

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



July 2, 2020

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CJN-49-20, *An Action Relating to Naabik'iyati' and the Navajo Nation Council; Cancelling the Primary Election for the 2020 Chapter Election; Setting One Chapter Election Date for November 3, 2020; Waiving 11 N.N.C. §§ 3 (C) and 41*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I am vetoing CJN-49-20.

"There is no right more basic in our democracy than the right to participate in electing our political leaders." This principle is the basis of the Navajo Nation's legal argument to the New Mexico court in the case of *State of New Mexico, ex rel., M. Keith Riddle, et al. v. Maggie Toulouse Oliver* filed earlier this year supporting the Navajo People's right to vote in State elections. The Navajo Nation has also fought for the People's right to vote in Arizona and Utah elections. CJN-49-20 has the potential to undo all the legal arguments made by the Navajo Nation Department of Justice and cripple the Nation's position in State election cases. Had the Navajo Election Commission and the Navajo Nation Council consulted the Navajo Nation Department of Justice there may have been a solution to our own election situation rather than an immediate rush to cancel our Primary Election.

The Navajo Nation has fought for decades to secure certain rights for our People and the right to vote is a fight we continue to this day. We owe much to our parents and grandparents who lead that fight for our rights, so we have an obligation as Navajo leaders to protect those rights for future generations. We are in a difficult time now where we need to be seriously concerned for our People's health, safety, and welfare but we must balance that concern without giving up our hard earned right to vote. There are still many options available to the Navajo Election Office for the Primary Election; some of those options are expressed in the New Mexico case brief mentioned above.

We agree the coronavirus presents a major challenge for all of us but over the past months we have learned to meet that challenge head on. We live in a COVID world now with face coverings, washing our hands, limiting our movement outside our homes, and keeping our physical distance from others. Our People are well aware of the seriousness of the virus and we are learning new social norms. Election day was a time we met with our relatives to catch up on news, have a cup

of coffee and a hot meal. We cannot do these things now, but we can still exercise our right to choose our leaders.

The Navajo elections must be taken seriously. As a Nation we have made accommodations to have our own elections coincide with State elections to have our Navajo People participate in all elections. This is one of those years it is important to get out the vote. Our Navajo People have influence on State elections and the national election, but we will lose that influence with the cancellation of our Primary Election this year. The rationale for cancelling the Navajo Primary this year will have repercussions not only for Chapter elections but the State and national elections as well.

A veto of CJN-49-20 protects the right to vote of all Navajo People and we recommend the Navajo Election Office and the Navajo Nation Board of Election Supervisors consider alternative methods to allow Navajo People their vote in the Chapter elections. We also recommend the Election Office and Board of Supervisors review the Navajo Nation's position on State elections with the Navajo Department of Justice so that we are in step with each other on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Nez".

Jonathan Nez, President
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACTION RELATING TO NAABIK'ÍYÁTI' AND THE NAVAJO NATION COUNCIL;
CANCELLING THE PRIMARY ELECTION FOR THE 2020 CHAPTER ELECTION;
SETTING ONE CHAPTER ELECTION DATE FOR NOVEMBER 3, 2020; WAIVING 11
N.N.C. §§ 3 (C) AND 41

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102 (A).
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 700. Pursuant to 2 N.N.C. § 164 (A)(9), "a proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti' Committee."
- C. The Navajo Board of Election Supervisors was created by the Navajo Nation Council as "an independent entity." 2 N.N.C. § 871 (A), Consistent with this status, the Board is responsible only to the Navajo Nation Council, with the authority to enforce provisions of the Navajo Election Code and to make rules and regulations furthering the intent and purposes of the Election Code. 2 N.N.C. § 873 (B)(6) and 11 N.N.C. §§ 321 (A)(6) and 322.

