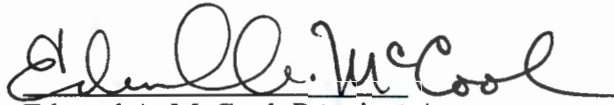


**MEMORANDUM**

**TO:** Tom Platero, Executive Director  
Navajo Nation Council

**FROM:**   
Edward A. McCool, Principal Attorney  
Office of Legislative Counsel

**DATE:** January 14, 2019

**RE:** CD-87-18 Enacted by Statute

Based on the documents as submitted, on December 31, 2018 the Navajo Nation Council considered and passed Resolution CD-87-18, *Amending the Challenge and Election Dispute Provisions of the Navajo Nation Election Code at 11 N.N.C. §§ 21,23,24,20, 341, and 342.*

The Speaker of the Navajo Nation Council certified the resolution on January 3, 2019. On that same day, the Office of the President and Vice-President received the resolution for the President's consideration. The Office of Legislative Services received the returned legislation from the President's Office on January 13, 2019 at 5:02 P.M. The legislation was not vetoed nor was it signed by the President.

Pursuant to 2 N.N.C. §1005 (C)(12) "The President's authority to sign into law or veto legislation shall be deemed to be waived if not exercised with ten calendar days after certification of the legislation by the Speaker or Speaker Pro Tem and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. §221."

Based on the documents as submitted, the President, having not exercised his authority to either veto or sign into law CD-88-18 within the 10 day period as measured from January 4, 2019 to January 13, 2019 is deemed to have waived such authority and the legislation is deemed by statute to be enacted and considered Navajo Nation law pursuant to 2 N.N.C. § 221.

Cc. Hon. LoRenzo Bates, Speaker, 23<sup>rd</sup> Navajo Nation Council  
Council Delegates, 23<sup>rd</sup> Navajo Nation Council  
Pete Atcity, Chief of Staff, Legislative Branch

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL; AMENDING CHALLENGE AND ELECTION DISPUTE PROVISIONS OF THE NAVAJO NATION ELECTION CODE AT 11 N.N.C. §§ 21, 23, 24, 240, 341 AND 342

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600(A). A general purpose of the Law and Order Committee is "to improve the administration of justice on the Navajo Nation." 2 N.N.C. § 600(C)(1). It "serve[s] as the oversight committee for the Judicial Branch of the Navajo Nation, all administrative legal tribunals including but not limited to the Navajo Nation Labor Commission and the Office of Hearings and Appeals, Office of the Public Defender, Office of the Prosecutor, Division of Public Safety, and the Office of Ethics and Rules. 2 N.N.C. § 601(C)(1). The Committee, among other delegated duties, "review[s] and make[s] recommendations to the Navajo Nation Council on proposed amendments to ... the Navajo Nation Code." 2 N.N.C. § 601(B)(14).
- B. Pursuant to 2 N.N.C. § 164(A)(9), "[a] proposed resolution that requires final action by the Navajo Nation Council shall be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti' Committee."
- C. The Navajo Nation Council enacts and amends laws of the Navajo Nation. The Council also sets policy for the Navajo Nation. See generally, 2 N.N.C. § 102.

SECTION TWO. FINDINGS

- A. The right to vote is protected by Navajo Nation law. Every Navajo Nation voter is encouraged to register and to vote in every election conducted. Every Navajo voter also has a right to run for elective office and to be treated on an equal basis.

- B. All challenges to the qualifications of a candidate for a Navajo Nation elective office should be filed prior to ballot printing and prior to the conduct of an election, not after an election is over or upon the release of election results. Navajo voters have a right to have their votes counted.
- C. After an election is conducted, administrative grievances must be limited to the manner in which an election was conducted on an election day. This is consistent with the rights of candidates and the rights of voters casting ballots for candidate of their choice. Voters have an absolute right to vote and a fundamental right to choose their own leaders. Our laws clearly state:

*It is the right and freedom of the Diné to choose leaders of their choice; leaders who will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; and leaders who will also ensure the rights and freedoms of the generations yet to come; 1 N.N.C. §203(A).*

- D. Equal protection must be afforded all voters and candidates for elective office. Due process should also not be denied. For reasons stated herein, it is in the best interest of the Navajo Nation that the Navajo Nation Election Code be amended to protect the rights of voters and the rights of candidates.

