Steven C. Boos, USB# 4198
Maya Leonard Kane
Maynes, Bradford, Shipps & Sheftel, LLP
835 East Second Avenue, Suite 123
P.O. Box 2717
Durango, Colorado 81301/2
(970) 247-1755 / Facsimile: (970) 247-8827
E-mail: sboos@mbssllp.com

Eric P. Swenson, USB #3171
1393 East Butler Avenue
Salt Lake City, Utah 84102
Telephone: (801) 521-5674
E-mail: e.swenson4@comcast.net

D. HARRISON TSOSIE, USB# 7329
Navajo Nation Attorney General
NAVAJO NATION
   DEPARTMENT OF JUSTICE
P.O. Box 2010
Window Rock, Arizona 86515-2010
(928) 871-6345 / Facsimile: (928) 871-6177
E-mail: 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, et al.,
 	
          Plaintiffs,
   v.
 	
SAN JUAN COUNTY, a Utah governmental subdivision,
 	
          Defendants.
	MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' FOURTH CLAIM 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 Plaintiffs' Fourth Claim for Relief. There are

no disputed issues of material fact with respect to Plaintiffs' Fourth Claim for Relief. San Juan

County, Utah, has not established election districts for the San Juan County School Board that are in proportion to the population, thereby denying Indian voters equal weight in representation. Population deviations among School Board election districts in the County exceed the constitutional limit of ten percent (10%). The County has not redistricted the School Board election districts since 1992. San Juan County's failure to properly reapportion its School Board election districts violates the Equal Protection clause of the Fourteenth Amendment and the one-person-one-vote rule enunciated in *Reynolds v. Sims*, 377 U.S. 533 (1964).

Pursuant to Rule 54(b), Fed. R. Civ. P., plaintiffs move for a final judgment on the Fourth Claim for Relief that incorporates a remedial plan to reapportion the School Board. This claim is distinct and separate from the other claims in this case and there is no just cause for delay.

II.   INTRODUCTION

The San Juan County School Board ("Board"), which is the governing body of the San Juan School District ("District"), is divided into five election districts which have never complied with the one-person-one vote rule announced in *Reynolds v. Sims,* 377 U.S. 533 (1964). Election districts must be in proportion to the population so voters have equal weight in representation. An overall ten-percent (10%) deviation in district populations from an election plan's ideal district size is a *prima facie* violation of the Equal Protection clause of the United States Constitution. *Voinovich v. Quilter*, 507 U.S. 146, 161(1993) (Citing *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983)). The overall disparity for the Board is nearly four times the constitutional limit of ten percent. Since this is undisputed, Plaintiffs should be granted partial summary judgment on their Fourth Claim for Relief.

San Juan County ("County") is responsible for reapportioning the Board election districts. The County reapportioned the Board in 1992, but not in the 22 years since then. Reapportionment is required at least every ten years, after each decennial census, to achieve election districts that are substantially equal in population, contiguous, and compact. *Reynolds,* at 583. Less frequent redistricting will "assuredly be constitutionally suspect." *Reynolds,* at 583-84. Once partial summary judgment is granted, the County must be ordered to prepare a reapportionment plan for the Board election districts. A final judgment incorporating a remedial plan with monitoring and enforcement provisions should be entered without undue delay.

III.   STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS

A.   Legal Elements

1.   Election districts must be in proportion to the population so voters have equal weight in representation, which is known as the one-person one-vote rule. *Reynolds v. Sims*, 377 U.S. 533 (1964).

2.   An overall ten-percent (10%) deviation in district populations from an election plan's ideal district size is a *prima facie* violation of the Equal Protection clause of the United States Constitution. *Voinovich v. Quilter*, 507 U.S. 146, 161(1993) (Citing *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983)).

3.   Reapportionment of election districts to ensure compliance with the one-person one-vote rule must occur every ten years after each decennial census. *Reynolds,* at 583-84; UCA 20A-14-201(2) (a) (I).

4.   Election district plans based on population data over ten years old have been invalidated.

Bacon v. Carlin, 575 F.Supp. 763, 766 (D.C. Kan. 1983).

