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17 Nation President and Vice President Joe Shirley, Jr.

18 **IN THE DISTRICT COURT OF THE NAVAJO NATION**
19 **JUDICIAL DISTRICT OF WINDOW ROCK, ARIZONA**

20 **OFFICE OF THE NAVAJO NATION**
21 **PRESIDENT AND VICE PRESIDENT**
22 **and JOE SHIRLEY, JR.**, in his capacity as
23 President of the Navajo Nation, and as an
24 individual,

25 Petitioners,

26 v.
27 **THE NAVAJO NATION COUNCIL and**
28 **LAWRENCE T. MORGAN**, in his
capacity as Speaker of the Navajo Nation
Council, and as an individual,

Respondents.

CASE NO. WR-CV-512-09

Assigned for all purposes to the
Honorable Judge

**PETITIONERS' COMBINED
APPLICATION FOR AND
MEMORANDUM IN SUPPORT OF
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Pursuant to Rule 65.1, Navajo Rules of Civil Procedure, Petitioners Office of the Navajo Nation President and Vice President ("Office of President and Vice President") and Joe Shirley, Jr. ("President Shirley") (collectively, "Petitioners") hereby request a Temporary Restraining Order, restraining Respondents the Navajo Nation Council and Lawrence T. Morgan ("Speaker Morgan") (collectively, "Respondents") from enforcement of Resolution CO-41-09 against President Joe Shirley, Jr., and that the Temporary Restraining Order remain in full force and effect pending an evidentiary

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1 hearing to be held before the Court for the purpose of determining why a preliminary
2 injunction should not issue while awaiting trial on the merits.¹

3 On or about October 26, 2009, Respondents voted on Resolution CO-41-09, which
4 purported to place President Shirley on administrative leave. Resolution CO-41-09 is
5 invalid and unenforceable as a matter of law because it does not state that the action is in
6 the best interests of the Navajo People as required by 11 N.N.C. § 240(C). Further,
7 Respondents failed to provide President Shirley with notice and an opportunity to be
8 heard, and further failed to follow proper legislative procedure as enumerated in Title II
9 of the Navajo Nation Code. Respondents' actions constituted a bill of attainder and
10 violated numerous Navajo Nation laws and traditions, including separation of powers,
11 and infringed upon the rights of the Petitioners and the Navajo People. The result was an
12 invalid, void and unenforceable Resolution.

13 To maintain a sense of order and peace, President Shirley has voluntarily chosen
14 not to return to his office; however, the President's voluntary action *cannot be viewed as*
15 *his concession that the law is valid*. It is not. The status quo remains that President
16 Shirley is *the* Navajo Nation President – the Council's "Resolution" has no legal effect
17 and cannot change the status quo. President Shirley seeks this Court's intervention and
18 declaration of the Resolution's invalidity so that he may return to his office in a peaceful
19 and orderly manner, and without further dispute.

20 The requested relief is necessary to preserve the status quo with regard to
21 President Shirley's rights and responsibilities as President of the Navajo Nation, and the
22 rights of the people who elected him to office. Without the requested relief, Petitioners
23 and the people of the Navajo Nation will immediately suffer substantial and irreparable
24 harm. Further, Petitioners do not have an adequate remedy at law for the type of relief
25

26 ¹ Pursuant to Nav. R. Civ. P. 65(d), Petitioners request that the Court consolidate
27 the hearing on their petition for a preliminary injunction with the trial on the merits. As
28 the issues in this case are almost entirely legal in nature, there is no reason to delay the
trial, and Petitioners stand ready to participate in a trial on the merits immediately.

1 sought. Respondents' actions leave Petitioners with no choice but to ask this Court to
2 intervene and to provide immediate declaratory and injunctive relief.

3 This Application is supported by the following Memorandum of Points and
4 Authorities, the affidavit attached hereto, the entire record in this case, and such further
5 evidence as may be presented at the hearing of this matter.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. FACTUAL BACKGROUND**

8 In November, 2002, the Diné elected President Joe Shirley Jr. to become the sixth
9 President of the Navajo Nation. He was inaugurated and took office as President in
10 January, 2003. In November 2006, the Diné reelected President Shirley for a second
11 Presidential term.

12 In 2008, the Navajo Nation Presidential Task Force on Government Reform
13 proposed two government reform initiative ballot measures ("Government Reform
14 Initiatives") for the November 4, 2008 election. The first initiative sought to reduce the
15 Navajo Nation Council from 88 delegates to 24 delegates ("Council Reduction
16 Initiative"). The second initiative sought to give the Navajo Nation President line item
17 veto authority over appropriations approved by the Navajo Nation Council and budget
18 items in the annual Navajo Nation Comprehensive Budget ("Line Item Veto Initiative").
19 Both Government Reform Initiatives were met with great approval by the people, as
20 evidenced by the fact that more than 18,000 Diné signed petitions in favor of placing the
21 initiatives on the ballot.

22 Despite the popularity of these initiatives with the Diné, both the Navajo Nation
23 Council and the Speaker's office demonstrated a strong resistance to the initiatives, and
24 made numerous statements and took legal action in opposition to the initiatives. On June
25 25, 2009, Judge Carol Perry ordered that the initiatives be submitted to the people for a
26 popular vote and on September 18, 2009, the Board of Election Supervisors scheduled
27 the election for December 15, 2009. Although the Navajo Nation Council was
28 responsible for ensuring that it had appropriated sufficient funds to pay for the December

1 15, 2009 election, on October 20, 2009, the Council voted against placing legislation on
2 its fall agenda to pay for the special election.

3 Only six days later, the Navajo Nation Council held a special session ("October
4 26th Special Session") to consider a resolution that would, among other things, place
5 President Shirley on administrative leave ("Resolution CO-41-09") based on
6 investigative reports commissioned by the Council. Prior to the October 26th Special
7 Session, the Office of the Attorney General sent a Memorandum to Speaker Lawrence T.
8 Morgan urging caution in enacting this Resolution because the reports underlying the
9 legislation alleged only an *appearance* of impropriety and provided only "scant evidence
10 that the President engaged in any criminal conduct."² Despite the Attorney General's
11 words of caution and in complete disregard for the will of the Diné in selecting their
12 naat'aanii, Respondents voted to enact Resolution CO-41-09, which purportedly placed
13 President Shirley on administrative leave. Disregarding the Navajo tradition of "talking
14 things out," the Council did not give President Shirley notice of the allegations or an
15 opportunity to be heard.

16 Despite statutory requirements, the Council did not document a finding that this
17 Resolution was in the best interests of the Navajo People. In addition, the agenda for the
18 Resolution was not properly adopted and the Resolution did not go through an oversight
19 committee before passage. Despite Title II requirements, the Council did not submit the
20 Resolution to the Office of the Navajo Nation President and Vice-President for review.

21 **II. ARGUMENT**

22 Navajo Rule of Civil Procedure 65(c) enumerates the injunctive relief standard.
23 To demonstrate the appropriateness of injunctive relief, Petitioners must show: (1) a
24 likelihood of success on the merits and a protectible interest; (2) substantial irreparable
25 injury or loss will result unless an injunction is granted; and (3) an inadequate remedy at
26 law. Petitioners address each of these criteria in turn:

27 _____
28 ² Despite numerous requests, neither President Shirley nor his Office have
received copies of the reports purportedly underlying this Resolution.

