

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

BRIAN EGOLF, HAKIM BELLAMY, MEL HOLGUIN,
MAURILIO CASTRO, and ROXANE SPRUCE BLY,

Plaintiff-Petitioners,

v.

NMSC No. _____

D101-CV-2011-02942
D101-CV-2011-02944
D101-CV-2011-02945
County of Santa Fe
First Judicial District Court

DIANNA J. DURAN, in her official capacity as New Mexico Secretary of State,
SUSANA MARTINEZ, in her official capacity as 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, JR., in his official capacity as Speaker of the
New Mexico House of Representatives,

Defendant-Respondents.

JONATHAN SENA, DON BRATTON,
CARROLL LEAVELL AND GAY KERNAN,

Plaintiffs-Real Parties in Interest,

v.

D-506-CV-201100913
County of Lea
Fifth Judicial District Court

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-Real Parties in Interest.

REPRESENTATIVE CONRAD JAMES,
DEVON DAY, MARGE TEAGUE,
MONICA YOUNGBLOOD, JUDY
McKINNEY, and SENATOR JOHN RYAN,

Plaintiffs-Real Parties in Interest,

v.

D-202-CV-2011-09600
County of Bernalillo
Second Judicial District Court

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

Defendants-Real Parties in Interest.

**PLAINTIFF-PETITIONERS' EMERGENCY PETITION FOR WRIT OF
SUPERINTENDING CONTROL AND APPLICATION FOR RELIEF**

Petition for Writ of Superintending Control from the First Judicial District Court
County of Santa Fe
The Honorable Barbara J. Vigil; D101-CV-2011-02942
The Honorable Raymond Z. Ortiz; D101-CV-2011-02944 & D101-CV-2011-02945

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I. Introduction.

1. Petitioners are Plaintiffs in three separate lawsuits that are now pending in the First Judicial District in which Plaintiffs seek to accomplish constitutional redistricting of the New Mexico House of Representatives, the New Mexico Senate, and New Mexico's Congressional Districts.¹

2. In addition to the three lawsuits filed by these Petitioners, other plaintiffs have filed two other lawsuits of which Petitioners are presently aware also seeking redistricting that are now pending in the Second and Fifth Judicial Districts. *See James v. Duran*, D-202-CV-2011-09600 (Second Jud. Dist., filed Sept. 25, 2011), attached as Ex. D; *Sena v. Duran*, D-506-CV-2011-00913 (Fifth Jud. Dist., filed Sept. 26, 2011), attached as Ex. E.

3. Petitioners are before the Supreme Court seeking a writ of superintending control to consolidate in one judicial district, before one judge, all pending redistricting cases, as well as any future redistricting cases filed.

II. Jurisdiction of this Court.

¹ *See* Plaintiffs' Complaint for Injunctive and Declaratory Relief for Redistricting of the New Mexico Senate, filed Sept. 26, 2011, D101-CV-2011-02942, before the Honorable Barbara J. Vigil, attached as Ex. A; Plaintiffs' Complaint for Injunctive and Declaratory Relief for Redistricting of the New Mexico Federal Congressional Districts, filed Sept. 26, 2011, D101-CV-2011-02944, before the Honorable Raymond Z. Ortiz, attached as Ex. B; Plaintiffs' Complaint for Injunctive and Declaratory Relief for Redistricting of the New Mexico House of Representatives, filed Sept. 26, 2011, D101-CV-2011-02945, before the Honorable Raymond Z. Ortiz, attached as Ex. C.

4. Petitioners here, Plaintiffs in the district court, invoke the jurisdiction of this Court pursuant to Article VI, Sections 3 and 15 of the New Mexico Constitution, NMSA 1978, §§ 44-2-1 to 44-2-14 (1953), Rules 1-088 and 1-042 NMRA, and Rule 12-504 NMRA.

III. The Parties.

5. Petitioners are all registered voters in the State of New Mexico. Brian Egolf is a registered voter and a member of the New Mexico House of Representatives; Hakim Bellamy is a registered voter who resides in Bernalillo County and is identified as an African American by the Bureau of Census standards; Mel Holguin is a registered voter who resides in Dona Ana County and is identified as Hispanic/Latino; Maurilio Castro is a registered voter who resides in Dona Ana County and is identified as Hispanic/Latino; and Roxane Spruce Bly is a registered voter who resides in Bernalillo County and is identified as an American Indian. *See* Plaintiffs' Complaints, attached as Exhs. A, B & C.

6. Respondents, Defendants in the district court, are Diana J. Duran, in her official capacity as Secretary of State; Susana Martinez, in her official capacity as Governor of New Mexico; John A. Sanchez, in his official capacity as New Mexico Lt. Governor; Timothy Z. Jennings, in his official capacity as President Pro-Tempore of the New Mexico Senate; and Ben Lujan, in his official capacity as Speaker of the New Mexico House of Representatives. Their responsibilities

include the conduct of elections and compliance with the requirements of the United States and New Mexico Constitutions to ensure that the apportionment of legislative and congressional districts are within constitutional standards. All of their respective offices are located in Santa Fe County, Santa Fe, New Mexico.

IV. The Pending Lawsuits.

7. Petitioners' Complaint for Redistricting of the New Mexico Senate, D101-CV-2011-02942, is pending before the Honorable Barbara J. Vigil in the First Judicial District. *See* Ex. A, attached. Petitioners' Complaints for Redistricting the New Mexico Federal Congressional Districts, D101-CV-2011-02944, and for Redistricting the New Mexico House of Representatives, D101-CV-2011-02945, are pending before the Honorable Raymond Z. Ortiz in the First Judicial District. *See* Exhs. B & C, attached.

8. In addition to these three lawsuits, other plaintiffs have filed in other judicial districts. Pending before the Honorable Beatrice Brickhouse in the Second Judicial District is the redistricting case of *James v. Duran*, D-202-CV-2011-09600 (Second Jud. Dist., filed Sept. 25, 2011), attached as Ex. D. Pending before the Honorable William G. W. Shoobridge in the Fifth Judicial District is the redistricting case of *Sena v. Duran*, D-506-CV-2011-00913 (Fifth Jud. Dist., filed Sept. 26, 2011), attached as Ex. E.

