



# THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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## Navajo President Joe Shirley, Jr., disappointed with council action to place him on leave, attributes it to his government reform effort

**WINDOW ROCK, Ariz.** – Navajo Nation President Joe Shirley, Jr., said Monday that he is disappointed in the Navajo Nation Council's action to place him on administrative leave and that he is still waiting to be informed of the specific allegations against him.

"They're really hurting the Navajo Nation," President Shirley said following the council's vote. "In this case, 36,000 voters put me in office and 48 council delegates decided to put me on leave without telling me or the people the specific reasons why."

"I wasn't informed what the allegations are, I don't know what the allegations are, and I still don't know what it's all about," President Shirley said. "No one has bothered to share that with me."

On Monday, the council voted 48-to-22, with 18 not voting, to place the President on administrative leave with pay and to refer reports on OnSat Communications and Biochemical Decontamination Systems Manufacturing Co. to Navajo Nation Attorney General Louis Denetsosie. The attorney general is expected to determine within 60 days whether hiring a special prosecutor is necessary.

President Shirley noted that neither OnSat CEO Dave Stephens nor former Navajo Nation Telecommunications Regulatory Office Director Ernest Franklin, who are also accused of wrongdoing, have been charged, prosecuted or convicted of any improprieties.

The resolution to place the President on leave passed after an amendment to remove Navajo Nation Vice President Ben Shelly's name from it was approved.

The Vice President said the council's action will go through its normal course of certification to enable an investigation to proceed. He will remain Vice President while temporarily assuming the duties and functions of President Shirley in his absence during his administrative leave.

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– Navajo Nation President Joe Shirley, Jr.

"The people elected President Shirley and I," Vice President Shelly said. "It is our responsibility and our duty, now incumbent upon me, to ensure government, services to the Nation continue. The executive branch of the Navajo government resumes with no disruption."

Despite the council's denial, President Shirley said it appears irrefutable that the action is in retaliation for his efforts to seek an initiative election to reduce the council from 88 to 24 delegates, and to allow the president line item veto authority.

"In this case, we've been trying to give the Navajo people the opportunity to be more involved in their government through the government reform initiatives, and the council does this without telling the people or me why," he said.

“All that’s out there is hearsay. Something is wrong with this process, and I don’t think it’s right.”

He said more than 33,000 people signed petitions to give Navajo voters a chance to decide on the initiatives but that the effort has run into continual resistance and stalling from the council since May 2008.

A review of the chronology of events since President Shirley announced the Presidential Initiative on Government Reform shows that both the council and the Speaker’s office have opposed the initiatives with statements and legal action since they were first announced.

“Just because the President makes a huge intimidating move, it doesn’t necessarily mean the legislators will accept,” the May 1, 2008, Gallup Independent reported Speaker Morgan as saying on. “That’s democracy.”

“If this is what it takes to get there, to give the people the chance to decide what their government looks like, then this is what it takes,” President Shirley said. “I certainly believe I’ll be exonerated. We’ve got nothing to hide. I’m just very sorry this has happened. I’m still the president. The vice president will do the best of his ability in the meantime.”

On April 29, 2008, the President presented two initiatives to the Navajo Election Administration; one seeking to reduce the council from 88 to 24 delegates, and the second to establish presidential line item veto authority.

The President has said the initiatives are necessary to bring greater accountability, efficiency and effectiveness to the council because it repeatedly waives the Navajo Nation Appropriations Act, repeatedly drains the Undesignated Unreserved Fund over the objections of the Navajo Office of Management and Budget, and recklessly allocates money for questionable discretionary funding.

Two efficiency reports commissioned by the council corroborate the President’s assertions.

A 2001 report, titled *Lawmaking and Oversight Efficiency Study; Increasing the Efficiency of the Navajo Nation Council and Standing Committees*, measured the

council’s effectiveness against other state, county and city governments. It found examples of inefficiency, high costs, and a lack of delegate preparation, but expressed doubt that delegates would make the necessary changes to bring greater efficiency to their lawmaking process, or that they would implement its recommendations.

