

**RESOLUTION OF THE  
NAVAJO BOARD OF ELECTION SUPERVISORS**

**Referring back the Navajo Nation Council resolution CJY-37-14 for purposes of clarification on measures presented for referendum vote**

**WHEREAS:**

1. The Navajo Board of Election Supervisors conducts all Navajo Nation elections, including referendum elections. 2 N.N.C. § 871.
2. The Navajo Nation Council on August 23, 2014, through resolution CJY-37-14, referred a referendum on amending 2 N.N.C. §102. Attached is a copy (along with the Navajo Nation President's memorandum of concerns regarding the referendum). The resolution of the Navajo Nation Council indicates that a primary issue referred to the voters of the Navajo Nation is to recognize or otherwise acknowledge that *"the Navajo People maintain the inherent power and authority to govern themselves. All authorities and all powers not delegated are reserved to the Navajo People."* See text of measure referred at subsection "A." However, the Navajo Board of Election Supervisors identified several issues relative to the ballot language and text referred by the Council, as well as issues relative to the requirements of the Election Code.
3. Under the Navajo Nation Election Code, the Navajo Board of Election Supervisors must ensure that all measures referred for referendum vote are in accordance with the requirements of the Election Code. In particular, ballot language and the statutory changes must be clearly stated for the voters. Also, there can only be one subject matter presented in each question proposed for referendum. If there is more than one subject matter, they must properly be separated into separate individual questions and cannot be combined. All matters referred must be fairly stated and cannot be potentially confusing to voters.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Board of Election Supervisors hereby refers back to the Navajo Nation Council the referendum issues referred by Council resolution CJY-37-14.
2. The Navajo Board of Election Supervisors recommends that the Navajo Nation Council clarify the issues presented for referendum or to separate each issue. The following issues should be addressed as separate issues or questions on the ballot:
  - a. The matter of recognizing the inherent power of the people and reservation of powers not granted;
  - b. Whether there should be a delegation of legislative authority to the Navajo Nation Council;

- c. Whether there should be a delegation of authority to the Navajo Nation Council over external government relations; and,
  - d. Whether there should be a delegation of authority to the Navajo Nation Council to act as the governing body of the Navajo Nation.
3. The Navajo Board of Election Supervisors hereby rescinds BOESS-061-14.

### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Board of Election Supervisors at a duly called meeting within the Navajo Nation in Window Rock, Arizona, during which a quorum was present and that the same was passed by a vote of 6 in favor, 0 opposed, 0 abstained, this 16<sup>th</sup> day of September, 2014.



Wallace Charley, Chairperson  
Navajo Board of Election Supervisors

Motion: Michael Coan  
Second: Ruth H. Watson

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22<sup>nd</sup> NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE NAVAJO NATION  
COUNCIL; REFERRING A REFERENDUM MEASURE ON AMENDING 2 N.N.C.  
§102 AND ON APPROVAL TO AMEND 1 N.N.C. §10

BE IT ENACTED:

**Section One. Findings**

1. Navajo Nation law states "[a]ll powers not delegated are reserved to the Navajo Nation Council." 2 N.N.C. §102(B). However, the authority to govern derives from the Navajo People. The People elect their leaders and may delegate to them certain powers.

2. It is necessary that Navajo Nation law be amended to state that the source of all power is the People of the Navajo Nation.

**Section Two. Referral of Referendum Measure**

The Navajo Nation Council, pursuant to 11 N.N.C. §403(A), hereby refers a referendum measure and ballot language on proposed amendment of 2 N.N.C. §102, as follows:

---

**Official Title:** "Referendum Amending 2 N.N.C. §102."

**Descriptive Summary:**

The purpose of this referendum, entitled: "Referendum Amending 2 N.N.C. §102," is to give the Navajo People an opportunity to decide by majority vote whether to change Navajo Nation law at 2 N.N.C. §102 to state that power originates from the Navajo People, and that it is the People who delegate legislative authority to the Navajo Nation Council. Further, the law will be changed to state that all powers not delegated are reserved to the People of the Navajo Nation.

**Brief Statement of Legal Effect:**

A "YES" vote is in favor amendment 2 N.N.C. §102 to state that all powers originate from the Navajo People, and powers not delegated are reserved to the People.

