

IN THE SUPREME COURT OF THE
NAVAJO NATION

FILED
SUPREME COURT

2014 OCT 27 PM 4:30

DALE TSOSIE AND HANK WHITETHORNE,)

Petitioners,)

vs.)

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

Respondents; and)

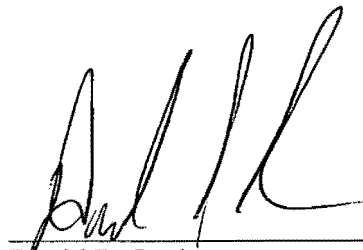
CHRISTOPHER DESCHENE,)

Real Party in Interest.)

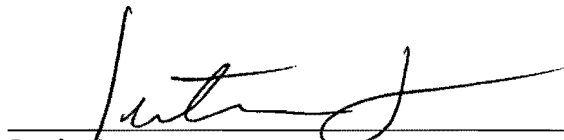
No. SC-CV-68-14 NAVAJO NATION

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

MOTION TO HOLD RESPONDENTS IN CONTEMPT OF COURT AND TO ISSUE AN
ORDER TO SHOW CAUSE



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COMES NOW, Petitioners, through their undersigned Attorneys, hereby requests the Court for an Order For Contempt of Court, for the Respondent's failure to comply with this Court's Order, dated October 23, 2014. The Respondents were ordered to comply with 11 N.N.C. §44 by immediately reprinting the ballots without the name of the disqualified candidate, Christopher C. Deschene and to postpone the November 04, 2014 election. As grounds for this Motion, Petitioners state as follows:

1. This Court continues to have Subject Matter and Personal Jurisdiction.
2. On October 23, 2014, the Navajo Nation Supreme Court issued a Permanent Writ of Mandamus against the Respondents.
3. In the Writ of Mandamus, the Navajo Nation Supreme Court, ordered the Respondents to do the following:
 - A. To comply with 11 N.N.C. §44;
 - B. To immediately reprint the ballots without the name of the disqualified candidate, Christopher C. Deschene;
 - C. To postpone the November 04, 2014 election, as agreed to by the Chief Legislative Counsel and as permitted by 11 N.N.C. § 3, to ensure a valid election.
4. As of today's date, Respondents have refused to comply. The election is still scheduled for November 4, 2014, and Deschene is still on the ballot.
5. Respondents have blatantly defied the Orders of this Court.
6. Respondents' conduct is neither supported nor excused by the Council's passage on October 23, 2014 of legislation that purported to alter the fluency requirement for presidential candidates. The rights of the parties in this case are vested, and the

Council may not pass *ex post facto* legislation that purports to divest parties of previously obtained rights. *Tso v. NHA*, No. SC-CV-20-06, slip op. at 3 (Nav. Sup. Ct. December 6, 2007) (*ex post facto* legislation is inappropriate “when it seeks to divest individuals or groups of a previously-obtained right”).

7. In any event, this case has become about more issues than the fluency issues that formed the original basis of this action. In addition to the fluency issue, this case is about Deschene’s refusal to obey the OHA’s order for a test (which had been based upon Deschene’s stipulation through his counsel), his refusal to answer questions at a deposition ordered by OHA, his refusal to answer legitimate questions asked by opposing counsel at the final hearing, his refusal to answer direct questions from the OHA at the final hearing, his default at the final hearing, and his failure to properly perfect his appeal documentation with this Court. None of these actions by Deschene are “cured” by the actions of the Council.
8. Deschene’s disqualification order has been deemed “final and enforceable” by this Court, and it must be obeyed by all. Respondents’ failure to follow the order of this Court is contempt.

Statement Of The Relief Sought

Petitioners request the following relief:

- A. Immediately schedule a hearing on this Motion;
- B. Order Law Enforcement Officers to be present during the scheduled hearing on this matter;
- C. Order ALL members of the Navajo Board of Election Supervisors and the Executive Director for the Navajo Election Administration to be present for the

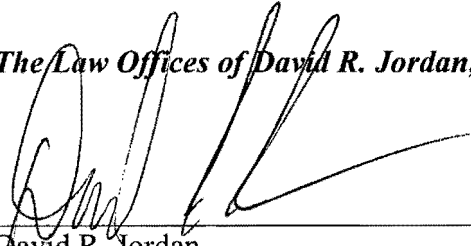
scheduled hearing on this Motion. If the members of the Navajo Election Administration or the Executive Director of the Navajo Election Administration are not present for the scheduled hearing, a Bench Warrant shall be issued for that individual.

- D. Order each member of the Navajo Board of Election Supervisors and the Executive Director to inform the Court their reasons for defying the Order of this Court, during the scheduled Motion hearing.
- E. Upon the presentation of each individual ordered to appear before this Court, to order the Law Enforcement Officers present, to immediately detain each member of the Navajo Board of Election Supervisors, and the Executive Director for the Navajo Election Administration, for Contempt of Court.
- F. To order the Navajo Nation Department of Corrections, to detain the Respondents until such time the Orders of this Court, as stipulated in this Court's Order, dated October 23, 2014, are fully and verifiably complied with. There shall be no release from detention of the Respondents until such time the Orders of this Court are fully and verifiably complied with.
- G. To order the members of the Navajo Board of Election Supervisors to be immediately stripped of their elected positions as Board Members to the Navajo Board of Election Supervisors for their blatant defiance of the lawful orders of this Court.
- H. To Order the members of the Navajo Board of Election Supervisors, disqualified and ineligible for any current or future Navajo Nation elected office. This shall include the current elections for 2014.

- I. To order the Respondents to pay all legal fees and costs for the undersigned attorneys in bringing this action before this Court. In addition, to award all legal fees and costs for the undersigned attorneys, in bringing the Writ of Mandamus action before this Court.

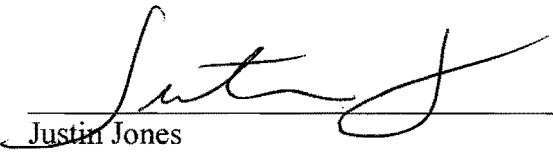
RESPECTFULLY SUBMITTED this 27th day of October, 2014.

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 sent VIA FACSIMILE, to (928) 871-7576, this 27th day of October, 2014, to Levon Henry, Chief Legislative Counsel, and mailed to Chief Legislative Counsel, at PO Box 3390, Window Rock, AZ 86515; Navajo Election Administration, PO Box 3449, Window Rock, AZ 86515, Navajo Board of Election Supervisors, PO Box 3449, Window Rock, AZ 86515.

