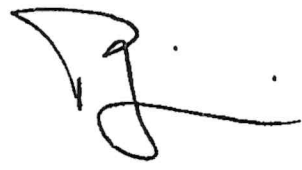
- (17) When approved donations budget, recommended for \$25,000 per community. Chairwoman refused to allow the funding to be passed through. (A5)
- (18) Memo directing Directors to refuse to speak to Tribal Council members. (A5)
- (19) Denied councilmans' right to make a motion on a resolution. (A8)
- (20) Violations of the Yaqui Preference Act in hiring of key employees. (A8)
- (21) Has violated the Yaqui Preference Act by failing to protect the rights of tribal member employees who were laid off and not given preference in rehiring while giving non-tribal employees in similar situations the benefit of employment.(A8)
- (22) Has created instability in tribal government due to lack of leadership and creating excessive turnover in critical positions resulting in resignations or terminations of qualified individuals while replacing them with unqualified interim director positions in excess of one year.(A8)

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 20 DAY OF July, 2007

BY Peter Yulupko

Gloria M. Coronado
NOTARY PUBLIC



EXHIBIT

4

**THE PASCUA YAQUI TRIBAL COUNCIL HAS CALLED A
SPECIAL TRIBAL COUNCIL MEETING FOR WEDNESDAY, AUGUST 1, 2007
AT 10:00 A.M. IN THE TRIBAL COUNCIL CHAMBERS.**

**AGENDA
SPECIAL TRIBAL COUNCIL MEETING
AUGUST 1, 2007**

- 1. Call to Order**

- 2. Roll Call**

- 3. Action/Discussion Item:**
 - A. Hearing regarding complaint pursuant to Tribal Council Code of Ethics Ordinance of 2006, Title 2, Chapter 1-2, Sections 1 – 110. Chairwoman Herminia Frias. *(Council will conduct hearing in Executive Session)***

- 4. Adjournment**

EXHIBIT

5

July 30, 2007

Via Email and Facsimile

Honorable Members of the Pascua Yaqui Tribal Council
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, Arizona 85746

Re: Motion to Disqualify Complainants from Presiding Over or Participating in Special Tribal Council Meeting and Hearing on August 1, 2007, ("Hearing")

Honorable Members of the Pascua Yaqui Tribal Council:

In the earnest interest of providing fundamental fairness and due process of law pursuant to Article I, Section 1(h) of the Constitution of the Pascua Yaqui Tribe, Chairwoman Herminia Frias, through the undersigned legal counsel hereby moves to disqualify and excuse Vice Chairman Peter Yucupicio, Treasurer Francisco Valencia, Council Member Priscilla Flores, Council Member Arcadio Gastelum, Council Member Luis Gonzales, Council Member David Ramirez, and Council Member Robert Valencia ("Complainants") from presiding over or participating in the hearing in the above referenced matter on the grounds of conflict of interest and fundamental principles of due process.

Specifically, the Complainants are named as such in the Complaint pursuant to Tribal Council Code of Ethics Ordinance of 2006 dated July 20, 2007 ("Complaint"). For action in which a person was allegedly wronged, the person who allegedly wronged must file the complaint. 2 PYTC § 1-2-60 (B)(1)(b). The status of being a complainant is akin to being a "victim". By submitting and attaching their names as complainants, it would be fundamentally unjust to allow "victims", in this case the Complainants, to also participate as the judge/jury, and finally as the enforcer through sanctions. As the Tribal Council is intended to be the independent and impartial decision maker, victims, in this case the Complainants, will be biased and can not provide the Chairwoman an impartial decision.

Further, under Pascua Yaqui Tribal Ethics Code, the accused Council Member and *the complainant shall be excused from the executive session so the Tribal Council may review evidence and consider a decision and sanction.* 2 PYTC § 1-2-70 (A) (emphasis provided). This provision is intended to preserve the Tribal Council as an impartial decision maker, without influence from the accused Council Member and the complainant(s).



To permit the Complainants to participate in this Hearing in any manner would be offensive to the due process provisions of the Pascua Yaqui Tribe's Constitution, Ethics Ordinance, and in direct contradiction of the fundamental fairness relied upon by all members of the Pascua Yaqui Tribe.

Therefore, for the above stated reasons we hereby move to disqualify and excuse the Complainants from participating in this Hearing on the above referenced matter.

In the event the presiding official can not compel disqualification or excuse the Complainants, Chairwoman Frias, through the undersigned counsel, respectfully requests the Complainants to recuse themselves from the Hearing on the same grounds and under the same authority, as set forth above.

Respectfully,

A handwritten signature in black ink, appearing to read "Verrin T. Kewenvoyouma".

Verrin T. Kewenvoyouma

cc: Honorable Attorney General Justin M. Ruggieri

EXHIBIT

6

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRWOMAN



July 30, 2007

RE: Ethics Complaint

Dear Tribal Member,

I hope this letter finds you in good health and spirits. I am sending this letter to you today because I have important information to share with you. During my term, I have tried to be honest and open about what is happening in our government, sharing with you the good, the bad, and the ugly.

On Friday, July 20, 2007, I was handed a memo from the Vice Chairman seeking to remove me from office for vindictive and politically motivated reasons. There is nothing to the allegations contained in the memo except a basic disagreement about my constitutional authorities as Chair. I assure you that I have always acted within the authority granted to the Chairperson by the Constitution. This action by 7 Council members, and the false allegations listed within it, will reverse the important work we as a community began over three years ago. It is hard to believe that with only 10 months left in our term, these Council members will engage in political theatrics instead of focusing on the work that needs to be done.

Since becoming the Chairwoman, my administration has worked tirelessly to invest our money in projects and programs that improve the lives of every tribal member, and not just those with political influence. We have worked to build new facilities, develop new programs and services, and invest the Tribe's resources to improve the lives of each tribal member. Because of this work our community is becoming more safe, healthy and better off.

In the past three years we worked on:

- Construction of the Wellness Center
- Construction of the Senior Center and improved services to our elders
- Improving services to our youth and families
- Establishment of Hiaki High School
- Development of plan to build 200 more houses on the reservation, and develop new homeownership programs for tribal members
- Establishment of the Community Advisory Board to improve public safety, housing and community revitalization.
- Community revitalization, including new parks, playgrounds, sidewalks and lighting, to create a better living environment and provide more and safer places for the children, elders and families on the reservation
- Commercial development of the Tribe's land along Valencia road is FINALLY going to happen which will increase revenues and job opportunities for more tribal members.

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUÑOZ, SR.
DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

7474 S. Camino De Oeste • Tucson, Arizona 85746 • Phone (520) 883-5015 • FAX (520) 883-5099
1-800-572-7282 • E-mail: pylit@liveline.com

Open Letter to Tribal Members
July 26, 2007
Page 2

As your tribal government leaders, each Council member has a responsibility to each and every tribal member. We must lead by example. Council members should no longer expect or receive any special treatment just because of their position. I have repeatedly stated that each decision we make as a Council to utilize our resources must be done with *your* best interest in mind, not ours.

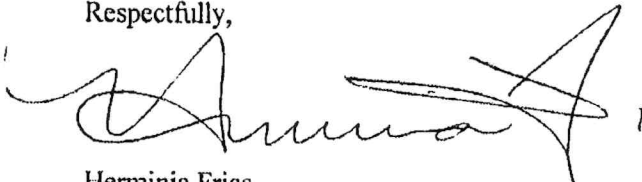
My administration remains dedicated to these principles. On July 18, consistent with these principles, I rescinded my previous executive order which delegated certain Casino related duties to the Vice Chairman. In addition, I ordered a complete financial audit of the Casino. This audit is necessary to understand the financial expenditure decisions by Casino Management and oversight of those expenditures by the Vice Chairman. It is obvious that these decisions led to the false allegations filed against me.

This action against me offers each Council member a clear choice: they can work with me for the next 10 months to improve the lives of all our tribal members or they can go back to a time when special favors for themselves, their families and their friends were acceptable. They can choose to work with my administration to use our funds to build needed housing, parks, playgrounds, and sidewalks for our tribal members or they can spend their time trying to benefit just their family and friends. Council members can choose to work with me to save and invest in the future of our people and community, or they can choose to allow the Casino to squander our resources on unnecessary, frivolous projects.

As Chairwoman, I want to reassure you that, while this process is occurring there will be no impact on either government or enterprise operations. I will continue to fulfill the duties of this office. I have asked all employees to continue to focus on their jobs, which is to provide the important and needed services and programs to our tribal members and customer service to our customers.

Thank you again for your support. Together we will continue to make our government work to improve the lives of each and every tribal member.

Respectfully,

A handwritten signature in black ink, appearing to read 'Herminia Frias', with a large, stylized flourish at the end.

Herminia Frias
Chairwoman

EXHIBIT

7

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRWOMAN



February 2, 2007

Dear Honorable Priscilla Flores, Councilmember

It has come to my attention that you have not turned in your credit card receipts since June of last year. As a result, I began reviewing your credit card statements, and found several unauthorized and suspicious charges totaling over \$14,000. The charges do not appear to be related to tribal business.

Because of your improper use of your tribal credit card, I have cancelled your card effective today. In addition, I will be referring this matter to Tribal Council in the form of a formal ethics complaint.

Respectfully,

A handwritten signature in black ink, appearing to read 'Herminia Frias'. The signature is stylized and written in cursive.

