

FILED JUN 07 2022

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MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)  
BEN KARNES (2nd Chief)  
DANNY BURKYBILE (Council Member)  
EDD MILLER (Council Member)  
ANITA WILLIAMS (Secretary/Treasurer)

Case No.:

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Plaintiffs,

vs.

BILL FOLLIS (Former Chief),  
ROBERT BURKYBILE (Former 2nd Chief),  
RAMONA ROSIERE (Former  
Secretary/Treasurer),  
MONA CRAVEN (Former Council Member),  
TYLER SCRIFERS (Former Council  
Member),

Defendants

Modoc Nation members and newly elected Elected Council members Kirk Miller, Ben Karnes, Danny Burkybile, Edd Miller, and Anita Williams (collectively, "Plaintiffs"), through undersigned counsel, request that the Court grant injunctive relief and issue a temporary restraining order, and state for the cause the following:

## PRELIMINARY STATEMENT

1  
2 1. Plaintiffs seek injunctive relief and a temporary restraining order to protect their rights  
3 as Modoc Nation members against the unlawful disenrollment actions being taken by the former  
4 Elected Council of Chief Bill Follis, 2nd Chief Robert Burkybile, Secretary/Treasurer Ramona  
5 Rosiere, Council Member Mona Craven, and Council Member Tyler Scifers (collectively,  
6 “Defendants”). Plaintiffs also seek a declaratory judgment recognizing the Plaintiffs as the proper  
7 Elected Council as voted on by the Tribal Council at the May 7, 2022 Annual Meeting and a  
8 temporary restraining order and preliminary injunction prohibiting the Defendants from holding  
9 themselves out as the lawful Elected Council of the Modoc Nation and prohibiting the Defendants  
10 from taking any actions on behalf of the Modoc Nation.  
11

12  
13 2. As explained further below, the Defendants are currently conducting an “audit” of  
14 over 400 Modoc Nation members’ tribal membership using an outside accounting firm, Wipfli LLP.  
15 Indeed, the Defendants have made the extraordinary claim that “more than 75% of the Tribe’s  
16 members are not fully enrolled,” thus, an audit is warranted.  
17

18 3. The “audit” violates Modoc Nation Law. First, the Enrollment Code prohibits the  
19 release of membership information in a person’s file unless the Enrollment Code allows it or the  
20 Tribal Council has passed a resolution. Enrollment Code, § 2(B). The Enrollment Code does not  
21 allow it and the Tribal Council has not passed a resolution allowing the release of an individual’s  
22 membership file. Second, under the Enrollment Code, membership is final when an individual  
23 receives a “permanent plastic card.” Enrollment Code, § 9(A). The Plaintiffs have all received their  
24 permanent plastic card stating they are full members and they have never been notified that they were  
25 only “temporary members.”  
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1           4.       The Defendants have relied on their disenrollment actions to push back the Modoc  
2 Nation Annual Meeting and Elected Council election until August 6, 2022 so that their audit can be  
3 complete. These actions directly violate the Modoc Nation Constitution. The Modoc Nation  
4 Constitution ("Constitution") mandates that the Annual Meeting take place the first Saturday in May.  
5 Art. X, § 1. And at this meeting, the Elected Council election takes place. Art. IX, § 2. Defendants are  
6 bound by the Constitution and cannot change the Annual Meeting and election to a date other than  
7 May 7, 2022.  
8

9           5.       What seems apparent is that Defendants are using their unlawful disenrollment audit  
10 and investigation to *delay* the Annual Meeting and prevent themselves from getting voted out.  
11 Defendants' power grab is so extreme they are willing to disenroll Modoc Nation members like the  
12 Plaintiffs in order to remain in power.  
13

14           6.       Despite Defendants' brazen attempt to delay the Annual Meeting, the Tribal Council  
15 held the Annual Meeting on May 7, 2022 and elected the Plaintiffs as the new lawful Elected  
16 Council. The Elected Council now consists of: Kirk Miller-Chief, Ben Karnes-2nd Chief, Danny  
17 Burkybile-Council Member, Edd Miller-Council Member, and Anita Williams-Secretary/Treasurer.  
18

19           7.       For this action, Plaintiffs seek a declaratory judgment that Defendants have violated  
20 the Enrollment Code and a temporary restraining order and preliminary injunction prohibiting the  
21 Defendants from engaging in any disenrollment activity. Plaintiffs also seek a declaratory judgment  
22 recognizing the Tribal Council's election of the Plaintiffs as the Elected Council at the Annual  
23 Meeting on May 7, 2022 and a temporary restraining order and preliminary injunction prohibiting the  
24 Defendants from holding themselves out as the lawful Elected Council and prohibiting the  
25 Defendants from taking any actions on behalf of the Modoc Nation.  
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8. For support for their temporary restraining order and injunction, Plaintiffs have filed a Motion for Temporary Restraining Order and Preliminary Injunction contemporaneously with this Complaint.

