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ATTORNEYS FOR PLAINTIFFS

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

NAVAJO NATION, a federally recognized
Indian tribe, et al.,

Plaintiffs,

v.

SAN JUAN COUNTY, a Utah governmental
subdivision,

Defendants.

**MOTION FOR PARTIAL SUMMARY
JUDGMENT ON PLAINTIFFS'
SECOND AND THIRD CLAIMS FOR
RELIEF AND MEMORANDUM OF LAW**

Civil No. 2:12-cv-00039-RS

Judge Robert Shelby

I. MOTION

Plaintiffs move the Court, pursuant to Rule 56, Fed. R. Civ. P., and DUCivR 56-1, for entry of partial summary judgment in their favor on a portion of their Second and Third claims for relief under the Voting Rights Act. No disputed issues of material fact exist regarding a portion of the Second Claim for Relief: the Indian voting age population in San Juan County,

Utah, is sufficiently large and geographically compact to constitute a majority in two or more single-member San Juan County Commission election districts. No disputed issues of material fact exist regarding a portion of the Third Claim for Relief: the Indian voting age population in San Juan County, Utah, is sufficiently large and geographically compact to constitute a majority in three or more single-member San Juan County School Board election districts.

II. INTRODUCTION

This action is brought, in part, pursuant to Section 2 of the Voting Rights Act, 42 U.S.C. 1973, *et seq.* To prevail in an action under Section 2, a plaintiff must prove existing malapportioned election districts are subject to three factors adopted in *Thornburg v. Gingles*, 487 U.S. 30, 35-37 (1986): first, there must be evidence that a minority group is sufficiently large and geographically compact to constitute a majority in a single-member election district (numerosity and compactness); second, it must be shown that the minority group is politically cohesive; and, third, it must be shown that the White majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate ("Gingles Factors"). *Id.* at 50-51.¹ Once there is a showing that all three Gingles Factors apply, seven additional criteria are considered; known as the "Senate Factors" due to their having first appeared in the Senate Judiciary Committee's report on the 1982 amendment to Voting Rights Act.² There is no requirement to show that the challenged election districts were adopted as the result of discriminatory intent.³

¹ See *Sanchez v. State of Colorado*, 97 F.3d 1303, 1310-1313 (10th Cir. 1996).

² *Gingles*, 36-37, 43-46; *Sanchez*, 1310 & n. 11. Plaintiffs allege each factor applies to San Juan County's electoral practices and history. Second Amended Complaint, Document 75, ¶¶ 37-45.

³ The Voting Rights Act was amended in 1982 to eliminate the requirement of showing discriminatory intent. Discriminatory effect is now sufficient for a violation to be found. Minority voters need only show they have less opportunity to participate in the election process and elect their candidates. *Chisom v. Roemer*, 501 U.S. 380, 394 (1991) (results only test).

The Voting Rights Act requires that minority voters have equal access and participation in the electoral process, which is denied if the population of an election district is mal apportioned by being composed in such a way that it is harder for minority voters to elect their candidates of choice. *Gingles*, at 50, n. 17. It must be possible for minority voters to elect their candidates of choice; a possibility that is obliterated by mal apportioned election districts. Analysis of the first Gingles Factor, for numerosity and compactness, determines whether this injury exists.

The Gingles analysis is essentially a math calculation that compares mal apportioned current election districts with hypothetical districts. *Cuthair v. Montezuma-Cortez, Colorado School District No. RE-1*, 7 F.Supp.2d 1152, 1165-1167 (D. Colo., 1998). Mal apportioned districts will not have the “numerosity and compactness” characteristics that are the basis of the hypothetical districts. If it can be shown that mal apportioned districts can be replaced with new districts where the minority is sufficiently numerous and compact that it can elect its candidates, the first Gingles Factor is established.

The present Motion requests that the Court enter judgment that the first Gingles Factor is established in this case.⁴ The undisputed facts show that Indians of voting age in San Juan County, Utah, are sufficiently numerous and geographically compact to constitute a majority in two County Commission and three School Board election districts. Plaintiffs’ motion should be granted.

III. STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS

⁴ This is the first step in proving the Plaintiffs’ Second Claim for Relief (mal apportioned County Commission election districts) and Third Claim for Relief (mal apportioned School Board election districts).

A. Legal Elements

1. Where mal apportioned election districts exist, a determination must be made whether the population of minority is sufficiently numerous and geographically compact that alternative election districts can be drawn that give minority voters the possibility of electing their candidates of choice. *Thornburg v. Gingles*, 487 U.S. 30, 35-37 (1986); *Abrams v. Johnson*, 521 U.S. 74, 91-92 (1997).

B. Material Facts Concerning Numerosity and Compactness of the Indian Population in San Juan County, Utah.

1. The District encompasses the entire County except for an area within the Spanish Valley Precinct that was annexed into the Grand County School District in December 2010 (“Spanish Valley Annexation”). Because this 487-person annexation occurred after the 2010 Census, it is not taken into account in a census record called the *2010 PL94-171* file. William S. Cooper Affidavit, ¶¶ 21, 54.

2. The County reapportioned Board election districts in 1969, 1972 and 1992. Cooper Affidavit, ¶¶ 14, 103-106 (1969 School Board Plan); ¶¶ 101-102 (1972 School Board Plan); and ¶¶ 96-100 (1992 School Board Plan).

3. According to the 2010 Census, the District has a population of 14,259 with a single-race Indian population of 7,419 (52.03%) and an Any Part Indian population of 7,677 (53.84%). Cooper Affidavit, ¶ 53.

4. The single-race non-Hispanic white population in the District is 6,031 (42.30%).

5. Thus, the 2010 minority population in the District is 8,228 (57.70%) consisting of all persons who are not single-race non-Hispanic White. Cooper Affidavit, ¶ 55.

6. Adjusted for the Spanish Valley Annexation⁵, the District has a total voting age population of 9,379 persons, of whom 4,800 (51.18%) are single-race Indian and 4,891(52.15%) are Any Part Indian. Cooper Affidavit, ¶ 56.
7. There are 4,157 (44.32%) single-race non-Hispanic Whites of voting age in the District. Cooper Affidavit, ¶ 57.
8. Therefore, the 2010 minority voting age population in the County, adjusted for the Spanish Valley Annexation, is 5,222 (55.68%), consisting of all persons over 18 who are not single-race non-Hispanic White. Cooper Affidavit, ¶ 57.⁶
9. The County elected county commissioners at-large until 1984 and changed to three, single-member election districts in 1984 as a result of this Court's injunction in *United States v. San Juan County*, C-83-1286W (1984). Plaintiffs' First Requests For Admission, Request Number 65, Response: Admitted.
10. The population for the County from 1970-2010 is as follows:

⁵ The annexation of part of Spanish Valley Precinct to the Grand County School District increased the Any Part Indian percentage in the San Juan School District from 52.17% to 53.84%, according to the 2010 Census. Cooper Affidavit, ¶ 58.

⁶ San Juan County, 1970 Census to 2010 Census, Population and Ethnicity/Race Distribution, is set forth in Cooper Affidavit, ¶ 45, Figure 1.

| Race | 1970 Number | Percent | 1980 Number | Percent | 1990 Number | Percent | 2000 Number | Percent | 2010 Number | Percent |
|--|----------------|---------|----------------|---------|----------------|---------|----------------|---------|----------------|---------|
| Total Population | 9,606 | 100.00% | 12,253 | 100.00% | 12,621 | 100.00% | 14,413 | 100.00% | 14,746 | 100.00% |
| Total Hispanics | 350 | 3.64% | 433 | 3.53% | 440 | 3.49% | 540 | 3.75% | 645 | 4.40% |
| White Alone* # | 4,826 | 50.24% | 6,192 | 50.53% | 5,347 | 42.37% | 5,710 | 39.62% | 6,474 | 43.90% |
| Black Alone* # | 16 | 0.17% | 11 | 0.09% | 10 | 0.08% | 18 | 0.12% | 21 | 0.14% |
| American Indian and Eskimo Alone* ## | 4,740 | 49.34% | 5,600 | 45.70% | 6,859 | 54.35% | 8,026 | 55.69% | 7,431 | 50.39% |
| Asian Alone* | NA | | 17 | 0.14% | 36 | 0.29% | 25 | 0.17% | 35 | 0.24% |
| Hawaiian or Pacific Islander Alone* | NA | | NA | | NA | | 5 | 0.03% | 5 | 0.03% |
| Other Alone* # | 24 | 0.25% | 0 | 0.00% | 6 | 0.05% | 11 | 0.08% | 2 | 0.01% |
| Two or More Races* | NA | | NA | | NA | | 156 | 1.08% | 120 | 0.81% |
| Any Part Indian ## | NA | | NA | | NA | | 8,163 | 56.64% | 7,693 | 52.17% |

* Non-Hispanic only; in 1980 and 1990 "Asian" includes Hawaiians and Pacific Islanders.

Includes Hispanics for 1970.

Includes Hispanic Indians for all years.

NA – Not Available.

Source: Table design adapted from – http://www.censusscope.org/us/s49/c37/chart_race.html

Cooper Affidavit, ¶ 73 & Fig. 1 1970-2010 Population Summary.

11. The voting age population (VAP) for the County from 1980-2010 is as follows:

| Race | 1980 Number | Percent | 1990 Number | Percent | 2000 Number | Percent | 2010 Number | Percent |
|------------------------|----------------|---------|----------------|---------|----------------|---------|----------------|---------|
| Total 18+ Population | 6,448 | 100.00% | 7,150 | 100.00% | 8,746 | 100.00% | 9,729 | 100.00% |
| Total 18+ Hispanics | 206 | 1.68% | 243 | 3.40% | 299 | 3.42% | 346 | 3.56% |
| 18+ NH White Alone | NA | | 3,238 | 45.29% | 3,839 | 43.89% | 4,490 | 46.15% |
| 18+ Indian Alone ## | 2,648 | 41.00% | 3,695 | 51.68% | 4,557 | 52.10% | 4,806 | 49.40% |
| 18+ NH DOJ Indian | NA | | NA | | 4,551 | 52.04% | 4,823 | 49.57% |
| 18+ Any Part Indian ## | NA | | NA | | 4,599 | 52.58% | 4,897 | 50.33% |

Includes Hispanic Indians for all years.

NA – Not Available.

Cooper Affidavit, ¶ 74 & Fig. 2 1980-2010 VAP Summary.

12. The current election district plan ("2011 Commission Plan") for San Juan County was adopted by the County Commission in November 2011 and has the following characteristics:

13. The 2011 Commission Plan has an overall population deviation between the largest and smallest districts of 3.60%. Cooper Affidavit, ¶ 76

14. The 2011 Commission Plan maintains one majority-Indian election district out of three, District 3, which is 92.52% AP Indian VAP, according to the 2010 Census. Cooper Affidavit, ¶ 76.

