

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

BRIAN F. EGOLF JR., et al.,

Plaintiffs,

v.

**No. D-101-CV-2011-02942
(Consolidated)**

DIANNA J. DURAN, et al.,

Defendants,

and

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

Plaintiffs in Intervention,

v.

**DIANNA J. DURAN, in her official
capacity as Secretary of State for the State of
New Mexico, SUSANA MARTINEZ, in her
official capacity Governor of the State of
New Mexico, TIMOTHY Z. JENNINGS, in his
official capacity as President Pro Tempore of
the New Mexico Senate, and BEN LUJAN, SR.,
in his official capacity as Speaker of the New
Mexico House of Representatives,**

Defendants in Intervention.

**FIRST AMENDED COMPLAINT IN INTERVENTION
OF THE NAVAJO INTERVENORS**

Plaintiffs in Intervention, 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 and VENUE

1. This is a civil action for injunctive and declaratory relief to achieve a lawful redistricting of the districts for election of representatives to the United States House of Representatives (“Federal House”), the districts for election of New Mexico State Senators (“State Senate”), the districts for election of members of the New Mexico State House of Representatives (“State House”), and the districts for election of members of the New Mexico Public Regulation Commission (“PRC”).

2. The original Complaint has been amended prior to an answer to name Timothy Z. Jennings, in his official capacity as President Pro Tempore of the New Mexico Senate, and Ben Lujan, Sr., in his official capacity as Speaker of the New Mexico House of Representatives, as Defendants in Counts IV and VIII, which concern redistricting of the PRC.

3. This action is being brought pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV; Article II, § 18 of the New Mexico Constitution; the Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq.; and the provisions 42 U.S.C. §§ 1983 & 1988.

4. This Court has original jurisdiction pursuant to Article VI, § 13 of the New Mexico Constitution.

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

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

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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.

17. Defendant Duran is sued in her official capacity.

18. 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.

19. Defendant Martinez is sued in her official capacity.

20. Defendant Jennings is the President Pro Tempore of the New Mexico Senate. He serves as a presiding officer of the New Mexico Senate.

21. Defendant Jennings is sued in his official capacity. Defendant Jennings is named as a defendant only with respect to Counts IV and VIII.

22. Defendant Lujan is the Speaker of the New Mexico House of Representatives. He serves as the presiding officer of the New Mexico House of Representatives.

23. Defendant Lujan is sued in his official capacity. Defendant Lujan is named as a defendant only with respect to Counts IV and VIII.

24. Venue is proper in this Court pursuant to NMSA 1978 § 38-3-1(G) (1988).

ALLEGATIONS

25. 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.

26. 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.

27. The current districts drawn for the Federal House, State Senate, State House, and PRC 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.

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

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

30. The Legislature passed three bills regarding the reapportionment of the districts at issue in this litigation: Senate Bill 33 regarding the State Senate districts, House Bill 39 regarding the State House districts, and Senate Bill 24 regarding the PRC districts. No bill was passed regarding the Federal House districts.

31. Governor Susana Martinez vetoed all three bills.

32. Governor Martinez's vetoes leave in place the Federal House, State Senate, State House, and PRC districts that were established in 2002 based on the 2000 census.

33. There are no enacted districts encompassing the lands of the Navajo Nation or the State of New Mexico for the Federal House, State Senate, State House, and PRC based on the 2010 census.

34. Elections are scheduled to be held in 2012.

35. The Federal House, State Senate, State House, and PRC districts should be reapportioned based on the 2010 census as far in advance of the 2012 elections as is possible.

36. Without the intervention of this Court, the lawfully required redistricting likely will not occur before the 2012 elections.

COUNT I - EQUAL PROTECTION OF THE LAW

(All Defendants except Jennings and Lujan)

37. The current Federal 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.

COUNT II- EQUAL PROTECTION OF THE LAW

(All Defendants except Jennings and Lujan)

38. The current State Senate 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.

COUNT III- EQUAL PROTECTION OF THE LAW

(All Defendants except Jennings and Lujan)

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.

COUNT IV- EQUAL PROTECTION OF THE LAW

(All Defendants)

40. The current PRC 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.

COUNT V - VOTING RIGHTS ACT

(All Defendants except Jennings and Lujan)

41. The current Federal 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 of 1965, 42 U.S.C. § 1973 et seq.

COUNT VI - VOTING RIGHTS ACT

(All Defendants except Jennings and Lujan)

42. The current State Senate 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 of 1965, 42 U.S.C. § 1973 et seq.

COUNT VII - VOTING RIGHTS ACT

(All Defendants except Jennings and Lujan)

43. 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 of 1965, 42 U.S.C. § 1973 et seq.

COUNT VIII - VOTING RIGHTS ACT

(All Defendants)

44. The current PRC districts encompassing lands both within and without the Navajo Nation dilute and violate the voting rights of the Plaintiffs and other members of the Navajo Nation, in violation of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq.

REQUESTED RELIEF

WHEREFORE, Navajo Intervenors respectfully request that this court exercise its jurisdiction and enter:

A. A declaratory judgment adjudicating that the current Federal House districting plan, 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. Preliminary and permanent injunctions restraining Defendants from using the current Federal House districting plan in any further elections;

C. A declaratory judgment adjudicating that the current State Senate districting plan, 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.;

D. Preliminary and permanent injunctions restraining Defendants from using the current State Senate districting plan in any further elections;

E. A declaratory judgment adjudicating that the current State House districting plan adopted 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.;

F. Preliminary and permanent injunctions restraining Defendants from using the current State House districting plan in any further elections;

G. A declaratory judgment adjudicating that the current PRC districting plan 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.;

H. Preliminary and permanent injunctions restraining defendant from using the current PRC districting plan in any further elections;

I. A final judgment establishing lawful districting plans for the Federal House, State Senate, State House, and PRC based on the 2010 census, in compliance with 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.;

J. An order awarding the Navajo Intervenors their lawful fees and costs of suit; and

K. Such other and further relief as the court deems proper.

Respectfully submitted,

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By s/ Patricia G. Williams

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We hereby certify that a copy of the foregoing was electronically served to counsel of record through the Court's electronic filing system and was e-mailed to all counsel of record and the Honorable James Hall in .pdf format on this 28th day of October, 2011.

WIGGINS, WILLIAMS & WIGGINS, P.C.

By s/ Jenny J. Dumas

Jenny J. Dumas