5.   A remedial plan may be adopted immediately pursuant to Rule 54(b) that ensures election

districts will be adopted that comply with the one-person one vote rule and do not violate the

Equal Protection clause. See *Battle v. Anderson,* 708 F.2d 1523, 1537-1540 (10th Cir. 1983).

B.   Material Facts Concerning Population, Reapportionment and One-Person One-Vote

1.   The District encompasses the entire County except for an area within the Spanish Valley

Precinct that was annexed into Grand County School District in December 2010 ("Spanish

Valley Annexation"). Because this 487-person annexation occurred after the 2010 Census, it is

not accounted for in a census record called the *2010 PL94-171* file. 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%). Cooper

Affidavit, ¶ 55.

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 Annexation[1], the District has a total voting age population of

---

[1] 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

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 District, 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.[2]

9.	The population for the County from 1970-2010 is as follows (Cooper Affidavit, ¶ 73 & Fig. 1 1970 -2010 Population Summary:

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%	649	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

10.	The voting age population (VAP) for the County from 1980-2010 is as follows (Cooper Affidavit, ¶ 74 & Fig. 2 1980 - 2010 VAP Summary):

---

the 2010 Census. Cooper Affidavit, ¶ 58.
[2] San Juan County, 1970 Census to 2010 Census, Population and Ethnicity/Race Distribution, is set forth in Cooper Affidavit, ¶ 45, Figure 1.

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.

11.   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:

12.   The 2011 Commission Plan has an overall population deviation between the largest and

smallest districts of 3.60%. Cooper Affidavit, ¶ 76.

13.   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.

14.   The boundaries for District 3 under the 2011 Commission Plan are identical to those found

in the 1986 Commission Plan. Cooper Affidavit, ¶ 76.

15.   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.

16.   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.

17.   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.

18.   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.

19.   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.

20.   The 2011 Commission Plan unnecessarily concentrates or "packs" the Indian population

into District 3 and fragments or "cracks" the remaining Indian population between Districts 1 and

2. Cooper Affidavit, ¶ 80 & n. 20; Exhibit F.

21.   The County received a proposed County Commission redistricting plan from the Navajo

Nation in 2011 ("Navajo Nation Proposal"). Cooper Affidavit, ¶¶ 81-87, and Exhibits.

22.   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.

23.   Commission District 3 of the Navajo Nation Proposal is 78.84% Indian VAP. Cooper

Affidavit, ¶ 81.

24.   The overall population deviation for the Navajo Nation Proposal is 0.06%. Cooper

Affidavit, ¶ 81.

25.   The Navajo Nation proposal eliminates the unnecessary packing of the Indian population in

District 3 under the 2011 County Commission Plan. Cooper Affidavit, ¶ 84.

26.   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.

27.   The Navajo Nation Proposal establishes that Indians in San Juan County are sufficiently

numerous and geographically compact to constitute two Indian-majority election districts in a three-district county commission plan. Cooper Affidavit, ¶ 82.

28.   Compared to the 2011 Commission Plan and the 1986 Commission Plan, the 2011 Navajo Nation Proposal achieves better balance with respect to geographic size of the districts- District 1 (3,262 sq. mi.), District 2 (3,363 sq. mi.), and District 3 (1,004 sq. mi.). Cooper Affidavit, ¶ 83.

29.   The Navajo Nation Proposal complies with key traditional redistricting criteria.[3]

30.   There are five San Juan County, Utah, Board of Education election districts created by the 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.

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

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

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

34.   According to the 2000 Census, the 1992 Plan had a population deviation of 22.09%. Cooper Affidavit, ¶ 96, Exhibit I-1.

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

---

[3] The plan complies with one-person-one-vote, compactness, contiguity, respect for communities of interest, and non-dilution of minority voting strength. Cooper Affidavit, ¶ 86.

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

37.   The 1992 Plan was mal apportioned and unnecessarily concentrated or packed Indians into

Election Districts 4 and 5. Cooper Affidavit, ¶ 97 & Exhibit I-2, 2000 population summary by

district.

38.   Based on 1990 Decennial Census data, the 1992 Plan had three majority-Indian Districts.

Cooper Affidavit, ¶ 98.

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

40.   The 1992 Plan was malapportioned and unnecessarily concentrated and packed Indians into

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

41.   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.

