

BRIAN M. BARNARD USB # 00215
STEWART GOLLAN USB # 12524
UTAH LEGAL CLINIC
Cooperating Attorneys for
UTAH CIVIL RIGHTS & LIBERTIES
FOUNDATION, INC.
214 East Fifth South Street
Salt Lake City, Utah 84111-3204
Telephone: (801) 328-9531
Facsimile: (801) 328-9533
Email: ulcr2d2c3po@utahlegalclinic.com

D. HARRISON TSOSIE USB # 07329
Navajo Nation Attorney General
NAVAJO NATION
DEPARTMENT OF JUSTICE
P.O. Box 2010
Window Rock, Arizona 86515-2010
Telephone: (928) 871-6345
Facsimile: (928) 871-6177
Email: htsosie@nndoj.org
ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

NAVAJO NATION, a federally recognized
Indian tribe, **LORENA ATENE**,
**TOMMY ROCK, HARRISON
(HUTCHINS) HUDGINS, WILFRED
JONES, ELSIE BILLIE**, and **HERMAN
FARLEY**,

Plaintiffs,

vs.

SAN JUAN COUNTY, a Utah governmental
sub-division; **BRUCE ADAMS**, San Juan
County Commissioner / Commission Chair;
PHIL LYMAN, San Juan County
Commissioner; **KENNETH MARYBOY**, San
Juan County Commissioner; and **NORMAN
L. JOHNSON**, San Juan County Clerk /
Auditor,

Defendants.

C O M P L A I N T

Case No. 2:12-cv-00039-DS

Judge David Sam

PLAINTIFFS, the **NAVAJO NATION**, a federal recognized Indian tribe, **WILFRED JONES, ELSIE BILLIE, HERMAN FARLEY, LORENA ATENE, TOMMY ROCK, HARRISON (HUTCHINS) HUDGINS**, through counsel, BRIAN M. BARNARD and STEWART GOLLAN of the Utah Legal Clinic, as cooperating attorneys for the Utah Civil Rights & Liberties Foundation, Inc., and D. HARRISON TSOSIE, Navajo Nation Attorney General as a Complaint and as causes of action against Defendants state and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for injunctive and declaratory relief to achieve a lawful redistricting of the Commission Districts in San Juan County, Utah. This 42 U.S.C. § 1983 action seeks declaratory, equitable, and injunctive relief for improper interference with the constitutional rights of individual Plaintiffs. Plaintiffs seek declaratory relief as to the unconstitutionality of the Defendants' district apportionment map (the "Map"). The Map impermissibly infringes on Plaintiffs' rights under the Equal Protection clause of the Fourteenth Amendment because the Commission Districts are not substantially equal in population. The Map impairs the voting rights of minorities in violation of § 2 of the Voting Rights Act, 42 U.S.C. § 1973. Plaintiffs seek attorney fees and costs under 42 U.S.C. § 1983, 42 U.S.C. § 1988, and 42 U.S.C. § 1973(l).

JURISDICTION AND VENUE

2. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 and 28 U.S.C. § 1343

because Plaintiffs' claims arise under federal law. Plaintiffs seek relief under 42 U.S.C. § 1983 and § 1988 based on violations of the Fourteenth Amendment and 42 U.S.C. § 1973, the Voting Rights Act.

3. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

5. Venue is proper with this Court pursuant to 28 U.S.C. § 1391(b) because the individual parties reside in the Central Division of this Court. The governmental defendant is located in the Central Division of this Court.

PARTIES

6. **PLAINTIFF NAVAJO NATION** is a federally recognized Indian tribe whose reservation lands are located in the states of New Mexico, Arizona, and Utah.

7. **PLAINTIFF LORENA ATENE** is an adult citizen and resident of San Juan County. She is a member of the Navajo Nation, is registered to vote in San Juan County, and lives at Navajo Mountain, Utah (in the Navajo Mountain Precinct). She resides in County Commission District # 1.

