



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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Navajo President Joe Shirley, Jr., will seek restraining order to stop election of judges from appearing on November ballot

WINDOW ROCK, Ariz. – Navajo Nation President Joe Shirley, Jr., will seek a temporary restraining order to keep the election of judges referendum question from appearing on the November 2 general election ballot.

On Friday, attorney Paul Charlton, whose law firm Gallagher & Kennedy is representing the President, notified the Navajo Board of Election Supervisors and the Navajo Election Administration of the President's intent to file for declaratory and injunctive relief.

Mr. Charlton said there is a significant question about the propriety of including this measure on the election ballot. He said the President was seeking the TRO to save the Navajo People from the unnecessary expense of printing multiple ballots.

On July 21, the Navajo Nation Council passed legislation to refer a referendum that calls for the election of District Court judges and Navajo Nation Supreme Court Justices, as well as the restructuring of the Judicial Branch.

The legislation was certified by Navajo Nation Council Speaker Lawrence T. Morgan, sent to NBOES but was never sent to President Shirley for consideration or veto.

On Sept. 8, Nation Attorney General Louis Denetsosie issued a legal opinion found that the legislation was invalid because the Legislative Branch failed to send it to the President.

"The Legislative Branch's failure to send the legislation to the President's office for review or consideration within 10 days of certification violated sections 165(B) and 1005(C)(10) and (11) of Title 2, and is consequently invalid," Mr. Denetsosie said.

The only type of Council resolution that does not have to go the President for consideration and review, he said, is a resolution approving internal procedures and policies

of, or endorsements from, the Navajo Nation Council.

On July 15, Navajo Nation Bar Association President Levon B. Henry wrote to Speaker Morgan to urge the Council to defer action on the election of judges legislation until the bar association could educate Council delegates on its impacts.

"There are excellent qualities to be said about the current system which creates permanency for judges and keep them from outside influence, a vetting process that works to bring qualified persons to the bench, and an evaluation system that involves all branches of government and the NNBA," Mr Henry wrote.

However, six days later, the Council adopted the 35-page legislation without benefit of the bar association's offered assistance.

On Sept. 15, NBOES approved ballot language that calls for a straight yes-or-no vote on the election of judges that does not take into consideration the many other aspects of restructuring the entire Judicial Branch.

The board adopted language was offered by Chief Legislative Counsel Frank Seanez as it appeared in the legislation while disregarding Mr. Denetsosie's legal opinion.

Previously, on Aug. 16, NBOES tabled the referendum question because funding for public education had not been identified. None had been identified by the time the board reconsidered and approved Mr. Seanez's ballot language.

On Sept. 20, the Budget and Finance Committee voted down a supplemental appropriation to provide public education on the election of judges referendum. The reason was attributed to the Nation's current \$24 million budget shortfall.

Next week, the Council is poised to consider other legislation to increase the size of the Council, repeal *Diné* Fundamental Law, and further calls for the elections of the attorney general, education superintendent and the controller.

None of these proposals, like the election of judges proposal, have been subject to public hearings, news reports or NBOES-sponsored public education to enable voters to make an informed decision on election day.

In addition to bypassing the President on this controversial legislation, it is widely believed that the election of judges would politicize the Navajo judiciary, undermine its independence, and that the legislation was retaliation against sitting judges and justices for decisions the Council did not agree with.

The argument in support of the legislation to elect judges considered only two recent cases that involved the Council and Council reduction, and disregarded that Navajo courts and judges deal primarily with thousands of civil, criminal and family cases that have nothing to do with politics.

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