### **SECTION THREE. AMENDING ELECTION CODE**

The Navajo Nation Council hereby amends the Navajo Nation Election Code as follows:

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#### **§ 21. Candidacy application**

- A. Candidates for general and chapter elections who meet the applicable qualifications set forth in 11 N.N.C. § 8 must file a candidacy application with the Election Administration. The candidacy application shall include a filing fee. A candidate shall file a candidate application for only one office unless that other office is that of a school board member.

- B. The candidate application form shall be in the form specified by the Board and shall contain:
1. The name of candidate as it will appear on the official ballot;
  2. A notarized, sworn statement by the candidate that (a) he or she is legally qualified to hold the office; (b) that he or she meets the qualifications required by Navajo Nation law; (c) that his or her candidate application is in the form and manner prescribed by law, and (d) that he or she may be removed as a candidate in the event his or her application contains a false statement;
  3. Any convictions for felonies and misdemeanors affecting qualifications for office; and
  4. The name and address of the financial agent of record for the candidate.
- C. A candidate application shall be considered public record which shall be kept on file with the Election Administration and copies may be provided at a nominal fee to the public.
- D. With the exception of 11 N.N.C. § 21(C) hereof, the provisions of this section shall be construed as applicable to candidates within the application process of an election. Upon assuming office, officials are subject to applicable removal provisions of the Election Code.

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**§ 23. Review of Candidate Application; notice; appeals**

- A. Within 14 days of the closing of the candidate filing period, the Election Administration shall review, verify and determine, on the face of the candidate application, the qualifications for candidacy. The Navajo Election Administration shall have the authority to determine ineligible any individual who does not meet the qualifications for the office sought.
- B. If the Election Administration determines that an individual is not qualified for the position sought, it shall deny the application for candidacy as ineligible. Within 14 days closing of the candidate filing period, the

Administration shall notify the applicant in writing of the reason for his or her ineligibility and the right to file an appeal to the Office of Hearings and Appeals ~~pursuant to 11 N.N.C. §341~~ within 10 days of the Navajo Election Administration's decision. The process for seeking a hearing and proceedings before the Office of Hearings and Appeals shall be as follows.

- 1) The Office of Hearings and Appeals shall review all appeals within 10 days of filing. The Office of Hearings and Appeals may dismiss appeals that are insufficiently stated as to law or facts. For appeals deemed sufficient, hearings shall be scheduled.
  - a. Hearings shall be conducted within 10 days of the determination of sufficiency.
  - b. Notices of hearing shall be provided to the parties and others deemed necessary for determination of the appeal.
- 2). Relevant evidence shall be admitted as determined by Office of Hearings and Appeals Hearing Officer.
- 3). The applicant shall have the burden of proving, by clear and convincing evidence, that he or she is eligible for the position sought and that the determination of the Election Administration is incorrect and should be reversed.
- 4). The right to call and/or cross examine witnesses shall be afforded parties.
- 5). The Office of Hearings and Appeals, consistent with provisions herein, may establish other rules in the conduct of hearings under this section. Provided, remedies under this section, or established rules, shall be limited to upholding or reversing the determination of the Navajo Election Administration.
- 6). Appeals to the Navajo Supreme Court shall be filed within 10 days of the written decisions of the Office of Hearings and Appeals.
  - a. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

- b. The Supreme Court shall review and decide appeals under this section within 30 days of appeal.
- c. Costs and attorney fees, if any, shall rest with the parties.

#### **§ 24. Challenges; appeals**

- A. The Navajo Election Administration shall hold the candidate applications of all candidates it has certified as eligible for a period of ten (10) days during which sworn challenges may be filed with the Office of Hearings and Appeals by other applicants for the same position, whether or not such applicants are certified. The Office of Hearings and Appeals, within the same 10-day time period, may accept challenges from other parties, subject to standing requirements as determined by the Office of Hearings and Appeals and subject to due process rights of the candidate challenged. The 10-day challenge period provided herein shall be deemed jurisdictional, and in no event shall a challenge be accepted by the Office of Hearings and Appeals under this section beyond this period.
- B. The form for challenges shall be in the size and style specified by the Office of Hearings and Appeals and shall state the reasons for the challenge.
- C. Within five (5) days of the date of filing, the Office of Hearings and Appeals shall review and determine whether or not the challenge meets the requirements of §24 (B) and whether or not the challenge, if true, would affect the initial determination of eligibility of the candidate challenged.
  - 1. If the challenge, on its face will not change the eligibility of the candidate challenged, the challenge shall be dismissed.
- D. If the Office of Hearings and Appeals determines that the challenge meets the requirements of §24(B) and (C), it shall hold a hearing not less than three (3) nor more than ten (10) days after its determination that the challenge is valid on its face. The Election Administration shall forthwith mail to the candidate, the party initiating the challenge, and others the Office of Hearings and Appeals may require for a hearing, a copy of the challenge along with notice of time and place of hearing. The notice shall also contain a warning to the candidate that failure to

appear at the hearing may constitute just cause for disqualification.