8. **PLAINTIFF TOMMY ROCK** is an adult citizen and resident of San Juan County. He is a member of the Navajo Nation, is registered to vote in San Juan County, and lives at Oljato, Utah (in the Oljato Precinct). He resides in County Commission District # 1.

9. **PLAINTIFF HARRISON (HUTCHINS) HUDGINS** is an adult citizen and resident

of San Juan County. He is a member of the Navajo Nation, is registered to vote in San Juan County, and lives at Westwater, Utah (in the Blanding Precinct). He resides in County Commission District # 2.

10. PLAINTIFF **WILFRED JONES** is an adult citizen and resident of San Juan County. He is a member of the Navajo Nation, is registered to vote in San Juan County, and lives at Red Mesa, Utah (in the Montezuma Creek Precinct). He resides in County Commission District # 3.

11. PLAINTIFF **ELSIE BILLIE** is an adult citizen and resident of San Juan County. She is a member of the Navajo Nation, is a registered to vote in San Juan County, and lives at Aneth, Utah (in the Aneth Chapter Precinct). She resides in County Commission District # 3.

12. PLAINTIFF **HERMAN FARLEY** is an adult citizen and resident of San Juan County. He is a member of the Navajo Nation, is registered to vote in San Juan County, and lives at Red Mesa, Utah (in the Red Mesa Chapter Precinct). He resides in County Commission District # 3.

13. DEFENDANT **SAN JUAN COUNTY** is a governmental sub-division of the State of Utah. It governs the geographical area in southeastern Utah known as San Juan County. It operates pursuant to powers granted by the State of Utah.

14. DEFENDANT **BRUCE ADAMS** is a duly elected and serving Commissioner and Commission Chair of San Juan County. He is charged with the executive duties and responsibilities to act on behalf of that county. Those duties include creating districts for the elections of the San Juan County Commission.

15. DEFENDANT **PHIL LYMAN** is a duly elected and serving Commissioner of San Juan County. He is charged with the executive duties and responsibilities to act on behalf of that county. Those duties include creating districts for the elections of the San Juan County Commission.

16. DEFENDANT **KENNETH MARYBOY** is a duly elected and serving Commissioner of San Juan County. He is charged with the executive duties and responsibilities to act on behalf of that county. Those duties include creating districts for the elections of the San Juan County Commission.

17. DEFENDANT **NORMAN L. JOHNSON** is the duly elected and serving County Clerk/Auditor of San Juan County. He is charged with the executive duties and responsibilities to administer elections in San Juan County and for San Juan County Commissioners. He is charged with the responsibility of administering the Utah State election code and ensuring that elections within San Juan County are conducted in a fair and lawful manner.

18. As a county commissioner, each defendant commissioner is responsible for acting to redistricting the county, faithfully executing the laws of the State of Utah and upholding the United States Constitution.

19. Each individual defendant is sued in his official capacity.

20. At all times pertinent to this action, the governmental defendants have been and will be acting under color of state law and pursuant to authority granted to them by the State of Utah and San Juan County.

FOURTEENTH AMENDMENT

21. The Equal Protection Clause of the Fourteenth Amendment requires that electoral districts have substantially equal populations to provide each citizen with an equal vote (the “one person, one vote” principle).

22. The current San Juan County Commission Districts encompassing lands both within and outside the Navajo Nation violate the rights of the Navajo plaintiffs and other members of the Navajo Nation, are unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States.

23. The United States Supreme Court has held that voter districting plans and apportionment maps that have or create population variances greater than ten per cent (>10%) are *prima facie* unconstitutional.

24. To calculate the percentage of population variance between voting districts, the United States Supreme Court has explained that the deviations from the average district size of the most under-represented and most over-represented districts are added together. *See Brown v. Thompson*, 462 U.S. 835, 852 (1983) (Brennan, J., dissenting).

VOTING RIGHTS ACT

25. The Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.*, prohibits any voting standard, practice, or procedure that, on the totality of the circumstances, impairs the ability of minority groups to elect candidates of their choice.

