

IN THE SUPREME COURT OF THE
NAVAJO NATION

FILED
SUPREME COURT

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No. SC-CV-68-14

NAVajo NATION

DALE TSOSIE AND HANK WHITETHORNE,)

Petitioners,)

vs.)

NAVAJO BOARD OF ELECTION)
SUPERVISORS AND NAVAJO ELECTION)
ADMINISTRATION,)

Respondents; and)

CHRISTOPHER DESCHENE,)

Real Party in Interest.)

Regarding OHA Case Nos. OHA-
EC-05-14 and OHA-EC-07-14
and this Court's Prior Opinion in
SC-CV-57-14 and SC-CV-58-14

**BRIEF ON THE MERITS OF
THE WRIT OF MANDAMUS &
INJUNCTION**

There are several layers of merit that justify this Court to issue an Order compelling the Respondents to comply with the Disqualification Order issued by the Office of Hearing and Appeals (OHA). However, the underlying reason for the Petitioner's request for a writ of mandamus and injunction against the Respondents and Real Party in Interest is the verifiable fact that the Respondents and RPI consciously chose to defy the Navajo Nation rule of law. *T'áá yíni biighahgo, t'áá tí'dzi'ahígo, t'áá tálaago, bee haz'áanii doo bik'eh ádziidzaada, doo bik'eh hojít'íjd da, doo jidiísíjd da.*

Pursuant to 1 N.N.C. §203, this Court, as "[t]he leader(s) of the Judicial Branch (*Aláají' Hashkééjí Naat'ááh*)" has been given the authority and responsibility by *Diné Bibeelahaz'áanii* to ensure there is obedience to established rules of law. If such obedience is not given, this Court has the authority and responsibility given by *Diné Bibeelahaz'áanii* to render discipline and punishment. *Id.* The requests for a writ of mandamus to be issued against the Respondents and an injunction against the RPI are actions securing obedience to established rules of law. In addition, the writ of mandamus and permanent injunction against the Respondents and the RPI

are mechanisms which will put said parties on notice that further disobedience of legal orders shall be grounds for disciplinary action and punishment. *Id.*

This Court remanded the case back to OHA to determine the fluency of the RPI. RPI defied orders from this Court and OHA by refusing to take the OHA ordered fluency test, and coming up with meritless excuses avoid speaking Navajo (for example, saying things like “you can’t test me”). This behavior ultimately resulted in OHA determining that RPI was not fluent in Navajo pursuant to this Court’s Navajo language fluency standard, which was formalized in a written Order on October 09, 2014. The OHA order specifically stated that the RPI was disqualified from being a candidate for the Navajo Nation Presidency. Respondents were immediately obligated to take the RPI off of the ballot pursuant to 11 N.N.C. §44 and move the third place Primary Elections finisher onto the ballot for the General Elections. The Respondents and RPI consciously refused to honor this legal order.

In a move that was obviously politically motivated, the Respondents held a special meeting on October 13, 2014, after OHA disqualified RPI obligating Respondents to immediately and automatically take RPI off of the ballot pursuant to 11 N.N.C. §44. By an official action of the Respondents, during a duly called meeting, the Respondents voted to defy the lawful order of the OHA by voting to keep the RPI on the ballot and proceeding with the General Election with the now disqualified RPI remaining on the ballot. The Respondents not only defied a lawful order by OHA, but they also became belligerent by declaring that the Navajo Board of Election Supervisors is an “independent body” of the Navajo Nation government. To Respondents, this “independence” apparently includes right to defy this Court and other judicial or administrative law bodies of the Navajo Nation. By declaring that the Respondents only answer to the “people” of the Navajo Nation, Respondents engaged in a blatant disobedience of Navajo law, and of the lawful orders of this Court and the OHA.

The Respondents are afforded their general powers and duties pursuant to 11 N.N.C. §321. The Respondent's afforded powers and duties do not include any provisions for the Respondents to overrule any codified law of the Navajo Nation Code. Instead, the Respondents are specifically given the powers and duties to, "[a]dminister, implement and enforce the Navajo Nation Code". *Id.* At one time, the Respondents were given the powers and duties to "[h]ear all election disputes". However, pursuant to CJA-05-01, January 24, 2001, this power and duty of the Respondent was stripped and given to the OHA. Thus, today, the Respondents are not arbiters of Navajo Nation election disputes.

The Petitioners rightfully brought their election code violation disputes before OHA. Although OHA initially dismissed the Petitioner's grievances, the matter was brought before this Court and, after extensive briefings and oral arguments, this Court overturned OHA's dismissals and remanded the case back to OHA to adjudicate whether the RPI fluently spoke and understood Navajo. Upon its adjudication of the legal issues of fluency, OHA issued a lawful order. Hence, OHA legally and rightfully adjudicated the legal matter and rightfully and legally issued a legally binding Order, disqualifying the RPI and ordered the Respondents to carry out the provisions of 11 N.N.C. §44. OHA rightfully and legally carried out its statutory responsibilities pursuant to 11 N.N.C. §341 (*t'áá bee haz'áanii áninígi' át'éego bik'ehgo é'élyaa*).

Now, it is rather perplexing (*t'óó haada*) to identify which Navajo Nation law the Respondents are using to override the non-discretionary language in 11 N.N.C. §44 and to take official action to vote to keep the RPI on the General Election ballot. The only explanation of the Respondents' actions is deliberate and blatant defiance of Navajo Nation law.