## PARTIES

9. Plaintiff Kirk Miller is an individual Modoc Nation member who resides in Stigler, Oklahoma. Plaintiff Kirk Miller was elected as Chief of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

10. Plaintiff Ben Karnes is an individual Modoc Nation member who resides in Miami, Oklahoma. Plaintiff Ben Karnes was elected as 2nd Chief of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

11. Plaintiff Danny Burkybile is an individual Modoc Nation member who resides in Quapaw, Oklahoma. Plaintiff Danny Burkybile was elected as a Council Member of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

12. Plaintiff Edd Miller is an individual Modoc Nation member who resides in Broken Arrow, Oklahoma. Plaintiff Edd Miller was elected as a Council Member of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

13. Plaintiff Anita Williams is an individual Modoc Nation member who resides in Wyandotte, Oklahoma. Plaintiff Anita Williams was elected as Secretary/Treasurer at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

14. Defendant Bill Follis is the former Chief of the Modoc Nation and, on information and belief, resides in Miami, Oklahoma.

15. Defendant Robert Burkybile is the former 2nd Chief of the Modoc Nation and, on information and belief, resides in Miami, Oklahoma.

16. Ramona Rosiere is the former Secretary/Treasurer of the Modoc Nation and, on information and belief, resides in Seneca, Missouri.

17. Defendant Mona Craven is a former Council Member of the Modoc Nation and, on information and belief, resides in Seneca, Missouri.

18. Defendant Tyler Scifers is a former Council Member of the Modoc Nation and, on information and belief, resides in Kansas City, Kansas.

## JURISDICTION AND VENUE

19. The Modoc Nation Constitution grants this Court jurisdiction over this dispute. Article VIII, § 1, states this Court has “jurisdiction to decide disputes on issues arising under any provision of this constitution or any legislation enacted by the Modoc Tribal Council and/or the Modoc Elected Council.”

20. Venue is proper because a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred on Modoc Nation lands.

## STATEMENT OF FACTS

*Plaintiffs are enrolled members of the Modoc Nation and have never been told they were “temporary” members*

21. Plaintiffs have been enrolled members of the Modoc Nation for several years. Plaintiffs have all received a plastic membership card, signifying they are permanent Modoc Nation members. Plaintiff Anita Williams received her plastic membership card in 1987. Plaintiff Ben Karnes received his plastic membership card in 2006. Plaintiff Daniel Burkybile received his plastic membership card in 2006. Plaintiff Edd Miller received his plastic membership card in 2019. Plaintiff Kirk Miller received his plastic membership card in 2019.

22. Plaintiffs identify as Modoc Nation members and are very proud of their tribal membership. Plaintiffs are grateful for the Modoc Nation services they receive and these services

1 greatly improve their lives. These services includes education funding, healthcare funding, childcare  
2 funding, and housing funding.

3 23. Before the year 2022, Plaintiffs were never told by any elected official they were  
4 “temporary members.”

5  
6 ***Defendants pass Resolution No. 22-16 which starts a disenrollment investigation and pushes back  
the Annual Meeting***

7 24. On April 21, 2022, the Defendants passed Resolution 22-16, which postponed the  
8 2022 Annual Meeting scheduled for May 7, 2022 to Saturday, August 6, 2022. In this Resolution, the  
9 Defendants stated that an internal review of enrollment records showed “irregularities” and all  
10 enrollment records “since 2003” are “in question.” See Resolution 22-16, attached as Exh. 1. The  
11 Defendants stated that they have “contracted with the accounting firm of Wipfli LLP to audit the  
12 enrollment records of the Nation” after which a Final Enrollment Audit Report will be issued.

13 25. The Defendants state this Final Enrollment Audit Report is not expected to occur for  
14 at least 60 days. The Defendants note that “once completed, the audit of enrollment records could  
15 ultimately result in significant changes to the composition of the current purported membership of the  
16 Nation.”

17 26. Because of their concerns that “an election in which a significant number of ineligible  
18 voters participat[ing] would suppress the vote of eligible voters” and concerns about the “integrity of  
19 the tribal election,” the Defendants postponed the Annual Meeting from May 7, 2022 to August 6,  
20 2022.

21 27. On April 26, 2022, the Defendants sent a letter to the Tribal Council<sup>1</sup> notifying them  
22 of the membership audit and the postponement of the Annual Meeting and Elected Council election.

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<sup>1</sup> The Tribal Council is the governing body of the Modoc Nation and is composed of all enrolled members of  
the Nation who are at least 18 years of age and over. Constitution, Art. 1, § 2.



