

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLAUDETTE CHAVEZ-HANKINS,
PAUL PACHECO, and MIGUEL VEGA,

Plaintiffs,

and

No. 1:12-CV-00140

THE NAVAJO NATION,
a federally recognized Indian tribe,
LORENZO BATES, DUANE H. YAZZIE,
RODGER MARTINEZ, KIMMETH YAZZIE,
and ANGELA BARNEY NEZ,

Intervenors,

vs.

DIANNA J. DURAN, in her official capacity
as New Mexico Secretary of State, and
SUSANA MARTINEZ, in her official
Capacity as Governor of New Mexico,

Defendants,

and

ANTONIO MAESTAS, JUNE LORENZO
ALVIN WARREN, ELOISE GIFT AND
HENRY OCHOA,

Defendants-in-Intervention,

and

BEN LUJAN, SR., in his official capacity
as Speaker of the New Mexico House of
Representatives, and TIMOTHY Z. JENNINGS,
in his official capacity as President Pro-Tempore
of the New Mexico Senate,

Defendants-in-Intervention,

and

BRIAN GOLF, MARILIA CASTRO, MEL
HOLGUIN, HAKIM BELLAMY, and ROXANE
SPRUCE BLY,

Defendants-in-Intervention.

COMPLAINT IN INTERVENTION
OF NAVAJO INTERVENORS

The Navajo Nation, a federally recognized Indian tribe, Lorenzo Bates, Duane H. Yazzie, Rodger Martinez, Kimmeth Yazzie, and Angela Barney Nez (collectively “Navajo Intervenors”), by and through their attorneys, Wiggins, Williams and Wiggins, PC and the Navajo Nation Department of Justice, for their claims against Defendants state as follows:

Parties, Jurisdiction & Venue

1. Plaintiff, Navajo Nation, is a federally recognized Indian tribe whose reservation lands are located within the states of New Mexico, Arizona, and Utah.

2. The bulk of the Navajo Nation's reservation lands within the State of New Mexico are located in the northwest quadrant of the state.

3. The Navajo Nation has reservation lands within the New Mexico counties of McKinley, Socorro, Cibola, Bernalillo, Sandoval, Rio Arriba and San Juan.

4. Members of the Navajo Nation reside throughout New Mexico on Navajo Nation reservation lands, on other Indian reservations, and in urban and rural areas outside reservation lands.

5. Members of the Navajo Nation who reside within the boundaries of the State of New Mexico are eligible to vote and are registered to vote as citizens of the United States and New Mexico.

6. Plaintiff Lorenzo Bates is a member of the Navajo Nation, is registered to vote in San Juan County, New Mexico, is a resident of Fruitland, New Mexico, within Navajo Nation reservation lands, and is a Navajo Nation Council delegate, representing six Navajo Nation chapters west and south of the city of Farmington, New Mexico.

7. Plaintiff Duane H. Yazzie is a member of the Navajo Nation, is registered to vote in San Juan County, New Mexico, is a resident of Shiprock, New

Mexico, within Navajo Nation reservation lands, and is Chairman of the Navajo Nation Human Rights Commission.

8. Plaintiff Rodger Martinez is a member of the Navajo Nation, is registered to vote in Cibola County, New Mexico, is a resident of Ramah, New Mexico, within Navajo Nation reservation lands, and is president of the Navajo Nation's Ramah chapter and director of the Navajo Nation's retirement services.

9. Plaintiff Kimmeth Yazzie is a member of the Navajo Nation, is registered to vote in McKinley County, New Mexico, is a resident of Rock Springs, New Mexico, within Navajo Nation trust lands, and is a program specialist for the Navajo Nation's Election Administration.

10. Plaintiff Angela Barney Nez is a member of the Navajo Nation, is registered to vote in McKinley County, New Mexico, is a resident of Tohatchi New Mexico, within Navajo Nation reservation lands, and is a chapter officer at the Tohatchi Chapter of the Navajo Nation.

11. Members of the Navajo Nation are Native Americans recognized as ethnic minorities by the United States Census Bureau.

12. Defendant Duran is the duly elected Secretary of State for the State of New Mexico with offices in Santa Fe, New Mexico. As the chief election officer for

the State, as provided in NMSA 1978, §§ 1-2-1 to 5, Defendant Duran is charged with the responsibility of administering the election code and ensuring that elections within the State of New Mexico are conducted in a fair and lawful manner.

13. Defendant Duran is sued in her official capacity.

14. Defendant Martinez is the duly elected Governor of the State of New Mexico with offices in Santa Fe, New Mexico. As chief executive officer of the State of New Mexico, Defendant Martinez is responsible for calling the legislature into session, approving or vetoing redistricting legislation, and faithfully executing the laws of the State.