9. In all five cases, the plaintiffs are seeking the same or similar redistricting relief. Petitioners are unaware of any other pending redistricting cases but anticipate that it is possible that other redistricting cases will be filed.

V. Necessity for a Writ of Superintending Control.

10. Notwithstanding the results of the 2010 Census, which establishes that there is malapportionment of electoral districts in the New Mexico State House, State Senate and in the districts for United States Congress if lawful redistricting does not occur, the New Mexico Legislature and the Governor of New Mexico have failed to adopt any redistricting plans for any districted, elective offices. As a consequence, Petitioners here and the plaintiffs in the other two cases identified in this Petition have turned to the New Mexico courts to accomplish the constitutionally-required reapportionment, necessary to effectuate their rights to equally apportioned electoral districts under the New Mexico and United States Constitutions. *See Baker v Carr*, 369 U.S. 186 (1962) (providing courts have jurisdiction to consider constitutional challenges to redistricting).

11. The pendency of at least five redistricting cases in at least three different judicial districts in front of four different judges undeniably necessitates consolidation before a single judge in a forum where venue lies and in a location that is reasonably convenient to the parties and their counsel. Consolidation will promote convenience and efficiency to the courts and the parties and will prevent

inconsistent results that, in the reapportionment context, would create a chaotic situation in which there could be multiple, conflicting redistricting plans.

12. As a consequence, Petitioners seek a writ of superintending control from this Court to consolidate all of the foregoing redistricting complaints, along with any other redistricting complaints that have or may be filed in any New Mexico judicial district. Because New Mexico's venue statute, NMSA 1978, § 38-3-1 (1988), provides that venue is appropriate in the First Judicial District for lawsuits brought against State officers, petitioners respectfully request that this Court consolidate all cases in the First Judicial District Court.

13. Although consolidation in the First Judicial District is appropriate under New Mexico's venue statute, it is also appropriate because the First Judicial District is a convenient forum and located at the seat of State government. It is convenient because all the lawyers in all the pending cases are from either Santa Fe or Albuquerque.

VI. Basis for the Writ.

14. The Constitution of the State of New Mexico provides that:

The supreme court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions, and shall have a superintending control over all inferior courts; it shall also have power to issue writs of mandamus, error, prohibition, habeas corpus, certiorari, injunction and all other writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same. Such writs may be issued by direction of the court, or by any justice thereof.

N.M. Const., art. VI, § 3. This Court has the power to grant the relief requested. “[T]he power of superintending control is an extraordinary power. It is hampered by no specific rules or means for its exercise.” *In re Extradition of Martinez*, 2001-NMSC-009, ¶ 12, 130 N.M. 144, 20 P.3d 126 (quoting *Albuquerque Gas & Elec. Co. v. Curtis*, 43 N.M. 234, 236, 89 P.2d 615, 616 (1939)). The writ of superintending control is “one of sound judicial discretion, to be granted or withheld according to the circumstances of each particular case, to be used with great caution for the furtherance of justice when none of the ordinary remedies provided by law are applicable.” *Id.* (quoted authority omitted); see *Jones v. Murdoch*, 2009-NMSC-002, ¶ 17, 145 N.M. 473, 200 P.3d 523 (providing the Court exercises its power of superintending control when the matter is of the most urgent nature). Pursuant to this constitutional grant of jurisdiction, this Court’s “power of superintending control is the power to control the course of ordinary litigation in inferior courts.” See *State v. Roy*, 40 N.M. 397, 422, 60 P.2d 646, 661 (1936).

15. The power of superintending control is meant to address issues of significant interest and importance to the public, to prevent costly delays in litigation, to manage, control and guide the judicial process, and to protect parties from unusual burdens of expense and hardship. See *Dist. Ct. of the Second Jud. Dist. v. McKenna*, 118 N.M. 402, 406, 881 P.2d 1387, 1391 (1994) (granting writ

on basis of Court's power to control ongoing litigation and in light of the "matters of significant public interest" at stake); *State ex rel. Transcontinental Bus Serv., Inc. v. Carmody*, 53 N.M. 367, 378, 208 P.2d 1073, 1080 (1949) (exercising writ "to prevent irreparable mischief, great, extraordinary, or exceptional hardship, costly delays and unusual burdens of expense"). In the redistricting matters before this Court, a writ of superintending control is the only plain, speedy, and adequate remedy available to Plaintiffs to accomplish the orderly and efficient judicial resolution of the important matters raised by these redistricting lawsuits.

16. In 2001, this Court granted a similar request for a writ of superintending control when multiple lawsuits followed the failure of the Legislature and the then-Governor to agree on redistricting. *See* Order Granting Writ of Superintending Control, NMSC No. 27,241, Dec. 4, 2001, attached as Ex. F (granting Writ of Superintending Control in the redistricting case of *Jepsen v. Quintana*). As was the case in 2001, there is now no "plain, speedy, and adequate remedy" other than by issuance of the writ. *See Jones*, 2009-NMSC-002, ¶ 17 (providing Court exercises its power of superintending control when "there is no plain, speedy, and adequate remedy"). A writ of superintending control is proper for the purpose of consolidating all redistricting proceedings throughout the State into one judicial district before one judge appointed by this Court.

VII. Grounds for Extraordinary Relief.

17. Petitioners request that the Court exercise its extraordinary powers to consolidate all redistricting proceedings before one judge in the most convenient and appropriate forum, the First Judicial District Court, in Santa Fe, New Mexico. The paramount reason to consolidate all of the redistricting litigation is to avoid inconsistent results. In addition, there are practical considerations that favor consolidation including location, convenience, judicial economy, and the avoidance of costly delays and hardship to all of the parties. Practical considerations and New Mexico's venue statute militate in favor of consolidating the litigation in New Mexico's First Judicial District. *See* § 38-3-1. Because the prompt redrawing of new constitutional boundaries for congressional and state electoral districts is of paramount importance, the exercise of this Court's extraordinary powers through a writ of superintending control is necessary to consolidate the redistricting cases filed among different judicial districts in New Mexico.