Herminia Frias
Chairwoman

Cc: Michelle Aros
Treasurer Valencia
Interim AG Thomas Pilar Thomas

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
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DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

7474 S. Camino De Oeste • Tucson, Arizona 85757 • Phone (520) 883-5015 • FAX (520) 883-5099
1-800-572-7282 • E-mail: chairwoman.frias@pascuayaqui-nsn.gov

EXHIBIT

8

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension
3 months

(7)

MOTION TITLE: Refusing to allow Treasurer to view financial Records of the Tribe

MOTION MADE BY: D. R.

SECONDED BY: ~~_____~~, R.V.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<input checked="" type="checkbox"/>			
CATALINA ALVAREZ COUNCIL SECRETARY		CA		
FRANCISCO VALENCIA TREASURER			<input checked="" type="checkbox"/>	
PRISCILLA FLORES			<input checked="" type="checkbox"/>	
ARCADIO GASTELUM	<input checked="" type="checkbox"/>			
LUIS GONZALES	<input checked="" type="checkbox"/>			
FRANCISCO MUNOZ, SR.		<input checked="" type="checkbox"/>		
DAVID RAMIREZ	<input checked="" type="checkbox"/>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<input checked="" type="checkbox"/>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO MUNOZ, SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension



(9)
 MOTION TITLE: *Without Council approval, cut budget without approving the cuts.*
 MOTION MADE BY: *F.V.* SECONDED BY: *R.V.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>[Signature]</i>		
FRANCISCO VALENCIA TREASURER	<i>[Signature]</i>			
PRISCILLA FLORES		<i>[Signature]</i>		
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES	<i>[Signature]</i>			
FRANCISCO MUNOZ, SR.	<i>[Signature]</i>			
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO O. MUNOZ SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension

(2)
 MOTION TITLE: *Ch. = Failed to carry out, or cause to be carried out resolutions.*
 MOTION MADE BY: *D.R.* SECONDED BY: *F.V.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>NA</i>		
FRANCISCO VALENCIA TREASURER	<i>[Signature]</i>			
PRISCILLA FLORES	<i>[Signature]</i>			
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES			<i>[Signature]</i>	
FRANCISCO MUNOZ, SR.		<i>[Signature]</i>		
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUNOZ SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD



(4)
 MOTION TITLE: Reprimand.
 Designation of Signatory authority.
 MOTION MADE BY: R. V. SECONDED BY: L. G.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>CA</i>		
FRANCISCO VALENCIA TREASURER			<i>[Signature]</i>	
PRISCILLA FLORES	<i>[Signature]</i>			
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES	<i>[Signature]</i>			
FRANCISCO MUNOZ, SR.		<i>[Signature]</i>		
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO G. MUNOZ, SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Reprimand

MOTION TITLE:

(#5)

Violation of Fiscal Management

MOTION MADE BY:

D. R.

SECONDED BY:

L. G.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN	/			
PETER YUCUPICIO VICE-CHAIRMAN	✓			
CATALINA ALVAREZ COUNCIL SECRETARY		CA		
FRANCISCO VALENCIA TREASURER			✓	
PRISCILLA FLORES	✓			
ARCADIO GASTELUM	✓			
LUIS GONZALES	✓			
FRANCISCO MUNOZ, SR.	✓			
DAVID RAMIREZ	✓			
BENITO F. VALENCIA				
ROBERT VALENCIA	✓			

COUNCIL MEMBERS

HERMINIA FRIAS TRIBAL CHAIRWOMAN • PETER YUCUPICIO VICE-CHAIRMAN
 CATALINA ALVAREZ TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUNOZ, SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

EXHIBIT

9

July 27, 2007

Via Facsimile, Email and Federal Express Overnight

Honorable Vice Chairman Peter Yucupicio/Complainant
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, Arizona 85746

Re: Representation of Chairwoman Herminia Frias and Request for Information

Honorable Vice Chairman:

We have been retained to represent Chairwoman Herminia Frias with respect to the Special Tribal Council Meeting and Hearing on August 1, 2007 ("Hearing") regarding a Complaint from Vice Chairman Yucupicio and additional Complainants (collective referred to as "Complainants"), dated July 20, 2007, pursuant to Pascua Yaqui Tribal Council Code of Ethics Ordinance of 2006, §§ 1 – 110 ("Complaint"). We have been provided a copy of the Agenda for the Hearing, as well as a copy of the Complaint. On behalf of Chairwoman Frias, we respectfully request the following prior to the Hearing:

1. All evidence, documents, prior testimony, allegations, ("Evidence"), related to the Complaint; and
2. All procedures governing the Hearing, which include, among other things, procedures for filing motions for the Hearing, procedures of evidence, and the right of the accused to scrutinize all Evidence and cross-examine witnesses; and
3. A list of all witnesses and their contact information that will be present at the Hearing, as well as the right of the accused to cross-examine all witnesses; and
4. A copy of the investigative report pursuant to 2 PYTC §1-2-60(B)(4); and
5. A copy of the Notice, sent by certified mail, to the Chairwoman pursuant to 2 PYTC §1-2-60(B)(4)(a); and
6. A specific description of the "conduct that is alleged to be unethical or improper" pursuant to 2 PYTC § 1-2-60(B)(1)(a), for each of the (22) charges listed in the Complaint; and



7. All Evidence submitted by the Complainants to the Tribal Council at the initial hearing on Saturday, July 21, 2007; and
8. A record or transcript of the initial hearing on Saturday, July 21, 2007; and
9. All Evidence the Complainants will introduce at the Hearing; and
10. Names and contact information for any legal counsel participating in the hearing, as well as identifying the parties whom they represent.

As the Hearing is only five days away, we respectfully request your timely response. Further, considering that we will need to review each allegation individually and examine all Complainants, we respectfully request the Hearing to be scheduled for two consecutive days. Should you have any questions please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Rosette".

Robert A. Rosette
Rosette & Associates, PC

A handwritten signature in black ink, appearing to read "Verrin T. Kewenvoyouma".

Verrin T. Kewenvoyouma
Rosette & Associates, PC

cc: Complainant Francisco Valencia
Complainant Priscilla Flores
Complainant Arcadio Gastelum
Complainant Luis Gonzales
Complainant David Ramirez
Complainant Robert Valencia
Honorable Secretary Catalina Alvaraz
Honorable Council Member Francisco Munoz Sr.
Honorable Council Member Benito Valencia
Honorable Attorney General Justin M. Ruggieri

EXHIBIT

10

July 31, 2007

Via Facsimile, Email

Honorable Members of the Tribal Council
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, Arizona 85746

**Re: Second Request for Information for Special Tribal Council Meeting and
Hearing on August 1, 2007**

Honorable Members of the Tribal Council:

On July 27, 2007, our firm provided a letter to the Vice Chairman and the Tribal Council of our representation of Chairwoman Herminia Frias ("Letter"). In the Letter we respectfully requested certain information prior to the Special Tribal Council Meeting and Hearing on August 1, 2007 ("Hearing") regarding a Complaint from Vice Chairman Yucupicio and additional complainants (collectively referred to as "Complainants") dated July 20, 2007, pursuant to Pascua Yaqui Tribal Council Code of Ethics Ordinance of 2006, §§ 1 – 110 ("Complaint"). At this time, the only documentation provided to the Chairwoman from the Tribal Council is a copy of the Agenda for the Hearing, as well as a copy of the Complaint.

On behalf of Chairwoman Frias, we are making a second respectful request for the information contained in the Letter (enclosed), and listed below:

1. All evidence, documents, prior testimony, allegations, ("Evidence"), related to the Complaint; and
2. All procedures governing the Hearing, which include, among other things, procedures for filing motions for the Hearing, procedures of evidence, and the right of the accused to scrutinize all Evidence and cross-examine witnesses; and
3. A list of all witnesses and their contact information that will be present at the Hearing, as well as the right of the accused to cross-examine all witnesses; and
4. A copy of the investigative report pursuant to 2 PYTC §1-2-60(B)(4); and

July 27, 2007



5. A copy of the Notice, sent by certified mail, to the Chairwoman pursuant to 2 PYTC §1-2-60(B)(4)(a); and
6. A specific description of the "conduct that is alleged to be unethical or improper" pursuant to 2 PYTC § 1-2-60(B)(1)(a), for each of the (22) charges listed in the Complaint; and
7. All Evidence submitted by the Complainants to the Tribal Council at the initial hearing on Saturday, July 21, 2007; and
8. A record or transcript of the initial hearing on Saturday, July 21, 2007; and
9. All Evidence the Complainants will introduce at the Hearing; and
10. Names and contact information for any legal counsel participating in the hearing, as well as identifying the parties whom they represent. Specifically, we would like to know if the Complainants or the Tribal Council have retained legal counsel.

Our list of exhibits and witnesses we expect to examine at the Hearing are forthcoming. We expect to provide this information to you as soon as possible.

As the Hearing is less than a day away, we respectfully request your timely response. Further, considering that we will need to review each allegation individually and examine all complainants and witnesses, we are making a second respectful request that the Hearing be scheduled for two consecutive days. Should you have any questions please feel free to contact us.

Sincerely,

Verrin T. Kewenvoyouma
Rosette & Associates, PC



Pascua Yaqui Tribal Council

Page 3 of 3

July 27, 2007

**cc: Complainant Francisco Valencia
Complainant Priscilla Flores
Complainant Arcadio Gastelum
Complainant Luis Gonzales
Complainant David Ramirez
Complainant Robert Valencia
Honorable Secretary Catalina Alvaraz
Honorable Council Member Francisco Munoz Sr.
Honorable Council Member Benito Valencia
Honorable Attorney General Justin M. Ruggieri**

Enclosure

No. CA-07-015

Pascua Yaqui Tribe Court of Appeals

Chairwoman Herminia Frias, Appellant,

v.

