



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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Navajo President Joe Shirley, Jr., asks OHA to dismiss grievance filed to contest Dec. 15 special election

WINDOW ROCK, Ariz. – In a motion filed Monday, Navajo Nation President Joe Shirley, Jr., asked the Office of Hearings and Appeals to dismiss a grievance contesting the Dec. 15 Special Election, stating that the actual indispensable parties had not been included.

“The President and the Initiative Committee did not make those decisions complained of nor did they conduct the Special Election,” the motion states. “They cannot adequately defend the Navajo Board of Election Supervisors’ and Navajo Election Administration’s decisions, actions and failures to act. The statement of grievance should be dismissed with prejudice for the petitioner’s failure to join indispensable parties.”

The motion states that Dec. 23 grievance filed by Timothy Nelson of Leupp, Ariz., failed to include the Navajo Board of Election Supervisors and Navajo Election Administration. They are indispensable parties. Therefore, the case cannot proceed if they are not joined as parties.

A party is indispensable to a lawsuit if that party has an interest in the action. The disposition of the action in a party’s absence may impair that party’s ability to protect its interest. An indispensable party is one whose relationship to the controversy is such that any decree entered would affect that party’s rights.

The motion says Mr. Nelson lists complaints in paragraphs 5, 6, 7 and 8 that do not address anything that the President or the Initiative Petition Committee should have done or have failed to do because neither conducted the Dec. 15 special election.

“Any complaint that attacks the conduct of the special election must join the Navajo Board of Election Supervisors and the Navajo Election Administration as parties,” the motion states.

“They must be given an opportunity to defend themselves, their actions and their decisions.”

The motion states that complaints contained in paragraphs 1, 4, 6 and 10 of the grievance are not timely.

“The President and the Initiative Committee did not make those decisions complained of nor did they conduct the Special Election.”

– President Shirley’s motion to dismiss grievance

Among the complaints are that more than a simple majority of the votes cast is required for the measure to pass, that the override authority of the Navajo Nation Council is changed, and that an adequate plan for the effects of the initiative are not shown in the initiative.

“All those complaints could have been and should have been addressed within 10 days of April 29, 2008, when the petitions were first presented to the Navajo Election Administration for determination of sufficiency,” the motion states. “The petitioner cannot wait until this late date, 20 months after submittal, to complain about the content of the petition.”

“The Navajo Election Administration conducted the Special Election on December 15, 2009, and is responsible for many of the acts complained of in the statement,” the President’s motion states. “The Navajo Board of Election Supervisors and the Navajo Election Supervisors are therefore the parties best able to defend their actions in the calling and conduct of the Special Election.”

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