1 See April 26, 2022 Letter, attached as Exhibit 2. This letter stated that a preliminary audit of  
2 enrollment records by tribal staff found “irregularities” and that “at least 419 temporary enrollments  
3 by the Tribal Registrar have not been reviewed and more than 75% of the Tribe’s members are not  
4 fully enrolled.”

5  
6 28. The letter stated that upon receipt of the Final Enrollment Audit Report, the  
7 Enrollment Committee—which is the Defendants—will meet and “approve or disapprove the  
8 enrollment of each individual members.” The letter then stated that the Defendants will “publish a  
9 certified and confirmed list of enrolled members” and “each enrolled member may register to vote if  
10 they are not already so registered.” The letter then concludes that the Annual Meeting will take place  
11 on August 6, 2022.

12  
13 ***The Tribal Council holds the May 7, 2022 Annual Meeting and Election in accordance***  
14 ***with the Modoc Nation Constitution and elects the Plaintiffs as the new Elected Council***

15 29. The Constitution mandates that the Annual Meeting take place on the first Saturday in  
16 May. It states, “[t]he annual Modoc Tribal Council meeting shall be held the first Saturday of May.”  
17 Art. X, § 1.

18 30. The Constitution also mandates that elections of the Elected Council occur during the  
19 Annual Meeting. “Elections of the Modoc Elected Council shall take place during the annual meeting  
20 of the Modoc Tribal Council.” Art. IX, § 2.

21 31. Because the Constitution is the supreme authority for the Modoc Nation, and the  
22 Constitution mandates that the Annual Meeting be held and the Elected Council election be held at  
23 this meeting, the Tribal Council held the Annual Meeting and elections on May 7, 2022.

24 32. Over 80 Modoc Nation members attended this meeting, thus constituting a proper  
25 quorum to do business. See May 7, 2022 Attendance Sheet, attached as Exh. 3. Under the  
26 Constitution, ten members of the Modoc Tribal Council shall constitute a quorum. Art. XI, § 1.  
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1           33.     At this meeting, the Tribal Council elected a new Elected Council, which consisted of  
2 the Plaintiffs as follows: Chief Kirk Miller, Second Chief Ben Karnes, Council Member Danny  
3 Burkybile, Council Member Edd Miller, and Secretary Treasurer Anita Williams. The vote totals  
4 consisted of Chief Kirk Miller (70 votes), 2nd Chief Ben Karnes (46 votes), Secretary/Treasurer  
5 Anita Williams (49 votes), Council Member Daniel Burkybile (34 votes), and Council Member Edd  
6 Miller (59 votes). *See* Ballot Totals Sheet, attached as Exh. 4.  
7

8           34.     The Tribal Council also elected a new Tribal Court Judge, Jason Clark, under Article  
9 VII, § 1 of the Constitution. Jason Clark received 65 votes. *See* Ballot Totals Sheet.  
10

11                               ***Defendants' actions on disenrollment have damaged Plaintiffs***

12           35.     Plaintiffs have been damaged by Defendants' disenrollment actions. Plaintiffs have  
13 suffered from anxiety and stress worried their Modoc Nation membership will be terminated.  
14 Plaintiffs are proud Modoc Nation members and Defendants' attempt to disenroll them in direct  
15 violation of Modoc Nation law has caused irreparable harm to Plaintiffs.  
16

17           36.     Additionally, Plaintiffs have concerns about losing Modoc Nation services like  
18 education funding, healthcare funding, childcare funding, and housing funding due to disenrollment.  
19 Plaintiffs have relied on these services for the betterment of their lives and their families' lives. Any  
20 loss of membership and services will severely affect Plaintiffs' standard of living and greatly affect  
21 the Plaintiffs' ability to care for their families.  
22

23                               **CLAIMS FOR RELIEF**

24                               **Count I: Violation of the Enrollment Code, § 2(B)**

25           37.     Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs  
26 and all paragraphs of this Complaint.  
27  
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1           38.     Section 2(B) of the Enrollment Code prohibits the release of an individual's tribal  
2 membership file. It states "[i]nformation contained in the membership files of the tribe is  
3 confidential. It shall be released only pursuant to this code or to any subsequent resolution of the  
4 tribal council."

5           39.     The Enrollment Code has no provision which allows the release of an individual's  
6 membership file to an outside accounting firm like Wipfli LLC. And the Tribal Council has not  
7 passed a resolution allowing the release of an individual's membership file to an outside accounting  
8 firm.  
9

10           40.     Defendants have violated § 2(B) of the Enrollment Code by giving the Plaintiffs'  
11 membership files to the accounting firm of Wipfli LLP to audit the Modoc Nation membership.  
12

13           41.     Defendants are jointly and severally liable for all damages that resulted from their  
14 violation of § 2(B) of the Enrollment Code.

