



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

FOR IMMEDIATE RELEASE

JULY 31, 2009

CONTACT: GEORGE HARDEEN
COMMUNICATIONS DIRECTOR
OFFICE – 928-871-7917
CELL – 928-309-8532
pressoffice@opvp.org

Navajo Nation Supreme Court affirms final judgment ordering election on council reduction, line item veto

WINDOW ROCK, Ariz. – The Navajo Nation Supreme Court on Thursday affirmed a June 25 final judgment by the Office of Hearings and Appeals which ordered an election within six months on two government reform initiatives.

The election will allow Navajo voters to choose whether to reduce the Navajo Nation Council from 88 to 24 members and whether to give the President line item veto authority.

Navajo Nation President Joe Shirley, Jr., said Thursday that it made his heart glad that the Court unanimously affirmed the decision to move forward with an election.

“It is a judgment on behalf of the people and their inalienable right to participate and have a say in how their government is structured, how it works, and how the peoples’ resources are used,” he said. “I am glad the people will have a chance to vote on the two initiatives. They have every right to.”

Thursday’s opinion, resulting from a hearing held Monday on an appeal of District Court Judge Carol Perry’s June 25 decision ordering the election, also took the Navajo Election Administration’s lawyer to task – Ron Haven of the Office of the Legislative Counsel – for unprofessional conduct in what it called an attempt to apply political pressure to find in favor of his client at the risk of not confirming two probationary justices as permanent justices.

“This Court will continue to protect the guarantee of an independent judiciary,” it said. “Rather than submit to political pressure from the NEA and its counsel, we deny NEA’s motion. This type of unprofessional conduct will not be tolerated.”

In an opinion footnote, the Court noted that the lawyer for the election administration is also the lawyer for the Navajo Nation Council, which would be directly affected in structure and authority should the initiatives pass. It said that although the Navajo Election Administration is an independent entity, it is responsible only to the Council.

“It is a judgment on behalf of the people and their inalienable right to participate and have a say in how their government is structured.”

– Navajo Nation President Joe Shirley, Jr.

“To allow elected officials to supervise the regulatory entity that administers elections and certifies petitions raises the likelihood of impartiality, abuses of power and corruption,” the Court said. “It is critical that the NEA be a neutral body independent of the politics of the elected branches of government to ensure public faith in the petition verification process.”

The Court found that the Initiative Petition Committee had operated in good faith and that it followed the rules as best it could, given the lack of clear directives. However, it faulted the Navajo Election Administration for failing to count signatures accurately and in a timely fashion.

It found that despite the election administration’s contention that the petition committee failed to collect enough valid petition signatures, it noted that its attorney, Chief Legislative Counsel Frank Seanez, stipulated

several times at the March 30 final hearing that more than enough valid signatures – 16,891 – had been collected.

Given the stipulation, an agreement as to the facts, Judge Perry issued a summary judgment in favor of the petition committee, reversing the election administration's determination of insufficiency for both initiatives.

"The numbers were agreed to by both parties," the Court's opinion states. "The Hearing Office determined in her final judgment that there was no dispute as to the figures. Hearing Office Perry, in her discretion, determined there is no need to engage in further hearing when there is a stipulation in the proceeding. That decision is not an abuse of discretion."

The Court noted that although six months had passed from the time of the election administration's determination of insufficiency of the petitions to the OHA hearing, the office did nothing to re-confirm its tally of valid signatures.

"To ensure the confidence of the People in their government, the presumption is that NEA's staff have duly performed their duties and that the reported results are correct," the Court found. "It would be absurd to allow the NEA to now attack its own results and present new figures at the eleventh hour, especially when no effort was made to amend the results in the intervening six months."

"There has been a failure by the regulatory body to implement the law through proper guidelines and standards," the Supreme Court found. "This systemic failure to execute statutory responsibilities should not delay the People participation in their government."

On July 17, the election administration filed a motion to stay the election but the Supreme Court denied the motion, stating the election administration failed to state reasons to justify a stay.

The Court took the opportunity to use unusually firm language to address the election administration's motion to disqualify the Court entire panel – Chief Justice Herb Yazzie and Associate Justices Eleanor Shirley and Louise Grant. In his motion, Mr. Haven alleged that the Court had already decided the outcome of the appeal and that the election office would not receive a fair and impartial hearing.

The Court noted that the motion referred to the probationary status of the two associate justices, stating that they are subject to evaluation by the Chief Justice.

"At the hearing, NEA's legal counsel failed to explain how a justice's probationary status was of concern and relevant to partiality and disqualification," the opinion states. "We further informed counsel that we see these statements as innuendos to apply improper political pressure. We took these statements to imply that if the Court did not decide the matter in NEA's favor, the probationary justices may not be confirmed by Council as permanent justices."

The Court denied the motion, stating the election administration failed to state any facts or provide evidence to justify disqualification.

###