



NAVAJO NATION PRESIDENT JOE SHIRLEY JR.

STATEMENT ON JUDGE ALLEN SLOAN'S RULING ON THE JUDICIAL ELECTION REFERENDUM ACT

OCT. 29, 2010

On Oct. 28, Tuba City District Court Judge Allen Sloan ruled that the Navajo Board of Election Supervisors is permanently enjoined from including the Judicial Election Referendum Act on the Nov. 2, 2010, General Election Ballot.

This means that Navajo voters should not vote on this measure because the votes will not be counted. The Judge ruled that the referendum measure was improperly placed on the election ballot by the Navajo Board of Election Supervisors because it was not sent to the President by the Navajo Nation Council for review as required by law. Regardless of whether voters vote yes, no, or don't vote at all on the measure, no votes will be counted because the measure has been ruled invalid.

I've issued this message on the radio so that you can let everyone know this, and the greatest number of people hear of the Court's ruling. I understand that approximately 5,000 people have already voted early. Many others are waiting for Nov. 2 to vote. The Court has ordered that NBOES take steps to inform the public that the referendum measure is invalid, and that votes cast for it will not be counted.

Several days before the Oct. 28 Court hearing, the Office of the President filed with the court to seek this permanent injunction to prevent the legislation to elect judges from being put on the ballot for the reason the Court cited. The Court's ruling was based on its finding that the Navajo Nation Council failed to present its resolution, CJY-32-10, to the President for the exercise of Presidential review as is required by Title 2, Section 165 (B). Judge Sloan said that when the Council did not transmit the resolution to the President's office, it was without force and effect and never became a valid Council enactment under the law. Therefore, the Navajo Board of Election Supervisors should not have included it on the General Election Ballot.

There are 26 Titles contained within the body of Navajo Nation law. Title 2 describes how the Navajo Nation Council will legislate for the People. When the Council legislates, it is supposed to transmit each law to the President for his consideration because he is the leader of the all of the People. There is no doubt this is the law. When the Navajo Nation Council creates law, it must go to the President for his review, signature or veto, with a few listed exceptions. That is the process. If the President chooses to allow the legislation sit for 10 days without his signature or veto, it will automatically become law. That is our law.

The reason why I, as President, filed this case is because the Council did not follow this specific process. The referendum measure is legislation that should not have been placed on the ballot without Presidential review first. On Sept. 8, Navajo Nation Attorney General issued a legal opinion that also found the legislation invalid because the Legislative Branch failed to send it to the President for signing or veto. The NBOES had that legal opinion but chose to disregard it when it placed the measure on the election ballot.

The Council argued in Court that the legislation did not have to go before the President. After listening to the case on Thursday, after all the presentations were completed, Judge Sloan rejected the Council's argument. He ruled that the Council did not follow the process when it decided to put this issue on the ballot. When the Council created this law, it should have gone to the President, he said. In this case, I did not receive it. The Council bypassed the President's office. This is not right. I have always advised that the Navajo Nation not bypass, suspend or waive our existing laws. It would appear that is what occurred again.

Voters should cast their votes for President and Vice President, Council delegate and Board of Election Supervisors candidates. But they should understand that no votes on the referendum question will now be counted, whether they vote yes, no or leave it blank. That will not spoil or invalidate your ballot. That is the instruction that came from Kimmeth Yazzie of the Navajo Election Administration. Election officials at the polls will explain this at the time you vote, wherever you vote. You will be told at the election site of the Judge's decision.

We, as elected officials and leaders, are supposed to uphold the law. That is what the People expect us to do when they elected us. We cannot do things contrary to the law. We have laws that are in place and they are there to be upheld and respected. We cannot continue to waive the laws. When we uphold the law as leaders, it is good because people are always looking at us and that is why I always caution not to do otherwise. That is why we filed the complaint with the court.

Council Speaker Lawrence Morgan said in news releases that Joe Shirley wants to stop the People from voting, that people should not vote on these issues. His office told the People, "The Navajo people's voting rights continue to be threatened by President Joe Shirley, Jr.," and "he is now attempting to deny their right to vote on whether judges and justices should be elected, and is ultimately undermining the Navajo people." My response is, "When did I say that?" This is not right.

For 19 months, we struggled to allow the People to vote on the initiative to reduce the Council and give the President line item veto authority. This was to bring accountability back to our government. All along the way, the Speaker's office tried to prevent that election from happening. First, his office went to court to challenge the number of petition signatures, then the Council refused to fund the special election, and then the Speaker's office used the People's money to try to overturn the results of the election. I have always supported the right of the People to vote but we must follow the law as we did with the initiative election. In this case, the Council tried to bypass the law. That is not right. And so what I did was caution the Council to follow the law. These are sacred trusts the People placed upon us as leaders.

DR. JOE SHIRLEY, JR., PRESIDENT
THE NAVAJO NATION