

No. SC-CV-57-14  
No. SC-CV-58-14

FILED  
SUPREME COURT

**SUPREME COURT OF THE NAVAJO NATION**

2014 SEP 25 PM 4:42

NAVAJO NATION

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Dale E. Tsosie,  
Petitioner-Appellant,  
v.

Christopher C. Deschene,  
Real Party in Interest.

Hank Whitehorse,  
Petitioner-Appellant,  
v.

Christopher C. Deschene,  
Real Party in Interest.

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**APPLICATION TO FILE *AMICUS CURIAE* BRIEF  
NAVAJO ELECTION ADMINISTRATION**

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September 25, 2014

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**IN THE SUPREME COURT OF THE NAVAJO NATION  
WINDOW ROCK (NAVAJO NATION), ARIZONA**

Dale E. Tsosie,	)	
Appellant,	)	
v.	)	
	)	No. SC-CV-57-14
Christopher C. Deschene,	)	No. SC-CV-58-14
Appellee.	)	
	)	
Hank Whitehorse,	)	
Appellant,	)	
v.	)	
	)	<b>APPLICATION TO FILE</b>
Christopher C. Deschene,	)	<b>AMICUS CURIAE BRIEF</b>
Appellee.	)	
	)	
_____	)	

COMES NOW, the Navajo Election Administration, by and through counsel, and submits application to the Navajo Supreme Court for leave to file a brief as *amicus curiae* in the above-entitled matter. Grounds for this petition are provided below.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Rule 13 of the Navajo Civil Appellate Procedure, in part, states:

"An amicus curiae brief shall be filed only with permission of the Supreme Court. The motion shall identify the interest of the applicant, state that the applicant has read the brief of the parties, and reasons why applicant's amicus curiae brief is necessary." Rule 13, Navajo Civil Appellate Procedure.

**I. Interests of Applicant**

The purpose and interest of the Navajo Election Administration in submitting this request to file as *amicus curiae* is to provide the Court the role of the Administration with respect to candidate applications filed for Navajo public elective offices.

Generally, the Election Administration, subject to the oversight authority of the Navajo Board of Election Supervisors, is responsible for conducting all Navajo Nation elections. *See generally*, 2 N.N.C. §871. Among its responsibilities in conducting elections, the Election Administration reviews and determines as eligible or ineligible all candidates for public elective office. 2 N.N.C. §871(A)(12).

## II. Reading of Briefs of Parties

The time periods for brief filing were shortened in this appeal. The Navajo Election Administration has read the briefs submitted by the parties.

## III. Reasons *Amicus Curiae* Necessary

Finally, the Election Administration, pursuant to the requirements of the rule on *amicus curiae*, states the reasons why it is necessary that it be allowed to submit an *amicus curiae* brief. The Navajo Election Administration reviews candidate applications. It determines whether or not candidates are eligible to run for office. The Election Administration can provide information that may be helpful in understanding the process involved. It can also provide an objective position on the application process and how or when challenges are made under the Election Code.

For reasons provided, the Navajo Election Administration requests that the Court grant leave to file an *amicus curiae* brief.

RESPECTFULLY SUBMITTED this 25th day of September, 2014.

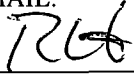


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Ron Haven, Counsel for Applicant  
Navajo Election Administration

**CERTIFICATION:**

I hereby certify that the forgoing application,  
at time of filing, was forwarded to the parties  
by EMAIL:



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Ron Haven, Counsel for Applicant  
Navajo Election Administration

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***AMICUS CURIAE* BRIEF OF  
THE NAVAJO ELECTION ADMINISTRATION**

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***AMICUS CURIAE BRIEF OF THE  
 NAVAJO ELECTION ADMINISTRATION***

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## **I. STATEMENT OF THE CASE**

This appeal concerns two cases dismissed by the Office of Hearings and Appeals. Both appeals include issues relative to the qualifications of the Appellee to run for Office of Navajo Nation President. The cases are consolidated on appeal.

## **II. PROCEEDINGS BELOW**

Statements of Grievances regarding Appellee's candidacy were filed with the Office of Hearings and Appeals. The grievances challenged the qualifications of the Appellee, that he did not meet the statutory requirement that candidates for Office of the President must speak Navajo fluently.

The Office of Hearings and Appeals dismissed the Statements of Grievance filed by the Appellants. Appellants filed appeals with the Navajo Supreme Court.

## **III. STATEMENT OF JURISDICTION**

Pursuant to 11 N.N.C. §24(A), challenges to the qualifications of candidates can be filed with the Office of Hearings and Appeals (OHA). Decisions by OHA on these challenges can be appealed to the Navajo Supreme Court. 11 N.N.C. 24(G).

For those disputes addressed by OHA through 11 N.N.C. §341, appeals can be filed with the Navajo Supreme Court within 10 days of decisions.

## **III. STANDARD OF REVIEW**

The standard of review for appeals concerning challenges under 11 N.N.C. §24 is stated as follows:



"Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record." 11 N.N.C. §24(G).

The standard of review for appeals filed under 11 N.N.C. §341 is the same. 11 N.N.C. §341(A)(4).

