



The Navajo Nation

DR. JOE SHIRLEY, JR.

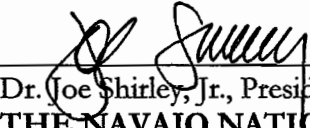
President

BEN SHELLY

Vice President

MEMORANDUM

TO: Lawrence T. Morgan, Speaker
The Navajo Nation Council

FROM: 
Dr. Joe Shirley, Jr., President
THE NAVAJO NATION

DATE: February 12, 2010

SUBJECT: RESOLUTION NO. CJA-08-10

The amendments to the Foundation of the Diné, Diné Law and Diné Government codified in 1 N.N.C. §§ 200 – 207, undermine the original intent and purpose of the Diné Fundamental Law. That purpose is to protect, preserve and enhance the Diné Life Way and to do so on a daily basis at all levels of government and among each of the branches. These amendments would prohibit the Courts of the Navajo Nation from interpreting, applying or determining the validity of the Diné Fundamental Law unless statutorily defined by the Navajo Nation Council or through consensual peacemaking.

After nearly a decade of codification of Diné Fundamental Law without problem or issue, these amendments came about for political reasons because of one recent decision by the Office of Hearings and Appeal. Disagreement with that decision for political reasons has resulted in the Navajo Nation Supreme Court and the District Courts being painted with the same political brush, with the accusation that our Navajo judges are incapable of accurately and impartially interpreting Diné Fundamental Law. These allegations only serve to undermine their integrity, probity, fairness, legal training and soundness in the minds of the public, and send the progress of our judicial system in a backward direction.

Most troubling is that the Council approved these amendments without consulting the Navajo people, without holding public hearings, without chapter visits, without so much as collaboration with the very people who will be most directly affected. Diné Fundamental Law is the bedrock upon which Navajo society and our Navajo government is built. By attempting to amend, and, in essence repeal, its applicability, the Council is undermining all we hold dear and that which identifies us specifically as Navajo, distinct from other tribes or other governmental entities.

Additionally, the prohibition on the Courts to apply the Diné Fundamental Law will be viewed as curtailing or denying due process to Navajo citizens because these amendments

intend to restrict the Courts from recognizing causes of action or entitlements arising from the Navajo Common Law.

From a legal standpoint, the amendments are seriously defective because of incomplete legal research and a lack of thorough understanding of our Navajo Nation Code which references Diné Fundamental Law in more than one Title – specifically Title 7. The failure to amend relevant sections of Title 7 of the Navajo Nation Code creates a serious conflict of law problem which will, without a doubt, result in uncertainty and legal challenges. This oversight is indicative of the lack of serious thought and consideration given to these amendments.

Finally, as policy-makers and lawmakers, I believe the Navajo Nation Council has a duty to develop a body of law that is consistent with Diné value systems, is based upon the guiding principles of *K'í*, and will sustain and strengthen our government and Nation, rather than try to limit that which is our way of life and a gift from the deities.

For the reasons stated herein, I hereby veto Resolution No. CJA-08-10.

xc: Honorable Members of the Navajo Nation Council

RESOLUTION NO: CJA-08-10

TITLE: RELATING TO GOVERNMENT SERVICES,
JUDICIARY AND INTERGOVERNMENTAL RELATIONS;
ENACTING THE FOUNDATION OF THE DINÉ, DINÉ
LAW AND DINÉ GOVERNMENT ACT OF 2009;
AMENDING 1 N.N.C. §§ 200-207

DELIVERED TO PRESIDENT'S OFFICE: 2/03/10 4:25 P.M.
Date Time

Received By: MDT/s 2/3/10
Name Date

Veto Power Waived as of 5:00 P.M. 02/13/2010
Date

Prepared by Office of Legislative Services

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

AN ACT

**RELATING TO GOVERNMENT SERVICES, JUDICIARY AND
INTERGOVERNMENTAL RELATIONS; ENACTING THE FOUNDATION OF
THE DINÉ, DINÉ LAW AND DINÉ GOVERNMENT ACT OF 2009; AMENDING 1
N.N.C. §§ 200 - 207**

BE IT ENACTED:

Section One. Findings

A. The Navajo Nation Council developed and legislatively enacted the Foundation of the Diné, Diné Law and Diné Government in 2002 to acknowledge, protect, observe and educate on the values and principles inherent to the Diné Life Way, while maintaining respect for the various spiritual beliefs, practices and contributions of all persons within the Navajo Nation. Resolution CN-69-02; 1 N.N.C. §§ 201-206.

