



THE NAVAJO NATION

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Council proposal to override President's line item veto is waste of tribal resources People sought to prevent

Council hopes to hand out financial favors to chapters prior to elections despite Office of Management & Budget saying there's no money to do it

WINDOW ROCK, Ariz. – A Navajo Nation Council proposal to override Navajo Nation President Joe Shirley, Jr.'s, June 24 line item veto would:

- Deepen the Navajo Nation budget deficit of \$22 million by another \$5.6 million;
- Invalidate a presidential power specifically authorized by Navajo voters less than seven months ago;
- Frustrate the will of the People to control unnecessary spending by the Council;
- Deplete money from a Navajo Department of Justice contingency fund that is already obligated to pay the Nation's legal debts;
- Duplicate millions of dollars in funding that is already appropriated to chapters but which remains unspent by them, and;
- Result in yet another round of costly litigation between the Legislative and Executive branches that would likely end in the same place it began.

The funding legislation, CJN-25-10 that President Shirley signed into law with the first exercise of presidential line item veto authority, was sponsored by Council Delegate Young Jeff Tom who criticized the President for using his new authority.

The override legislation is also sponsored by Mr. Tom. However, it remains unclear how legislation that has already been signed into law could be subject to an override vote of the Council.

Mr. Tom hopes to employ what he believes to be a loophole in the line item veto ballot language that the Navajo Board of Election Supervisors used for simplification so voters would understand it.

In FY 2009, the Council made supplemental appropriations of more than \$87.3 million. More than \$56.2 million went to chapters for public employment, summer employment, scholarships, winter emergencies, stipends for officials, and community projects.

– Navajo Nation Office of Management and Budget

The language of the signature petitions that voters signed stated, "Budget line items vetoed by the President of the Navajo Nation will not be subject to Navajo Nation Council override."

NBOES ensured that this petition language was provided to voters at polling places with the intention that the Council would not be allowed to override the President's line item veto.

If the Council votes to override the line item vetoes, the action would be counter to a Navajo Nation Supreme Court finding that presidential line item veto authority – approved by voters on Dec. 15, 2009 – was unchallenged in court and so is now valid law.

That law includes the prohibition of a Council override, which was the unmistakable intent of voters when they approved it. Obviously, without such a prohibition the law would be toothless and there would be no point in having the presidential authority.

Consequently, an override would likely be challenged in court, leading to tens of thousands of dollars more in Navajo Nation legal costs.

Over the past two years, the Council has been unsuccessful in every legal challenge and appeal it has brought regarding the government reform initiatives. Those challenges are estimated to have cost hundreds of thousands of dollars.

Among them is \$150,000 that the Intergovernmental Relations Committee and Speaker Lawrence T. Morgan appropriated to private citizen Timothy Nelson for attorney fees to challenge the Dec. 15 special election results.

In its May 28 decision, the Supreme Court noted that it would address the "misappropriation of public funds for private purposes" at a later date.

Meanwhile, Mr. Tom and other delegates are now erroneously portraying the override as an emergency to help financially struggling chapters and citizens. An analysis by the Office of Management and Budget, however, found that no emergency exists to justify giving new supplemental funding to chapters.

In its June 22 analysis of the spending legislation, OMB reported that as of April 30 chapters had a balance of \$38.1 million in unspent money.

That includes \$3.1 million for public employment, and \$948,000 for summer youth employment that has not been used. In addition, the Department of Workforce Development currently reports that it has ARRA funding to use for public employment.

In FY 2009, OMB reported that the Council made supplemental appropriations of more than \$87.3 million, with more than \$56.2 million going to chapters for public employment, summer employment, scholarships, winter emergencies, stipends for officials, and community projects.

OMB reported that over the past two years the Council has made so many supplemental appropriations from the tribe's Undesignated Unreserved Fund and personnel savings that it depleted these sources and caused the Nation's \$22 million tribal budget deficit.

Prior to approving Mr. Tom's legislation, the Council failed to consult OMB and bypassed requirements of the Appropriations Act. As a result, the Council took action without determining an actual need for the funding.

In fact, if chapters have funding available for these needs but are not using it, no new need for funding can be established.

Consequently, Mr. Tom's legislation is widely seen as a ploy to hand out financial largesse in hopes of his and other delegates' winning support for re-election because of it.

Nearly seven months ago, the Navajo people voted to give the President line item veto authority as a way to end this kind of wasteful and frivolous spending by the Council. The People repeatedly expressed concerns in newspaper letters, online blog comments, and through the signing of government reform initiative petitions about what they perceived as waste of tribal funds.

