

LEGISLATIVE ORDER OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Judgment in Contest of April 29, 2023 Primary Election for the Offices of
Chairperson and Vice Chairperson of the Tohono O'odham Nation)

LEGISLATIVE ORDER NO. 23-155

1 **WHEREAS,** **the Constitution of the Tohono O'odham Nation provides that the "Council shall**
2 **enact an election ordinance . . . which shall prescribe the qualifications of**
3 **candidates, the registration requirements for voting and such other rules and**
4 **procedures necessary to the orderly conduct of elections, including but not**
5 **limited to procedures for validation of petitions and the settlement of any and all**
6 **election disputes" (Constitution, Article X, Section 7); and**

7 **WHEREAS,** **the "decision of the Tohono O'odham Council in all election matters, including**
8 **the eligibility and qualifications of candidates, shall be final" (Constitution,**
9 **Article X, Section 7); and**

10 **WHEREAS,** **"a general election may be postponed for up to one month when such**
11 **postponement is necessary in the opinion of the Council" (12 T.O.C. Chapter 1 –**
12 **Elections, Section 1802); and**

13 **WHEREAS,** **12 T.O.C. Chapter 1 – Elections, establishes the procedure for "[a]ny eligible voter**
14 **of the Nation" to contest an election upon specific grounds, including "[f]or**
15 **misconduct on the part of any district election board or of the [Election] Board, or**
16 **any member thereof" (12 T.O.C. Chapter 1 – Elections, Section 1901(A)); and**

17 **WHEREAS,** **when "a contest statement is filed with the [Election] Board alleging misconduct**
18 **on the part of the Board or any member thereof," the Legislative Council has**
19 **jurisdiction to hear the contest (Elections, Section 1904); and**

20 **WHEREAS,** **12 T.O.C. Chapter 1 – Elections, further provides that the Legislative Council "will**
21 **meet within 15 days after the receipt of the [Election Board's] answer for the sole**
22 **purpose of hearing the contest on the grounds of misconduct on the part of the**
23 **Board or any member thereof and shall decide the issue(s) raised in the contest**
24 **statement on those grounds only" (Elections, Section 1905(B)); and**

25 **WHEREAS,** **on April 29, 2023, the Election Board conducted the Nation's 2023 primary**
26 **election, including the election for the offices of the chairperson and vice**
27 **chairperson of the Tohono O'odham Nation, and the Board posted its certificates**
28 **of election results on April 29, 2023; and**

29 **WHEREAS,** **on May 3, 2023, the Election Board delivered to the Legislative Council secretary a**
30 **contest statement filed by Nation's voters Juan C. Buendia and Damascus D.**
31 **Francisco ("Buendia-Francisco contestors") alleging Election Board misconduct**
32 **during the Nation's 2023 primary election for the offices of chairperson and vice**
33 **chairperson of the Tohono O'odham Nation; and**

1 **WHEREAS,** on May 3, 2023, the Legislative Council secretary provided the Council's Election
2 Contest Hearing Procedures and written notice to the Election Board
3 ("contestee") requiring the contestee to file an answer to the contest statement
4 with the secretary within five days of receipt, and the secretary copied the
5 Buendia-Francisco contestors (Elections, Section 1905(A)); and

6 **WHEREAS,** on May 4 and May 5, 2023, the Election Board delivered to the Legislative Council
7 secretary additional contest statements filed by Nation's voters ("contestors")
8 also alleging Election Board misconduct during the Nation's 2023 primary
9 election for the offices of chairperson and vice chairperson of the Tohono
10 O'odham Nation; and

11 **WHEREAS,** on May 5, 2023, the Legislative Council secretary provided all the contestors
12 whose valid contest statements had been received to that point, and the contestee
13 with written notice of the contest hearing date, time, and location and with copies
14 of the Council's Election Contest Hearing Procedures; the secretary sent the same
15 notice and copies of the Election Contest Hearing Procedures to any remaining
16 contestors with copies to all other parties on May 8, 2023; and

17 **WHEREAS,** on May 9, 2023, the Election Board filed with the Legislative Council secretary a
18 written answer to the contest statements; and