B. The Diné are guided and protected by their individual understanding, respect, and observance of the Diné Life Way, or other life ways, in the manner they have been taught by their respective families, community leaders, and as advised by the traditional practitioners they have selected.

C. An individual's education, understanding, respect and observance of the Diné Life Way is incomplete unless it is consensual and harmonious with the principles of hózhó, k'é and k'éeí.

D. It is inappropriate for Navajo Nation governmental entities or officials to dictate, coercively administer, and attempt to enforce a non-consensual observance of the Diné Life Way, including through the imposition of decisions and judgments developed in adversarial proceedings in non-traditional judicial forums by government-appointed judges and justices in the Judicial Branch (Aláají' Hashkèèjí Naat'ááh).

E. The Navajo Nation Council (Aláají' Naat'ájí Naat' áanii) is comprised of Diné individuals freely chosen as elected leaders to represent the beliefs and values of their respective Diné communities and to acknowledge the complexities of modern Diné and global society when enacting laws and policies (Diné bibeehaz'áanii) to address the needs of the Navajo Nation.

F. The Foundation of the Diné, Diné Law and Diné Government statute was not enacted by the Navajo Nation Council to supersede duly-adopted Navajo Nation laws or policies; to contravene the authority of the Navajo Nation Council to enact Navajo Nation laws or policies; nor to delegate authority to substitute alternatively formulated “fundamental laws” instead of Navajo Nation laws or policies duly-adopted by the leaders of the Legislative Branch.

G. There is a need to clarify the application of the Foundation of the Diné, Diné Law and Diné Government statute, clarify the roles and responsibilities of the three branches of contemporary Navajo Nation government, and expressly state that the Diné leaders of the Legislative Branch duly enact valid Diné bibeehaz’áanii (Navajo Nation laws and policies) which are reflective of the needs and values of Diné constituents, and which are to be implemented by the Executive Branch and applied and interpreted by the Judicial Branch.

Section Two. Enacting the Foundation of the Diné, Diné Law and Diné Government Act of 2009

The Navajo Nation hereby enacts the Foundation of the Diné, Diné Law and Diné Government Act of 2009 by amending 1 N.N.C. §§ 200 - 207 as follows:

Title 1. General Provisions

Chapter 2. Foundation of the Diné, Diné Law and Diné Government

§ 200. Purpose; application

A. The Foundation of the Diné, Diné Law and Diné Government is a legislative enactment of the Navajo Nation Council to provide a general statement of guiding principles to acknowledge, protect, observe, and educate on the values and principles inherent to the Diné Life Way, while maintaining respect for the various spiritual beliefs, practices and contributions of all persons within the Navajo Nation; and maintaining respect for the specific roles, responsibilities and authorities of the three branches of contemporary Navajo Nation government.

B. The Foundation of the Diné, Diné Law and Diné Government does not supersede Navajo Nation statutory laws or policies (Diné bibeehaz’áanii) duly-adopted by the leaders of the Legislative Branch; does not contravene the authority of the leaders of the Legislative Branch to enact Navajo Nation statutory laws or policies (Diné bibeehaz’áanii); and does not delegate authority to substitute alternatively formulated “fundamental laws” or policies instead of Navajo Nation laws or policies (Diné bibeehaz’áanii) duly-adopted by the leaders of the Legislative Branch.

§ 201. Diné Bi Beehaz'áanii Bitsé Siléí - Declaration of the Foundation of Diné Law

We, the Diné, the people of the Great Covenant, are the image of our ancestors and we are created in connection with all creation.

