

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

NO. D101CV201102944

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

Plaintiffs,

and

**NEW MEXICO LEAGUE OF UNITED LATIN AMERICAN CITIZENS (NM
LULAC), PAUL A. MARTINEZ, J. PAUL TAYLOR, PETER OSSORIO,
CHRISTY L. FRENCH, MATT RUNNELS, RAE FORTUNATO,**

Plaintiffs in Intervention,

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

NEW MEXICO LEAGUE OF UNITED LATIN AMERICAN CITIZENS

(NM LULAC), Paul A. Martinez, J. Paul Taylor, Peter Ossorio, Christy L. French, Matt

Runnels and Rae Fortunato, by and through their attorney, Santiago E. Juárez, for their

Complaint in Intervention state:

I.

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. The League of United Latin American Citizens (LULAC) is the oldest and largest Hispanic civil rights organization in the United States of America. Since 1929, LULAC has served as a vanguard in the Latino community advocating for social and economic parity at all levels within our American Society. LULAC has historically acted as both an advocate and has intervened and participated as a party in historic landmark litigation. Resulting legal victories have made significant impact on our communities and have changed the legal framework allowing Hispanics equality and access to opportunities not afforded in the past. This has been especially true with respect to education and voting rights across the country. NM LULAC is affiliated with LULAC and is the second state to organize councils across the entire state. Its oldest councils in New Mexico date back to LULAC's inception in 1929. NM LULAC has councils in every county within the 2nd Congressional District of New Mexico. NM LULAC is also the largest Hispanic membership organization in the State of New Mexico. NM LULAC Districts II and III are located in the 2nd Congressional District of New Mexico. This

Congressional District accounts for the majority of the state-wide membership. It is also one of the largest Congressional House Seats in the nation and largest in the state of New Mexico. NM LULAC is visible and respected in the various communities where LULAC Councils are located. NM LULAC is non-partisan and domestic non-profit organization registered in the state of New Mexico. The interest of the League is not partisan the partisan outcome, but the minority majority outcome, which is a significant factor with respect to the Voting Rights Act.

4. Paul A. Martinez is the Immediate Past State Director of NM LULAC. He is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, which is located in the 2nd Congressional District of New Mexico and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

5. J. Paul Taylor is a respected and esteemed former NM State Representative. He is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, which is located in the 2nd Congressional District of New Mexico and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

6. Peter Ossorio is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, which is located in the 2nd Congressional District of New Mexico and is identified as Hispanic/Latino, an ethnic minority, by Bureau of Census standards.

7. Christy L. French is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, which is located in the 2nd Congressional District of New Mexico. She is a member of LULAC Council 8071.

8. Matt Runnels is a registered voter in the State of New Mexico who resides in Grant County, New Mexico, which is located in the 2nd Congressional District of New Mexico.

9. Rae Fortunato is a registered voter in the State of New Mexico who resides in Dona Ana County, New Mexico, which is located in the 2nd Congressional District of New Mexico.

10. 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, Sections. 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.

11. 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.

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

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

14. 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.

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

II.
ALLEGATIONS COMMON TO BOTH CAUSES OF ACTION

16. 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.

17. 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, this 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.

18. Pursuant to federal law, the detailed results of the 2010 decennial census was 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.”

19. 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.

20. 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 mal-apportioned districts created in 2002.

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

22. 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

23. 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

24. 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.

III.

REDISTRICTING MAP AND SUPPORT OF HB 46, STATE REPRESENTATIVE JOSEPH CERVANTES' REDISTRICTING PLAN

25. The NM LULAC's position is different from the existing plaintiffs in *Holguin, et al. v. Duran, et al* because NM LULAC proposes and supports a comprehensive remedy to the overall redistricting map of the 2nd Congressional District of New Mexico. The New Mexico Senate did pass a comparable plan. However, the Cervantes Bill would have given this Congressional District a Hispanic minority majority

of voting age. The Governor threatened to veto any redistricting plan proposed by the New Mexico Legislature. The Cervantes plan best meets the standard of minority majority and does not compromise precincts, as required by the Voting Rights Act.

IV. REQUESTED RELIEF

WHEREFORE, the identified Plaintiffs in Intervention respectfully request that this court exercise its jurisdiction and enter:

1. 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, as requested in this Complaint in Intervention;
2. Preliminary and permanent injunctions restraining Defendants from using the current Congressional districting plan in any further elections, as requested in this Complaint in Intervention;
3. A final judgment establishing a lawful Congressional redistricting plan outlined in 2011 House Bill 46, which provides a practical solution and remedy based on the 2010 Census, to be used by the Defendants in New Mexico elections. It is likely that the Governor will use veto power regardless if the New Mexico Legislature lawfully passes a Congressional redistricting bill, as requested in this Complaint in Intervention;
4. An order awarding these plaintiffs their lawful costs of suit; attorney fees and any other relief that the court deems necessary and appropriate, as requested in this Complaint in Intervention.

Respectfully submitted,

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