These concerns have continued ever since reports of delegates' giving themselves a pay raise, paying themselves \$300 per day to attend agency caucus meetings, paying themselves stipends for committee meetings, the purchase of gold rings, repeatedly waiving the Appropriations Act, repeatedly draining the Undesignated Unreserved Fund Balance and other accounts, excessive travel, and, most recently, the questionable use of discretionary funds for relatives and Legislative Branch employees which is now being investigated by a special prosecutor.

In January 2008, the Gallup Independent dubbed the legislature "the runaway Council" because of its repeated draining of the Undesignated Unreserved Fund, its repeated waivers of the Appropriations Act, and repeated appropriation of discretionary funds to delegates and the Speaker's office.

Delegates want big money, Jan. 14, 2008
www.gallupindependent.com/2008/January/011408kh_bigmney.html

The planned attempt to override the President's line item veto is the latest in a long pattern of obstruction that goes back to 2008 that the Council has used to prevent the government reform initiatives from taking effect:

- **May 20, 2008** – President Shirley met with Speaker Lawrence T. Morgan and Council delegates at the President's office about the government reform initiatives. Later that day, Speaker Morgan filed objections to the petition language with Office of Hearings and Appeals,

although the Speaker never mentioned his intention to do so in his meeting with the President.

- **June 3, 2008** – The President agrees to Speaker Morgan's request to "talk things out" in the spirit *k'e*, compromise and harmony to seek government reform through legislation, and halt the Presidential initiatives.

- **Aug. 13, 2008** – After six weeks of talks, President Shirley, Speaker Morgan and their attorneys sign a Memorandum of Agreement to compromise on comprehensive government reform, making it "a matter of the highest priority." The agreement acknowledges that the balance of government power is tilted toward the Legislative Branch.

"Because this temporary government structure was never re-examined as stated in and intended by CD-68-89, the government structure created by that resolution had the unintended effect of concentrating power in the hands of a single entity, the Legislative Branch, in a manner that the Navajo Nation Council had actually sought to avoid in 1989."

- **Oct. 2, 2008** – After 50 days on inaction, Speaker Morgan fails to uphold his agreement with President Shirley. His lawyer tells the President the entire effort was a delaying tactic.

- **Nov. 7, 2008** – Navajo Election Administration, which is under the Speaker's office, determines that both initiative petitions have insufficient signatures.

- **May 30, 2009** – Nearly seven months later, NEA Director Edison Wauneka acknowledges that NEA miscounted insufficient signatures. NEA's lawyer, Chief Legislative Counsel Frank Seanez, is forced to stipulate before the Office of Hearings and Appeals that the petitions contained sufficient signatures.

- **July 27, 2009** – The Navajo Nation Supreme Court hears the Council's appeal of the OHA decision to allow the special election. The Court chastises the NEA's attorney from the Office of Legislative Counsel for his motion to disqualify the three justices on grounds that they are biased and prejudiced but without providing any facts to support the motion.

- **Oct. 8, 2009** – President Shirley presents a budget of \$289,912 to the Navajo Board of Election Supervisors to fund the special election after the Council refuses to pay for it, and NEA Director Edison Wauneka says NEA has no money to pay for it despite a budget of more than \$1 million

for the 2010 elections.

- **Oct. 19, 2009** – The Council fails to acquire enough votes to place legislation to fund the election on its fall session agenda.

- **Oct. 26, 2009** – The Council purports to place President Shirley on administrative leave without due process, without charge, and without an opportunity to respond. However, the Window Rock District Court later rules that the Council exceeded its authority. That decision is affirmed on May 28, 2010, by the Navajo Nation Supreme Court which found the Council's action "is notable for secrecy, haste, disregard for persuasive Navajo Nation legal authority, and the shabbiest of shabby treatments of the President...."

- **Nov. 25, 2009** – The Council's Intergovernmental Relations Committee unanimously approves using \$734,000 from the Motor Vehicle Authority to pay for Dec. 15 special election. After the \$298,000 cost of the election, the Speaker's office keeps the \$436,000 balance of the money, depleting all of the Motor Vehicle Authority's funds and permanently hindering its ability to function.

- **Dec. 1, 2009** – After discussions with Mr. Tom and other Council delegates, Vice President Ben Shelly fires OPVP Chief of Staff Patrick Sandoval by letter on grounds of his being too loyal to President Shirley. Former Navajo Nation Washington Office Director Sharon Clahchischilliage replaces him for one day and begins an immediate OPVP reorganization despite President Shirley's pending administrative leave appeal. Other OPVP staff are slated to be fired for the same reason.

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