The RPI joined in the defiance by declaring that the Respondents were empathetic to his 9,000 plus voters and kept him on the ballot; openly campaigning as though he was still a

qualified candidate. At the instant second the OHA ruled that the RPI was not fluent in Navajo, pursuant to this Court's Navajo language fluency standard, the RPI became disqualified to be a candidate. However, the RPI continued in what could only be described as a deception claiming that he was still a candidate. What is even more disturbing is the fact that RPI is a licensed member of the Navajo Nation Bar Association, who took an oath before this Court, to uphold the rule of Navajo Nation law. He of all people should set an example for obedience to the Navajo rule of law.

Due to these verified disobedient actions of *t'áá yíní bíghahgo, t'áá tí'dzi'ahígo, t'áá tálaago, bee haz'áanii doo bik'eh ádziidzaada, doo bik'eh hojíí'íid da, doo jidíísíid da*, by the Respondents and RPI, this Court, pursuant to 1 N.N.C. §203, as "[t]he leader(s) of the Judicial Branch (*Aláají' Hashkééjí Naat'ááh*)" and having been given the authority and responsibility by *Diné Bibeelaz'áanii* to render disciplinary actions and punishment for disobedience, a Writ of Mandamus should be issued against the Respondents to immediately invoke, by operation of law, the provisions of 11 N.N.C. § 44, by removing the RPI from the 2014 General Election ballot for the Office of Navajo Nation President and replacing him with the candidate who received the third highest number of votes, to be the new candidate for the office of Navajo Nation President for the 2014 General Election. Furthermore, an injunction should be issued to the RPI to cease and desist all of his campaign activities and appearances because the RPI has been disqualified to be a viable candidate for the office of Navajo Nation President due to the findings that the RPI is not fluent in speaking and understanding in Navajo, as required by 11 N.N.C. § 8(A)(4) and as set forth as the fluency standard in this Court's opinion in *Tsosie v. Deschene*, SC-CV-57-14, *Whithorne v. Deschene*, SC-CV-58-14, slip op. (Nav. Sup. Ct. October 8, 2014 *nunc pro tunc* September 26, 2014).

T'ááhó ájt'éego, joodláago, jidísingo, bik'eh nijigháago, t'éiyá, ha'át'íshíí nizhónígíí bik'ijiighááh dóó nízhdilééh. By the same token, t'ááhó ájt'íigo, doo joodláagóó, doo jidísingóó, doo bik'eh nijigháagóó, hayooch'iidgo da, hona'adlo'go da, t'áá yíní bíghahgo, t'áá tí'dzí'ahígo, t'áá táláago, nitsídzíkeesgo, ha'át'íshíí ádíts'áá' jíłchxqoh dóó ádích'í' jidiilk'áah. Hónáásgóoda diné doo ádaat'éhéę attso béé jinił. Kót'íhgo índida náána łahgóó ak'íhoji'ááh yileeh. Ákondi t'ááhó éí áyisíí ájt'íi łeh. These were the teachings rendered to *Nayée' Neizghání* dóó *Tó Bájishchíní* (warrior twins) after they were disciplined and punished by *Haashch'ééłti'í*, for disobeying their mother, *Yoołgai Asdzáán* (Whiteshell Woman).

The warrior twins were previously ordered not to venture beyond their general living area because there were evil and conniving people out there who may harm them. The warrior twin did not listen. They ventured out into the area they were ordered not to go. A Red Herring and a Raven befriended them. They taught them how to lie, cheat, and to make gossip between their relatives as a means to manipulate them to get what they wanted. Some of the relatives, while out hunting and gathering, saw them out where the warrior twins were ordered not to be. The relatives informed Whiteshell Woman. When their mother confronted them, the warrior twins lied to their mother that they were not out there and proceeded to tell their mother that their relatives were only jealous of them and were telling lies about them. This prompted Whiteshell Woman to confront her relatives, which, in turn, created discord among the village.

The warrior twins were finally caught by *Áłtsé Hastiin* (First Man). Upon their confession, their grandfather, *Haashch'ééłti'í*, was notified and he arrived to discipline and punish the warrior twins for their disobedience. *Haashch'ééłti'í* prepared a *tsá'ászi' be'etsis* (yucca whip) to use for disciplining and punishment and used it upon the warrior twins to “chase out the evil and conniving ways” the Red Herring and Raven had imbedded in the warrior twins. By this method, these teachings (supra) were instilled into the warrior twins. Civil discipline and

punishment were introduced as traditional law. This ancient law continues to play a significant role in our Diné Way of Life.

For social order to be preserved, there cannot be deceit, defiance and contempt without civil discipline and punishment. The Respondents and the RPI must be held accountable for their conduct, and they must be prevented from engaging in such behavior in the future.

RELIEF REQUESTED FROM THE COURT

Petitioners request that the Court enforce 11 N.N.C. § 44 by granting the writ of mandamus and order RPI off of the 2014 Presidential Election ballot. Petitioners request that this Court warn Respondents that the strictest punishments will apply if they again defy these lawful orders. Petitioners also request an injunction against RPI to prevent any further campaign activity on his part.

RESPECTFULLY SUBMITTED this 20th day of October, 2014.

The Law Offices of David R. Jordan, P.C.



David R. Jordan
Counsel for Petitioner Tsosie

The Law Offices of Justin Jones, P.C.



Justin Jones
Counsel for Petitioner Whitethorne

CERTIFICATE OF SERVICE

We hereby certify that COPIES were faxed this 20th day of October, 2014, to Levon Henry, Chief Legislative Counsel, at (928) 871-7576; Brian Lewis, Counsel for RPI, at (505) 722-3212, and the Office of Hearings and Appeals, at (928) 871-7843.