#### **IV. STATEMENT OF THE FACTS**

1. The Appellee, Mr. Christopher C. Deschene, filed with the Navajo Election Administration on April 14, 2014 his candidacy application for President the Navajo Nation.
2. The Election Administration, Western Agency, reviewed his application and determined his eligibility on April 25, 2014. Ballots for the Primary Election were prepared and printed.
3. Navajo Nation Primary Elections were conducted on August 26, 2014. The Appellee placed second among the candidates running for Office of President. Under Navajo Nation law, this qualified him to be placed on the November 2014 General Election.
4. Appellants filed complaints with the Office of Hearings and Appeals challenging Appellee's qualifications. The complaints alleged that Appellee did not speak Navajo fluently, a requirement under the Navajo Election Code. 11 N.N.C. §8(A)(4).
5. The Office of Hearings and Appeals, pursuant to 11 N.N.C. §24(G), summarily dismissed the complaints filed by the Appellants. Generally, the Office of Hearings and Appeals determined that the law required that challenges to the qualifications of candidates must be filed within 10 days of their eligibility determinations.
6. Appellants appealed the dismissals of the Office of Hearings and Appeals to the Supreme Court.

## V. STATEMENT OF THE ISSUES

Whether Appellee is qualified for Office of President, Navajo Nation.

## VI. ARGUMENTS

The Navajo Election Administration submits this *amicus curiae* brief for purposes of generally provide information on the role of the Navajo Election Administration in reviewing candidate applications under the Election Code.

The Navajo Election Code at 11 N.N.C. §23(A) provides:

"Within thirty (30) days of receipt of a candidate application, the Election Administration shall review, verify and determine, on the face of the candidate application, the qualifications for candidacy. The Navajo Election Administration shall have the authority to determine ineligible any individual who does not meet the qualifications for the office sought."

This provision of law states the scope of candidacy application reviews. The statute limits the review authority of the Navajo Election Administration to "the face of the candidate application." At the time of the application process, candidates are provided, along with a standard application form, copies of the statutory requirements of the office they are seeking to apply for. Also, within the application, an affidavit form is provided to all candidates to complete and file. This standard form, the affidavit, contains a statement that the candidate is qualified for the office he or she seeks candidacy for.<sup>1</sup>

The role of the Navajo Election Administration is to review what is provided by the candidate. Based on information and statements submitted, a candidate is either certified or

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<sup>1</sup> The administrative review process also includes verification of a candidate's voter registration, the submission of an ethics clearance form (provided by the Ethics and Rules Office), providing candidates with forms on campaign expense reporting and providing any necessary assistance to candidates on understanding the requirements of candidacy.

determined ineligible for office.

Aside the statutory limitations placed on the Election Administration on reviewing applications, there are equal protection considerations. The Election Administration will not randomly select or single out a candidate for further investigation. What applies to one candidate must be applied to all other candidates. *See e.g., Deswood v. Navajo Board of Election Supervisors*, 1 Nav.R. 306, 311 (Ct.App.1978). All candidates must be treated similarly, within the limitations set by law. *See, Begay v. Navajo Nation Election Administration*, 8 Nav.R. 241, 258 (Nav.Sup.Ct. decided July 31, 2002).

Under the Election Code, disagreements over the determinations of the Election Administrations are submitted to the Office of Hearings and Appeals. Regarding determinations of candidacy ineligibility, the Election Code provides:

"If the Election Administration determines that an individual is not qualified for the position sought, it shall deny the application for candidacy as ineligible. Within thirty (30) days of the submitted application, the Administration shall notify the applicant in writing of the reason for his or her ineligibility and the right to file an appeal to the Office of Hearings and Appeals pursuant to 11 N.N.C. §341." 11 N.N.C. §23(B).

And regarding determinations of eligibility, the Election Code provides that other candidates can file "challenges." The Code here states:

"The Navajo Election Administration shall hold the candidate applications of all candidates it had certified as eligible for a period of ten (10) days during which sworn challenges may be filed with the Office of Hearings and Appeals by other applicants for the same position, whether or not such applicants are certified." 11 N.N.C. §24(A).

As indicated, the responsibilities of the Navajo Election Administration under the Navajo Election Code are defined by statute. The Election Administration can only review documents on their face. This means that the Election Administration is limited to reviewing the qualifications of candidates based on what is provided by the candidates themselves, in their applications submitted to the Administration. The Election Administration does not investigate

claims of ineligibility nor does it withdraw their determinations of eligibility, essentially decertifying candidates.<sup>2</sup>

The authority to review claims of ineligibility rests with the Office of Hearings and Appeals, including claims of misrepresentation of qualifications by a candidate. 11 N.N.C. §24. Before candidates are placed on ballots in upcoming elections, hearings can be convened by the Office of Hearings and Appeals to review and determine qualifications of candidates. Upon hearing, the Office of Hearings and Appeals can either uphold or reverse a determination of the Election Administration that a candidate is qualified.

### CONCLUSION

The role of the Navajo Election Administration in reviewing candidate applications is limited. The review is limited to what the candidates provide. The Navajo Election Code limits review to reviewing the face of the applications.

RESPECTFULLY SUBMITTED this 25th day of September, 2014.

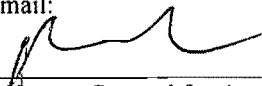


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Ron Haven, Counsel for Applicant  
Navajo Election Administration

### CERTIFICATION:

I hereby certify that the forgoing application, at time of filing, was forwarded to the parties by email:



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Ron Haven, Counsel for Applicant  
Navajo Election Administration

<sup>2</sup> Appellant Whitethorne, among other arguments, states in his brief at page 8 that Appellee does not meet the requirement that a Presidential candidate must have prior experience in holding an elective office or employment with the Navajo Nation. It is important to note that this particular requirement is no longer applicable. See *Bennett v. Navajo Board of Election Supervisors*, 6 Nav.R. 319 (Nav.Sup.Ct. 1990).