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

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MICHAEL JEPSEN, et al.,
Plaintiffs,

vs.

No. D-0101-CV-2001-02177
(Consolidated)

REBECCA VIGIL-GIRON, in her
official capacity as New Mexico
Secretary of State, et al.,
Defendants.

COURT'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW
CONCERNING STATE HOUSE OF
REPRESENTATIVES REDISTRICTING

FINDINGS OF FACT

1. The United States Constitution and the New Mexico Constitution provide that the New Mexico State House of Representatives must be reapportioned by district every ten years.
2. According to the 2000 census, the population of the State of New Mexico is 1,819,046, an increase of 303,977 residents.
3. The New Mexico Constitution establishes a State House of Representatives with a maximum of 70 seats.
4. The ideal State House of Representatives district based upon the 2000 census has a population of 25,986. The maximum deviation among the current house districts is 104.9%.
5. The current House of Representative districts are grossly malapportioned.

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6. A special legislative session was called for the Fall of 2001. In anticipation of the special session, the bi-partisan New Mexico Legislative Council adopted without dissent certain criteria which the legislature would consider in formulating redistricting plans.
7. The Redistricting Committee traveled throughout the State of New Mexico and held public hearings to receive comments and input from citizens and interest groups from all areas of the state. Comments were received from groups including, but not limited to, the State Republican Party, the Mexican-American Legal Defense and Education Fund, the NAACP, the Navajo Nation, and the Jicarilla Apache Nation.
8. The Legislature retained Research and Polling, Inc. to provide demographic support for the special session.
9. The special legislative session began on September 4, 2001 and ended on September 20, 2001.
10. During the special legislative session, the legislature passed HB 7 which provided for the redistricting of the New Mexico House of Representatives. That plan was vetoed by the Governor.
11. The legislature then passed HB 3, as a compromise bill to address the concerns expressed in the Governor's veto message. That plan, drafted in conformance with the criteria adopted by the Legislative Council and the laws of the United

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States and the State of New Mexico, was also vetoed by the Governor.

12. Suit was filed by the Jepsen Plaintiffs prior to the conclusion of the special legislative session. This suit was consolidated with a suit filed by the Sanchez Plaintiffs. Other parties intervened, defendants were added.
13. The United States District Court deferred to the on going state proceedings after removal of the case by Governor Johnson. The Federal Court ordered the matter remanded to this Court.
14. This Court has before it 6 plans:
 - a. HB7, first passed by the legislature, and vetoed (Sanchez Plan)
 - b. HB 3, second passed by the legislature, and vetoed (Legislative Plan)
 - c. The Jepsen Plan, a modification of HB7
 - d. The Padilla Plan
 - e. The Gutierrez Plan, and
 - f. The Vigil Plan.
15. The Sanchez Plaintiffs initially advanced HB7, but during final argument, counsel advised the court that, given all the evidence presented during trial and considering the relevant criteria for selection of a court adopted plan, HB 3 is their

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preferred plan.

16. Also submitted to the court were partial plans submitted by the Navajo Nation and the Jicarilla Apache Nation.
17. During the course of the trial it became obvious that the New Mexico Legislature failed to provide adequately for equal Native American electoral access in Northwestern New Mexico when it crafted the current plan in 1991. Therefore, the Court will first consider the partial plans submitted by the Navajo and the Jicarilla Apache Nations for Northwestern New Mexico.
18. Native Americans constitute 9.5% of the total population of New Mexico and 8.3% of the voting age population of New Mexico.
19. The Native American population in New Mexico increased both in absolute terms and as a percentage of the total between 1990 and 2000.
20. Of the seventy (70) seats in the State House of Representatives, at present, only three are filled by Native Americans.
21. If Native Americans were represented in the State House at a level proportionate to their total population, Native Americans would occupy seven seats in the State House.
22. If Native Americans were represented by the State House proportionate to their voting age population, Native Americans would occupy six seats in the State House.

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23. Proportionality between the number of Native Americans majority State House districts and the relevant Native American population would be achieved through the creation of six districts in which Native Americans constitute the majority of the voting age population.
24. The Native American population of New Mexico, collectively, constitutes a recognizable and significant community of interest, as well as a protected racial minority, for purposes of redistricting.
25. In Northwest New Mexico, a district having a population of Native American voting age population of 55% or less does not provide Native Americans with a reasonable opportunity to elect candidates of their choice.
26. The Navajo Nation Plan with the Jicarilla Apache Plan for district 65 include six (6) reasonable compact, contiguous districts with Native American VAP in excess of 60% and with total Native American population in excess of 64.7%.
27. Six (6) compact, contiguous districts can be formed where Native Americans would have a reasonable opportunity to elect candidates of their choice.
28. Homogeneous precinct analyses, bivariate ecological regression analyses, and multivariate ecological regression analyses demonstrate that elections in the Northwestern New Mexico involving Native American candidates and non-Native

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American candidates, including primary and general elections, are racially polarized.