Peter Yucupicio, an individual, and Vice Chairman and Member of the Tribal Council of the Pascua Yaqui Tribe; Priscilla Flores, an individual an Member of the Tribal Council of the Pascua Yaqui Tribe; Arcadio Gastelum, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Luis Gonzales, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; David Ramirez, an individual and Member of the Tribal Council of the Pascua Yaqui Tribe; Robert Valencia, an individual and Member of the Tribal Council of the Pascua Tribe; Francisco Valencia, an individual, Treasurer and Member of the Tribal Council of the Pascua Yaqui Tribe; and the Tribal Council of the Pascua Yaqui Tribe, Appellees.

ORDER

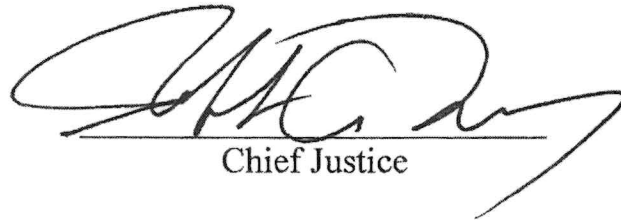
Appeal of a decision of the Pascua Yaqui Tribal Council suspending and reprimanding Chairwoman Herminia Frias.

Verrin T. Kewenvoyouma, Esq., and Robert A. Rosette, Esq., Rosette & Associates, P.C., Mesa, Arizona, for the Appellant.

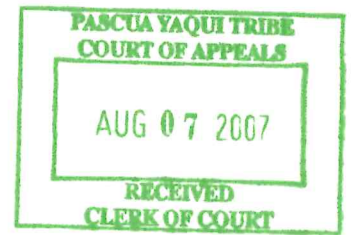
The Court has reviewed the notice of appeal filed in this case and finds that a briefing schedule is necessary to expedite the proceedings on appeal. The parties shall address two issues: 1) There is an apparent inconsistency between Article VIII, Section 5, of the Constitution of the Pascua Yaqui Tribe and 2 PYTC § 1-2-100; thus, the parties shall address the question of whether this Court has jurisdiction over this appeal; and 2) Whether the Tribal Council, by its actions that resulted in sanctions against the Appellant, granted the Appellant all due process as required by the Constitution of the Pascua Yaqui Tribe (See Article I — Bill of Rights. The Appellant shall file her opening brief by 5:00 P.M., on or before Tuesday, August 14, 2007, and serve a copy on opposing counsel no later than the same date and time; the Appellees shall file their response brief on or before 5:00 P.M.,

Monday, August 20, 2007, and serve a copy on opposing council no later than the same date and time; and no further briefing shall be allowed. Service of brief on opposing counsel can be done by any electronic means, but a paper copy shall follow. The Clerk of the Court of Appeals shall serve a copy of this order on counsel for the parties, or if unrepresented, on the parties themselves or a designated representative, by electronic means.

So ORDERED this 9th day of August, 2007.



Chief Justice



CA - 07 - 015

Verrin T. Kewenvoyouma
Robert A. Rosette
Rosette & Associates, PC
6124 East Brown Road, Suite 101
Mesa, Arizona 85205
480-889-8990
Fax (480) 889-8997
vkewenvoyouma@rosettela.com
Counsel for Chairwoman Herminia Frias

PASCUA YAQUI TRIBE COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI RESERVATION

PETER YUCUPICIO, an individual, and Vice
Chairman and Member of the Tribal Council of
the Pascua Yaqui Tribe; PRISCILLA FLORES,
an individual and Member of the Tribal Council
of the Pascua Yaqui Tribe; ARCADIO
GASTELUM, an individual and Member of the
Tribal Council of the Pascua Yaqui Tribe; LUIS
GONZALES an individual and Member of the
Tribal Council of the Pascua Yaqui Tribe;
DAVID RAMIREZ, an individual and Member of
the Tribal Council of the Pascua Yaqui Tribe;
ROBERT VALENCIA, an individual and
Member of the Tribal Council of the Pascua
Yaqui Tribe; FRANCISCO VALENCIA, an
individual, Treasurer and Member of the Tribal
Council of the Pascua Yaqui Tribe; and the
TRIBAL COUNCIL OF THE PASCUA YAQUI
TRIBE,

Appellees,

vs.

Chairwoman Herminia Frias,

Appellant.

Case No.:

**APPELLANT'S MOTION TO
IMMEDIATELY STAY SANCTIONS**

1 COMES NOW, Chairwoman Herminia Frias (“Chairwoman”), by and through
2 undersigned counsel, respectfully moves that the Court, pursuant to the Pascua Yaqui Tribe
3 Rules of Appellate Procedure Rule 23 (3 PYTRAP Rule 23), enter an order immediately staying
4 the sanctions imposed by the Council Member/Complainants (“Complainants”)¹ until the legal
5 questions presented in the Chairwoman’s Notice of Appeal, filed concurrently with this request
6 and incorporated herein, have been considered and decided by this Court.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. STATEMENT OF JURISDICTION**

9 It is within this Court’s discretion to assert jurisdiction over the instant motion. Here, the
10 Chairwoman is requesting to delay the execution of sanctions levied by the Tribal Council.
11 Typically, under 3 PYTRAP 23(A), a party moving for a stay of execution of a *trial court*
12 determination must file the motion with the trial court. *See also* 3 PYTC § 3-3-30. As such, the
13 trial court may only review its own orders and not those of the Council. However, there is no
14 similar rule for filing a motion to stay the execution of a *Tribal Council* determination. Even if
15 the Chairwoman attempted to file this motion with the Council, the body would likely refuse to
16 hear the motion. During the August 1, 2007 hearing, the Council explicitly described the
17 proceedings as non-judicial, and as such, refused to entertain motions.² Therefore, the Council
18 has effectively barred the Chairwoman from filing this motion with the Tribal Council.

19 This Court provides the only forum for the Chairwoman’s motion because neither the
20 trial court nor the Council are eligible to review this Motion. Additionally, section 1-2-100(A)
21 of the Tribal Council Code of Ethics and Standards of Conduct provides that council members
22

23 ¹ The Complainants are named in their individual and official capacities as Appellees in this Motion.

24 ² Unfortunately a record does not currently exist for the Tribal Council proceeding. If provided, the Court will find
25 that Vice Chairman Yucupicio failed to entertain a written and oral Motion to Disqualify Complainants (The written
Motion provided to the Tribal Council before the proceeding is attached to this Motion as Attachment 1). The
forum was described by the Vice Chairman as “Not a Court of Law”, and that “There is no Motion under my terms .
.. I see no need to review.” This assertion is supported by Affidavit of Chairwoman Herminia Frias, Attachment 2.

1 sanctioned by the Council under the Code may “appeal such determination[s] to the Pascua
2 Yaqui Tribal Court of Appeals.” This language confers jurisdiction on this Court. Finally, Rule
3 3 contemplates suspension of the Appellate Court rules when good cause is shown for
4 suspending the rules. As such, this Court is the proper forum for the instant Motion to Stay.

5 II. ARGUMENT

6 While there appears to be no court rule that addresses the criteria for granting a motion
7 for stay, the Pascua Yaqui code allows this Court to reference and incorporate federal and
8 Arizona law. 3 PYT R.Civ.P. Rule 23; 5 PYTC § 1-30(D); Under both federal and Arizona law,
9 the Court should consider a motion for stay using the traditional criteria for the issuance of
10 preliminary injunctions. Keating v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir. 1995);
11 Smith v. Ariz. Citizens Clean Elections Comm’n, 212 Ariz. 407, 410-411, 132 P.3d 1187 (2006).
12 In Smith, the Court adopted the following factors for stay on appeal: (1) the existence of a strong
13 likelihood of success on the merits; (2) the possibility of irreparable harm if the stay is not
14 granted; (3) the harm to the requesting party outweighs the harm to the party opposing the stay;
15 and (4) public policy favors the granting of the stay. Id. These factors are not absolute, but
16 rather, are examined on a “sliding scale” where the greater the showing of irreparable harm, the
17 less of a showing the proponent must make regarding the likelihood of success on the merits. Id.
18 Conversely, if the likelihood of success on the merits is weak, the showing of irreparable harm
19 must be that much stronger. Id. These factors are discussed below.

20 1. The Chairwoman Can Demonstrate a Strong Likelihood of Success on the 21 Merits.

22 The two primary bases for the Chairwoman’s appeal are the arbitrary and capricious
23 nature of the Complainants’ actions and the outright violation of the Chairwoman’s right to due
24 process. The Complainants violated the Chairwoman’s fundamental constitutional right to due
25 process by failing to provide her with, among other things, a fair and impartial hearing.