Diné Bi Beehaz'áanii Bitsé Siléí

Diyin Dine'é,
 Sin dóó sodizin,
 Bee
 Nahasdzáán dóó yádiłhił nitsáhákees yił hadeidiilaa,
 Tó dóó dził diyinii nahat'á yił hadeidiilaa,
 Niłch'i dóó nanse' ałtaas'éí iiná yił hadediilaa,
 Kó', adínííín dóó nt'iz náádahaniihji' shasin yił hadediilaa.
 Díí ts'ídá aláají' nihi beehaz'áanii bitsé siléí nihá' ályaa.
 Nitsáhákees éí nahat'á bitsé silá.
 Iiná éí sihasin bitsé silá.
 Hanihi'diilyaadi díí nihiihdaahya' dóó bee hadíníit'é.
 Binahji' nihéého'díłzingíí éíí:
 Nihíłzhi',
 Ádóone'é niidlíinii,
 Nihinéí',
 Nihee ó'ool iłł,
 Nihi chaha'oh,
 Nihi kék'ehashchíín.
 Díí bik'ehgo Diyin Nohookáá Diné nihi'doo'niid.
 Kodóó dah'adíníísá dóó dah'adiidéél.
 Áko dííshjíígi éí nitsáhákees, nahat'á, iiná, saad, oodłą',
 Dóó beehaz'áanii ałąą ádaat'éego nihitah nihwiileeh,
 Ndi nihi beehaz'áanii bitsé siléí nhá ndaahya'ąą t'ahdii doo łahgo ánéehda.
 Éí biniinaa t'áá nanihi'deelyáhąą doo níłch'i diyin hinááh nihiihdaahya'ąą ge'át'éigo,
 T'áá Diné niidłgo náásgóó ahoól'á.
 The Holy People ordained,
 Through songs and prayers,
 That
 Earth and universe embody thinking,
 Water and the sacred mountains embody planning,
 Air and variegated vegetation embody life,
 Fire, light, and offering sites of variegated sacred stones embody wisdom.
 These are the fundamental tenets established.
 Thinking is the foundation of planning.
 Life is the foundation of wisdom.
 Upon our creation, these were instituted within us and we embody them.

Accordingly, we are identified by:

Our Diné name,

Our clan,

Our language,

Our life way,

Our shadow,

Our footprints.

Therefore, we were called the Holy Earth–Surface–People.

From here growth began and the journey proceeds.

Different thinking, planning, life ways, languages, beliefs, and laws appear among us,

But the fundamental laws placed by the Holy People remain unchanged.

Hence, as we were created and with living soul, we remain Diné forever.

[Image of Mother Earth and Father Universe not reproduced herein.]

§ 202. Diné Bi Beenahaz'áanii

The Diné bi beenahaz'áanii embodies Diyin bitsáádéé' beehaz'áanii (Traditional Law), Diyin Dine'é bitsáádéé' beehaz'áanii (Customary Law), Nahasdzaán dóó Yádiłhił bitsáádéé' beehaz'áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz'áanii (Common Law), and Diné bibeehaz'áanii (Navajo Nation statutory laws or policies (codified or uncodified) duly-adopted by the Diné leaders of the Legislative Branch in the Navajo Tribal Council, Navajo Nation Council or their standing committees).

These laws provide sanctuary for the Diné life and culture, our relationship with the world beyond the sacred mountains, and the balance we maintain with the natural world.

These laws provide the foundation of Diné bi nahat'á (providing leadership through developing and administering policies and plans utilizing these laws as guiding principles) and Diné sovereignty. In turn, Diné bi nahat'á is the foundation of the Diné bi naat'á (government). Hence, the respect for, honor, belief and trust in the Diné bi beenahaz'áanii preserves, protects and enhances the following inherent rights, beliefs, practices and freedoms:

A. The individual rights and freedoms of each Diné (from the beautiful child who will be born tonight to the dear elder who will pass on tonight from old age) as they are declared in these laws; and

B. The collective rights and freedoms of the Diyin Nihookáá Diné as a distinct people as they are declared in these laws; and

C. The fundamental values and principles of Diné Life Way as declared in these laws; and

D. Self-governance; and

E. A government structure consisting of Hózhóqjí Nahat'á (Executive Branch), Naat'ájí Nahat'á (Legislative Branch), and Hashkééjí Nahat'á (Judicial Branch), and the Naayee'jí Nahat'á (National Security Branch); and

F. That the practice of Diné bi nahat'á through the values and life way embodied in the Diné bi beenahaz'áanii provides the foundation of all laws proclaimed by the Navajo Nation government and the faithful adherence to Diné bi nahat'á will ensure the survival of the Navajo Nation; and

G. That Diné bi beenahaz'áanii provides for the future development and growth of a thriving Navajo Nation regardless of the many different thinking, planning, life ways, languages, beliefs, and laws that may appear within the Nation; and

H. The right and freedom of the Diné to be educated as to Diné bi beenahaz'áanii; and

I. That Diné bi beenahaz'áanii provides for the establishment of governmental relationships and agreements with other nations; that the Diné shall respect and honor such relationships and agreements and that the Diné can expect reciprocal respect and honor from such other nations.