15. District 3 has always elected an Indian Commissioner. Plaintiffs' Second Amended Complaint, ¶ 18; Defendant's Answer to Second Complaint, ¶ 18: Admitted.
16. The boundaries for District 3 under the 2011 Commission Plan are identical to those found in the 1986 Commission Plan. Cooper Affidavit, ¶ 76.
17. District 1, which under the 2011 Commission Plan is 30.82% Any Part Indian VAP, stretches from Spanish Valley in the extreme north of the County to encompass the Navajo Mountain Precinct (421 Any Part Indians) and the Oljato Precinct (1,064 Any Part Indians) in the southwest corner of the County on the Navajo Reservation. Cooper Affidavit, ¶ 77 & n. 18.
18. District 1 of the 2011 Commission Plan creates an election district with a land area of about 4,729 square miles (almost the size of Connecticut). Cooper Affidavit, ¶ 78.
19. The road distance from the Navajo Mountain community in the south to Spanish Valley in the north is 249 miles—a journey of more than 5 hours. Cooper Affidavit, ¶ 79 & n. 19.
20. District 1 has never elected an Indian Commissioner. Mark S. Maryboy Affidavit, ¶ 10.
21. District 2 under the 2011 Commission Plan is 29.04% AP Indian VAP and includes the town of Blanding (3,375 persons, of whom 1,078 are AP Indians) and White Mesa Precinct (234 AP Indians). Cooper Affidavit, ¶ 77 & n. 18.
22. District 2 has never elected an Indian Commissioner. Maryboy Affidavit, ¶ 10.
23. Districts 2 and 3 of the 2011 Plan have a combined land area that is a little over two-thirds the size of District 1 (3,200 square miles). Cooper Affidavit, ¶ 78.
24. The 2011 Commission Plan unnecessarily concentrates or “packs” the Indian population into District 3 and fragments or “cracks” remaining Indian populations between Districts 1 and 2. Cooper Affidavit, ¶ 80 & n. 20; Exhibit F.

25. The County received a proposed County Commission redistricting plan from the Navajo Nation in 2011 (“Navajo Nation Proposal”). Cooper Affidavit, ¶¶ 81-87, Exhibits G-1 to G-3).
26. The Navajo Nation Proposal presented a plan that would establish two of three County commission election districts as majority Indian. Cooper Affidavit, ¶ 81. Commission District 2 of the Navajo Nation Proposal is 67.66% Indian VAP. Cooper Affidavit, ¶ 81.
27. Commission District 3 of the Navajo Nation Proposal is 78.84% Indian VAP. Cooper Affidavit, ¶ 81.
28. The overall population deviation for the Navajo Nation Proposal is 0.06%. Cooper Affidavit, ¶ 81.
29. The Navajo Nation proposal eliminates the unnecessary packing of the Indian population in District 3 under the 2011 County Commission Plan. Cooper Affidavit, ¶ 84.
30. The Navajo Nation proposal also eliminates the unnecessary fragmentation of the Indian population in Districts 1 and 2 under the 2011 County Commission Plan. Cooper Affidavit, ¶ 84.
31. The Navajo Nation Proposal establishes that Indians in San Juan County are sufficiently numerous and geographically compact to constitute two of three majority election districts in a three-district county commission plan. Cooper Affidavit, ¶ 82.
32. Compared to the 2011 Commission Plan and the 1986 Commission Plan, the 2011 Navajo Nation Proposal achieves a better balance with respect to the geographic size of the three districts- District 1 (3,262 sq. mi.), District 2 (3,363 sq. mi.), and District 3 (1,004 sq. mi.). Cooper Affidavit, ¶ 83.
33. The Navajo Nation Proposal complies with key traditional redistricting criteria.⁷

⁷ The plan complies with one-person-one-vote, compactness, contiguity, respect for communities

34. There are five San Juan County, Utah, Board of Education election districts created by a 1992 School Board Plan (“1992 Plan”). Cooper Affidavit, ¶¶ 96-100 & Exhibits I, 1-3. Indians are sufficiently numerous and geographically compact to constitute a voting-age majority in three of the five School Board election districts. Cooper Affidavit, ¶ 99.

35. The 1992 Plan unnecessarily concentrates or packs Indians into Districts 4 and 5. Cooper Affidavit, ¶ 96.

36. The 1992 Plan has an overall plan deviation of 37.69%. Cooper Affidavit, ¶ 96.

37. Based on 2010 Decennial Census data and adjusting for the Spanish Valley Annexation, under the 1992 Plan, Election District 1 has a population deviation of 15.60%. Cooper Affidavit, Exhibit I-1.

38. Under the 1992 Plan, Election District 5 has a population deviation of 22.09%. Cooper Affidavit, Exhibit I-1.

39. The 1992 Plan had an overall plan deviation of 25.04%. Cooper Affidavit, ¶ 97.

40. The 1992 Plan had three majority-Indian Districts. Cooper Affidavit, ¶ 97.

41. The 1992 Plan was mal apportioned and unnecessarily concentrated or packed Indians into Election Districts 4 and 5. Cooper Affidavit, ¶ 97 & Exhibit I-2 for 2000 population summary by district.

42. Based on 1990 Decennial Census data, the 1992 Plan had three majority-Indian Districts. Cooper Affidavit, ¶ 98.

43. The 1992 Plan had an overall plan deviation of 18.70%. Cooper Affidavit, ¶ 98.

44. The 1992 Plan was mal apportioned and unnecessarily concentrated and packed Indians in

of interest, and non-dilution of minority voting strength. Cooper Affidavit, ¶ 86.

Election District 4. Cooper Affidavit, ¶ 98 & Exhibit I-3 for 1990 population summary by district.

45. The mal apportionment of the 1992 Plan is corrected with two demonstration plans that maintain three majority-Indian voting age election districts, while eliminating the unnecessary packing of Indians into Election Districts 4 and 5. Cooper Affidavit, ¶¶ 100, 122-129.

46. In 2014, Board elections will be held for Election Districts 4 and 5.⁸

47. Based on 1980 Census data, the 1972 School Board Plan (1972 Plan), which consisted of five election districts, had two majority-Indian election districts: District 4 (94.34% single-race Indian); and District 5 (86.47% single-race Indian). Cooper Affidavit, ¶ 101.

48. The 1972 Plan had an overall plan deviation of 28.52%. Cooper Affidavit, ¶ 101.

49. The 1972 Plan was severely mal apportioned and unnecessarily concentrated and packed Indians into Election District 4. Cooper Affidavit, ¶ 101 & Exhibit J-1 for 1980 population summary by district.

50. Based on 1970 Census data, the 1972 Plan had two majority Indian districts; Districts 4 and 5. Cooper Affidavit, ¶ 102, Exhibit D, & Exhibit J-2 for a 1970 population summary by district.

51. The 1972 Plan had an overall plan deviation of 15.93% based on estimates reported in the May 1972 School Board minutes. Cooper Affidavit, ¶ 102 & Exhibit J-2 for a 1970 population summary by district.

52. In 1969, the County adopted a five-election district school board plan (1969 Plan). Cooper Affidavit, ¶¶ 103.

53. Under the 1969 Plan, Election Districts 1, 3, and 5 encompassed the Navajo Division (78.4% Indian), along with additional territory to the north. Cooper Affidavit, ¶ 104.

⁸ “Next election to use mailed-in ballots exclusively.” San Juan Record, January 29, 2014.

54. There is insufficient detail in the 1960 Census data to tabulate race and ethnicity by district. Cooper Affidavit, ¶ 104.

55. For the 1969 redistricting, San Juan County could have used registered voter counts. Cooper Affidavit, ¶ 105.

56. For the 1969 redistricting, San Juan County could have conducted a mid-decade population-based apportionment method. Cooper Affidavit, ¶ 105.

57. In addition to populations for the three sub-county divisions reported in the 1960 Census, reasonable 1960 population estimates could have been developed using more detailed sub-county information available from the 1950 Census. Cooper Affidavit, ¶ 105.

58. Based on 1970 Census data, Indian-majority Election District 1 of the 1969 Plan had a population deviation of +36.32%. Cooper Affidavit, ¶ 106.

59. The 1969 Plan had an overall population deviation of 45.4%. Cooper Affidavit, ¶ 106.

60. Plaintiffs' demographic and redistricting expert formulated Demonstration Plans for the San Juan County Commission and the San Juan County School Board.

61. County Commission Demonstration Plan A has two voting age majority Indian Districts, District 2 ((82.31% AP Indian VAP) and District 3 (61.44% AP Indian VAP). Cooper Affidavit, ¶ 120 & Exhibits Q-1 through Q-3.

62. The overall plan deviation for County Commission Demonstration Plan A is 5.5%. Cooper Affidavit, ¶ 120.

63. Under County Commission Demonstration Plan A, District 1 is 3,331 square miles, encompassing Monticello, a portion of the town of Blanding, and precincts north of Blanding. Cooper Affidavit, ¶ 121.

64. Under County Commission Demonstration Plan A, District 2 is 3,894 square miles and includes most of the land area of the Navajo and Ute Reservations and extends into the southern part of Blanding. Cooper Affidavit, ¶ 121.

65. Under Commission Plan A, District 3 is 704 square miles and contains all of Blanding Northeast and Blanding Southeast precincts, as well as the eastern portion of the Navajo Reservation. Cooper Affidavit, ¶ 121.

66. County Commission Demonstration Plan B has two voting age majority Indian districts-District 2 (60.78% AP Indian VAP), and District 3 (78.99% AP Indian VAP). Cooper Affidavit, ¶ 122 and Exhibits R-1, R-2, R-3 and R-4.

67. The overall population deviation for County Commission Demonstration Plan B is 8.22%. Cooper Affidavit, ¶ 122.

68. Under County Commission Demonstration Plan B, District 1 has an area of 2,566 square miles. Cooper Affidavit, ¶ 122.

69. Under County Commission Demonstration Plan B, District 2 has an area of 4,484 square miles. Cooper Affidavit, ¶ 122.

70. Under County Commission Demonstration Plan B, District 3 has an area of 979 square miles. Cooper Affidavit, ¶ 122.

71. Under School Board Demonstration Plan A, the plan has three voting age majority Indian districts-District 3 (65.73% AP Indian VAP), District 4 (90.02% AP Indian VAP), and District 5 (80.57% AP Indian VAP). Cooper Affidavit, ¶ 125 & Exhibits S-1, S-2, S-3 and S-4.

72. Under School Board Demonstration Plan A, the overall plan population deviation is 6.42%. Cooper Affidavit, ¶ 125.

73. Under School Board Demonstration Plan B, the plan has three voting age majority Indian districts-District 3 (66.07% AP Indian VAP), District 4 (89.46% AP Indian VAP), and District 5 (83.18% AP Indian VAP). Cooper Affidavit, ¶ 127 & Exhibits T-1, T-2, T-3, and T-4.

74. Under School Board Demonstration Plan B, the overall plan population deviation is 7.82%. Cooper Affidavit, ¶ 127.

IV. ARGUMENT

A. Summary Judgment Standards

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A disputed issue of fact is “genuine” only if a reasonable jury could find for the non-movant. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986). The party opposing summary judgment has the burden of presenting evidence that a disputed issue of material fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The Court may draw reasonable inferences from the evidence in a light most favorable to the non-moving party. *Berry & Murphy, P.C. v. Carolina Cas. Ins. Co.*, 586 F.3d 803, 808 (10th Cir. 2009).