1 **A. PETITIONERS' CLAIMS HAVE A HIGH LIKELIHOOD OF**
2 **SUCCESS ON THE MERITS AND PETITIONERS HAVE A**
3 **PROTECTIBLE INTEREST.**

4 Although President Shirley has voluntarily consented to being placed on
5 administrative leave for the time-being, he is under no obligation to refrain from taking
6 back his office. The Council "Resolution" that purportedly ordered him on
7 administrative leave was not duly or properly enacted, and is thus of no legal force or
8 effect.

9 Of paramount importance here, the Navajo Nation Supreme Court has determined
10 that "[p]rocedural requirements for the enactment of Navajo Nation legislation *must be*
11 *strictly observed.*" *Judy v. White*, No. SC-CV-35-02, slip op. ¶ 69 (Nav. Sup. Ct. 2004)
12 (emphasis added) (quoting *Peabody Western Coal Co., Inc. v. Nez*, No. SC-CV-49-00,
13 slip op. at 5 (Nav. Sup. Ct. 2001)). "Placing such importance on procedural requirements
14 ensures consistency in enacting legislation and allows notice to everyone involved about
15 exactly what the new legislation will provide, if approved." *Id.* ¶ 69.

16 **1. Resolution CO-41-09 Fails to Comply with 11 N.N.C. § 240.**

17 The Navajo Nation Code defines the parameters of the Council's authority. And,
18 when that authority pertains to removal of officials or to the placement of officials on
19 administrative leave, the Code is clear. The Council may place the President (or any
20 other official) on administrative leave only if the Council, by a majority vote, determines
21 that there are reasonable grounds to believe both:

- 22 a) That the President has personally, seriously breached his fiduciary trust
23 to the people; *and*
24 b) That placing the President on administrative leave is in the best interest
25 of the Navajo people.

26 11 N.N.C. § 240(C).³

27 ³ If the Council desired to remove the President from office without having to
28 justify its determination of a "serious" fiduciary breach with "reasonable grounds," it

1 On its face, the instant Resolution fails to meet § 240's clear requirements.
2 Resolution CO-41-09, attached as Ex. A. First, the Council does not articulate the
3 "reasonable grounds" for believing the President "seriously breached his fiduciary trust"
4 to the people. Instead, the Council recites only that it received "reports" about the
5 Navajo Nation's dealings with private companies, and that those "reports" provide
6 "reasonable grounds." Section 240's imposition of a reasonableness standard necessarily
7 requires the Council to identify the grounds upon which it based its decisions to place the
8 President on administrative leave. Yet, the Council wholly fails to identify what its
9 "grounds" are, let alone how its "grounds" are reasonable. This failure deprives the
10 people of the opportunity to determine whether the Council's determination or belief was
11 objectively reasonable.

12 Second, although the Resolution cites § 240's language generally, *nowhere* does
13 the Resolution state or conclude that placing the President on administrative leave is in
14 the best interest of the Navajo people, let alone that the Council has made its
15 determination based on reasonable grounds. Section 240 could not be more clear: if the
16 Council wishes to place the President (the official elected by the Navajo people) on
17 administrative leave (and thus deprive the people of the leader they voted to elect) the
18 Council must make a showing that it has (1) reasonable grounds, to (2) believe that
19 placing the President on administrative leave is in the best interest of the Navajo people.
20 Inherent in this "best interest of the people" requirement is the fundamental principle that
21 the people have the *right* to select their leaders. If the legislative body has power to
22 remove those leaders or place them on administrative leave, it is a limited power, and it
23 must do so only for prescribed purposes and in the prescribed manner.

24 The Council's failure to articulate reasonable grounds for believing the President
25 seriously breached his fiduciary trust to the people, and its complete failure to find or

26 could have done so pursuant to 11 N.N.C. § 240(A), which subjects officials to removal
27 from office for, among other things, a breach of fiduciary trust to the Navajo people. It is
28 not surprising that the Council did not choose this route, as it would have had to obtain a
two-thirds vote, which it was unable to do.

1 conclude that placing the President on administrative leave was in the best interest of the
2 Navajo people, runs contrary to § 240's clear mandate. On its face, Resolution CO-41-09
3 is invalid.

4 **2. Resolution CO-41-09 Violates 2 N.N.C. § 164.**

5 The Navajo Code outlines specific, mandatory procedures the Council must follow
6 in enacting Council Resolutions. See 2 N.N.C. § 164. Consistent with *Judy v. White*,
7 *supra*, these procedures must be strictly followed. Specifically,

- 8 (1) Resolutions "must be *reviewed* and *approved* by resolution by the
9 appropriate standing committee(s) and the Navajo Nation Council" unless
10 the resolution falls within an enumerated exception. *Id.* § 164(A)
11 (emphasis added).
- 12 (2) Resolutions must be read twice, in their entirety, to the Council. *Id.* §
13 165(B).
- 14 (3) The Speaker of the Council "shall" assign resolutions to the "respective
15 oversight committee(s) . . . having authority over the matters contained in
16 the proposed resolution for *proper consideration*." *Id.* § 164(A)(4). The
17 Speaker must distribute the proposed resolution to a number of offices,
18 including the Office of the President. *Id.*
- 19 (4) Resolutions that require final action by the Council (and, pursuant to 11
20 N.N.C. § 240(C) the instant resolution clearly does) "shall" be assigned to
21 "at least two standing committees; the oversight committee(s) and the
22 Ethics and Rules Committee." *Id.* § 164(A)(5). Each committee can then
23 propose amendments to the resolution and present its proposed
24 amendments to the Council for consideration. *Id.*
- 25 (5) The Ethics and Rules Committee "shall," upon the Speaker's
26 recommendation, develop a proposed agenda for the Council's calendar
27 fifteen calendar days prior to the start of the session. *Id.* § 164(A)(7). But,
28 proposed resolutions are not to be placed on the agenda until a number of

1 procedural requirements are met, including that the Speaker has assigned
2 the resolution to the appropriate standing committees for their "proper
3 consideration." *Id.*

4 Upon information and belief, the Speaker, the Council and the Ethics and Rules
5 Committee failed to comply with the above requirements, either in whole or in part,
6 before the Council voted on Resolution CO-41-09. In fact, it is President Shirley's
7 understanding that the Resolution was *not* assigned to the oversight committee, and thus,
8 that the oversight committee could not have given this Resolution proper consideration.
9 Because the Council's minutes are not yet finalized, it is unclear whether the Resolution
10 was read to the Council twice in its entirety, as required by § 165.

11 Significantly, the Ethics and Rules Committee could not have (and did not)
12 comply with the requirement that it develop an agenda to include this Resolution fifteen
13 days prior to the start of the session, and only after the Resolution had been assigned to
14 the proper committees.⁴ The Council did not request a special session until October 21,
15 2009, and notice of the anticipated special session did not occur until October 22, 2009.
16 *See* Memorandum from Delegate Raymond Joe to Speaker Lawrence T. Morgan
17 (October 21, 2009), attached hereto as **Ex. B**; and Memorandum from Speaker Lawrence
18 T. Morgan to Members of the Navajo Nation Council (Oct. 22, 2009), attached hereto as
19 **Ex. C**. The session was held two business days (four calendar days) later, on October 26,
20 2009. Agenda for Oct. 26, 2009 Special Session of the Navajo Nation Council, attached
21 hereto as **Ex. D**.

22 The Council attempted to circumvent the important agenda notice and timing
23 requirements by calling the Resolution an "emergency" measure. But, the Resolution at
24 issue is hardly an "emergency," despite the Council's bald assertion to the contrary.
25 Section 165(A)(7)(a) defines an emergency as "*limited* to cessation of law enforcement
26

27 ⁴ Although the statute specifically indicates that the agenda must be prepared
28 fifteen days in advance of a "regular" session, it does not except special sessions. Thus,
special sessions should be governed by the same standard.

