

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

BRIAN F. EGOLF, JR., HAKIM BELLAMY, )  
MEL HOLGUIN, MAURILIO CASTRO, and )  
ROXANE SPRUCE BLY, )

Plaintiffs, )

v. )

DIANNA J. DURAN, in her official capacity as )  
New Mexico Secretary of State, SUSANA )  
MARTINEZ, in her official capacity s New )  
Mexico Governor, JOHN A. SANCHEZ, in his )  
official capacity as New Mexico Lieutenant )  
Governor and presiding officer of the New )  
Mexico Senate, TIMOTHY Z. JENNINGS, in )  
his official capacity as President Pro-Tempore )  
of the New Mexico Senate, and BEN LUJAN, )  
SR., in his official capacity as Speaker of the )  
New Mexico House of Representatives, )

Defendants. )

NO. D-101-CV-2011-02942

CONSOLIDATED WITH:

D-101-CV-2011-02944

D-101-CV-2011-02945

D-101-CV-2011-03016

D-101-CV-2011-03099

D-101-CV-2011-03107

D-202-CV-2011-09600

D-506-CV-2011-00913

**LEGISLATIVE DEFENDANTS' PRETRIAL BRIEF  
CONCERNING REDISTRICTING OF  
THE NEW MEXICO PUBLIC REGULATION COMMISSION**

Prior to the trial for redistricting the New Mexico House of Representatives, Legislative Defendants submitted to the Court their *Omnibus Pretrial Brief*, which sets forth the legal principles and factual considerations that should guide the Court's decision-making throughout all of these consolidated redistricting cases. The discussion contained in that brief is hereby incorporated herein by reference. Legislative Defendants submit this Pretrial Brief to preview for the Court the evidence to be presented at the trial for redistricting the New Mexico Public Regulation Commission (PRC), in support of their position that the Court should adopt the Legislature's passed PRC plan.

**I. The Legal Standards and Districting Principles that Applied to Redistricting the New Mexico Legislature also Apply to Redistricting the PRC.**

The PRC was created by the New Mexico Constitution. N.M. Const., Art XI, § 1. The Commission consists of five (5) Commissioners elected from five single-member districts. *Id.* The PRC is charged with a multitude of responsibilities, including chartering and regulating business corporations, and regulating public utilities, transportation companies, telecommunications companies, and insurance companies. *Id.* at Art. XI, § 2.

Because PRC Commissioners are popularly elected government officials, the districting of the PRC is subject to the same one-person, one-vote constraints as the state legislature and other state and local governmental bodies. *See Hadley v. Junior College District of Metro. Kansas City*, 397 U.S. 50, (1970) (holding that “as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions” the one-person, one-vote principles articulated in *Reynolds v. Sims* apply). Section 2 of the Voting Rights Act also applies to the PRC redistricting. 42 U.S.C. § 1973; *Bradley v. Work*, 916 F. Supp. 1446, 1454 (S.D. Ind. 1996) *aff’d*, 154 F.3d 704 (7th Cir. 1998) (Section 2 “extends to all popular elections, and the corresponding nomination process, of representatives of the people” and a “representative has been defined as anyone selected or chosen by popular election from among a field of candidates to fill an office.”)

**II. The Legislature’s PRC Plan is Fair, Complies with all Legal Requirements, Follows Traditional Districting Principles, and Reflects the Will of the People.**

The evidence at trial will show that the Legislature’s passed PRC plan complies with legal requirements, considers and balances the concerns of citizens around the state of New Mexico, promotes legitimate and rational state policy, promotes partisan fairness, and comports with traditional redistricting criteria.

