



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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Presidential Task Force on Government Reform issues fact sheet on initiatives to answer common questions

WINDOW ROCK, Ariz. – The Navajo Nation Presidential Task Force on Government Reform has issued its first fact sheet about the two initiative ballot measures proposed for the Nov. 4, 2008, Navajo Nation election.

► *What do the two initiatives say?*

1. The initiative question to reduce the Navajo Nation Council states:

“The number of Navajo Nation Council Delegates will be reduced from 88 to 24 members. The Council reduction will apply to the Navajo Nation Council election of 2010, and will become effective on January 11, 2011.

“Upon approval of this initiative to reduce the number of Council delegates, the Navajo Board of Election Supervisors will immediately begin reapportionment planning consistent with the Council reduction. The reapportionment plans will be presented to, and be approved by, the current 21st Navajo Nation Council no later than August 15, 2009. If the Navajo Nation Council is unable to approve the reapportionment plans by August 15, 2009, the President of the Navajo Nation will develop and approve the reapportionment plans no later than October 30, 2009.

“Upon approval of this initiative to reduce the number of Council delegates, the current 21st Navajo Nation Council will immediately begin standing committee and Legislative Branch reorganization consistent with the Council reduction. The reorganization amendments will be developed and approved by the current 21st Navajo Nation Council no later than August 15, 2009. If the Navajo Nation Council is unable to approve the standing committee and Legislative Branch reorganization by August 15, 2009, the President of the Navajo Nation will develop and approve the standing committee and Legislative Branch reorganization no later than October 30, 2009.

“If approved, this initiative may be repealed or amended by the initiative process only.”

2. The initiative question to give the President line item veto authority states:

“The President of the Navajo Nation will be authorized to exercise line item veto authority over budget items contained in the annual Navajo Nation Comprehensive Budget or supplemental appropriations approved by the Navajo Nation Council. Budget line items vetoed by the President of the Navajo Nation will not be subject to Navajo Nation Council override. Upon approval of this initiative, the authority of the President of the Navajo Nation to exercise line item veto authority will become effective immediately.

“If approved, this initiative may be repealed or amended by the initiative process only.”

► *What will a reduction of the Navajo Nation Council to 24 delegates do?*

1. It will make the Navajo Nation government more accountable to the people, bring efficiency to the policy-making function of the Council, and reverse the concentration of power in the Legislative Branch as was intended by 1989 government reforms.
2. It will reduce costs of the Navajo Nation Council by millions of dollars a year.
3. It will reduce delegate meeting stipends costs by tens of thousands of dollars a year.
4. It will restore true checks and balances to the three-branch government.

► **What are some examples of a lack of accountability?**

1. The Navajo People are not informed about the true nature of Navajo Nation Council delegates' compensation. Delegates are paid an annual salary of \$25,000 but are compensated far more than that.
2. Since the 2004 Navajo Nation Supreme Court decision in *Judy v. White* prevented Navajo Nation Council delegates from granting themselves a \$10,000 salary increase, delegates authorized payments of \$250 per meeting (increased to \$300 in April) to attend chapter, caucus, agency council, planning and other approved meetings simply by signing the sign-in sheet and regardless how long they attend.

The *Judy v. White* decision is available online at:

www.navajocourts.org/NNCourtOpinions2004/11Nellie%20Judy%20v.%20Bobby%20White.pdf

3. In addition, Navajo Nation Council delegates receive deferred compensation, qualify for fringe benefits, 401(K) plans, retirement benefits and medical coverage, travel reimbursements, per diem for regular and special Navajo Nation Council sessions and an interest-free loan up to \$15,000.
4. Delegates are now paid \$300 as prime sponsor of legislation, regardless of passage or not. Delegates are paid \$60 per diem for meals and hotel, whether meals are provided or not.
5. Delegates are compensated and their expenses are paid for motorcycle honor rides and the annual horse ride to the summer session of Council.
6. In addition, delegates bought themselves gold rings for \$50,000. Only four chose not to accept them.
7. Delegates sit on 24 paid Navajo Nation boards and commissions. These do not include school boards and county boards.
8. The Navajo People are not informed about the true nature of Navajo Nation Council Speaker's Office FY 2008 \$16.5 million budget, up from an original \$2.8 million request and achieved through carry-over of funds and supplemental appropriations.