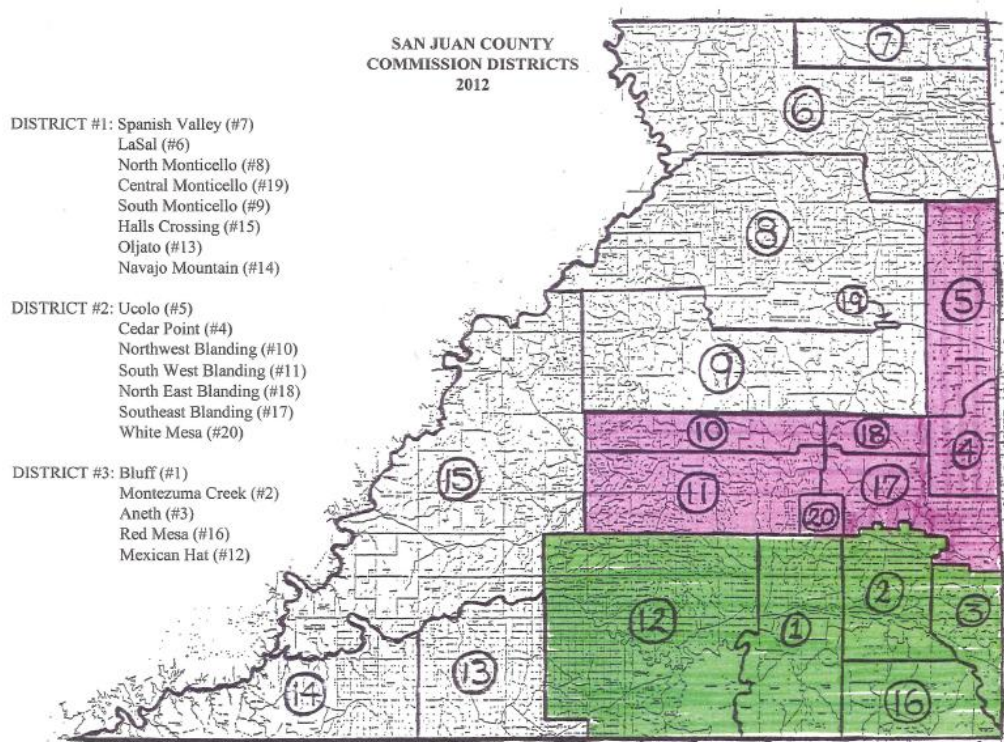
Partial summary judgment on one claim is available under Rule 56(a).⁹ Adjudication without a partial summary judgment is appropriate on portions of a claim. *Americans Disabled For Accessible Public Transp. v. Skywest Airlines, Inc.*, 762 F.Supp. 320, 323 (D. Utah 1991).

B. San Juan County Commission.

i. There is no genuine issue of material fact that Indians in San Juan County are sufficiently numerous to constitute a majority in two of three County Commission election districts.

⁹ “A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is appropriate.”

A three-district County Commission was established in 1984.¹⁰ A new plan with minor modifications was enacted in 2011. County Commission District 1 has always been predominately non-Hispanic White. District 1 incorporates northern San Juan County, including the County seat of Monticello, then follows a narrow, largely unpopulated strip south along the Colorado River to encompass a distant portion of the Navajo Indian Reservation in the vicinity of Navajo Mountain. District 2 has always been primarily non-Hispanic White and incorporates the middle of the County and the City of Blanding. County Commission District 3 has always been predominantly Indian and includes the Navajo Indian Reservation in southern San Juan County.



Cooper Affidavit, Exhibit B-1 (2012 Commission Districts).

The existing County Commission districts are mal apportioned. County Commission District 3 has an unnecessarily large concentration of Indians (92.52%).¹¹ It is the only election district that has ever elected an Indian commissioner to the County Commission. *See Gingles*, 478 U.S. 30, 46 & n. 11 (White majority may manipulate the election of “safe” minority candidate to evade Section Two of the Act). The packing of District 3 has been apparent since at least the 1990 Decennial Census.¹² As a result of packing District 3, the remaining Indian population of the County is cracked or fragmented into Districts 1 and 2. Indians in these districts have a diminished opportunity to elect candidates of their choice. *Gingles*, at 46, n. 11 (vote dilution caused by dispersal of minority into a district in which they are an ineffective minority of voters).

As noted above, to determine numerosity under the first Gingles Factor, comparisons are made between current mal apportioned districts and hypothetical districts drawn by demographic and redistricting experts. Unlike mal apportioned districts, the hypothetical districts must have sufficient numbers of minorities to constitute a “working majority of the voting-age population.”¹³ If the hypothetical districts have a majority of minority members, the hypothetical districts then replace the mal apportioned districts.

Indians in San Juan County have sufficient numbers to constitute two majority-Indian Commission districts. Indians of voting age (“VAP”) have been a majority in San Juan County

¹⁰ Slight changes were made to the County Commission districts in 1986.

¹¹ Cooper Affidavit, ¶¶ 80.

¹² Cooper Affidavit, ¶ 94.

¹³ *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (quotation) (citing *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993) (minority voters ensured of electing their candidates)).

for at least 24 years. In 1990, the “18+ Indian Alone” VAP was 3,695, or 51.68%.¹⁴ In 2000, the 18+ Any Part Indian population (“AP VAP”) was 4,599, or 52.58% of the total population.¹⁵ The 2010 Decennial Census data shows that the 18+ AP VAP population is 4,897, or 50.33% of the total. Under 2010 Census data, it is undisputed that two of three Commission districts should be majority Indian.

| Race | 1980 | | 1990 | | 2000 | | 2010 | |
|------------------------|--------|---------|--------|---------|--------|---------|--------|---------|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total 18+ Population | 6,448 | 100.00% | 7,150 | 100.00% | 8,746 | 100.00% | 9,729 | 100.00% |
| Total 18+ Hispanics | 206 | 1.68% | 243 | 3.40% | 299 | 3.42% | 346 | 3.56% |
| 18+ NH White Alone | NA | | 3,238 | 45.29% | 3,839 | 43.89% | 4,490 | 46.15% |
| 18+ Indian Alone ## | 2,648 | 41.00% | 3,695 | 51.68% | 4,557 | 52.10% | 4,806 | 49.40% |
| 18+ NH DOJ Indian | NA | | NA | | 4,551 | 52.04% | 4,823 | 49.57% |
| 18+ Any Part Indian ## | NA | | NA | | 4,599 | 52.58% | 4,897 | 50.33% |

Includes Hispanic Indians for all years.

NA – Not Available.

Cooper Affidavit, ¶ 74 & Fig. 2 1980 - 2010 VAP Summary

Plaintiffs’ demographic and redistricting expert, William S. Cooper (“Cooper”), proposes two County Commission demonstration plans where voting age Indians constitute two majority-Indian Commission districts. The hypothetical districts are compared to the current malapportioned districts. “Numerosity” is established because there are enough Indians of voting age in the hypothetical majority-Indian districts to elect their candidates.

Under Demonstration Commission Plan A, Indians are sufficiently numerous to constitute two of three County Commission election districts.

¹⁴ For the 2000 Decennial Census, the census classification was “Indian alone,” signifying persons reporting only this particular minority group.

¹⁵ A person reporting “any part” of a minority is included in that group. “Any part” population data is now the appropriate census classification used in Section 2 voting cases. *Georgia v. Ashcroft*, 539 U.S. 461, 474, n. 1 (2003); Cooper Affidavit, ¶¶ 35-39 (2000 and 2010). Census). Mr. Cooper employed the “any part” Indian population calculation in *Large v. Fremont County*, 709 F.Supp.2d 1176, 1182-1184 (D. Wyo. 2010), *aff’d*, 670 F.3d 1133, 1136, n. 2 (10th Cir., 2012).

Population Summary Report

San Juan County, UT – Demonstration Plan A County Commission

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|----------------|------------------|-----------------------|-------------------------|--------------------|----------------------|------------|--------------|--------------|----------------|--|
| 1 | 5078 | 163 | 3.32% | 494 | 9.73% | 586 | 11.54% | 412 | 8.11% | 4084 | 80.43% | |
| 2 | 4808 | -107 | -2.18% | 4008 | 83.36% | 4104 | 85.36% | 79 | 1.64% | 656 | 13.64% | |
| 3 | 4880 | -55 | -1.12% | 2929 | 60.27% | 3003 | 61.79% | 158 | 3.25% | 1734 | 35.68% | |
| Total | 14746 | | | 7431 | 50.39% | 7693 | 52.17% | 649 | 4.40% | 6474 | 43.90% | |
| Total Deviation | | | 5.50% | | | | | | | | | |
| District | 18+_Pop | 18+ Am. Indian | % 18+ Am. Indian | 18+ NH DOJ Am. Indian | % 18+ NH DOJ Am. Indian | 18 + AP Am. Indian | % 18 + AP Am. Indian | 18+_Hisp. | % 18+_Hisp. | 18+ NH White | % 18+ NH White | |
| 1 | 3477 | 326 | 9.38% | 335 | 9.63% | 365 | 10.50% | 239 | 6.87% | 2866 | 82.43% | |
| 2 | 3158 | 2602 | 82.39% | 2615 | 82.81% | 2631 | 83.31% | 38 | 1.20% | 493 | 15.61% | |
| 3 | 3094 | 1878 | 60.70% | 1873 | 60.54% | 1901 | 61.44% | 69 | 2.23% | 1131 | 36.55% | |
| Total | 9729 | 4806 | 49.40% | 4823 | 49.57% | 4897 | 50.33% | 346 | 3.6% | 4490 | 46.15% | |

Cooper Affidavit, Exhibit Q-1 (County Commission, Plan A).

Demonstration Commission Plan A is drawn using voter tabulation districts (VTD). VTDs are Census Bureau approximations of county precincts with modified boundaries that follow 2010 census blocks. San Juan County has 20 Census VTDs. Additional census data include 2012 shapefiles depicting “VISTA Ballot Areas,” 2010 “TIGER files,” and a census “shapefile” that has the county’s Public Land Survey section lines. Cooper determined that Commission District 2 has 2,631 Indian VAP, or 83.31%. District 3 has 1,901 Indian VAP, or 61.44%. The overall plan deviation from the ideal district population is 5.5%.¹⁶ There are enough Indians of voting age in these districts to elect their candidates. Therefore, the “numerosity” requirement of the first Gingles Factor is established for Districts 2 and 3 under Demonstration Commission Plan A.

Demonstration Commission Plan B also has sufficient numbers of Indians to elect their candidates in two of three County Commission districts.

¹⁶ Cooper Affidavit, Sources-2010 Census, ¶¶ 16-23; Demonstration Commission Plan A (¶¶ 120-121 & Exhibit Q 1, Population Summary Report)

Population Summary Report

San Juan County, UT – Demonstration Plan B County Commission

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|----------------|------------------|-----------------------|-------------------------|-------------------|---------------------|------------|--------------|--------------|----------------|--|
| 1 | 5125 | 210 | 4.27% | 710 | 13.85% | 803 | 15.67% | 265 | 5.17% | 4049 | 79.00% | |
| 2 | 4721 | -194 | -3.95% | 2895 | 61.32% | 2994 | 63.42% | 230 | 4.87% | 1525 | 32.30% | |
| 3 | 4900 | -15 | -0.31% | 3826 | 78.08% | 3896 | 79.51% | 154 | 3.14% | 900 | 18.37% | |
| Total | 14746 | | | 7431 | 50.39% | 7693 | 52.17% | 649 | 4.40% | 6474 | 43.90% | |
| Total Deviation | | | 8.22% | | | | | | | | | |
| District | 18+_Pop | 18+ Am. Indian | % 18+ Am. Indian | 18+ NH DOJ Am. Indian | % 18+ NH DOJ Am. Indian | 18+ AP Am. Indian | % 18+ AP Am. Indian | 18+_Hisp. | % 18+_Hisp. | 18+ NH White | % 18+ NH White | |
| 1 | 3470 | 484 | 13.95% | 500 | 14.41% | 519 | 14.96% | 149 | 4.29% | 2793 | 80.49% | |
| 2 | 3108 | 1854 | 59.65% | 1865 | 60.01% | 1889 | 60.78% | 132 | 4.25% | 1088 | 35.01% | |
| 3 | 3151 | 2468 | 78.32% | 2458 | 78.01% | 2489 | 78.99% | 65 | 2.06% | 609 | 19.33% | |
| Total | 9729 | 4806 | 49.40% | 4823 | 49.57% | 4897 | 50.33% | 346 | 3.6% | 4490 | 46.15% | |

Cooper Affidavit, Exhibit R-1 (County Commission, Plan B).

