



FOR IMMEDIATE RELEASE
January 6, 2015

President Shelly signs into law special run off election, NBOES pardon



On Jan. 10, Navajo Nation President Ben Shelly signed election legislation into law. (Photo by Rick Abasta)

In other election related news, the Supreme Court vacated a motion filed by the Navajo Department of Justice seeking clarification from the court on the election before Jan. 31, 2015, and additionally, an opinion on whether President Shelly remains as president beyond Jan. 13, 2015.

During the late hours of Jan. 9, President Shelly met with the Speaker Pro Tem LoRenzo Bates and members of the Navajo Nation Council, along with attorneys from the DOJ and the chief legislative counsel to fashion an agreement for the president to remain as president beyond Jan. 13. The agreement will require President Shelly to take an oath of office on Tuesday.

It was agreed by the parties that stability is important to the functioning government and to ensure a greater sense of continuity. The agreement does lend opportunity for the incoming lawmakers to introduce legislation that would otherwise address the matter of the presidency until an election is held.

WINDOW ROCK, Ariz.—On the afternoon of Jan. 10, Navajo Nation President Ben Shelly signed the special run off election legislation passed on the last day of the year by the Navajo Nation Council into law, as well as a bill that grants a pardon to the members of the Navajo Board of Election Supervisors who were stripped of their offices by order of the Navajo Nation Supreme Court.

“It is in the best interest of the Navajo people that

we give the thousands of voters a new opportunity to choose their next leaders,” President Shelly said. “There have been too many discrepancies over the last several months. A new election will restore some hope among the voters and the people that their voice will be heard.”

Believing that individual rights are undeniable, President Shelly signed legislation CD-81-14 and pardoned the NBOES members from sanctions imposed upon them by the

Supreme Court.

The legislation sets forth a special election for June 2015, in which the 17 candidates who were contenders for the 2014 primary election are eligible to reapply as candidates for president. The two candidates with the highest votes will proceed to a special general election in Aug. 2015. The legislation calls for the oath of office to be administered to the President-Elect and Vice President-Elect on Sept. 9, 2015.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL—FOURTH YEAR, 2014

AN ACT

RELATING TO NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL; PARDONING NAVAJO BOARD OF ELECTION SUPERVISORS FROM ANY VIOLATIONS OF LAW IN THE PERFORMANCE OF THEIR WORK IN PRESIDING OVER THE 2014 ELECTION INCLUDING INDIRECT CIVIL CONTEMPT FINDINGS AND REINSTATING THE NAMED INDIVIDUALS TO THEIR OFFICES AS NAVAJO BOARD OF ELECTION SUPERVISORS

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§ 164 (A)(9), 700 (A) (2012); see also CO-45-12.
- B. The Navajo Nation Council is the governing body of the Navajo Nation and all powers not delegated are reserved with the Navajo Nation Council. 2 N.N.C. § 102 (A), (B) and (C) (supervise all powers delegated) (2012); see also CO-45-12.
- C. The pardon power is an attribute of governance which the Navajo Nation has not delegated to any Navajo Nation governmental entity and the Navajo Nation Council established precedence when the Council pardoned Mr. Peter MacDonald. Memorandum from the Office of the Attorney General, Herb Yazzie, to the Navajo Nation Council (Apr. 17, 1995).
- D. The Navajo Nation Council recognized in Diyin Bits'áádéé Beehaz'áanii that they will "use their experience and wisdom to always act in the best interest of the people [and]...ensure the rights and freedoms of the generations yet to come...[and] enact policies and laws to address the immediate and future needs... ." 1 N.N.C. § 203 (A) and (D) (2009).

