

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

NAVAJO NATION, KIMMETH  
YAZZIE, SONLATSA JIM-MARTIN,  
BENJAMIN BITSILLY, ALBERT  
SHIRLEY, FERNIE YAZZIE, JULIA A.  
LIVINGSTON, MARIA A. JOE,  
DAVID LEE, AND GERTRUDE LEE,

Plaintiffs,

vs.

No. \_\_\_\_\_

GALLUP-MCKINLEY COUNTY  
SCHOOLS BOARD OF EDUCATION,  
MAVIS V. PRICE, in his official capacity as  
President of the Gallup-McKinley County  
Schools Board of Education, CHEE SMITH  
JR., in his official capacity as Vice President  
of the Gallup-McKinley County Schools  
Board of Education, JOE MENINI, in his  
official capacity as Secretary of the Gallup-  
McKinley County Schools Board of  
Education, DR. BRUCE TEMPEST, in his  
official capacity as Member of the Gallup-  
McKinley County Schools Board of  
Education, KEVIN MITCHELL, in his  
official capacity as Member of the Gallup-  
McKinley County Schools Board of  
Education, and JACQUELINE SLOAN, in  
her official capacity as County Clerk of  
McKinley County.

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, the Navajo Nation, a federally recognized Indian tribe, Kimmeth Yazzie, Sonlatsa Jim-Martin, Benjamin Bitsilly, Albert Shirley, Fernie Yazzie, Julia A. Livingston, Maria A. Joe, David Lee, and Gertrude Lee, (collectively "Plaintiffs"), by and through their attorneys, Wiggins,

Williams and Wiggins, PC and the Navajo Nation Department of Justice, for their Complaint for Declaratory and Injunctive Relief state as follows:

**Nature of the Action**

1. This action is being brought pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV; Article II, § 18 of the New Mexico Constitution; the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*; and the provisions 42 U.S.C. §§ 1983 & 1988.

2. In this lawsuit, Plaintiffs seek (a) a declaration that the district map adopted by the Gallup McKinley County Schools Board of Education ("GMCSB") for use in the February, 2013 school board election ("Challenged Plan") is unconstitutional and in violation of the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et. seq.* ("Voting Rights Act"); (b) an injunction preventing use of that unconstitutional and unlawful district map in advance of or in the February 2013 election or in any future election and postponing the GMCSB school board election unless and until a lawful districting map is adopted; and (c) establishment of constitutionally sound and lawful districts for the GMCSB.

**Background**

3. Native Americans comprise 70.8% of the population within the GMCSB's five election districts.

4. The GMCSB's Challenged Plan packs Native American voters into three of the five voting districts—Districts 1, 2, and 3—unnecessarily diluting the strength of the Native American vote in those districts in violation the Voting Rights Act, and the doctrine of one person, one vote mandated by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

5. The Challenged Plan creates two other districts—Districts 4 and 5—in which the Native American voting age population is near or below 40%, making election of a Native American candidate of choice in those two districts extremely difficult, and unnecessarily diluting the power of the Native American voters in those districts to influence elections and elected officials.

6. Although less offensive districting plans were presented to GMCSB for consideration, GMCSB failed to adopt a districting plan, like that advocated by the Navajo Nation, that complies with the requirements of the United States Constitution and of the Voting Rights Act by unpacking Districts 2 and 3, maintaining three strong majority-minority Native American voting districts (Districts 1, 2, and 3), and increasing the ability of Native American voters to influence elections in the remaining districts (Districts 4 and 5).

#### **Jurisdiction and Venue**

7. This Court has subject matter jurisdiction over this action which states claims pursuant to the Fourteenth Amendment of the United States Constitution and the Voting Rights Act. See 28 U.S.C. §§ 1331, 1343(a)(3)-(4), 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988.

8. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

#### **Parties**

9. Plaintiff, the Navajo Nation, is a federally recognized Indian tribe whose reservation lands are located within the states of New Mexico, Arizona, and Utah.

10. The bulk of the Navajo Nation's reservation lands within the State of New Mexico are located in the northwest quadrant of the state, including within the New Mexico county of McKinley.

11. Members of the Navajo Nation reside throughout New Mexico on Navajo Nation

reservation lands, on other Indian reservations, and in urban and rural areas outside reservation lands.

12. Members of the Navajo Nation who reside within the boundaries of the State of New Mexico are eligible to vote and are registered to vote as citizens of the United States and New Mexico.

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

14. Plaintiffs Kimmeth Yazzie, Sonlatsa Jim-Martin, and Benjamin Bitsilly are Native Americans, members of the Navajo Nation, and are residents of GMCSB District 1 in the Challenged Plan. These Plaintiffs have an interest in ensuring that persons elected to the GMCSB pursue and protect the interests of Native American students and parents within McKinley County.

15. Plaintiff Albert Shirley is a Native American, a member of the Navajo Nation, and a resident of Iyanbito, NM. Plaintiff Albert Shirley lives within GMCSB District 2 in the Challenged Plan. Because District 2 in the Challenged Plan is unnecessarily packed, in each and every election allowed to occur pursuant to the Challenged Plan, Plaintiff Albert Shirley's vote will have been unnecessarily compromised and diluted.