Demonstration Commission Plan B is drawn using census blocks. A census block is the smallest geographic tabulation area in a decennial census. A block is an area bounded by visible features. There are 4,546 census blocks in San Juan County, but only 815 are populated. Cooper determined that Commission District 2 has 1,889 Indian VAP, or 60.78%. District 3 has 2,489 Indian VAP, or 78.99%. The overall plan deviation is 8.22%.¹⁷ There are enough Indians of voting age in these proposed districts to elect their candidates. Therefore, the “numerosity” factor of the first Gingles Factor is established for Districts 2 and 3.

ii. Indians are sufficiently geographically compact to constitute a majority in two of three County Commission election districts.

In addition to having “numerosity”, the minority group must also be geographically compact. *Abrams v. Johnson*, 521 U.S. 74, 91-92 (1997).¹⁸ In short, there must be enough

¹⁷ Cooper Affidavit, ¶¶ 122-123 & Exhibit R-1, Population Summary Report; ¶ 23 (census blocks).

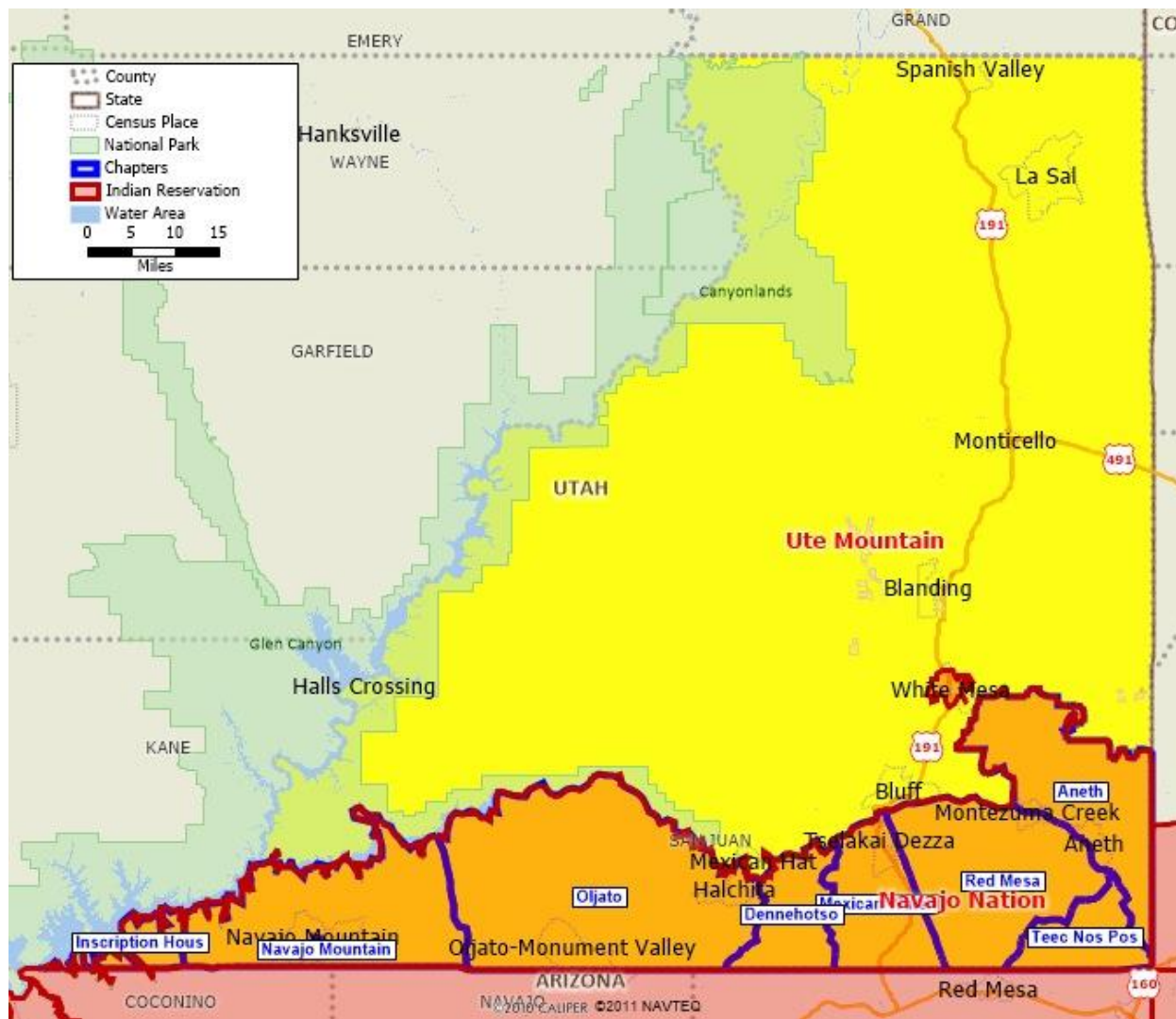
¹⁸ The focus is on the minority population, not the district. *LULAC v. Perry*, 548 U.S. 399, 433 (2006).

minority voters grouped together in one place to elect a candidate.¹⁹ The Indian population in San Juan County is geographically compact.

Navajo and Ute Mountain lands account for about one-fourth of San Juan County. Most of the Indian population (5,943 AP Indian, or 77.25% of all Indians) resides in the southern part of the county on the Navajo Indian Reservation. One-sixth of the Indian population (1,078 AP Indian, or 14.01% of all Indians) resides mid-county in the City of Blanding. The Indian community of White Mesa between the Navajo Indian Reservation and Blanding has 233 AP Indians. In total, 1,255 Indians live off reservation lands.

Other factors also indicate that the Indian population is compact, including a pattern of Indian residences grouped together in the County and in the municipalities of Blanding and Monticello. Indians are concentrated in census blocks and in voting tabulation districts. Maps and charts prepared by Cooper clearly show how Indians in the County are grouped together.

¹⁹ If mal apportioned districts configure a compact minority population in a way that it is not compact, the affected minority group is prevented from electing its candidates. If, on the other hand, minority voters are scattered or dispersed so that they are not capable of being compacted in a district, then the first Gingles Factor is not shown. *Bush v. Vera*, 517 U.S. 952, 979 (1996).



Cooper Affidavit ¶ 108, Figure 3 (Map of San Juan County, Utah, and vicinity).

San Juan County – Population by Place – 2010 Census

| Place | Type | Population | Any Part Indian * | % AP Indian * | Hispanic* | % Hispanic* |
|-------------------------------|-------------------------|------------|-------------------|---------------|-----------|-------------|
| Aneth | Census Designated Place | 501 | 491 | 98.00% | 8 | 1.60% |
| Blanding | Town | 3375 | 1078 | 31.94% | 128 | 3.79% |
| Bluff | Census Designated Place | 258 | 73 | 28.29% | 13 | 5.04% |
| Halchita | Census Designated Place | 266 | 264 | 99.25% | 3 | 1.13% |
| Halls Crossing | Census Designated Place | 6 | 0 | 0.00% | 0 | 0.00% |
| La Sal | Census Designated Place | 395 | 2 | 0.51% | 35 | 8.86% |
| Mexican Hat | Census Designated Place | 31 | 3 | 9.68% | 0 | 0.00% |
| Montezuma Creek | Census Designated Place | 335 | 320 | 95.52% | 12 | 3.58% |
| Monticello | Town | 1972 | 170 | 8.62% | 264 | 13.39% |
| Navajo Mountain | Census Designated Place | 354 | 349 | 98.59% | 0 | 0.00% |
| Oljato-Monument Valley | Census Designated Place | 674 | 639 | 94.81% | 10 | 1.48% |
| Spanish Valley | Census Designated Place | 491 | 16 | 3.26% | 33 | 6.72% |
| Tselakal Dezza | Census Designated Place | 109 | 109 | 100.00% | 2 | 1.83% |
| <i>White Mesa</i> | Census Designated Place | 242 | 233 | 96.28% | 10 | 4.13% |

Bold type indicates communities on the Navajo Reservation

White Mesa is on the Ute Reservation

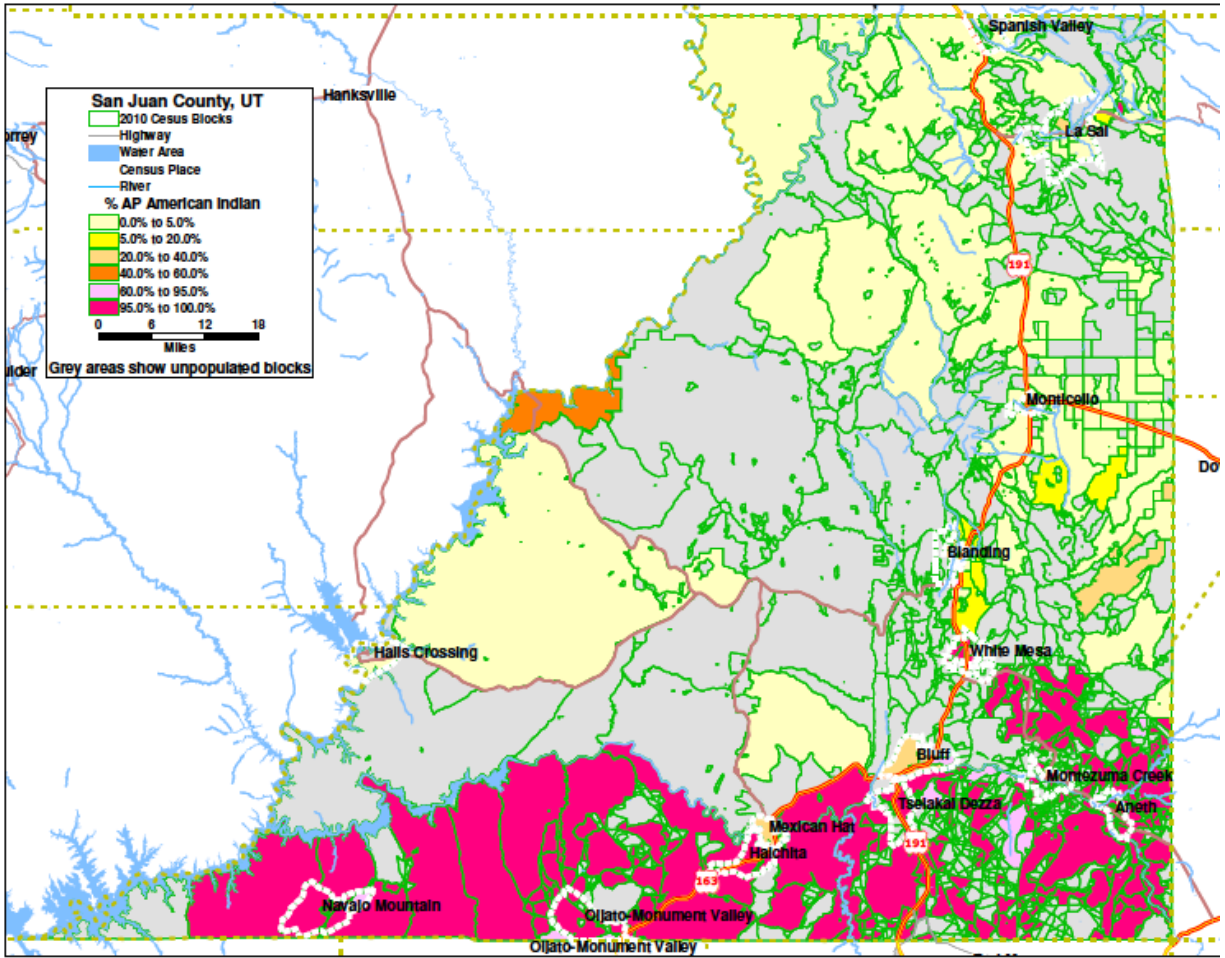
* Includes Hispanic Indians

Cooper Affidavit, Exhibit L, (County Population by Place, 2010 Census).