42.   In 2014, Board elections will be held for Election Districts 4 and 5.[4]

43.   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.

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

45.   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.

---

[4] "Next Election to use mailed-in ballots exclusively." San Juan Record, January 29, 2014.

46.   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.

47.   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.

48.   In 1969, the County adopted a five-election district school board plan (1969 Plan). Cooper

Affidavit, ¶¶ 103.

49.   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.

50.   There is insufficient detail in the 1960 Census data to tabulate race and ethnicity by district.

Cooper Affidavit, ¶ 104.

51.   For the 1969 redistricting, San Juan County could have used registered voter counts.

Cooper Affidavit, ¶ 105.

52.   For the 1969 redistricting, San Juan County could have conducted a mid-decade

population-based apportionment method. Cooper Affidavit, ¶ 105.

53.   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.

54.   Based on 1970 Census data, Indian-majority Election District 1 of the 1969 Plan had a

population deviation of more than 36.32%. Cooper Affidavit, ¶ 106.

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

C.   Material Facts Concerning a Remedial Plan pursuant to Rule 54(b)

56.   In 1972, this Court found that two Indian candidates for election to the San Juan County

Commission were unlawfully excluded from the election ballot in *Yanito v. Barber,* 348 F.Supp.

587 (D. Ut., 1972).

57.   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.

58.   The County admitted it had failed to comply fully with Section 2 of the Voting Rights Act,

which was entered into an Agreed Settlement and Order by the Court on April 4, 1984. Plaintiffs'

First Requests For Admission, Request Numbers 63-64, Response: Admitted.

59.   In *United States v. San Juan County*, C-83-1287J (1984), San Juan County admitted it had

failed to fully comply with the minority language requirements of the Voting Rights Act, which

was entered into an order by the court on January 11, 1984.

60.   Plaintiffs' demographic and redistricting expert, William S. Cooper, formulated

Demonstration Plans for the San Juan County Commission and 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. *Matsuishita 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).

B.　　There is no genuine issue of material fact that School Board election districts violate the one-man one-vote mandate of the Equal Protection clause.

San Juan County has one school board of five single-member election districts,

reapportioned in 1969 and 1972. The current plan was enacted in 1992 (1992 Plan) (Cooper

Affidavit, ¶ 14, Exhibit B-3 (2012 School Board Map):
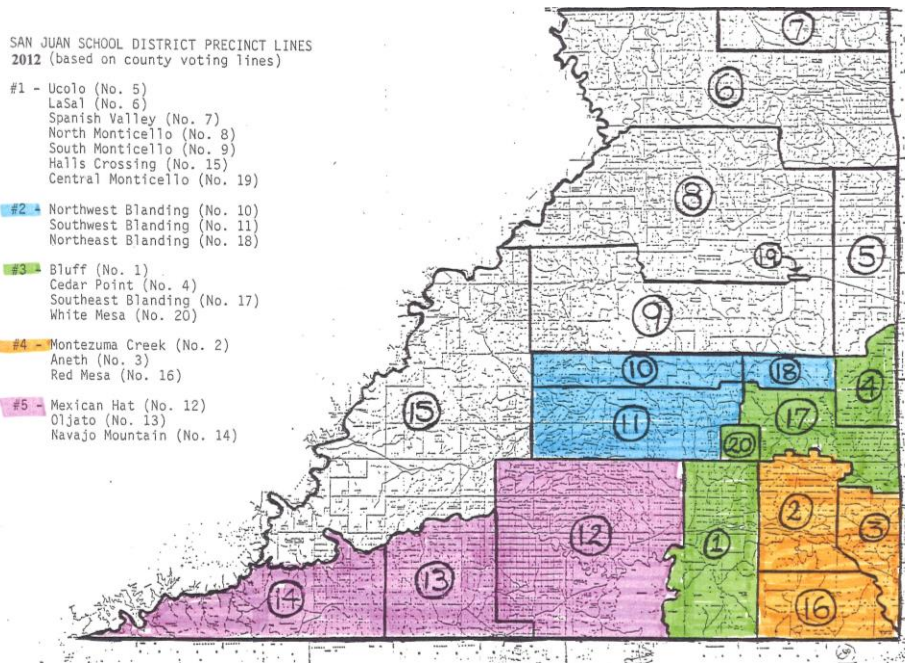
The County is required to reapportion after each decennial census to achieve election

districts that are substantially equal in population, as well as contiguous and compact. *Reynolds,*

at 583; UCA § 20A-14-201(a)-(b). The County has never complied with *Reynolds.* The 1969

and 1972 plans had severe population deviations.[5] Additionally, the 1992 Plan violated the Equal

Protection clause from the moment it was enacted.