1 The Complainants' violated the Chairwoman's right to due process, which was required
2 under Article I, Section 1(h) of the Pascua Yaqui Constitution, and sections 60-70 of the Ethics
3 Ordinance itself. "Due process is that which comports with the deepest notions of what is fair
4 and right and just." Solesbee v. Balkcom, 339 U.S. 9, 16 (1950). At the heart of this notion is
5 the right to a fair hearing, one in which the tribunal is impartial. Wong Yang Sung v. McGrath,
6 339 U.S. 33, 50 (1950). Because the Ethics Ordinance requires a hearing before Council, 2
7 PYTC § 1-2-60(B)(6), due process requires that the hearing be conducted in a fair and impartial
8 manner.
9

10 Here, it was impossible for the Chairwoman to obtain a fair and impartial hearing
11 because her accusers, the Complainants, are also the Council Members who sat as her judges.
12 The Ethics Complaint served on the Chairwoman on July 20, 2007 listed seven Council
13 members, including the Vice Chairman, as the Complainants. *See Complaint for Removal of*
14 *Chairwoman Herminia Frias pursuant to the Pascua Yaqui Tribe Constitution – Article X –*
15 *Removal, Recall and Resignation from Office, July 20, 2007 (Attachment 3).* All seven of these
16 Complainants participated in the hearing conducted on August 1, 2007, and deliberated on the
17 allegations and voted against the Chairwoman. *See Special Tribal Council Meeting, August 1,*
18 *2207, Council Motion/Vote Records (Attachment 4).*
19

20 By sitting in judgment of their own complaint, reviewing their own evidence, and
21 participating in the final decision, the Complainants denied the Chairwoman the most
22 fundamental aspect of due process—the right to a fair and impartial hearing.
23
24
25

1 **2. The Chairwoman and the Tribe Will Be Irreparably Harmed If a Stay of Sanctions**
2 **is Not Granted, and Such Harm to the Chairwoman Substantially Outweighs Any**
3 **Harm to the Council.**

4 The Council actions will harm the Chairwoman's property interest in her salary. The
5 Council imposed four suspensions without pay as sanctions upon the Chairwoman, each lasting 3
6 months. In addition, the Vice Chairman asserts that these sanctions shall run consecutively.
7 This will result in a 12-month suspension without pay for the Chairwoman that will last the
8 balance of her term in office, which expires in June, 2008. As such, the Council's
9 unconstitutional, arbitrary and capricious action deprives the Chairwoman of her pay for at least
10 a 10 month period.

11 This action also harms the Tribe's interest having the head of its Executive Branch
12 discharge the duties of the office. The Council suspended the Chairwoman from performing her
13 duties as Chairwoman for the Tribe. There are several constitutional authorities that, in the
14 absence of a proper delegation, only the Chairwoman can perform. For example, the
15 Chairwoman acts in an executive capacity on behalf of the Tribe. Pascua Yaqui Constitution,
16 Art. XV, Sec. 2. As the chief executive, the Chairwoman is the direct supervisor of the Tribe's
17 Divisions, Departments, and Offices of the Executive Branch. As supervisor, the Chairwoman is
18 responsible for the administration and management of the Executive Branch. In addition, only
19 the Chair has the authority to sign "any and all documents, agreements, contracts and
20 commitments for and on behalf of the Tribe." Constitution, Art. XV, Sec. 3. Also, the
21 Chairwoman is required to direct the preparation of the annual budget, and present that budget to
22 the Council. Constitution, Art. XV, Sec. 5.
23
24
25

1 There are also a number of statutory authorities that are the Chairwoman's responsibility
2 to perform. These authorities range from overall fiscal management duties, 2 PYTC §§ 5-1-60,
3 to approving extraditions, 3 PYT R. Crim. P Rule 57, to approving assistance for tribal members,
4 6 PYTC §§ 3-1-190, 210.

5 Due to the Chairwoman's suspension, these constitutional and statutory authorities
6 cannot be performed. There is no provision in the Tribe's constitution or statutes for the
7 automatic delegation of the Chairwoman's authorities if she is suspended. The Tribe is denied
8 its head of the Executive branch, and the divisions and departments are denied their supervisor.
9 These consecutively imposed, long-term suspensions have left the Executive Branch without
10 leadership at this time.

11 Two currently critical duties that cannot be performed are contract signature authority
12 and budget preparations. Because the Chairwoman is the only authorized signer of contracts and
13 agreements, contracts and agreements cannot be fully executed in her absence. The Tribe enters
14 into agreements with the federal and state governments for grants and contracts which provide
15 the Tribe with a substantial amount of income. The Tribe also enters into contracts with service
16 providers who perform a range of services for tribal members, including health care, dental care,
17 and child care. In the Chairwoman's absence, any of these contracts and agreements cannot be
18 entered into or renewed. As a result, much needed benefits and services will not be available to
19 tribal members.
20
21

22 Also, budget preparation is of utmost importance at this time of the year. The end of the
23 fiscal year occurs on September 30. As such, the Chairwoman is preparing the annual budget for
24 submission and review by Council. *See Fiscal Year 2008 Budget Calendar (Attachment 5)*. This
25

1 Council's action has caused the budget preparation process to fall weeks behind, and the Tribe
2 will likely not have an approved budget for Fiscal Year 2008 before the September 30, 2007
3 deadline. If no budget is approved by the end of the fiscal year, then the current year budget will
4 remain in place (assuming a continuing resolution passed by Tribal Council). However, new
5 programs and services and positions which may be included in a new budget, including
6 additional police officers and public safety initiatives such as lights, sidewalks, and street
7 improvements will not be implemented nor budgeted for.
8

9 Additionally, irreparable harm will be caused by the unlawful actions of the Vice
10 Chairman in the wake of Chairwoman's suspension. Despite the plain language of the
11 Constitution, the Vice Chairman has issued an executive order, purporting to assume the
12 authorities of the Chairwoman and calling himself the "Acting Chairman." *See* Executive Order
13 No. 08-06-07, Assumption of Authority of Office of Chairman (Attachment 6). The Vice
14 Chairman's executive order is an unconstitutional and unlawful assumption of the Chairwoman's
15 authorities. Despite his claim that he has the authority under Article XI, Section 2, this provision
16 in the Constitution provides no such support for the Vice Chairman's actions. This section reads:
17

18 "In the event of a *vacancy*, for any cause, in the office of the chairman, the vice-
19 chairman shall assume the duties of the chairman for the remainder of the
20 unexpired term or until a successor has been chosen by the tribal council. In the
21 event of a vacancy in the office of vice-chairman, a successor shall be chosen by
22 majority vote of the tribal council from among those members then sitting on the
23 council."

24 Id. (emphasis added).

25 However, the Office of the Chairwoman is not vacant. Under the terms of the
Constitution, the Chairwoman's office becomes vacant upon removal, recall, resignation, or

1 death. Constitution, Article X, Sections 1 – 3, and Article XI, Section 1 (listing the four actions
2 that result in a vacancy). While the Council suspended the Chairwoman from performing her
3 duties, they did not remove her from office.

4 The Vice Chairman’s unlawful actions will also cause irreparable harm to the Tribe. He
5 claims to assume the authority of the Chairwoman, which he does not have. Therefore, all
6 actions he takes as purported “Acting Chairman” will be invalid. These actions can include
7 expenditure approvals, execution of contracts and agreements, and personnel action including the
8 termination of employees. In addition, the resulting confusion and chaos in the Tribe’s
9 government operations can lead to irreparable harm in the delivery of benefits and services to our
10 tribal members. Further, contracts or agreements executed on behalf of the Tribe by the Vice
11 Chairman will trigger ramifications from the parties in privity, and potential third parties.

13 The suspension sanctions will clearly cause irreparable harm to the Chairwoman from
14 lost wages. In addition, the sanctions cause irreparable harm to the Tribe and its members
15 because certain duties, decisions and actions will not be carried out when they need to be.
16 Lastly, the Vice Chairman’s actions in unlawfully assuming the Chairwoman’s authorities will
17 cause irreparable harm to the Tribe because any action he takes will be invalid. Contrary to these
18 harms, the potential harm to the Council should the Court enter a Stay at this point in the
19 proceedings is non-existent. The Court can prevent this irreparable harm by entering a Stay of
20 these sanctions now and until a final determination is made by the Court on the merits.

22 **3. Public Policy Favors the Entry of a Stay in this Matter.**

23 Public policy strongly favors the continuity of governance, protection of constitutional
24 rights, and lawful behavior on the part of tribal officials. The entry of an immediate stay of
25

1 sanctions serves this important public policy, and the policy of preserving the “status quo” until a
2 ruling on the legal issues that are the subject of the Chairwoman’s appeal can be addressed by
3 this Court. *See generally* Firchau v. Barringer Crater Co., 86 Ariz. 215, 219, 344 P.2d 486
4 (1959) (explaining that one of the purposes of injunctions is to preserve the “status quo” of the
5 parties pending consideration before the Court).

6 Preserving the status quo is especially critical now that the Vice Chairman has taken
7 action to purportedly become the “Acting Chairman” to use the power of the office. His action is
8 unlawful and unconstitutional, and any future actions he takes will be equally so. Public policy
9 demands that government officials act in a constitutional and lawful manner. Any and all efforts
10 by government officials, and in this case the Vice Chairman, to act otherwise should be
11 overwhelming rebuked and corrected.

12 Accordingly, the Court can and must protect constitutional due process and fundamental
13 fairness, ensure continuity of governance, uphold the Constitution, and preserve the status quo of
14 this matter and the relative position of the parties at the present time by entering the requested
15 Stay.
16
17

18 **III. CONCLUSION**

19 For the reasons stated above, the Chairwoman respectfully requests the Court enter an
20 immediate Stay of the sanctions pending this Court’s consideration of the Chairwoman’s Appeal.
21
22
23
24
25

RESPECTFULLY SUBMITTED this 7th day of August, 2007

By:



Verrin T. Kewenvoyouma
Robert A. Rosette
Rosette & Associates, PC
Counsel for Chairwoman
Herminia Frias

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ATTACHMENT 1

July 30, 2007

Via Email and Facsimile

Honorable Members of the Pascua Yaqui Tribal Council
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, Arizona 85746

Re: Motion to Disqualify Complainants from Presiding Over or Participating in Special Tribal Council Meeting and Hearing on August 1, 2007, (“Hearing”)

Honorable Members of the Pascua Yaqui Tribal Council:

In the earnest interest of providing fundamental fairness and due process of law pursuant to Article I, Section 1(h) of the Constitution of the Pascua Yaqui Tribe, Chairwoman Herminia Frias, through the undersigned legal counsel hereby moves to disqualify and excuse Vice Chairman Peter Yucupicio, Treasurer Francisco Valencia, Council Member Priscilla Flores, Council Member Arcadio Gastelum, Council Member Luis Gonzales, Council Member David Ramirez, and Council Member Robert Valencia (“Complainants”) from presiding over or participating in the hearing in the above referenced matter on the grounds of conflict of interest and fundamental principles of due process.