18. There is no plain, speedy, and adequate remedy available to Petitioners because there are now a number of redistricting complaints filed in different jurisdictions before different district courts. The rule governing consolidation, Rule 1-042, governs cases filed in the same judicial district and is silent, and therefore does not directly provide for, consolidating cases that are filed in

different judicial districts. The Rule, however, is instructive insofar as it provides that in actions involving a common question of law or fact a court may order a joint hearing or trial of any or all the matters in issue in the actions, and may order all the actions consolidated, and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. *See* Rule 1-042(A). “[T]he purpose of Rule 1-042(A) is to ‘avoid unnecessary costs or delay’” and to “‘expedite litigation and decrease the expense thereof.’” *Roark v. Farmers Group, Inc.*, 2007-NMCA-074, ¶ 53, 142 N.M. 59, 162 P.3d 896 (quoting *Vargas v. Clauser*, 62 N.M. 405, 410, 311 P.2d 381, 384 (1957)).

19. Because the redistricting matters here all pertain to the same Defendants, regard the same subject matter, the same legal issues, and require substantially the same general character of evidence, it is in the best interests of both the litigants, the public and the judiciary for the Court to exercise its powers of superintending control to consolidate all actions before one court in one judicial district.² The attached complaints amply demonstrate the commonality of the claims, evidence and relief sought. *See* Rule 1-042(A) (requiring “a common question of law or fact”); Exhs. A-E.

20. While courts are asked to weigh “the interest of judicial economy against

² The suits filed in the Second and Fifth Judicial Districts also involve the PRC; however, consolidation continues to be warranted as the trial concerning the PRC redistricting can be held immediately following the trials concerning Congress and the State House and Senate. *See* Exhs. D & E.

the potential for delay, confusion, and prejudice that may result from consolidation,” *Cienega Gardens v. United States*, 62 Fed. Cl. 28, 31 (2004), here the only potential for delay, confusion or prejudice will be if the actions are not consolidated. The difficulties and likely attendant delays in scheduling for defendants (who would have to defend in three far-flung districts), and the potential for inconsistent redistricting outcomes as a result of different trials in different districts would create confusion, delay and likely lack of respect for the judicial outcomes.

21. Because our venue statute states that suits against any state officers are properly brought in the court of the county in which their offices are located, or at the capital, *see* § 38-3-1, and all defendants in every filed case are State officers who have their principal offices in Santa Fe, the most convenient and cost effective forum for these proceedings is in Santa Fe, the capital.

22. This Court has previously consolidated similar cases filed in different judicial districts under its power of superintending control, *see In re N.M. Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 3, 140 N.M. 879, 149 P.3d 976 (stating the three class action cases at issue were consolidated by a writ of superintending control issued by the New Mexico Supreme Court), and the redistricting matters now spread throughout the State are of significant public

interest warranting expeditious review in one forum.³

23. Consolidation of all cases into one convenient forum before one judge will ensure our State's efforts to redistrict itself. Delays or failures to timely adjudicate our redistricting issues, whether in our Legislature or State courts, affects qualifying deadlines, primaries and elections, inter alia, and can result in the current redistricting issues being decided by our Federal courts. *See Grove v. Emison*, 507 U.S. 25, 33-34 (1993) (providing the states have the primary duty and responsibility to perform redistricting, and federal courts must defer their action when a State, through its legislative or judicial branch, has begun in timely fashion to address the issues); *Branch v. Smith*, 538 U.S. 254, 261-62 (2003) (same).

24. Just as this Court determined that the consolidation of all redistricting proceedings before one court was proper for all of the redistricting matters in 2001, so too is consolidation proper to accomplish redistricting now, in response to this decade's census. Because redistricting matters are primarily the duty and responsibility of the State, and are best resolved in our State courts, the prompt consolidation of these cases before one State court is essential to ensure that the Federal courts abstain or defer to our State-court redistricting proceedings.

³ The Chief Justice of this Court has the power to appoint a judge to oversee these proceedings. *See* N.M. Const., art. VI, § 15 (“Whenever the public business may require, the chief justice of the supreme court shall designate any district judge of the state, or any justice of the supreme court when no district judge may be available within a reasonable time, to hold court in any district”); Rule 1-088 NMRA (rule for designating judges).

VIII. Prayer for Relief.

25. Petitioners pray that this Court:

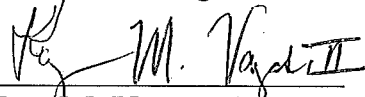
(a) Expedite consideration of this matter, issue a Writ of Superintending Control to consolidate all redistricting proceedings in the First Judicial District, in Santa Fe, New Mexico, appoint one judge to preside over all redistricting proceedings, and direct that the judge appointed proceed with the trials of these matters;

(b) Enter an order requiring that any future complaints raising redistricting claims be consolidated with these five complaints before the same judge in the First Judicial District Court in Santa Fe, New Mexico; and

(c) Order such further relief as this Court deems necessary and appropriate.

Respectfully submitted,

Garcia & Vargas, LLC



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I hereby certify that on September 29, 2011, a copy of this pleading was served by hand delivery on:

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411 State Capitol, Room No. 105
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Governor of the State of New Mexico
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John A. Sanchez
Lieutenant Governor of the State of New
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Ben Lujan
Speaker of the New Mexico House of
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I hereby certify that on September 29, 2011, a copy of this pleading was served by U.S. Mail on:

The Honorable Barbara J. Vigil
New Mexico First Judicial District Court
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The Honorable Raymond Z. Ortiz
New Mexico First Judicial District Court
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P.O. Box 2268
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The Honorable Beatrice Brickhouse
New Mexico Second Judicial District Court
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The Honorable William G. W. Shoobridge
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Duran, D-506-CV-2011-00913*

By:



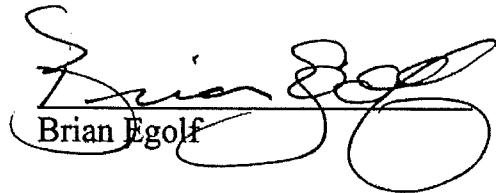
Ray M. Vargas, II

VERIFICATION

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

I, Brian Egolf, pursuant to Rule 12-504 NMRA, state that I am the Petitioner in this case, have read the foregoing Petition, and acknowledge that the statements contained in the Petition are true and correct to the best of my knowledge, information and belief.