---

[5] Cooper Affidavit, ¶ 106 (1969, overall deviation of 45.4%); and ¶ 102 (1972, 15.93%). By the 1980
Decennial Census the 1972 School Board Plan's overall deviation increased to 28.52%. *Id.,* ¶ 101.

Plaintiffs' demographic and redistricting expert, William Cooper, analyzed the 1992

Plan.[6] He calculated the deviation from the ideal population of an election district and for the

Board overall. The total population is divided by the number of election districts to obtain the

ideal size. The ideal size is compared to an election district's actual population. Cooper

concluded that the 1992 Plan has inordinately high population deviations in two districts and for

the Board overall.[7]

According to 2010 Census data, the 1992 Plan's overall population deviation is 37.69%.

Deviations above ten percent (10%) constitute a prima facie case of discrimination.[8] In a case

with disparities similar to San Juan's, the Supreme Court stated, "variations of 30% among

senate districts and 40% among house districts can hardly be deemed de minimis and none of our

cases suggest that differences of this magnitude will be approved without a satisfactory

explanation grounded on acceptable state policy."[9]

The situation is exacerbated by high population deviations in Board Election Districts 1

and 5. Redistricting practitioners have a standard for evaluating individual election districts:

districts are mal apportioned if deviations are more than five-percent (5%) greater or more than

five-percent less than the ideal population.[10] Election District 1 has a deviation of 15.60%.

---

[6] Cooper is a demographic and redistricting expert. He prepared redistricting plans for approximately 600 jurisdictions in matters involving the Voting Rights Act, including written and/or testimony in 10 voting cases on behalf of American Indian plaintiffs in South Dakota, Montana, Colorado Nebraska, and Wyoming. Cooper Affidavit, ¶¶ 1-9 & Exhibit A.

[7] Cooper Affidavit, ¶¶ 96-100; Exhibits I-1-3.

[8] *Voinovich v. Quilter,* 507 U.S. 146, 161(1993) (Citing *Brown v. Thomson,* 462 U.S. 835, 842-843 (1983)).

[9] *Swann v. Adams,* 385 U.S. 440, 444 (1967),

[10] Cooper Affidavit, ¶ 91 & n. 22.

Election District 5 has a deviation of 22.09%. In combination, the districts have an overall

deviation that is well above the constitutional limit of ten percent.[11]

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, ¶ 96, Exhibit I-1 (2010 Census Summary Report, Current School Board Plan).

The 1992 Plan's defects were apparent at the time of reapportionment in 1992. According

to the 1990 Census, the 1992 Plan had three majority-Indian Districts of which Election District

4 was unnecessarily concentrated and packed with Indians.[12] The overall plan deviation was

18.70%.[13] Over the last 22 years, the County has not corrected this problem and the Board

continues to hold elections for only two majority Indian election districts.

---

[11]Cooper Affidavit, ¶ 96; Exhibit I-1. The school board now has three majority-Indian Districts: District 3 (56.62% AP Indian VAP); District 4 (97.93% AP Indian VAP); and District 5 (95.37% AP Indian VAP).
[12] A minority population is concentrated in an election district for an overall dilution of minority voting strength in the 1992 Plan. Cooper Affidavit, ¶80, n. 20; *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).
[13] District 3 had 58.42% single-race Indian VAP; District 4 was packed with 95.26% single-race Indian VAP; District 5 had 84.59% single-race Indian VAP. Cooper Affidavit, ¶ 98; Exhibit I-3 for a 1990 population summary by district.

Following the 2000 Decennial Census, the 1992 Plan's flaws were even more pronounced. The overall plan deviation increased from 18.70% to 25.04%.[14] Three majority-Indian districts were still present. However, at that point two districts existed that were unnecessarily concentrated and packed with Indians: Election Districts 4 and 5.

