

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

NAVAJO NATION, a federally recognized Indian Tribe; NAVAJO NATION HUMAN RIGHTS COMMISSION; LORENZO BATES; JONNYE KAIBAH BEGAY; GLORIA ANN DENNISON; TRACY DEE RAYMOND; and BESSIE YAZZIE WERITO,

Plaintiffs,

v.

SAN JUAN COUNTY, NEW MEXICO; SAN JUAN COUNTY BOARD OF COMMISSIONERS; JOHN BECKSTEAD, in his official capacity as Chairman; TERRI FORTNER, in her official capacity as Commissioner; STEVE LANIER, in his official capacity as Commissioner; MICHAEL SULLIVAN, in his official capacity as Commissioner; GLOJEAN TODACHEENE, in her official capacity as Commissioner; and TANYA SHELBY, in her official capacity as County Clerk,

Defendants.

CIVIL NO. 1:22-cv-00095-JB-JFR

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFF
NAVAJO NATION HUMAN RIGHTS
COMMISSION [DKT. NO 100]**

Plaintiffs submit this response in opposition to Defendants' Motion to Dismiss: Rule 12(b)(1) Dismissal for Lack of Standing of Putative Plaintiff Navajo Nation Human Rights Commission. Plaintiff Navajo Nation Human Rights Commission ("NNHRC") has satisfied all pleading requirements to demonstrate standing, thus Defendants' motion should be denied as discussed below.

LEGAL STANDARD

"Rule 12(b)(1) motions generally take one of two forms: (1) a facial attack on the sufficiency of the complaint's allegations as to subject matter jurisdiction; or (2) a challenge to the actual facts upon which subject matter jurisdiction is based." *Ruiz v. McDonnell*, 299 F.3d 1173,

1180 (10th Cir. 2002). Here, though not explicitly stated, Defendants appear to mount a facial attack on the allegations in Plaintiffs' Complaint. *See* Dkt. No. 100, Motion at 3. (stating court must take allegations in complaint as true to assess standing). Accordingly, "a plaintiff is afforded safeguards similar to those provided in opposing a rule 12(b)(6) motion: the court must consider the complaint's allegations to be true." *Hill v. Vanderbilt Cap. Advisors, LLC*, 834 F. Supp. 2d 1228, 1241 (D.N.M. 2011).

ARGUMENT

I. DEFENDANTS' MOTION TO DISMISS THE NAVAJO NATION HUMAN RIGHTS COMMISSION HAS NO PRACTICAL OR LEGAL EFFECT ON THE LITIGATION AS DEFENDANTS DO NOT CHALLENGE THE OTHER PLAINTIFFS' STANDING.

Courts have consistently recognized that standing is satisfied so long as one party meets the requirements. *See, e.g., Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023) ("If at least one plaintiff has standing, the suit may proceed."); *Haaland v. Brackeen*, 143 S. Ct. 1609, 1632 n.5 (2023) ("Since Texas has standing to raise these claims, we need not address whether the individual petitioners also have standing to do so."); *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006) (adopting lower court's determination that "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement"); *Citizens for Const. Integrity v. United States*, 57 F.4th 750, 759 (10th Cir. 2023) ("If one appellant has standing, we need not worry about the standing of another appellant raising the same issues and seeking the same relief."); *Navajo Nation v. San Juan Cnty.*, 150 F. Supp. 3d 1253, 1260 n.5 (D. Utah 2015), *aff'd*, *Navajo Nation v. San Juan Cnty.*, 929 F.3d 1270 (10th Cir. 2019) (finding standing of individual plaintiffs alone "sufficient for the purposes of this suit"). Thus, where one plaintiff establishes standing, the standing of other plaintiffs is "immaterial to jurisdiction." *Jones v. Gale*, 470 F.3d 1261, 1265 (8th Cir. 2006) (internal quotation marks omitted).

Notably, Defendants only challenge the standing of NNHRC, and not any other Plaintiff. As set forth in the Complaint, the Navajo Nation and several individual plaintiffs also bring claims that Defendants violated Section 2 of the Voting Rights Act of 1965. For the reasons discussed below, NNHRC, and, by extension, the Navajo Nation itself, have *parens patriae* standing to bring suit on behalf of its citizens. Defendants say nothing about the standing of the Navajo Nation, or, in fact, anything about *parens patriae* standing. Regardless, the named individual plaintiffs have standing independent of NNHRC or the Navajo Nation, as Navajo members who vote in the contested County Commission districts. Because three individual plaintiffs reside and vote in District 2 and two individual plaintiffs reside and vote in District 1, *see* Dkt. No. 1, Compl. ¶¶ 15-19, they are directly injured by Defendants' violations of Section 2. Indisputably, these five individual plaintiffs have standing. *See Navajo Nation v. San Juan County*, 150 F. Supp. at 1260 (determining "all that is required for standing" is individual Plaintiffs residing in the district in question).