The Court has now heard in both the State House and Senate trials extensive testimony about the public and transparent approach to redistricting that the Legislature undertook over the course of many months in the interim and during the 2011 Special Session. At the PRC trial, the Court will hear that this same approach was used for redistricting the PRC. During the 2011 Special Session, the Legislature developed a redistricting plan for the PRC, SB 24, which passed both houses of the Legislature and was vetoed by the Governor. At trial, the Legislative Defendants will demonstrate that SB 24 appropriately takes into account the public input garnered through that process and permissibly and legitimately uses deviations well within an overall range of ten percent to unite counties and municipalities, to respect geographic boundaries and communities of interest, and to accommodate other neutral redistricting criteria.

In particular, the evidence will show that the Legislature's plan splits fewer incorporated municipalities than any other plan before the Court. This feature of the Legislature's plan respects and balances the wishes of the citizenry, as expressed at public hearings held around the state in the summer prior to the special session, that their communities and municipalities remain unified. Additionally, the Legislature's district line separating District 1 from Districts 3 and 4 in Albuquerque closely follows the Rio Grande River, thereby attempting to accommodate the expressed wishes of citizens residing west of the river that their communities be recognized as being distinct from communities on the east side of the river. The Legislative Defendants' map also contains fewer county splits than the current map.

The evidence will also demonstrate that the plan complies with the Voting Rights Act and respects Native American and Hispanic communities of interest. Currently, the five PRC districts include one majority Hispanic VAP district and three majority-minority districts. The Legislature's PRC plan maintains the Hispanic VAP majority district, and contains three

majority-minority districts. One district in the Legislature's plan, District 4, contains 30.6% Native American VAP. This plan very nearly comports with the Navajo Nation's proposed Native American VAP percentage for District 4, which is 31.3%.

The evidence will also show that the Legislature's plan contains one incumbent pairing, involving two Democratic Commissioners, one of whom is ineligible for reelection in the next cycle due to term limits. This pairing allows the Legislature to better respect communities of interest on Albuquerque's Westside and does not result in any partisan gain for either party. In addition, the evidence will show that the current PRC map contains four Democratic-leaning and one Republican-leaning district. The Legislature's PRC plan maintains that same configuration.

The plan's overall deviation is 8.6%, which is a presumptively constitutional "minor deviation" that constitutes "substantial equality" under well-established U.S. Supreme Court precedent. *See Brown v. Thomson*, 462 U.S. 835, 842 (1983) (overall deviations below ten percent are minor and do not by themselves trigger a state's burden to justify them); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (requiring "substantial equality of population among the various districts" and recognizing that flexibility is needed for state legislative redistricting). The Court will hear evidence that the Legislature used minor population deviations to accommodate important and neutral redistricting goals. Furthermore, this Court is neither required nor compelled to achieve lower population deviations and is instead entitled and compelled to adopt a plan which accommodates legitimate policy choices made by the people's elected representatives, *see generally, Legislative Defendants' Post-Trial Brief for Redistricting of the State House of Representatives*, at pp. 23-28. Additionally, the Court should not adopt a plan with *de minimis* deviations, as to do so would represent a drastic change in New Mexico's established redistricting policy. *Id.* at 31-34.

**III. The Legislature's Passed Plan, Unlike Any Other Plan, is Entitled to Thoughtful Consideration by the Court.**

Finally, as in the House and Senate trial, the Legislative Defendants will show that the Court should give thoughtful consideration to the Legislature's PRC plan, as it was developed through the public process which reflects the will of the people, expressed through their elected representatives. Because the Legislature's plan is fair, complies with all legal requirements, and adheres to the neutral Redistricting Guidelines adopted unanimously by the bi-partisan Legislative Council, thoughtful consideration counsels that the Court is bound to adopt the Legislature's PRC plan.

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## CERTIFICATE OF SERVICE

I hereby certify that on January 6<sup>th</sup>, 2012, I caused a true and correct copy of LEGISLATIVE DEFENDANTS' PRETRIAL BRIEF CONCERNING REDISTRICTING OF THE NEW MEXICO PUBLIC REGULATION COMMISSION to be e-mailed to all parties or counsel of record as follows, along with this Certificate of Service to be filed electronically through the Tyler Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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