1 services, disaster relief services, fire protection services or other direct services required
2 as an entitlement under federal or Navajo law, or which directly threaten the sovereignty
3 of the Navajo nation.” The Resolution concludes that “the alleged breaches of fiduciary
4 trust . . . have a direct negative affect on the sovereignty to the Navajo Nation.” This
5 statement has at least two flaws.

6 First, a “threat” to the Navajo Nation’s sovereignty (as required by the statute) is
7 much different than a “direct negative impact” (the language in the Resolution). Because
8 the Council found only a negative impact on the Navajo Nation’s sovereignty and not a
9 threat, the Resolution is not properly classified as an emergency. Second, considering the
10 context of the emergency exception, and the other enumerated instances that qualify as
11 emergencies (*i.e.*, an absence of law enforcement or other essential services or
12 entitlements) an alleged breach of fiduciary trust hardly rises to the level of an emergency
13 on its face. In fact, rather than confirming some “threat” to the Navajo Nation’s
14 sovereignty, the Office of the Attorney General made an independent review of
15 Resolution CO-41-09 and sent a memorandum to Speaker Morgan urging caution in
16 enacting the Resolution because the reports underlying the legislation provided only
17 “scant evidence that the President engaged in any criminal conduct.” *See* Memorandum
18 from Office of the Attorney General to Lawrence T. Morgan re Legislation 0617-09,
19 dated Oct. 26, 2009, attached hereto as **Ex. E**. Yet, the Council does nothing to justify its
20 use of the “emergency” exception (which necessarily deprives affected parties of
21 otherwise-appropriate notice).

22 The Council failed to follow the procedures required by §§ 164 and 165 before it
23 voted on Resolution CO-41-09. The Council’s vote was premature and ineffective, and
24 the resulting Resolution is invalid.

25 **3. Resolution CO-41-09 Violates 2 N.N.C. § §165 and 221.**

26 Resolution CO-41-09 was subject to signature or veto by the Office of the Navajo
27 Nation President and Vice-President, but the Council deprived the Executive Branch of
28 the opportunity to exercise its duty and right to review, and to approve or veto, the

1 Resolution. The Council's failure to present the Resolution to the Office of the Navajo
2 Nation President and Vice-President for consideration violates 2 N.N.C. §§ 165 and 221,
3 and results in the Resolution's invalidity.

4 As a general rule, Council enactments do not become effective until the day the
5 Executive Branch signs a resolution into law. And "[a]ll proposed resolutions enacting
6 new laws, amending existing laws, or adopting a statement of policy . . . are subject to
7 veto by the President." *Id.* § 165(B). The only exceptions are resolutions approving or
8 adopting internal procedures and policies of the Council. The instant Resolution does not
9 concern any internal procedures and policies of the Council. In fact, because it directly
10 impacts the President and the Executive Branch, a wholly separate branch of government,
11 by definition the Resolution is external to the Council. It is, therefore, subject to the
12 Office of the Navajo Nation President and Vice-President's review and approval or veto.

13 The Council's refusal or failure to present the Resolution to the Executive Branch
14 means the Resolution never became law.⁵

15 **4. Resolution CO-41-09 violates President Shirley's Fundamental**
16 **Right to Due Process under Statutory and Traditional Law.**

17 *K'e*, which fosters fairness through mutual respect, requires that a person be fully
18 informed and provided an opportunity to speak before being deprived of life, liberty or
19 property. As stated by the Court, the Navajo concept of Due Process is unique, in that it
20 applies concepts of fairness consistent with Navajo values. *See Fort Defiance Housing*
21 *Corp. v. Lowe*, No. SC-CV-32-03, slip op. at 6-7 (Nav. Sup. Ct. 2004) (discussing Navajo
22 concept of Due Process in terms of *k'e*). The heart of Navajo Due Process under the
23 Navajo Nation Bill of Rights is notice and an opportunity to be present and defend a
24 position. *See Begay v. Navajo Nation*, 6 Nav. R. 20, 24-25 (Nav. Sup. Ct. 1988). The
25 high value Navajo people place in "talking things out" means that those affected by a
26

27 ⁵ Although under ordinary circumstances, the President's failure to act within ten
28 days of the Speaker's certification of a resolution is deemed the President's acceptance;
here, the Council refused or failed to present the Resolution to the Executive Branch.

1 governmental action should have the opportunity to be heard. *See Duncan v. Shiprock*
2 *Dist. Ct.*, slip op. at 11 (Nav. Sup. Ct. 2004).

3 President Shirley has a personal liberty interest in exercising the authority of the
4 President's Office granted to him by the People of the Navajo Nation. Even though an
5 elected official does not have a *property* interest in public office, *see In the Matter of*
6 *Certified Questions II, The Navajo Nation, et al. v. Peter MacDonald*, No. A-CV-13-89,
7 slip op. at ¶ 115 (Nav. Sup. Ct. 1989), the elected official does have a personal liberty
8 interest in exercising the authority granted by the People after winning an election. Just
9 as the right to run for public office implicates a political and personal liberty interest, and
10 therefore a Due Process right, the right to exercise the duties of that office also implicate
11 a personal liberty right. *See Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R.
12 319, 325 (Nav. Sup. Ct. 1990) (holding that a candidate must be given notice and an
13 opportunity to be heard before removal from the ballot). To protect Due Process rights,
14 when the Board of Election Supervisors intends to remove a candidate from the ballot, it
15 must explain to the candidate the precise reason for the proposed action and allow the
16 candidate to respond. *See Bennett v. Navajo Board of Election Supervisors*, 7 Nav. R.
17 161, 163-164 (Nav. Sup. Ct. 1995). Once the People have placed their candidate into
18 office, the elected official should have the same notice and opportunity to be heard before
19 being deprived of the ability to exercise the authority granted by the People.

20 In this case, the Council did not give President Shirley notice of the proposed
21 Resolution or give him the opportunity to defend his position. Instead, the Council
22 unilaterally placed the President on administrative leave – a decision the President has no
23 opportunity to contest or appeal.⁶

24 _____
25 ⁶ This case contrasts significantly with Peter MacDonald's case. First, Peter
26 MacDonald was the Chairman of the Navajo Nation Council and his authority derived
27 from the Council. Here, President Shirley's authority comes from the People, not the
28 Council, so the Council has no right to place the People's chosen leader on administrative
leave. Second, Peter MacDonald was present when the Council discussed the Resolution
to place him on leave and he had an opportunity to speak – President Shirley was given
no such benefit. Finally, the statutory scheme that once protected the rights of a
Chairman (discussed in *In the Matter of Certified Questions II*) do not protect the rights

1 Because the Council deprived the President of a political and personal liberty, the
2 right to hold public office and exercise the authority of that office, without notice or an
3 opportunity to be heard, their actions violated the Due Process Clause of the Navajo
4 Nation Bill of Rights (1 N.N.C. § 3) and went against the traditional values of the Navajo
5 People. As a result, the Court should declare the Resolution void and unenforceable.