SECTION TWO. FINDINGS

- A. Under the Navajo Nation Election Code, primary election for the 2020 Chapter Elections must be conducted August 4, 2020. 11 § N.N.C. 3 (C).
- B. Pursuant to directive of the Navajo Nation Council for recommendations, the Navajo Board of Election Supervisors, "the board," is requesting that the primary election scheduled for August 4, 2020 be cancelled. **Exhibit A**, resolution BOESMY-024-20. The board expresses health concerns over the recent outbreak of coronavirus (COVID-19). The Navajo Election Administration (NEA) states similar concerns. **Exhibit B**, NEA memorandum. Essentially, the concerns are over the safety of

the voting public, candidates, poll officials, and staff of the Election Administration. For purposes of mitigating the spread of COVID-19, the request is made for the cancellation of the primary election and that one election be held on November 3, 2020.

- C. COVID-19 is a virus causing serious respiratory illness. It is pandemic, with many cases involving death continuing to be reported across the United States. In addressing the concerns, the Navajo Nation has issued a number of public health orders for all residents of the Navajo Nation. These orders include mandatory curfews, restrictions on public gatherings, the mandatory wearing of masks in public places and social distancing. Access to government offices has also been restricted to the general public. See, *Emergency Management Commission resolution CEM 20-03-11; Executive Orders Nos. 001-20, 002-20, 003-20, 004-20; Public Health Emergency Orders 2020-001, 2020-002, 2020-003, 2020-004, 2020-005, 2020-006, 2020-007, 2020-008* (incorporated herein by this reference).
- D. In spite of mitigation measures, COVID-19 has disproportionately affected the Navajo Nation. Today, the Navajo Nation has one of the highest per capita rates of positive tests for COVID-19 in the United States. See, <https://thehill.com/policy/healthcare/497091-navajo-nation-has-more-coronavirus-cases-per-capita-than-any-us-state>. The number of positive tests continues to increase at an alarming rate.
- E. Historically, elections within the Navajo Nation have been conducted in-person. Although mail-in balloting is permitted, most voters choose to cast their ballots at the polling sites that are established in each of the 110 chapters on election day. The emergency caused by COVID-19 has impacted preparations for the 2020 Chapter Elections.
- F. All voters, candidates and poll officials must be properly protected on election day. Preparations and precautionary measures must include the purchase and availability of Personnel Protective Equipment (PPE). The Navajo Election Administration calculates the costs for such protective equipment to range between \$57,884.68 and \$84,401.20. **Exhibit B.** In addition to these anticipated costs, the Election Administration is also reviewing the prospect of on-line voting, as well as purchasing computer software and additional equipment for election purposes. For the 2020 Chapter Elections, the Administration intends to continue working with

Navajo Nation Health Command in ensuring compliance with all guidelines for conducting a safe election.

- G. COVID-19 will likely affect voter turnout in the 2020 Chapter Elections, particularly for the primary. Voter turn-out is generally lower in primary elections than in general elections. In the last Chapter Election conducted in 2016, the primary election voter turn-out was 29.52 %. Aside this issue, the Navajo Board of Election Supervisors expresses concern regarding instances in which candidates will run unopposed in the primary election. Upon election, such candidates are automatically placed on the general election and certified upon such election.
- H. COVID-19 presents a major challenge in the conduct of the 2020 Chapter Elections. The pandemic facing the Navajo Nation makes it extremely difficult to proceed with elections as has been done in the past. As there is no vaccine, it is crucial that the spread of the virus be minimized.

SECTION THREE. CANCELLING PRIMARY ELECTION; AUTHORIZING CHAPTER ELECTION FOR NOVEMBER 3, 2020

- A. The Navajo Nation hereby cancels the primary election for the 2020 Chapter Elections. For purposes of this action, 11 N.N.C. §§ 3 (C) and 41 are waived.
- B. Chapter Elections shall be conducted on November 3, 2020. There shall be one election, with no primary election. All eligible candidates shall be placed on the election ballot and the winning results for each position shall be determined by plurality vote.
- C. The Navajo Board of Election Supervisors shall set the candidate filing period, and shall further adopt any necessary rules and regulations for purposes of implementing and furthering the intent and purposes of this resolution of the Navajo Nation Council.