15                   **Count II: Violation of the Enrollment Code, § 9(A)**

16           42.     Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs  
17 and all paragraphs of this Complaint.  
18

19           43.     Section 9(A) of the Enrollment Code states:

20           New enrollees shall receive a temporary paper membership card until their  
21 enrollment is finalized by the enrollment committee. After which, a permanent plastic  
22 card will be issued.

23           44.     This provision's plain language means that an individual's membership is "finalized"  
24 if the individual receives a permanent plastic membership card.

25           45.     The Plaintiffs have all received their permanent plastic membership cards and have  
26 had these card for many years. This means they are permanent members of the Modoc Nation and are  
27 not "temporary members."  
28

1           46.     The Defendants' actions in labeling the Plaintiffs-and hundreds of other Tribal  
2 members—as only temporary members violates § 9(A) of the Enrollment Code.

3           47.     Nothing in the Enrollment Code allows the Defendants to label Plaintiffs as temporary  
4 members for years on end and then decide in an arbitrary fashion that an “audit” of the enrollment of  
5 the Modoc Nation is required.  
6

7           48.     Defendants are jointly and severally liable for all damages that resulted from their  
8 violation of § 9(A) of the Enrollment Code.

9           **Count III: Violation of the Modoc Nation Constitution, Art. X, § 1 and Art. IX, § 2**

10          49.     Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs  
11 and all paragraphs of this Complaint.  
12

13          50.     Article X, § 1 of the Constitution states that “[t]he annual Modoc Tribal Council  
14 meeting shall be held the first Saturday of May.”

15          51.     Article IX, § 2 states “[e]lections of the Modoc Elected Council shall take place during  
16 the annual meeting of the Modoc Tribal Council.”

17          52.     In alignment with the Constitution, the Election Ordinance states that the “General  
18 Election shall be held on the first Saturday of May every four years. The next election after this  
19 amended Election Ordinance is May 7, 2022.” Election Ordinance, § 6(2).  
20

21          53.     Defendants have violated the Constitution, Art. X, § 1, and Art. IX, § 2, by delaying  
22 the Annual Meeting scheduled for May 7, 2022 and not holding an election on May 7, 2022.

23          54.     The Constitution is the supreme law of the Modoc Nation and contains no exceptions  
24 for the delay of the Annual Meeting and the holding of the Elected Council election on this May 7,  
25 2022 date. Defendants cannot use their enrollment “audit” to violate the Constitution.  
26

27          55.     Defendants are jointly and severally liable for all damages that resulted from their  
28 violations of the Constitution, Art. X, § 1, and Art. IX, § 2

1                   **Count 4: Declaratory Judgment recognizing the election results of the May 7, 2022**  
2                                   **Annual Meeting**

3           56.     Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs  
4 and all paragraphs of this Complaint.

5           57.     Under the Constitution, the Tribal Council is the “governing body” of the Modoc  
6 Nation. Art. 1, § 2.

7           58.     Under the Constitution, the Tribal Council held their Annual Meeting on May 7, 2022.  
8 Over 80 Tribal Council members attended.

9           59.     Because over 10 Tribal Council members attended this meeting, a quorum was  
10 established. Art. 11, § 1.

11           60.     At this meeting, the Tribal Council elected the following individuals as the Elected  
12 Council: Chief Kirk Miller, Second Chief Ben Karnes, Council Member Danny Burkybile, Council  
13 Member Edd Miller, and Secretary Treasurer Anita Williams. These individuals are the Plaintiffs in  
14 this lawsuit.

15           61.     The Elected Council elected by the Tribal Council at the Annual Meeting on May 7,  
16 2022 is the lawful Elected Council per the Constitution.

17           62.     Plaintiffs request a declaratory judgment that names the Plaintiffs as the lawful  
18 Elected Council for the Modoc Nation.

19                                   **PRAYER FOR RELIEF**

20           WHEREFORE, Plaintiffs respectfully request that:

- 21
- 22
- 23           1.   The Court declare that the Defendants violated the Election Code, § 2(B), by  
24 disclosing the Plaintiffs’ membership file to the outside accounting firm of Wipfli  
25 LLP;
- 26           2.   The Court declare that the Defendants violated the Election Code, § 9(A), by labeling  
27 Plaintiffs as temporary members;
- 28



3. The Court declare that the Defendants violated the Constitution, Art. X, § 1, and Art. IX, § 2, by delaying the Annual Meeting to August 6, 2022 and not holding an Elected Council election on May 7, 2022;
4. The Defendants be immediately enjoined from engaging in any disenrollment activity;
5. The Defendants be ordered to immediately retrieve from Wipfli LLP all Modoc Nation membership files;
6. The Court recognize the Plaintiffs as the lawful Elected Council of the Modoc Nation;
7. The Defendants be immediately enjoined from holding themselves out as the lawful Elected Council of the Modoc Nation;
8. The Defendants be immediately enjoined from taking any actions on behalf of the Modoc Nation;
9. For attorney fees under and where allowed by existing law; and
10. For such other relief as the Court may deem proper and just.