6 **5. Resolution CO-41-09 Placed President Shirley on Administrative**
7 **Leave in Violation of Diné Traditional Law.**

8 The Diné Traditional Law “declares and teaches that...it is the right and freedom
9 of the Diné to choose leaders of their choice.” 1 N.N.C. § 203. In “recognizing and
10 giving formality to the Navajo People’s fundamental principles and tenets of the Diné
11 bi’o’ool’, or the Diné Life Way, the Council conceded that despite its statutory
12 pronouncements there exists a deeper, more profound system of governance.” *Judy v.*
13 *White*, No. SC-CV-35-02, slip op. at ¶ 29 (Nav. Sup. Ct. 2004). The statute used to place
14 President Shirley on administrative leave, 11 N.N.C. § 240(C), undermines the
15 Traditional Rights of the Diné because it allows the Navajo Nation Council to unilaterally
16 place the Diné’s chosen leader on administrative leave, which functionally disables the
17 naat’aanii from carrying out the responsibilities entrusted to him by the People. In
18 addition, the law does not provide a mechanism for the naat’aanii to appeal the legislation
19 or for the Diné to overrule the Council’s suspension of their chosen leader.

20 It is common Diné knowledge that removal of a naat’aanii is a monumental task
21 and one not to be taken lightly. *See Arthur, et al. v. Navajo Board of Election*
22 *Supervisors*, 7 Nav. R. 340, 345 (Nav. Sup. Ct. 1998). Despite this common Diné
23 knowledge, 11 N.N.C. § 240(C) allows the Council to remove the Diné’s chosen leader
24 from office during the term of the leave by *a mere majority vote* simply by calling it an

25
26
27 of President Shirley because, unlike a Chairman, the President had no opportunity to be
28 heard at the Council session placing him on leave. Because President Shirley had no
opportunity to be heard, the procedures for properly enacting Resolutions do not protect a
President in the same way they once protected a Chairman.

1 administrative leave.⁷ If the Diné no longer trust President Shirley, there is a statutory
2 removal process or, under the Traditional Law, the people can simply cease to follow him
3 or even listen to his words. *In the Matter of Certified Questions II, The Navajo Nation, et*
4 *al. v. Peter MacDonald*, No. A-CV-13-89, slip op. at ¶ 104 (Nav. Sup. Ct. 1989). Even
5 while on this purported administrative leave, the Diné continue to follow President
6 Shirley and to listen to his words. Because the Diné have the traditional and fundamental
7 right to choose their own leaders, no law should allow the Council to undo that choice for
8 a time by simply calling the removal a “leave.”

9 Because the Council placed President Shirley on administrative leave pursuant to a
10 law in conflict with Traditional Law, that Legislation should be declared by this Court
11 void and unenforceable.

12 **6. Resolution CO-41-09 Violates Separation of Powers Established by**
13 **Title II of the Navajo Nation Code.**

14 After the governmental crisis involving Peter MacDonald, Resolution CD-68-89
15 separated the executive and legislative branches of the Navajo Nation government
16 because the government structure at that time allowed too much centralized power
17 without real checks on the exercise of such power. *See* Resolution CD-68-89, at ¶ 2,
18 attached hereto as **Ex. F**. Resolution CD-68-89 expressly stated its intent to limit the
19 power of the legislative body to “legislation and policy decision making,” and it repealed
20 and declared null and void all rules, regulations, laws or parts thereof which are
21 inconsistent with Title II of the Navajo Nation Code. *Id.* at ¶ 4.

22
23
24 ⁷ Even though the Supreme Court has ruled that administrative leave is not
25 technically the same as removal, the facts of this case demonstrate that the administrative
26 leave is tantamount to a removal. The President has been placed on leave for an
27 indeterminate amount of time “during the pendency of the investigation and possible
28 prosecution of ethical, civil and criminal charges by the Navajo Nation through a Special
Prosecutor.” No Special Prosecutor has been appointed and the Council has given no
timeframe within which such an investigation will occur. Because there is no
determinate timeframe for the administrative leave, which could easily run through the
end of the President’s term, the administrative leave is merely removal by a different
name.

1 Section 240(C) of Title XI grants the Legislative Branch too much centralized
2 power by purporting to grant the Navajo Nation Council the authority to place the
3 President of the Navajo Nation on administrative leave by a majority vote. This law is a
4 remnant of a time before the separation of powers when the "executive" was the
5 Chairman of the Navajo Nation Council and a member of that body. At that time, the
6 Chairman's authority flowed from the Council, not the People. *See In the Matter of*
7 *Certified Questions II, The Navajo Nation, et al. v. Peter MacDonald*, No. A-CV-13-89,
8 slip op. at ¶ 93 (Nav. Sup. Ct. 1989). By contrast, after the separation of powers pursuant
9 to Resolution CD-68-89, the President's authority flows from the People, not the Council;
10 therefore, the Council no longer has the authority to place the President on leave. This
11 change in the basis of authority rendered 11 N.N.C. §240(C) inconsistent with the
12 separation of powers inherent in Title II. As such, 11 N.N.C. §240(C) is null and void as
13 a matter of law.

14 In addition, Resolution CD-68-89 directs that any amendment to Title II can only
15 be accomplished by a 2/3 vote of the Navajo Nation Council sitting in regular session.
16 Resolution CO-41-09, to the extent that it purports to place President Shirley on
17 administrative leave, constitutes a *de facto* amendment to the separation of powers
18 inherent to Title II, because the authority to place the President on leave is not granted to
19 the legislature by Title II. Because Resolution CO-41-09 was neither considered by the
20 Council sitting in regular session nor was it enacted by 2/3 vote, it is invalid.

21 Further, the power to place the President on administrative leave at any time by a
22 simple majority vote of the Council destroys the diffusion of power sought by Resolution
23 CD-68-89 by granting the Council undue power over the Executive Branch. For
24 example, in situations in which a majority of the Council believes the President will veto
25 legislation, it could place the President on administrative leave and preemptively
26 overcome the veto without the 2/3 vote that would normally be required. This power
27 directly undermines the veto power of the Executive Branch pursuant to 2 N.N.C. § 1005.
28 Because 11 N.N.C. § 240(C) is inconsistent with the powers of the President under Title

1 II, it is null and void as a matter of law. *See, e.g.*, Resolution CD-68-89 at ¶ 4 (repealing
2 and declaring null and void all rules, regulations, laws or parts thereof which are
3 inconsistent with Title II of the Navajo Nation Code); *Judy v. White*, No. SC-CV-35-02,
4 slip op. at ¶ 69 (Nav. Sup. Ct. 2004) (holding that Title II of the Navajo nation Code is
5 organic law that takes precedence over other statutes).

6 Finally, Resolution CD-68-89 expressly limits the power of the legislative body to
7 “legislation and policy decision making.” *See* Resolution CD-68-89, at ¶ 4. The
8 Resolution placing the President on administrative leave involves neither legislation nor
9 public policy making. That action affects only the personnel and efficient administration
10 of a completely separate branch of government. To the extent that Resolution CO-41-09
11 purports to use 11 N.N.C. § 240(C) as the basis for extending the powers beyond the
12 scope authorized by Title II, it is void as a matter of law.

13 Resolution CO-41-09 constitutes an unauthorized exercise of legislative authority
14 because 11 N.N.C. § 240(C) is inconsistent with the separation of powers under Title II.
15 Because Resolution CO-41-09 violates the separation of powers under Title II, it is void
16 as a matter of law and unenforceable.

17 **7. Resolution CO-41-09 is a Bill of Attainder.**

18 Resolution CO-41-09 constitutes a bill of attainder because it inflicts punishment
19 upon the President without the protections of trial in the Navajo Courts. *See In the*
20 *Matter of Certified Questions II, The Navajo Nation, et al. v. Peter MacDonald*, No. A-
21 CV-13-89, slip op. at ¶ 118 (Nav. Sup. Ct. 1989). Such a bill of attainder violates the
22 President’s right to due process under 1 N.N.C. § 3; therefore, Resolution CO-41-09 is
23 void as a matter of law and unenforceable. *See id.* at ¶¶ 116-118.