San Juan County – Navajo Chapters – 2010 Census

| Chapter | Area (sq. mi.) | Population | Any Part Indian * | % AP Indian * | Occupied Housing Units | Vacant Housing Units |
|----------------------------|-----------------|--------------|-------------------|---------------|------------------------|----------------------|
| Aneth | 274.99 | 1,989 | 1,935 | 97.29% | 534 | 119 |
| Dennehotso | 114.36 | 67 | 66 | 98.51% | 18 | 18 |
| Inscription House | 51.83 | 0 | 0 | | 0 | 0 |
| Mexican Water | 164.83 | 543 | 540 | 99.45% | 153 | 66 |
| Navajo Mountain | 359.36 | 436 | 431 | 98.85% | 138 | 38 |
| Oljato | 616.36 | 1,684 | 1,642 | 97.51% | 457 | 131 |
| Red Mesa | 320.21 | 1,196 | 1,176 | 98.33% | 328 | 82 |
| Tec Nos Pos | 98.38 | 153 | 153 | 100.00% | 52 | 38 |
| Navajo Nation Total | 2,000.32 | 6,068 | 5,943 | 97.94% | 1,680 | 492 |

Cooper Affidavit, Exhibit M (Navajo Nation Chapters, 2010 Census).



Cooper Affidavit, N-1 (County Map, Indian Population).

Demonstration plans can be formulated in which the Indian population is compact in majority-Indian election districts for two of three County Commission districts.²⁰ The Plaintiffs' demonstration plans comply with key redistricting criteria, including one-person-one-vote; compactness; contiguity; respect for communities of interest; incumbents are not paired and have

²⁰ Cooper Affidavit, ¶ 107 & Exhibit L, 2010 Indian population by town and community; ¶ 108 (tribal land area); ¶ 109, Exhibit M (population by Navajo Chapter) & Figure 3 (Map, San Juan County); ¶¶ 110-111 (residential segregation); ¶ 112 (Census block groups); ¶¶ 113-114 (Voting tabulation districts); ¶¶ 114-123 (County Commission Demonstration Plans).

their own districts; and minority voting strength is not diluted. Municipalities are divided to comply with one-person-one-vote.²¹ Indians are not unnecessarily concentrated or packed into majority-Indian districts and the plans do not fragment or crack Indian communities into majority-White districts.

The Indian community is compact under Demonstration Commission Plan A.

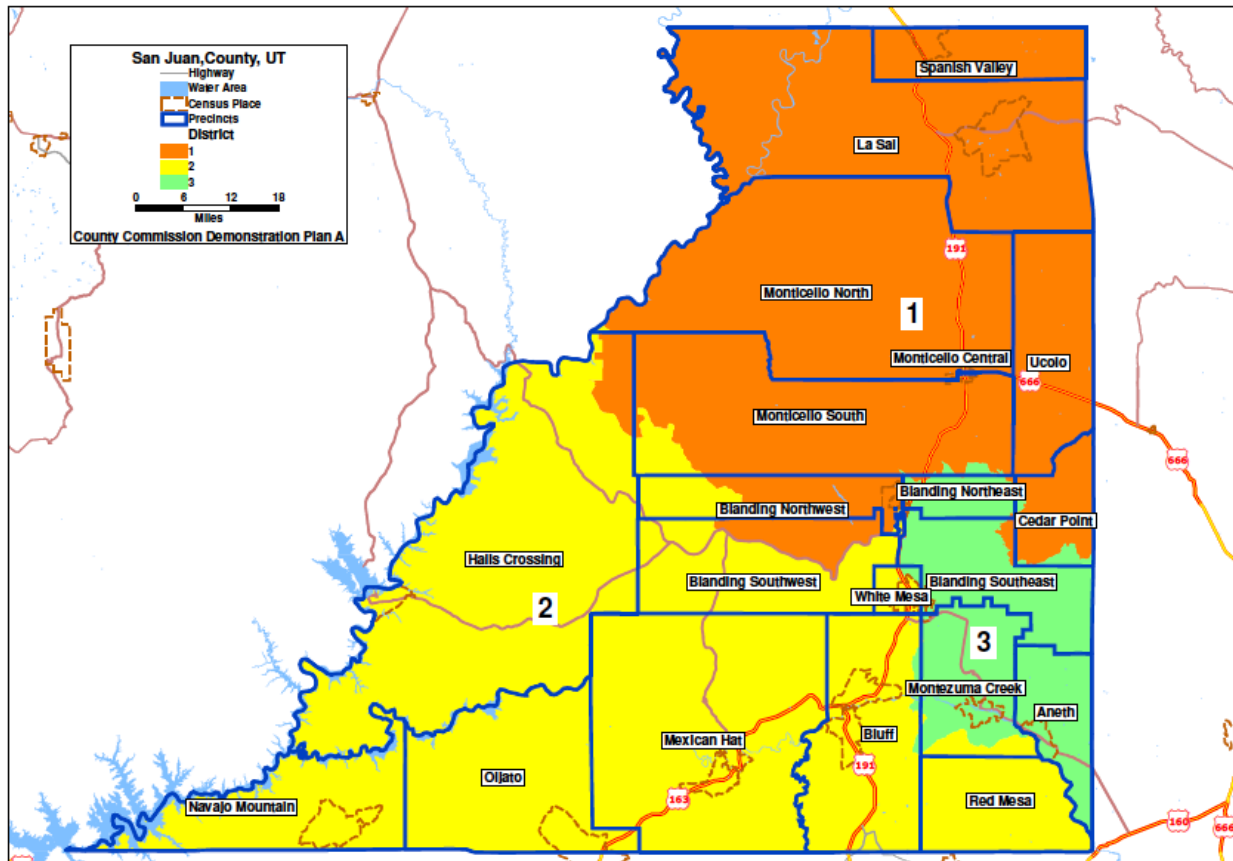
Population Summary Report

San Juan County, UT – Demonstration Plan A County Commission

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|----------------|------------------|-----------------------|-------------------------|-------------------|---------------------|------------|--------------|--------------|----------------|--|
| 1 | 5078 | 163 | 3.32% | 494 | 9.73% | 586 | 11.54% | 412 | 8.11% | 4084 | 80.43% | |
| 2 | 4808 | -107 | -2.18% | 4008 | 83.36% | 4104 | 85.36% | 79 | 1.64% | 656 | 13.64% | |
| 3 | 4860 | -55 | -1.12% | 2929 | 60.27% | 3003 | 61.79% | 158 | 3.25% | 1734 | 35.68% | |
| Total | 14746 | | | 7431 | 50.39% | 7693 | 52.17% | 649 | 4.40% | 6474 | 43.90% | |
| Total Deviation | | | 5.50% | | | | | | | | | |
| District | 18+ Pop | 18+ Am. Indian | % 18+ Am. Indian | 18+ NH DOJ Am. Indian | % 18+ NH DOJ Am. Indian | 18+ AP Am. Indian | % 18+ AP Am. Indian | 18+ Hisp. | % 18+ Hisp. | 18+ NH White | % 18+ NH White | |
| 1 | 3477 | 326 | 9.38% | 335 | 9.63% | 365 | 10.50% | 239 | 6.87% | 2866 | 82.43% | |
| 2 | 3158 | 2602 | 82.39% | 2615 | 82.81% | 2631 | 83.31% | 38 | 1.20% | 493 | 15.61% | |
| 3 | 3094 | 1878 | 60.70% | 1873 | 60.54% | 1901 | 61.44% | 69 | 2.23% | 1131 | 36.55% | |
| Total | 9729 | 4806 | 49.40% | 4823 | 49.57% | 4897 | 50.33% | 346 | 3.6% | 4490 | 46.15% | |

Cooper Affidavit, Exhibit Q-1 (Population Summary Report, County Commission).

²¹ *Reynolds v. Sims*, 377 U.S. 533 (1964).



Cooper Affidavit, Exhibit Q-2 (Demonstration Plan A, Map of County Commission Districts).

District 1 is 3,331 square miles, encompassing Monticello, part of Blanding and precincts north of Blanding. District 2 is 3,894 square miles, includes most of the Navajo and Ute Reservations and extends into the southern part of the town of Blanding. District 3 is 704 square miles, encompasses Northeast and Southeast Blanding precincts, and includes the eastern portion of the Navajo Reservation.²²

The Indian community is also compact under Demonstration Commission Plan B.

²² Cooper Affidavit, ¶ 120 & Exhibit Q-1, 2010 population summary by district; ¶ 121 (Districts 1-3, area); 118 (avoids packing and cracking).

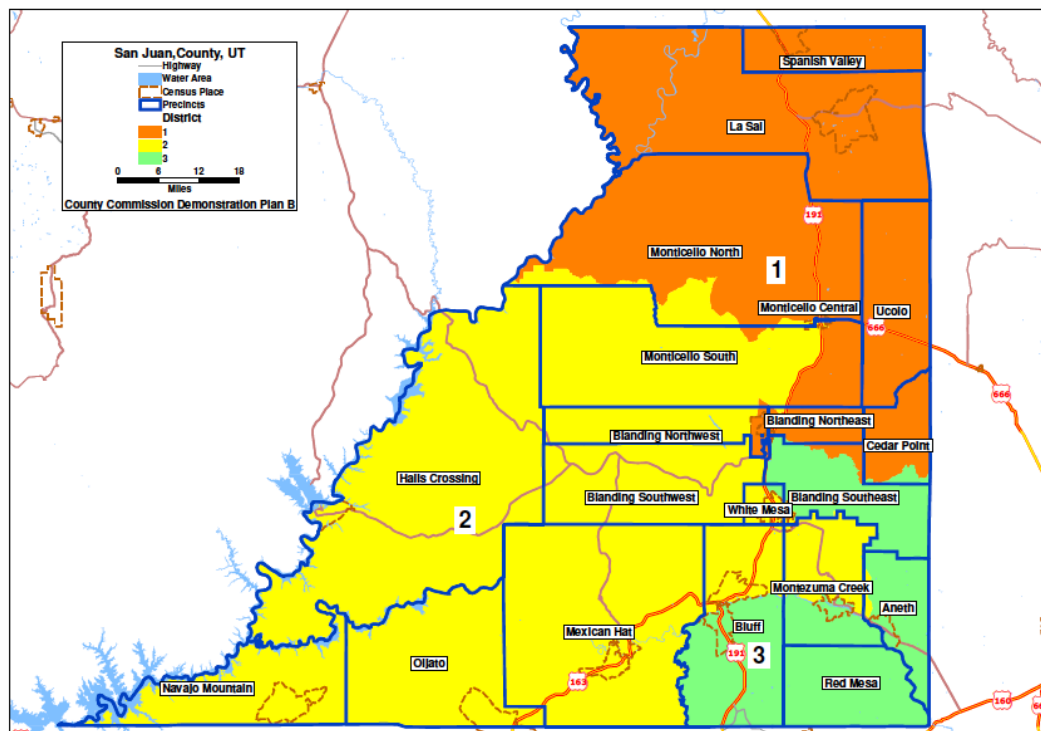
Population Summary Report

San Juan County, UT - Demonstration Plan B County Commission

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|-----------|--------------|-------------|---------------|---------------|-----------------|------------|--------------|-------------|---------------|--|
| 1 | 5125 | 210 | 4.27% | 710 | 13.85% | 803 | 15.67% | 265 | 5.17% | 4049 | 79.00% | |
| 2 | 4721 | -194 | -3.95% | 2895 | 61.32% | 2994 | 63.42% | 230 | 4.87% | 1525 | 32.30% | |
| 3 | 4900 | -15 | -0.31% | 3826 | 78.08% | 3896 | 79.51% | 154 | 3.14% | 900 | 18.37% | |
| Total | 14746 | | | 7431 | 50.39% | 7693 | 52.17% | 649 | 4.40% | 6474 | 43.90% | |
| Total Deviation | | | 8.22% | | | | | | | | | |

| District | 18+_Pop | 18+_ Am. Indian | % 18+_ Am. Indian | 18+_ NH DOJ Am. Indian | % 18+_ NH DOJ Am. Indian | 18+_ AP Am. Indian | % 18+_ AP Am. Indian | 18+_ Hisp. | % 18+_ Hisp. | 18+_ NH White | % 18+_ NH White |
|--------------|-------------|-----------------|-------------------|------------------------|--------------------------|--------------------|----------------------|------------|--------------|---------------|-----------------|
| 1 | 3470 | 484 | 13.95% | 500 | 14.41% | 519 | 14.96% | 149 | 4.29% | 2793 | 80.49% |
| 2 | 3108 | 1854 | 59.65% | 1865 | 60.01% | 1889 | 60.78% | 132 | 4.25% | 1088 | 35.01% |
| 3 | 3151 | 2468 | 78.32% | 2458 | 78.01% | 2489 | 78.99% | 65 | 2.06% | 609 | 19.33% |
| Total | 9729 | 4806 | 49.40% | 4823 | 49.57% | 4897 | 50.33% | 346 | 3.6% | 4490 | 46.15% |

Cooper Affidavit, Exhibit R-1 (Population Summary Report, County Commission).



