

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

MICHAEL JEPSEN, et al.,  
Plaintiffs,

vs.

No. D0101 CV 2001 02177  
(Consolidated)

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

COURT'S FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW

FINDINGS OF FACTS

1. Article I, Section 2 of the United States Constitution provides that the House of Representatives must be reapportioned by district every ten years.
2. Pursuant thereto, the United States Census Bureau conducts a decennial census throughout the United States to accomplish the proper apportionment of House districts.
3. The most recent census was conducted in 2000, and established that the population of the State of New Mexico is 1,819,046, an increase of 303,977 residents from the 1990 census.
4. New Mexico received the relevant 2000 Census data from the Federal Census Bureau in March, 2001. In order to allow the

legislature to perform redistricting in conformity with that data, a special legislative session was called for the fall of 2001.

5. In anticipation of that special session, the bi-partisan New Mexico Legislative Council<sup>D</sup> adopted, without dissent, certain criteria or "Guidelines" which the legislature would consider in formulating redistricting plans. The Legislative Council also formed a bi-partisan Interim Redistricting Committee to study the question of redistricting and make recommendations to the full Legislature.

6. The Redistricting Committee traveled throughout the State of New Mexico and held public hearings to receive comments and input concerning certain congressional redistricting concepts from citizens and interest groups from all areas of the state. Comments were received from groups including, but not limited to, the State Republican Party, the Mexican-American Legal Defense Education Fund, the NAACP, the Navajo Nation, and the Jicarilla Apache Tribe, Id.

7. On September 20, 2001, the Legislature passed SB 33, a reapportionment plan for New Mexico's three Congressional seats. It passed the senate 21-18 and the house 34-27.

8. On October 3, 2001, Governor Johnson vetoed SB 33.

9. The Legislature adjourned on the same day it enacted SB

33 and made no attempt to override the governor's veto.

10. Redistricting is primarily a legislative duty which was not accomplished and therefore left to the court.

11. The court has been presented with 6 plans. SB 33, the plan passed by the Legislature, the Jepsen Plan a modification of SB 33, the Sanchez Plan similar to SB 33 and the Jepsen Plan, the Padilla Plan which meets many of the Governor's concerns, the Gutierrez Plan which is similar to the Padilla Plan and the Vigil Plan which is called the "Least Change" because it makes fewer changes to the current districts.

12. SB 33, the Jepsen Plan and the Sanchez Plan redistricts the State of New Mexico to provide for a majority Hispanic district.

13. Hispanic communities in New Mexico are sufficiently and geographically compact to constitute a majority in a Congressional district. (Gingles Precondition 1)

14. Hispanic citizens vote generally as a majority for Democratic candidates and non-Hispanic white citizens vote generally as a majority for Republicans. (Gingles Precondition 2)

15. The white majority does not vote sufficiently as a block to enable it to usually defeat the minority preferred candidate. (Gingles Precondition 3 fails)

16. The New Mexico's Native American communities are not sufficiently larger and geographically compact to constitute a majority in a Congressional district.

17. The Court based upon the evidence presented is not able to find that race is the predominant factor in the drawing of district lines for SB 33, Jepsen and Sanchez Plan or that a majority Hispanic district in each of the plans would constitute racial gerrymandering in violation of Shaw v. Reno, 509 U.S. 630 (1993) but;

18. The Court does find that a redistricting plan as proposed by SB 33, the Jepsen and Sanchez Interveners in establishing a majority Hispanic district is a substantial change from our existing plan and not required by Section 2 of the Voting Rights Act.

19. SB 33, the Jepsen Plan and the Sanchez Plan in establishing a majority Hispanic district require the disrupting of existing districts which have been in effect for twenty years.

20. The establishment of a majority Hispanic district as provided for in SB 33, the Jepsen and Sanchez Plan involve serious political consideration which should be made by our Legislature and Governor working within the political process and not by the court.

21. Of the remaining plans (Gutierrez, Fadilla and Vigil) the Court adopts the Vigil "Least Change" VTD Level Plan which

maintains our present system until the Legislature choose to act.

22. The Vigil "Least Change" Congressional Redistricting Plans shift the minimum population necessary to bring New Mexico into compliance with the one-person, one-vote requirement set by the United States Supreme Court.

23. The Congressional Redistricting Plans submitted to the Court by the other parties shift far larger population from one congressional district to another than the Vigil "Least Change" Plans.

24. Every plan other than the Vigil "Least Change" Plans split the City of Albuquerque, placing the Northeast Heights in one district and the Downtown and areas of the Valley in another. Three of the other plans - Senate Bill 33, the Jepsen Plan and the Sanchez Plan - divide portions of the City of Albuquerque into all three congressional districts.