29. In primary elections, the voting preferences of Native Americans and Hispanics are racially polarized.
30. Native Americans in Northwestern New Mexico have traditionally voted, and continue to vote, as a cohesive group.
31. Homogeneous precinct analyses, bivariate ecological regression analyses, multivariate ecological regression analyses, and scatter plot diagrams demonstrate that, in Northwestern New Mexico districts where non-Native Americans comprise the majority, the non-Native American voters vote sufficiently as a bloc to veto with regularity the election of the preferred candidate of the Native American voters.
32. The Navajo Nation and the Jicarilla Apache Nation have established that the current plan fails to provide equal electoral access to New Mexico's Native American population and satisfies the totality of the circumstances requirement. In that regard the court adopts Navajo Nation's Proposed Findings of Fact 35 through 46 and the Jicarilla Apache Nation's Proposed Findings of Fact 25 through 38.
33. The redistricting proposals submitted by the Jicarilla Apache Nation for district 65 and the Navajo Nation proposal for districts 1, 2, 3, 4, 5, 6, 9 and 69 offer the best remedy

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for the current plans equal protection and Voting Rights Act violation.

34. The plans of the two Nations adhere to traditional Redistricting criteria, provide the best overall remedy to the current plans dilution of Native American vote in the Northwestern quadrant, and have acceptable population deviations.
35. The deviation in the plans of the two Nations are justified by natural, political and traditional boundaries and the need to remedy the dilution of Native American voting rights.
36. The house districting phase of the case has resulted in eleven days of trial. During that time the court has heard from eighteen witnesses including seven experts in the field of political science or redistricting, six legislators, a mayor and various representatives of the Native American Nations. Each witness discussed the pros and cons of the different plans. The parties have spent many thousands of dollars for experts to prepare the plans and testify as to why their plan should be accepted and why the other plans should be rejected. All the experts have been cross examined by as many as eight or nine different lawyers.
37. The Governor or the Lt. Governor have not submitted a plan or endorsed any of the plans presented. They have not submitted a plan which then could under go the intense scrutiny that

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the other plans have received.

38. The Governors position is that the court should draw its own plan with a de minimis population deviation. This request is rejected as not necessary under the law and not possible or fair with the time restraints brought on by the coming election. A court drawn plan at this late date could not receive the necessary scrutiny from all sides as the six submitted plans have received.

39. The Court in its prior Findings of Fact and Conclusions of Law concerning the Congressional redistricting set out certain principles that a Court should follow when required to redistrict because the legislature has failed to act. These principles include the following:

- a. Look to the last clear expression of state policy. (Finding No. 34)
- b. Not make radical or partisan changes unless the law requires those changes to be made. (Conclusion No. 7)
- c. Shift the population necessary to bring New Mexico into compliance with the one-person one-vote requirement. (Finding No. 22)
- d. Insure the districts are compact and contiguous to the extent possible and keep intact to the extent possible county and municipal boundaries. (Conclusion

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No. 9)

- a. Maintain percentages of effective Hispanic and Native American majority districts as in the existing plan subject to Voting Rights Act compliance. (Conclusions 3-6)
 - f. Try to promote partisan fairness and political competition.
40. In evaluating the plans submitted by the parties, it is appropriate that the Court give thoughtful consideration that HB 3 and HB 7 are plans developed through a process which reflects the will of the people, expressed through their elected representatives. That HB 3 was a compromise plan which attempted to balance the competing social, economic, geographic and racial interests which comprise the state.
41. The Court finds that HB 3 in combination with the plans of the two Nations best satisfies the principles referred to in Finding 39 and the consideration referred to in Finding 40.
42. New Mexico has a total population of 1,819,046. The New Mexico House of Representatives is made up of seventy (70) single-member districts. Accordingly, the ideal size of each district is 25,986.
43. In HB 3, the greatest deviation from the ideal among the 70

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House of Representative Districts are:

- a. District 60 has a total population of 27,260, which is 1,274 people over, or 4.9% greater than the ideal.
 - b. District 41 has a total population of 24,791, which is 1,195 people under, or 4.6% less than the ideal.
44. The total maximum deviation from ideal is 9.5% which is not increased by the insertion of the plans of the two Nations into HB 3.
 45. HB 3 considered with the plans of the two Nations shifts the minimum population necessary in order to accommodate one-person one-vote mandates while meeting the legitimate needs of the Navajo and Jicarilla Apache Nations, and avoiding the loss of a Republican seat on the Eastside while creating a new Republican district on the Westside of Albuquerque.
 46. HB 3 in combination with the plans of the two Nations does not retrogress from the current plan with respect to the number of Hispanic majority district, Native American Districts and Majority-minority districts.
 47. HB 3 follows traditional redistricting criteria. By insertion of the Navajo Nation Plan, Gallup is split. This is necessary to establish six (6) Native American Districts.
 48. HB 3 in combination with the plans of the two Nations more