19 **WHEREAS,** contestors Buendia-Francisco and the contestee each provided a list of hearing
20 evidence and witnesses, as well as copies of evidence, to the secretary and the
21 other parties before the contest hearing was scheduled to convene; and

22 **WHEREAS,** the majority of the remaining contestors did not file lists of hearing evidence and
23 witnesses; and

24 **WHEREAS,** during the Legislative Council's May 16, 2023 election contest hearing, contestors
25 Buendia-Francisco and the contestee Election Board were represented by legal
26 counsel, and the parties were given the opportunity to appear; testify; make
27 opening statements; to call, question, and cross-examine witnesses; present
28 evidence; make objections; make closing statements; and otherwise participate
29 in the hearing; and

30 **WHEREAS,** at the conclusion of the Legislative Council's election contest hearing, the
31 presiding officer ordered a vote to determine whether the primary election
32 results contested should be certified or set aside in accordance with 12 T.O.C.
33 Chapter 1.

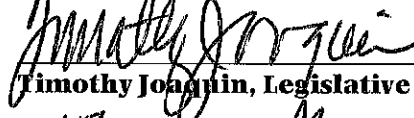
1 NOW, THEREFORE, BE IT ORDERED by the Tohono O'odham Legislative Council that the April 29,
2 2023 primary election results for the offices of chairperson and vice chairperson
3 of the Tohono O'odham Nation are set aside.

4 BE IT FURTHER ORDERED by the Tohono O'odham Legislative Council that a special primary
5 election for eligible and qualified sets of candidates for the offices of the Nation's
6 chairperson and vice chairperson, as determined by the Election Board pursuant
7 12 T.O.C. Chapter 1, shall be conducted on June 24, 2023 and the Nation's 2023
8 general election is postponed and shall be conducted on July 22, 2023.

9 BE IT FINALLY ORDERED that the Nation's Election Board is directed to issue and publicly
10 publish a revised election schedule consistent with the special primary election
11 and postponed general election dates set by this order.

12 The foregoing Order was passed by the Tohono O'odham Legislative Council on the 16TH day of
13 MAY, 2023 at a meeting at which a quorum was present with a vote of 194.45 CERTIFIED; 3,023.55
14 SET ASIDE; and [01] ABSENT, pursuant to the powers vested in the Council by Article V, Section 1;
15 Article VI, Section 1; Article VI, subsection 1(a), subsection 1(g), and subsection 1(l); and Article
16 X, Section 7 of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham
17 Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian
18 Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
19 Stat.984).

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21 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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24 Timothy Joannin, Legislative Chairman

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26 17 day of May, 2023
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31 ATTEST:

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34 Evonne Wilson, Legislative Secretary

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36 17 day of May, 2023
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ACTION: JUDGMENT IN CONTEST OF APRIL 29, 2023 PRIMARY ELECTION FOR THE OFFICES OF CHAIRPERSON AND VICE CHAIRPERSON OF THE TOHONO O'ODHAM NATION

DATE: MAY 16, 2023

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	CERTIFIED	SET ASIDE	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8		X	
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8		X	
SELLS 556.5	1. ARTHUR WILSON (Sheila Espino)	278.25		X	X
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25		X	
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25		X	
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25		X	
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3		X	
	2. JANICE FELIX (Adam P. Andrews)	121.3		X	
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eiler)	121.9		X	
	2. ROGER MANUEL (Christina Andrews)	121.9		X	
PISINEMO 232.7	1. MARIETTA MARTIN ()	116.35		X	
	2. EDWARD D. MANUAL (Monica Morgan)	116.35		X	
HICKIWAN 216.6	1. LOUIS R. LOPEZ ()	108.3		X	
	2. DELMA M. GARCIA ()	108.3		X	
GU VO 270.7	1. GRACE MANUEL ()	135.35		X	
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35		X	
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25		X	
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25		X	
CHUKUT KUK 351.6	1. MARLAKAY HENRY (Billman Lopez)	175.8		X	
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8		X	
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45		X	
	2. LEANDER MASE (Francine Schooling)	194.45	X		
	TOTAL	3,218.0	194.45	3,023.55	[01]