§ 203. Diyin Bits'áádéé' Beehaz'áanii - Diné Traditional Law

The Diné Traditional Law declares and teaches that:

A. 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; and

B. All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of Diné bi beenahaz'áanii; and

C. The leader(s) of the Executive Branch (Aláají' Hózhjí Naat'ááh) shall represent the Navajo Nation to other peoples and nations and implement the policies and laws (Diné bibeelaz'áanii) enacted by the leaders of the Legislative Branch; and

D. The leader(s) of the Legislative Branch (Aláají' Naat'ájí Naat'ááh and Aláají' Naat'ájí Ndaanit'áii or Naat'aanii) shall enact policies and laws (Diné bibeelaz'áanii) in harmony with Diné bi beenahaz'áanii to address the immediate and future needs; and

E. The leader(s) of the Judicial Branch (Aláají' Hashkééjí Naat'ááh) shall resolve disputes in the courts of the Navajo Nation and adopt rules of pleading, practice, procedure, and evidence by applying and interpreting Navajo Nation statutory laws and policies (Diné bibe haz'áanii) enacted by the leaders of the Legislative Branch. The Peacemakers within the Peacemaking Program shall uphold the values and principles of embodied in Diné bi beenahaz'áanii in the consensual practice of resolving disputes by peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments; and

~~F. The leader(s) of the National Security Branch (Aláají' Naayéé'jí Naat'ááh) are entrusted with the safety of the people and the government. To this end, the leader(s) shall maintain and enforce security systems and operations for the Navajo Nation at all times and shall provide services and guidance in the event of severe national crisis or military type disasters; and~~

¶ F. Our elders and our medicine people, the teachers of the traditional laws, values and principles must always be respected and honored if the people and the government are to persevere and thrive; the teachings of the elders and medicine people, their participation in the government and their contributions of the traditional values and principles of the Diné life way will ensure the growth of the Navajo Nation; and from time to time, the elders and medicine people must be requested to provide the cleansing, protection prayers, and blessing ceremonies necessary for securing healthy leadership and the operation of the government in harmony with traditional law; and

¶ G. The various spiritual healings through worship, song and prayer (Nahaghá) must be preserved, taught, maintained and performed in their original forms; and

¶ H. The Diné and the government must always respect the spiritual beliefs and practices of any person and allow for the input and contribution of any religion to the maintenance of a moral society and government; and

¶ I. The Diné and the government can incorporate those practices, principles and values of other societies that are not contrary to the values and principles of Diné Bi Beenahaz'áanii and that they deem is in their best interest and is necessary to provide for the physical and mental well-being for every individual.

§ 204. Diyin Dine'é Bitsáádéé' Beehaz'áanii - Diné Customary Law

The Diné Customary Law declares and teaches that:

A. It is the right and freedom of the people that there always be holistic education of the values and principles underlying the purpose of living in balance with all creation, walking in beauty and making a living; and

B. It is the right and freedom of the people that the sacred system of k'é, based upon the four clans of Kiiyaa'áanii, Todíh'íinii, Honagháahnii and Hasht'ishnii and all the descendant clans be taught and preserved; and

C. It is the right and freedom of the people that the sacred Diné language (nihiinéí') be taught and preserved; and

D. It is the right and freedom of the people that the sacred bonding in marriage and the unity of each family be protected; and

E. It is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse; and

F. It is the right and freedom of the people that our children are provided with education to absorb wisdom, self-knowledge, and knowledge to empower them to make a living and participate in the growth of the Navajo Nation.

§ 205. Nahasdzáán dóó Yádilhil Bitsdée' Beehaz'áanii - Diné Natural Law

Diné Natural Law declares and teaches that:

A. The four sacred elements of life, air, light/fire, water and earth/pollen in all their forms must be respected, honored and protected for they sustain life; and

B. The six sacred mountains, Sisnaajini, Tsoodził, Dook'o'oolííd, Dibé Nitsaa, Dził Na'oodihii, Dził Ch'ool'í'í, and all the attendant mountains must be respected, honored and protected for they, as leaders, are the foundation of the Navajo Nation; and

C. All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist; and

D. The Diné have the sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward for these relatives through our use of the sacred gifts of language and thinking; and

E. Mother Earth and Father Sky is part of us as the Diné and the Diné is part of Mother Earth and Father Sky; The Diné must treat this sacred bond with love and respect without exerting dominance for we do not own our mother or father; and

F. The rights and freedoms of the people to the use of the sacred elements of life as mentioned above and to the use of land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné Life Way; and

G. It is the duty and responsibility of the Diné to protect and preserve the beauty of the natural world for future generations.