9. From FY 2004 to FY 2008, the Navajo People were not informed about the Navajo Nation Council's increase of the original budgets for the Speaker's Office by \$37,071,490, or by 84 percent.

► **Have Navajo citizens ever voted to reduce the Navajo Nation Council?**

Yes. A referendum was held on Sept. 5, 2000, that asked Navajo voters whether they supported reducing the Council from 88 to 24 delegates. Navajo voters said yes by a two-to-one margin to support reducing the Council.

However, because Navajo law regulating a referendum was applied, a majority vote in all 110 Navajo voting precincts was required for the measure to pass despite popular support. As a result, the measure failed.

► **What is the difference this time?**

A "referendum" is a general vote by the electorate on a political question that has been referred to the people *by the government*, such as the Navajo Nation Council.

An "initiative" is a general vote by the electorate on a political question that has been put on the ballot *by the people* through a petition process.

An April 29, 2008, legal opinion of the Navajo Nation Attorney General determined that Navajo law regulating an initiative process applies to this election. That means passage of the measures will require a "simple majority," or 50-percent-plus-one of the votes cast, rather than a "super majority," which is a majority vote in all 110 chapters.

Information about the Attorney General's opinion is available online at :

www.navajo.org/News%20Releases/George%20Hardeen/May08/Navajo%20AG%20says%20supermajority%20not%20needed%20for%20initiatives%20to%20succeed%20for%20May%2009.pdf

► **Where did the number 24 come from?**

The number 24 is the People's choice. In the 2000 Primary Election to reduce the Council, Navajo voters were given

the option of re-sizing the Navajo Nation Council to 110, 88, 72, 48, 44, 32 or 24 delegates. Voters selected 24.

In the Sept. 5, 2000, General Election, 22,081 Navajo voters approved reducing the Navajo Nation Council to 24 delegates. That represented more than 70 percent of voters who cast ballots.

► ***If the People voted to reduce the Council in 2000, why wasn't it reduced to 24 delegates then?***

The 2000 election was a "referendum." In 2008, ballot questions are being presented as an "initiative."

According to Navajo law, a majority vote is required in each of the 110 chapters for a referendum to pass. That is called a "supermajority." This standard is nearly impossible to achieve. If one chapter votes against the referendum, the entire referendum fails.

In the 2000 referendum, voter turnout was low, and the ballot issue did not achieve a majority vote in every chapter, so the ballot question failed.

► ***Why is a reduction of Navajo Nation Council needed?***

The Navajo Nation Council's inefficiency and high cost was documented in two Navajo Nation Government Development Office reports commissioned by the Council.

The first is the November 2001 report *Lawmaking and Oversight Efficiency Study; Increasing the Efficiency of the Navajo Nation Council and Standing Committees*. It found that the Navajo Nation Council is significantly more expensive than other legislatures but is better paid, has attendance problems although delegates have time to sit on other governmental bodies, and has the highest percentage of representation per constituent in the country.

The second is the December 2005 *Final Report to the Navajo Nation Council Subcommittee on Legislative Branch Effectiveness*. This report evaluated the Council's effectiveness and found that it has poor legislative record-keeping, delegates are prevented from dealing with issues that should be heard by the full Council but often are not, and oversight committees spend more than half their time micro-managing Executive Branch functions.

It is online at www.ongd.navajo.org/files/frnnc.pdf

The reports show that a reduction in the size of the Council will bring needed efficiency to the Legislative Branch and return it to its policy-making and legislative function, and will create a realistic balance in the three-branch government that was sought in 1989.

The government reforms resulting from the political turmoil of 1989 sought a "more responsible and accountable government," according to Navajo Nation Council resolution CD-68-89 that authorized amendments to Title II of the Navajo Nation Code.

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

It also states that the lack of definition of power and separation of legislative and executive functions "allowed the legislative body to overly involve itself in the administration of programs thereby demonstrating a need to limit the legislative function to legislation and policy decision making."

However, since the Title II amendments were adopted, the Navajo People have not been afforded the opportunity to decide the form of government they want, and the power of the Legislative Branch has continued to grow, creating an impractical imbalance between the government branches.

For example, since FY 2004, its budget has more than doubled from \$15.8 million to \$32.7 million today, which is more than a 100 percent increase while both the Executive and Judicial branches have seen significantly smaller increases.