24 A bill of attainder has two elements: 1) specificity (*i.e.* singling out an individual
25 for infliction of punishment); and 2) punishment inflicted by the legislature rather than
26 the judiciary. *Id.* at ¶ 118. Resolution CO-41-09 meets the specificity requirement
27 because it singles out the President for placement on administrative leave.

28

1 The Court has recognized several tests for determining punishment. The first, the
2 “historical experiences” test, determines punishment in terms of what has been
3 historically considered punishment for bills of attainder. *Id.* at ¶ 119. The District Court
4 has noted that laws prohibiting a person from pursuing a particular vocation fall under
5 this category. *See Navajo Nation, et al. v. Chairman Peter MacDonald, et al.*, No. WR-
6 CV-99-89, slip op. at ¶ 198 (Nav. Dist. Ct. 1989). Resolution CO-41-09 places the
7 President on administrative leave for an unknown period of time. Such leave specifically
8 prevents the President from pursuing his vocation as a politician and from exercising the
9 authority of his office.

10 The second, the “motivational” test, looks to whether the legislature evidenced an
11 intent to punish. In this case, placement of the President on administrative leave was
12 motivated by a desire to retaliate against and punish him for his popular initiatives to
13 limit the size of the Navajo Nation Council and to authorize a line-item veto power. On
14 other occasions, the Respondents have attempted to use legislation to meet the same
15 purposes. For example, on September 24, 2009, Speaker Morgan assigned legislation to
16 the Government Services Committee to abolish the Office of the First Lady in an attempt
17 to retaliate against and punish the President for his popular initiatives to limit the size of
18 the Navajo Nation Council and to authorize a line-item veto power. Memorandum from
19 Speaker Lawrence T. Morgan to Delegate Ervin M. Keeswood, Sr., Government Services
20 Committee (Sept. 24, 2009), attached hereto as **Ex. G**.

21 On October 16, 2009, President Shirley directed a Memorandum to Speaker
22 Morgan requesting that the Legislative Branch make a supplemental appropriation to
23 fund the election regarding the initiatives to limit the size of the Navajo Nation Council
24 and to authorize a line-item veto power. Five days later, on October 21, 2009, Speaker
25 Morgan attempted to introduce legislation, without assignment to the appropriate
26 committees, to abolish funding for the President’s Executive Protective detail to retaliate
27 against and punish the President for his popular initiatives to limit the size of the Navajo
28 Nation Council and to authorize a line-item veto power. Memorandum from Speaker

1 Lawrence T. Morgan to Members of the Navajo Nation Council (Oct. 21, 2009), attached
2 hereto as **Ex. H**. The next day, on October 22, the Special Session Agenda for the
3 October 26, 2009 Special Session was approved by the Ethics and Rules Committee but
4 the Resolution never went to an oversight committee as required by law. A mere ten
5 days after the President requested that the Council fund the election on the initiatives to
6 limit the size of the Council and grant the President line-item veto power, Respondents
7 enacted Resolution CO-41-09 which purported to place the President on administrative
8 leave.

9 The Council used investigative reports it commissioned as the basis for this
10 administrative leave. After an independent review of the reports and the legislation
11 designed to place the President on leave, the Office of the Attorney General urged
12 caution in enacting the legislation because the reports contained "scant evidence" of any
13 criminal conduct by the President. Despite this warning, the Council placed the President
14 on leave in its zeal to retaliate against and punish the President for proposing initiatives
15 that would lawfully limit the power of the Navajo Nation Council.

16 Because Resolution CO-41-09 constitutes a bill of attainder enacted in violation of
17 President Shirley's due process rights, it is void and unenforceable as a matter of law.

18 **B. SUBSTANTIAL IRREPARABLE INJURY, LOSS, OR DAMAGE**
19 **HAS OCCURRED AND WILL CONTINUE TO OCCUR IN THE**
20 **ABSENCE OF INJUNCTIVE RELIEF.**

21 Although Resolution CO-41-09 is invalid, the President has, to-date, voluntarily
22 remained away from his office in an effort to maintain the peace. Upon information and
23 belief, the Vice President has been acting in the President's absence, and delegates of the
24 Navajo Nation Council have instructed or advised the Vice President to terminate the
25 President's staff. In fact, members of the President's staff have already been, and may
26 continue to be, terminated. *See, e.g.,* Gallup Independent Article, "President's Right
27 Hand Man Fired By Shelly," dated December 3, 2009, attached hereto as **Ex. I**. In
28 addition, the Council is making, and will continue to make, policy decisions, and enact
legislation without oversight of the People's elected leader.

1 The Navajo People exercised their fundamental right to elect the leader of their
2 choice. The Council's action has deprived them of their leader, and will result in serious
3 damage to public trust and confidence in the Navajo Nation government. The more time
4 that passes without the President in office, the more unchecked action the Council is
5 taking and the more integral staff will be terminated.

6 Injunctive relief is the only way the President and the People can get an immediate
7 enforcement of the status quo. Other remedies will be time-consuming and ineffective.

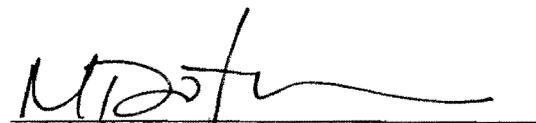
8 **C. PETITIONER HAS NO ADEQUATE REMEDY AT LAW.**

9 Injunctive relief is the only way the President and the People can get an immediate
10 enforcement of the status quo. Other remedies are either unavailable, or will be time-
11 consuming and ineffective.

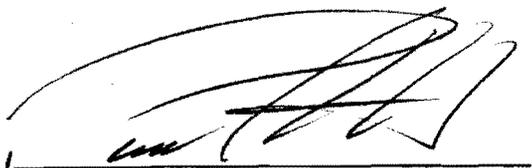
12 **III. CONCLUSION**

13 In the interests of justice, to avoid immediate, substantial, and irreparable harm to
14 Petitioners and the people of the Navajo Nation, and to preserve the status quo between
15 the parties, Petitioners respectfully request this Court to issue a Temporary Restraining
16 Order, restraining Respondents from attempting to enforce Resolution CO-41-09 against
17 President Joe Shirley, Jr., and that the Temporary Restraining Order remain in full force
18 and effect pending an evidentiary hearing to be held before the Court for the purpose of
19 determining why a preliminary injunction should not issue while awaiting trial on the
20 merits.

21 RESPECTFULLY SUBMITTED this 7th day of December, 2009.

22
23 
24 Michelle Dotson, Legal Counsel
25 Office of the Navajo Nation
26 President and Vice President

26 and



Paul K. Charlton
Benjamin C. Runkle
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

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Original Filed with the Court Administrator
this 2nd day of December, 2009.

Copies to be served on Defendants
by the Navajo Nation Police.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - Third Year, 2009

AN ACTION

RELATING TO AN EMERGENCY; PLACING CERTAIN NAVAJO NATION
OFFICIALS ON ADMINISTRATIVE LEAVE, REFERRING REPORTS TO THE
ATTORNEY GENERAL FOR APPLICATION TO THE SPECIAL DIVISION OF
WINDOW ROCK DISTRICT COURT FOR A SPECIAL PROSECUTOR

BE IT ENACTED:

Section 1. Findings

A. Pursuant to the Navajo Nation Code, 11 N.N.C. §240(C), the Navajo Nation Council may by majority vote of the Council, place the President, Vice-President or any of its members on administrative leave, with or without pay, where there are reasonable grounds to believe that such official has seriously breached his or her fiduciary trust to the Navajo People and such leave will serve the best interests of the Navajo People.