DATED: June 7, 2022

/s/Joe Keene  
Joe Keene OK Bar No. 33085  
Wilson Pipestem OK Bar No. 16877  
Pipestem Law P.C.  
401 S. Boston  
Suite 2200  
Tulsa, OK 74103  
P: 918-936-4705  
[jkeene@pipestemlaw.com](mailto:jkeene@pipestemlaw.com)

# Exhibit 1



## **MODOC NATION**

22 N. Eight Tribes Trail  
Miami, Oklahoma 74354  
918-542-1190 • FAX 918-542-5415



### **RESOLUTION 22-16**

#### **POSTPONING AND RESCHEDULING THE 2022 ANNUAL MEETING TO SATURDAY, AUGUST 6, 2022.**

- WHEREAS, the Modoc Nation is a federally recognized Indian tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution approved by the United States Secretary of the Department of the Interior on July 27, 1990, and
- WHEREAS, the Tribal Council is the governing body of the Modoc Nation pursuant to Article I, Section 2 of the Constitution and the Elected Council is the representative governing body of the Tribal Council pursuant to Article IV, Section 1 of the Constitution; and
- WHEREAS, pursuant to Article V of the Constitution, the Elected Council is empowered to exercise all powers of the Nation not reserved to the Tribal Council; and
- WHEREAS, Article II of the Constitution and the Modoc Tribal Enrollment Code enumerate the requirements and internal procedures for membership in the Nation, including the process for membership by enrollment, and
- WHEREAS, Article II, Section 4 of the Constitution provides that the Elected Council shall serve as the Enrollment Committee, and
- WHEREAS, under Section 3 of the Modoc Tribal Enrollment Code, the Enrollment Committee is empowered to approve or disapprove enrollment actions submitted by the Tribal Registrar, and also possesses oversight authority of all enrollment activities, and
- WHEREAS, a limited internal review of enrollment actions taken by the Tribal Registrar during the past three years has indicated potential irregularities in the investigation and processing of enrollment applications, and
- WHEREAS, the Elected Council, sitting as the Enrollment Committee, is now informed that the condition, status, completeness, and accuracy of a significant number of



enrollment records of the Nation, as well as the validity of the enrollment actions submitted by the Tribal Registrar since 2003, are in question, and

WHEREAS, the Elected Council, sitting as the Enrollment Committee, is informed that enrollment records of certain individuals and families contain significant gaps in lineal genealogy links, and

WHEREAS, the Elected Council, sitting as the Enrollment Committee, desires that every individual member file be audited for completeness and accuracy according to the enrollment eligibility requirements in effect at the time of enrollment, and

WHEREAS, the Elected Council has contracted with the independent certified public accounting firm of Wipfli LLP to audit the enrollment records of the Nation in accordance with generally accepted government auditing standards and to prepare a Final Enrollment Audit Report, and

WHEREAS, the issuance of the Final Enrollment Audit Report is not expected to occur for at least sixty days, and

WHEREAS, within a reasonable time following the receipt of the Final Enrollment Audit Report from Wipfli LLP, the Enrollment Committee will meet to either approve or disapprove the enrollment of each individual member of the Nation, and

WHEREAS, the Elected Council finds that, once completed, the audit of enrollment records could ultimately result in significant changes to the composition of the current purported membership of the Nation, and

WHEREAS, Article X, Section 1 of the Constitution requires that the annual meeting of the Tribal Council be held on the first Saturday of May and Article IX, Section 2 of the Constitution requires that the election of the Elected Council shall take place during the annual meeting, and

WHEREAS, in accordance with Article IX, Section 4 of the Constitution, any properly enrolled member is eligible to vote in the election for Elected Council who is at least eighteen (18) years of age on election day and is properly registered according to the Modoc Election ordinance, and

WHEREAS, the Elected Council finds that a genuine and credible election depends, in part, on a transparent electoral process, equal voting opportunities for all enrolled members, and accurate tabulation and acceptance of the electoral results, and

WHEREAS, the Elected Council finds that the existence of substantive questions regarding the proper enrollment of a significant number of individuals necessarily means that the accuracy and reliability of the voter list and the eligibility of certain voters are also in question, and

WHEREAS, the Elected Council is justifiably concerned that an election in which a significant number of ineligible voters participate would suppress the vote of eligible voters and adversely affect the acceptance of the electoral results, and

