

No. SC-CV-02-10

NAVAJO NATION SUPREME COURT

OFFICE OF THE NAVAJO NATION
PRESIDENT AND VICE-PRESIDENT and
JOE SHIRLEY, JR., in his capacity as President
Of the Navajo Nation, and as an individual
Petitioners-Appellees,

v.

THE NAVAJO NATION COUNCIL and
LAWRENCE T. MORGAN, in his capacity
As Speaker of the Navajo Nation Council,
And as an individual
Respondents-Appellants.

ORDER REQUESTING SUPPLEMENTAL BRIEFS

Before, YAZZIE, Chief Justice, and GRANT and SHIRLEY, Associate Justices.

An appeal from the decision of the Window Rock District Court, Cause No. WR-CV-512-09, the Honorable Judge, Geraldine Benally, presiding.

C. Joe Lennihan, Albuquerque, New Mexico for Appellants; and Benjamin C. Runkle, Phoenix, Arizona for Appellees; James E. Fitting, Albuquerque, New Mexico for Amicus Curiae Eddie J. Arthur.

In the Order dated January 29, 2010 the Court established a briefing schedule for the Appellant and the Appellee. The Court has received Appellant's Opening Brief and Appellee's Answering Brief. Appellant's reply brief has yet to be filed. The amicus brief has yet to be filed. Oral argument has been set for March 19, 2010 at 10:00 a.m. at Diné College, Tsaile, Navajo Nation.

The Court now sees a need to revisit the briefing schedule and the date of oral argument because of recent legislative activities. Resolution CJA-08-10 was recently enacted by

the Navajo Nation Council by an override of the President's veto. This enactment appears to make changes in our legal system that must be addressed.

First, it appears that the new legislation purports to enhance the immunity of the Navajo Nation Council and all council delegates against lawsuits. In this particular case, the Navajo Nation Council and Speaker Lawrence T. Morgan are the Defendants/Appellants in this proceeding. They are a party to this lawsuit. As a result, a question arises as to what impact does the new legislation have on this lawsuit. Can this lawsuit proceed?

Secondly, the parties have briefed their positions using Diné Fundamental Law, custom and tradition. The new legislation appears to prohibit all courts of the Navajo Nation from considering and applying Diné Fundamental Law, customs, and tradition in interpreting laws and adjudicating cases. The question then arises as to what impact this new legislation has on the positions of the parties and on the authority of this Court and the district courts to consider the positions of the parties.

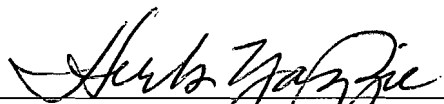
Thirdly, the plain language of the new legislation appear to prohibit judicial review of all laws enacted by the legislature and fundamentally change existing principles, concepts and structure of the Navajo Nation government. This not only raises the issue of what impact there may be on the lawsuit but, more importantly and necessarily, whether the new legislation itself is legally valid.

For these general reasons and upon the Court's own motion, supplemental briefing shall be ORDERED from the parties. The Court, for the foregoing reasons, finds that the new legislation raises legal doubt requiring final determination of law, that the questions raised are of material importance and of substantial public interest and that the questions raised affect the merits of the case and should be determined before further proceeding.

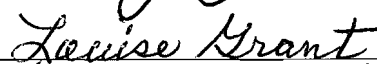
The Court hereby modifies the briefing schedule as follows:

1. Appellant's reply to Appellee's Answering Brief remains as is – it shall be filed on March 08, 2010 at 5:00 p.m.
2. The amicus brief originally set for March 05, 2010 has been changed to 5:00 p.m., Friday, April 02, 2010. The amicus brief shall include, if any, a position as to the new legislation. These shall be no supplemental brief from the amicus curiae.
3. The amicus response by the Appellants and Appellees set for March 12, 2010 has been changed to 5:00 p.m., Friday, April 09, 2010
4. Appellant and Appellee shall file their supplemental brief by 5:00 p.m. Friday, March 19, 2010.
5. Appellant and Appellee shall file their response to the supplemental brief by 5:00 p.m. Friday, March 26, 2010
6. There shall be no reply by either party.
7. The oral argument originally set for March 19, 2010 has been rescheduled to Friday, April 19, 2010 at 10:00 a.m. at Dine College, Tsaile, Navajo Nation.
8. The amicus brief, supplemental briefs, and response briefs shall be limited to no more than thirty (30) pages.

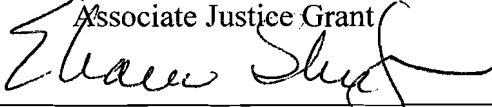
Dated this 3rd day of March, 2010.



Chief Justice



Associate Justice Grant



Associate Justice Shirley