

No. SC-CV-57-14

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SUPREME COURT OF THE NAVAJO NATION

Dale Tsosie,
Petitioner/Appellant,

v.

Christopher Deschene,
Respondent/Appellee.

Hank Whitethorne,
Petitioner/Appellant,

v.

Christopher Deschene,
Respondent/Appellee.

ORDER OF REMAND

Before YAZZIE, H., Chief Justice, SHIRLEY, E., Associate Justice, and BLACK, I., Associate Justice by Designation.

An appeal of the decision of the Office of Hearings and Appeals concerning Cause Nos. OHA-EC-007-14 and OHA-EC-007-14, Chief Hearing Officer Richie Nez, presiding.

David R. Jordan, Gallup, New Mexico, for Appellant Tsosie; Justin Jones, Farmington, New Mexico, for Appellant Whitethorne; Samuel Pete, Shiprock, New Mexico, and Calvin Lee, Yahtahey, New Mexico, for Appellee.

This matter comes before us on an appeal from an election grievance concerning Christopher C. Deschene, a candidate for the President of the Navajo Nation. We hereby announce our decision verbally and in this order for the purpose of moving along the election process. A more detailed opinion will follow.

We REVERSE the OHA.

OHA erred in summarily dismissing the Grievances filed by the Appellants. Under 11 N.N.C. § 341(A)(1), within 10 days of the incident complained of or the election, the OHA had the authority to consider the Grievances. Furthermore, in *Gishey v. Begay*, 7 Nav. R. 377 (Nav. Sup. Ct. 1999), this Court stated “We cannot permit potential candidates to make statements in public documents where they have almost exclusive knowledge of the facts and then escape the consequences of their declaration by a failure [of an aggrieved candidate] to contest it within 10 days.” *Gishey*, 7 Nav. R. at 380 (Nav. Sup. Ct. 1999). Most recently, we have also stated “A candidate may not circumvent express conditions established by the Council by keeping silent until an election is over. Disqualifying conditions that are known to a candidate are not waived simply because an election has taken place.” *Sandoval v NEA*, No. SC-CV-62-12 (Nav. Sup. Ct. February 26, 2013). The OHA must consider the Grievances pursuant 11 N.N.C. § 341(A)(1), *Gishey*, and *Sandoval*.

The Court hereby REINSTATES the Grievances and REMANDS to the OHA for adjudication.

In remanding the matter, this Court has the authority to clarify 11 N.N.C. § 8(4)(A). This Court may clarify this provision pursuant to our duty in all cases to first apply applicable Navajo Nation statutory laws, here 11 N.N.C. § 8(4)(A), and the utilization of Diné bi beenahaz’áanii to guide the interpretation of that provision. The qualification for fluency in the Navajo language is a reasonable regulation to a candidate’s right to political liberty. It is the right and freedom of the people that the sacred Dine language (nihiinéí’) be taught and preserved. Our President must communicate in that sacred language fluently. We therefore reject Appellee’s arguments to simply disregard the requirement for fluency.

We therefore interpret the meaning and standard of “fluently” as offered by Appellant Whitethorne as follows:

Dah dilkóóhgo, t'áá k'idahineezláago, t'áá chánaahgo, diits'a'go, haala Dine' Binanit'a'i idliigo éi lahdo baa yájliti (talk about), *nabik'i yájliti* (analysis speech), *bich'i yájliti* (to talk about), *hachí yátti*, (to be talked to), and *Diné k'ehgo bik'izhdii'tiih* (comprehending the substance in the Diné language).

Authority to review claims of ineligibility rests with the OHA, including claims of misrepresentation of qualifications by a candidate. 11 N.N.C. § 24. The OHA shall make its determination applying the standard we adopted above.

We further hold that Appellant's Whitethorne's argument that Appellee does not meet the requirement under 11 N.N.C. § 8(A)(5) that a Presidential candidate must have prior experience in holding an elective office or employment with the Navajo Nation is meritless. 11 N.N.C. §8(A)(5) is no longer applicable to a Presidential candidate pursuant to *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319 (Nav. Sup. Ct. 1990).

OHA shall hold a hearing within 5 business days, or by close of business on October 3, 2014, to determine whether or not to disqualify Appellee as a candidate for the office of the Navajo Nation President by applying the standard we have adopted above. Thereafter, a decision should be issued as soon as possible.

Dated this ^{26th} day of September, 2014.


Chief Justice

Steve Sluz

Associate Justice

Steve Sluz

Associate Justice