Accordingly, Defendants' motion is without merit and should be denied, as the standing of other plaintiffs in the case renders NNHRC's independent standing irrelevant.

II. AS AN AGENCY OF THE NAVAJO NATION GOVERNMENT WITH DELEGATED AUTHORITY TO PROTECT THE VOTING RIGHTS OF INDIVIDUAL NAVAJOS, NNHRC HAS *PARENS PATRIAE* STANDING TO ASSERT CLAIMS FOR THE BENEFIT OF THE NATION'S MEMBERS.

NNHRC is an arm of the Navajo Nation government with *parens patriae* standing to be a party to this action. As stated in the Complaint, NNHRC has a mission to:

address discriminatory actions against citizens of the Navajo Nation and to promote the cultural, economic, political and social welfare of citizens of the Navajo Nation. Citizens of the Navajo Nation include U.S. citizens who are registered to vote or are eligible to register to vote in San Juan County, New Mexico for federal, state and local elections. The voting strength of citizens of the Navajo Nation is diluted by the Section 2 violations alleged herein. Plaintiff

NAVAJO NATION HUMAN RIGHTS COMMISSION sues in a representational capacity on behalf of the affected citizens of the Navajo Nation it represents.

Dkt. No. 1, Compl. ¶ 14.

The Complaint is supported by the general structure of the Navajo Nation government and the specific authorities delegated to NNHRC. The Navajo Nation is a federally recognized tribe and sovereign government with a three-branch governmental structure. 2 Navajo Nation Code (N.N.C.) § 1. The Legislative Branch of the Navajo Nation consists of the Navajo Nation Council and any entity created by the Council. *Id.* § 101. The Navajo Nation Council as the governing body of the Nation passes legislation by resolution. *See id.* § 164(A). The Council created NNHRC within the Legislative Branch. *Id.* § 920. NNHRC operates under the Council's oversight to address discrimination against members of the Navajo Nation in accordance with its Plan of Operation and any applicable laws and regulations of the Navajo Nation. *Id.* §§ 921, 923. NNHRC's Plan of Operation was also adopted by the Navajo Nation Council. *See generally* Navajo Nation Council Res. CJN-15-08, 21st Navajo Nation Council (2008) (attached as Exhibit A).¹

Moreover, NNHRC is delegated by resolution the authority specifically “to represent the Navajo Nation in the 2021-2022 Congressional and State redistricting activities and recommend[] redistricting plans.” Naabik’íyáti’ Comm. Res. NABIJN-15-21, § 3 (2021) (attached as Exhibit B). The Resolution specifically directs NNHRC to:

¹ A court may take judicial notice of a fact that is not subject to reasonable dispute when it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Because resolutions of the Navajo Nation Council and its committees are formal legislative actions of the Navajo Nation, Plaintiffs respectfully request the Court to take judicial notice of the resolutions cited herein. Notably, Defendants also include a resolution of the Navajo Nation Council with its Motion, and also request the Court take judicial notice of it. Dkt. No. 100 at 6.

1. Improve/maintain the legislative districting in which the Navajo Nation is located and preserve a majority-minority standard;
2. Improve the Congressional districting in which the Navajo Nation is located;
3. Ensure that Navajo Nation communities remain intact in legislative districts and oppose cracking of such districts; and
4. Resist all efforts to dilute the strength of Navajo votes; ensure that Navajo voters are given a fair opportunity to elect candidates of their choice; and
5. Oppose retrogression; ensure that Navajo voting rights are protected and preserved.

Id.

Parens patriae standing enables a government to sue on behalf of its citizens. A party has *parens patriae* standing when it has an interest of its own that differs from private individuals' interests. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982). That interest is often referred to as a “quasi-sovereign” interest. *Id.* at 601.

The U.S. Supreme Court has determined that two types of quasi-sovereign interest exist. *Id.* at 607. One is the government's interest in the overall health and well-being of its residents. *Id.* While there is no finite list or definition of such a qualifying quasi-sovereign interest, it can include citizens' physical and economic well-being. *Id.* The other quasi-sovereign interest is “in not being discriminatorily denied its rightful status within the federal system.” *Id.*

NNHRC has *parens patriae* standing under the first category.² The Navajo Nation has a quasi-sovereign interest in the “health and well-being—both physical and economic—of its

² In their Motion, Defendants make no argument contesting NNHRC's *parens patriae* standing, instead arguing that NNHRC lacks associational standing. However, NNHRC fulfills that standard as well.

