

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

BRIAN F. EGOLF, JR, HAKIM BELLAMY,
MEL HOLGUIN, MAURILIO CASTRO,
and ROXANNE SPRUCE BLY,

Plaintiffs,

NO. D-101-CV-2011-02942

v.

DIANNA J. DURAN, in her official capacity as
New Mexico Secretary of State, SUSANA
MARTINEZ, in her official capacity as New
Mexico Governor, JOHN A. SANCHEZ, in his
official capacity as New Mexico Lieutenant
Governor and presiding officer of the New Mexico
Senate, 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,

**CONSOLIDATED WITH
D-101-CV-2011-02944
D-101-CV-2011-02945
D-101-CV-2011-03016
D-101-CV-2011-03099
D-101-CV-2011-03107
D-202-CV-2011-09600
D-506-CV-2011-00913**

Defendants.

**PUEBLO OF LAGUNA, a federally recognized
Indian tribe, PUEBLO OF ACOMA, a federally
recognized Indian tribe, JICARILLA APACHE
NATION, a federally recognized Indian tribe,
PUEBLO OF ZUNI, a federally recognized
Indian tribe, PUEBLO OF SANTA ANA, a
federally recognized Indian tribe, PUEBLO
OF ISLETA, a federally recognized Indian
tribe, RICHARD LUARKIE, HARRY A.
ANTONIO, JR., DAVID F. GARCIA,
LEVI PESATA, and LEON REVAL,**

NO. D-0101-CV-2011-03016

Plaintiffs,

v.

**DIANNA J. DURAN, in her official
capacity as Secretary of State for
the State of New Mexico,**

Defendant.

**SECOND AMENDED COMPLAINT OF PLAINTIFFS
THE PUEBLO OF LAGUNA, THE PUEBLO OF ACOMA, THE JICARILLA APACHE
NATION, THE PUEBLO OF ZUNI, THE PUEBLO OF SANTA ANA, THE PUEBLO OF
ISLETA, RICHARD LUARKIE, HARRY A. ANTONIO, JR., DAVID F. GARCIA,
LEVI PESATA AND LEON REVAL
FOR INJUNCTIVE AND DECLARATORY RELIEF
FOR REDISTRICTING OF THE NEW MEXICO STATE SENATE
AND THE NEW MEXICO STATE HOUSE DISTRICTS**

COME NOW, the plaintiffs, the Pueblo of Laguna, the Pueblo of Acoma, the Jicarilla Apache Nation, the Pueblo of Zuni, the Pueblo of Santa Ana, the Pueblo of Isleta, Governor Richard Luarkie, Lt. Governor Harry A. Antonio, Jr., Lt. Governor David F. Garcia, President Levi Pesata, and Leon Reval by and through their attorneys Nordhaus Law Firm, LLP, to further amend the Amended Complaint pursuant to Rule 1-015(A) NMRA and the Scheduling Order issued by this Court on October 19, 2011, and for their claims 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 New Mexico State Senate and New Mexico State House of Representatives.

2. This action is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV, and the New Mexico

Constitution, art. II, § 18; the Voting Rights Act of 1965, 42 U.S.C. §§ 1973-1973gg-10 (2009); 42 U.S.C. §§ 1983 & 1988; and this court's original jurisdiction under art. VI, § 13 of the New Mexico Constitution.

3. Plaintiff Pueblo of Laguna is a federally recognized Indian tribe whose reservation is located in the New Mexico counties of Sandoval, Cibola, Bernalillo and Valencia. Pueblo of Laguna members are eligible to vote and are registered to vote as citizens of the United States and New Mexico. The Pueblo members live on the Pueblo of Laguna Reservation, on other New Mexico Pueblos and Indian Reservations, and in rural and urban areas throughout the state.

4. Plaintiff Governor Richard Luarkie is the Governor and a member of the Pueblo of Laguna, is registered to vote in Cibola County, and is a resident of Paraje Village, New Mexico, within the Pueblo of Laguna.

5. Plaintiff Lt. Governor Harry A. Antonio, Jr. is the Lt. Governor and a member of the Pueblo of Laguna, is registered to vote in Cibola County, and is a resident of Old Laguna Village, New Mexico, within the Pueblo of Laguna.

6. The members of the Pueblo of Laguna are Native Americans recognized as ethnic minorities by the United States Census Bureau.

