



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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CONTACT: GEORGE HARDEEN
COMMUNICATIONS DIRECTOR
OFFICE – 928-871-7917
CELL – 928-309-8532
pressoffice@opvp.org

Proposed legislation would undermine Navajo judiciary, politicize Navajo judgeship, retaliate against sitting judges

WINDOW ROCK, Ariz. – A May 7 news release from the Speaker's Office distorts and conceals reasons why the Navajo Nation Council is considering legislation to require the election of Navajo Nation judges beginning this year.

Stating that he wants to bring greater transparency to Navajo government through the election of judges, Council Delegate Thomas Walker, Jr.'s, proposal to elect judges would politicize the Navajo judiciary, undermine its independence, and retaliate against sitting judges for decisions the Council does not agree with.

Conceivably under Mr. Walker's proposal, Council delegates who lose their seats because of Council reduction could seek election as a Navajo Nation judge or Supreme Court justice, placing them in a position to overturn rulings they don't like or render decisions based on political, rather than legal, reasons.

On Friday, Mr. Walker reported to the Judiciary Committee that, in his view, the election of judges is necessary because, "judges in our courts are supposed to be very independent as ever, but it appears otherwise if you look at decisions in election-related cases and legislative enactment cases that the decisions serve the best interests of the Executive Branch."

Because of the Council's dissatisfaction with court decisions that allowed the Dec. 15, 2009, initiative election to take place, and which ruled that the Council exceeded its authority when it purportedly placed the President on leave, it is now turning to the election of judges as a way to replace those on the bench under the guise of "comprehensive government reform."

Mr. Walker's proposal to require the election of judges considers only two recent cases that involve the Council and Council reduction, and disregards that Navajo courts and judges deal primarily with civil, criminal and family cases that have nothing to do with politics.

Council Delegate Thomas Walker, Jr.'s, proposal to elect judges would politicize the Navajo judiciary, undermine its independence, and retaliate against sitting judges for decisions the Council does not agree with.

In his desire to re-design the Navajo Judicial Branch from within the Legislative Branch, Mr. Walker's concern focuses on two political cases that question the Navajo Nation Council's unrestricted authority.

One is the Dec. 14, 2009, District Court ruling that the Council exceeded its authority when it placed the President on leave. The other is the Dec. 15, 2009, special election case in which the Council challenges the validity of the election.

Decisions in both cases are pending in the Navajo Nation Supreme Court.

Mr. Walker's and the Council's concern may also focus on a June 24, 2009, Office of Hearings and Appeals decision, based on *Diné* Fundamental Law, that ordered the initiative election to take place.

That order was later affirmed by the Supreme Court which resulted in delegates repeatedly calling the high court biased on the floor of the Council Chamber.

Despite their daily interaction with Navajo citizens, Mr. Walker states without basis that “it is apparent that Navajo Nation judges have no direct relationships or *k'é* at the chapter level with the public.”

While Mr. Walker and other Council delegates have repeatedly said that they support government reform, greater transparency and a balance of power among the three branches of Navajo government, since October 2009 – with Mr. Walker’s support – the Council has approved legislation to:

- Place President Shirley on administrative leave without charge and without due process.
- Elevate the powers of the Chief Legislative Counsel to that of the Navajo Nation Attorney General.
- Give the Chief Legislative Counsel power to hire a special prosecutor to conduct investigations and prosecute Executive Branch officials but *not* Council delegates, and,
- Prohibit Navajo courts from considering and interpreting *Diné* Fundamental Law in their decisions as they have for the past 50 years.

These unilateral actions, without consultation with the Navajo People, served to concentrate governmental power in the hands of the Legislative Branch and severely encroach on the separation of powers between the Council and the Executive and Judicial branches.

In addition to jeopardizing sitting judges and justices with proposed legislation, the Council has already twice formally threatened the Navajo Nation Supreme Court in oral and written arguments.

First, in its July 2009 oral presentation over the sufficiency of two government reform initiative petitions, the Office of Legislative Counsel attempted to apply political pressure by reminding the Court – without any relevance to the case – that its two probationary justices still needed to be confirmed by the Council as permanent justices.

“This type of unprofessional conduct will not be tolerated,” the Court stated in its written decision to affirm that the special election take place. “This Court will continue to protect the guarantee of an independent judiciary... Rather than submit to political pressure from the NEA and its

counsel, we deny NEA’s motion.”

The Court noted that the lawyer for the Navajo Election Administration is also the lawyer for the Navajo Nation Council, and that although the NEA is supposed to be an independent body, it is responsible only to the Council.

“To allow elected officials to supervise the regulatory entity that administers elections and certifies petitions raises the likelihood of (a lack of) impartiality, abuses of power and corruption,” the Court said.

Secondly, in its March 2010 supplemental brief response to appeal the Window Rock District Court’s decision to void the Council’s resolution that illegally placed the President on administrative leave, the Council’s attorney said that a Supreme Court decision that *did not* overturn the District Court’s ruling “would lack the necessary authenticity to command the assent of the government and the people.”

