



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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OPVP corrects numerous inaccuracies in statement issued by five agency caucus leaders regarding reapportionment plan

Agency caucus leaders, other delegates seek to suspend 2010 elections

WINDOW ROCK, Ariz. – The Navajo Nation Council Speaker's office issued a news release on Wednesday that contained inaccurate and misleading statements based on unresearched suppositions regarding the Navajo Board of Election Supervisors' approval of the J4 Reapportionment Plan on June 11.

The release reports that five Navajo Nation Council delegates, who are agency caucus leaders, wrote to NBOES Chairman Larry Biltah and Navajo Election Administration Director Edison Wauneka with concerns about the reapportionment plan.

Among the concerns are that the plan was adopted "hastily," and that NBOES should "suspend the (2010) election indefinitely."

To specifically avoid acting hastily, however, NBOES held three meetings to allow concerns to be heard, and made compromises to the plan to address those concerns before adopting the J4 plan by a vote of 9-0.

The caucus leaders are Council Delegates Andy Ayze for the Central Navajo Agency, Leslie Dele for the Western Navajo Agency, Phillip Harrison for the Northern Navajo Agency, Orlanda Smith-Hodge for the Fort Defiance Agency and Young Jeff Tom for the Eastern Navajo Agency.

The concerns they cite come six months after Navajo voters approved two initiatives to reduce the Navajo Nation Council and approve presidential line item veto authority, and 18 days after the Navajo Nation Supreme Court ordered NBOES to adopt the President's reapportionment plan.

The Navajo Election Administration is a program under the authority of the Speaker's office, and is represented by attorneys from the Office of Legislative Counsel.

Each of the delegates vigorously opposed Council reduction and support overturning the election results. Their bid to suspend the 2010 elections and to question the reapportionment plan is seen as another delaying tactic that

will frustrate the will of Navajo voters.

Despite the May 28 Navajo Nation Supreme Court decision which was to bring final resolution to Council reduction questions and challenges, the release quotes Ms. Smith-Hodge as saying, "We put it upon ourselves to call this meeting today and address these issues and go forward with any proposed changes."

The caucus leaders' bid to suspend the 2010 elections and to question the reapportionment plan is seen as another delaying tactic that will frustrate the will of Navajo voters.

Among the concerns in the order presented in the news release:

1. The delegates questioned why NBOES went into executive session prior to approval of the J4 Reapportionment Plan, stating that protocol for executive sessions are for matters related to personnel or litigation issues.

Office of Legislative Counsel attorney Ron Haven was in attendance to provide legal advice to NBOES. President Shirley, his legal counsel and his staff were among those excluded from the executive session.

The delegates complained that the NBOES executive session discussion was about reapportionment and was "a matter that affects the entire Navajo Nation." However, NEA Director Wauneka reported that it was to discuss Council Delegate Leonard Tsosie.

2. The delegates complained that NBOES “hastily approved a revised J4 reapportionment plan,” that President Shirley “merely showed a map,” and that he did not “hold proper public hearings for the selected new plan.”

In fact, despite the Supreme Court’s order that the plan be approved by NBOES “immediately,” the J4 plan was not approved until 10 days after President Shirley first asked for a meeting with NBOES but was denied by Mr. Wauneka who said there was not enough funding to pay supervisors’ stipends for the meeting.

Two days later, Mr. Wauneka reconsidered. NBOES’ first meeting with the President was held on June 4. A second followed on June 8, and a third was held on June 11 when NBOES approved the plan.

None of the five caucus leaders attended or participated in any of these NBOES meetings.

Rather than hastily approve the President’s reapportionment plan, the Board decided at its June 4 meeting to permit other plans and population figures to be discussed, and President Shirley did not object.

The J4 plan was a compromise that included allowing the satellite chapters of Ramah, Alamo and To’hajiilee in the Eastern Agency to have their own delegate, among others changes.

The final plan was a culmination of public input received at more than 20 agency and community meetings in January and again in June, and the most recent meetings with NBOES – none of which were attended by the five delegates.

On Jan. 8, 2010, President Shirley invited Council delegates, NBOES and the NEA to participate in the first series of reapportionment meetings to inform the public about 11 plans that had been developed for a 24-member Council in time for the 2010 elections.

<http://www.navajo.org/News%20Releases/George%20Hardeen/Jan10/100110presNavajo%20president%20schedules%2011%20public%20meetings%20on%20reapportionment%20plans.pdf>

Neither Council delegates, Mr. Wauneka, nor NBOES members participated in those public discussions.