SECTION FOUR. EFFECTIVE DATE

This action of the Navajo Nation Council herein shall be effective pursuant to 2 N.N.C. § 221(B). Further, the "President's authority to sign into law or veto legislation shall be deemed waived if not exercised within 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." 2 N.N.C. § 1005 (C)(12).

SECTION FIVE. 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.

SECTION SIX. DIRECTIVE

The Office of the Controller and Business Regulatory Department shall provide administrative support to the Navajo Nation Election Office for financial procurement of goods and services to ensure the 2020 election is held in a safe and orderly manner.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th 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 15 in Favor, and 06 Opposed, on this 19th day of June 2020.


Honorable Seth Damon, Speaker
24th Navajo Nation Council

June 23, 2020
DATE

Motion: Honorable Vince James

Second: Honorable Eugenia Charles-Newton

Speaker Seth Damon 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 _____, 2020.

Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this 03 day of July, 2020 for the reason(s) expressed in the attached letter to the Speaker.

J-TL NEZ
Jonathan Nez, President
Navajo Nation

RESOLUTION OF THE
NAVAJO BOARD OF ELECTION SUPERVISORS

**Recommending the conduct of only the General Election for the 2020 Chapter Elections;
recommending waiving 11 N.N.C. §§ 3(C) and 41 with a timeline attached at Exhibit A,**

WHEREAS:

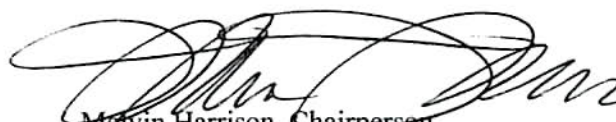
1. Pursuant to 2 N.N.C. § 871(A), the Navajo Board of Election Supervisors was created by the Navajo Nation Council as "*an independent entity*." Consistent with this status, the Board is responsible only to the Navajo Nation Council, with the authority to enforce provisions of the Navajo Election Code and to make rules and regulations furthering the intent and purposes of the Election Code. 2 N.N.C. § 873(B)(6) and 11 N.N.C. §§ 321(A)(6) and 322.
2. There are a number public health orders issued residents and members of the Navajo Nation for purposes of addressing COVID-19, orders including stay-at-home orders. It is uncertain when orders and restrictions will be lifted.
3. Under the current provisions of the Navajo Nation Election Code at 11 N.N.C § 3(C) primary elections are held on first Tuesday in August in any year in which a general election is held and at which candidates for public office are to be elected. The processes for a primary election are held in 11 N.N.C. § 41 as well. The new timeline is attached as Exhibit A.
4. It is not uncommon in a primary election to have only one interested candidate applying for a position. In these instances, the sole candidate, pursuant 11 N.N.C. § 25, is placed on the ballot as an "unopposed candidate" in both the primary and general elections. In the primary elections for 2016 Chapter Elections, there were 479 unopposed candidates.
5. Through a directive of the Navajo Nation Council issued on April 10, 2020, the Navajo Board of Election Supervisors must within 60 days thereof address through resolution, the Chapter Elections.

NOW THEREFORE BE IT RESOLVED THAT:

1. To minimize the contact amidst COVID-19 and for the purposes of compliance with the various Navajo Nation Health Orders issued to date, the Navajo Board of Elections Supervisors, in respect to the 2020 Chapter Elections, recommends that requirements of conducting a primary election this year to be waived and to have only a General Election in November 2020. See Exhibit A.
2. Pursuant to the Navajo Nation Election Code, the Navajo Board of Election Supervisors states that the General Election of the 2020 Chapter Election be conducted on November 3, 2020.