Dated September 29, 2011.


Brian Egolf

ENDORSED
First Judicial District Court



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

SEP 26 2011
Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268



NO. D101 CV 2011 D2942

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

Plaintiffs,

vs.

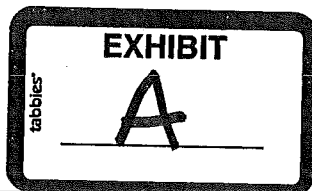
**DIANNA J. DURAN, in her official
capacity as New Mexico Secretary of State,
SUSANA MARTINEZ, in her official capacity as New Mexico Governor,
JOHN A. SANCHEZ, in his official capacity as New Mexico Lieutenant
Governor and presiding officer of the New Mexico Senate,
TIMOTHY Z. JENNINGS, in his official 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.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
FOR REDISTRICTING OF THE NEW MEXICO SENATE**

JURISDICTION, VENUE AND PARTIES

1. This is a civil action for injunctive and declaratory relief to achieve a lawful redistricting of the 42 districts for the New Mexico Senate.
2. This action is brought pursuant to this court's original jurisdiction under Art. VI, § 13, of the New Mexico Constitution, the equal protection clauses of Art. II, § 18, of the New Mexico Constitution and the Fourteenth Amendment to the United States Constitution, the Voting Rights Act of 1965, 42 U.S.C. § 1973, and the civil rights provisions of 42 U.S.C. Secs. 1983 and 1988.
3. Plaintiff Brian Egolf is a registered voter in the State of New Mexico and a member of the New Mexico House of Representatives.
4. Plaintiff Mel Holguin is a registered voter in the State of New Mexico who resides in



Dona Ana County, New Mexico, and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

5. Plaintiff Hakim Bellamy is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico, and is identified as African American, a racial minority, by Bureau of Census standards.

6. Plaintiff Maurilio Castro is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

7. Plaintiff Roxane Spruce Bly is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico, and is identified as American Indian, an ethnic minority, by Bureau of Census standards.

8. Defendant Dianna Duran is the duly elected Secretary of State of New Mexico, with offices at the seat of State government in Santa Fe County, New Mexico. As the chief election officer of the State, as provided in NMSA 1978, Secs. 1-2-1, et seq., she is the State official charged with the responsibility of administering the Election Code and ensuring that elections within the State are conducted in a fair and lawful manner. As such, she is named as a defendant in her official capacity.

9. Defendant Susana Martinez is the duly elected Governor of New Mexico. As the chief executive officer of the State of New Mexico, she has the power to call the legislature into session, to approve or veto redistricting legislation, and is obligated to faithfully execute the laws of the State.

10. Defendant John Sanchez is the Lieutenant Governor of New Mexico. He acts as a presiding officer of the New Mexico Senate.

11. Defendant Timothy Jennings is the President Pro-Tempore of the New Mexico Senate. He acts as a presiding officer of the New Mexico Senate.

12. Defendant Ben Lujan, Sr., is the Speaker of the New Mexico House of Representatives. He acts as presiding officer of the New Mexico House of Representatives.

13. This judicial district is the lawful venue for this action, pursuant to NMSA 1978, § 38-3-1G (1988).

ALLEGATIONS COMMON TO BOTH CAUSES OF ACTION

14. Each ten years, the Census Bureau of the United States conducts a decennial census throughout the United States, pursuant to the mandates of Article I, § 2, of the Constitution of the United States.

15. The population of the State of New Mexico has grown, changed in demographic characteristics and shifted in location substantially since the 2000 census. The current 42 districts for the New Mexico Senate, created by 2002 Laws of New Mexico, ch. 90 § 50, are based on 2000 Census population figures. As a result, these districts deviate impermissibly from population parity, resulting in a violation of "one-person, one-vote" principles, dilution of minority voting strength, and denial of equal protection of the laws for plaintiffs and all other voters throughout the State of New Mexico.

16. Pursuant to federal law, the detailed results of the 2010 decennial census were provided in March 2011 to the governors and legislatures of all states, including New Mexico, specifically to provide a basis for a fair and lawful redrawing of congressional, state legislative and other districts, to prevent dilution of minority voting strength and to ensure that all voters can be guaranteed that their votes are accorded equal weight in elections for their representatives under the fundamental democratic and constitutional principle of "one person—one vote."

17. To this date, New Mexico has not accomplished any redistricting whatsoever based on the current census of its citizens. There are elections scheduled for State Senate in 2012. Redistricting must be accomplished now, so that Defendants and other New Mexico election officials may begin their preparations for the primary and general elections, so that potential

candidates in the lawfully apportioned Census 2010-based districts may begin preparing to present their campaigns to New Mexico voters and so that New Mexico voters must know their districts and consider whom they wish to support to represent those districts.

18. The New Mexico Legislature, the institution primarily responsible for preparing a lawful and fair redistricting plan, subject to the veto power of the governor, and pursuant to the authority provided in Art. IV, § 3, of the New Mexico Constitution, convened in a special session in September 2011 called for the purpose of accomplishing the necessary redistricting. During that session, the Legislature passed bills to redistrict the 42 Senate districts according to the 2000 census population figures, but the Governor vetoed those bills. As a consequence, the defendant Secretary of State will proceed to conduct the 2012 general and primary elections for State Senate districts on the basis of the malapportioned districts created by the 2002 Senate Redistricting Act.

19. Judicial relief is necessary at this time. Without the action of this court, the lawfully required redistricting clearly will not take place.

