

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0166-20__

SPONSOR: Carl Slater

TITLE: An Action Relating to Naabik'iyáti' Committee; Reaffirming the Position of the Navajo Nation Opposing the Death Penalty and the Sentence Imposed in United States V. Lezmond Michell, Case Number CR-01-1062-PCT

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0166-20

DATE: August 6, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO NAABIK'ÍYÁTI COMMITTEE; REAFFIRMING THE POSITION OF THE NAVAJO NATION OPPOSING THE DEATH PENALTY AND THE SENTENCE IMPOSED IN *UNITED STATES V. LEZMOND MICHELL*, CASE NUMBER CR-01-1062-PCT

PURPOSE: This resolution, if adopted, would state the position of the Navajo Nation on the death penalty. Further, the resolution opposes the death penalty sentence imposed in *United States v. Lezmond Michell*, case number CR-01-1062-PCT.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD:
Website Posting Time/Date:
Posting End Date: 08-11-20
Eligible for Action: 08-12-20

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 24th NAVAJO NATION COUNCIL -- Second Year, 2020

3 INTRODUCED BY

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6 (Prime Sponsor)

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8 TRACKING NO. 0166-20

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10 AN ACTION
11 RELATING TO NAABIK'ÍYÁTI' COMMITTEE; REAFFIRMING THE POSITION
12 OF THE NAVAJO NATION OPPOSING THE DEATH PENALTY AND THE
13 SENTENCE IMPOSED IN *UNITED STATES V. LEZMOND MICHELL*, CASE
14 NUMBER CR-01-1062-PCT

15
16 WHEREAS:

- 17 A. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council. 2
18 N.N.C. § 700. The committee is empowered to coordinate all federal and state programs
19 with other standing committees for purposes of providing the most efficient delivery of
20 services to the Navajo Nation. 2 N.N.C. § 701(A)(4).
- 21 B. The Diné of the Navajo Nation believe that iina, life, is sacred, must be protected, and
22 must be cultivated to fulfill the purposes of each life form according to the Diné bee
23 behazaanii.
- 24 C. Understanding this sacred principle expounded upon by the Diné's hataaliis,
25 practitioners, and other spiritual leaders, the Navajo Nation opposes capital
26 punishment in all forms.
- 27 1. The Diné have long believed in rehabilitative and restorative justice, practiced
28 in many forms. Punitive justice, as expressed by western and United States'
29 influences, by definition, does not create harmony and serves to primarily
30 reinforce discord within society.

1 D. In 1994, the US Congress passed the Federal Death Penalty Act, which created a
2 tribal opt-in provision for guiding the US Government's decision in whether to seek
3 the death penalty in the sentencing of American Indians.

4 1. The Navajo Nation has consistently opposed the sentence of death for
5 prosecutions of its citizens by the federal government.

6 2. At this time, only one American Indian tribe (out of 577), the Sac and Fox
7 Nation, has "opted-in" to federal death penalty sentencing prosecutions.

8 E. Since the Diné emerged into the Fourth, or Glittering World in Dinétah, they have
9 exercised sovereign authority over Diné Bikeyah, between the Four Sacred
10 Mountains.

11 F. From 1868 to the present, the United States government has recognized the Navajo
12 Nation's right to practice self-government over its land and its citizens, including
13 handling many intra-Indian criminal matters.

14 G. There is perhaps no higher expression of sovereign authority than the ability of a
15 sovereign to deliver justice on matters between its citizens occurring on the
16 sovereign's lands, including the sense of the sovereign before other sovereigns on
17 matters of justice where other sovereigns have asserted jurisdiction.

18 1. While the Navajo Nation understands it has the inherent authority to settle
19 justice issues between its citizens on matters occurring on its lands, the United
20 States has asserted jurisdiction over many intra-Indian criminal matters on the
21 Navajo Nation. The Navajo Nation possesses the right to intercede on such
22 matters.

23 2. The Federal Death Penalty Act affirms and defines the right of the Navajo
24 Nation to intervene and express its views on death penalty prosecutions of
25 Navajo Nation citizens.

26 H. The Navajo Nation has and will continue to express its opposition to the death penalty
27 conviction of Mr. Lezmond Mitchell.

28 1. In 2001, 20-year-old Lezmond Mitchell and a juvenile co-defendant, both
29 Navajo citizens, were charged with killing two other Navajo people.
30

- 1 2. The federal government prosecuted this crime in the U.S. District Court in
- 2 Arizona.
- 3 3. Although the co-defendant, Johnny Orsinger, was the primary assailant in the
- 4 case, he was under 18 at the time of the crime and thus ineligible for a death
- 5 sentence.
- 6 4. Mr. Mitchell, barely out of his teens, became the focus for then-Attorney
- 7 General John Ashcroft's desire to prosecute this case as a capital crime.
- 8 5. On at least three separate occasions, the Nation formally petitioned the federal
- 9 government not to subject Mr. Mitchell to a death sentence.
- 10 6. Marlene Slim, a Navajo citizen who is the daughter and mother of the victims,
- 11 asked the federal government not to pursue a death sentence. **Exhibit A.**
- 12 7. Even the local U.S. Attorney's office opposed capitally prosecuting Mr.
- 13 Mitchell out of respect for the position of the Navajo Nation and its people.
- 14 **Exhibits B, C, and D.**
- 15 8. Instead of respecting tribal sovereignty – let alone the wishes of the victims'
- 16 family or the local prosecutors' views – the federal government in its zeal to
- 17 seek a death sentence found a work-around.

- 18 a. The federal government prosecuted Mr. Mitchell for "carjacking
- 19 resulting in death," a capital crime of general federal jurisdiction for
- 20 which tribal consent was not required.

- 21 I. The Navajo Nation acknowledges that peculiarities exist within the federal
- 22 government's prosecution of Mr. Mitchell and these peculiarities compromise the
- 23 integrity of Mr. Mitchell's death penalty conviction.

- 24 1. After his arrest, the federal government abused the tribal court system to deny
- 25 Mr. Mitchell his federal due process rights.

- 26 a. Specifically, Mr. Mitchell was held in a tribal jail for 25 days while
- 27 the Federal Bureau of Investigation continually interrogated him. It
- 28 was only after they allegedly obtained a full confession that Mr.
- 29 Mitchell was brought to federal court, presented to a magistrate, and
- 30 appointed counsel.

1 b.The FBI neither tape-recorded Mr. Mitchell's alleged confession, nor
2 allowed him to write a statement in his own hand.

3 c.In fact, in his only recorded statement, Mr. Mitchell fervently denies
4 having a direct role in the capital offenses.

5 d.Were Mr. Mitchell a non-Indian, the federal government would not
6 have been permitted to use these alleged confessions against him.

7 2. There are strong indications that federal prosecutors worked to keep American
8 Indian people off of Mr. Mitchell's jury and played to anti-Indian biases
9 during the trial.

10 a.Mr. Mitchell was not served by a jury of his peers; he was convicted
11 by a jury of eleven white persons and one Navajo person.

12 b.Mr. Mitchell's lawyers have sought for years to investigate these
13 issues, but the federal courts refuse to allow them to interview the
14 jurors

15 **NOW THEREFORE BE IT RESOLVED:**

16 A. The Navajo Nation hereby opposes the death penalty against any of its citizens.

17 B. The Navajo Nation requests the President of the United States to commute Mr.
18 Lezmond Mitchell's sentence to life in prison without the possibility of release.