



The 21st Navajo Nation Council

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Special Amendments Act of 2010 provides transparency, accommodates changes in circumstances

"The delegation of authority to the Chief Legislative Counsel will prevent the Attorney General from being able to improperly protect Executive Branch officials and employees from investigation and prosecution."

– Orlanda Smith-Hodge, Navajo Nation Council delegate

WINDOW ROCK, Ariz. – Navajo Council Delegate Orlanda Smith-Hodge was not surprised Navajo Nation President Joe Shirley Jr. vetoed the Special Prosecutor Amendments Act of 2010 on May 14.

The legislation, which Hodge sponsored, provides the Chief Legislative Counsel the authority to make preliminary investigations and to apply for the appointment of a special prosecutor in the same manner as the Navajo Attorney General, and it also provides that the appointment of judges to the Special Division of the Window Rock District Court be confirmed by the Navajo Nation Council.

She said the legislation was needed because when information on the alleged improprieties of the Navajo Nation's dealings with OnSat and BCDS, the Bio Chemical Decontamination Systems – two failed business deals managed by the Office of the President – were received by the Attorney General, he failed or refused to take immediate action.

"It has been the experience of the Navajo Nation that the Attorney General has been reluctant to make preliminary investigations and to apply for the appointment of a special prosecutor when the identified officials and employees are the President of the Navajo Nation, or other officials, or employees of the Executive Branch of the Navajo Nation," Smith-Hodge said. "This was the case even though the Office of the Prosecutor had requested an investigation, and the Auditor General had completed an audit of OnSat and BCDS matters, which revealed alleged improprieties on the part of the Executive Branch officials and employees."

"The Attorney General had also received an investigative report from the law firm with which they contracted -- Shubert, Garvey and Barer," Smith-Hodge added. "This revealed serious allegations of improprieties in the Navajo Nation Executive Branch's handling of the federal E-Rate applications and funding, connected with OnSat."

The Attorney General's inaction required the Council to appropriate \$500,000 in additional funding for investigations by outside law firms. With the recommendation from the Office of the Speaker, the Attorney General contracted with Wiggins, Williams and Wiggins law firm for further investigation of the BCDS matter and Sacks Tierney for further investigation of OnSat.

"Even though the Attorney General received the detailed written reports from these law firms, the Attorney General did not immediately proceed to review those reports and apply for appointment of a special prosecutor," Smith-Hodge said. "The Navajo Nation Council was instead required on October 26, 2009, to pass its Resolution CO-41-09 to refer the reports to the Attorney General, and to place President Shirley on administrative leave to protect the Office of the President and Vice-President's witnesses and records from tampering."

During this time, the Attorney General still did not apply for a special prosecutor until Dec. 7, 2009, when the Office of the President and Vice President (OPVP) and President Shirley filed a complaint in Window Rock District Court to challenge the passage of Resolution CO-41-09. As well, the Attorney General refused to provide legal representation to the Navajo Nation Council and the Speaker in the suit.

After Judge Geraldine Benally issued a final order on Dec. 16, 2009, invalidating Resolution CO-41-09, the Attorney General finally reported to the Navajo Nation Council that he would apply for appointment of a special prosecutor for the OnSat and BCDS matters.

"It has been the experience of the Navajo Nation that the Attorney General has eagerly, and without apparent preliminary investigation applied for the appointment of a special prosecutor when the identified officials and employees are the delegates of the Navajo Nation Council," Smith-Hodge said. "The delays in the consideration of evidence by the Attorney General for the appointment of a special prosecutor, and in the submission of an application to the Special Division have naturally resulted in a situation where in the second term of the Navajo Nation President will likely expire prior to any prosecution of the BCDS and OnSat matters before the Ethics and Rules Committee of the 21st Navajo Nation Council, or possibly the Courts of the Navajo Nation."

Smith-Hodge said the needs have been identified to allow the Chief Legislative Counsel to exercise similar authorities to those exercised by the Attorney General with regards to investigations and the application of special prosecutors.

"The delegation of authority to the Chief Legislative Counsel will prevent the Attorney General from being able to improperly protect Executive Branch officials and employees from investigation and prosecution, while providing both the Attorney General and the Chief Legislative Counsel the authority to address allegations of impropriety by Legislative Branch officials and employees," Smith-Hodge said. "The amendment of the law, relative to the appointment of judges and justices of the Special Division of the Window District Court, will provide for confirmation of the appointments by the Navajo Nation Council, which will provide an effective checks and balance on the authority of the Chief Justice of the Navajo Nation Supreme Court to make such appointments."

"Currently, the Attorney General has the authority to apply for a special prosecutor on his own, without a referral from any source," Smith-Hodge explained. "These amendments would address the situation, wherein, the Attorney General relies on newspaper articles or other unreliable sources of information, instead of audit reports or investigative reports, as the basis for filing an application for appointment of a special prosecutor."

A May 16 press release from the Office of the President seeks to highlight the separation of powers doctrine several times by saying "it prevents the concentration of power in one branch, which historically has roots to tyranny."

Although light in words, the Office of the President assumes the Council is a tyrant entity among the three branches for simply elevating its Chief Legislative Counsel to that of the Navajo Attorney General.

Ironically, the meaning of tyranny refers to one who has taken power for his or her own interest. In this case of defining who is a tyrant, the Office of the President has his own interest at stake by running for an unprecedented third term, which is clear evidence of self-serving interests; thus, fits the criterion of a tyrant.

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