20. Pursuant to the doctrines reaffirmed by the United States Supreme Court in *Grove v. Emison*, 507 U.S. 25 (1993), it is the primary right and responsibility of the State courts to require valid reapportionment or to formulate a valid redistricting plan where the State political branches have not done so in a timely fashion. It is necessary for this court to exercise its jurisdiction to provide a specified period of time in which the legislature and governor may attempt to achieve the necessary redistricting, and if that political process should fail, to order the Defendant Secretary of State to administer the election process pursuant to a lawful redistricting plan established by order of this court.

COUNT I – EQUAL PROTECTION OF THE LAW

21. The current districting violates the rights of Plaintiffs and all other New Mexico voters to the equal protection of the laws in violation of Article II, Section 18 of the New Mexico

Constitution and the Fourteenth Amendment to the Constitution of the United States of America.

COUNT II-VOTING RIGHTS ACT OF 1965

22. The current districting dilutes and violates the voting rights of the named Plaintiffs who are ethnic minorities and of all other New Mexicans similarly situated, in violation of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this court exercise its jurisdiction and enter:

A. A declaratory judgment adjudicating that the current districting plan, enacted by the 2002 Senate Redistricting Act, for the New Mexico Senate is in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the federal Voting Rights Act of 1965;

B. Preliminary and permanent injunctions restraining Defendants from using the current districting plan for the New Mexico Senate in any further elections;

C. A final judgment establishing a lawful redistricting plan for the New Mexico Senate based on the 2010 Census, to be used by the Defendants in New Mexico elections, until and unless another lawfully proper redistricting bill is duly passed by the New Mexico Legislature and signed into law by the Governor;

D. An order awarding Plaintiffs their lawful fees and costs of suit; and

E. Such other and further relief as the court deems proper.

Respectfully submitted,

**FREEDMAN BOYD HOLLANDER
GOLDBERG IVES & DUNCAN, P.A.**

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Attorneys for Plaintiffs

P

ENDORSED

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE SEP 26 2011
STATE OF NEW MEXICO

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

NO. D101CV201102944

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

Plaintiffs,

vs.

DIANNA J. DURAN, in her official
capacity as New Mexico Secretary of State,
SUSANA MARTINEZ, in her official capacity as 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,

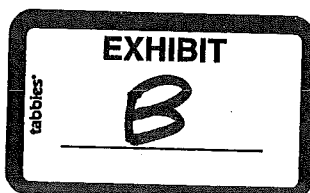
Defendants.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF FOR REDISTRICTING OF THE NEW MEXICO
FEDERAL CONGRESSIONAL DISTRICTS**

JURISDICTION, VENUE AND PARTIES

1. This is a civil action for injunctive and declaratory relief to achieve a lawful redistricting of the three New Mexico Congressional districts for election of representatives to the United States House of Representatives.

2. This action is brought pursuant to this court's original jurisdiction under Art. VI, § 13, of the New Mexico Constitution, the equal protection clauses of Art. II, § 18, of the New Mexico Constitution and the Fifth Amendment to the United States



Constitution, Art. I, § 2 of the United States Constitution, the Voting Rights Act of 1965, 42 U.S.C. § 1973, and the civil rights provisions of 42 U.S.C. §§ 1983 and 1988.

3. Plaintiff Mel Holguin is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

4. Plaintiff Brian Egolf is a registered voter in the State of New Mexico and a member of the New Mexico House of Representatives.

5. Plaintiff Hakim Bellamy is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico, and is identified as African American, a racial minority, by Bureau of Census standards.

6. Plaintiff Maurilio Castro is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

7. Plaintiff Roxane Spruce Bly is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico, and is identified as American Indian, an ethnic minority, by Bureau of Census standards.

8. Defendant Dianna Duran is the duly elected Secretary of State of New Mexico, with offices at the seat of State government in Santa Fe County, New Mexico. As the chief election officer of the State, as provided in NMSA 1978, Secs. 1-2-1, et seq., she is the State official charged with the responsibility of administering the Election Code and ensuring that elections within the State are conducted in a fair and lawful manner. As such, she is named as a defendant in her official capacity.

9. Defendant Susana Martinez is the duly elected Governor of New Mexico. As

the chief executive officer of the State of New Mexico, she has the power to call the legislature into session, to approve or veto redistricting legislation, and is obligated to faithfully execute the laws of the State.

10. Defendant John Sanchez is the Lieutenant Governor of New Mexico. He acts as a presiding officer of the New Mexico Senate.

11. Defendant Timothy Jennings is the President Pro-Tempore of the New Mexico Senate. He acts as a presiding officer of the New Mexico Senate.

12. Defendant Ben Lujan, Jr., is the Speaker of the New Mexico House of Representatives. He acts as presiding officer of the New Mexico House of Representatives.

13. This judicial district is the lawful venue for this action, pursuant to NMSA 1978, § 38-3-1G (1988).

ALLEGATIONS COMMON TO BOTH CAUSES OF ACTION

14. Each ten years, the Census Bureau of the United States conducts a decennial census throughout the United States, pursuant to the mandates of Article I, § 2, of the Constitution of the United States.

15. The population of the State of New Mexico has grown, changed in demographic characteristics and shifted in location substantially since the 2000 census. The three current United States Congressional districts in New Mexico are based on population data from the 2000 Census. As a result, these district deviate impermissibly from population parity, resulting in a violation of "one-person, one-vote" principles, dilution of minority voting strength, and denial of equal protection of the laws, denial of the right to equal voting rights under Art. I, § 2 of the United States Constitution and the

Voting Rights Act of 1965 for plaintiffs and all other voters throughout the State of New Mexico.

16. Pursuant to federal law, the detailed results of the 2010 decennial census were provided in March 2011 to the governors and legislatures of all states, including New Mexico, specifically to provide a basis for a fair and lawful redrawing of congressional and legislative districts, to prevent dilution of minority voting strength and to ensure that all voters can be guaranteed that their votes are accorded equal weight in elections for their representatives under the fundamental democratic and constitutional principle of "one person—one vote."

17. To this date, New Mexico has not accomplished any redistricting whatsoever based on the current census of its citizens. Redistricting must be accomplished now in the short time remaining so that Defendants and other New Mexico election officials may begin their preparations for the upcoming primary and general elections, so that potential candidates in the lawfully apportioned Census 2010-based districts may begin preparing to present their campaigns to New Mexico voters and so that New Mexico voters may know their districts and consider whom they wish to support to represent those districts.

