

No. SC-CV-03-10

NAVAJO NATION SUPREME COURT

Timothy Nelson,
Petitioner-Appellant,

v.

Initiative Committee to Reduce Navajo
Nation Council, Office of the President,
Joe Shirley, Jr.,
Respondents-Appellees.

ORDER REQUESTING SUPPLEMENTAL BRIEFS

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

An appeal from the decision from the Office of Hearing and Appeals, Cause No. OHA-EC-002-09, Administrative Hearing Officer Karen Bernally presiding.

John Trebon, Flagstaff, Arizona, for Appellant; and Albert A. Hale, Window Rock, Navajo Nation, for Appellees; James E. Fitting, Albuquerque, New Mexico for Amicus Curiae Eddie J. Arthur; Frank M. Seanez, Window Rock, Navajo Nation for Amici Curiae Ernest Yazzie, Leonard Chee, and Lee Jack.

Pursuant to the briefing schedule established by the Order dated February 04, 2010 the Court has received Appellant's Opening Brief and Appellee's Response Brief. The Appellant's reply brief has yet to be filed. The amicus briefs have yet to be filed. Oral argument is scheduled for March 12, 2010 at 10:00 a.m. at the Navajo Nation Museum, Window Rock, 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, 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 rises 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.

Secondly, 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 on whether the new legislation itself is legally valid.

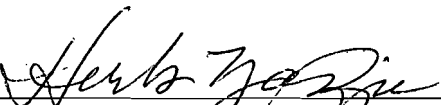
For these general reasons and upon the Court's own motion, supplemental briefing shall be ORDERED from the parties. The Court, for the foregoing reasons, finds that the new legislation raises legal doubt requiring final determination of law, that the questions raised are of material importance and of 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:

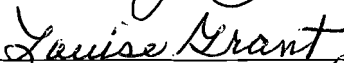
1. The Appellant's reply brief to Appellee's response brief shall remain as is. The reply brief shall be filed on March 09, 2010 at 5:00 p.m.
2. Appellant and Appellee shall file their supplemental briefs by 5:00 p.m., Friday, April 02, 2010.
3. Appellant and Appellee shall file their response briefs to the supplemental brief by 5:00 p.m., Friday, April 09, 2010.

4. The amicus brief originally set for March 05, 2010 has been changed to 5:00 p.m., Friday, April 02, 2010 and shall include, if any, the issue on the impact of the new legislation under Resolution CJA-08-10.
5. The amicus response by the Appellant and Appellee set for March 10, 2010 has been changed to 5:00 p.m., Friday, April 09, 2010.
6. There shall be no reply by either party.
7. The oral argument set for March 12, 2010 has been rescheduled to April 20, 2010 at 10:00.m. at Navajo Nation Museum, Window Rock, Navajo Nation.
8. The amicus brief, supplemental briefs and response briefs shall be limited to no more than thirty (30) pages.

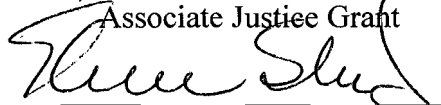
Dated this 3rd day of March, 2010.



Chief Justice



Associate Justice Grant



Associate Justice Shirley