Page 20, www.navajocourts.org/NNCourtOpinions2010/SC-CV-02-2010%20%20%20LTMORGAN%20v.%20JSHIRLEY,%20JR.%20%20%20%20%202002_23_10.pdf

In other words, the Navajo Nation Council would not respect the Navajo Nation Supreme Court’s decision if it did not agree with it.

Ironically, in the May 7 news release, Mr. Walker is noted as saying one of the reasons Navajo people are distrustful of their government is because of the efforts to reduce the Navajo Nation Council.

However, aside from attempts to influence the courts through political pressure, the results of the special election unmistakably demonstrate that the reasons voters distrust their government is because of the inefficient, self-serving and non-accountable actions of the Council, and its flagrant, wasteful and unnecessary spending that has worsened the \$22 million tribal budget deficit – the first in Navajo history.

Mr. Walker correctly states that reform efforts need to include all three branches for true checks and balances in the Navajo government, despite Navajo Nation Council Speaker Lawrence T. Morgan’s statement on May 8, 2008, that “a balance of power does exist – that’s reality.”

www.navajo.org/News%20Releases/Joshua%20Lavar%20Butler/Aug08/Speaker%20Morgan%20clarifies%20statement%20and%20position%20on%20comprehensive%20reform.pdf

In August 2008, following six weeks of negotiations, President Shirley and Speaker Morgan signed a memorandum of agreement that would have halted the

initiative election process, reduced the Council to 44 delegates rather than 24, and appropriated \$2 million for a comprehensive government reform convention.

"It is a fact that Speaker Morgan and Navajo Nation President Joe Shirley, Jr., have agreed to work together on government reform for the Navajo Nation and in an effort to resolve differences using the Navajo concept of *K'e*," stated the Speaker's communications director, Joshua Lavar Butler, in an Aug. 13, 2008, news release.

"Speaker Morgan and President Shirley announced a comprehensive government reform plan that will be designed to overhaul the entire Navajo Nation government – which includes the Executive Branch, the Legislative Branch and the Judicial Branch. This plan does not include just the reduction of Council delegates on the Council."

As is well-known, Speaker Morgan reneged on the agreement, which was acknowledged by his attorney to be a tactic to delay the gathering of petition signatures within the required timeframe. The tactic failed, and the public responded by signing the petitions within the deadline.

President Shirley has since renewed his call for a Navajo Nation-wide comprehensive government reform convention but has garnered no support from Council delegates other than Leonard Tsosie of Pueblo Pintado, Torreon, Whitehorse Lake.

Mr. Walker also said electing judges would result in "tremendous cost savings" by decreasing their salaries, benefits and pension plans, and by not having lengthy meetings to confirm them.

Instead, Navajo judges would be subject to "a fair salary." He said this would result in attracting "highly-qualified candidates," without stating what qualifications would be required.

Despite the painstaking process, Navajo judges are now appointed and confirmed rather than elected specifically to ensure that the best-educated and qualified people serve on the Navajo bench.

Under Navajo law, a judge does not need to be law school trained or even a member of the Navajo Nation Bar Association. Consequently, Council delegates who lose their seats because of Council reduction could seek election as a Navajo Nation judge or Supreme Court justice based on popularity rather than any judicial experience.

Mr. Walker said the Navajo people would become "the selectors and evaluators which would elevate highly-qualified candidates to administer fair justice."

Ironically, Council delegates, as well as their attorney before the Supreme Court, repeatedly accused Navajo voters of not knowing what they were voting for in the Dec. 15, 2009, initiative election despite the election occurring after the longest campaign in Navajo history.

The May 7 Speaker's Office news release inaccurately states that there are no plans for implementation of the two initiatives. However, petitions signed by 16,000 voters specifically stated that upon approval of the voters, the Legislative Branch would begin to reorganize for a Council of 24 delegates, and that the Navajo Election Administration would create redistricting plans to elect a Council of 24 delegates. Line item veto authority would be authorized immediately.

Because of the Council's and NEA's inaction and legal delays, the Executive Branch conducted redistricting meetings across the Navajo Nation, and drafted nearly a dozen plans for voters' consideration.

President Shirley is now ready to make a final recommendation of a redistricting plan that includes input from citizens from across Navajoland, although he has been faulted by delegates for preparing one.

By contrast, through the Legislative Branch:

- The Speaker's Office gave a private citizen a \$150,000 grant to hire an attorney to try to overturn the results of the initiative election.
- The director of the Navajo Election Administration, which is overseen by the Speaker's Office, surprised the Navajo Board of Election Supervisors and voters by stating no work would begin on redistricting until the Navajo Nation received the results of the 2010 federal census; and
- The Council's lawsuit to overturn the election sought to apply the voting standard for referendum elections rather than the initiative process, even though it was its Chief Legislative Counsel, Frank Seanez, who stipulated before the Office of Hearings and Appeals that enough signatures had been gathered to schedule an initiative election.

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