Population Summary Report

San Juan County, UT – Current School Board Plan -- 2000 Census -- Includes Spanish Valley

District	Population	Deviation	% Deviation	Am_Indian	% Am_Indian	Hispanic	% Hispanic	NH White	% NH White
1	3257	374	12.97%	246	7.55%	343	10.53%	2626	80.63%
2	2535	-348	-12.07%	578	22.80%	96	3.79%	1824	71.95%
3	2803	-80	-2.77%	1588	56.65%	67	2.39%	1093	38.99%
4	3243	360	12.49%	3164	97.56%	19	0.59%	60	1.85%
5	2575	-308	-10.68%	2450	95.15%	15	0.58%	107	4.16%
Total	14413			8026	55.69%	540	3.75%	5710	39.62%
Total Deviation			25.04%						

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	2206	158	7.16%	157	7.12%	179	8.11%	205	9.29%	1814	82.23%
2	1568	339	21.62%	341	21.75%	349	22.26%	44	2.81%	1173	74.81%
3	1653	886	53.60%	878	53.12%	893	54.02%	35	2.12%	726	43.92%
4	1834	1781	97.11%	1783	97.22%	1784	97.27%	4	0.22%	46	2.51%
5	1485	1393	93.80%	1392	93.74%	1394	93.87%	11	0.74%	80	5.39%
Total	8746	4557	52.10%	4551	52.04%	4599	52.58%	299	3.42%	3839	43.89%

Cooper Affidavit , ¶ 97, Exhibit I-2 (1992 Plan under 2000 Census).

---

[14] District 3 had 54.02% AP Indian VAP. District 4 had 97.27% AP Indian VAP. District 5 had 93.87% AP Indian VAP. The overall plan deviation was 25.04%. Cooper Affidavit, ¶ 97; Exhibit I-2 for a 2000 population summary by district.

Population Summary Report

San Juan County, UT – Current School Board Plan -- 1990 Census

District	Population	Deviation	% Deviation	Am_Indian	% Am_Indian	Hispanic	% Hispanic
1	2540	16	0.63%	98	3.86%	278	10.94%
2	2561	37	1.47%	641	25.03%	65	2.54%
3	2582	58	2.30%	1558	60.34%	39	1.51%
4	2705	181	7.17%	2586	95.60%	47	1.74%
5	2233	-291	-11.53%	1976	88.49%	11	0.49%
Total	12621			6859	54.3%	440	3.5%

Total Deviation			18.70%

District	18+_Pop	18+ Am. Indian	% 18+ Am. Indian
1	1559	57	3.66%
2	1433	330	23.03%
3	1419	829	58.42%
4	1519	1447	95.26%
5	1220	1032	84.59%
Total	7150	3695	51.7%

Cooper Affidavit, ¶ 98, Exhibit I-3 (1992 Plan under 1990 Census).

Following the 2010 Decennial Census, the 1992 Plan contained an extraordinarily high overall deviation of 37.69% and continues to maintain Election Districts 4 and 5 that are unnecessarily concentrated and packed with Indians. Elections will be held for both districts in 2014.

In 2011, the Navajo Nation presented a proposal to redistrict County Commission districts. The proposal's districts were substantially equal in population and compact. The overall population deviation for the Nation's proposal was a "near-perfect" 0.06%.[15] With the Nation's offer of assistance and a model plan, the County could also have reapportioned the Board election districts. Yet, the County took no action. Instead, the County focused only on County Commission election districts. Commission District 3's unnecessary packing and concentration

---

[15]Cooper Affidavit, ¶ 81 & Exhibits G-1-3 ("near perfect"). The Nation's proposal complied with other key redistricting criteria. *Id.*, ¶ 86.

of Indians was left in place. A portion of the Indian population that was cracked and included in

Commission District 1 also remained unchanged. Yet, two voting precincts were moved from

Commission District 2 to Commission District 1 in an effort to comply with the one-person-one-

vote mandate of *Reynolds.* At the same time, the County made no effort to achieve the one-

person-one-vote mandate for School Board elections.