B. On October 19, 2009, the Navajo Nation Council received reports on investigations performed by law firms contracted by the Office of the Attorney General relative to Navajo Nation dealings with the private companies, ONSAT and BCDS, which provide reasonable grounds that certain Navajo Nation officials and employees have seriously breached their fiduciary trust to the Navajo People.

C. The reports on investigations performed by law firms contracted by the Office of the Attorney General relative to Navajo Nation dealings with the private companies, ONSAT and BCDS, further provide a significant basis for referral of the reports to the Attorney General to address the application for appointment of a special prosecutor.

D. The Navajo Nation hereby finds that these matters require the consideration of this emergency legislation, as the alleged breaches of fiduciary trust to the Navajo People by these certain Navajo Nation officials and employees have a direct negative affect on the sovereignty of the Navajo Nation.

Section 2. Placement on Administrative Leave With Pay

On the basis of the foregoing findings, the Navajo Nation hereby places the following official of the Navajo Nation on administrative leave with pay during the pendency of the investigation and possible prosecution of ethical, civil and criminal charges by the Navajo Nation through a Special Prosecutor:

- a) Joe Shirley, Jr., Navajo Nation President.

The placement of these officials on administrative leave will allow appropriate law enforcement authorities access to further information within the Office of the President/Vice-President and prevent the Navajo Nation President from obstructing or otherwise interfering with the investigation and possible prosecution of these officials for ethical, civil and criminal charges arising from the allegations set forth in the reports.

Section 3. Referral to Attorney General for Application to Special Division of the Window Rock District Court for Appointment of Special Prosecutor

On the basis of the foregoing findings, the Navajo Nation hereby refers the reports to the Attorney General for application to the Special Division of the Window Rock District Court for selection of a Special Prosecutor regarding all matters arising from, or related to, the ONSAT and BCDS reports, pursuant to 2 N.N.C. §§ 2021 - 2024. The Attorney General shall expedite his application for appointment of a Special Prosecutor, in light of impending statute of limitation issues identified within the reports.

Section 4. Referral of Navajo Nation Employees for Investigation by the Special Prosecutor

In addition to the Navajo Nation officials referred to in Section 2 above, the Navajo Nation refers the allegations contained in the report relative to following current and former employees and officials of the Navajo Nation to the Attorney General for investigation and possible prosecution of ethical, civil and criminal charges by the Navajo Nation:

- a) Patrick Sandoval, Chief of Staff, Office of the President/Vice President
- b) Allan Begay, Executive Director, Division of Economic Development; and
- c) Arbin Mitchell, Executive Director, Division of Community Development; and
- d) Samson Cowboy, Executive Director, Division of Public Safety; and
- e) Duane "Chili" Yazzie, former Shiprock Chapter President; and
- f) Ernest Franklin, former Division of Community Development employee.

Section 5. Confirmation of Prohibition Against Retaliation

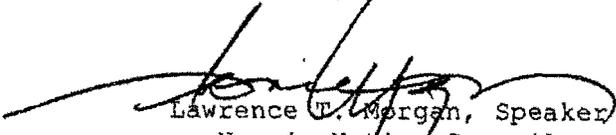
The Navajo Nation confirms the prohibition against retaliation set forth in the Ethics in Government Law against any party or witness to any ethics complaint filed on the basis of these referrals. Retaliation shall include any form of adverse or punitive action. This protection shall also be afforded to any person(s), including Ethics and Rules Office staff, offering testimony or evidence or complying with directives of the Committee. Any violations shall be subject to penalties under the Ethics in Government Law, as well as obstruction and contempt violations of both the civil and criminal codes of the Navajo Nation.

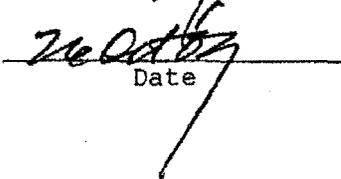
Section 6. Effective Date

The effective date of this resolution shall be the date on which it is certified by the Speaker of the Navajo Nation Council, pursuant to 2 N.N.C. §§165(B) and 221(C).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 48 in favor and 22 opposed, this 26th day of October, 2009.


Lawrence T. Morgan, Speaker
Navajo Nation Council


Date

Motion: Curran Hannon
Second: Kee Yazzie Mann



October 21, 2009

MEMORANDUM

TO: Honorable Lawrence T. Morgan, Speaker
NAVAJO NATION COUNCIL

FROM: Raymond Joe
Raymond Joe, Member
NAVAJO NATION COUNCIL

RECEIVED
OCT 21 2009
OFFICE OF THE
SPEAKER

SUBJECT: Requesting Special Session of the Navajo Nation Council

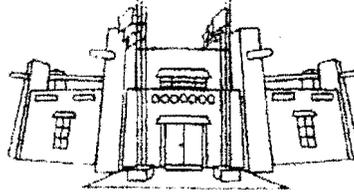
In accord with 2 N.N.C. §162(B)(2), attached and transmitted herewith is petition signed by 80 members of the Navajo Nation Council who have requested a special meeting of the Navajo Nation Council on Monday, October 26, 2009 at 10:00 a.m. to address Legislation No. 0617-09, Relating to an Emergency; Placing Certain Navajo Nation Officials on Administrative Leave, Referring to the Attorney General for Application to the Special Division of the Window Rock District Court for a Special Prosecutor.

Thank you for your kind and favorable consideration.

[] APPROVED [] DISAPPROVED

Lawrence T. Morgan
Lawrence T. Morgan, Speaker
Office of the Speaker
21 Oct 09

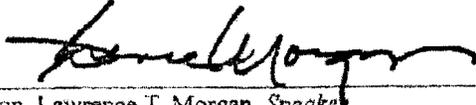
LAWRENCE T. MORGAN
Speaker of the Navajo Nation Council



October 22, 2009

MEMORANDUM

TO : *Hon. Members of the Navajo Nation Council*

FROM : 
Hon. Lawrence T. Morgan, *Speaker*
Navajo Nation Council

SUBJECT : **ANNOUNCEMENT OF SPECIAL SESSION**

This memorandum serves to inform you of a special session of the 21st Navajo Nation Council scheduled for **October 26, 2009** starting at 10 a.m. at the Navajo Nation Council Chamber, Window Rock, Navajo Nation (AZ).

During this special session, the Navajo Nation Council will address one legislative proposal. This proposal is:

- **Legislation No. 0617-09 – Relating to an Emergency; Placing Certain Navajo Nation Officials on Administrative Leave, Referring Reports to the Attorney General for Application to the Special Division of the Window Rock District Court for a Special Prosecutor (Sponsor: Hon. Raymond Joe)**

Be further advised that 2 N.N.C. § 183(F) requires the attendance of all council delegates to regular and special meetings of the Navajo Nation Council or Committees. Therefore, please cancel your existing travel plans and make the necessary arrangements to attend this calling of the Navajo Nation Council.

If you have any questions regarding this matter, please call my Legislative Chief of Staff, Dr. James Davis, Jr., at (928) 871-7160.