15. Defendant Martinez is sued in her official capacity.

16. Defendant Ben Lujan, Sr. is Speaker of the New Mexico House of Representatives.

17. Defendant Lujan is sued in his official capacity.

18. Defendant Timonthy Z. Jennings is President Pro-Tempore of the New Mexico Senate.

19. Defendant Jennings is sued in his official capacity.

20. Jurisdiction and venue to address the merits of this dispute are at issue.

This Court has jurisdiction, however, to determine its jurisdiction.

ALLEGATIONS

21. Every ten years, the United States Census Bureau conducts a census throughout the United States pursuant to Article I, § 2 of the United States Constitution.

22. The results of the 2010 census demonstrated that over the last ten years, the population of the State of New Mexico has grown by approximately 13.2%, and has shifted in locations and demographics.

23. The current districts drawn for the State House are based on the 2000 census figures and given population growth and shifts, the districts are unconstitutionally malapportioned and no longer comply with federal and state principles of equal protection, one-person one-vote, and preservation of minority and community voting interests.

24. The districts, therefore, must be redrawn to take account of the 2010 census data.

25. A special legislative session was called by Governor Susana Martinez for the purpose of accomplishing the necessary redistricting.

26. The Legislature passed House Bill 39 regarding the State House districts, but it was vetoed by the Governor.

27. In late 2011, several groups brought suit seeking adoption of a constitutionally appropriate statewide State House districting map.

28. In December 2011, New Mexico District Court judge pro tempore, James Hall presided over an eight-day bench trial concerning reapportionment of the New Mexico State House of Representatives (“State House”).

29. During that trial, the Navajo Intervenors submitted evidence and argument to establish violations of the Voting Rights Act of 1965, 42 U.S.C. § 1973 as it pertains to Native Americans in Northwest New Mexico.

30. The Navajo Intervenors also proposed, as a remedy for such Voting Rights Act violations, a nine-district partial plan (“Navajo Plan”), which contained six majority-minority Native American State House districts (the “Native American Districts”).

31. Judge Hall concluded that the Navajo Intervenors and the multi-tribal group had successfully established Voting Rights Act violations and incorporated the Navajo Plan, without alteration, into the final statewide districting plan.

32. In his Findings and Conclusions, Judge Hall explained that:

a. “Section 2 of the Voting Rights Act is violated if, ‘based on the totality of circumstances, it is shown that the political processes leading to

nomination or election in the State or political subdivision are not equally open to participation by members of a class of [protected] citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.’ 42 U.S.C. § 1973(b).” Egolf v. Duran, No. D-101-CV-2011-02942, Findings of Fact and Conclusions of Law (New Mexico House of Representatives Trial) at Conclusion of Law (“COL”) 19 (N.M. First Jud. Dist. Ct., Jan. 3, 2012); and

b. “In order to demonstrate a violation of Section 2 of the Voting Rights Act, the following three preconditions must be met: (1) a particular racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986).” COL 20.

33. Based on the evidence presented at trial, Judge Hall found that:

a. “Native Americans in northwestern New Mexico, including several Indian pueblos, the Jicarilla Apache Nation, and the New Mexico portion of the Navajo Nation, have a sufficiently numerous and geographically compact population to constitute a majority of voters in six districts.” Egolf v. Duran, No. D-

101-CV-2011-02942, Findings of Fact and Conclusions of Law (New Mexico House of Representatives Trial) at Finding of Fact (“FOF”) 49 (N.M. First Jud. Dist. Ct., Jan. 3, 2012); and

b. “Ecological inference (King method) analysis demonstrates that elections in northwestern New Mexico involving Native American candidates and non-Native American candidates are racially polarized.” FOF 50; and

c. “Native Americans in northwestern New Mexico have traditionally voted, and continue to vote, as a politically cohesive group.” FOF 51; and

d. “Homogeneous precinct analyses, ecological regression analyses, and ecological inference analyses establish racially polarized voting in Native American districts in New Mexico, and that non-Native voters vote sufficiently as a bloc in primary elections to veto more often than not the election of the preferred candidate of Native American voters.” FOF 52; and

e. “Native Americans in New Mexico continue to suffer the effects of historic discrimination, in areas such as education, employment, and health, which hinder their ability to effectively participate in the political process.” FOF 53.

34. Judge Hall concluded that:

a. “The evidence establishes that Native Americans meet the threshold criteria required under Gingles, at 50-51, to establish a Section 2 violation of the Voting Rights Act by showing: a) the Native American population in the northwest quadrant of the state is large and compact enough to create multiple, compact Native American majority districts; b) the Native American population is politically cohesive; and, c) that racial bloc voting exists to defeat the representatives of the Native Americans' choice.” COL 21; and

b. “Under the totality of circumstances, Native Americans in New Mexico do not possess the same opportunities to participate in the political process as other New Mexicans, in violation of Section 2 of the Voting Rights Act. Gingles at 46.” COL 22.