Specifically, the Complainants are named as such in the Complaint pursuant to Tribal Council Code of Ethics Ordinance of 2006 dated July 20, 2007 (“Complaint”). For action in which a person was allegedly wronged, the person who allegedly wronged must file the complaint. 2 PYTC § 1-2-60 (B)(1)(b). The status of being a complainant is akin to being a “victim”. By submitting and attaching their names as complainants, it would be fundamentally unjust to allow “victims”, in this case the Complainants, to also participate as the judge/jury, and finally as the enforcer through sanctions. As the Tribal Council is intended to be the independent and impartial decision maker, victims, in this case the Complainants, will be biased and can not provide the Chairwoman an impartial decision.

Further, under Pascua Yaqui Tribal Ethics Code, the accused Council Member and *the complainant shall be excused from the executive session so the Tribal Council may review evidence and consider a decision and sanction.* 2 PYTC § 1-2-70 (A) (emphasis provided). This provision is intended to preserve the Tribal Council as an impartial decision maker, without influence from the accused Council Member and the complainant(s).



To permit the Complainants to participate in this Hearing in any manner would be offensive to the due process provisions of the Pascua Yaqui Tribe's Constitution, Ethics Ordinance, and in direct contradiction of the fundamental fairness relied upon by all members of the Pascua Yaqui Tribe.

Therefore, for the above stated reasons we hereby move to disqualify and excuse the Complainants from participating in this Hearing on the above referenced matter.

In the event the presiding official can not compel disqualification or excuse the Complainants, Chairwoman Frias, through the undersigned counsel, respectfully requests the Complainants to recuse themselves from the Hearing on the same grounds and under the same authority, as set forth above.

Respectfully,

Verrin T. Kewenvoyouma

cc: Honorable Attorney General Justin M. Ruggieri

ATTACHMENT 2

1 Robert A. Rosette
2 Verrin T. Kewenvoyouma
3 Rosette & Associates, PC
4 6124 East Brown Road, Suite 101
5 Mesa, Arizona 85205
6 480-889-8990
7 Fax (480) 889-8997
8 rosette@rosettela.com
9 vkewenvoyouma@rosettela.com
10 Counsel for Chairwoman Herminia Frias

11 **PASCUA YAQUI TRIBE COURT OF APPEALS**
12 **IN AND FOR THE PASCUA YAQUI RESERVATION**

13 PETER YUCUPICIO, an individual, and Vice
14 Chairman and Member of the Tribal Council of
15 the Pascua Yaqui Tribe; PRISCILLA FLORES,
16 an individual and Member of the Tribal Council
17 of the Pascua Yaqui Tribe; ARCADIO
18 GASTELUM, an individual and Member of the
19 Tribal Council of the Pascua Yaqui Tribe; LUIS
20 GONZALES an individual and Member of the
21 Tribal Council of the Pascua Yaqui Tribe;
22 DAVID RAMIREZ, an individual and Member of
23 the Tribal Council of the Pascua Yaqui Tribe;
24 ROBERT VALENCIA, an individual and
25 Member of the Tribal Council of the Pascua
Yaqui Tribe; FRANCISCO VALENCIA, an
individual, Treasurer and Member of the Tribal
Council of the Pascua Yaqui Tribe; and the
TRIBAL COUNCIL OF THE PASCUA YAQUI
TRIBE,

Appellees,

vs.

Chairwoman Herminia Frias,

Appellant.

Case No.:

**AFFIDAVIT OF CHAIRWOMAN
HERMINA FRIAS**

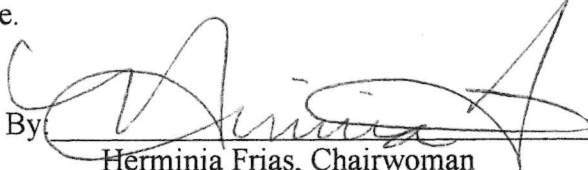
AFFIDAVIT OF CHAIRWOMAN HERMINIA FRIAS

I, Herminia Frias, state as follows:

1. I am an enrolled member and Chairwoman of the Pascua Yaqui Tribe, and appellant to this action. As such, I have personal knowledge of the events that occurred on August 1, 2007 at the Pascua Yaqui Tribal Council's Special Tribal Council Meeting and Hearing ("Special Hearing") which was conducted to hear the allegations of ethics violations filed against me.
2. I have personal knowledge that Vice Chairman Peter Yucupicio conducted the Special Hearing.
3. I have personal knowledge that during the Special Hearing, the Vice Chairman described the proceedings as "not a court of law."
4. I have personal knowledge that during the Special Hearing, the Vice Chairman refused to acknowledge both my written and oral Motions to Disqualify Complainant, stating: "[t]here is no Motion under my terms . . . I see no need to review."

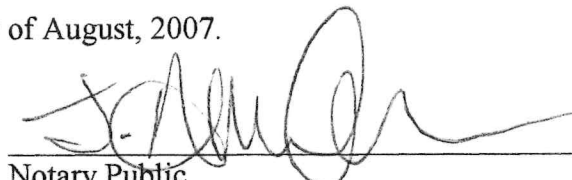
I hereby swear that the foregoing is true and accurate to the best of my knowledge, under penalty of the perjury laws of the Pascua Yaqui Tribe.

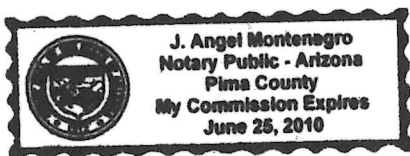
Dated this 7th day of August, 2007

By: 
 Herminia Frias, Chairwoman

State of Arizona)
)
 County of Pima)

Subscribed and sworn before me this 7th day of August, 2007.


 Notary Public



ATTACHMENT 3

CONFIDENTIAL
MEMORANDUM

To: Herminia Frias, Chairwoman
Pascua Yaqui Tribe

From: Peter Yucupicio, Francisco Valencia, David Ramirez, Robert Valencia, Priscilla Flores, Arcadio Gastelum, Luis Gonzales

Date: July 20, 2007

Re: **Complaint for removal of Chairwoman Herminia Frias pursuant to the Pascua Yaqui Tribe Constitution – Article X – Removal, Recall and Resignation from Office**

In accordance with the Constitution of the Pascua Yaqui Tribe – Article X – Removal, Recall and Resignation from office, please accept this document as the written complaint that is required to be submitted to Herminia Frias as the accused in order to begin the procedure to investigate allegations of unethical or improper misconduct as stated in the Constitution..

For several reasons, we believe that the Chairwoman has engaged in unethical and improper conduct as defined by the Code of Ethics Ordinance. As required by the Ordinance, the following actions are specific examples of the Chairwoman’s unethical and improper conduct.

- (1) The Chairwoman failed to consult with the Tribal Council regarding the appointment of the Finance Director in violation of 2 PYTC § 5-1-100. (A8)
- (2) The Chairwoman failed to carry out, or cause to be carried out resolutions in March 2006 in violation of Article XV of the Constitution of the Pascua Yaqui Tribe. (A8)
- (3) The Chairwoman has failed to report to the Tribal Council regarding the status of tribal matters and make such recommendations to the Tribal Council as she deemed advisable in the best interest of the tribe, in violation of Article XV, Section 1 of the Constitution of the Pascua Yaqui Tribe. No reports as required by the Constitution. (A8)
- (4) Designation of signatory authority. (A8)
- (5) Violation of Fiscal Management Ordinance→ No enforcing reporting requirements on Finance Director. Monthly and Quarterly Reports. Finance Director has not given budget information to the Tribal Council. (A8)

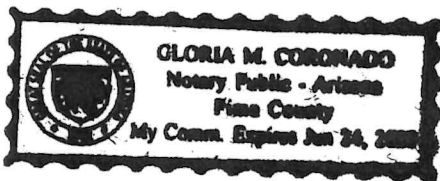
Section 330 Reports (2 PYTC § 5-1-330)

- (A) Monthly Reports:

- (1) The Finance Director shall provide a written monthly report to the Chairman, Treasurer and Financial Management Oversight Committee on or before the 20th day of each month, which shall reflect the amounts provided for in the adopted budget, as adjusted by additions, carryovers and other adjustments, in detail, and the amounts of expenditures made against such appropriations.
- (B) Quarterly Reports:
- (1) The Finance Director shall present a formal financial and budget status report through the Chairman to the Tribal Council within 30 days after the end of each fiscal quarter.
- (6) TGO reports are not being received. (A8)
- (7) Refusing to allow the Treasurer to view the financial records of the Tribe. (A8)
- (8) Neglect → Failing to delegate signatory authority to anyone for weeks at a time. (A8)
- (9) Without Council approval, cut the budget without approving the cuts. (A5)
- (10) Restructure of the tribal government divisions, offices. This is an authority expressly reserved to the Tribal Council. (A8)
- (11) Budget – Moving appropriated funds from one budget to another. (A5)
 Ex. Back to school bash → Money approved for it, and was not used or was moved.
 Ex. Enrollment – Money for printer was transferred to IT Division instead.
 Ex. Miss Yaqui funds reduced.
 Ex. Cultural Events budget → Council approved budget, but total was reduced afterwards.
 Ex. Council has its' own budget and programs → Council decision on how to spend money, this is not a Chair authority.
 Ex. Authority over approving Tribal Council member travel.
- (12) Not following OAG Ordinance. No review of Farley Reports by OAG. Providing reports to the Tribal Council. (A8)
- (13) Denying access to the Election Chairperson to her office resulting in not being able to fulfill election duties and requests from tribal constituents thus violating the election ordinance. (A8).
- (14) Relinquishment of duties of Chair to Vice-Chair. Not being involved in the affairs of the Gaming Enterprise Division. Failing to attend Gaming Enterprise Division meetings on a regular basis. (Neglect)
- (15) Did not mandate/require Finance Department and Office of the Attorney General to attend Gaming Enterprise Division meetings. (Neglect)
- (16) Refusing to spend money that has already been allocated. Ex. ITCA funding is Tribal Council authority and not Chairwoman's decision. (A5)

- (17) When approved donations budget, recommended for \$25,000 per community. Chairwoman refused to allow the funding to be passed through. (A5)
- (18) Memo directing Directors to refuse to speak to Tribal Council members. (A5)
- (19) Denied councilmans' right to make a motion on a resolution. (A8)
- (20) Violations of the Yaqui Preference Act in hiring of key employees. (A8)
- (21) Has violated the Yaqui Preference Act by failing to protect the rights of tribal member employees who were laid off and not given preference in rehiring while giving non-tribal employees in similar situations the benefit of employment.(A8)
- (22) Has created instability in tribal government due to lack of leadership and creating excessive turnover in critical positions resulting in resignations or terminations of qualified individuals while replacing them with unqualified interim director positions in excess of one year.(A8)

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 20 DAY OF July 2007
BY Peter Yulupkuo
Gloria M. Coronado
NOTARY PUBLIC



ATTACHMENT 4

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

(1) MOTION TITLE: Suspension - Ctt - failed to consult with T/C regarding the appointment of Finance Director.
 MOTION MADE BY: L.G. SECONDED BY: F.V.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<input checked="" type="checkbox"/>			
CATALINA ALVAREZ COUNCIL SECRETARY		<input checked="" type="checkbox"/>		
FRANCISCO VALENCIA TREASURER			<input checked="" type="checkbox"/>	
PRISCILLA FLORES			<input checked="" type="checkbox"/>	
ARCADIO GASTELUM	<input checked="" type="checkbox"/>			
LUIS GONZALES		<input checked="" type="checkbox"/>		
FRANCISCO MUNOZ, SR.		<input checked="" type="checkbox"/>		
DAVID RAMIREZ	<input checked="" type="checkbox"/>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<input checked="" type="checkbox"/>			

COUNCIL MEMBERS

HERMINIA FRIAS TRIBAL CHAIRWOMAN • PETER YUCUPICIO VICE-CHAIRMAN
 CATALINA ALVAREZ TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA TRIBAL COUNCIL TREASURER
 PRISCILLA FLORES • LUIS GONZALES • ARCADIO GASTELUM • FRANCISCO MUNOZ, SR.
 DAVID RAMIREZ • BENITO VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension

(2)
 MOTION TITLE: Ch. = failed to carry out, or cause to be carried out resolutions.

MOTION MADE BY: D.R.

SECONDED BY: F.V.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN				
CATALINA ALVAREZ COUNCIL SECRETARY				
FRANCISCO VALENCIA TREASURER				
PRISCILLA FLORES				
ARCADIO GASTELUM				
LUIS GONZALES				
FRANCISCO MUNOZ, SR.				
DAVID RAMIREZ				
BENITO F. VALENCIA				
ROBERT VALENCIA				

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, TRIBAL COUNCIL TREASURER
 PRISCILLA FLORES • LUIS GONZALES • ARCADIO GASTELUM • FRANCISCO MUNOZ, SR.
 DAVID RAMIREZ • BENITO VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

(4)
 MOTION TITLE: Reprimand
 Designation of Signatory authority.

MOTION MADE BY: R.V. SECONDED BY: L.G.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN	_____			
PETER YUCUPICIO VICE-CHAIRMAN	✓			
CATALINA ALVAREZ COUNCIL SECRETARY		GA		
FRANCISCO VALENCIA TREASURER			✓	
PRISCILLA FLORES	✓			
ARCADIO GASTELUM	✓			
LUIS GONZALES	✓			
FRANCISCO MUNOZ, SR.		✓		
DAVID RAMIREZ	✓			
BENITO F. VALENCIA	_____			
ROBERT VALENCIA	✓			

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Repumand

MOTION TITLE: *(#5) Violation of Fiscal Management*

MOTION MADE BY: *D.R.*

SECONDED BY: *L.G.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN	<hr/>			
PETER YUCUPICIO VICE-CHAIRMAN	<i>YJP</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>CA</i>		
FRANCISCO VALENCIA TREASURER			<i>z</i>	
PRISCILLA FLORES	<i>PF</i>			
ARCADIO GASTELUM	<i>AG</i>			
LUIS GONZALES	<i>LG</i>			
FRANCISCO MUNOZ, SR.	<i>FM</i>			
DAVID RAMIREZ	<i>DR</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>RV</i>			

COUNCIL MEMBERS

HERMINIA FRIAS TRIBAL CHAIRWOMAN • PETER YUCUPICIO VICE-CHAIRMAN
 CATALINA ALVAREZ TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA TREASURER
 PRISCILLA FLORES • LUIS GONZALES • ARCADIO GASTELUM
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING AUGUST 1, 2007 COUNCIL MOTION/VOTE RECORD

Suspension
3 min

(7)

MOTION TITLE: Refusing to allow Treasurer to view financial Records of the Tribe

MOTION MADE BY: D. R.

SECONDED BY: ~~_____~~, R.V.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<input checked="" type="checkbox"/>			
CATALINA ALVAREZ COUNCIL SECRETARY		<input checked="" type="checkbox"/>		
FRANCISCO VALENCIA TREASURER			<input checked="" type="checkbox"/>	
PRISCILLA FLORES			<input checked="" type="checkbox"/>	
ARCADIO GASTELUM	<input checked="" type="checkbox"/>			
LUIS GONZALES	<input checked="" type="checkbox"/>			
FRANCISCO MUNOZ, SR.		<input checked="" type="checkbox"/>		
DAVID RAMIREZ	<input checked="" type="checkbox"/>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<input checked="" type="checkbox"/>			

COUNCIL MEMBERS

HERMINIA FRIAS TRIBAL CHAIRWOMAN, PETER YUCUPICIO VICE-CHAIRMAN, CATALINA ALVAREZ TRIBAL COUNCIL SECRETARY, FRANCISCO VALENCIA TREASURER, PRISCILLA FLORES, LUIS GONZALES, ARCADIO GASTELUM, DAVID RAMIREZ

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension

(9)
 MOTION TITLE: *Without Council approval, cut budget without approving the cuts.*

MOTION MADE BY: *F.Y.*

SECONDED BY: *R.V.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN	_____			
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>CA</i>		
FRANCISCO VALENCIA TREASURER	<i>[Signature]</i>			
PRISCILLA FLORES		<i>[Signature]</i>		
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES	<i>[Signature]</i>			
FRANCISCO MUNOZ, SR.		<i>[Signature]</i>		
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, TRIBAL COUNCIL TREASURER
 PRISCILLA FLORES • LUIS GONZALES • ARCADIO GASTELUM • FRANCISCO MUNOZ, SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

ATTACHMENT 5

FISCAL YEAR 2008 BUDGET CALENDAR

Dates	Activity	Responsibility
April 2-May 30, 2007	Prepare Budget Request Worksheets and supplemental budget documents	Finance Department
April 12-May24, 2007	Budget Preparation Workshops- Intro to Performance Based Budgeting	Finance/Chairwoman
May 29-31, 2007	Budget Training Workshops- Excel Budget Format and Performance Based Budgeting	Finance Department
June 1, 2007	Deadline to issue Budget Worksheets and related materials to Department Director's	Finance Department
June 6, 2007	Deadline to submit Computer & Technology Request to Information Technology Department Deadline to submit New Position Classification Form to Human Resources Department	Division Directors
June 13, 2007	Deadline to return recommended Computer & Technology Requests to requesting departments Deadline to return recommended New Position Classification Forms to requesting departments	Information Technology Human Resources
June 20, 2007	Deadline to submit completed Budget Request and Supplemental Budget Documents to Finance department	Division Directors
June 21-30, 2007	Consolidate and review budget requests & prepare summary documents	Finance Department
July 3-21, 2007	Initial budget reviews with Department/Division Directors	Chairwoman
July 23-31, 2007	Consolidate and prepare Recommended Budget	Finance Department
August 1-2, 2007	Final review of Recommended Budget	Chairwoman
August 6- 24, 2007	Chairwoman's presentation of Recommended Department Budgets To Tribal Council	Tribal Chair & Council
August 27-28, 2007	Budget Wrap-up/Final Decision on unresolved issues	Tribal Council
August 29-Sept. 7, 2007	Prepare Adopted Budget Resolution, summaries & supporting documentation	Finance Department
September 4-5, 2007	Public Presentation of Fiscal Year 2008 Recommended Budget	Finance Department
September 7, 2007	Submit Fiscal Year 2008 Adopted Budget Resolution and documents for Tribal Council agenda packets.	Finance Department
September 12, 2007	Study Session & Adoption of Fiscal Year 2008 Budget	Tribal Chair & Council
September 13-29, 2007	Input into Fundware any modifications made at adoption. Prepare summary documents. Consolidate & distribute Adopted Budget work papers. Prepare, import and post	Finance Department