Compliance with *Reynolds* has always been within the County's grasp. Census

information is reliable and could have been easily obtained with reasonable effort. That is why

the Supreme Court required periodic reapportionment based on current census data. Plans based

on population data over ten years old have been invalidated.[16] Decennial redistricting "would

clearly meet the minimal requirements," and reapportionment less frequently will "assuredly be

constitutionally suspect." *Reynolds,* at 583-84.

The County reapportioned the School Board only three times in fifty years. *Reynolds* was

decided in 1964. After a delay of five years, the County reapportioned School Board election

districts in 1969. Nine-year old data from the 1960 Decennial Census was used when the County

could have obtained more reliable data.[17] Another reapportionment occurred in 1972. No

reapportionment occurred after the 1980 Decennial Census. By the time of the 1990 Decennial

Census, the Board's underlying population data was nearly two decades out of date.

The County last reapportioned the Board in 1992. In 1995, the Utah State Legislature

required that school boards redistrict "at least once every 10 years."[18] Decennial censuses

followed in 2000 and 2010. But although the population data continued to change and legislative

---

[16]*Bacon v. Carlin,* 575 F.Supp. 763, 766 (D.C. Kan. 1983) (citations omitted).
[17]Cooper Affidavit, ¶ 105.

mandates were put in place requiring use of this new data, the County took no action.[19] Elections

will be held this year with a plan that is 24-years old and becoming more skewed and

unconstitutional with each decennial census.

There are no genuine issues of material fact as to the Fourth Claim for Relief, that the

failure of the County to reapportion Board election districts violates the Equal Protection clause.

San Juan County is responsible for maintaining the districts. UCA 20A-14-201 (1)-(2). The

County has not reapportioned election districts since 1992 and there is a population deviation of

37.69% between the largest and smallest election districts. Voters do not have equal weight of

representation in clear violation of the one-person-one-vote rule of *Reynolds v. Sims,* 377 U.S.

533 (1964). The Court should enter a partial summary judgment for Plaintiffs on their Fourth

Claim for Relief.

A.   Remedial Plan should be incorporated in a final judgment pursuant to Fed. R. Civ. P. 54(b).

A remedial plan to reapportion Board election districts must be incorporated in a final

judgment as soon as practicable. Judgment on less than all claims is appropriate when the Court

"expressly determines that there is no just reason for delay."[20] While a final judgment must not

violate the rule against piecemeal litigation,[21] the Plaintiffs' fourth claim for relief is separate and

discrete because it is limited to the Board and the first and second claims involve the County

Commission. Although Plaintiffs' third claim also involves the School Board, that matter may be

---

[18]UCA 20A-14-201(2) (a) (I).

[19]Plaintiffs' First Requests for Admissions, Number 25 (school election districts redrawn on March 9, 1992); and 26 (no changes in school election districts since 1992).

[20]F.R.C.P., Rule 54(b);

subsumed in the fourth claim if reapportionment eliminates mal apportioned districts.

Redistricting can be accomplished expeditiously. Demographic data from the 2010 Decennial

Census is available. Maptitude for Redistricting Software employed by many state and local

governments can match data to census geography. This process efficiently formulates districts

with minimal population deviations.[22]

The Court has broad equitable authority to fashion a suitable remedy.[23] The County must

be given an opportunity to correct the violation in the first instance (*Reynolds,* at 586) and may

submit a remedial plan. *Id.,* 586-587. The plan must achieve population equality with *de minimis*

deviation absent "persuasive justification."[24] The Plaintiffs' will have an opportunity to object to

the County's proposed plan if it fails to achieve population equality with *de minimis* deviation

and may then suggest their own plan.

The Court may also formulate its own remedy or accept one of those proposed by

Plaintiffs. Plaintiffs have submitted two Demonstration Plans, and "[t]here are many other

possible configurations that would comply with key traditional redistricting criteria."[25] The