Navajo Nation Council resolution CD-68-89 sought to limit the centralized power of Legislative Branch to implement checks on the exercise of power. It notes that "experience shows that this deficiency in the government structure allows for, invites and has resulted in the abuse of power."

In 1989, it was determined that the power of the Chairman of the Navajo Tribal Council was excessive and had allowed for the abuse of power.

Since the creation of the Office of the President and Vice President and Office of the Speaker of the Navajo Nation Council in December 1989, the power and authority of the Speaker's office has continued to grow.

It is now to the point where the Speaker has assumed, with the acquiescence of the Navajo Nation Council, powers of a quasi-presidential nature, made possible through the appropriations process but without approval of the Navajo People.

Despite this, the Navajo Nation President and Vice President are the only Navajo leaders elected at large by the Navajo People. However, current Presidential power and authority tends to be limited by the Council through the appropriations process and veto overrides.

By contrast, the Speaker today often functions as a Navajo Nation President in all but name only despite being elected as a Council delegate by his chapter and then elected Speaker by the Council to a two-year term. This is not what was envisioned by the Council in 1989 when it established the three-branch government and instituted checks and balances.

► ***What is needed for the 2008 initiatives to succeed?***

In this election, a "simple majority" is required for each of the two initiative measures to succeed. That means 50 percent of the votes cast plus one more, and the initiative measure will pass.

► ***Can the Navajo Nation Council repeal, amend or choose not to recognize the vote of the People in this election?***

No. The language of both initiatives is written so that the results of the election can be repealed or amended by the Navajo voters, not the Navajo Nation Council.

It reads: "If approved, this initiative may be repealed or amended by the initiative process only." That means only the People can change the result if they desire.

► ***Is there a plan to follow when the Navajo Nation Council is reduced to 24 members?***

Yes. In preparation for the 2000 elections, the Navajo Board of Election Supervisors approved reapportionment plans for each of the re-sizing options: 110, 88, 72, 48, 44, 32 and 24. All that needs to be done now is for the Navajo Election Administration to re-calculate populations to take into account increases since 2000.

Upon approval of the initiative to reduce the Council, the 21st Council is directed by the initiative to immediately begin standing committee and Legislative Branch reorganization consistent with the Council reduction. The Council will have until August 15, 2009, to approve its reorganization plans. If for any reason the Council is unable to approve its plans by this date, the initiative directs President Shirley to develop and approve standing committee and Legislative Branch reorganization plans by October 30, 2009.

► ***How many chapters will each delegate represent?***

Although 110 chapters divided by 24 delegates equals 4.5 chapters, the exact apportionment decided by the Navajo Nation Board of Election Supervisors has some delegates representing more than five chapters and some fewer than four chapters.

► ***Will Chapters benefit from a Council of 24 members?***

Yes. Representation of Chapters by fewer delegates will strengthen Navajo democracy, sovereignty, and representation at both the Chapter and central government levels rather than weaken it.

It will permit delegates to place more attention on policy issues affecting the Navajo Nation than they do now.

It will permit Chapter officials to have a more direct influence in the functioning of the Navajo Nation government through their Chapter voting members, thus strengthening Navajo democracy.

► ***Will Chapters receive less money?***

No. Chapters should be able to receive more financial resources. Appropriations are made by the Navajo Nation Council. Fewer delegates on the Council should decrease only the customary politics involved in the appropriations process rather than appropriations to chapters.

A reduced Navajo Nation Council will free millions of dollars in financial resources that are now being used for the expenses and operation of the Navajo Nation Council to be directed to Chapters and direct services to the People.

► ***Will the initiative change Navajo law and the structure of Navajo government?***

Yes, it will change Title II of the Navajo Nation Code to reflect the reduction in Council delegates from 88 to 24.

No, it will not change the current three-branch Navajo government of Executive, Legislative and Judicial branches with the President elected by the People to serve as the Executive Branch chief, the Speaker elected by Council delegates to serve as the Legislative Branch chief, and the Supreme Court Chief Justice appointed and confirmed to a lifetime appointment.

The Judicial Branch was created as a separate branch of government through the Judicial Branch Reform Act of 1985, more than four years before the Executive and Legislative Branches were separated.

► ***What is Title II of the Navajo Nation Code?***

Title II is the chapter in the Navajo Nation Code that outlines the powers, authority and duties of the Navajo government. It was drafted and approved by the Navajo Tribal Council following the political turmoil of 1989 and the suspension of former Navajo Chairman Peter MacDonald.

Title 2 changed the system of Navajo government from one in which the chairman of the Navajo Tribal Council was elected by the People to a three-branch government with the Legislative, Executive and Judicial branches, and a President elected by the People who serves as chief executive officer of the Executive Branch and a Speaker who is elected from among the Council. This change sought to prevent the concentration of power in one individual or one branch.

Over time, however, power has become increasingly concentrated in the Legislative Branch, as is seen by increasing appropriations for Navajo Nation Council functions and operations. In FY 2004, the original budget appropriation for the Navajo Nation Council, its standing committees and the Office of the Speaker began at \$7.3

million. With supplemental appropriations of an additional \$8.8 million, the FY 2004 budget was \$16.2 million. By FY 2008, that figure had grown to \$32 million while the Office of the President and Vice President budget is \$2.3 million.

Reducing the Navajo Nation Council to 24 delegates will amend Title 2 of the Navajo Nation Code.

► ***Why did President Shirley wait until his second term to undertake Navajo Government Reform?***

Prior to being elected in 2002, President Shirley campaigned on a platform of government reform. However, the realities of being a new President facing other pressing priorities unavoidably took precedence over that priority.

Now, with many of his priorities put into place during his first term, he said he would make government reform a priority during in his second term.

President Shirley's record of first-term accomplishments includes ensuring Navajo Nation water rights and seeing that San Juan River Water Settlement Agreement legislation is introduced in Congress, signing the agreement to lift the 40-year old Bennett Freeze and initiating planning for rehabilitation of the area, signing legislation to decriminalize *azee* for use by *Azee' Bee Nahagha of Dine' Nation*, ensuring the protection of the San Francisco Peaks before the Federal District Court and 9th Circuit Court of Appeals, signing legislation to amend the Navajo education laws through the Diné Sovereignty in Education Act, signing legislation to establish the Navajo Nation Gaming Enterprise, the Navajo Nation Gaming Regulatory Office and to develop the first Navajo casino at Church Rock, signing the Natural Resources Protection Act to enact the Navajo uranium mining prohibition, signing legislation to develop the \$3 billion Desert Rock Energy Project, streamlining of Navajo Nation business site leasing regulations, and signing the agreement-in-principle with Citizen Energy to develop the Diné Wind Farm Project.

► ***By signing a petition, does that indicate my support to reduce the Navajo Nation Council from 88 to 24 delegates?***

No. Signing the petition expresses support only to put the question before Navajo voters in the Nov. 4, 2008, Navajo Nation election.

The election will allow voters to decide yes or no to reduce the Council and to give the President line item veto authority.

For the first time, the initiative process gives Navajo voters a direct voice in how their government is structured and in implementing greater fiduciary responsibility over budgetary matters.

► ***How many petition signatures are needed?***

A minimum of 16,820 certified petition signatures for each initiative question are required to place the measures on the Nov. 4, 2008, Navajo Nation election ballot.

That figure represents 15 percent of the 110,000 registered Navajo voters. Once signatures are gathered and the petitions are submitted, the Navajo Election Administration must certify each signature.

Once it is determined that the minimum signature requirement is met, the Navajo Board of Election Supervisors will certify the language of the initiatives and authorize that it to be placed on the November 4 election ballot.

► ***Who are the members of the Presidential Task Force on Government Reform?***

Among the first eight members of what is expected to be a 15-member task force is President Shirley, Eddie Arthur of Many Farms, Bessie Allen of Piñon, Division of Social Services Director Cora Maxx-Phillips, OPVP Chief of Staff Patrick Sandoval, OPVP Legal Counsel Michelle Dotson, and OPVP staff assistants Jim Store and Clinton Jim.

► ***What will line item veto authority for the President do?***

1. It will empower the Navajo Nation President to selectively delete budgetary line items from appropriation legislation in order to bring greater fiduciary responsibility back to the appropriations process.

2. It will empower the Navajo Nation President to cause the Legislative and Executive branches to work together in true cooperation on budgetary matters.
3. It will cause the Council to stop repeated raids of the Undesignated, Unreserved Fund and other trust fund accounts.
4. It will encourage the Council to stop repeated waiver of Navajo Nation laws.