WHEREAS, the Nation continues to be impacted by the novel coronavirus pandemic, including the inadvisability to hold large in-person events and meetings, and

WHEREAS, given the rapidly changing nature of the coronavirus pandemic outbreak, the Elected Council has previously postponed and rescheduled the annual meeting to protect the health, safety, and general welfare of the members of the Nation, and

WHEREAS, the Elected Council finds that it is inadvisable under all of these circumstances to hold the annual meeting, as scheduled on Saturday, May 7, 2022, and

WHEREAS, the Elected Council finds that in order to protect the health and safety of the Nation and to preserve the integrity of the tribal election, it is necessary and in the best interests of the Nation to postpone the annual meeting to Saturday, August 6, 2022, subject to the issuance of the Final Enrollment Audit Report and in consideration of the existing protocols and health and safety guidance related to the coronavirus pandemic.

NOW THEREFORE BE IT RESOLVED that the aforementioned recitals are hereby incorporated and made a part of this Resolution as if more fully set forth herein.

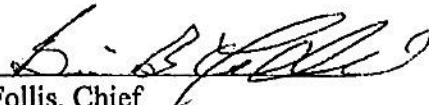
BE IT FURTHER RESOLVED that the annual meeting will be postponed and rescheduled to Saturday, August 6, 2022, at such time and place to be noticed in accordance with the Constitution.

**CERTIFICATION**

We, the undersigned, do hereby certify that the foregoing resolution 22-16 was adopted by the Elected Council of the Modoc Nation, by a vote of 4 for, 0 against, with 1 absent, at a duly called meeting on April 21, 2022, at which a quorum was present.

ATTEST:

  
\_\_\_\_\_  
Troy L. Little Axe

  
\_\_\_\_\_  
Bill G. Follis, Chief



## Exhibit 2



## MODOC NATION

22 North Eight Tribes Trl.  
Miami, OK 74354  
Phone: 918-542-1190  
Fax: 918-542-5415



### MEMORANDUM

TO: Modoc Tribal Council  
FROM: Modoc Elected Council  
DATE: April 26, 2022  
RE: Enrollment Audit and Postponement of Annual Meeting

The Elected Council recognizes that any time enrollment concerns arise within the Tribe, those issues can be difficult and emotional. We want to assure Tribal members that the Elected Council has had the strength and integrity of the Tribe as its singular goal in recent decisions to audit enrollment and postpone elections.

These are related issues. Proper enrollment is important, because only enrolled members of the Tribe may vote in elections. Understanding the genealogy of our lineal and extended families is also important to ensure that the Tribe knows what accommodations or changes may need to be made moving forward so that our nation thrives.

### ENROLLMENT AUDIT

The Modoc Tribal Enrollment Code authorizes the Tribal Registrar to make temporary enrollment decisions. Those temporary decisions must be submitted to the Enrollment Committee for a determination on each person's full enrollment. Under our Constitution, the Elected Council serves as the Enrollment Committee.

A preliminary audit of enrollment records by tribal staff found that the temporary enrollment decisions of the Tribal Registrar contained irregularities, including numerous instances where the Tribal Registrar did not correctly verify lineal descent. According to the preliminary audit, the Enrollment Committee has not reviewed enrollment actions submitted by the Tribal Registrar since the Modoc Tribal Enrollment Code was enacted in 2003. This means that at least 419 temporary enrollments by the Tribal Registrar have not been reviewed and more than 75% of the Tribe's members are not fully enrolled. We are concerned that the Tribal Registrar may not have adequately verified lineal descent for many of these temporary enrollments.

### WHAT WE HAVE DONE:

**Every enrollment file should be independently audited:** The Elected Council decided that every individual member file should be audited for completeness and accuracy according to the enrollment eligibility requirements in effect at the time of enrollment. In order to avoid the appearance of impropriety, the Elected Council has contracted with the independent certified public accounting firm of Wipfli LLP to audit the enrollment records in accordance with generally



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accepted government auditing standards and to prepare a Final Enrollment Audit Report. We will audit all enrollments so that no person feels unfairly targeted.

### **WHAT WE HAVE NOT DONE:**

- No member of the Tribe has been disenrolled.
- No member of the Tribe has been or will be denied any due process in the review of their enrollment with the Tribe.

### **POSTPONEMENT OF ANNUAL ELECTIONS**

Only enrolled members may vote in elections during the annual meeting of the Tribal Council. Given the findings of the preliminary audit, the Elected Council must ensure the integrity of tribal elections by determining whether all temporarily enrolled persons meet the qualifications under Article II of our Constitution.