18. The New Mexico Legislature, the institution primarily responsible for preparing a lawful and fair redistricting plan, subject to the veto power of the governor, and pursuant to the authority provided in Art. IV, § 3, of the New Mexico Constitution, convened in a special session in September 2011, called for the purpose of accomplishing the necessary redistricting. During that session, the Legislature failed to pass a plan for the three seats of the United States House of Representatives, based

on population figures for the 2010 Census. As a consequence, the defendant Secretary of State is proceeding to conduct primary and general elections in 2012 for the United States House of Representatives districts under the malapportioned districts created in 2002.

19. Judicial relief is necessary at this time. Without the action of this court, the lawfully required redistricting clearly will not take place.

20. Pursuant to the doctrines reaffirmed by the United States Supreme Court in *Grove v. Emison*, 507 U.S. 25 (1993), it is the primary right and responsibility of the State courts to require valid reapportionment or to formulate a valid redistricting plan where the State political branches have not done so in a timely fashion. It is necessary for this court to exercise its jurisdiction to provide a specified period of time in which the legislature and governor may attempt to achieve the necessary redistricting, and if that political process should fail, to order the Defendant Secretary of State to administer the election process pursuant to a lawful redistricting plan established by order of this court.

COUNT I – RIGHTS TO EQUAL VOTING STRENGTH

21. The current districting violates the rights of Plaintiffs and all other New Mexico voters to their rights to equal voting strength under Art. I, § 2 of the United States Constitution and the equal protection of the laws in violation of Article II, Section 18 of the New Mexico Constitution and the Fifth Amendment to the Constitution of the United States of America.

COUNT II–VOTING RIGHTS ACT OF 1965

22. The current districting dilutes and violates the voting rights of the named Plaintiffs who are ethnic minorities and of all other New Mexicans similarly situated, in

violation of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this court exercise its jurisdiction and enter:

A. A declaratory judgment adjudicating that the current Congressional districting plan, adopted in Jepsen v. Vigil-Giron, D-0101-CV-2001-02177 (First Judicial Dist., January 8, 2002), is in violation of the New Mexico and United States Constitutions and the federal Voting Rights Act of 1965;

B. Preliminary and permanent injunctions restraining Defendants from using the current Congressional districting plan in any further elections;

C. A final judgment establishing a lawful Congressional redistricting plan based on the 2010 Census, to be used by the Defendants in New Mexico elections, until and unless another lawfully proper Congressional redistricting bill is duly passed by the New Mexico Legislature and signed into law by the Governor;

D. An order awarding Plaintiffs their lawful fees and costs of suit; and

E. Such other and further relief as the court deems proper.

Respectfully submitted,

**FREEDMAN BOYD HOLLANDER
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Attorneys for Plaintiffs

ENDORSED
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO SEP 26 2011

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

NO. D101CV201102945

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

Plaintiffs,

vs.

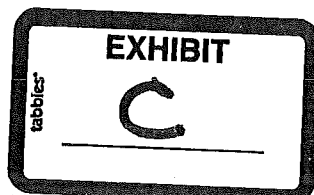
**DIANNA J. DURAN, in her official
capacity as New Mexico Secretary of State,
SUSANA MARTINEZ, in her official capacity as New Mexico Governor,
JOHN A. SANCHEZ, in his official capacity as New Mexico Lieutenant
Governor and presiding officer of the New Mexico Senate,
TIMOTHY Z. JENNINGS, in his official 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.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
FOR REDISTRICTING OF THE NEW MEXICO HOUSE
OF REPRESENTATIVES**

JURISDICTION, VENUE AND PARTIES

1. This is a civil action for injunctive and declaratory relief to achieve a lawful redistricting of the 70 districts for the New Mexico House of Representatives.
2. This action is brought pursuant to this court's original jurisdiction under Art. VI, § 13, of the New Mexico Constitution, the equal protection clauses of Art. II, § 18, of the New Mexico Constitution and the Fourteenth Amendment to the United States Constitution, the Voting Rights Act of 1965, 42 U.S.C. § 1973, and the civil rights



provisions of 42 U.S.C. Secs. 1983 and 1988.

3. Plaintiff Mel Holguin is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

4. Plaintiff Brian Egolf is a registered voter in the State of New Mexico and a member of the New Mexico House of Representatives.

5. Plaintiff Hakim Bellamy is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico, and is identified as African American, a racial minority, by Bureau of Census standards.

6. Plaintiff Maurilio Castro is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

7. Plaintiff Roxane Spruce Bly is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico, and is identified as American Indian, an ethnic minority, by Bureau of Census standards.

8. Defendant Dianna Duran is the duly elected Secretary of State of New Mexico, with offices at the seat of State government in Santa Fe County, New Mexico. As the chief election officer of the State, as provided in NMSA 1978, §§ 1-2-1, *et seq.*, she is the State official charged with the responsibility of administering the Election Code and ensuring that elections within the State are conducted in a fair and lawful manner. As such, she is named as a defendant in her official capacity.

9. Defendant Susana Martinez is the duly elected Governor of New Mexico. As the chief executive officer of the State of New Mexico, she has the power to call the

legislature into session, to approve or veto redistricting legislation, and is obligated to faithfully execute the laws of the State.

10. Defendant John Sanchez is the Lieutenant Governor of New Mexico. He acts as a presiding officer of the New Mexico Senate.

11. Defendant Timothy Jennings is the President Pro-Tempore of the New Mexico Senate. He acts as a presiding officer of the New Mexico Senate.

12. Defendant Ben Lujan, Jr., is the Speaker of the New Mexico House of Representatives. He acts as presiding officer of the New Mexico House of Representatives.

13. This judicial district is the lawful venue for this action, pursuant to NMSA 1978, § 38-3-1G (1988).

ALLEGATIONS COMMON TO BOTH CAUSES OF ACTION

14. Each ten years, the Census Bureau of the United States conducts a decennial census throughout the United States, pursuant to the mandates of Article I, § 2, of the Constitution of the United States.