- E. Hózhó and k'é calls for the Navajo Nation Council, as Naat'aanii, to acknowledge their duty and aid the Navajo Nation in healing.
- F. Wallace Charley, Jonathan Tso, Norman L. Begay, Harry D. Brown, Sr., Michael Coan, Tom M. White, Jr., Lenora Fulton, Frannie George, and Ruth Watson were elected on a staggered term basis by Navajo voters and properly installed as the Navajo Nation Board of Election Supervisors.
- G. Navajo Board of Election Supervisors was established as an independent entity, 11 N.N.C. § 321, and has the duty to provide for the efficient and uniform administration and conduct of elections.
- H. The Navajo Board of Election Supervisors was presiding over the 2014 election when its conduct was intertwined with private parties litigating before the Navajo Nation Supreme Court in *Tsosie, et. al, v. Navajo Board of Election Supervisors, et. al*, No. SC-CV-68-14. The Court indicated that it was enforcing its own order dated October 23, 2014 against the Navajo Board of Election Supervisors and Director of Navajo Election Administration. *Tsosie, et al. v. NBOES, et al.*, No. SC-CV-68-14, slip op. 10 - 11, (Navajo Sup. Ct., Nov. 4, 2014).
- I. In a hearing on October 31, 2014, the Court removed the Supervisors by indicating that the Navajo Board of Election Supervisors, as Respondents, failed to comply with the Court's Order and "took deliberate actions in violation of the Election Laws." The Court's action to hold Navajo Board of Election Supervisors in contempt is questionable and troubling as:
 - a. The Court failed to expressly identify the Navajo Board of Election Supervisors to carry out a certain act in the October 23, 2014 Order, but issued its order directed to the Navajo Election Administration, *Tsosie*, No. SC-CV-68-14, slip op. at 10 (Nav. Sup. Ct., Oct 23, 2014);
 - b. The Court did not give due process to the members of the Navajo Board of Election Supervisors in failing to specifically delineate how the members did not abide by the Court Order in violation of the Navajo Bill of Rights, 1 N.N.C. § 3;

- c. The Court did not give an opportunity to the members of the Navajo Board of Election Supervisors to have individual hearings where the members can defend themselves; in removing them under the Penal provisions of the Election Code, Section 365 the Court denied the Navajo Board of Election Supervisors equal protection and due process in a misdemeanor offense allegation, 11 N.N.C § 367;
- d. The Court Order and appellate hearing was originally based on an appeal from the Office of Hearings and Appeals (OHA) and it was later discovered that the hearing officer may not be qualified pursuant to Navajo Nation law to issue a decision; and this is particularly concerning in light of the Court order regarding the Hearing Officer and the Presidential decision on continued employment of the Hearing Officer. The Court relies on this debatable OHA Order of October 9, 2014, to indicate that the Navajo Board of Election Supervisors was on notice. Further, Navajo Board of Election Supervisors was not a party to the case that the Court refers to.
- J. The Court references 11 N.N.C. § 8(F) (as amended in 2014) (CJA-02-14) to indicate that the Board is "to maintain their qualifications throughout their term of office or face removal." The Board's qualifications are listed at 11 N.N.C. § 324. An indirect contempt of court by an appellate court is not listed as reasons to disqualify the members of the Navajo Board of Election Supervisors and the Court is over-reaching in doing so.
- K. The Navajo Nation Council and Naabik'iyáti' Committee has invited the Chief Justice of the Navajo Nation Supreme Court to explain its decision but he declined to do so.
- L. Navajo Nation People, communities and Chapters are expressing great concern of the removal of the members of the Navajo Board of Election Supervisors and the action of the Navajo Supreme Court.
- M. The Navajo Nation finds the pardon and restoration of the Navajo Board of Election Supervisors, named in SC-CV-68-14, is in the Navajo Nation's best interest.

Section Two. Pardon of Navajo Board of Election Supervisors

- A. The Navajo Nation pardons Wallace Charley, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- B. The Navajo Nation pardons Jonathan Tso, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- C. The Navajo Nation pardons Norman L. Begay, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- D. The Navajo Nation pardons Harry D. Brown, Sr., as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- E. The Navajo Nation pardons Michael Coan, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- F. The Navajo Nation pardons Tom M. White, Jr., as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- G. The Navajo Nation pardons Lenora Fulton, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and

willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.

- H. The Navajo Nation pardons Fannie George, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.
- I. The Navajo Nation pardons Ruth Watson, as a member of the Board of Election Supervisor, of indirect civil contempt, of violation of Navajo Election Laws and of knowingly and willfully failing or neglecting to perform duties under the Election Code as ruled in Case No. SC-CV-68-14.

Section Three. Reinstatement of Navajo Board of Election Supervisors

The Navajo Nation hereby reinstates Wallace Charley, Jonathan Tso, Norman L. Begay, Harry D. Brown, Sr., Michael Coan, Tom M. White, Jr., Lenora Fulton, Frannie George, and Ruth Watson as Navajo Nation Board of Election Supervisors.

Section Four. Effective Date

The Act is effective upon its approval pursuant to 2 N.N.C. §221.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 11 in favor and 1 opposed, this 30th day of December 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

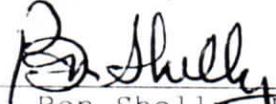
12-31-14

Date

Motion: Honorable Danny Simpson
Second: Honorable Charles Damon, II

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 10th day of JANUARY 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation

RESOLUITON OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACTION

RELATING TO AN EMERGENCY; TO ADDRESS A MATTER OF NAVAJO VOTER
DISENFRANCHISEMENT; AND PROVIDING FOR A SPECIAL RUN-OFF ELECTION
AND A SPECIAL GENERAL ELECTION FOR THE OFFICE OF PRESIDENT

BE IT ENACTED:

Section One. Findings

- A. 2 N.N.C. § 164(A)(16) provides, in part, that an emergency is limited to matters which directly threaten the sovereignty of the Navajo Nation and that such emergency matters must arise due to the pressing public need for such resolution and must be a matter requiring final action by the Council.
- B. The Navajo Nation election cycle for 2014 began with the primary election being held on August 26, 2014 and for the office of the President, seventeen (17) candidates filed; the two candidates with the most votes were slated to face each other in the general election which was scheduled for November 4, 2014.
- C. After the primary election, election grievances were filed by two candidates who did not prevail in the election and the grievances by the two candidates have been finalized by Navajo Nation tribunal bodies; however, Navajo People remain dissatisfied as their voice through their votes are being ignored and continued disharmony remains.
- D. Navajo Nation Supreme Court has issued an Opinion in the court case: *Tsosie, et al., v. Navajo Board of Election Supervisors*, slip op. SC-CV-68-14 (October 23, 2014) in a 2-1 majority vote with one (1) justice dissenting. The Opinion orders the name, Christopher C. Deschene, to be taken off the ballot.

- E. The decision of the Navajo Nation Supreme Court has disenfranchised the ample number of voters who voted in the 2014 primary and general election and no remedy was provided for them.
- F. The decision of the Navajo Nation Supreme Court indicates that it "is unavoidable that the November 4, 2014 election must be postponed..." The Navajo Nation Council agrees.
- G. The late filing of grievances, the different interpretations of the laws and the late decisions by the Office of Hearings and Appeals and the Navajo Nation Supreme Court has caused instability and confusion in the 2014 Navajo Nation Election. Such on-again, off-again appearance with respect to the carrying out of the Navajo Nation laws is damaging to the image of the Navajo Nation. In the meantime, community leaders are requesting the voters to have a civil dialogue and resolve the matter through the concept of hozho.
- H. Navajo Nation Council has received hundreds of Navajo Chapter resolutions, petitions or letters from Navajo voters. The request of the Navajo People should not be ignored and, rather, be seriously considered by all Navajo Nation branches and departments. If the confusion is not resolved, civil unrest may develop.
- I. Navajo Nation does not have a constitution but has a set of developed laws, including election laws. Navajo Nation Supreme Court's decisions should be given due deference when it identifies ambiguities in Navajo Nation laws; however, Navajo Nation Council, as the representative body of the elected representatives of the Navajo People, has the prerogative and the authority to address matters by determining if laws were properly applied, to reduce confusion in the interpretation of the laws, and to resolve emergency matters facing the Navajo Nation or its residents.
- J. Navajo Nation Council, as the representative body of the elected representatives of the Navajo People, pursuant to 2 N.N.C. § 102(A), has the prerogative and the authority to amend laws to provide for certain remedies and pass resolutions, pursuant to 2 N.N.C. § 164(A)(1).

- K. "Resolution" is defined as a form of legislation, which means a formal action of the Navajo Nation Council or its Committees adopting its approval of or stating its opinion on a matter. 2 N.N.C. §110(T).

Section Two. Amendments to Title 11 of the Navajo Nation Code

This Resolution does not amend Title 11 of the Navajo Nation Code, and other relevant laws, but shall be interpreted as a Resolution to provide for a special remedy to address the disenfranchisement of Navajo voters pursuant to the authority of the Navajo Nation Council over election matters.

Section Three. Authorizing a Special Run-off Election and a Special General Election

Notwithstanding certain election laws contained in Title 11 of the Navajo Nation Code, and other relevant laws, the following provisions shall be used to implement a special run-off primary election and a special general election:

- A. Except for the Office of the President and Vice President, the general election results of November 4, 2014, for all Navajo Nation elected offices shall be certified by the Navajo Election Administration.
- B. The Navajo Nation Council hereby authorizes a special run-off election and a special general election for the offices of the President and Vice President pursuant to the laws existing at the time of the special primary election.
- C. Navajo Nation Council hereby authorizes the following procedures to be used to conduct the 2015 special run-off election, if necessary, and the 2015 special general election:
 - 1. A special run-off election shall be scheduled for June 2, 2015.
 - 2. A special general election shall be scheduled for August 4, 2015.

3. Laws existing at the time of the special primary election shall be used to allow presidential candidates who filed for and participated in the 2014 primary election to be given an opportunity to participate in the special run-off election for the offices of the President and Vice President.
4. The requirements under 11 N.N.C. § 26 regarding filing fees shall be waived for candidates.
5. Subject to laws existing at the time of the election only the 2014 primary election candidates shall be qualified to be a candidate for the special run-off election and the Navajo Election Administration shall contact them to determine if they wish to file an application for candidacy for the Office of the President, to wit:
 - a. Donald Benally;
 - b. Edison J. Wauneka;
 - c. Moroni Benally;
 - d. Hank Whitethorne;
 - e. Dan Smith;
 - f. Ben Shelly;
 - g. Chris Deschene;
 - h. Kee Yazzie Mann;
 - i. Myron McLaughlin;
 - j. Joe Shirley, Jr.;
 - k. Duane H. Yazzie;
 - l. Dale E. Tsosie;
 - m. Carrie Lynn Martin;
 - n. Cal Nez;
 - o. Edison "Chip" Begay;
 - p. Kenneth Maryboy; and
 - q. Russell Begaye.

6. Navajo Election Administration shall maintain a record of how the contact with each candidate was made and the candidate's answer. Personal contact is preferred, but the Administration may contact the candidates by telephone or other form of electronic means. The candidate shall be allowed to file their application for candidacy for the Office of the President no later than April 3, 2015.
7. Candidates for the special run-off election shall be certified by the Navajo Election Administration no later than April 4, 2015.
8. If only two candidates file their applications for candidacy for the special run-off election, the special run-off election shall be canceled and the two candidates who filed shall be allowed to run in the special general election for the Office of the President.
9. If three or more candidates file their applications for candidacy for the run-off election, then all candidates who filed their candidacy application shall be allowed to run in the special run-off election. A special ballot shall be printed for the special run-off election. If a special ballot cannot be printed within the timeline herein, Navajo Election Administration shall arrange for in-house printing and the hand-counting of the ballots, along with security measures to prevent voting fraud.
10. Unless otherwise prohibited by Navajo Nation law, voters who are registered to vote by May 4, 2015, shall be allowed to vote in the special run-off election and the special general election.
11. Early voting for special run-off election shall be allowed from May 21, 2015 to May 29, 2015. Voters may be allowed to bring their special early voting ballot and cast it on special run-off election day.