---

[21]*J.W. v. Utah,* 2007 WL 895229 *1 (D. Utah 2007); *Spiegel v. Trustees of Tufts College,* 843 F.2d 38, 42-43 (1st Cir. 1988).
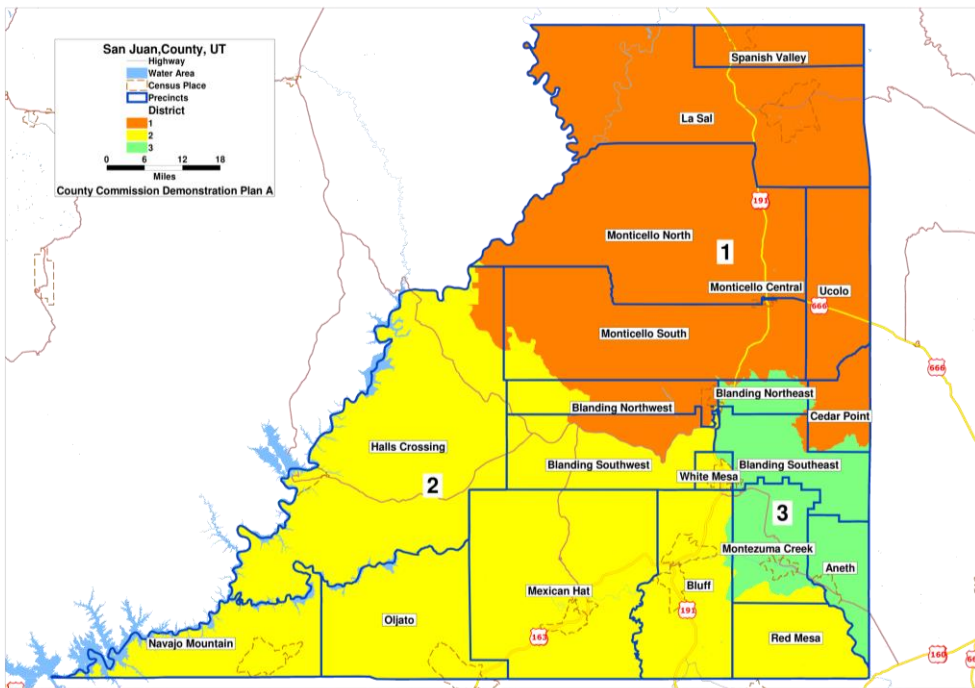
[22] Cooper Affidavit, ¶¶ 10-13.

[23]*Hellebust v. Brownback,* 42 F.3d 1331, 1336 (10th Cir. 1994); *see also Baker v. Carr,* 369 U.S. 186, 250 (1962) & *Hellebust,* at 1335-1336 ("The contour for a remedy in any equitable case is set by 'the nature of the violation'"); *Sanchez v. State of Colo.,* 97 F.3d at 1328. A remedy must be tailored to the violation. *Milliken v. Bradley,* 418 U.S. 717, 738 (1974) (quoting *Swann v. Charlotte-Mecklenburg Bd. Of Educ., 402 U.S. 1, 16 (12971)).* Local conditions and the unusual setting of the violation must be taken into account. *Id.*

[24] *Connor v. Finch,* 431 U.S. 407, 414 (1977); *Chapman v. Meier,* 420 U.S. 1, 26-27 (1975) (*de minimis* deviation). *See Bone Shirt v. Hazeltine,* 387 F.Supp.2d 1035, 1038 (D. S.D. 2005) (plans);

[25]Cooper Affidavit, ¶ 116. In *Buchanan v. City of Jackson, Tenn.,* 683 F.Supp. 1545, 1546 (W.D. Tenn., 1988), a remedial plan was incorporated in final judgment two months after partial judgment).

Demonstration Plans already comply with the standard of achieving population equality with *de minimis* deviation. With this head start, a judgment should not be delayed.

PLAN A MAP (Cooper Affidavit, ¶ 120, Exhibit Q2):

PLAN A Population Summary Report (Cooper Affidavit, ¶ 120, Exhibit Q-1):

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%

PLAN B MAP (Cooper Affidavit, ¶ 122, Exhibit R-2):