7. Plaintiff Pueblo of Acoma is a federally recognized Indian tribe whose reservation is located in the New Mexico counties of Cibola, Socorro and Catron. Pueblo of Acoma members are eligible to vote and are registered to vote as citizens of the United States and New Mexico. The

Pueblo members live on the Pueblo of Acoma Reservation, on other New Mexico Pueblos and Indian Reservations, and in rural and urban areas throughout the state. The members of the Pueblo of Acoma are Native Americans recognized as ethnic minorities by the United States Census Bureau.

8. Plaintiff Lt. Governor David F. Garcia is the Lt. Governor and a member of the Pueblo of Acoma, is registered to vote in Cibola County and resides at the Pueblo of Acoma.

9. Plaintiff Jicarilla Apache Nation is a federally recognized Indian tribe whose reservation is located in the New Mexico counties of Rio Arriba and Sandoval. Jicarilla Apache Nation members are eligible to vote and are registered to vote as citizens of the United States and New Mexico. The Nation's members live on the Jicarilla Apache Nation Reservation, on other New Mexico Indian Reservations, and in rural and urban areas throughout the state. The members of the Jicarilla Apache Nation are Native Americans recognized as ethnic minorities by the United States Census Bureau.

10. Plaintiff Levi Pesata is the President of the Jicarilla Apache Nation, a member of the Nation, is registered to vote in Rio Arriba County, and is a resident of Dulce, New Mexico, which is within the Jicarilla Apache Nation Reservation.

11. Plaintiff Leon Reval is the Public Relations Officer for the Jicarilla Apache Nation, a member of the Nation, is registered to vote in Rio Arriba County, and is a resident of Dulce, New Mexico, which is within the Jicarilla Apache Nation Reservation.

12. Plaintiff Pueblo of Zuni is a federally recognized Indian tribe whose reservation is located in the New Mexico counties of McKinley, Catron and Cibola. Pueblo of Zuni members are eligible to vote and are registered to vote as citizens of the United States and New Mexico. The Pueblo members live on the Pueblo of Zuni Reservation, on other New Mexico Pueblos and Indian Reservations, and in rural and urban areas throughout the state. The members of the Pueblo of Zuni are Native Americans recognized as ethnic minorities by the United States Census Bureau.

13. Plaintiff Pueblo of Santa Ana is a federally recognized Indian tribe whose reservation is located in the New Mexico county of Sandoval. Pueblo of Santa Ana members are eligible to vote and are registered to vote as citizens of the United States and New Mexico. The Pueblo members live on the Pueblo of Santa Ana Reservation, on other New Mexico Pueblos and Indian Reservations, and in rural and urban areas throughout the state. The members of the Pueblo of Santa Ana are Native Americans recognized as ethnic minorities by the United States Census Bureau.

14. Plaintiff Pueblo of Isleta is a federally recognized Indian tribe whose reservation is located in the New Mexico counties of Bernalillo, Valencia and Torrance. Pueblo of Isleta members are eligible to vote and are registered to vote as citizens of the United States and New Mexico. The Pueblo members live on the Pueblo of Isleta Reservation, on other New Mexico Pueblos and Indian Reservations, and in rural and urban areas throughout the state. The members of the Pueblo of Isleta are Native Americans recognized as ethnic minorities by the United States Census Bureau.

15. 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 (as amended through 2011), she is charged with the responsibility of administering the election code and ensuring that elections within the State are conducted in a fair and lawful manner.

16. Defendant Duran is sued in her official capacity.

17. This court has venue over this matter pursuant to NMSA 1978 § 38-3-1(G) (1988).

ALLEGATIONS

18. 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. The 2010 census showed the population of the state of New Mexico grew by approximately 13.2% from the 2000 census. The population growth was uneven throughout the state. The current political districts for the State Senate and State House have deviations from the ideal population ranging from -24.3% to 100.9%.

19. A special legislative session was called by Governor Susana Martinez for the purpose, among other things, of adopting legislation reapportioning the New Mexico State Senate and New Mexico State House of Representatives districts.

20. The Legislature passed two bills regarding the reapportionment of the State of New Mexico: Senate Bill 33 regarding the Senate districts, and House Bill 39 regarding the House districts.

21. Governor Susana Martinez vetoed both bills. Governor Martinez' veto leaves in place the current political districting of the New Mexico State Senate and New Mexico State House of Representatives.