35. Judge Hall concluded that the plan submitted by the Navajo Intervenors and other tribal groups was the best remedy for the established Voting Rights Act violations stating:

a. “The Multi-Tribal and Navajo Nation Plans provide for six reasonably compact, contiguous districts.” FOF 57; and

b. “Compliance with the Voting Rights Act Section 2, respect for self-determination, preservation of tribal communities of interest, maintaining tribal

communities whole within a district, and the need to remedy the historic and continuing dilution of Native American voting rights are legitimate reasons for deviations within the range of +1- 5%.” FOF 60; and

c. “The Multi-Tribal/Navajo Nation Plan for Districts 1, 2, 3, 4, 5, 6, 9, 65 and 69 complies with the Voting Rights Act. The Multi-Tribal/Navajo Nation Plan presents the best remedy under the Voting Rights Act.” COL 23; and

d. “Population deviations inherent in the Multi-Tribal/Navajo Nation Plan are justified by: 1) the need to comply with the Voting Rights Act in creating a plan that does not dilute Native American voting strength; and 2) the furtherance of significant state policies, such as providing equal protection under the law to all citizens, New Mexico's historical policy of crafting legislative districts based on precincts, the geography of the state, maintaining multiple reservation precincts within a district and respect for tribal self-determination.” COL 24; and

e. “Race and tribal political affiliation were properly considered in the MultiTribal/Navajo Nation Plan for the purpose of assuring compliance with the Voting Rights Act, but race was not the predominant factor in the drawing of the district lines and other race-neutral districting principles were not subordinated to race.” COL 25.

36. In the context of an extraordinary review proceeding, the New Mexico Supreme Court reviewed Judge Hall's decision and remanded the matter to him with directions to modify the statewide plan.

37. The Supreme Court's order concluded that "Including the Native American districts as contained in the Multi-Tribal/Navajo Nation Plan is essential under the Voting Rights Act and shall be included without the need for any change in the court-drawn map." Maestas v. Hall, No. 33,386, Order at 17 (N.M. Sup. Ct. Feb. 10, 2012).

38. While Plaintiffs have not directly challenged the inclusion of the Navajo Plan in any statewide map that emerges in this case, they have requested that this panel: "Redraw the current State House districts," and "Retain jurisdiction to determine the validity of any redistricting plan adopted using the New Mexico Supreme Court's erroneous instructions." Complaint at 20.

COUNT I-EQUAL PROTECTION OF THE LAW

39. The current State House districts encompassing lands both within and without the Navajo Nation violate the rights of the Navajo Intervenors and other members of the Navajo Nation, are unconstitutional and in violation of the Fourteenth

Amendment to the Constitution of the United States and Article II, § 18 of the New Mexico Constitution.

40. This violation can best be remedied by adopting the Navajo Plan into any statewide plan, without alteration, as the state trial court did in the prior litigation.

COUNT II - VOTING RIGHTS ACT

41. The current State House districts encompassing lands both within and without the Navajo Nation dilute and violate the voting rights of the Navajo Intervenors and other members of the Navajo Nation, in violation of the federal Voting Rights Act.

42. The best remedy for this violation is adopting the Navajo Plan into any statewide plan, without alteration, as the state trial court did in the prior litigation.

43. Plaintiffs have had to employ the services of legal counsel to pursue their interest and to protect their legal and constitutional rights and are thereby entitled to an award of attorney fees and costs associated with this action.

REQUESTED RELIEF

WHEREFORE, Navajo Intervenors respectfully request that if this panel chooses to exercise jurisdiction over this matter that it enter:

- A. A declaratory judgment adjudicating that the current State House districting plan for the northwest quadrant of the State of New Mexico, approved in 2002, is in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et. seq.* ;
- B. An order directing the adoption of the Navajo Plan into any statewide plan, without alteration, as a remedy for those violations;
- C. An order awarding the Navajo Intervenors their lawful fees and costs of suit; and
- D. Such other and further relief as the Court deems proper.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By _____

Patricia G. Williams

Jenny J. Dumas

Attorneys for the Navajo Intervenors
1803 Rio Grande Blvd., N.W. (87104)
P. O. Box 1308
Albuquerque, New Mexico 87103-1308
(505) 764-8400

We hereby certify that a copy of the foregoing was electronically served to counsel of record through the CM/ECF system on this _____ day of February, 2012.

WIGGINS, WILLIAMS & WIGGINS, P.C.

By _____
Jenny J. Dumas