26. Members of the Navajo Nation are Native Americans recognized as ethnic minorities

by the United States Census Bureau.

27. The current San Juan County districts encompassing lands both within and outside the Navajo Nation dilute and violate the voting rights of the Navajo plaintiffs and other members of the Navajo Nation, in violation of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.*

THE CURRENT MAP

28. San Juan County is currently divided into three (3) districts for the purpose of electing county commissioners. Commissioners are elected one from each of those districts.

29. Those districts were created based upon a districting process and a map created in 1984 (the “Map”) pursuant to a Agreed Settlement and Order entered into by San Juan County and the United States Department of Justice. United States of America v. San Juan County, et al, Case No. C-83-1286W, United States District Court for the District of Utah. A copy of that map is attached to this Complaint, marked Exhibit “A” and is incorporated herein by reference.

30. The Map has not been changed since 1984. San Juan County has not been re-districted for the purpose of county commission elections since 1984.

OPERATIVE FACTS

31. The Navajo Nation’s reservation lands within the State of Utah are located in the southeast quadrant of the state and in San Juan County.

32. Members of the Navajo Nation reside in San Juan County, Utah on Navajo Nation reservation lands, on other Indian reservations, and in urban and rural areas outside reservation lands.

33. The Navajo Nation has reservation lands in Districts # 1 and # 3 of San Juan County and fee lands in District # 2 of San Juan County.

34. Members of the Navajo Nation who reside in the State of Utah and in San Juan County are eligible to vote and are registered to vote as citizens of the United States and Utah.

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

36. 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.

37. The current Map (Exhibit "A") was drawn in 1984 using 1980 census data. Data from the United States 2010 census analysis documents that the populations of the three (3) current districts vary substantially due to population growth and shifts in the intervening decades.

38. The Map splits San Juan County into three (3) districts for the purpose of election county commissioners.

39. District # 1 of the current Map encompasses 5,347 people and is 29.96% Native American.¹

40. District # 2 of the current Map encompasses 4,550 people and is 29.21% Native American.²

¹ According to San Juan County, District # 1 has a population of 5,374.

² According to San Juan County, District # 2 has a population of 4,557.

41. District # 3 of the current Map encompasses 4,849 people and is 92.8% Native American.³

42. The 2010 census analysis shows that San Juan County has a total population of 14,746, of which 7,431 identify as Native American (50.4% of the population of the County).

43. Based on the 2010 census, the ideal population for each of the three (3) Commission Districts is now 4,915.

44. As the districts are currently divided, District # 1 deviates from the ideal population by 8.79%.⁴

45. As the districts are currently divided, District # 2 deviates from the ideal population by negative 7.43%.⁵

46. As the districts are currently divided, District # 3 deviates from the ideal population by negative 1.34%.⁶

47. Using the United States Supreme Court's prescribed calculation (as explained in ¶¶ 23-24 *supra*), the population variance between the current districts in San Juan County is 16.22%. (The deviation of District # 1 (8.79%) plus District # 2 (-7.43%) totals 16.22%).⁷

³ According to San Juan County, District # 3 has a population of 4,815.

⁴ According to San Juan County figures, the deviation of District # 1 is 9.34%.

⁵ According to San Juan County figures, the deviation of District # 2 is *negative* - 7.28 %.

⁶ According to San Juan County figures, the deviation of District # 3 is *negative* - 2%.

⁷ According to San Juan County figures, the deviation between District # 1 and District # 2 is 16.62 %.

48. Because the populations in the three (3) Commission Districts are not equal, the votes of residents of the districts are not equal in weight.

49. Based on the totality of the circumstances, Navajos in San Juan County have less opportunity than other citizens to participate in the political process and to elect representatives of their choice.

50. It is possible to create a map that would provide Navajo voters a greater and more equal opportunity to elect candidates of their choice.

CAUSES OF ACTION

51. Plaintiffs re-allege all foregoing paragraphs as though fully set forth here.

52. Given population growth and decline, the current Commission Districts are unconstitutionally malapportioned and no longer comply with federal principles of equal protection, one-person one-vote, and preservation of minority and community voting interests.