15. The population of the State of New Mexico has grown, changed in demographic characteristics and shifted in location substantially since the 2000 census. The current districts for members of the New Mexico House of Representatives, NMSA 1978 § 2-7D-1, approved and adopted in Jepsen v. Vigil-Giron, D-0101-CV-2001-02177 (First Judicial Dist. Court, January 24, 2002), are based on population data from the 2000 census. As a result, those districts now deviate impermissibly from population parity, resulting in a violation of "one-person, one-vote" principles, dilution of minority voting strength, and denial of equal protection of the laws for plaintiffs and all other

voters throughout the State of New Mexico.

16. Pursuant to federal law, the detailed results of the 2010 decennial census were provided in March 2011 to the governors and legislatures of all states, including New Mexico, specifically to provide a basis for a fair and lawful redrawing of congressional, state legislative and other districts, to prevent dilution of minority voting strength and to ensure that all voters can be guaranteed that their votes are accorded equal weight in elections for their representatives under the fundamental democratic and constitutional principle of "one person—one vote."

17. To this date, New Mexico has not accomplished any redistricting whatsoever based on the 2010 census of persons residing in New Mexico. Redistricting must be accomplished now, so that Defendants and other New Mexico election officials may begin their preparations for the upcoming primary and general elections in 2012 in lawfully apportioned census 2010-based districts, so that candidates in the lawfully apportioned Census 2010-based districts may begin preparing to present their campaigns to New Mexico voters and so that New Mexico voters may know their districts and consider whom they wish to support to represent those districts.

18. The New Mexico Legislature, the institution primarily responsible for preparing a lawful and fair redistricting plan, subject to the veto power of the governor, and pursuant to the authority provided in Art. IV, § 3, of the New Mexico Constitution, convened in a special session in September 2011 called for the purpose of accomplishing the necessary redistricting. The legislature passed a bill to redistrict the New Mexico House of Representatives, but that bill was vetoed by the Governor. As a consequence, the defendant Secretary of State will proceed to conduct primary and

general elections in 2012 for the 70 New Mexico House of Representative districts under the malapportioned districts which were adopted using the 2000 census.

19. Judicial relief is necessary at this time. Without the action of this court, the lawfully required redistricting clearly will not take place.

20. Pursuant to the doctrines reaffirmed by the United States Supreme Court in *Grove v. Emison*, 507 U.S. 25 (1993), it is the primary right and responsibility of the State courts to require valid reapportionment or to formulate a valid redistricting plan where the State political branches have not done so in a timely fashion. It is necessary for this court to exercise its jurisdiction to provide a specified period of time in which the legislature and governor may attempt to achieve the necessary redistricting, and if that political process should fail, to order the Defendant Secretary of State to administer the election process pursuant to a lawful redistricting plan established by order of this court.

COUNT I – EQUAL PROTECTION OF THE LAW

21. The current districting violates the rights of Plaintiffs and all other New Mexico voters to the equal protection of the laws in violation of Article II, Section 18 of the New Mexico Constitution and the Fourteenth Amendment to the Constitution of the United States of America. COUNT II–VOTING RIGHTS ACT OF 1965

22. The current districting violates the voting rights of the named Plaintiffs who are racial or ethnic minorities and all other New Mexicans similarly situated, in violation of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this court exercise its

jurisdiction and enter:

A. A declaratory judgment adjudicating that the current districting plan, adopted in 2002, for the New Mexico House of Representatives is in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the federal Voting Rights Act of 1965;

B. Preliminary and permanent injunctions restraining Defendants from using the current districting plan for the New Mexico House of Representatives in any further elections;

C. A final judgment establishing a lawful redistricting plan for the New Mexico House of Representatives based on the 2010 Census, to be used by the Defendants in New Mexico elections, until and unless another lawfully proper redistricting bill is duly passed by the New Mexico Legislature and signed into law by the Governor;

D. An order awarding Plaintiffs their lawful fees and costs of suit; and

E. Such other and further relief as the court deems proper.

Respectfully submitted,

**FREEDMAN BOYD HOLLANDER
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Attorneys for Plaintiffs

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED IN MY OFFICE
DISTRICT COURT CLERK
9/25/2011 9:33:15 PM
GREGORY T. IRELAND

REPRESENTATIVE CONRAD JAMES,
DEVON DAY, MARGE TEAGUE,
MONICA YOUNGBLOOD, JUDY
McKINNEY, and SENATOR JOHN RYAN,

myb

Plaintiffs,

v.

No. D-202-CV-2011-09600

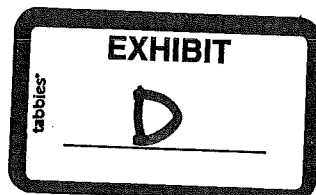
DIANA J. DURAN, in her official capacity as Secretary
of State of the State of New Mexico and SUSANA
MARTINEZ, in her official capacity as Governor
of the State of New Mexico,

Defendants.

**COMPLAINT FOR CONSTITUTIONAL
AND CIVIL RIGHTS VIOLATIONS**

NEW MEXICO STATE REPRESENTATIVE CONRAD JAMES, DEVON DAY,
MARGE TEAGUE, MONICA YOUNGBLOOD, JUDY McKINNEY and NEW MEXICO
STATE SENATOR JOHN RYAN (collectively, the "Plaintiffs") for their Complaint allege
as follows:

1. This is a civil action for injunctive and declaratory relief to achieve a lawful
redistricting of the three districts of the United States House of Representatives in New
Mexico ("U.S. 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 Conrad James is a registered voter in the State of New Mexico. Mr. James is a member of the New Mexico House of Representatives whose district is situated in Bernalillo County.

4. Plaintiff Devon Day is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico.

5. Plaintiff Marge Teague is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico.

6. Plaintiff Monica Youngblood is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico.

7. Plaintiff Judy McKinney is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico.

8. Plaintiff John Ryan is a registered voter in the State of New Mexico. Mr. Ryan is a member of the New Mexico State Senate whose district is situated within Bernalillo and Sandoval Counties.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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).