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– The Navajo Nation Supreme Court

Among the areas identified as needing improvement were delegate professionalism, meeting attendance and tardiness, committee assignments based on expertise, and the publication of voting and attendance records.

“The likelihood that the current delegates would vote for such changes, however, is doubtful,” concluded ETD Environmental Consulting of Flagstaff, Ariz., the report’s author. “The unwillingness of delegates to change their attitude towards their responsibilities may be the number one barrier to more effective and efficient lawmaking on the Nation.”

A second 2005 study, titled, *Final Report to the Navajo Nation Council Subcommittee on Legislative Branch Effectiveness*, recommended that the council re-evaluate how it oversees the Executive Branch.

“Delegation of decision-making authority to the Executive Branch and its respective agencies would allow the council and its legislative committees to focus more exclusively on policy development and would preserve the balance of power that a three-branch government provides,” wrote the authors, the National Conference of State Legislatures and its subcontractors JVA Consulting and Mark Fleming. “Many of the administrative actions considered by the Navajo Nation Council are functions more appropriately handled by the administrative

agencies within the executive branch and should be delegated accordingly.”

The 2005 report said the council should refrain from micro-managing.

On May 12, 2008, Chief Legislative Counsel Frank Seanez wrote an opposing legal opinion to an opinion issued by Attorney General Louis Denetsosie. Mr. Denetsosie had said a simple majority applied to the initiative election rather than a super-majority which applied to a referendum election.

In his opposing opinion, Mr. Seanez accused the attorney general of being biased.

On May 19, 2008, the Speaker filed objections to the sufficiency of the initiative petitions with the Office of Hearings and Appeals. His objections were denied.

In June 2008, the Speaker asked the President to “talk things out” in the spirit of *k’e*, compromise and harmony to seek government reform through legislation, and halt the Presidential initiatives. The President agreed, including dropping line item veto authority, and an agreement was signed on August 13, 2008.

However, the Speaker failed to carry through with his end of the agreement to see that legislation was introduced to reduce the council to 44 delegates. When the press inquired why, he office said only that it was because of a “technicality.”

In November 2008, after the Petition Initiative Committee submitted its completed petitions, the Navajo Election Administration – which is under the Speaker’s office – found them to have insufficient signatures but refused to allow the Petition Committee the opportunity to review them.

The Petition Committee sought a hearing from the Office of Hearing and Appeals. However, after a six-month delay in appointing a hearing officer, the committee sought relief from the Navajo Nation Supreme Court. The high court appointed District Court Judge Carol Perry as hearing officer.

On June 25, 2009, Judge Perry ordered an initiative election to occur within six months after Chief Legislative

Counsel Frank Seanez stipulated, based upon the election administration’s recalculation, that the Petition Committee had collected enough valid signatures.

The Office of Legislative Counsel appealed Judge Perry’s order, which was denied when the Navajo Nation Supreme Court affirmed the order to hold the election within six months.

However, in its decision the high court also chastised the Navajo Election Administration’s lawyer – Ron Haven of the Office of the Legislative Counsel – for unprofessional conduct in what it called an attempt to apply political pressure to find in favor of his client, the election administration, at the risk of the council not confirming two probationary justices as permanent justices.

The court noted the paradox that the lawyer for the election administration is also the lawyer for the council, which would be directly affected in structure and authority should the initiatives pass. It said that although the NEA is an independent entity, it answers only to the council and the Speaker’s office.

“To allow elected officials to supervise the regulatory entity that administers elections and certifies petitions raises the likelihood of impartiality, abuses of power and corruption,” the court said. “It is critical that the NEA be a neutral body independent of the politics of the elected branches of government to ensure public faith in the petition verification process.”

At the same time, the court also found that the Initiative Petition Committee had operated in good faith and that it followed the rules as best it could, given the lack of clear directives.

On Sept. 10, 2009, President Shirley made a personal appeal to the Navajo Board of Election Supervisors to set an election date. On Sept. 18, the board set the election for Dec. 15.

On Oct. 20, the council voted against placing legislation on its fall agenda to pay for the special election. To date, the council has not considered the issue and has not appropriated funding for the election to occur.

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