A "NO" vote is against amending 2 N.N.C. §102 and the effect of a "NO" vote is to maintain current law providing that the Navajo Nation Council is "the governing body of the Navajo Nation" and that it reserves all powers not delegated.

**Referendum Ballot Question:**

"Navajo Nation law, at 2 N.N.C. §102, shall be amended to state that all powers originate from the Navajo People, and powers not delegated are reserved to the People?"

\_\_\_\_\_ "YES"

\_\_\_\_\_ "NO"

**Section Three. Complete Text**

The Navajo Nation Council hereby refers the complete text of the proposed referendum measure amending 2 N.N.C. §102, as follows:

\*\*\*\*

**§102. Powers; Composition**

~~A. The Navajo Nation shall be the governing body of the Navajo Nation and shall consist of 24 delegates. This § 102 (A) shall not be amended unless approved by majority vote of all registered voters in all precincts.~~

A. The Navajo People maintain the inherent power and authority to govern themselves.

All authorities and all powers not delegated are reserved to the Navajo People.

~~B. All powers not delegated are reserved to the Navajo Nation Council.~~

B. The Navajo People hereby delegate the legislative authorities of the Navajo Nation to the Navajo Nation Council. All legislative powers not limited by laws of the Navajo Nation or by vote of the Navajo People are delegated to the Navajo Nation Council, including the power to act as the governing body of the Navajo Nation and for purposes of external government relations.

~~C. The Navajo Nation Council shall supervise all powers delegated.~~

C. The Navajo Nation Council shall consist of 24 delegates. This § 102(C) shall not be amended unless approved by majority vote of all registered voters in all precincts.

\*\*\*\*

---

**Section Four. Time Lines; Directive to the Navajo Board of Election Supervisors**

The Navajo Board of Election Supervisors shall, in accordance with the requirements of the Navajo Nation Election Code, place the referred measure on the ballot of the November 4, 2014 Chapter general election.

**Section Five. Vote Requirement**

Pursuant to 11 N.N.C. §406(A), this referendum shall pass if a majority "of all eligible registered voters who cast a vote" vote in favor of it.

**Section Six. Effective Date**

If this referendum is approved by majority vote, it shall be deemed effective upon certification by the Navajo Nation Board of Election Supervisors.

**Section Seven. Codification**

Upon approval and certification of the referendum herein referred, the Office or Legislative Counsel shall codify the approved amendments.

**Section Eight. Amendment to 1 N.N. C. §10**

Upon approval by majority vote, the referendum language of 2 N.N.C. §102, as amended, shall be codified at 1 N.N.C. §10.

**Section Nine. Savings Clause**

Should any provisions of the amendments approved by this referendum measure be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of the legislation 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 14 in favor and 6 opposed, this 23<sup>rd</sup> day of July 2014.



LoRenzo Bates, Pro Tem Speaker  
Navajo Nation Council

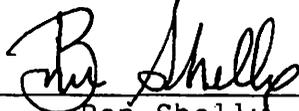
July 29, 2014

Date

Motion: Honorable Alton Joe Shepherd  
Second: Honorable Joshua Lavar Butler

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 AUG 08 2014 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

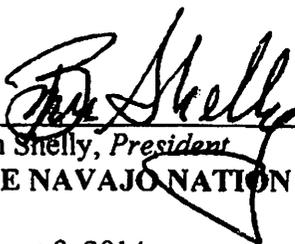


MEMORANDUM

TO: Honorable Lorenzo Bates, *Pro Tem Speaker*  
The 22<sup>nd</sup> Navajo Nation Council

Members of the Navajo Board of Supervisors

FROM:

  
Ben Shelly, *President*  
THE NAVAJO NATION

DATE: August 8, 2014

SUBJECT: **CJY-37-14 Referring a referendum measure on amending 2 N.N.C. §102.**

As a Navajo citizen I truly believe, and as President I have advocated that it should be recognized, that the authority to govern originates and is authorized by the Navajo Nation People. Although, it could be said by casting an election ballot the Navajo People provide the delegation or authorization, but that recognition needs to be codified within the Navajo Nation laws. I am pleased to sign this Resolution CJY-37-14 Referring a referendum Measure to Amend 2 N.N.C. § 102 and commend the Navajo Nation Council for its passage.