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than any other plan promotes partisan fairness and political competition as set out in Legislative Findings 47 through 78.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.
2. The current existing New Mexico House of Representatives districts are unconstitutional under the United States Constitution Amendment XIV and New Mexico Constitution Act II §18 and are therefore enjoined for use in any further elections.
3. The primary goal of state legislative redistricting is "fair and effective representation of all citizens." Reynolds v. Sims, 377 U.S. 533, 565-66 (1964). Redistricting is essentially a task for the state legislature, White v. Weiser, 412 U.S. 783, 794-95 (1973), but courts must intervene in the redistricting process when no redistricting law is enacted, *id.*, and state courts are particularly appropriate for this task. Grove v. Emison, 507 U.S. 25 (1993).
4. HB 3 in combination with the plans of the two Nations provides for fair and effective representation of the citizens of New Mexico in compliance with Federal and State Law, and neutral standards adopted by the Legislative

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Council.

5. The Equal Protection Clause, "guarantees the opportunity for equal participation by all voters in the election of state legislators." Reynolds v. Sims, 377 U.S. 533, 566 (1963). This goal is achieved by creating state legislative districts having a total deviation of no more than 10% from the ideal. White v. Regester, 412 U.S. 755 (1973).
6. This Court, as a state court, is not constrained by the de minimis standard of population deviation imposed upon federal courts in drafting or adopting a state legislative redistricting plan. In re Apportionment of State Legislature 1982, 321 N.W.2d 585 (Mich. 1982) (Levin and Fitzgerald, JJ, concurring).
7. The requirement imposed upon federal courts to adhere to de minimis population deviation standards in crafting state legislative redistricting plans stems from the Supreme Court's superintending control over the federal courts, and not any federal constitutional standard. In re Apportionment of State Legislature - 1982, 321 N.W.2d 585 (Mich. 1982) (Levin and Fitzgerald, JJ, concurring).
8. In adopting a plan for redistricting the New Mexico House of Representatives, this Court is constrained only by the 10% (+/-5%) population deviation standard applicable to plans adopted by the State Legislature, and which have been held

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per se constitutional.

9. The state legislative districts in HM 3 in combination with plans of the two Nations fall well within the 10% deviation requirement, and are in full compliance with the requirements of the Equal Protection Clause of the United States Constitution.
10. The population deviation among the districts in the Navajo Nation Plan and District 65 in the Jicarilla Apache Nation plan does not violate the constitutional principle one-person one-vote. Moreover, any deviations inherent to these plans 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, and respect for tribal self-determination.
11. The Native American population in Northwestern New Mexico is sufficiently large and compact to constitute a majority in six single member state House districts. Native Americans in Northwestern New Mexico are politically cohesive, and the non-Native American majority in the State votes as a bloc to defeat Native Americans' candidates of choice. Accordingly, the Native American population in Northwestern New Mexico

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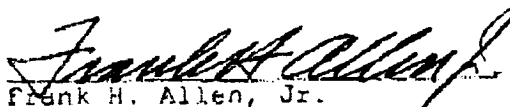
- satisfies the threshold criteria established by the U.S. Supreme Court in Thornburg v. Gingles, 478 U.S. 30 (1986).
12. Native Americans in New Mexico have suffered a history of discrimination, have not achieved proportional representation in the State House, and voting in New Mexico is racially polarized. The high employment, high poverty, and low educational attainment of Native Americans in New Mexico results from historical discrimination and contributes to Native Americans' diminished ability to address problems through the political process. Under the "totality of the circumstances test" of Section 2 of the Voting Rights Act, the voting strength of Native Americans in the State are diluted and Native Americans do not have an equal opportunity to participate in the political process and elect representatives of choice.
 13. HB 3 in combination with the plans of the Navajo and Jicarilla Apache Nations does not dilute minority voting strength in districts where minority groups are able to elect candidates of their choice.
 14. HB 3 in combination with the Navajo Nation and Jicarilla Apache Nation Plans is not retrogressive and complies with the Voting Rights Act.
 15. Race was properly considered in HB 3 in combination with the plans of the two Nations for the purpose of assuring

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compliance with the Voting Rights Act; but race was not the predominant factor in the drawing of the district lines and race was not subordinated to other race-neutral district principles. These combination plans do not violate the Fourteenth Amendment prohibition against racial gerrymandering.

16. HB 3 in combination with the plans of the two Nations comports with other, traditional redistricting criteria. Several criteria, adopted without dissent by the bi-partisan Legislative Council, deserve heightened consideration in this case. See O'Sullivan v. Brier, 540 F. Supp. 1200, 1203 (D. Kan. 1982). Those criteria are compactness, contiguity, respect for incumbency and communities of actual shared interests and the preservation of geographical and political boundaries. The combination plan comports with the districting criteria adopted by the Legislative Council.
17. Attorneys for Defendants Romero and Lujan in cooperation with attorneys from the Navajo Nation and the Jicarilla Apache Nation are to prepare the necessary Order with required attachments to implement this ruling and to put into effect this State House of Representative Plan for the primary and general election.


Frank H. Allen, Jr.
District Judge, Division IV