§ 206. Diyin Nohookáá Diné Bi Beehaz'áanii - Diné Common Law

The Diné Common Law declares and teaches that:

A. The knowledge, wisdom, and practices of the people must be developed and exercised in harmony with the values and principles of the Diné Bi Beenahaz'áanii; ~~and in turn, the written laws of the Navajo Nation must be developed and interpreted in harmony with Diné Common Law;~~ and

B. The values and principles of Diné Common Law must be recognized, respected, honored and trusted as the motivational guidance for the people and their leaders in order to cope with the complexities of the changing world, the need to compete in business to make a living and the establishment and maintenance of decent standards of living; and

C. The values and principles of Diné Common Law must be used to harness and utilize the unlimited interwoven Diné knowledge, with our absorbed knowledge from other peoples. This knowledge is our tool in exercising and exhibiting self-assurance and self-reliance and in enjoying the beauty of happiness and harmony.

[Image of Diné Original Law Structure not reproduced herein.]

§ 207. Statutory construction; justiciability; amendments

A. The Foundation of the Diné, Diné Law and Diné Government shall be construed to support its purpose to provide a general statement of guiding principles to acknowledge, protect, observe, and educate on the values and principles inherent to the Diné Life Way, while maintaining respect for the various spiritual beliefs, practices and contributions of all persons within the Navajo Nation; and maintaining respect for the specific roles, responsibilities and authorities of the three branches of contemporary Navajo Nation government.

B. The Foundation of the Diné, Diné Law and Diné Government shall not be construed to waive the sovereign immunity of the Navajo Nation; and shall not be construed to create any legally enforceable rights, entitlements or causes of action.

C. The Foundation of the Diné, Diné Law and Diné Government shall not be construed to supersede or replace Navajo Nation statutory laws or policies (Diné bibeehaz'áanii) duly-adopted by the leaders of the Legislative Branch; and shall not be construed to delegate authority to substitute alternatively formulated "fundamental laws" or policies instead of Navajo Nation laws or policies (Diné bibeehaz'áanii) duly-adopted by the leaders of the Legislative Branch.

D. Any dispute regarding the interpretation, application or validity of any portion or the entirety of the Foundation of the Diné, Diné Law and Diné Government statute or its underlying core principles shall not be brought, heard or resolved in the courts of the Navajo Nation but shall be resolved consensually through peacemaking in accord with Navajo Nation law.

E. The Foundation of the Diné, Diné Law and Diné Government shall be amended by the Navajo Nation Council upon recommendation by the Navajo Nation Council as deemed necessary from time to time.

Section Three. Effective Date

This Act shall become effective immediately in accord with 2 N.N.C. § 221(B).

Section Four. Codification

The provisions of this Act which adopt or amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

Section Five. Non-Justiciability

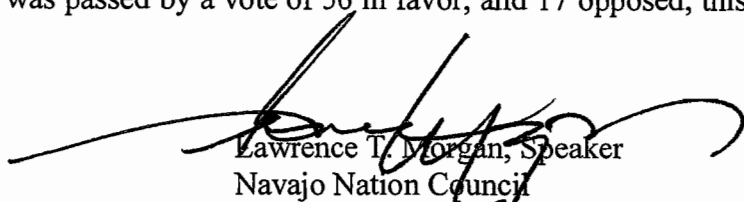
A. It is inappropriate for disputes on the interpretation, application or validity of the Foundation of the Diné, Diné Law and Diné Government to be heard and determined in non-traditional, non-consensual and adversarial judicial proceedings.

B. The courts of the Navajo Nation shall not hear any disputes nor render any decisions on the interpretation, application or validity of the Diné, Diné Law and Diné Government statute or its underlying core principles.

C. Any dispute regarding the interpretation, application or validity of any portion or the entirety of the Diné, Diné Law and Diné Government statute shall not be brought in the courts of the Navajo Nation but shall be resolved consensually through peacemaking in accord with Navajo Nation law.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 56 in favor, and 17 opposed, this 29th day of January, 2010.


Lawrence T. Morgan, Speaker
Navajo Nation Council

03 29 2010
Date

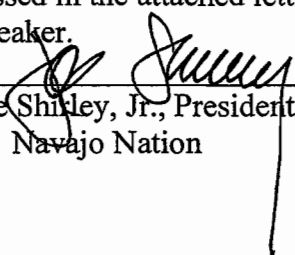
Motion: Woody Lee
Second: Harriett Becenti

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 _____, 2010.

Dr. Joe Shirley, Jr., President
Navajo Nation

- 2. I hereby veto the foregoing Legislation pursuant to 2 N.N.C. §1005(C) (11), this _____ day of ~~FEB 13 2010~~, 2010 for the reason(s) Expressed in the attached letter to the Speaker.



Dr. Joe Shirley, Jr., President
Navajo Nation