PLAN B Population Summary Report (Cooper Affidavit, ¶ 120, Exhibit R-1):
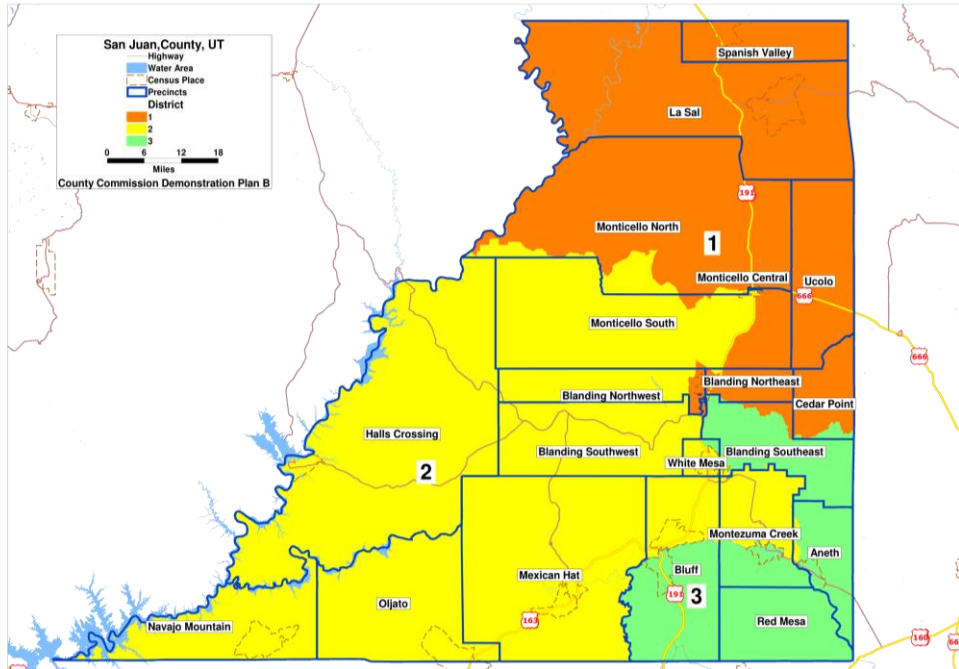
Population Summary Report

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%

Page 24 of 26

The Court should order San Juan County to submit its proposed remedial plan within thirty days. Additionally, the County's electoral history compels a remedy beyond simply redrawing election districts and moving around population numbers. The County must also be carefully monitored over an extended period to address decades of constitutional violations of Indian voting rights.

In fifty years of *Reynolds* jurisprudence, Board election districts have never complied with the one-person-one-vote mandate. During this time the County violated Indian voting rights in other electoral matters. In 1972, this Court found Indian candidates were wrongfully excluded from the ballot. *Yanito v. Barber,* 348 F.Supp. 587 (D. Ut., 1972). In 1984, this Court found that County commission elections failed to fully comply with Section 2 of the Voting Rights Act. *United States v. San Juan County*, Case No. C-83-1286W. In 1984, this Court found that the County failed to fully comply with the minority language requirements of the Voting Rights Act. *United States v. San Juan County*, Case No. C-83-1287J. With this background, the Court should retain jurisdiction to monitor and enforce a remedial plan to make absolutely sure that mal apportioned Board election districts are eliminated "root and branch," and there is "no reasonable expectation that the unconstitutional practices will occur." *Battle v. Anderson,* 708 F.2d 1523, 1537-1540 (10th Cir. 1983).

V.   CONCLUSION

The Court should grant partial summary judgment on Plaintiffs' Fourth Claim for Relief. The County has not apportioned the School Board in accordance with the one-person-one-vote mandate of *Reynolds*, thereby violating the Equal Protection Clause of the Fourteenth

Amendment to the United States Constitution. The County should be ordered to submit a

remedial plan within thirty days, subject to Plaintiffs' review. A final judgment should

incorporate a remedial plan that achieves population equality between Board election districts

with *de minimis* deviation. The Court should retain jurisdiction to monitor and enforce the

remedial plan.

     DATED this 19th day of February, 2014.

                MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

              by: */s/ Steven C. Boos*
                    Steven C. Boos
                    Eric P. Swenson
                    Maya L. Kane
                    Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

     I hereby certify that on the 19th day of February, 2014, I electronically filed the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' FOURTH CLAIM 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:

          Jesse C. Trentadue
          Carl F. Huefner
          Britton R. Butterfield
          SUITTER AXLAND, PLLC
          8 East Broadway, Suite 200
          Salt Lake City, Utah 84111
          E-mail: jesse32@sautah.com
          E-Mail: chuefner@sautah.com
          E-Mail: bbutterfield@sautah.com

                    /s/ Steven C. Boos