17. 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.

18. Should new and lawful districts not be speedily redrawn in New Mexico, 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.

19. Voting disparities of the magnitude shown in New Mexico legislative districts, congressional districts and PRC districts is of great concern to and will injure Plaintiffs because of the vote dilution and the resulting violation of the civil rights it entails.

20. 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).

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

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

23. 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,

RODEY, DICKASON, SLOAN,
AKIN & ROBB, P.A.

By: /s/ Henry M. Bohnhoff

Henry M. Bohnhoff

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Attorney for Plaintiffs

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

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ORG. FILED DIST COURT
SEP 26 2011
NELDA CUELLAR, CLERK

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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Albuquerque, NM 87103
(505) 848-1849
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1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

2 December 4, 2001

3 NO. 27,241

4 MICHAEL JEPSEN, MAX COLL, RAYMOND RUIZ,
5 CARMEN GARZA, MAXINE VELASQUEZ, HAROLD
6 BAILEY, RETA DOMINGUEZ, and VIRGINIA GILLMER,

7 Petitioners,

8 vs.

9 JOANNE VIGIL QUINTANA, in her official
10 capacity as Clerk of the First Judicial
11 District Court of the State of New Mexico,

12 Respondent,

13 and

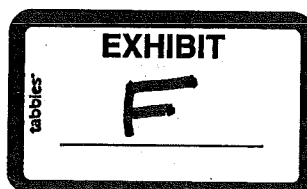
14 REBECCA VIGIL-GIRON, in her official capacity as
15 New Mexico Secretary of State, GARY E. JOHNSON,
16 in his official capacity as New Mexico Governor,
17 WALTER BRADLEY, in his official capacity as New Mexico
18 Lieutenant Governor and presiding officer of the New Mexico
19 Senate, RICHARD ROMERO, in his official capacity as
20 President Pro-Tempore of the New Mexico Senate,
21 BEN LUJAN, JR., in his official capacity as Speaker of the
22 New Mexico House of Representatives, FRANK SANCHEZ,
23 DIANA BUSTAMANTE, ANTONIO LUJAN, MARIA LOPEZ,
24 VICTOR GUTIERREZ, MARLENE SHERMAN, SUE WILSON
25 BEFFERT, DANIEL FOLEY, LEE RAWSON, MARK BOITANA,
26 BRIAN MOORE, DEMESIA PADILLA, LAWRENCE PADILLA,
27 DELLA VEGA, KENT CRAVENS, GLORIA VAUGHN, WILLIAM
28 FULLER, B. THOMAS VIGIL, HOLM BURSUM, JOE MOHOROVIC,
WILLIAM E. SHARER, THE NAVAJO NATION, THE JICARILLA
APACHE NATION AND CARSON VINCENTI,

Real Parties in Interest.

WRIT OF SUPERINTENDING CONTROL

THE STATE OF NEW MEXICO

TO: Joanne Vigil Quintana, Court Clerk
First Judicial District Court
P.O. Box 2268
Santa Fe, New Mexico 87504-2268



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GREETINGS:

WHEREAS, a verified petition for writ of superintending control having been filed in this matter by Michael Jepsen, et al., and the Court being sufficiently informed, and good cause appearing for the issuance of a writ of superintending control;

NOW, THEREFORE, IT IS ORDERED that the stay issued on November 27, 2001, shall remain in effect as designation of a judge to preside over the matter has been accomplished by the appointment by the Chief Justice of this Court; and

IT IS FURTHER ORDERED that the clerk of the First Judicial District Court shall prepare the record in this matter and deliver it forthwith to the Honorable Frank H. Allen.

Service of this writ shall be made on Joanne Vigil Quintana and all parties in the manner prescribed by the Rules of Appellate Procedure.

WITNESS, The Honorable Patricio M. Serna, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of this Court this 4th day of December, 2001.

(SEAL)

Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico

CLERK OF SUPREME COURT
P.O. BOX 848
Santa Fe, N.M. 87504

1
2 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

3 December 4, 2001

4 NO. 27,241

5 MICHAEL JEPSEN, MAX COLL., RAYMOND RUIZ,
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7 BAILEY, RETA DOMINGUEZ, and VIRGINIA GILLMER,

8 Petitioners,

9 vs.

10 JOANNE VIGIL QUINTANA, in her official
11 capacity as Clerk of the First Judicial
12 District Court of the State of New Mexico,

13 Respondent,

14 and

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16 capacity as New Mexico Secretary of State,
17 GARY E. JOHNSON, in his official capacity
18 as New Mexico Governor, WALTER BRADLEY,
19 in his official capacity as New Mexico
20 Lieutenant Governor and presiding officer
21 of the New Mexico Senate, RICHARD ROMERO, in his
22 official capacity as President Pro-Tempore of
23 the New Mexico Senate, BEN LUJAN, JR., in his
24 official capacity as Speaker of the New Mexico
25 House of Representatives, FRANK SANCHEZ,
26 DIANA BUSTAMANTE, ANTONIO LUJAN, MARIA LOPEZ,
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FULLER, B. THOMAS VIGIL, HOIM BURSUM, JOE MOHOROVIC,
WILLIAM E. SHARER, THE NAVAJO NATION, THE JICARILLA
APACHE NATION AND CARSON VINCENTI,

Real Parties in Interest.

ORDER

WHEREAS, this matter came on for consideration upon a petition for writ of
superintending control, responses thereto, reply, bench memorandum, supplemental
legal authority, and oral argument by the parties, and the Court having considered said

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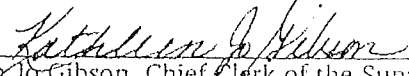
pleadings and argument and being sufficiently advised, Chief Justice Patricio M. Serna, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Pamela B. Minzner, and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of superintending control hereby is GRANTED and a writ of superintending control shall issue to the clerk of the First Judicial District Court.

IT IS SO ORDERED.

WITNESS, The Hon. Patricio M. Serna, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 4th day of December, 2001.

(SEAL)


Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico

