



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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OPVP Chief of Staff Patrick Sandoval says Legislative Counsel trying to change initiative to have voters affirm Council as ‘governing body’

WINDOW ROCK, Ariz. – The chief of staff in the Office of the President and Vice President says that the Navajo Nation Council’s lawyer is trying to change the Dec. 15 special election ballot language so that if Navajos vote to reduce the council they would inadvertently affirm it as “the governing body of the Navajo Nation.”

“Knowing they probably can’t stop the election, this is the Speaker’s office trying to get the Navajo people to vote on something they don’t want and never intended,” said Patrick Sandoval, chief of staff in the Office of the President and Vice President, said Tuesday. “This is the latest version of yes means no and no means yes.”

Last Thursday, Navajo Election Administration Director Edison Wauneka read the proposed language, prepared by the Office of Legislative Counsel, into the record of the Navajo Board of Election Supervisors.

If the language is approved by the board, election ballots would state: “Do you approve the amendment of 2 N.N.C. §102 (A) to state that the Navajo Nation Council shall be the governing body of the Navajo Nation and shall consist of 24 delegates?”

That is not the language on initiative petitions signed by more than 16,800 Navajos, is not what voters want, and is not the language recommended by the Navajo Nation Department of Justice, Mr. Sandoval said.

Mr. Sandoval said the language is designed to have voters acquiesce to a power the council took for itself in 1989 or reject the initiative outright – not because they don’t support council reduction but because they never approved the concept of the council as the governing body of the Nation.

He said the Navajo people have repeatedly stated that the authority to govern is reserved to the people by the people themselves.

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– OPVP Chief of Staff Patrick Sandoval

Election Supervisor LeNora Johnson said the Navajo people were supposed to be given the opportunity to vote on Title 2 of the Navajo Nation Code – which states that the council is the governing body of the Nation – after it was approved by the council in 1989. But that never happened, she said.

Navajo Nation Department of Justice attorney Regina Holyan told the election board on Oct. 8 that DOJ recommends it adopt ballot language that reflects what the initiative says in accordance with Navajo law.

She said the version recommended by the Office of Legislative Counsel is both incomplete and changes what petition signers approved.

“The initiative measure recommended by Legislative Counsel introduces language that is not in the text,” she

said. "By statute, the board shouldn't be adding language to the text of the initiative."

Michelle Dotson, legal counsel in the Office of the President and Vice President, told the election board that the Initiative Petition Committee agrees with DOJ's recommendation. She said the question of whether the council is the governing body of the Navajo Nation should be separated out, as that is not what was on the petitions voters signed.

The Legislative Counsel's version also contains a section of language that states that the election would require a majority vote of all registered voters in all precincts.

"The Navajo people are not voting on that question," Ms. Dotson told the board.

She said a Navajo Nation Department of Justice legal opinion states that the vote requirement for an initiative is a simple majority of the votes cast.

That April 29, 2008, opinion is based on the Fundamental Law of the Diné, Navajo Nation Supreme Court rulings, and the intent and actions taken by the Navajo Nation Council in 1989 to forever prevent the concentration of power in the hands of one individual or one branch of Navajo government.

"The Navajo government and Navajo leaders are accountable to the people first and foremost, not the other way around, and this legal opinion reflects that understanding," Navajo Nation President Joe Shirley, Jr., said at the time. "It is an inherent right of the people to petition their government to let it know that they want change. The government cannot refuse to hear the plea of the people. That is tyranny, and tyrannies do not last." He said the opinion strongly acknowledges the principle of the people giving their consent to be governed while never relinquishing their right to change their government.

Mr. Sandoval said the legal opinion resulted in an attempt by the Navajo Nation Council to fire Attorney General Louis Denetsosie. Among the attachments to the legislation was a memorandum by Legislative Counsel Frank Seanez to Navajo Nation Council Speaker Lawrence T. Morgan that contained legal advice that conflicted with the DOJ legal opinion.

Mr. Seanez's memorandum concluded that the Navajo people do not have the right to redress their government based on the one-man-one-vote principle and inappropriately stated that the Attorney General's legal opinion was biased but did not provide a basis for why.

The memorandum also outlined a basis for which Navajo Nation Supreme Court Justice Herb Yazzie could be disqualified should a lawsuit over the government reform initiatives move to the courts. Such a sequence of events would cause turmoil in the Navajo justice system and give full control of all three branches of Navajo government to the Council in violation of the principles of Fundamental Law.

A July 30, 2009, Navajo Nation Supreme Court opinion found that the Navajo Election Administration's lawyer displayed unprofessional conduct during a hearing on the initiatives when he attempted to apply political pressure on the court to find in favor of the NEA at the risk of not confirming two probationary justices as permanent justices.

"This Court will continue to protect the guarantee of an independent judiciary," the court said. "Rather than submit to political pressure from the NEA and its counsel, we deny NEA's motion. This type of unprofessional conduct will not be tolerated."

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