25. Since the adoption of single member Congressional districts in the State of New Mexico in 1968, the legislative and executive branches of New Mexico State Government have never split the City of Albuquerque in the manner proposed Plans.

26. The Vigil "Least Change" Plans promote partisan fairness and political competition.

27. Under the Vigil "Least Change" Plans are based upon the districting scheme adopted by the New Mexico Legislature and Governor Bruce King in 1991.

28. Under the Vigil "Least Change" VTD Level Plan, only 22,966 people, or 1.26% of New Mexico's total population of 1,819,046, change Congressional districts.

29. Under the Vigil "Least Change" VTD Level Plan, 13,489 people will be shifted from the 3<sup>rd</sup> Congressional District to the 1<sup>st</sup> Congressional District, and 9,616 people will be shifted from the 3<sup>rd</sup> Congressional District to the 2<sup>nd</sup> Congressional District.

30. In particular, under the Vigil "Least Change" VTD Level Plan, Cibola County Precinct 5 and McKinley County Precincts 26, 27, 29 and 30 will be moved from the 3<sup>rd</sup> to the 2<sup>nd</sup> district, and Bernalillo County Precincts 2, 87 and 89 will be moved from the 3<sup>rd</sup> to the 1<sup>st</sup> district.

31. The Vigil "Least Change" VTD Level Congressional Plan will result in a population deviation of 51 people over the ideal in the 1<sup>st</sup> district, 57 over in the 2<sup>nd</sup> and 109 under in the 3<sup>rd</sup>.

32. Under the Vigil "Least Change" VTD Level Plan, the percentage of voting age Hispanics in the new districts compared to the old districts remains virtually the same, with a Hispanic population of 38.8% compared to 39% in the 1<sup>st</sup>, 42.54% compared to 43.13% in the 2<sup>nd</sup>, and 34.61% compared to 34.05% in the 3<sup>rd</sup>.

33. Although the Vigil "Least Change" VTD Level Plan shifts some Native Americans from the 3<sup>rd</sup> to the 2<sup>nd</sup> district, the percentage decrease in the Native American voting age population in

the 3<sup>rd</sup> district would only be reduced by two thirds of 1%, from 16.99% to 16.33%.

34. Because the legislature and Governor were unable to reach agreement on a Congressional Redistricting Plan in 2001, it is appropriate for this Court to lock to the last, clear expression of state policy on this issue enunciated in 1991 with the enactment of the current districts.

35. Therefore, the Court finds that New Mexico's three congressional districts should be composed as follows:

- A. Congressional district number one is composed of Torrance county; Bernalillo county precincts number 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75, 76, 77, 81, 82, 83, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 101, 102, 103, 104, 105, 106, 107, 111, 112, 113, 114, 120, 121, 122, 123, 124, 125, 131, 132, 133, 135, 150, 151, 152, 153, 154, 161, 162, 163, 164, 165, 166, 180, 181, 182, 183, 184, 185, 186, 187, 191, 192, 193, 194, 195, 196, 197, 211, 212, 214, 215, 216, 217, 221, 223, 224, 225, 226, 241, 242, 243, 244, 245, 246, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273, 274, 275, 278, 281, 282, 283, 284, 285, 286, 287, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 311, 312, 313, 314, 315, 316, 317, 318, 321, 322, 323, 326, 327, 328, 329, 330, 331, 332, 333, 341, 342, 343, 344, 345, 346, 347, 351, 352, 353, 354, 355, 356, 357, 358, 371, 372, 373, 374, 375, 381, 382, 383, 384, 385, 386, 387, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 449, 450, 451, 452, 453, 454, 461, 462, 463, 464, 465, 466, 471, 472, 473, 474, 475, 476, 477, 478, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 571, 573, 601 and 602; Sandoval county precincts number 1, 2, 3, 4, 5, 28, 29, 38, 55, 56 and 64; Santa Fe county precincts number 15, 73 and 84; and Valencia county precincts number 6, 8, 15, 16, 28, 29, 30, 32, 33, 34 and 38.

- B. Congressional district number two is composed of Carron, Cibola, Chaves, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Hidalgo, Lea, Lincoln, Luna, Otero, Sierra and Socorro counties; Bernalillo county precincts number 31 and 93; McKinley county precinct numbers 26, 27, 29 and 30; and Valencia county precincts number 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 35, 36 and 37.
- C. Congressional district number three is composed of Colfax, Curry, Harding, Los Alamos, Mora, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Taos and Union counties; Bernalillo county precincts numbers 1, 80, 84 and 85; McKinley county precinct numbers 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50; Sandoval county precincts numbers 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 58, 59, 60, 61, 62, 63 and 67; and Santa Fe county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85 and 86.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.
2. Under the "one-person, one-vote" mandate, each district should contain as nearly as possible the same population as other districts, based upon the most recent federal census.
3. Section 2 of the Voting Rights Act prohibits any state from imposing any voting qualification, standard, practice or procedure that results in the denial or abridgment of any citizen's right to vote on account of race, color or status as a member of a language minority group.