8/6/2007

ATTACHMENT 6

PASCUA YAQUI TRIBE

OFFICE OF ACTING CHAIRMAN

EXECUTIVE ORDER NO. 08-06-07

ASSUMPTION OF AUTHORITY OF OFFICE OF CHAIRMAN

- WHEREAS,** On August 1, 2007, the Tribal Council of the Pascua Yaqui Tribe on motion voted to suspend **Herminia Frias** as Chairwoman of the Pascua Yaqui Tribe pursuant to the Constitution of the Pascua Yaqui Tribe, Article VI, Section 1, Subsections (o) and (p); and
- WHEREAS,** The Council's action took effect immediately, all powers and authorities previously exercised by **Herminia Frias** as Chairwoman were suspended and set aside, and
- WHEREAS,** **Heminia Frias** is without authority to exercise the duties and obligations of Chairwoman of the Pascua Yaqui Tribe and she no longer possesses the authority to delegate her duties and responsibilities of her office to anyone else; and
- WHEREAS,** Executive Order No. 08-01-07 was purportedly drafted and signed by **Chairwoman Frias** on August 1, 2007 at a time when she was facing possible removal from office or a suspension of her executive powers, and said executive order was not published until August 2, 2007, a time after the formal suspension became effective; and
- WHEREAS,** In said executive order, **Chairwoman Frias** purported to delegate certain executive powers to an administrative staff member, who is not an elected member of tribal council, and purported to delegate certain other enumerated and non-enumerated executive powers to Secretary Alvarez that went beyond the delegation of powers that are allowed by a Chairperson under the Constitution, bylaws, or Directives from Executive Officers, and that being the case, Executive Order No. 08-01-07 is without legal effect and is null and void; and
- WHEREAS,** Pursuant to said suspension action of the Pascua Yaqui Tribal Council, and pursuant to Article XI, Section 2, Constitution of the Pascua Yaqui Tribe, **Peter S. Yucupicio**, is now authorized to act and exercise the powers and authorities of the office of **Chairman** of the Pascua Yaqui Tribe during the period of suspension of the executive powers of the Chairwoman.
-

IT IS HEREBY ORDERED THAT:

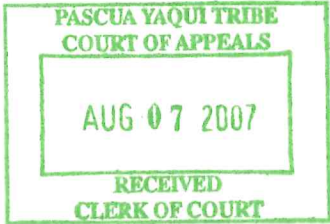
1. The Executive Order No. 08-01-07 regarding a purported delegation of executive authority is hereby revoked, declared null and void, and is hereby superceded;
2. All Key Employers, Directors and Appointed Employees will report directly to **Acting Chairperson, Peter Yucupicio;**
3. All PTO requests granted to Key Employees, Directors or Appointed Employees that were signed/granted after July 20, 2007 are hereby revoked and all future requests for PTO or a leave of absence from said employees must be signed by the acting chairman or his designated agent.

BE IT FINALLY ORDERED that this Executive Order is effective immediately and shall remain in effect until revoked.

Dated this 6th day of August, 2007.



Peter S. Yucupicio, Acting Chairman
Pascua Yaqui Tribe



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Robert A. Rosette
Rosette & Associates, PC
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Fax (480) 889-8997
rosette@rosettelaw.com
vkewenvoyouma@rosettelaw.com
Counsel for Chairwoman Herminia Frias

**PASCUA YAQUI TRIBE COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI RESERVATION**

PETER YUCUPICIO, an individual, and Vice
Chairman and Member of the Tribal Council
of the Pascua Yaqui Tribe; PRISCILLA
FLORES, an individual and Member of the
Tribal Council of the Pascua Yaqui Tribe;
ARCADIO GASTELUM, an individual and
Member of the Tribal Council of the Pascua
Yaqui Tribe; LUIS GONZALES an individual
and Member of the Tribal Council of the
Pascua Yaqui Tribe; DAVID RAMIREZ, an
individual and Member of the Tribal Council
of the Pascua Yaqui Tribe; ROBERT
VALENCIA, an individual and Member of the
Tribal Council of the Pascua Yaqui Tribe;
FRANCISCO VALENCIA, an individual,
Treasurer and Member of the Tribal Council of
the Pascua Yaqui Tribe; and the TRIBAL
COUNCIL OF THE PASCUA YAQUI
TRIBE,

Case No.:

NOTICE OF APPEAL

Appellees,

vs.

Chairwoman Herminia Frias,

Appellant.

1 Notice is hereby given that Chairwoman Herminia Frias (“Chairwoman”), in the above-
2 named case, appeals to the Pascua Yaqui Tribal Court of Appeals, by and through undersigned
3 counsel, pursuant to the Pascua Yaqui Tribe Rules of Appellate Procedure Rule 7 (3 PYTRAP
4 Rule 7) and PYTC § 1-2-100, from the determination and sanctions made during the Special
5 Tribal Council Meeting and Hearing on August 1, 2007.

6 Specifically, the Chairwoman seeks relief and determination from the final vote and
7 sanctions imposed by Appellees on the following allegations (as corresponding to the Complaint
8 pursuant to Tribal Council Code of Ethics Ordinance of 2006. Title 2, Chapter 1-2, Sections 1-
9 110, Chairwoman Herminia Frias (Attachment 1), and Special Tribal Council Meeting, August 1,
10 2007, Council Motion/Vote Records (Attachment 2):

11 Allegation 1. The Chairwoman failed to consult with the Tribal Council regarding
12 the appointment of the Finance Director in violation of 2 PYTC §5-1-100.
13 Sanction: suspension for Three months.

14 Allegation 2. The Chairwoman failed to carry out, or cause to be carried out
15 resolutions in March 2006 in violation of Article XV of the Constitution of the
16 Pascua Yaqui Tribe. Sanction: suspension for Three months.

17 Allegation 4. Designation of signatory authority. Sanction: reprimand.

18 Allegation 5. Violation of Fiscal Management Ordinance: No enforcing reporting
19 requirements on Finance Director. Monthly and Quarterly Reports. Finance
20 Director has not given budget information to the Tribal Council. Sanction:
21 reprimand.

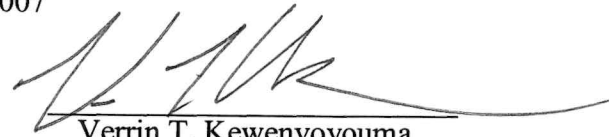
22 Allegation 7. Refusing to allow the Treasurer to view the financial records of the
23 Tribe. Sanction: suspension for Three months.

24 Allegation 9. Without council approval, cut the budget without approving the
25 cuts. Sanction: suspension for Three months.

1 Pursuant to the discretion of the Court under 3 PYTRAP Rule 5(B) and Rule 28, the
2 parties, issues, and significant nature of this Appeal, we respectfully request the Court to
3 give this Appeal priority. In addition to other Motions, we expeditiously anticipate filing
4 a Motion for Expedited Processing and Motion for Expedited Briefing.

5
6 **RESPECTFULLY SUBMITTED** this 7th day
7 of August, 2007

8
9 By:



Verrin T. Kewenvoyouma
Robert A. Rosette
Rosette & Associates, PC
Counsel for Chairwoman
Herminia Frias

1
2 CERTIFICATION OF SERVICE

3 I certify that on the 7th day of August, 2007, I served the
4 above Notice of Appeal and Motion to Immediately Stay Sanctions on all
5 counsel of record by depositing a true copy thereof in the United States mail
6 addressed as follows:
7

8
9 Vice Chairman and Council Member Peter Yucupicio
10 Pascua Yaqui Tribe
11 7474 S. Camino De Oeste
12 Tucson, AZ 85746

13 Treasurer Council and Member Francisco Valencia
14 Pascua Yaqui Tribe
15 7474 S. Camino De Oeste
16 Tucson, AZ 85746

17 Secretary and Council Member Catalina Alvarez
18 Pascua Yaqui Tribe
19 7474 S. Camino De Oeste
20 Tucson, AZ 85746

21 Council Member Francisco Munoz, Sr
22 Pascua Yaqui Tribe
23 7474 S. Camino De Oeste
24 Tucson, AZ 85746

25 Council Member Benito Valencia
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746

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Council Member Priscilla Flores
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746

Council Member Arcadio Gastelum
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746

Council Member Luis Gonzales
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746

Council Member David Ramirez
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746

Council Member Robert Valencia
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746

Attorney General Justin M. Ruggieri
Pascua Yaqui Tribe
Attorney General Department
4725 W. Calle Tetakusim Bldg. B
Tucson, AZ 85757

 Signature

ATTACHMENT 1

CONFIDENTIAL
MEMORANDUM

To: Herminia Frias, Chairwoman
Pascua Yaqui Tribe

From: Peter Yucupicio, Francisco Valencia, David Ramirez, Robert Valencia, Priscilla Flores, Arcadio Gastelum, Luis Gonzales

Date: July 20, 2007

Re: **Complaint for removal of Chairwoman Herminia Frias pursuant to the Pascua Yaqui Tribe Constitution – Article X – Removal, Recall and Resignation from Office**

In accordance with the Constitution of the Pascua Yaqui Tribe – Article X – Removal, Recall and Resignation from office, please accept this document as the written complaint that is required to be submitted to Herminia Frias as the accused in order to begin the procedure to investigate allegations of unethical or improper misconduct as stated in the Constitution..