Cooper Affidavit, Exhibit R-2 (Demonstration Plan B, Map of County Commission Districts)

District 1 encompasses an area of 2,566 square miles. District 2 is 4,484 square miles. District 3

is 979 square miles. The plan divides Blanding in exactly the same way as the current 1992 School Board Plan by splitting Districts 1 and 3 to meet one-person, one-vote requirements. Monticello is divided between Districts 1 and 2. Monticello Central Precinct and areas-south are in majority-Indian District 2.²³

In 2011, the Navajo Nation provided the San Juan County Commission with a proposed plan (Navajo Nation Proposal) to reapportion County Commission election districts. Under the Navajo Nation Proposal, it is undisputed that two of three County Commission districts are majority-Indian and compact.

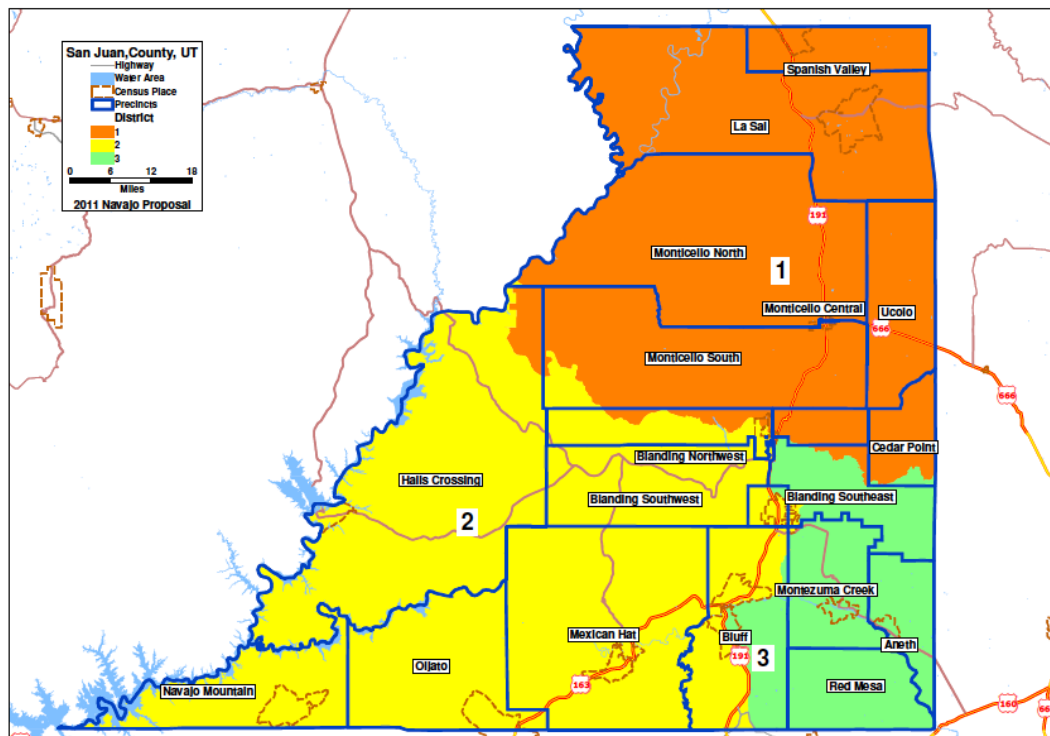
Population Summary Report

San Juan County, UT – 2011 Navajo Proposal County Commission

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|----------------|------------------|-----------------------|-------------------------|--------------------|----------------------|------------|--------------|--------------|----------------|--|
| 1 | 4914 | -1 | -0.02% | 290 | 5.90% | 364 | 7.41% | 383 | 7.79% | 4167 | 84.80% | |
| 2 | 4917 | 2 | 0.04% | 3320 | 67.52% | 3442 | 70.00% | 106 | 2.16% | 1382 | 28.11% | |
| 3 | 4915 | 0 | 0.00% | 3821 | 77.74% | 3887 | 79.08% | 160 | 3.26% | 925 | 18.82% | |
| Total | 14746 | | | 7431 | 50.39% | 7693 | 52.17% | 649 | 4.40% | 6474 | 43.90% | |
| Total Deviation | | | 0.06% | | | | | | | | | |
| District | 18+_Pop | 18+ Am. Indian | % 18+ Am. Indian | 18+ NH DOJ Am. Indian | % 18+ NH DOJ Am. Indian | 18 + AP Am. Indian | % 18 + AP Am. Indian | 18+_Hisp. | % 18+_Hisp. | 18+ NH White | % 18+ NH White | |
| 1 | 3342 | 190 | 5.69% | 198 | 5.92% | 221 | 6.61% | 227 | 6.79% | 2886 | 86.36% | |
| 2 | 3216 | 2137 | 66.45% | 2159 | 67.13% | 2176 | 67.66% | 51 | 1.59% | 985 | 30.63% | |
| 3 | 3171 | 2479 | 78.18% | 2466 | 77.77% | 2500 | 78.84% | 68 | 2.14% | 619 | 19.52% | |
| Total | 9729 | 4806 | 49.40% | 4823 | 49.57% | 4897 | 50.33% | 346 | 3.6% | 4490 | 46.15% | |

Cooper Affidavit, Exhibit G-1 (Population Summary 2011 Navajo Nation Proposal)

²³ Cooper Affidavit, ¶¶ 122-123 & Exhibit R-1 for a 2010 population summary by district)



Cooper Affidavit, Exhibit G-2 (Navajo Nation Proposal, Map).

Cooper analyzed the Navajo Nation Proposal and determined that it complied with basic redistricting criteria. The Indian communities in the proposal are compact. Compared with the 2011 Commission Plan and its 1986 predecessor, the Navajo Nation Proposal “achieves a better balance with respect to the geographic size of the three districts—District 1 (3,262 sq. mi.), District 2 (3,363 sq. mi.) and District 3 (1,004 sq. mi.).”²⁴ The Navajo Nation Proposal was rejected by San Juan County.

iii. Determining numerosity and compactness for the first Gingles Factor reconfigures mal apportioned County Commission districts.

County Commission District 3 is packed. District 1 has never elected an Indian commissioner to the County Commission. District 1 is gigantic. It begins at the Grand County

line in the predominately non-Hispanic White north and runs south to the Arizona border where Navajo Mountain and Oljato on the Navajo Reservation are located. District 1 is 4,729 square miles and is almost the size of Connecticut. The road distance from Navajo Mountain in the south to Spanish Valley in the north is 249 miles and a journey of more than 5 hours.²⁵ District 2 has also never elected an Indian commissioner to the County Commission. Geographically and demographically, the reservation communities of Oljato and Navajo Mountain in District 1 should be in District 2.

The ease with which this situation can be rectified is evident in the Demonstration Commission Plans and the Navajo Nation Proposal. District 3 is “unpacked”. District 1 is reconfigured to a proper size and population: the Indian population in the south is shifted to nearby District 2; and District 1 remains majority-non-Hispanic White. The Demonstration Commission Plans adjust District 2 to provide Indians with the potential to elect their candidates. *Sanchez*, at 1311-1312. The Navajo Nation Proposal also eliminates fragmentation of the Indian population and shifts Oljato and Navajo Mountain from District 1 to a reconfigured majority Indian District 2.²⁶

C. San Juan County School District.

i. Indians are sufficiently numerous to constitute a majority in three of five School Board districts.

The same analytical process employed with the County Commission for the first Gingles Factor must also be applied to the San Juan County School Board. First, current mal apportioned

²⁴ Cooper Affidavit, ¶¶ 81-87 (Nation 2011 Plan); ¶ 82 (two of three majority Indian districts); ¶ 84 (basis redistricting criteria); ¶ 83 (geographic size).

²⁵ Cooper Affidavit, ¶¶ 78-79 (District 1, size, travel).

²⁶ Cooper Affidavit, ¶ 84.

districts are compared to hypothetical districts. There must be sufficient numbers of voting age Indians to constitute majority-Indian election districts. Indians must also be compact as a group to enable them to elect their candidates. In completing the numerosity and compactness analyses under the first Gingles Factor, existing mal apportioned Board districts are restructured.

The School Board was reapportioned in 1969, 1972 and again in 1992. Under the 1992 Plan, which is currently in effect, the three northern-most election districts are majority non-Hispanic White. Two School Board election districts in the south are presently maintained as majority Indian. Both existing majority Indian districts have the characteristics of numerosity and compactness required by the first Gingles Factor.²⁷

However, according to 2010 Census data, the 1992 Plan's is mal apportioned. Indians are unnecessarily packed or concentrated into Districts 4 (97.93% AP Indian VAP) and 5 (95.37% AP Indian VAP). Districts 1 and 5 have an extraordinarily high overall plan deviation (37.69%) from the ideal district population size.²⁸ Additionally, Indians of voting age have been a majority in San Juan County since 1990. The 2010 Decennial Census data indicates that Indians of voting age in School Board Districts 3, 4 and 5 have a sufficiently large population to constitute a majority: District 3 has 56.62% AP Indian VAP; District 4 has 97.93% AP Indian VAP; and District 5 has 95.37% AP Indian VAP. Three of five Board election districts should be majority Indian. *See* Point II B (i), *supra*.

²⁷ Cooper Affidavit, ¶¶ 96-100 (1992 School Board Plan).

²⁸ Cooper Affidavit, ¶ 96 & Exhibit I-1.