Absent an injury to itself, an organization can establish standing by demonstrating “that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2157 (2023). Here,

residents in general.” *Id.* NNHRC not only has an interest, but a legislatively-directed *duty*, in protecting Navajo members’ voting and redistricting interests. Voting and redistricting affect Navajo voters’—and their families’—physical and economic health and well-being, as Navajo voters in San Juan County elect County Commissioners who address such issues affecting Navajo citizens who reside in San Juan County. Any County Commission redistricting changes affecting Navajo voters’ ability to vote for a candidate of their choice, then, affects Navajo voters’ physical and economic health and well-being.

Consistent with this legislative mandate, NNHRC proposed a redistricting map for the San Juan County Commission to consider, which it did at a public meeting on November 30, 2021. Dkt. No. 1, Compl. ¶ 58. The Commissioners, on December 7, 2021, also heard public comment and comments from Defendants’ expert Rod Adair regarding NNHRC’s proposed plan. *Id.* ¶ 72. Although NNHRC performed its duty to advocate for Navajo voters’ interests by presenting a proposed plan to Defendants, Defendants ultimately did not adopt that plan. *Id.* ¶¶ 75-76. This litigation then became necessary to protect Navajo voters in San Juan County.

Finally, the remedies NNHRC requests, if the Court grants them, would directly affect NNHRC’s interest in ensuring that Defendants adopt a redistricting plan that does not dilute Navajo citizens’ votes and complies with Section 2 of the Voting Rights Act. *See* Dkt. No. 1, Compl. §§ VI(a)-(c). Therefore, NNHRC, by performing its mandated duty, has shown its interest

NNHRC has brought suit on behalf of members of the Navajo Nation who have suffered an injury-in-fact under Defendants’ violations of Section 2 of the Voting Rights Act. Because NNHRC is an entity within the Legislative Branch of the Navajo Nation government, the membership of NNHRC is comprised of the members of the Navajo Nation. As noted in the Complaint, NNHRC is an arm of the government that operates solely to protect the rights of the members of the Navajo Nation. Dkt. No. 1, Compl. ¶ 14. Finally, the claims raised and injunctive relief requested in the Complaint will benefit those Navajo members whether or not they are co-plaintiffs in the case.

in protecting San Juan County Navajo voters’ overall health and well-being, thus meeting the standard for *parens patriae* standing.

The Supreme Court and this Court further require that, for a sovereign to have *parens patriae* standing, “more must be alleged than injury to an identifiable group of individual residents[;] the harm must affect a substantial segment of [the] population.” *Navajo Nation v. Wells Fargo & Co.*, 344 F.Supp.3d 1292, 1311 (D.N.M. 2018) (internal quotation marks omitted) (quoting *Snapp*, 458 U.S. at 607). The Navajo voting-age population (NVAP) in San Juan County forms a substantial segment of the total Navajo Nation population. According to the 2020 Census, there were 34,663 American Indians of voting age in San Juan County. Dkt. No. 1, Compl. ¶ 41. Almost all of such American Indians are Navajo—more than 31,000. *See id.* ¶¶ 31-32. The more than 31,000 Navajo voters in San Juan County certainly qualify as a substantial segment of the Navajo Nation’s population. The harm alleged in the Complaint thus affects a substantial segment of the population, and NNHRC has *parens patriae* standing.

Finally, the *Snapp* Court offered additional guidance in assessing whether a sovereign has *parens patriae* standing:

[o]ne helpful indication in determining whether an alleged injury to the health and welfare of its citizens suffices to give the State standing to sue as *parens patriae* is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers.

Snapp, 458 U.S. at 607.

As noted above, the Navajo Nation’s lawmaking body delegated its authority to NNHRC to act as the Navajo Nation’s representative on voting and redistricting matters. *See* Naabik’íyáti’ Comm. Res. NABIJN-15-21 (2021), Ex. B. Further, the Navajo Nation Council as the governing body of the Navajo Nation can and does pass laws to protect the voting rights of its members. *See*,

e.g., Navajo Nation Election Code, 11 N.N.C. §§ 1 *et seq.* As a governmental entity created generally to protect the interests of its members, and specifically for voting and redistricting matters, NNHRC meets the pleading requirements for *parens patriae* standing.

CONCLUSION

Plaintiff NNHRC has alleged sufficient facts to demonstrate that it has standing and this court has jurisdiction over the asserted claims. For the foregoing reasons, Plaintiffs respectfully submit that this Court should deny Defendants' Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 24th day of July, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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