For several reasons, we believe that the Chairwoman has engaged in unethical and improper conduct as defined by the Code of Ethics Ordinance. As required by the Ordinance, the following actions are specific examples of the Chairwoman's unethical and improper conduct.

- (1) The Chairwoman failed to consult with the Tribal Council regarding the appointment of the Finance Director in violation of 2 PYTC § 5-1-100. (A8)
- (2) The Chairwoman failed to carry out, or cause to be carried out resolutions in March 2006 in violation of Article XV of the Constitution of the Pascua Yaqui Tribe. (A8)
- (3) The Chairwoman has failed to report to the Tribal Council regarding the status of tribal matters and make such recommendations to the Tribal Council as she deemed advisable in the best interest of the tribe, in violation of Article XV, Section 1 of the Constitution of the Pascua Yaqui Tribe. No reports as required by the Constitution. (A8)
- (4) Designation of signatory authority. (A8)
- (5) Violation of Fiscal Management Ordinance → No enforcing reporting requirements on Finance Director. Monthly and Quarterly Reports. Finance Director has not given budget information to the Tribal Council. (A8)

Section 330 Reports (2 PYTC § 5-1-330)

- (A) Monthly Reports:

- (1) The Finance Director shall provide a written monthly report to the Chairman, Treasurer and Financial Management Oversight Committee on or before the 20th day of each month, which shall reflect the amounts provided for in the adopted budget, as adjusted by additions, carryovers and other adjustments, in detail, and the amounts of expenditures made against such appropriations.
- (B) Quarterly Reports:
 - (1) The Finance Director shall present a formal financial and budget status report through the Chairman to the Tribal Council within 30 days after the end of each fiscal quarter.
 - (6) TGO reports are not being received. (A8)
 - (7) Refusing to allow the Treasurer to view the financial records of the Tribe. (A8)
 - (8) Neglect → Failing to delegate signatory authority to anyone for weeks at a time. (A8)
 - (9) Without Council approval, cut the budget without approving the cuts. (A5)
 - (10) Restructure of the tribal government divisions, offices. This is an authority expressly reserved to the Tribal Council. (A8)
 - (11) Budget – Moving appropriated funds from one budget to another. (A5)
 - Ex. Back to school bash → Money approved for it, and was not used or was moved.
 - Ex. Enrollment – Money for printer was transferred to IT Division instead.
 - Ex. Miss Yaqui funds reduced.
 - Ex. Cultural Events budget → Council approved budget, but total was reduced afterwards.
 - Ex. Council has its' own budget and programs → Council decision on how to spend money, this is not a Chair authority.
 - Ex. Authority over approving Tribal Council member travel.
 - (12) Not following OAG Ordinance. No review of Farley Reports by OAG. Providing reports to the Tribal Council. (A8)
 - (13) Denying access to the Election Chairperson to her office resulting in not being able to fulfill election duties and requests from tribal constituents thus violating the election ordinance. (A8).
 - (14) Relinquishment of duties of Chair to Vice-Chair. Not being involved in the affairs of the Gaming Enterprise Division. Failing to attend Gaming Enterprise Division meetings on a regular basis. (Neglect)
 - (15) Did not mandate/require Finance Department and Office of the Attorney General to attend Gaming Enterprise Division meetings. (Neglect)
 - (16) Refusing to spend money that has already been allocated. Ex. ITCA funding is Tribal Council authority and not Chairwoman's decision. (A5)

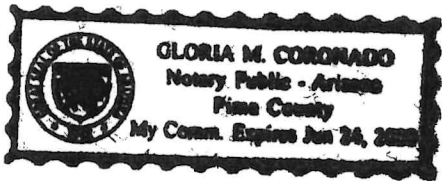
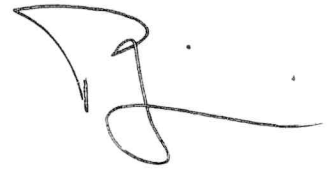
- (17) When approved donations budget, recommended for \$25,000 per community. Chairwoman refused to allow the funding to be passed through. (A5)
- (18) Memo directing Directors to refuse to speak to Tribal Council members. (A5)
- (19) Denied councilmans' right to make a motion on a resolution. (A8)
- (20) Violations of the Yaqui Preference Act in hiring of key employees. (A8)
- (21) Has violated the Yaqui Preference Act by failing to protect the rights of tribal member employees who were laid off and not given preference in rehiring while giving non-tribal employees in similar situations the benefit of employment.(A8)
- (22) Has created instability in tribal government due to lack of leadership and creating excessive turnover in critical positions resulting in resignations or terminations of qualified individuals while replacing them with unqualified interim director positions in excess of one year.(A8)

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 20 DAY OF July 2007

BY Peter Yulupko

Gloria M. Coronado
NOTARY PUBLIC



ATTACHMENT 2

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD



(1) MOTION TITLE: suspension - C.H. - Failed to consult with T/C regarding the appointment of Finance Director.
 MOTION MADE BY: L.G. SECONDED BY: F.V.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<input checked="" type="checkbox"/>			
CATALINA ALVAREZ COUNCIL SECRETARY		<input checked="" type="checkbox"/>		
FRANCISCO VALENCIA TREASURER			<input checked="" type="checkbox"/>	
PRISCILLA FLORES			<input checked="" type="checkbox"/>	
ARCADIO GASTELUM	<input checked="" type="checkbox"/>			
LUIS GONZALES		<input checked="" type="checkbox"/>		
FRANCISCO MUNOZ, SR.		<input checked="" type="checkbox"/>		
DAVID RAMIREZ	<input checked="" type="checkbox"/>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<input checked="" type="checkbox"/>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUNOZ, SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension

(2)
 MOTION TITLE: *Ch. = Failed to carry out, or cause to be carried out resolutions.*

MOTION MADE BY: *D.R.*

SECONDED BY: *F.V.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Handwritten mark]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>[Handwritten mark]</i>		
FRANCISCO VALENCIA TREASURER	<i>[Handwritten mark]</i>			
PRISCILLA FLORES	<i>[Handwritten mark]</i>			
ARCADIO GASTELUM	<i>[Handwritten mark]</i>			
LUIS GONZALES			<i>[Handwritten mark]</i>	
FRANCISCO MUNOZ, SR.		<i>[Handwritten mark]</i>		
DAVID RAMIREZ	<i>[Handwritten mark]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Handwritten mark]</i>			

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
 CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUÑOZ SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD



(4)
 MOTION TITLE: Reprimand.
 Designation of Secretary authority.
 MOTION MADE BY: R.V. SECONDED BY: L.G.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>CA</i>		
FRANCISCO VALENCIA TREASURER			<i>[Signature]</i>	
PRISCILLA FLORES	<i>[Signature]</i>			
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES	<i>[Signature]</i>			
FRANCISCO MUNOZ, SR.		<i>[Signature]</i>		
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

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 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Repumand

MOTION TITLE:

(#5) Violation of Fiscal Management

MOTION MADE BY: *D.R.*

SECONDED BY: *L.G.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN	_____			
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>CA</i>		
FRANCISCO VALENCIA TREASURER			<i>[Signature]</i>	
PRISCILLA FLORES	<i>[Signature]</i>			
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES	<i>[Signature]</i>			
FRANCISCO MUNOZ, SR.		<i>[Signature]</i>		
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

HERMINIA FRIAS TRIBAL CHAIRWOMAN • PETER YUCUPICIO VICE-CHAIRMAN
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 PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUNOZ, SR.
 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension
3 min

(7)

MOTION TITLE: Refusing to allow Treasurer to view financial Records of the Tribe

MOTION MADE BY: D. R.

SECONDED BY: ~~_____~~, R.V.

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN				
PETER YUCUPICIO VICE-CHAIRMAN	<input checked="" type="checkbox"/>			
CATALINA ALVAREZ COUNCIL SECRETARY		CA		
FRANCISCO VALENCIA TREASURER			W	
PRISCILLA FLORES			W	
ARCADIO GASTELUM	<input checked="" type="checkbox"/>			
LUIS GONZALES	<input checked="" type="checkbox"/>			
FRANCISCO MUNOZ, SR.	<input checked="" type="checkbox"/>			
DAVID RAMIREZ	<input checked="" type="checkbox"/>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<input checked="" type="checkbox"/>			

COUNCIL MEMBERS

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 DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

PASCUA YAQUI TRIBE

SPECIAL TRIBAL COUNCIL MEETING

AUGUST 1, 2007

COUNCIL MOTION/VOTE RECORD

Suspension.

MOTION TITLE: ⁽¹⁹⁾ Without Council approval, cut budget without approving the cuts.

MOTION MADE BY: *F.V.*

SECONDED BY: *R.V.*

COUNCIL MEMBER	YES	NO	ABSTAINED	ABSENT
HERMINIA FRIAS TRIBAL CHAIRWOMAN	_____			
PETER YUCUPICIO VICE-CHAIRMAN	<i>[Signature]</i>			
CATALINA ALVAREZ COUNCIL SECRETARY		<i>[Signature]</i>		
FRANCISCO VALENCIA TREASURER	<i>[Signature]</i>			
PRISCILLA FLORES		<i>[Signature]</i>		
ARCADIO GASTELUM	<i>[Signature]</i>			
LUIS GONZALES	<i>[Signature]</i>			
FRANCISCO MUNOZ, SR.	<i>[Signature]</i>			
DAVID RAMIREZ	<i>[Signature]</i>			
BENITO F. VALENCIA				
ROBERT VALENCIA	<i>[Signature]</i>			

COUNCIL MEMBERS

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