“No representatives from the Navajo Election Administration or the Board of Election Supervisors attended Monday’s meeting. Shiprock’s three elected delegates also were absent,” the Farmington Daily Times reported following the first agency meeting in Shiprock on Jan. 11.

Despite the President’s repeated requests to work with the Council and NEA prior to and following the Dec. 15, 2009, initiative special election, Mr. Wauneka had made known his intention not to cooperate despite the mandate from Navajo voters.

On Dec. 30, he told the Human Services Committee that NEA would not work on reapportionment planning – despite the election result – because the election had been challenged by private citizen Tim Nelson of Leupp and the newly-formed organization Diné for Fairness in Government.

www.navajo.org/News%20Releases/Joshua%20Lavar%20Butler/Dec09/091230spkrHSCHearsUpdatesOnSpecialElectionResults.pdf

The J4 plan was approved 10 days after President Shirley first asked for a meeting with NBOES but was denied by NEA Director Wauneka who said there was not enough funding to pay stipends for the meeting.

He said he had been invited by Division of Community Services Director Arbin Mitchell to assist with the reapportionment plans.

“I called the chair (Larry Biltah) and vice chair (Jonathan Tso) of the Elections Board and I was advised to stay out of their planning until the election is certified,” Mr. Wauneka said.

www.navajo.org/News%20Releases/Joshua%20Lavar%20Butler/Dec09/091230spkrHSCHearsUpdatesOnSpecialElectionResults.pdf

NBOES delayed certifying the election results for more than six months although there was no legal reason to wait. The Board certified the results only when ordered to through the Supreme Court’s May 28 decision.

However, according to the Council reduction initiative petition signed by more than 16,800 registered Navajo voters and approved by the NEA in 2008 prior to its circulation, NEA’s mandate regarding reapportionment was:

“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.”

Despite now faulting NBOES for approving a reapportionment plan, Human Services Committee Vice Chairman Young Jeff Tom made clear his objection to the President and his staff developing any reapportionment plan at the Dec. 30 HSC meeting.

"Reapportionment is not their area of jurisdiction," Mr. Tom inaccurately alleged. "There is great concern of misusing tribal government resources and property. There is a duplication of services here, services that should be performed by the Navajo Elections Administration and not the Office of the President."

Not only was there no duplication of services because NEA had no intention to begin reapportionment planning, but the President had been mandated to develop a plan through the special election if NEA failed to or the Council did not approve one.

In addition, there was precedent that planning was within the President's authority.

In his Jan. 8 letter to NBOES, President Shirley said moving forward on reapportionment planning was appropriate, timely and fitting, and that no law limited reapportionment planning to only the NEA or NBOES.

Title 11, Section 9, of the Navajo Nation Code does not give sole authority to NBOES to authorize reapportionment. In addition, NBOES cannot introduce legislation to adopt a plan unless a Council delegate sponsors it.

In its 2002 Resolution CJN-50-02, the Council explicitly called upon the President to assist with reapportionment efforts. President Shirley said that the Council has allowed other entities to be involved in reapportionment activities such as the when the Education Committee was involved in school board reapportionment.

"Precedent is well-established regarding reapportionment, and there is no justifiable reason to delay implementation of the will of the People until after the completion of the Federal 2010 Census," the President said in his letter to NBOES.

President Shirley began reapportionment planning because that was the mandate stated on the initiative petition signed by more than 16,800 Navajo voters.

Rather than show any indication that the NEA or the Council would participate, both NEA and the Council took repeated steps to *prevent* both the election from occurring and subsequent reapportionment planning from happening, notwithstanding this mandate from the People.

On Dec. 21, numerous delegates – including caucus leaders

Young Jeff Tom and Leslie Dele – attended a press conference called by Council Delegate Leonard Chee to declare their opposition to the results of the Dec. 15 special election.

It was then that Timothy Nelson of Leupp stated his intention to file a grievance against President Shirley and the Initiative Petition Committee for the way the special election was conducted.

The Office of Hearings and Appeals dismissed his grievance, finding that Mr. Nelson had failed to join indispensable parties, in particular the NEA. OHA's dismissal was upheld by the Navajo Nation Supreme Court on May 28.

Mr. Nelson's challenge was paid for through a \$150,000 "grant agreement" from the Speaker's office which was approved on Dec. 23, 2009, by Intergovernmental Relations Committee Resolution IGRD-248-09.