Population Summary Report

San Juan County, UT – Current School Board Plan – 2010 Census – Excludes Spanish Valley

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White |
|------------------------|--------------|----------------|------------------|-----------------------|-------------------------|--------------------|----------------------|------------|-------------|--------------|----------------|
| 1 | 3297 | 445 | 15.60% | 143 | 4.34% | 188 | 5.70% | 329 | 9.98% | 2786 | 84.50% |
| 2 | 2828 | -24 | -0.84% | 629 | 22.24% | 700 | 24.75% | 79 | 2.79% | 2030 | 71.78% |
| 3 | 2886 | 34 | 1.19% | 1620 | 56.13% | 1691 | 58.59% | 116 | 4.02% | 1092 | 37.84% |
| 4 | 3026 | 174 | 6.10% | 2932 | 96.89% | 2954 | 97.62% | 74 | 2.45% | 52 | 1.72% |
| 5 | 2222 | -630 | -22.09% | 2095 | 94.28% | 2144 | 96.49% | 18 | 0.81% | 71 | 3.20% |
| Total | 14259 | | | 7419 | 52.0% | 7677 | 53.8% | 616 | 4.3% | 6031 | 42.3% |
| Total Deviation | | 37.69% | | | | | | | | | |
| District | 18+_Pop | 18+ Am. Indian | % 18+ Am. Indian | 18+ NH DOJ Am. Indian | % 18+ NH DOJ Am. Indian | 18 + AP Am. Indian | % 18 + AP Am. Indian | 18+_Hisp. | % 18+_Hisp. | 18+ NH White | % 18+ NH White |
| 1 | 2274 | 97 | 4.27% | 98 | 4.31% | 119 | 5.23% | 203 | 8.93% | 1947 | 85.62% |
| 2 | 1851 | 427 | 23.07% | 446 | 24.10% | 455 | 24.58% | 41 | 2.22% | 1344 | 72.61% |
| 3 | 1918 | 1064 | 55.47% | 1070 | 55.79% | 1086 | 56.62% | 52 | 2.71% | 779 | 40.62% |
| 4 | 1932 | 1883 | 97.46% | 1869 | 96.74% | 1892 | 97.93% | 30 | 1.55% | 29 | 1.50% |
| 5 | 1404 | 1329 | 94.66% | 1336 | 95.16% | 1339 | 95.37% | 7 | 0.50% | 58 | 4.13% |
| Total | 9379 | 4800 | 51.2% | 4819 | 51.4% | 4891 | 52.1% | 333 | 3.6% | 4157 | 44.3% |

Cooper Affidavit, Exhibit I-1 (2010 population summary by district).

Two proposed Demonstration School Board Plans formulated by Mr. Cooper are compared to current mal apportioned Board districts. The 1992 Plan has three majority non-Hispanic White districts. The hypothetical districts in Cooper's plans have sufficient numbers of Indians to constitute a majority in three of five Board districts. The first Gingles Factor element of "numerosity" is undisputed, as there are enough Indians of voting age in these majority-Indian districts to elect their candidates.

Under Demonstration School Board Plan A, Indians of voting age are sufficiently numerous to constitute a majority in three of five Board election districts.

Population Summary Report

San Juan School District – Demonstration Plan A – Excludes Spanish Valley Area

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|-----------------|-------------------|------------------------|--------------------------|--------------------|----------------------|------------|--------------|---------------|-----------------|--|
| 1 | 2810 | -42 | -1.47% | 131 | 4.66% | 176 | 6.26% | 310 | 11.03% | 2331 | 82.95% | |
| 2 | 2766 | -86 | -3.02% | 484 | 17.50% | 540 | 19.52% | 86 | 3.11% | 2123 | 76.75% | |
| 3 | 2949 | 97 | 3.40% | 1911 | 64.80% | 1974 | 66.94% | 115 | 3.90% | 885 | 30.01% | |
| 4 | 2917 | 65 | 2.28% | 2638 | 90.44% | 2668 | 91.46% | 71 | 2.43% | 220 | 7.54% | |
| 5 | 2817 | -35 | -1.23% | 2255 | 80.05% | 2319 | 82.32% | 34 | 1.21% | 472 | 16.76% | |
| Total | 14259 | | | 7419 | 52.03% | 7677 | 53.84% | 616 | 4.32% | 6031 | 42.30% | |
| Total Deviation | | | 6.42% | | | | | | | | | |
| District | 18+_Pop | 18+_ Am. Indian | % 18+_ Am. Indian | 18+_ NH DOJ Am. Indian | % 18+_ NH DOJ Am. Indian | 18+_ AP Am. Indian | % 18+_ AP Am. Indian | 18+_ Hisp. | % 18+_ Hisp. | 18+_ NH White | % 18+_ NH White | |
| 1 | 1898 | 85 | 4.48% | 86 | 4.53% | 107 | 5.64% | 188 | 9.91% | 1599 | 84.25% | |
| 2 | 1847 | 321 | 17.38% | 334 | 18.08% | 341 | 18.46% | 48 | 2.60% | 1449 | 78.45% | |
| 3 | 1879 | 1212 | 64.50% | 1211 | 64.45% | 1235 | 65.73% | 51 | 2.71% | 601 | 31.99% | |
| 4 | 1933 | 1732 | 89.60% | 1725 | 89.24% | 1740 | 90.02% | 30 | 1.55% | 173 | 8.95% | |
| 5 | 1822 | 1450 | 79.58% | 1463 | 80.30% | 1468 | 80.57% | 16 | 0.88% | 335 | 18.39% | |
| Total | 9379 | 4800 | 51.18% | 4819 | 51.38% | 4891 | 52.15% | 333 | 3.55% | 4157 | 44.32% | |

Population Summary Report by District (Cooper Affidavit, ¶ 125 & Exhibit S-1, Plan A).

District 3 has an 18+ AP Indian population of 1,235, or 65.73%. The District 4 population is 1,740, or 90.02%. The District 5 population is 1,468, or 80.57%. Overall plan deviation from the ideal population is 6.42%.²⁹ It is undisputed that there are sufficient numbers of Indians for three majority-Indian districts to elect their candidates under Demonstration School Board Plan A.

Under Demonstration School Board Plan B, Indians of voting age are sufficiently numerous to constitute a majority in three of five Board election districts.

²⁹ Cooper Affidavit, ¶ 125 & Exhibit S-1.

Population Summary Report

San Juan School District – Demonstration Plan B – Excludes Spanish Valley Area

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White | |
|------------------------|--------------|----------------|------------------|-----------------------|-------------------------|-------------------|---------------------|------------|--------------|--------------|----------------|--|
| 1 | 2962 | 110 | 3.86% | 132 | 4.46% | 177 | 5.98% | 310 | 10.47% | 2482 | 83.79% | |
| 2 | 2922 | 70 | 2.45% | 637 | 21.80% | 708 | 24.23% | 91 | 3.11% | 2104 | 72.01% | |
| 3 | 2893 | 41 | 1.44% | 1882 | 65.05% | 1945 | 67.23% | 110 | 3.80% | 864 | 29.87% | |
| 4 | 2743 | -109 | -3.82% | 2469 | 90.01% | 2494 | 90.92% | 71 | 2.59% | 219 | 7.98% | |
| 5 | 2739 | -113 | -3.96% | 2299 | 83.94% | 2353 | 85.91% | 34 | 1.24% | 362 | 13.22% | |
| Total | 14259 | | | 7419 | 52.03% | 7677 | 53.84% | 616 | 4.32% | 6031 | 42.30% | |
| Total Deviation | | | 7.82% | | | | | | | | | |
| District | 18+_Pop | 18+ Am. Indian | % 18+ Am. Indian | 18+ NH DOJ Am. Indian | % 18+ NH DOJ Am. Indian | 18+ AP Am. Indian | % 18+ AP Am. Indian | 18+_Hisp. | % 18+_Hisp. | 18+ NH White | % 18+ NH White | |
| 1 | 2018 | 86 | 4.26% | 87 | 4.31% | 108 | 5.35% | 188 | 9.32% | 1718 | 85.13% | |
| 2 | 1926 | 435 | 22.59% | 454 | 23.57% | 463 | 24.04% | 50 | 2.60% | 1402 | 72.79% | |
| 3 | 1842 | 1194 | 64.82% | 1193 | 64.77% | 1217 | 66.07% | 50 | 2.71% | 584 | 31.70% | |
| 4 | 1821 | 1622 | 89.07% | 1615 | 88.69% | 1629 | 89.46% | 29 | 1.59% | 172 | 9.45% | |
| 5 | 1772 | 1463 | 82.56% | 1470 | 82.96% | 1474 | 83.18% | 16 | 0.90% | 281 | 15.86% | |
| Total | 9379 | 4800 | 51.18% | 4819 | 51.38% | 4891 | 52.15% | 333 | 3.55% | 4157 | 44.32% | |

Population Summary by District (Cooper Affidavit, ¶ 127 & Exhibit T-1, Plan B).

District 3 has an 18+ AP Indian population of 1,217, or 66.07%. The District 4 population is 1,629, or 89.46%. The District 5 population is 1,474, or 83.18%. The overall plan deviation from the ideal population is 7.82%. It is undisputed that there are sufficient numbers of Indians for three districts to be majority-Indian under Plan B.

ii. Indians in School Board districts are sufficiently compact to constitute three majority Indian districts.

The second element of the first Gingles Factor requires that Indians in Board election districts be geographically compact. See Section B(ii), *supra*. The same County population characteristics and census-geography principles as were applied to the determination of compactness for County Commission districts must also be applied to the School Board.

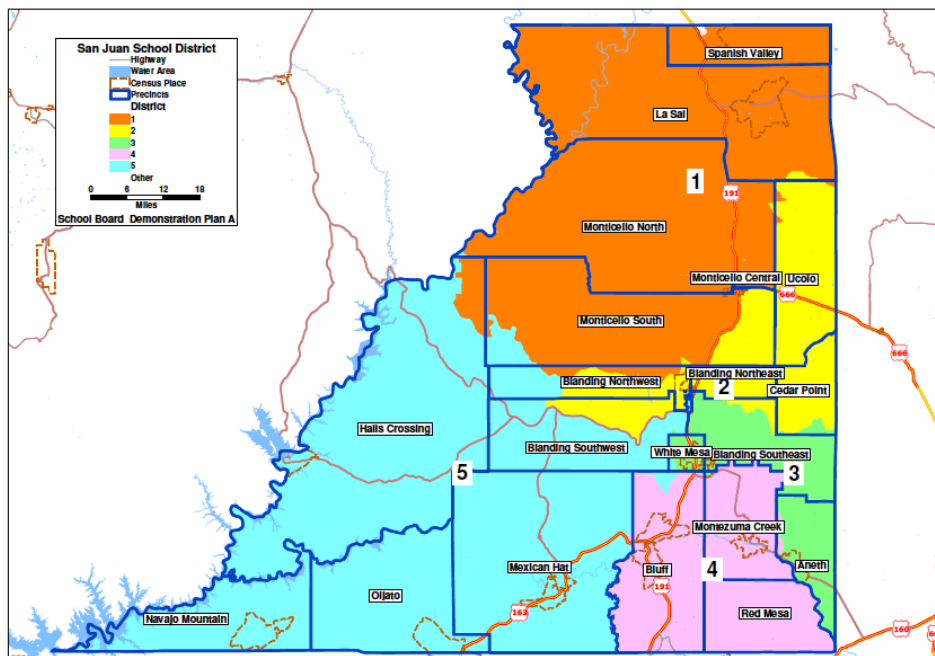
Two proposed Demonstration School Board Plans, formulated by Mr. Cooper, indicate

that the Indian population is compact for three majority-Indian School Board districts.³⁰ The Demonstration School Board Plans comply with key redistricting criteria. Municipalities are divided to comply with one-person-one-vote. Indians are not unnecessarily concentrated or packed into majority-Indian districts and are not fragmented or cracked into majority-white districts.

Demonstration School Board Plan A is formulated with voting tabulation districts, except for a split in the town of Monticello to comply with one-person-one vote. The City of Blanding is split three ways in order to comply with one-person-one-vote without extending Indian-majority school board districts north of Blanding.³¹ District 3 includes the Indian community of Aneth. District 4 has the Indian Communities of Red Mesa, Montezuma Creek and a large area on the Navajo Reservation south of the town of Bluff. And District 5 contains the Indian communities of Mexican Hat, Oljato and Navajo Mountain.

