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The 21st Navajo Nation Council

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Judicial Elections Referendum Act of 2010 invalidated by Judge Allen Sloan of the Tuba City District Court

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TUBA CITY, Ariz. – The Judicial Elections Referendum Act of 2010, a Navajo Nation Council referendum to elect Navajo Nation Justices and Judges, will appear on the 2010 Navajo Nation General Election ballot; however, votes on the measure will not be counted. Judge Allen Sloan of the Tuba City District Court invalidated the measure at an evidentiary hearing held today.

Judge Sloan's decision means that over 5,000 absentee voters who casted their ballot will not have their referendum vote counted, only their votes for elected positions such as for the president and council delegates' offices.

On Oct. 25, the Navajo Nation Supreme Court, on a writ of mandamus and superintending control, ordered the lower court to host an expedited hearing after denying an appeal by Navajo Nation President Joe Shirley, Jr., on procedural reasons.

Earlier this month, the president filed an application for preliminary injunction to halt the referendum but that was denied by Judge Sloan at the Window Rock District Court on grounds that the president acted prematurely. The president immediately appealed the lower's courts Oct. 11 decision, prior to receiving full explanation of the district court decision.

Last week, he re-submitted the appeal through an application for extraordinary writ, but that was also denied by the high court for procedural reasons, and it was the Supreme Court who ordered the evidentiary hearing.

In the Oct. 25 writ of mandamus and superintending control, the high court essentially directed the lower court to issue a final decision on the following baseline considerations: 1) address the question of whether the referendum referral process does or does not include approval or veto by the president; 2) determine whether the presidential veto authority is part of the governmental structure of checks and balances and 3) that it is not in the discretion of the court to determine whether or not the by-passing of the president's review of a legislation is harmless based on the number of Council delegates having voted to pass the legislation.

As a result, the court determined that the referendum measure failed to involve the president's veto review, which correspondingly led to the court's decision to invalidate the measure. The court also indicated that

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proper education efforts did not occur, despite the ongoing education from the Navajo election office, and encouraged both the executive and legislative branches to cooperate on the basis and principle of k'é.

Kimmeth Yazzie, program and project specialist for the Navajo Election Administration, said the elections office and Navajo Board of Election Supervisors will focus their efforts on educating the people of the court's decision.

"Chief poll judges at each voting site across the Navajo Nation will be informed to disregard the referendum results," said Yazzie, adding that voting machines have been distributed to polling sites and booted to accept the ballots, including the absentees.

A consensual script is also in progress of being developed by the parties in the case in an effort to inform voters of the court's decision.

"The decision today could change a lot of things and increase liabilities in the area of voting rights," said Speaker Lawrence T. Morgan. "The effort on providing education on the referendum has been ongoing and two weeks ago the decision of the court was different. Now, the NBOES will need to re-educate the Navajo people of the court's decision and I am confident the NBEOS will educate the voters. But at this point in time, the court's decision creates some possible liabilities on voter rights and potential voter challenges."

Even with the court's decision, officials from the Office of the Speaker, Office of the Council Delegates and NEA reported that their telephone lines were swamped by absentee voters expressing that their voting rights had been violated, and the offices expect more of the same phone calls the rest of the week.

Kee Allen Begay, chair for the Judiciary Committee, echoed similar concerns.

"The court's decision short changes the Navajo people of their participation in their own government," Begay said. "I encourage and ask that the Navajo people who have voted to challenge this decision simply because their right to participating in their government has been violated. It is very interesting that the court's decision comes at the 'eleventh hour' during this election and the special election held last December."

The court's full explanation of its decision will be available tomorrow afternoon, despite the high court's request to have the written decision no later than Oct. 28. For more information on the courts decision, please visit www.navajocourts.org.

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