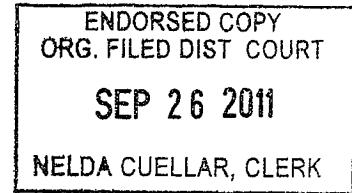


STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT



JONATHAN SENA, DON BRATTON, CARROLL LEAVELL AND GAY KERNAN

Plaintiffs,

v.

DIANA DURAN, in her official capacity as Secretary
of State for the State of New Mexico and SUSANA
MARTINEZ, in her official capacity as Governor
of the State of New Mexico,

Defendants.

CW 2011-913
William G. W. Shoobridge

**COMPLAINT FOR CONSTITUTIONAL
AND CIVIL RIGHTS VIOLATIONS FOR THE MALAPPORTIONMENT
OF POLITICAL DISTRICTS IN NEW MEXICO**

JONATHAN SENA, DON BRATTON, CARROLL LEAVELL AND GAY
KERNAN (collectively, the "Plaintiffs"), for their Complaint allege as follows:

1. This is a civil action for injunctive and declaratory relief to achieve lawful redistricting in the three districts of the United States House of Representatives in New Mexico ("US House"), the forty-two districts of the New Mexico State Senate ("State Senate"), the seventy districts of the New Mexico State House of Representatives ("State House") and the five districts of the New Mexico Public Regulation Commission ("PRC").

2. This action is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Voting Rights Act of 1965, 42 U.S.C. Section 1973, the civil rights provisions of 42 U.S.C. Sections 1983 and 1988, and the Equal Protection Clause contained in Article II, Section 18 of the New Mexico

Constitution.

3. Plaintiff Jonathan Sena is a registered voter in the State of New Mexico who resides in Lea County, New Mexico.

4. Plaintiff Don Bratton is a member of the New Mexico House of Representatives and is a registered voter in the State of New Mexico who resides in Lea County, New Mexico.

5. Plaintiff Gay Kernan is a member of the New Mexico State Senate and is a registered voter in the State of New Mexico who resides in Lea County, New Mexico.

6. Plaintiff Carroll H. Leavell is a member of the New Mexico Senate and is a registered voter in the State of New Mexico who resides in Lea County,

7. Plaintiffs bring this action against the Governor and Secretary of State of New Mexico, in their official capacities.

8. Defendant Susana Martinez is the Governor of the State of New Mexico. As the chief executive officer of the State, she has the power to call the Legislature into session and to approve or veto redistricting legislation, among other things, and she is charged with the duty of faithfully executing the laws of the State.

9. Defendant Diana J. Duran is the Secretary of State of the State of New Mexico, and as such serves as the chief election officer of the state.

10. Every ten years, the United States Census Bureau conducts a census throughout the United States pursuant to Article I, Section 2 of the Constitution of the

United States. The latest census was conducted in the year 2010. A primary purpose of the decennial census is to provide data for reapportioning the 435 seats in the U.S. House among the fifty states, for reapportioning seats in state legislative bodies and for reapportioning other elected political bodies.

11. According to the 2010 census, the population of the State of New Mexico has grown, changed in demographics and shifted in locations substantially since the 2000 census and the redistricting attendant to that census.

12. The ideal population for each U.S. House district under the 2010 census is 698,637. New Mexico's three U.S. House districts are, under the current redistricting plan, unconstitutionally malapportioned.

13. New Mexico's State House districts, State Senate districts and PRC districts are, under their current redistricting plans, also unconstitutionally malapportioned.

14. The State of New Mexico has not created districts for these offices after the 2010 census, so the districts are not in compliance with federal "one- person, one- vote" constitutional requirements, *Reynolds v. Sims*, 377 U.S. 533 (1964), and the Federal Voting Rights Act (42 U.S.C. §§ 1971, 1973 to 1973bb-1).

15. The U.S. House districts, the State Senate districts, the State House districts and the PRC districts must be reapportioned pursuant to the 2010 census.

16. If new and lawful districts not be speedily redrawn in New Mexico, many New Mexico citizens will suffer dilution of their vote in the 2012 elections. At this time,

New Mexico Legislative, PRC and U.S. House of Representatives districts across the state contain substantial and sometimes dramatic population variances due both to growth in the population of the state overall and to shifts in state population.

16. Voting disparities of the magnitude shown in New Mexico legislative districts, congressional districts and PRC districts will injure Plaintiffs because of the vote dilution, vote disparity and the resulting violation of civil rights.

17. The Fiftieth New Mexico Legislature convened in its First Special Session in September, 2011, specifically to address redistricting (the "Special Session"). Among other matters, the Special Session was held to accomplish the redistricting of New Mexico legislative districts, PRC districts and U.S. House of Representatives districts. During the Special Session, among other activity, the New Mexico Legislature passed bills providing for:

A) Redistricting the State Senate districts (Senate Bill 33);

B) Redistricting the State House districts (House Voters and Elections Committee Substitute for House Bill 39); and

C) Redistricting the PRC (Senate Bill 24/A).

18. The New Mexico Legislature enacted no bill whatsoever providing for redistricting of the U.S. House districts in New Mexico.

19. The Special Session has now been adjourned *sine die*.

20. The Governor of the State of New Mexico has publically indicated that she


will veto Senate Bill 33, House Voters and Elections Committee Substitute for House Bill 39 and Senate Bill 24/A.

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Assume jurisdiction over this action;
- B. Rule unconstitutional, and issue preliminary and permanent injunctions restraining Defendants from using, the current districting plans for the New Mexico districts of the United States House of Representatives, the New Mexico Senate, the New Mexico House of Representatives and the New Mexico Public Regulation Commission in any future election;
- C. Issue a final judgment establishing a lawful redistricting plan for the New Mexico districts of the United States House of Representatives, the New Mexico Senate, the New Mexico House of Representatives and the Public Regulation Commission to be operative until and unless a lawful redistricting plan is enacted by the New Mexico Legislature and signed into law by the Governor;
- D. Award Plaintiffs damages and nominal damages for, among other matters, violation of their civil and constitutional rights;
- E. Award Plaintiffs their lawful fees and costs of suit, including attorney fees under 42 U.S.C. §1983, 42 U.S.C. § 1988, 42 U.S.C. §1973; and
- F. Grant such other and further relief as the Court deems proper.

Respectfully Submitted,

**MODRALL, SPERLING, ROEHL, HARRIS AND
SISK, P.A.**

By: 

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