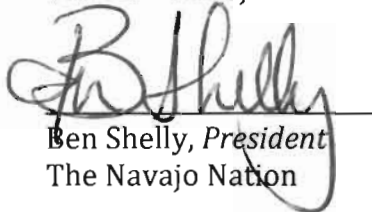




MEMORANDUM

TO: Honorable LoRenzo Bates, Speaker Pro Tem
The 22nd Navajo Nation Council

FROM: 
Ben Shelly, *President*
The Navajo Nation

DATE: December 31, 2014

SUBJECT: LEGISLATION NO. CD-79-14: RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL; AMENDING LANGUAGE FLUENCY REQUIREMENTS OF THE NAVAJO NATION ELECTION CODE AT 11 N.N.C. §8(A)(4) (OFFICE OF THE PRESIDENT/VICE PRESIDENT)

Pursuant to 2 N.N.C. §1005(c)(10), the above titled Legislation CN-56-14 is being submitted to the Navajo Nation Council, through the Office of the Speaker, within the ten (10) day requirement. 2 N.N.C. §1005(c)(10) establishes the Navajo Nation President's authority to veto legislation passed by the Navajo Nation Council. I hereby exercise my veto authority with this legislation.

In October, legislation that addressed a similar issue was submitted for my consideration. At that time, I exercised the authority vested in me by the People to veto CO-47-14. My reasons were that a thoughtful, deliberative conversation should occur regarding the qualifications an individual must meet in order to lead the People. This conversation has yet to occur and, as such, my feelings on the matter have not changed.

The Navajo Nation Council set the requirements for Navajo Nation political offices. It has been piecemeal changed through council resolutions and Supreme Court opinions. An overhaul needs to occur to ensure the laws are clear, unambiguous and fair. However, on something as important and decisive as the issues facing our Nation today, change needs to be done through consultation and a referendum of the People. It the People's right to determine this, not myself, Council or the Courts.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE NAVAJO NATION COUNCIL; AMENDING LANGUAGE FLUENCY REQUIREMENTS OF THE NAVAJO NATION ELECTION CODE AT 11 N.N.C. §8(A)(4) (OFFICE OF PRESIDENT/VICE PRESIDENT)

BE IT ENACTED:

Section One. Findings

A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §601(B)(14), reviews and makes recommendations to the Navajo Nation Council proposed amendments to the Navajo Nation Code.

B. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §164(A)(9), reviews proposed legislation which requires final action by the Navajo Nation Council.

C. The Navajo Nation Council 2014 Election had 17 candidates seeking the office of President of the Navajo Nation. At the primary election, the two top vote getters were Mr. Joe Shirley, Jr., and Mr. Chris Deschene. After the primary election was held, two presidential candidates challenged Mr. Deschene's qualifications for the presidency. The Navajo Nation Supreme Court heard this challenge on September 26, 2014 and remanded the question of fluency in the Navajo language back to the Office of Hearings and Appeals; and, directed that the Office of Hearings and Appeals make a decision by Friday, October 3, 2014.

D. There is currently much confusion among the Navajo people about the value of their participation in the primary election; about whether their voice through their vote has been heard. There is much discussion of the varying degrees of Navajo language ability of the 17 candidates for the Office of the President. Navajo language skills of all the 17 candidates were made evident to the Navajo people through the public forums. The Navajo people then went to the polls and voted.

E. The issue of the ability to speak the Navajo language is an issue that is present not just in the presidential election.

F. The Navajo Nation Election Code lists numerous qualification requirements for elective offices. Included in these requirements are the ability to speak Navajo and English. The Election Code, however, is not consistent as to these requirements. For example, some positions merely require the ability to speak Navajo, while others require speaking Navajo "fluently." These inconsistencies in the Election Code may potentially violate due process rights of candidates, deny the right to the equal protection of the law and infringe upon the fundamental right of voters to select their own leaders. It is necessary that all provisions on any language requirements, Navajo or English, whether speaking or writing it, be amended to permit voters to determine on their own who the best qualified candidates are.

G. It is permissible to amend qualifications provisions of the Election Code after filing periods are opened and prior to an election.

H. We are all Navajo people. We do not want to provide impediments that prevent the Navajo people, both young and old, from exercising their political leadership qualities and other beneficial qualities for the betterment of the Navajo Nation.

I. The Navajo Nation Council passed legislation in 1990 with regard to language requirements, among other qualifications, for elected office. The Navajo Nation Council now, for the reasons discussed above, determine that it is in the best interest of the Navajo Nation that 11 N.N.C. §8 be amended in the manner described below.

Section Two. Enactment of the Amendments to the Navajo Nation Election Code Act of 2014

The Navajo Nation hereby approves the Amendments to the Navajo Nation Election Code, Title 11, Section 8 Act of 2014.

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

The Navajo Nation hereby amends the Navajo Nation Code, Title 11, §§ 8 et seq., as follows:

TITLE 11. ELECTIONS
CHAPTER 1. NAVAJO ELECTION CODE OF 1990
SUBCHAPTER 1. GENERAL PROVISIONS

§8. Qualifications for office

A. Qualifications for President and Vice-President are:

4. Must be able to speak and understand the Navajo language and English language and this ability will be determined by the Navajo people;

B. Qualifications for Delegate to the Navajo Nation Council:

8. Must be able to speak and understand Navajo and/or English;

D. Qualifications for Other Elected Officials:

1. Qualifications for the Land Board Candidates:

(f). Must be able to speak the Navajo Language fluently, and to read and write the English language;

2. Qualifications for Farm Board Candidates:

(c). Must be fluent in the Navajo and English language;

3. Qualifications for District Grazing Committee Candidates:

(d). Should be able to read, write, and speak the English language;

(e). Must be able to converse fluently in the Navajo language;

Section Four. Effective Date

The Act is effective upon its approval pursuant to 2 N.N.C. §221 and shall be in effect for subsequent Navajo Nation elections.

Section Five. Codification

The Office of Legislative Counsel shall redesignate all subsequent sections of 11 N.N.C. §8 affected by these amendments. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

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 13 in favor and 0 opposed, this 23rd day of December 2014.

Jonathan L. Hale, Pro Tem Speaker
Navajo Nation Council

Jonathan L. Hale
Date
Dec. 24, 2014

Motion: Honorable Duane Tsinigine
Second: Honorable Roscoe Smith

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 _____ day of _____ 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

Ben Shelly, President
Navajo Nation