22. There are no enacted districts encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation, Pueblo of Zuni Reservation, Pueblo of Santa Ana Reservation, Pueblo of Isleta Reservation, or the State of New Mexico for the New Mexico State Senate or New Mexico State House of Representatives based on the 2010 census of persons residing in New Mexico.

COUNT I - EQUAL PROTECTION OF THE LAW

23. The current State Senate districts encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation, Pueblo of Zuni Reservation, Pueblo of Santa Ana, Pueblo of Isleta Reservation and the State of New Mexico are unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States and art. II, § 18 of the New Mexico Constitution.

COUNT II - EQUAL PROTECTION OF THE LAW

24. The current State House districts encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation, Pueblo of Zuni Reservation, Pueblo of Santa Ana Reservation, Pueblo of Isleta Reservation and the State of New Mexico are

unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States and art. II, § 18 of the New Mexico Constitution.

COUNT III - VOTING RIGHTS ACT

25. The current State Senate districts encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation, Pueblo of Zuni Reservation, Pueblo of Santa Ana Reservation, and Pueblo of Isleta Reservation violate the voting rights of the Pueblo of Laguna, Pueblo of Acoma, Jicarilla Apache Nation, Pueblo of Zuni, Pueblo of Santa Ana and Pueblo of Isleta members as protected in the Voting Rights Act of 1965. 42 U.S.C. §§ 1973-1973gg-10 (2009).

COUNT IV - VOTING RIGHTS ACT

26. The current State House districts encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation and Pueblo of Zuni Reservation, Pueblo of Santa Ana Reservation, and Pueblo of Isleta Reservation violate the voting rights of the Pueblo of Laguna, Pueblo of Acoma, Jicarilla Apache Nation, Pueblo of Zuni, Pueblo of Santa Ana and Pueblo of Isleta members as protected in the Voting Rights Act of 1965. 42 U.S.C. §§ 1973-1973gg-10 (2009).

REQUESTED RELIEF

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

A. A declaratory judgment adjudicating that the current districting plans, enacted by the 2002 decision in the case, *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (N.M. 1st Jud. Dist. Jan. 24, 2002) (as codified at NMSA 1978, § 2-7D-1) for the New Mexico State House of Representatives and the 2002 Senate Redistricting Act, NMSA 1978, §§ 2-8D-1 to -49 (2002), for the New Mexico State Senate are in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the Voting Rights Act, 42 U.S.C. §§ 1973-1973gg-10 (2009);

B. Preliminary and permanent injunctions restraining Defendant Duran from using the current districting plan for the areas encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation, Pueblo of Zuni Reservation, Pueblo of Santa Ana Reservation, Pueblo of Isleta Reservation and the State of New Mexico for the New Mexico State Senate and New Mexico State House of Representatives in any further elections;

C. A final judgment establishing a lawful districting plan encompassing the Pueblo of Laguna Reservation, Pueblo of Acoma Reservation, Jicarilla Apache Nation Reservation, Pueblo of Zuni Reservation, Pueblo of Santa Ana Reservation, Pueblo of Isleta Reservation and the State of New Mexico for the New Mexico State Senate and New Mexico State House of Representatives based on the 2010 census in compliance with the Equal Protection Clauses of the New Mexico and United States Constitutions, the Voting Rights Act of 1965, 42 U.S.C. §§ 1973-1973gg-10 (2009), and tribal self-determination, until and unless another lawfully proper redistricting bill is duly passed by the New Mexico Legislature and signed into law by the Governor;

D. An order awarding plaintiffs their lawful fees and costs of suit; and

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

Respectfully submitted this 28th day of October, 2011.

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Leon Reval

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2011, a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT OF PLAINTIFFS THE PUEBLO OF LAGUNA, THE PUEBLO OF ACOMA, THE JICARILLA APACHE NATION, THE PUEBLO OF ZUNI, THE PUEBLO OF SANTA ANA, PUEBLO OF ISLETA, RICHARD LUARKIE, HARRY A. ANTONIO, JR., DAVID F. GARCIA, LEVI PESATA AND LEON REVAL, FOR INJUNCTIVE AND DECLARATORY RELIEF FOR REDISTRICTING OF THE NEW MEXICO STATE SENATE AND THE NEW MEXICO STATE HOUSE DISTRICTS** was electronically mailed and electronically served through the court's e-filing system to the Honorable James A. Hall and the counsel listed below.

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