- E. Hearings shall be conducted pursuant to such rule and regulations promulgated by the Office of Hearings and Appeals.
- F. The party initiating the challenge shall have the burden of proving the allegations contained in the challenge by clear and convincing evidence.
- G. The decision of the Office of Hearings and Appeals shall be issued to the party initiating the challenge and the candidate within ten (10) days of the hearing. Appeal may be made by either party to the Navajo Nation Supreme Court within ten (10) days of the date of decision. The Supreme Court shall review the appeal no later than fifteen (15) days from the date of filing. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

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***Subchapter 13. Removal of Officials; Placement of Officials on Administrative Leave; Recall; Filling Vacancy***

**§ 240. Removal and placement on administrative leave**

- A. The President, Vice-President and delegate to the Navajo Nation Council are subject to removal by the Navajo Nation Council for just cause.
  - 1) Just cause shall include, but not limited to:
    - a. Insanity, when judicially or medically determined.
    - b. Council members failing to attend Council meeting as required by law.
    - c. President or Vice-President absent for three consecutive months without permission of the Navajo Nation Council.
    - d. Habitual indulgence in alcoholic beverages.
    - e. Breach of fiduciary trust duties to the Navajo People.

- f. Malfeasance or misfeasance of office.
  - 2) Such official can be removed by at least two-thirds vote of the Navajo Nation Council.
- B. The District Grazing Committee Members are subject to removal by the Navajo Nation Council for just cause.
- 1. Just cause shall include, but shall not be necessarily limited to:
    - a. Insanity, when judicially or medically determined.
    - b. Failure to attend three (3) consecutive District Grazing Committee meetings.
    - c. Absence for three consecutive months without permission of the District Grazing Committee.
    - d. Habitual indulgence in alcoholic beverage.
    - e. Breach of fiduciary trust duties to the Navajo People.
    - f. Malfeasance or misfeasance of office.
  - 2. Such official can be removed by at least two-thirds vote of the Navajo Nation Council.
- C. The Navajo Nation Council may by majority vote of the Council, place the President, Vice-President or any of its members on administrative leave, with or without pay, where there are reasonable grounds to believe that such official has seriously breached his or her fiduciary trust to the Navajo People and such leave will serve the best interests of the Navajo People.
- D. Any official holding an elective position with the Navajo Nation ~~All elected officials including Chapter Officers, School Board members, NBOES and all other elected under the Navajo Nation Law,~~ failing to maintain qualifications for office, ~~and not subject to automatic removal,~~ as specified by Navajo Nation law, or convicted while in office for any offense affecting qualifications for office shall be removed as follows:
- 1) The Navajo Election Administration, upon adequate documentation, shall provide written notice to an



official that he or she has failed to maintain the qualifications of office and that his or her position will be declared vacant.

- 2) An official receiving notice that his or her position will be declared vacant, may file a statement of grievance with the Office of Hearings and Appeals as ~~provided by 11 N.N.C. §341~~ follows:

a. The Office of Hearings and Appeals shall review all grievances within 10 days of filing. The Office of Hearings and Appeals may dismiss grievances that are insufficiently stated as to law or facts. For grievances deemed sufficient, hearings shall be scheduled.

i) Hearings shall be conducted within 10 days of the determination of sufficiency.

ii) Notices of hearing shall be provided to the parties and others deemed necessary for determination of the appeal.

b. The formal rules of evidence shall not apply to hearings under this section. However, only relevant evidence shall be admitted, including evidence relevant to the purposes and justification for removal of an elected official.

c. The official subject to removal shall have the burden of proving, by clear and convincing evidence, that he or she is qualified to remain in office and that the decision of the Election Administration is incorrect and should be reversed.

d. The right to call and/or cross examine witnesses shall be afforded parties.

e. The Office of Hearings and Appeals may require other rules in the conduct of hearings under this section. Provided, remedies under this section shall be limited to upholding or reversing the decision of the Navajo Election Administration. The Office of Hearings and Appeals shall have no authority to reverse or otherwise amend rulings of a District Court regarding convictions.