Flagstaff attorney John Trebon was hired to represent Diné for Fairness in Government," an organization created specifically to challenge certification of the Dec. 15 special election results.

"There is no dispute that the appropriation funded Mr. Nelson's independent legal counsel in this appeal," the Supreme Court found in its May 28 decision. "It is a fundamental principle of governance that public funds cannot be used for private purposes, and this principle applies to funds of the Navajo Nation."

Numerous legal findings of this nature against the Council and its positions is what now causes delegates to repeatedly accuse the Navajo courts of unfairness.

For instance, in a May 17 news release from the Speaker's office, Council Delegate Kee Allen Begay is quoted as saying, "For the past seven years, there was no problem with the court system until recently."

"Currently, we know the judges are biased," Council Delegate Jerry Bodie alleged during a June 15 caucus leaders' panel discussion.

"The Supreme Court should not have politicized these cases," Council Delegate Katherine Benally stated, even though it was the Speaker's office that appealed a District Court ruling to the Supreme Court.

Ms. Benally accused the justices of politicizing the case and of jeopardizing the impartiality of the court system irrespective of the Supreme Court's May 28 affirmation in *Shirley v. Morgan*:

"As we begin examining the doctrines and principles applicable to this case, we state unconditionally that the

courts will not become entangled in the political maneuvering that we and the People are now observing,” the Court stated. “The courts will take its proper role – that of an independent decision-maker which has been summoned by the branches and the People to move this dispute forward and bring it to an end with a final resolution consistent with our teachings, values, principles, and tradition.”

The Council’s intention not to cooperate with reapportionment planning was reiterated during a Jan. 21 work session with the NEA. Mr. Wauneka told the Council that 88 Council seats would be available for this year’s election, despite the Dec. 15 mandate from the People.

http://www.navajo.org/News%20Releases/Joshua%20Lavar%20Butler/Jan10/012110s_prk_NEA_meet_with_NNC.pdf

“The number of Council delegates being advertised for the 2010 General Election is 88 seats – 88 is the only approved number,” Mr. Wauneka told the committee.

However, by virtue of the election results, Navajo voters had enacted new law that approved only 24 Council seats.

Council Delegate Leonard Chee was quoted as saying any plans not produced by NEA would be ignored by the Council.

“We need to reaffirm that we will not entertain other plans not by the election board,” Mr. Chee said. “Joe Shirley has so much to do to meet the needs of our people, yet he has time to develop 10 reapportionment plans.”

At no time during the President’s reapportionment planning was work by the various divisions or services to the People curtailed, nor was any allegation made to that effect other than unsubstantiated opinions by Council delegates.

Despite Mr. Wauneka’s statement, Window Rock District Court Judge Carol Perry issued a temporary restraining order on April 13 against the Navajo Election Administration to halt its planned election of a Council of 88 delegates.

Council delegates later criticized Judge Perry for cancelling a hearing on the TRO even though it was their own attorney from the Office of Legislative Counsel who asked the court to issue the stay.

Finally, on May 28, the Supreme Court ordered that NEA proceed with an election of 24 delegates, stating that the Council has no independent authority “to alter or abolish its clear deference to the Navajo People.”

“We affirm today that the Council may not use its power to frustrate the will of the People,” the Court said.

Despite the caucus leaders’ June 15 complaint about what they perceive as an unfair selection of a reapportionment plan, the Supreme Court took notice of the Council’s and NEA’s decision to ignore numerous opportunities to participate in the planning as it began:

“The NBOES and the Council were given ample opportunity to develop and approve the plan but failed to do so,” the Court said. “The People’s government must comply with the mandate issued by its People. The People do not want any more delays and uncertainty. In accordance with the new law, the President shall present a reapportionment plan that has been discussed at community meetings by June 11, 2010, and the NBOES shall approve the reapportionment plan by June 18, 2010.”

As a result of the Court’s decision, Navajo Nation Attorney General Louis Denetsosie urged the NBOES in a June 2 letter to approve the reapportionment plan before the June 11 Council candidate filing deadline:

“It is important to note that the Council Reduction Initiative adopted by the People now has the force of law,” Mr. Denetsosie said. “All employees and officials of the Navajo Nation are bound to follow, implement and enforce these laws, including NBOES, NEA and the Office of the Attorney General.”