³⁰ Cooper Affidavit, ¶ 125 (Plan A) and ¶ 127 (Plan B).

³¹ Cooper Affidavit, ¶124- 126 & Exhibits S-1-4.



Cooper Affidavit, ¶ 125 & Exhibit S-2, Map, Plan A.

Demonstration School Board Plan A has three voting age majority-Indian Board Districts:

District 3 has 65.73% AP Indian VAP; District 4 has 90.02% AP Indian VAP; and District 5 has 80.57% AP VAP.

Population Summary Report

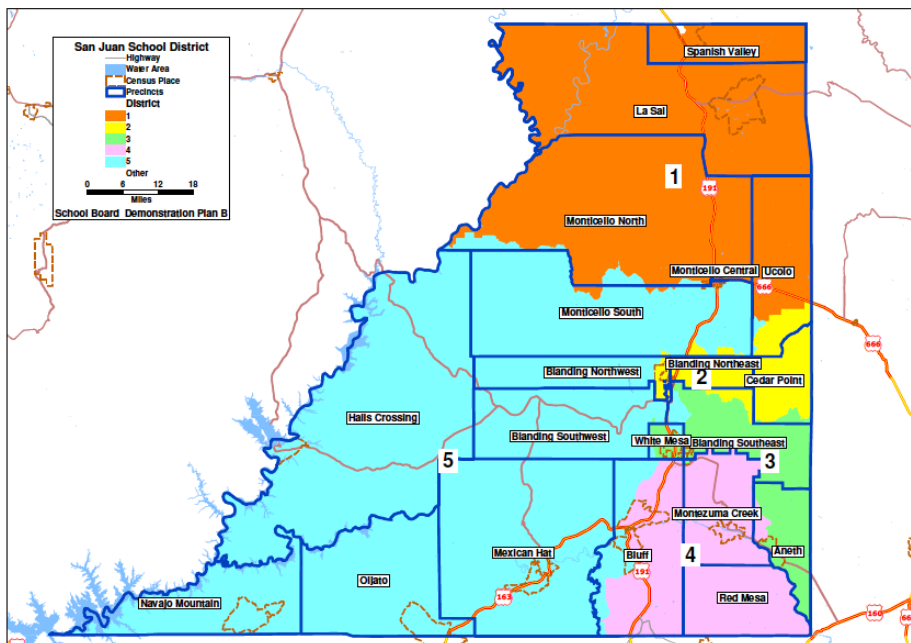
San Juan School District – Demonstration Plan A – Excludes Spanish Valley Area

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White |
|------------------------|--------------|-----------------|-------------------|------------------------|--------------------------|--------------------|----------------------|------------|--------------|---------------|-----------------|
| 1 | 2810 | -42 | -1.47% | 131 | 4.68% | 176 | 6.26% | 310 | 11.03% | 2331 | 82.95% |
| 2 | 2766 | -86 | -3.02% | 484 | 17.50% | 540 | 19.52% | 86 | 3.11% | 2123 | 76.75% |
| 3 | 2949 | 97 | 3.40% | 1911 | 64.80% | 1974 | 66.94% | 115 | 3.90% | 885 | 30.01% |
| 4 | 2917 | 65 | 2.28% | 2638 | 90.44% | 2668 | 91.46% | 71 | 2.43% | 220 | 7.54% |
| 5 | 2817 | -35 | -1.23% | 2255 | 80.05% | 2319 | 82.32% | 34 | 1.21% | 472 | 16.76% |
| Total | 14259 | | | 7419 | 52.03% | 7677 | 53.84% | 616 | 4.32% | 6031 | 42.30% |
| Total Deviation | | | 6.42% | | | | | | | | |
| District | 18+_Pop | 18+_ Am. Indian | % 18+_ Am. Indian | 18+_ NH DOJ Am. Indian | % 18+_ NH DOJ Am. Indian | 18+_ AP Am. Indian | % 18+_ AP Am. Indian | 18+_ Hisp. | % 18+_ Hisp. | 18+_ NH White | % 18+_ NH White |
| 1 | 1898 | 85 | 4.48% | 86 | 4.53% | 107 | 5.64% | 188 | 9.91% | 1599 | 84.25% |
| 2 | 1847 | 321 | 17.38% | 334 | 18.08% | 341 | 18.46% | 48 | 2.60% | 1449 | 78.45% |
| 3 | 1879 | 1212 | 64.50% | 1211 | 64.45% | 1235 | 65.73% | 51 | 2.71% | 601 | 31.99% |
| 4 | 1933 | 1732 | 89.60% | 1725 | 89.24% | 1740 | 90.02% | 30 | 1.55% | 173 | 8.95% |
| 5 | 1822 | 1450 | 79.58% | 1463 | 80.30% | 1468 | 80.57% | 16 | 0.88% | 335 | 18.39% |
| Total | 9379 | 4800 | 51.18% | 4819 | 51.38% | 4891 | 52.15% | 333 | 3.55% | 4157 | 44.32% |

Cooper Affidavit, Exhibit S-1 (Population Summary Report, Plan A)

It is undisputed that the Indian population for Board election districts under Plan A is compact.

Demonstration School Board Plan B is formulated using census blocks. Blanding City is split between Districts 2 and 3 in “exactly the same fashion as the current 1992 School Board Plan.” Blanding must be split under any school board plan because the city’s population of 3,375 is 18% over the ideal district size of 2,852. District 3 includes White Mesa Precinct, a Ute community; Aneth, a Navajo Community; and Blanding southeast precincts. District 4 encompasses the Indian communities of Montezuma Creek, Red Mesa and parts of Bluff and Aneth precincts. District 5 contains the Indian precincts of Mexican Hat, Oljato, Navajo Mountain, and parts of Bluff. To comply with one-person-one-vote, District 3 extends north to include Halls Crossing and areas in or near Blanding and Monticello.³²



Cooper Affidavit (¶ 127 & Exhibit T-2, Map, Plan B)

Demonstration School Board Plan B has three voting age majority Indian School Board Districts:

District 3 has 66.07% AP Indian VAP; District 4 has 89.46% AP Indian VAP; District 5 has 83.18% AP Indian VAP.

Population Summary Report

San Juan School District – Demonstration Plan B – Excludes Spanish Valley Area

| District | Population | Deviation | % Deviation | Am_Indian | % Am_Indian | AP Am. Indian | % AP Am. Indian | Hispanic | % Hispanic | NH White | % NH White |
|------------------------|--------------|-----------------|-------------------|------------------------|--------------------------|--------------------|----------------------|------------|--------------|---------------|-----------------|
| 1 | 2962 | 110 | 3.86% | 132 | 4.46% | 177 | 5.98% | 310 | 10.47% | 2482 | 83.79% |
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| 3 | 2893 | 41 | 1.44% | 1882 | 65.05% | 1945 | 67.23% | 110 | 3.80% | 864 | 29.87% |
| 4 | 2743 | -109 | -3.82% | 2469 | 90.01% | 2494 | 90.92% | 71 | 2.59% | 219 | 7.98% |
| 5 | 2739 | -113 | -3.96% | 2299 | 83.94% | 2353 | 85.91% | 34 | 1.24% | 362 | 13.22% |
| Total | 14259 | | | 7419 | 52.03% | 7677 | 53.84% | 616 | 4.32% | 6031 | 42.30% |
| Total Deviation | | | 7.82% | | | | | | | | |
| District | 18+_Pop | 18+_ Am. Indian | % 18+_ Am. Indian | 18+_ NH DOJ Am. Indian | % 18+_ NH DOJ Am. Indian | 18+_ AP Am. Indian | % 18+_ AP Am. Indian | 18+_ Hisp. | % 18+_ Hisp. | 18+_ NH White | % 18+_ NH White |
| 1 | 2018 | 86 | 4.26% | 87 | 4.31% | 108 | 5.35% | 188 | 9.32% | 1718 | 85.13% |
| 2 | 1926 | 435 | 22.59% | 454 | 23.57% | 463 | 24.04% | 50 | 2.60% | 1402 | 72.79% |
| 3 | 1842 | 1194 | 64.82% | 1193 | 64.77% | 1217 | 66.07% | 50 | 2.71% | 584 | 31.70% |
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| 5 | 1772 | 1463 | 82.56% | 1470 | 82.96% | 1474 | 83.18% | 16 | 0.90% | 281 | 15.86% |
| Total | 9379 | 4800 | 51.18% | 4819 | 51.38% | 4891 | 52.15% | 333 | 3.55% | 4157 | 44.32% |

Cooper Affidavit, Exhibit T-1 (Population Summary Report, Plan B).

It is undisputed that the Indian population for San Juan School Board districts under Plan B is compact.

iii. Determining numerosity and compactness for the first Gingles Factor re-configures mal apportioned School Board election districts.

Mal apportioned Board districts 4 & 5 have been present for 24 years.³³ The

Demonstration School Board Plans eliminate mal apportioned districts and meet the numerosity and compactness requirements of the first Gingles Factor: they do not unnecessarily concentrate

³² Cooper Affidavit, ¶¶ 127-129 & Exhibits T-1 through 4.

³³ Reapportionment less frequently than the decennial census will “assuredly be constitutionally suspect.” *Reynolds v. Sims*, 377 U.S. 533, 583-584 (1964). According to 2010 Census data, the 1992 Plan packs Indians into Districts 4 and 5 (both are majority Indian districts). This was true for the previous two decennial censuses, where the 1992 Plan unnecessarily concentrated or packed Indians into Districts 4 and 5. Cooper Affidavit, ¶¶ 97-98.

or pack Indians into Indian majority districts and do not fragment or crack Indian communities into majority-white districts.³⁴ Under Demonstration School Board Plan A, the overall plan deviation is 6.42%. Under Plan B, the overall plan deviation is 7.82%. Determining the School Board districts' numerosity and compactness for the first Gingles Factor necessarily reconfigures each district in equal proportion to the population.³⁵

V. CONCLUSION

Existing San Juan County Commission and School Board election districts are malapportioned. The Indian voting age population in San Juan County, Utah, is sufficiently large to constitute a majority in two of three County Commission election districts and three of five School Board election districts. The Indian population is sufficiently compact to elect candidates for these districts. There is no material dispute of fact as to the application of the first Gingles Factor to existing Commission and School Board election districts and the plaintiffs' motion for partial summary judgment should be granted.

DATED this 20th day of February, 2014.

³⁴ Cooper Affidavit, ¶ 118

³⁵ Another violation corrected by reapportionment to determine the first Gingles Factor is the one-person-one-vote issue, discussed in the Motion for Partial Summary Judgment on Plaintiff's Fourth Claim for Relief and Memorandum of Law (which is incorporated by reference). *Reynolds v. Sims*, 377 U.S. 533 (1964). According to 2010 Decennial Census data, the 1992 Plan's overall population deviation is 37.69%. Districts 1 & 5 have substantial departures from the ideal population. District 1's population of 3,297 has a deviation of 445 (15.60%). District 5's population of 2,222 has a deviation of -630, (-22.09%). A deviation over ten percent establishes a prima facie case of discrimination and a violation of the Equal Protection clause. *Voinovich v. Quilter*, 507 U.S. 146, 161 (1993) (citing *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983)).

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

by: /s/ Steven C. Boos
Steven C. Boos
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2014, I electronically filed the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' SECOND AND THIRD CLAIMS FOR RELIEF AND MEMORANDUM OF LAW** with the U.S. District Court for the District of Utah. Notice will automatically be electronically mailed to the following individual(s) who are registered with the U.S. District Court CM/ECF System:

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