ATTACHMENT: Special Session Agenda for 10/26/09 (Approved by Ethics and Rules Committee)
XC: File

PROPOSED
AGENDA OF THE
NAVAJO NATION COUNCIL

October 26, 2009

SPECIAL SESSION



PRESIDING: Hon. Lawrence T. Morgan, Speaker
Navajo Nation Council

PLACE: Navajo Nation Council Chamber
Window Rock, Navajo Nation (AZ)

-
1. Call the Special Session to Order; Roll Call; and Invocation.
 2. Recognize the Guests and Visiting Officials to the Navajo Nation.
 3. Review and Adopt the Agenda for the Special Session of the Navajo Nation Council.
 4. Reports: None
 5. Old Business: None
 6. New Business:
 - (a) Legislation No. 0617-09 -- Relating to an Emergency; Placing Certain Navajo Nation Officials on Administrative Leave, Referring Reports to the Attorney General for Application to the Special Division of the Window Rock District Court for a Special Prosecutor (Sponsor: Hon. Raymond Joe)
 7. Close of the Special Session; Announcement; and Adjournment.

Approved by the Ethics and Rules Committee on October 22, 2009.



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

Louis Denetsosie
ATTORNEY GENERAL

Harrison Tsosie
DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Lawrence T. Morgan, Speaker
The Navajo Nation Council

FROM: Louis Denetsosie
Louis Denetsosie, Attorney General
Office of the Attorney General

DATE: October 26, 2009

SUBJECT: Legislation No. 0617-09

COPY

The Navajo Nation Department of Justice, Office of the Attorney General, received a copy of Legislation No. 0617-09 titled:

Relating to an Emergency, Placing Certain Navajo Nation Officials on Administrative Leave, Referring Reports to the Attorney General for Application to the Special Division of the Window Rock District Court for a Special Prosecutor.

The Office of the Attorney General made an independent review of the proposed legislation to identify any legal impediments to passage of the proposed legislation or issues that may arise after passage and raises these concerns.

The authority to place the President and Vice President on administrative leave is found at 11 N.N.C. § 240 (C). This part provides:

The Navajo Nation Council may by majority vote of the Council, place the President, Vice-President or any of its members on administrative leave, with or without pay, where there are reasonable grounds to believe that such official has seriously breached his or her fiduciary trust to the Navajo People and such leave will serve the best interests of the Navajo People.

Based on this provision, there are four requirements to place the President and Vice President on administrative leave. First, the Navajo Nation Council is the only body that can place the President and Vice President on administrative leave. The Navajo Nation Council is comprised of 88 council delegates and the second criteria requires a majority vote of the Council or at least

Memorandum to: Lawrence T. Morgan, Speaker, The Navajo Nation Council

RE: Legislation No. 0617-09

October 26, 2009

Page 2

45 votes. The third requirement is there must be reasonable grounds to believe that President or Vice President has seriously breached his or her fiduciary trust to the Navajo People. The last requirement provides that placing the President or Vice President on administrative leave must serve the best interests of the Navajo People.

The first two requirements are unambiguous procedural requirements. The third requirement may be dissected into the following elements: (1) there must be reasonable grounds to form a belief; (2) the President or Vice President has personally; and (3) seriously breached (4) his fiduciary trust to the Navajo People. The fourth requirement is to consider the best interests of the Navajo people by performing a factual determination that placing the President or Vice President on administrative leave will serve the best interest of the Navajo people. Each of these elements should be discussed in detail.

11 NNC § 240 does not provide for an appeal to contest action of the Council placing the President or Vice President on leave. Due to the lack of a required administrative procedure to afford due process, this matter will likely be contested in the Navajo Nation Courts.

The proposed legislation would place the President and Vice President on leave on the primary grounds that they have violated the conflict of laws provisions of the Navajo Nation Ethics in Government Law, specifically that they have taken actions which create the **appearance** of giving preferential treatment to special interest organizations or persons. The evidence given in the two investigative reports performed by Sacks Tierney and Williams, Wiggins and Williams provides scant evidence that the President engaged in any criminal conduct and **no evidence** that the Vice President engaged in conduct justifying his prosecution or placing him on administrative leave.

It is my conclusion that the Navajo Nation Council has no basis for placing the Vice President on leave and should exercise caution in acting on Legislation No. 0617-09.

xc: Dr. Joe Shirley, Jr., President

The Navajo Nation

: Ben Shelly, Vice President

The Navajo Nation

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Amending Title Two (2) of the
Navajo Tribal Code and Related Actions

WHEREAS:

1. Pursuant to 2 N.T.C., Section 101, the Navajo Tribal Council is the governing body of the Navajo Nation; and

2. Recent controversy involving the leadership of the Navajo Nation has demonstrated that the present Navajo Nation Government structure allows too much centralized power without real checks on the exercise of power. Experience shows that this deficiency in the government structure allows for, invites and has resulted in the abuse of power; and

3. The Judicial Branch has been reorganized by the Judicial Reform Act of 1985, Resolution CD-94-85, and treating the Judicial Branch as a separate branch of government has proven to be beneficial to the Navajo Nation and has provided stability in the government; and

4. The lack of definition of power and separation of legislative and executive functions have also allowed the legislative body to overly involve itself in administration of programs thereby demonstrating a need to limit the legislative function to legislation and policy decision making and further limit the executive function to implementation of laws and representation of the Navajo Nation; and

5. There is an immediate need to reorganize the Navajo Nation government by defining the powers of the legislative and executive branches and impose limitations on exercise of such powers; and

6. The number of standing committees of the Navajo Tribal Council has grown to eighteen (18) and some standing committees can be combined and Navajo-Hopi Land Committee moved back to a Commission thereby reducing the number of standing committees to twelve (12) and to provide for a more efficient and responsive committee system; and

7. The reorganization of the Navajo Nation Government as proposed herein is intended to meet the immediate needs of the Navajo People for a more responsible and accountable government and will have no effect on the long term Government Reform Project which will proceed as authorized and directed by the Navajo Tribal Council; and

8. It is in the best interest of the Navajo Nation that the Navajo Nation Government be reorganized to provide for separation of functions into three branches, and provide for checks and balances between the three branches until the Navajo People decide through the Government Reform Project the form of government they want to be governed by; and

9. The Intergovernmental Relations Committee by Resolution IGRNV-01-89, Exhibit "C" attached, has recommended the Title Two (2) amendments.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby amends Title Two (2) of the Navajo Tribal Code as provided in Exhibit "A" attached hereto and incorporated herein by reference.

2. The Navajo Tribal Council further directs and authorizes the Legislative Counsel to codify the Title Two (2) amendments and to insert the proper language in the Code to reflect the amendments.

3. The Navajo Tribal Council further directs and authorizes that the Title Two (2) amendments adopted herein shall become effective April 1, 1990; except that the Plans of Operation of the Intergovernmental Relations Committee of the Navajo Tribal Council, Navajo Nation Commission on Navajo Government Development and the Office of Navajo Government Development, Office of Legislative Counsel, Office of Legislative Services, the Navajo Board of Election Supervisors and Navajo Election Administration shall become effective immediately upon passage of this resolution. The salary provided in 2 N.T.C. Section 106(a) of the amendments shall become effective on January 1, 1990.

4. The Navajo Tribal Council further repeals and declares null and void rules, regulations and laws or parts thereof which are inconsistent with the provisions of Title Two (2), Navajo Tribal Code, as amended herein.

5. The Navajo Tribal Council further confirms the Standing Committee Chairpersons and Vice Chairpersons listed on attached Exhibit "B" and directs the Chairpersons and Vice Chairpersons to recommend committee membership and two (2) candidates for the position of the Speaker of the Navajo Nation Council for final confirmation by the Navajo Tribal Council.

6. The Navajo Tribal Council further authorizes and directs that any amendment to the adopted Title Two (2) amendments and the 1985 Judicial Reform Act, 7 N.T.C., Section 101 et. seq., shall require two-thirds (2/3) vote of the full membership of the Navajo Tribal Council. The two-thirds (2/3) vote requirement shall not apply to technical amendments to Title Two (2); these amendments shall be presented at the regular session of the Navajo Tribal Council.