CERTIFICATION

I hereby certify that the foregoing resolution was duly adopted by the Navajo Board of Election Supervisors at a duly called special meeting at Window Rock, Navajo Nation (Arizona) at which a quorum was physically present and that the same was passed by a vote of 6 in favor, 0 opposed, and 0 abstaining this 13th day of May, 2020.


Melvin Harrison, Chairperson
Navajo Board of Election Supervisors

Motion: Jackie Burbank
Second: Arlene Brown

"Exhibit A"

New Timeline for the 2020 Navajo Chapter Elections

1. July 25 to August 5, 2020 Candidates filing date opens and closes.
2. August 10, 2020 Deadline for Certification of Candidates.
3. August 20, 2020 Deadline for Candidates to file a grievance.
4. October 5, 2020 Voter registration closes.
5. October 5, 2020 Absentee voting begins.
6. October 19, 2020 Deadline for early voters, (voters must be in NEA office by 5pm that day).
7. October 30, 2020 Last day for absentee voting.
8. November 2, 2020 Chief Poll Judges meeting and training.
9. November 3, 2020 General Election.



NAVAJO ELECTION ADMINISTRATION

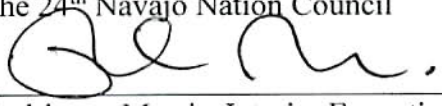
Strength and Dignity Through Voting



May 14, 2020

MEMORANDUM

To: The 24th Navajo Nation Council

From: 
Rodriguez Morris, Interim Executive Director
Navajo Election Administration

RE: Support for the NBOES Resolution BOESMY-024-20
*Recommending the conduct of only the General Election for the
2020 Chapter Elections; recommending waving 11 N.N.C. §§ 3(C) and 41.*



This memorandum is written to support and to provide information to the Navajo Nation Council on the Navajo Board of Election Supervisors resolution to recommend waving 11 N.N.C. §§ 3 (C) and 41, and to proceed directly to the General Election and not have a Primary Election for the 2020 Election. The Navajo Elections Administration (NEA) has assessed the current office standing as for available resources in operations to proceed with the planning and the implementation of the 2020 election without a primary election. And our office has identified the following as to support our aforementioned position for the 2020 Election:

1. The primary concern in proceeding with elections as codified within the election code is the safety of the NEA staff, volunteers and the general public. The COVID19 (CCP Virus) pandemic makes it difficult to proceed with the elections as it has been done in the past. We are tasked with procuring building material to build barriers, counter space to direct public traffic for open filing and the elections, establishing a controlled environment to mitigate direct and community spread of the virus, partitions to separate staff work stations and establishing a decontamination work stations for all 6 offices to process the submission of public documents to mitigate the indirect spread of the virus to the NEA offices and staff who will have to handle documents submitted by candidates. The NEA will have to seek additional supplemental funding immediately from council to prepare for this election year, as we will incur significant additional expenditures for this election cycle.
2. The NEA has also identified that we will have to acquire Personal Protective Equipment (PPE) --- which includes masks, hand sanitizer stations, gloves and disinfectant supplies---for staff members to operate in the normal course of business serving the general public and candidates. The PPEs will also have to be procured and made available for poll workers, volunteers, registered voters and staff members who may enter into the polling sites on the designated election days. The anticipated registered voters for the 2020 elections is 108,968 and thus it is estimated to provide sufficient PPEs for a safe election it will cost at the least \$57,884,68 and \$84,401.20 on the high end.