12. Absentee ballots for special run-off election shall be mailed to all voters who requested absentee ballots in the regular primary election and regular general election no later than May 4, 2015, and the due date for the return of absent ballots shall be June 2, 2015. Additional absentee ballot requests may be allowed for the special run-off election.
13. Final certification of the result for the special run-off election shall be done no later than June 15, 2015 the Navajo Election Administration. The candidates with the two highest votes in the run-off election shall be certified as candidates for a special general election.
14. Grievance filed by a candidate for the special run-off election shall be filed no later than June 12, 2015; and the Navajo Nation Office of Hearings and Appeals shall render a decision no later than June 13, 2015. Appeals of the decision of the Navajo Nation Office of Hearings and Appeals shall be made to the Navajo Nation Supreme Court no later than June 14, 2015; and the Navajo Nation Supreme Court shall render a decision no later than June 16, 2015.
15. A special ballot shall be printed for the special general election and included on the ballot shall be the two certified candidates.
16. Early voting for the special general election shall be allowed from June 22, 2015, to June 31, 2015 if no grievance is filed for the special run-off election. If a grievance is filed in the special run-off election, then early voting for the special general election shall be allowed from June 27, 2015, to June 31, 2015. Voters may be allowed to bring their special early voting ballot and cast it on special general election day.

17. Absentee ballots for special general election shall be mailed to all voters who requested absentee ballots in the regular primary election and regular general election no later than July 6, 2015, and the due date for the return of absent ballots shall be August 4, 2015. Additional absentee ballot requests may be allowed for the special general election.
18. Absentee voting for the special general election shall be allowed from July 6, 2015, to August 4, 2015 if no grievance is filed for the special run-off election. If a grievance is filed in the special run-off election, then absentee voting for the special general election shall be allowed from July 11, 2015, to August 4, 2015.
19. Final certification of the result for the special general election shall be done no later than August 17, 2015 by the Navajo Election Administration. The candidate with the highest votes shall be certified as the elected official to take the oath of office on September 9, 2015.
20. Grievance filed by a candidate for the special general election shall be filed no later than August 14, 2015; and the Navajo Nation Office of Hearings and Appeals shall render a decision no later than August 18, 2015. Appeals of the decision of the Navajo Nation Office of Hearings and Appeals shall be made to the Navajo Nation Supreme Court no later than August 21, 2015; and the Navajo Nation Supreme Court shall render a decision no later August 25, 2015.
21. Campaign reports for the special run-off election and the special general election, as required by 11 N.N.C. §§ 201 - 209 shall be filed no later than June 12, 2015 and August 14, 2015.
22. Poll officials used in the 2014 regular general election may be used as poll officials for the special run-off election and the special general election.

23. Navajo Election Administration shall take all precautions and necessary steps to promptly send absentee ballots to persons who have voted by absentee ballots in the 2014 election cycle.
 24. Navajo Election Administration shall use the special provisions contained herein in a congruent manner with the current Election Code provisions.
 25. Elections scheduled by Navajo Election Administration for President and Vice President should be canceled for 2014.
- D. Navajo Election Administration shall make arrangements for the public announcement of the procedure adopted herein in Navajo and English languages on a daily basis until January 13, 2015.
 - E. Navajo Election Administration shall prepare a budget to cover the costs of the special run-off election and the special general election and communicate this to the Navajo Nation Council so it may allocate additional resources.
 - F. Employees of the Navajo Nation government shall be given time off beginning at 1:00 p.m. on special run-off election day, if necessary, and on special general election day only if they use the leave to go vote.
 - G. The Oath of Office for all Navajo Nation elected officials shall be September 9, 2015.

Section Four.

The special primary and general elections shall be funded at the Amount of \$317,891.00 and said funding shall be expended pursuant to budget documents inserted hereto as Exhibit "B".

Section Five. Effective Date

These amendments are effective upon its approval pursuant to 2 N.N.C. §221 and shall be in effect for the 2015 Navajo Nation Election subsequent Navajo Nation elections.

Section Six. Saving Clause

Should any provisions of this ordinance be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this ordinance which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 11 in favor and 1 opposed, this 30th day of December 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

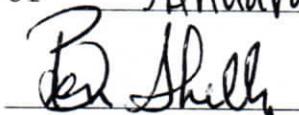
12-31-14

Date

Motion: Honorable Duane Tsinigine
Second: Honorable Roland Tso

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 10th day of January 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation

3. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10) and 2 N.N.C. §164 (A) (17), on this _____ day of _____, 2014. The justification of my line-item veto is set forth by memorandum.

Ben Shelly, President
Navajo Nation