- f. Appeals to the Navajo Supreme Court shall be filed within 10 days of the written decisions of the Office of Hearings and Appeals.
- i) Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.
- ii) The Supreme Court shall review and decide appeals under this section within 30 days of appeal.
- iii) Costs and attorney fees, if any, shall rest with the parties.
- 3) Consistent with procedural requirements subsection (D) herein and pursuant to other rules and regulations of Office of Hearings and Appeals as deemed necessary, other parties with standing as determined by the Office of Hearings and Appeals may be permitted to file Statements of Grievance against an official no longer qualified for office or otherwise failing to maintain qualifications of office.
- 4) Challenges to an individual's qualification for office shall properly be filed within the candidacy period pursuant to candidate challenge provisions of 11 N.N.C. § 24. In no event shall such challenges be authorized under 11 N.N.C. § 240(D) hereof.

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**§ 341. Office of Hearings and Appeals; election disputes; grievances**

- A. Except as otherwise provided for by law, ¶ the Office of Hearings and Appeals shall have the authority to implement procedures in resolving disputes pertaining to the conduct of an elections as follows: This section shall be limited to disputes arising from events occurring on an election day and the implementation of 11 N.N.C. §§ 81 - 87, 245.
- 1) Within ten days of the incident complained of or the an election, the complaining person must file with the Office of Hearings and Appeals a written complaint setting forth the reasons why he or she believes the Election Code have not been complied with. the

election was not conducted in accordance with the requirements of If, on its face, the complaint is insufficient under the Election Code, the complaint shall be dismissed by the Office of Hearings and Appeals

- 2) If the complaint is not dismissed, the Office of Hearings and Appeals shall conduct a hearing within fifteen days thereafter to determine if the allegations in the complaint are true and are supported by the law. At the hearing, the complainant and respondent may appear in person or through legal counsel. Except otherwise provided by law, the complainant shall have the burden of proving the allegations contained in the statement of dispute by clear and convincing evidence.
- 3) The Office of Hearings and Appeals shall issue a written determination within ten (10) days after the hearing on each complaint. At the conclusion of a hearing, the Office of Hearings and Appeals may issue a preliminary oral determination or request briefs from the parties by a specified date.
- 4) A party who wishes to appeal from a decision of the Office of Hearings and Appeals must file a Notice of Appeal with the Supreme Court of the Navajo Nation within ten days after the decision is made. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.
- 5) No complaint shall be filed under this section concerning a complaint on a candidate's qualification for an elective position. All complaints concerning qualifications of candidates shall properly be filed pursuant to "challenge" provisions of 11 N.N.C. § 24.

B. Except as otherwise provided by statutory law, the Office of Hearings and Appeals shall implement rules and regulations for grievances on implementation of the Election Code. Grievances shall be filed within 10 days of the incident complained of. All other procedural and applicable substantive requirements of 11 N.N.C. § 341(A) shall apply to grievances under this subsection.

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**SECTION FOUR. EFFECTIVE DATE**

The amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221(B). The amendments shall be applicable the 2018 Navajo Nation General Election and thereafter.

**SECTION FIVE. CODIFICATION**

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amendments in the next codification of the Navajo Nation Code.

**SECTION SIX. SAVINGS CLAUSE**

Should any provision of these amendments 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 amendments that are not determined invalid shall remain the law of the 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 03 opposed, on this 31<sup>st</sup> day of December 2018.



LoRenzo C. Bates, Speaker  
23rd Navajo Nation Council

1-3-19

Date

Motion: Honorable Herman M. Daniels

Second: Honorable Nathaniel Brown

Speaker LoRenzo C. Bates not voting

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 \_\_\_\_\_ 2019.

---

Russell Begaye, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this \_\_\_\_\_ day of \_\_\_\_\_ 2019 for reason(s) expressed in the attached letter to the Speaker

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Russell Begaye, President  
Navajo Nation

NAVAJO NATION

RCS# 1399

12/31/2018

Special Session

03:05:52 PM

Amd# to Amd#

Legislation 0144-18: Amending

PASSED

MOT Daniels

Challenge and Election Dispute

SEC Brown

Provisions of the NN Election

Code at 11 NNC SS 21,23,24,240..

Yea : 11

Nay : 3

Excused : 0

Not Voting : 10

Yea : 11

Begay, K

Brown

Jack

Smith

Begay, NM

Daniels

Kieyoomia

Yellowhair

Bennett

Filfred

Shepherd

Nay : 3

Tsosie

Pete

BeGaye, N

Excused : 0

Not Voting : 10

Bates

Damon

Phelps

Tso

Chee

Hale

Slim

Yazzie

Crotty

Perry