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NAVAJO NATION SUPREME COURT INVALIDATES APPROPRIATION, PLACES MORATORIUM ON DISCRETIONARY SPENDING

WINDOW ROCK – The Navajo Nation Supreme Court has invalidated the Council's appropriation of \$150,000 in public funds that had been designated to challenge the Dec. 15, 2009, initiative election to reduce the Council. Funds in the amount of \$50,000 had already been used to pay John Trebon, the lawyer for Timothy Nelson, under a grant agreement, which the Court also invalidated. The Court stated that Mr. Trebon need not return the money, but that no further award for attorneys' fees may be made out of the invalidated appropriation.

The Court further placed a moratorium on Navajo Nation discretionary spending through direct disbursement financial assistance programs as currently operated by all Navajo Nation government officials until a statutory and regulatory basis is in place.

The Court found numerous irregularities in the appropriation, the ensuing grant agreement, and the contract review process used by the Navajo Nation to make sure all government contracts are in compliance with the law.

The Dec. 23, 2009 appropriation had been made as a program reallocation in the Office of the Speaker after the program budget had already been appropriated in the stringent budget process. The reallocation legislation consisted of nothing other than the purpose of the reallocation and a direction to the fiscal office to make the payment. Frank Seanez, representing the Council as Chief Legislative Counsel, argued that pursuant to 2 NNC §185(A), all that was needed for the reallocation was a 2/3 majority vote of the Intergovernmental Relations Committee. The Court saw it differently and stated that all Navajo Nation fiscal laws fully applied. The appropriation should have been accompanied by proper justifications and program impact analyses as required by the Appropriations Act regulations and by 2 NNC § 185(A) itself.

The Court also stated that the performance-based direct payment agreement between Mr. Trebon and the Council was an attorney-client contract and not a grant agreement as the Council had asserted. Navajo Nation grants and contracts are governed by different government statutes and

Appropriations Act regulations. Provisions governing contracts are more stringent. Even so, the Court found that the grant agreement did not even comply with the grant regulatory conditions.

Additionally, the Court found the grant and contract review process “failed the Navajo People.” The direct payment agreement was not meaningfully reviewed by the bodies tasked with the review, and payment was issued to Mr. Trebon without the required Controller’s signature and had also been issued over concerns of staff at the Controller’s office.

Finally, Mr. Seanez had described the payment as “financial assistance.” The Court stated that the present “financial assistance” programs in the Council and Office of the Speaker lack any statutory authority and clearly ignore specific codified laws that require accountability, transparency, and public purposes.

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