16. Plaintiff Fernie Yazzie is a Native American, a member of the Navajo Nation, and a resident of Crownpoint, NM. Plaintiff Fernie Yazzie lives within GMCSB District 2 in the Challenged Plan. Because District 2 in the Challenged Plan is unnecessarily packed, in each and every election allowed to occur pursuant to the Challenged Plan, Plaintiff Fernie Yazzie's vote will have been unnecessarily compromised and diluted.

17. Plaintiff Julia Livingston is a Native American, a member of the Navajo Nation, and a resident of Churchrock, NM. She lives within GMCSB District 3 in the Challenged Plan. Because

District 3 in the Challenged Plan is unnecessarily packed, in each and every election allowed to occur pursuant to the Challenged Plan, Ms. Livingston's vote will have been unnecessarily compromised and diluted.

18. Plaintiff Maria A. Joe is a Native American, a member of the Navajo Nation, and a resident of Manuelito, NM. She lives within GMCSB District 3 in the Challenged Plan. Because District 3 in the Challenged Plan is unnecessarily packed, in each and every election allowed to occur pursuant to the Challenged Plan, Ms. Joe's vote will have been unnecessarily compromised and diluted.

19. Plaintiff David Lee is a Native American, a member of the Navajo Nation, and a resident of Gallup, NM. He lives within GMCSB District 4 in the Challenged Plan. Because Native American population has been unnecessarily removed from District 4 in the Challenged Plan, in each and every election allowed to occur pursuant to the Challenged Plan, Mr. Lee's ability to influence the election and elected officials in District 5 will have been unnecessarily compromised and diluted.

20. Plaintiff Gertrude Lee is a Native American, a member of the Navajo Nation, and a resident of Gallup, NM. She lives within GMCSB District 5 in the Challenged Plan. Because a portion of the Native American population has been unnecessarily excluded from District 5 in the Challenged Plan, in each and every election allowed to occur pursuant to the Challenged Plan, Ms. Lee's ability to influence the election and elected officials in District 5 will have been unnecessarily compromised and diluted.

21. Defendant GMCSB is the duly elected governing body of the Gallup-McKinley County Schools, within the New Mexico county of McKinley. GMCSB is responsible for defining

the boundaries of the districts from which its members are elected, and issuing a proclamation calling for a regular school board election based on such districts.

22. GMCSB approved the Challenged Plan.

23. Defendants, Mavis V. Price, Chee Smith Jr., Joe Menini, Dr. Bruce Tempest, and Kevin Mitchell, are the current members of GMCSB and are sued in their official capacities.

24. Defendant Jacqueline Sloan is the duly elected County Clerk of McKinley County, New Mexico and is sued in her official capacity. She is the chief election officer of McKinley County and her duties include ensuring that elections in her county are conducted in a fair and lawful manner, keeping records of county elections, giving notice of elections, receiving filings from candidates for office, preparing ballots, receiving election returns, enforcing measures against voter fraud and various other election duties.

25. Ms. Sloan will be responsible for administering the next GMCSB election.

#### **General Allegations**

26. United States Census Bureau conducts a decennial census throughout the United States. The most recent census was conducted in 2010, and established that the population of the State of New Mexico, including McKinley County, has increased and has shifted in location.

27. Due to population growth and population shifts that occurred over the last decade, the preexisting voting districts for GMCSB contained population disparities that were unconstitutional under the United States Constitution, Amendment XIV and under the New Mexico Constitution, Article II, §18. Reynolds v. Sims, 377 U.S. 533, 557 (1964).

28. To address this problem, the GMCSB earlier this year began to investigate options for redrawing district lines for its five School Board seats.

29. More than 60% of the area covered by the GMCSB's five voting districts is Navajo Nation reservation land.

30. More than 70% of the population with GMCSB's five voting districts is Native American.

31. Research and Polling, Inc. ("RPI") was hired by GMCSB to provide map packets and ethnographic data for the current districts, as well as for three proposed redistricting plans: A, B, and C.

32. Contrary to state law, GMCSB did not invite the Navajo Nation or its representatives to present a plan or to provide commentary on the map packets prepared by RPI.

33. A representative of RPI, however, did confer with the Executive Director of the Navajo Nation Human Rights Commission ("Navajo HRC"), and with that input, developed an additional proposed redistricting plan, referred to as Plan E-1.

34. At the November 5, 2012 meeting of the GMCSB, two redistricting proposals were discussed, Plan B and Plan E-1.

35. GMCSB, through its Board members, rejected Plan E-1, created in cooperation with the Navajo HRC.

36. GMCSB, by a vote of Board members, adopted the Challenged Plan, Plan B, which is opposed by the Navajo HRC and the Navajo Nation.

37. The Challenged Plan adopted by the GMCSB unnecessarily packs Native American population into three districts (or 60% of the districts), thus diluting the strength of the individual Native American votes in those districts, and fails to share sufficient Native American population with the remaining two districts (or 40% of the districts), thus hindering the ability of Native

Americans in those districts to elect their candidates of choice or influence elections and elected officials.