3. In their letter to NBOES, the delegates asked how reapportionment numbers were determined for the J4 plan. They complained that many Navajos who live and work off the Nation would not be included.

However, in President Shirley’s June 11 memo to NBOES Chairman Larry Biltah, he reports that the baseline data is from the 2000 Census population count as modified by the Council’s own 2002 Resolution CJN-50-02.

That resolution recognized 171,289 as the Nation’s population. It includes Navajos living on Hopi Partitioned Land and 3,169 registered Navajo voters who live off the Nation.

By contrast, neither the Council nor these caucus leaders expressed any concern for voters who were left out when the NEA determined that there would be no absentee or off-Navajo voting in the Dec. 15 special election.

That decision affected thousands of off-Nation student, working, elderly and military voters.

4. The delegates expressed concern that the Supreme Court “inadvertently reversed the due dates” and questioned whether there was enough time to distribute and receive absentee ballots.

That issue is irrelevant because NBOES had already acted on both the reapportionment plan and the candidate filing deadline before the delegates submitted their letter of concerns.

What is relevant, however, is a concern that NEA may not act diligently to ensure that absentee ballots are printed, distributed and received by voters that include all candidates' names and photos.

Given Mr. Wauneka's previous statements, and his inclination to disregard the Dec. 15 mandate from Navajo voters, a concern about absentee and off-Nation voting may be justified.

The delegates' most egregious misinterpretation of fact is their assertion that Navajo Nation Attorney General Louis Denetsosie "was advising the election office that absentee voting be foregone."

Based on that error, they conclude that the NEA is "re-empowered" to "suspend the election indefinitely."

Actually, in his June 2 memo to NBOES and NEA, Mr. Denetsosie wrote that *if* it was impractical to have absentee voting for the Aug. 3 primary election that he recommended that NEA advise voters and candidates of that fact.

Nowhere did Mr. Denetsosie advise NEA to forego or dispense with absentee voting. Instead, his memo clearly states that its purpose is to explain to NBOES how to implement the 2010 Council delegate election in accordance with the Supreme Court's May 28 decision.

Consequently, in Point 5 of their letter, these caucus leaders take it upon themselves to determine that because NBOES extended the Council candidate filing deadline by one business day that it has been "re-empowered" and could then "suspend the election indefinitely until such time all election related documents are in proper order, which is a move in the best interest of the Navajo people."

This notion is unfounded in light of the Supreme Court's decision which states:

"The Navajo Nation primary election will occur on Aug. 3 and the general election will occur on Nov. 2 as scheduled."

And that the Council has no independent authority "to alter or abolish its clear deference to the Navajo People," and that "the Council may not use its power to frustrate the will of the People."

Given the Council's history over the past two-and-a-half years to prevent the special election, stall certification of votes, and

negate the election's results, the Navajo People would be hard-pressed to accept that the caucus leaders know what is in the People's best interest.

It would appear that the caucus leaders are seeking to again frustrate the will of the People in another attempt to stall implementing the results of the Dec. 15 special election because that is in their own best interest.

6. Paradoxically, the caucus leaders state they have a "grave concern" about Council candidates voting rights were violated because they received confirmation letters from NEA listing chapters they would represent prior to the Supreme Court decision to proceed with an election of 24 delegates.

Nowhere, however, was mention made of the Navajo People's voting rights in light of the Council's challenge to overturn the result of the Dec. 15 special election or in the delegates' current proposal to indefinitely suspend this year's elections.

Certainly, it was NEA's and NBOES' responsibility to quickly develop and adopt a reapportionment plan, which was mandated by Dec. 15 election but which they failed to do.

Instead, Mr. Wauneka stated that because it would take too long to develop a plan he sought to preempt the election of 24 delegates until 2014.

Four months ago, on Feb. 4, President Shirley wrote to Mr. Wauneka to ask that he notify candidates about the likely change of voting precincts.

"I write to respectfully request that you provide sufficient notice to all individuals seeking candidacy for a Council delegate position that the filing for an 88-member Council is subject to change," the President said. "As a matter of fairness and in furtherance of your duties as the Director of the Navajo Election Administration, I highly recommend that your office provide this important notice."

That notification did not begin until after NBOES adopted the J4 Reapportionment Plan on June 11.

Nonetheless, given the immense news coverage of the issue, it is inconceivable that any candidate with the perspicacity to seek election to a Council of 24 delegates would not know that the chapters he or she will represent would likely change.

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