### **WHAT WE HAVE DONE:**

**Temporarily postponed the Annual Meeting and Election.** The Elected Council adopted Resolution 22-16 resolving that the Annual Meeting will be postponed and rescheduled to **Saturday, August 6, 2022**, so that the enrollment audit can be performed to ensure the integrity of the election process, as well as to mitigate the potential for exposure to COVID-19.

### **WHAT WE HAVE NOT DONE:**

- No candidate for Elected Council has been removed from the election.
- No changes have been made to voter registration.
- No changes have been made to the official term of any Elected Council member.

### **ENROLLMENT REVIEW AND ANNUAL ELECTION**

The Elected Council is committed to a careful, thorough, and transparent audit of the enrollment records. We have been assured by Wipfli LLP that the Final Enrollment Audit Report can be issued quickly. Upon receipt of the Final Enrollment Audit Report, we will schedule a meeting of the Enrollment Committee, which will meet to either approve or disapprove the enrollment of each individual member. After the Enrollment Committee makes final enrollment decisions, Chief Follis will call a Special Meeting of the Tribal Council to present the findings and recommendations of the independent auditor Wipfli and the enrollment decisions of the Enrollment Committee.

If the independent audit finds an enrollment application does not establish a person's qualifications for membership under Article II of our Constitution, the Enrollment Committee may disapprove final enrollment for that person. In accordance with Article II, Section 3 of the Constitution, any person whose final enrollment was disapproved will be permitted to file (or have filed on his/her





## MODOC NATION

22 North Eight Tribes Trl.  
Miami, OK 74354  
Phone: 918-542-1190  
Fax: 918-542-5415



behalf) an appeal to the Tribal Council. If there are enrollment appeals, Chief Follis will call a series of Special Meetings of the Tribal Council so that the appeals may be heard and decided. These Special Meetings will include an organizational meeting wherein the Tribal Council may propose and adopt the rules for addressing the appeals. The decision of the Tribal Council with respect to each appellant will be final.

Following the completion of the appeals process, the Enrollment Committee will publish a certified and confirmed list of enrolled members. Each enrolled member may register to vote if they are not already so registered. The Secretary/Treasurer will then publish notice of the time and place of the Annual Meeting, scheduled for August 6, 2022. Elections for the Elected Council will take place during the Annual Meeting.

### THE ELECTED COUNCIL'S GOALS IN AUDITING ENROLLMENT

This is an extraordinary situation requiring us to proceed with caution and deliberation. Our goals are to:

- Produce a certified and confirmed list of fully enrolled members.
- Develop procedures for ensuring that enrollment decisions by the Enrollment Committee occur timely and regularly.
- Recruit and hire a qualified candidate possessing training in genealogical research to serve as the Tribal Registrar.
- Continue to protect the integrity of the Tribe's elections and foster confidence in the outcomes.

We acknowledge that this disruption in the election cycle is disappointing to many of you. At the same time, we must also acknowledge our duty is to ensure that a genuine and credible election occurs, which means that the elections must fairly and accurately represent the will of the Tribe's qualified voters. To ensure the fairness and the accuracy of the election, we must ensure that all candidates meet the eligibility requirements to run for office and that all voters are qualified to participate in the election. The validity of our elections is necessarily founded in accurate enrollment records.

If you have any questions regarding the enrollment audit process, please feel free to contact Chief Bill Follis or Second Chief Robert Burkybile.

## Exhibit 3

# Modoc Nation Annual Meeting

mEmburs

May 7, 2022

B







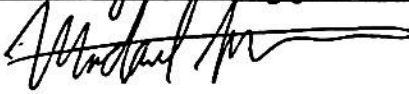
	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓27	Stephanie Hailey	Stephanie Hailey	0022
✓28	Catherine G. Gilmore	Catherine G. Gilmore	0017
✓29	Susan Glerup	Susan Glerup	260
✓30	Savannah Glerup	Savannah Glerup	0263
✓31	EDD miller	Eddy miller	0411
✓32	Wanda Jean Winters	Wanda J. Winters	0412
✓33	Seth Ford	Seth Ford	0419
✓34	LARRY BOGGS	Larry Boggs	0425
✓35	John BOGGS	John Boggs	0444
✓36	Amber Boggs	Amber Boggs	0480
✓37	Norma Poe	Norma Poe	0427
✓38	Karlie Schmidt	Karlie Schmidt	0467
✓39	Kathleen Hogg	Kathleen Hogg	0436



B

## Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓40	Jason T Grovenbuss		0498
✓41	Betty J. Eddings	Betty Eddings	0055
✓42	ASAI CLARK		25
✓43	Ben Karnes		237
✓44	Anita Williams	Anita William	0048
✓45	Rachel Bullard	Rachel Bullard	0463
✓46	Alisha Shoemaker	alishashm	0382
✓47	Linda Fuller	Linda Fuller	0481
✓48	Jesse Joyner		0545
✓49	Joshua Joyner		0488
✓50	Jordan Bloin Garrett		00514
✓51	Riley Quinn	Riley Quinn	0429
✓52	MICHAEL MILLER		0401

# Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓53	Debra Shelton	Debra Shelton	0123
✓54	Jason L. Brown	Jason L. Brown	0478
✓55	Justin Poe	Justin Poe	0489
✓56	Jeff Poe	Jeff Poe	0470
✓57	Brooklyn Owens	BOwens	399
✓58	Daniel Miller	Daniel Miller	406
✓59	Taylor Broules	Taylor Broules	457
✓60	Donald C. Miller	Donald C. Miller	434
✓61	Angela G. Graves	Angela Graves	0516
✓62	Samie Workley	Samie Workley	0556
✓63	Zachary Haring	Zachary Haring	0931
✓64	Samie A. Miller	Samie A. Miller	0587
✓65	Rex H. Barkyble	Rex H. Barkyble	0236

# Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓66	Richard Grant Byss	Richard Grant Byss	0532
67	JASON CLARK	JCL	25
✓68	Justin Garvin	Justin Garvin	62
✓69	Staci Hudson	Staci Hudson	0416
✓70	Cade Hudson	Cade Hudson	0417
✓71	Makisha White	Makisha White	0084
✓72	Lisa Brock	Lisa Brock	144
✓73	Jennifer Morrison	Jennifer Morrison	0049
✓74	Kati Bullard	Kati Bullard	0464
✓75	Cynthia Bullard Cindy Bullard	Cynthia Bullard	0462
✓76	Thomas Hansche	Thomas Hansche	0487
✓77	Misty Joyner	Misty Joyner	0487
✓78	Marnie NIA	Marnie NIA	0426



# Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓79	<del>Brandon Boggs</del> Brandon Boggs	<del>Brandon Boggs</del> Brandon Boggs	0428
✓80	Natalie Bateman	Natalie Bateman	0494
✓81	Daniel Burkbyhile		0233
✓82	Kirk Miller	Kirk Miller	0400
✓83	John Newberry	John Newberry	0099
✓84	Roy Steven Utho	Roy Steven Utho	0414
✓85	Mitzy Lynn	Mitzy Lynn	402
✓86	Ky Lynn	Ky Lynn	403
✓87	Kolton Lynn	Kolton Lynn	405
✓88	James T. Wodey	James T. Wodey	129
89	Scott Yeakey	Scott Yeakey	
90			
91			

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# Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
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104			

## Modoc Nation Annual Meeting



May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓131	MARGIE HAMMONS	Margie Hammons	0454
✓132	Betty Caudill	Betty Caudill	0439
✓133	Regina L Brown	Regina L Brown	0475
✓134	Lucy Poe	Lucy Poe	0490
✓135	Heath Glerup	Heath Glerup	0261
✓136	Libby M Owens	Libby M Owens	398
✓137	Donna Minshall	Donna Minshall	0459
✓138	Barbara Richards	Barbara Richards	0494
✓139	John Miller	John Miller	0572
✓140	Reagan Casey	Reagan Casey	0548
✓141	Ricky L Hollingback	Ricky L Hollingback	0430
✓142	Amber Clouse	Amber Clouse	0234
143	Imma A McEl	Imma A McEl	0587



## Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓144	Tara Moore	Tara Moore	227
145	1/6 Duplicate of Daniel Burleigh		0233
✓146	Jeremy Chisler		0047
147	Jim D. Milles	Jim D. Milles	0397
✓148	Josh Arnold	Josh Arnold	0370
149			
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156			

Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓157	Sierra Burkhibile	Sierra Burkhibile	235
158			
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## Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
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181			
182			



## Exhibit 4

## BALLOT TOTALS

### CHIEF

Names by number of votes	# of Votes
Robert Burkybile	5
Sydney Colombe	1
Kirk Miller	70

### SECRETARY/TREASURER

Names by number of votes	# of Votes
Ramona Rosiere	15
Anita Williams	49

### 2ND CHIEF

Names by number of votes	# of Votes
Johnny Baggs	17
Benjamin Karnes	46
Gina McGaughey	14

### COUNCIL MEMBERS

Names by number of votes	# of Votes
Daniel Burkybile	34
Ed Miller	59
Jessica Mullin	14
John Newberry	11
Jay Shadwick	9

# BALLOT TOTALS

## JUDGE

Names by number of votes      # of Votes

Jason Clark      65

## Election Commission Signatures

Natalie Bateman

Printed Name

Natalie Bateman

Signature

May 7, 2022

Date

Justin Poe

Printed Name

[Signature]

Signature

5/7/2022

Date

Daniel Lee Burkbyll

5/7/2022