I would request the Board of Election Supervisors consider clarification to the wording referred by this Resolution. As presented the Official Title and the Descriptive Summary is acceptable in describing the intent of the referendum. However, the Brief Statement of Legal Effect, Referendum Ballot Question, and the Section three Complete Text are lacking full accuracy in the explanation to the voter.

Brief Statement of Legal Effect: As stated now, "A 'Yes' vote is in favor [to] amend 2 N.N.C. § 102 to state that all powers originate from the Navajo People, and powers not delegated are reserved to the People.

Complete Text: the amended language, "The Navajo People maintain the inherent power and authority to govern themselves. All authorities and all powers not delegated are reserved to the Navajo People."

Section "A." of the Complete Text does accurately reflect the Brief Statement of Legal Effect. However, there is a section "B." that is included as part of the Complete Text section. It reads,

“The Navajo People hereby delegate the legislative authorities of the Navajo Nation to the Navajo Nation Council. All Legislative powers not limited by laws of the Navajo Nation or by vote of the Navajo People are delegated to the Navajo Nation Council, including the power to act as the governing body of the Navajo Nation and for purposes of external government relations.”

The whole section “B.” is an entirely separate action of delegation that is not described in the Brief Statement of Legal Effect or in the Referendum Ballot Question that the voters will read. Additionally the language goes beyond the legislative authority delegation described in the Descriptive Summary.

In the Descriptive Summary it states, “...it is the People who delegated *legislative authority* to the Navajo Nation Council.” Italics added. In the Complete Text, section “B.” the language after the comma of the last sentence, “...”, including the power to act as the governing body of the Navajo Nation and for purposes of external government relations.” That is more delegation than legislative authority, and should not be included within the referendum.

### **Navajo Board of Election Supervisors Authority**

Pursuant to 11 N.N.C. § 102, the Navajo Board of Election Supervisors has the final approval authority over the wording of the descriptive summary and the brief statement of legal effect of the referendum. Please see the following suggested language changes to clarify the intent of the referendum, for your consideration.

The Descriptive Summary as stated provides a good overview of the referendum intent and effect.

Brief Statement of Legal Effect: A “Yes” vote is in favor of amending 2 N.N.C. § 102 to state that all powers originate from the Navajo People, and powers not delegated are reserved to the People. The Navajo People delegate legislative authority to the Navajo Nation Council.

Referendum Ballot Question: Navajo Nation law, at 2 N.N.C. § 102, shall be amended to state that all powers originate from the Navajo People, and powers not delegated are reserved to the People? including amending delegation of legislative authority to the Navajo Nation Council?

### **Navajo Nation Council legislative authority**

The suggested legislative language in Section three Complete Text is required to reflect the intent and wording of the referendum. As referred by Resolution CJY-37-14 the language does not accurately reflect the referred Descriptive Summary, Brief Statement of Legal Effect, or Referendum Ballot Question. Please find suggested legislative language to clarify the Navajo Nation Council’s referred Descriptive Summary that surmise action of voters to decide to change 2 N.N.C. § 102: 1) to state the power originates from the Navajo People; 2) it is the People who delegate legislative authority to the Navajo Nation Council; 3) all powers not delegated are reserved to the People of the Navajo Nation.

Section "A." does accurately reflect the first and third summary points. However, Section "B." does not accurately reflect the summary second point. Please read the following clarifying changes to be considered to accurately reflect the intent and what was presented to the Navajo voter.

Section three. Complete Text: "B. The Navajo Nation People hereby delegate the legislative authorities powers not limited by laws of the Navajo Nation or by vote of the Navajo People are delegated to of the Navajo Nation to the Navajo Nation Council. ~~All legislative powers not limited by laws of the Navajo Nation or by vote of the Navajo People are delegated to the Navajo Nation Council, including the power to act as the governing body of the Navajo Nation and for purposes of external government relations.~~

Resolution CJY-37-14 refers a referendum to the Navajo Board of Supervisors to propose a lawmaking action to the Navajo People. In essence this allows the People by vote to create law, rather than the Navajo Nation Council enacting law. As President I concur with the intent of the Resolution to refer the referendum to the Navajo Board of Supervisor. I also feel strongly that it is our collective responsibility to ensure that the question put further by ballot to the Navajo voter is clear. In my capacity of the Chief Executive Officer of the Navajo Nation government, it is important that the laws that I faithfully execute, especially when directed by referendum by the People, is executed with transparency and in full effect of the intent of the People.