7. The Navajo Tribal Council further authorizes, declares and directs that Sections 101(b), 102(a), 1008 and 106(a) of the Title Two (2) amendments, shall not apply to amendments duly proposed by the Navajo Nation Commission on Navajo Government Development.

8. The Navajo Tribal Council further designates the Interim Chairman and Interim Vice Chairman of the Navajo Tribal Council to serve as the Interim President and Interim Vice President of the Navajo Nation until the Navajo Tribal Council directs otherwise or until the term of the current administration expires.

9. Present references in the Navajo Tribal Code to the "Chairman of the Navajo Tribal Council" or "Vice Chairman of the Navajo Tribal Council" are hereby declared to refer to the President or the Vice President of the Navajo Nation.

10. Present references in the Navajo Tribal Code to the "Advisory Committee of the Navajo Tribal Council" are hereby declared to refer to the Government Services Committee of the Navajo Nation Council.

11. The Navajo Tribal Council further directs that the Commission members for the Navajo Government Development Project shall be presented for confirmation by the Navajo Tribal Council at the next Navajo Tribal Council session.

12. The Navajo Tribal Council further directs the Ethics and Rules Committee of the Navajo Tribal Council to prepare and present Rules of Order for Navajo Tribal Council Sessions for approval by the Navajo Tribal Council at the next Council session.

13. The Navajo Tribal Council further authorizes and directs the Budget and Finance Committee of the Navajo Tribal Council to declare and reallocate budget savings to fund the Office of the Speaker and salary of the Speaker and other budgetary matters as necessitated by the amendments herein; and that such reallocation shall be completed by January 1, 1990.

14. The Navajo Tribal Council further authorizes and directs the Budget and Finance Committee of the Navajo Tribal Council to resolve the potential personnel layoffs and other

potential and unanticipated urgent matters, such as the Capital Improvement Projects, which will require some budget savings declarations and allocations of the same. This is a one time exemption from Budget Directives contained in Navajo Tribal Council Resolution CS-57-89.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 44 in favor, 17 opposed and 13 abstained, this 15th day of December 1989.



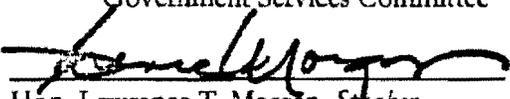
Interim Chairman
Navajo Tribal Council



September 24, 2009

MEMORANDUM

TO : Hon. Ervin M. Keeswood, Sr., Chairperson
Government Services Committee

FROM : 
Hon. Lawrence T. Morgan, Speaker
21st Navajo Nation Council

SUBJECT : **ASSIGNMENT OF LEGISLATION**

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Government Services Committee of the Navajo Nation Council:

Legislation No. 0551-09

An Action
Relating to Government Services: Repealing Resolution GSCD-54-07, Abolishing the Office of the First Lady.

As the Committee assigned to consider the legislation, Legislation No. 0551-09 must be placed on the Government Service Committee agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0551-09

xc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Denetsosie, *Attorney General*
Mark Grant, *Controller*
Hon. Curran Hannon, *Council Delegate (Prime Sponsor)*
File

PROPOSED STANDING COMMITTEE RESOLUTION
21st NAVAJO NATION COUNCIL - Third Year, 2009

INTRODUCED BY



Corbin Harrison

(Prime Sponsor)

TRACKING NO. 0551-09

AN ACTION

RELATING TO GOVERNMENT SERVICES, REPEALING RESOLUTION GSCD-54-
07, ABOLISHING THE OFFICE OF THE FIRST LADY

BE IT ENACTED:

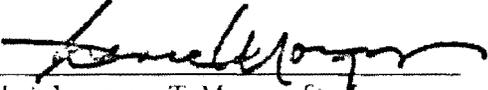
1. The Navajo Nation hereby repeals Resolution GSCD-54-07, effective October 1, 2009, and abolishing the Office of the First Lady, Business Unit # 103009.
2. The Navajo Nation directs the Office of Management and Budget, Office of the Controller, Division of Human Resources, and other Navajo Nation entities to implement the abolition of the Office of the First Lady, Business Unit # 103009.



October 21, 2009

MEMORANDUM

TO : Hon. Members
Navajo Nation Council

FROM : 
Hon. Lawrence T. Morgan, *Speaker*
Navajo Nation Council

SUBJECT : **ASSIGNMENT OF LEGISLATION**

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that the following legislation can be introduced directly to the Navajo Nation Council without being assigned to the respective standing committees:

Legislation No. 0624-09

A Budget Resolution

Relating to Emergency: Repealing Resolution GSCO-85-95 to Abolish the Executive Protection Services Program; Re-Appropriating Funds to the Department of Water Resources Notwithstanding 2 N.N.C. § 820 and Other Applicable Navajo Nation Laws.

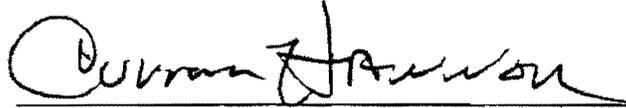
As the Committee assigned to consider the legislation, Legislation No. 0624-09 must be placed on the Navajo Nation Council's agenda for final consideration

ATTACHMENT: Legislation No. 0624-09

xc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Denetsosie, *Attorney General*
Mark Grant, *Controller*
Hon. Curran Hannon, *Council Delegate (Prime Sponsor)*
File

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
21ST NAVAJO NATION COUNCIL - Third Year, 2009

INTRODUCED BY



(Prime Sponsor)


Tracking No. 0624-09

AN ACTION

RELATING TO AN EMERGENCY; REPEALING RESOLUTION GSCO-83-95 TO
ABOLISH THE EXECUTIVE PROTECTION SERVICES PROGRAM; RE-
APPROPRIATING FUNDS TO THE DEPARTMENT OF WATER RESOURCES,
NOTWITHSTANDING 2 N.N.C. § 185; AND WAIVING 2 N.N.C. §§ 185, 343(B)(2),
12 N.N.C. § 820 AND OTHER APPLICABLE NAVAJO NATION LAWS

BE IT ENACTED:

1. The Navajo Nation finds that this matter constitutes an emergency under 2 N.N.C. § 164(A)(7)(a) because it effects the ability of Navajo Nation residents to obtain direct services in the form of safe drinking water from the Department of Water Resources.

2. The Navajo Nation hereby repeals Resolution GSCO-83-95, abolishing the Executive Protection Services Program, Business Unit # 103007, effective immediately.

3. The Navajo Nation hereby re-appropriates funds from Business Unit # 103007 to the Department of Water Resources, Business Unit # 115013, to provide safe drinking water to residents of Black Falls and Box Springs areas, as set forth in the budget forms attached hereto as Exhibit A.

4. The Navajo Nation hereby waives 2 N.N.C. §§ 185, 343(B)(2), 12 N.N.C. § 820, and other Navajo Nation laws necessary to repeal Resolution GSCO-83-95 and re-appropriate funds from Business Unit # 103007 to Business Unit # 115013, notwithstanding 2 N.N.C. § 185.

1 5. The Navajo Nation directs the Office of Management and Budget, Office of the
2 Controller, Division of Human Resources, Department of Water Resources, and other
3 applicable Navajo Nation entities to implement the abolition of the Executive Protection
4 Services Program, and transfer funds from Business Unit # 103007 to Business Unit #
5 115013 for the purpose specified in this resolution.
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