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

54. The individual Plaintiffs have suffered harm as a result of the Defendants' past use of the out-dated and malapportioned Map.

55. The individual Plaintiffs will suffer harm as a result of the Defendants' continued use of the out-dated and malapportioned Map.

Fourteenth Amendment

56. By having used the current Map, Defendants have deprived Plaintiffs and others of rights guaranteed by the Fourteenth Amendment of the United States Constitution.

57. By continuing to use the current Map, Defendants will deprive Plaintiffs and others of rights guaranteed by the Fourteenth Amendment of the United States Constitution.

Voting Rights Act of 1965

58. By having used the current Map, Defendants have deprived Plaintiffs and others of rights guaranteed by the Voting Rights Act.

59. By continuing to use the current Map, Defendants will deprive Plaintiffs and others of rights guaranteed by the Voting Rights Act.

IMMEDIATE EQUITABLE RELIEF

60. County elections are scheduled to be held in San Juan County in 2012.

61. Because its use would violate Plaintiffs' and others' constitutional rights, further elections under the current Map should be prohibited.

62. San Juan County should be reapportioned based on the 2010 census as far in advance of the 2012 elections as is possible.

63. Without the intervention of this Court, the lawfully required redistricting of San Juan County likely will not occur before the 2012 elections.

ATTORNEY FEES and COURT COSTS

64. Plaintiffs have been required to retain legal counsel to pursue their claims herein.

65. Plaintiffs have incurred and will incur attorney fees, expert witness fees, expenses and court costs in this action.

66. Plaintiffs are entitled to and seek reimbursement for their attorney fees, expert witness fees and court costs in this action. 42 U.S.C. § 1983 and § 1988, and 42 U.S.C. § 1973 and § 1973(l).

PROPOSED MAP

67. The Navajo Nation prepared for the individual Plaintiffs and presented to the Defendants a new Proposed Map to redistrict San Juan County.

68. A copy of Plaintiffs' new Proposed Map is attached to this Complaint, marked Exhibit "E" and incorporated herein by reference.

69. Plaintiffs' Proposed Map would create three (3) equal Commission Districts in San Juan County.

70. The Navajo Nation requested that the Defendants adopt the Proposed Map.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand the following relief:

1. Declaratory judgment that the Map violates the Fourteenth Amendment of the United States Constitution;
2. Declaratory judgment that the Map violates the Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.*;
3. A preliminary and permanent injunction prohibiting Defendants from holding any further elections using the current Map;
4. An order requiring Defendants to reapportion and redistrict San Juan County in

compliance with census tract information and implement a new Map that protects the constitutional rights of all citizens of San Juan County based on the 2010 census, in compliance with the Equal Protection Clause of the United States Constitution and the Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.*;

5. Awarding damages (at least nominal) against San Juan County for the violation of Plaintiffs' rights under the United States Constitution;

6. Awarding Plaintiffs' attorney fees, expert witness fees, expenses and court costs incurred in pursuing this action as per 42 U.S.C. § 1983 and § 1988, and 42 U.S.C. § 1973 and § 1973(l); and,

7. Granting such other and further relief as the Court deems just and proper.

DATED this 12TH day of JANUARY 2012.

ATTORNEYS FOR PLAINTIFFS

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

/s/ Brian M. Barnard

BRIAN M. BARNARD
STEWART GOLLAN

D. HARRISON TSOSIE
ATTORNEY GENERAL
NAVAJO NATION
DEPARTMENT OF JUSTICE

EXHIBITS

EXHIBIT "A"

CURRENT MAP OF SAN JUAN COUNTY
THREE (3) COUNTY COMMISSION DISTRICTS
WITH 2010 CENSUS FIGURES

EXHIBIT "E"

PLAINTIFFS' PROPOSED MAP OF SAN JUAN COUNTY
THREE (3) COUNTY COMMISSION DISTRICTS
WITH 2010 CENSUS FIGURES