

**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.**

**NAVAJO INTERVENORS' WRITTEN CLOSING ARGUMENT  
ON CONGRESSIONAL REDISTRICTING PLANS**

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") hereby submit this written closing argument on Congressional Redistricting Plans. The law and authorities cited in the Navajo Intervenors' Pretrial Brief on Congressional Redistricting Plans are incorporated by reference.

Prior to the Congressional Redistricting trial, all the parties stipulated that the current congressional districts in New Mexico, which are based on the 2000 census, violate the United States Constitution because those districts deviate from equal population standards.

The Navajo Intervenors did not submit a specific congressional redistricting plan, but instead advocated that the Navajo Nation be represented in each of the three congressional districts as follows: primary Navajo Nation reservation lands in District 3 (McKinley County precincts 1 through 26, 31 and 36, San Juan County precincts 1 through 10, 14 through 16 and 82 through 86, Sandoval County precincts 24, 26 and 27, and Rio Arriba precinct 29); Ramah Chapter (Cibola County precinct 5) and Alamo Chapter (Socorro County precinct 15) in District 2; and Tohajiilee

Chapter (Bernalillo County precinct 31) in District 1 (the “Navajo Nation’s Preferred Congressional District Placement”).

Through communication with legislators and Research and Polling Inc. before the 2011 Special Session, lobbying during the Special Session and negotiation in the course of this litigation, the Navajo Nation’s Preferred Congressional District Placement was incorporated into each of the plans before the Court. Because each of the parties have respected the Navajo Nation’s sovereignty and right to self determination by including the Navajo Nation’s Preferred Congressional District Placement, the Navajo Intervenors do not oppose the Maestas Plaintiffs’ Congressional Plan, the LULAC Plaintiffs’ Congressional Plan, which was introduced as HB46, or the Egolf Plaintiffs’ Revised Congressional Plan, also known as the Joint Congressional Plan as the Sena Plaintiffs, the James Plaintiffs, the Governor, the Lieutenant Governor and the Secretary of State joined in that plan.

In the Congressional Redistricting Trial, the evidence established that between 11% and 12% of New Mexicans are Native American. (Dr. Jim Williams testimony). Multiple witnesses testified that this number is not sufficiently large enough and the relevant populations are not geographically compact enough to constitute a majority in any congressional district. (Dr. Jim Williams testimony, Dr. Theodore Arrington testimony, Leonard Gorman testimony and Dr. Gabriel Sanchez testimony).

In light of this fact, the Navajo Nation determined that it was in the best interests of the Nation to have tribal lands placed in each of the three New Mexico congressional districts to maximize access to federal representatives. (Leonard Gorman testimony and Navajo Intervenors’ Exhibit 1). Dr. Gabriel Sanchez testified this was a sound decision from the political scientist’s perspective. The evidence established that the Navajo Nation has a special trust relationship with the federal

government that requires access to New Mexico's congressional representatives to advocate for the Nation and its people in Washington, D.C.. (Dr. Theodore Arrington testimony, Leonard Gorman testimony and Navajo Intervenors' Exhibit 2). This trust relationship makes having Navajo lands and constituents in each of New Mexico's three congressional districts in the best interest of the Navajo Nation. The evidence established that the Navajo Nation's preferences with regard to placement within each of the three congressional districts should be respected in accordance with the recognized state and federal policy of honoring tribal self-determination. (Leonard Gorman testimony). The uncontroverted evidence showed the Navajo Nation's determination that it is in the Nation's best interest to have three advocates in Washington, D.C.—instead of one or two—who are educated and invested regarding the issues that concern the the Nation. (Leonard Gorman testimony).

The fact that all the plans currently before the Court have been drawn to respect the Navajo Nation's preferences in placement, even given the vastly diverse interests of the parties, proves accommodation of the Navajo Nation's Preferred Congressional District Placement does not infringe on the rights and interests of other parties to the litigation.

As long the plans are not further amended to change the placement of Navajo precincts, the Navajo Nation will not oppose any of the congressional redistricting plans currently before the Court. The Nation is participating in the litigation to ensure that the Court has the evidence before it to adopt any of the three plans without modifications to the placement of the Navajo precincts.

If the Court rejects all three proposed plans and develops its own plan, New Mexico law requires the Court to consider tribal self-determination as a factor in drawing legislative districts. Jepsen v. Vigil-Giron, No. D-0202-CV-2001 (N.M. First Judicial District Court, January 24, 2002)

at p.13, ¶10. In Jepson, New Mexico’s last redistricting litigation, the Court deferred to plans presented by the Navajo and Jicarilla Apache Nations in part because they “further[ed] significant state policies, such as. . . respect for tribal self-determination.” Id. Likewise, this Court should defer to the Navajo Nation’s expressed preferences for placement within New Mexico’s three representative districts.

The Navajo Intervenors’ respectfully request that any plan emerging from the trial, whether it is the Joint Congressional Plan, the Maestas Plaintiffs’ Congressional Plan, the LULAC plan, a modification of any of these plans or it is the Court’s own plan, continues to be drawn to respect the sovereignty and self-determination of the Navajo Nation by honoring its preferences as to placement of its lands within each of New Mexico’s three congressional districts.

Respectfully submitted,

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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 9th day of December, 2011.

WIGGINS, WILLIAMS & WIGGINS, P.C.

By *s/ Jenny J. Dumas*  
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Jenny J. Dumas