4. The Court in Gingles set out "necessary preconditions," a three part test which is a threshold requirement. Only if all three preconditions are met is an examination of the "totalities of the circumstances" triggered. Gingles, 478 U.S. at 83, O'Connor concurring, Grove v. Emison, 507 U.S. 25, 39 (1992).

The necessary preconditions are:

- First, the minority group must be able to sufficiently large and geographically compact to constitute a majority in a single-member district.
- Second, the minority group must be able to show that it is politically cohesive (racial polarized voting).
- Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it-in the absence of special circumstances, such as the minority candidate running unopposed-usually to defeat the minority's preferred candidate."

5. "Absent evidence that minorities have been excluded from the political process, a "lack of success at the polls" is not sufficient to trigger judicial intervention. Courts must undertake the additional inquiry into the reasons for, or causes

of, these electoral losses in order to determine whether they were the product of 'partisan politics' or 'racial vote dilution', or 'built-in bias.'" LULAC, 999 F.2d at 853-54.

6. Applying this law, the Court finds no persuasive evidence to establish that § 2 of the Voting Rights Act mandates the creation of an Hispanic majority district in New Mexico. The third Gingles factor has not been established.

7. This Court is and should be reluctant to make radical or partisan changes unless the law requires these changes to be made.

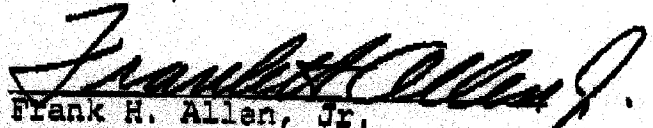
8. The current congressional plan or the Vigil Plan do not violate § 2 of the Voting Rights Act.

9. Each District should be as compact and contiguous to the extent possible and county and municipal boundaries should be kept intact to the extent possible.

10. When a court is required to redraw congressional districts due to an impasse between legislative and executive branches of government, the Court must apply neutral principles of law to his decision, Perrin v. Kitzhaber, Multnomah County Circuit Court, Oregon, Cause No. 0107-07021.

11. With the exception of the Vigil Plan, the realignment proposed by the other redistricting plans are not the type of plans that should be adopted by a Court exercising a limited role and applying neutral principles of law.

12. The Vigil Intervenors are to prepare the necessary Order with required attachments to implement this ruling and to put into effect this congressional districting plan for the primary and general elections.

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

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REBECCA VIGIL-GIRON, in her  
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Defendants.

ORDER RE: AMENDMENT TO THE COURT'S  
FINDING OF FACTS AND CONCLUSIONS OF LAW  
FILED JANUARY 2, 2002

It has been called to the Courts attention that although all of the parties have agreed that the current New Mexico congressional districts are malapportioned and therefore violate Art. I, § 2 of the Constitution of the United States, that a finding of facts and conclusions of law should indicate this. Therefore it is Ordered that the Court's Findings of Fact and Conclusions of Law shall be amended to add the following:

Additional Finding of Facts

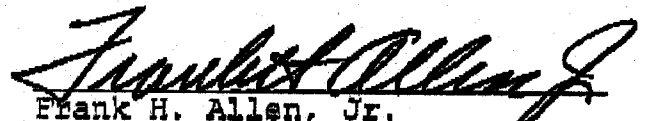
3A. The "ideal populations" (the total population of New Mexico according to the 2000 census divided by three) for congressional districts in New Mexico is 606,349. The current population, according to the 2000 census, of District 3 is 22,996 over the ideal population for that district. That is a deviation from the ideal population of 3.79 per cent. The current population of District 1 is 13,438 under the ideal population, for a

deviation from ideal of -2.2 per cent. Thus, the maximum deviation among the existing districts is 5.99 percent.

3B. In light of the deviations from the ideal population for New Mexico's congressional districts, based on the 2000 census, the current New Mexico congressional districts are malapportioned.

Additional Conclusions of Law

2A. The current New Mexico congressional districts violate Art. I, § 2 of the Constitution of the United States. The maximum deviation between the largest district and the smallest district is 5.99 per cent, which exceeds maximum deviations found to be unconstitutional under Art. 1, § 2. See Karcher v. Daggett, 462 U.S. 725, 730 (1983); Kirkpatrick v. Preisler, 394 U.S. 526, 531 (1969).

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

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