38. Proposed redistricting Plan E-1, advocated by the Navajo HRC and supported by the Navajo Nation, on the other hand, spreads out the Native American population among the five districts so that Native Americans have strong majorities in three districts, but also have sufficient population in the remaining two districts to effectively influence the elections and elected officials in those districts.

39. Potential GMCSB candidates must declare their candidacies on December 18, 2012, only a few weeks after the GMCSB's eleventh-hour adoption of its unconstitutional and unlawful Challenged Plan.

40. In the absence of action by this Court, such candidacies will be declared based on the unconstitutional and unlawful Challenged Plan adopted by the GMCSB just a few weeks ago, candidates will begin campaigning in the designated districts, and the election will occur based on the unconstitutional and unlawful Challenged Plan on February 5, 2013.

41. Should new voting districts not be timely drawn for the GMCSB, the Plaintiffs and other Native Americans within the GMCSB districts will suffer dilution of their votes in elections held in 2012.

**FIRST CLAIM FOR RELIEF**  
**(The Challenged Plan Violates the Federal Constitution)**

42. Plaintiffs restate and incorporate by reference the allegations contained in paragraphs 1 through 41 as though fully set forth herein.



43. The Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and the New Mexico Constitution guarantee to New Mexico voters equal protection of the law, which is embodied in the principle of one person one vote.

44. The GMCSB's current districting plan violates the principle of one person one vote because it unnecessarily dilutes the power of votes cast by Native Americans within the GMCSB districts.

45. A justiciable controversy exists among the parties and Plaintiffs are entitled to a declaratory judgment under 28 U.S.C. §2201 *et seq.* that the new GMCSB districts are invalid because they fail to comply with the requirements of the United States Constitution.

46. Plaintiffs are likely to succeed on the merits of their allegations contained herein, would suffer irreparable injury in the absence of equitable relief, and the balance of hardships favors the Plaintiffs. Therefore, Plaintiffs are entitled to injunctive relief enjoining the Defendants from using the current GMCSB districts in any future primary or general election.

47. Plaintiffs have been damaged by the delay in adopting a constitutional redistricting plan and have had to employ the services of legal counsel to pursue their interests and to protect their legal and constitutional rights and are thereby entitled to an award of attorneys' fees and costs associated with this action.

**SECOND CLAIM FOR RELIEF**  
**(The Challenged Plan Violates the Voting Rights Act)**

48. Plaintiffs restate and incorporate by reference the allegations contained in paragraphs 1 through 47 as though fully set forth herein.

49. The current GMCSB districts dilute and violate the voting rights of the Plaintiffs and other Native Americans in violation of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*

50. A justiciable controversy exists among the parties and Plaintiffs are entitled to a declaratory judgment under 28 U.S.C. §2201 *et seq.* that the current GMCSB districts and the districts in the Challenged Plan are invalid because they fail to comply with the requirements of the Voting Rights Act of 1965.

51. Plaintiffs are likely to succeed on the merits of their allegations contained herein, would suffer irreparable injury in the absence of equitable relief, and the balance of hardships favors the Plaintiffs. Therefore, Plaintiffs are entitled to injunctive relief enjoining the Defendants from using the current GMCSB districts or the districts in the Challenged Plan in any future primary or general election.

52. Plaintiffs have been damaged by the delay and uncertainty and have had to employ the services of legal counsel to pursue their interest and to protect their legal and constitutional rights and are thereby entitled to an award of attorneys' fees and costs associated with this action.

WHEREFORE, Plaintiffs respectfully request that this Court issue:

A. A declaratory judgment adjudicating that the current GMCSB districting plan is in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*;

B. A declaratory judgment adjudicating that the districts in the Challenged Plan are in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*

C. An injunction preventing use of any unconstitutional and unlawful GMCSB district map in advance of or in the February 2013 election or in any future election and postponing the GMCSB school board election unless and until a lawful GMCSB district map is adopted; and

D. A final judgment establishing a lawful district plan for the GMCSB in compliance with the Equal Protection Clauses of the New Mexico and United States Constitutions and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*;

E. An award of attorney fees, expert witness fees, and other costs and expenses as authorized under 42 U.S.C. § 1983 and 42 U.S.C. § 1973; and

F. Such other and further relief as the Court deems proper.

WIGGINS, WILLIAMS & WIGGINS  
A Professional Corporation

By/s/ Patricia G. Williams  
Patricia G. Williams  
Jenny J. Dumas  
1803 Rio Grande Blvd., N.W. (87104)  
P. O. Box 1308  
Albuquerque, New Mexico 87103-1308  
(505) 764-8400

Dana L. Bobroff, Deputy Attorney General  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, Arizona 86515  
(928) 871-6345-6205

Attorney for Plaintiffs

G:\PW\CLIENTS\2452-Navajo Nation\004A-School Board Redistricting\Pleadings\Final Complaint.wpd