

**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' PRE-TRIAL BRIEF
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 Pre-Trial Brief on Congressional Redistricting Plans. In the Congressional Redistricting Trial, the Navajo Intervenors will establish 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., that having Navajo lands and constituents in each of New Mexico’s three congressional districts is in the best interest of the Navajo Intervenors, 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, and that respecting those preferences will not infringe on the rights and interests of any of the other parties to the litigation.

FACTUAL BACKGROUND

Every ten years, the Census Bureau conducts a census to measure the total population of the United States and in each state of the union. According to the results of the 2010 Census, between

2000 and 2010, the population of New Mexico has grown, experienced demographic changes, and shifted in location. As a result of these changes, the current congressional districts in New Mexico, which are based on the 2000 census, violate the United States Constitution because they deviate from equal population standards.

In the Spring of 2011, after the results of the 2010 census data were made available, a bipartisan Interim Legislative Redistricting Committee was formed to study the issue of redistricting, take public testimony, and make recommendations to the full New Mexico Legislature. The Legislative Council Service adopted Redistricting Guidelines, which set forth the ground rules for the 2011 redistricting process. A special legislative session was called from September 6 through September 24, 2011 to consider, among other things, how to redraw the state's political districts based on the relevant 2010 census data from the Federal Census Bureau.

The special session was preceded by a series of public hearings held throughout the state by the Interim Legislative Redistricting Committee during which public comment was solicited on a series of redistricting plans developed as starting points in the process. Comments were received at meetings in Acoma, Gallup, Farmington and Las Vegas from representatives of the Navajo Nation. According to the 2010 Census, 11.4% of New Mexico's citizens are American Indian or Alaska Native alone. This number is not sufficiently large enough and the relevant populations are not geographically compact enough to constitute a majority in any congressional district. In the public hearings and in the special session, the Navajo Nation and other tribal entities did not present specific congressional maps and plans, but instead directed that certain of their precincts be included in particular congressional districts to maximize access to federal representatives.

No legislation regarding a congressional redistricting plan was passed during the special session. Litigation was initiated in which this Court was asked to determine the proper

apportionment of congressional districts. Five parties submitted seven plans for the redistricting of the congressional districts.

By the Treaty of 1868, a special trust relationship was created between the Navajo Nation and the federal government. The Navajo Nation has determined that the benefit of its trust relationship with the federal government can be maximized by constituent access to all three of New Mexico's congressional representatives. The Nation has further determined 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, is in the best interests of the Nation. The Navajo Intervenors have not submitted a specific congressional redistricting plan, but instead have 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.

Since the plans were initially filed in this litigation, some of the parties have reached consensus and there are currently three plans before the Court—the Egolf Plaintiffs' Revised Joint Plan, the Maestas Plan, and the LULAC plan, which was introduced as HB46. As a result of negotiations between the Navajo Intervenors and the other parties, all of the plans have been drawn to respect the Navajo Nation's preferences in placement. Accommodation of the Navajo Nation's preferences, therefore, will 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.

APPLICABLE LAWS

Article I, Section 2 of the United States Constitution provides that the House of Representatives must be reapportioned by district every ten years. The United States Supreme Court has held that congressional districts should be designed so that “as nearly as practicable one man's vote in a congressional election is. . .worth as much as another's.” Wesberry v. Sanders, 376 U.S. 1, 8 (1964). In addition to equal population, courts have considered traditional districting criteria in evaluating congressional district plans, such as compactness and contiguity, respect for political boundaries, protecting incumbents, and preservation of communities of interest. See, e.g., Reynolds v. Sims, 377 U.S. 533, 578 (1964).

The United States Constitution recognizes Indian tribes as distinct sovereign nations. See U.S. Const., Art. I, § 2, cl. 3; U.S. Const., Art. I, § 8. By virtue of sovereign to sovereign treaty negotiations, the Navajo Nation has a special trust relationship with the federal government. As part of this relationship, the federal government, in conjunction with the Navajo Nation, oversees management of the Navajo Nation’s natural resources, finances many of the Navajo Nation’s government programs, and provides roads, medical care, education and law enforcement services within the Navajo Nation. In light of this close relationship, it is essential that the Navajo Nation and its people have access to and representation from each of New Mexico’s congressional representatives, so that their interests may be most effectively advocated and protected in Washington, D.C.

In the 1970s, Native American self-determination replaced Indian termination policy as the official United States policy towards Native Americans. Richard Nixon addressed the issue in his

July 8, 1970 congressional “Message from the President of the United States Transmitting Recommendations for Indian Policy”:

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of Justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

Following this announced policy change, several statutes were passed promoting Indian self-determination. E.g., Indian Financing Act of 1974, 25 U.S.C. §§ 1451, et. seq.; Self-Determination and Education Act of 1975, 25 U.S.C. §§ 450, et. seq.; Indian Child Welfare Act, 25 U.S.C. §§ 1901, et. seq.; American Indian Religious Freedom Act, 42 U.S.C. §§ 1996, et. seq. Self-determination has been recognized by both the United States Supreme Court and the New Mexico State Court as a principle that serves as a cornerstone of federal/tribal relationships. E.g., California v. Cabezon Band of Mission Indians, 480 U.S. 202, 216-217 (1987); Ramah Navajo School Board v. Bureau of Revenue, 104 N.M. 302, 312-315, 720 P. 2d 1243, 1255-1256, cert. quashed, 104 N.M. 201, 718 P. 2d 1349, cert. denied 479 U.S. 940 (1986). This principle continues to serve a important and guiding principle in the relationships between the federal, tribal, and state governments. See, e.g., Exec. Order No. 13,175, Consultation and Coordination with Indian Tribal Governments, 65 Fed. Reg. 67, 249 (2000), attached hereto as Exhibit A; Memorandum for the Heads of Executive Departments and Agencies, SUBJECT: Tribal Consultation (Nov. 5, 2009) (continuing policies as expressed in Exec. Order No. 13, 175), attached hereto as Exhibit B.

In New Mexico, tribal self-determination is a factor to be considered by the Court in drawing legislative districts. New Mexico’s last redistricting litigation, this 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.” Jepsen v. Vigil-Giron, No. D-0202-CV-

2001 (N.M. First Judicial District Court, January 24, 2002) at p.13, ¶10. This Court, therefore, should defer to the Navajo Nation's expressed preferences for placement within New Mexico's three representative districts.

Given the unique trust relationship between the Navajo Nation and the federal government, placement of Navajo lands and constituents in each of New Mexico's three congressional districts is in the best interest of the Navajo Intervenors. Honoring the Navajo Nation's self determination by placing the Navajo Nation's lands within each of the three congressional districts is appropriate in the context of this case not only because self-determination is a recognized and significant state and federal policy, but also because to do so here will not infringe on the rights and interests of other parties to the litigation.

CONCLUSION

The Navajo Nation thus supports the adoption of either the Egolf Plaintiffs' Revised Congressional Plan, the Maestas Plaintiffs' Congressional Plan, or the LULAC plan, HB 46, because they all recognize the Navajo Nation's need for access to and representation by each of New Mexico's congressional representatives and they all 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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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 2nd day of December, 2011.

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