NAVAJO ELECTION ADMINISTRATION

Strength and Dignity Through Voting

3. The NEA, as result of the unique situation posed by the pandemic, time lines for printing the ballots has been directly affected and thus having to focus on a primary and a general election could hinder sufficient time to ensure the ballots would be ready for both the primary and general election. We have to also consider possible further delays which may come from candidates who may file within the Office of Hearings & Appeals and the Navajo Nation courts. This election cycle will result in possible instances of first impression and thus may further impinge upon the overall election process schedule.
4. It is recommended to have open filing for candidates to be set for July 23, 2020 to August 5, 2020 as opposed to June 4, 2020 as the NEA is currently working to establish online filing for candidates to limit person to person contact and to prevent contamination of our offices from documents which may have latent viruses upon them. We are acquiring a license to establish a viable online platform to allow for candidates to file for candidacy online. The initial cost of the annual licensure is \$700.00 and thus will have to include in operations expenditures.
5. The NEA administration has been seriously neglected and thus the interim Executive Director is working bring the office back up to sufficient operation standards. The computer system and the voter data base are both obsolete and operating on Window 2003, new computers have been ordered and some have arrived and have yet to be installed, computer software also need to be ordered for all the new computers, we also need additional equipment to include scanners, printers and hard drives. In addition to the office equipment the NEA is having to resubmit an application to acquire an Operational PCard to streamline purchasing office supplies and equipment.
6. The NEA requires additional time to work with the Navajo Nation Health Command to establish protocols and procedures for a safe election process for the November 3, 2020 General Election. This includes dispatching all protective measures at all the polling sites, train all staff and temporary support staff to properly deploy protective protocols for all sites, consider alternatives for casting ballots to include absentee ballots, mail in ballots and/or curb side voting. The NEA will also be looking to work with State entities to cost share on equipment and supplies for all polling sites. The NEA will be looking at alternative options to include limiting and consolidating polling sites for the General Election. We have also been tasked to attempt to implement online voting however such a platform would most likely not be available until the next years voting cycle.
7. The COVID19 (CCP Virus) has caused many Navajo Nation Offices to shut down or operate on limited staffing and hours which has affected processing of and approving purchase orders and request for direct payments, this has hindered NEA operations. Should the Navajo Nation reopen by June 2020, or thereafter we should be able to push all our purchasing forward within the process or via an operational PCard (which would be the best option for the NEA).
8. Statistics from the 2016 Primary Elections is recorded as follow; 118,673 persons registered to vote and only 35,027 (29.52 %) voted in the primary election in 2016.
9. Lastly, we also are establishing an internal administrative work group to work with and advise the Automated Election Services (AES), who primarily prints all Navajo Nation ballots and houses our voting machines, to work out details for ballot printing and to amend our agreement to utilize voting machines that could accommodate alternative voting for curbside voting, mail in and absentee balloting and to accommodate ballots that will have back to back printing to accommodate candidate ballots and referendums. The use of the updated voting machines would make tallying ballots efficiently and will also

NAVAJO ELECTION ADMINISTRATION

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help in over reporting of statistics. This also will open possible discussion to initiate the implementation of a new voter and election data base.

This memorandum is not written to undermine nor infringe upon the general public's right to vote but is made to ensure that the safety of the Navajo Nation tribal members in this years' election, which also includes the NEA staff and volunteers. Should you require additional information I may be reached at my office and will also be available to appear before the Navajo Nation Council when this matter is addressed in a regular or special meeting.

NAVAJO NATION

345

6/19/2020

Navajo Nation Council Special Session

11:22:08 PM

Amd# to Amd#	Legislation 0123-20: Cancelling	PASSED
MOT James, V	the Primary Election for the	
SEC Charles-Newton	2020 Chapter Election; Setting	
	one Chapter Election date...	

Yeas : 15

Nays : 6

Excused : 1

Not Voting : 1

Yea : 15

Begay, P	James, V	Stewart, W	Walker, T
Charles-Newton	Nez, R	Tso	Wauneka, E
Halona, P	Slater, C	Tso, D	Yazzie
Henio, J	Smith	Tso, E	

Nay : 6

Begay, E	Brown	Freeland, M	Yellowhair
Begay, K	Crotty		

Excused : 1

Daniels

Not Voting : 1

Tso, C

Presiding Speaker: Damon