

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

CAUSE NO. D-101-CV-2011-02942

BRAIN 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.

**CONSOLIDATED WITH CAUSE NOS.: D-101-CV-2011-02944; D-101-CV-2011-03016;
D-101-CV-2011-03099; D-101-CV-2011-03107; D-101-CV-2011-02945; D-506-CV-2011-00913;
D-202-CV-2011-09600**

**JAMES PLAINTIFFS' TRIAL BRIEF FOR
PUBLIC REGULATION COMMISSION TRIAL**

Plaintiffs Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy
McKinney and John Ryan ("the James Plaintiffs") submit the following trial brief in connection
with the trial currently scheduled to begin on January 11, 2012 for the purpose of reapportioning
the five districts of the New Mexico Public Regulation Commission ("PRC").

In the interest of avoiding unnecessary duplication and promoting judicial economy, the
James Plaintiffs adopt and incorporate by reference the discussion set forth in their December 9,
2011 Trial Brief for the House of Representatives districting trial regarding the law governing
permissible population deviation and Section 2 of the federal Voting Rights Act. These legal
principles are equally applicable to the Court's task of drawing the boundaries of the PRC.

The James Plaintiffs ask the Court to adopt the PRC districting plan that was introduced

in the recent special session of the Legislature as Senate Bill 36.¹ This plan satisfies all legal requirements: it has only de minimis (less than $\pm 0.1\%$) deviation from the ideal population, it complies with the Voting Rights Act, its districts are contiguous and compact, it retains the cores of the existing PRC districts, and it does not pair any incumbents.²

In addition to these attributes, Senate Bill 36 stands out from all the other PRC districting plans that will be presented to the Court because it promotes representational democracy by allowing the voters of New Mexico to decide the body's partisan make-up. Consistent with the existing plan, Senate Bill 36 creates two strong Democrat districts and one strong Republican district. However, the remaining two districts -- the central region encompassing Albuquerque and the southwestern region -- are drawn so that, based on the Research & Polling partisan performance formula, their performance is 50-50. Thus, the voters can decide whether the PRC has a Democrat or Republican majority.

Creating competitive districts is a goal consistent with the duties of the Court in redistricting the PRC following the failure of the Legislature and the Governor to do so. To the greatest possible extent possible, this Court should not make electoral choices for the citizens of New Mexico. Enhancing competitiveness is a tool that this Court can use to minimize the political impact of the redistricting plan that it adopts. The James Plan is the best of those submitted to this Court at creating competitive districts.

¹ In the alternative, the James Plaintiffs will offer another plan that minimizes deviation to 87 people, i.e., $\pm 0.01\%$.

² In the context of a court-drawn plan, communities of interest are subordinate to other considerations. However, the James Plaintiffs will argue that when drawing PRC districts communities of interest have even less significance than would be the case with legislative districts. The PRC is a significantly different entity than the House or the Senate. Members of the PRC typically are called upon not to make broad policy decisions but rather to make complex, highly technical decisions in connection with the regulation of, among other entities, utilities and insurance companies. They act more as judges than as legislators. Because of this different role, when drawing districts it is less important than is the case with the Legislature to avoid splitting local communities of interest. Instead, the Court's focus should be on drawing districts to reflect broader regional interests and to achieve population equality.

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By: /s/ Henry M. Bohnhoff

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CERTIFICATE OF SERVICE:

WE HEREBY CERTIFY that on the 6th day of January, 2012, we filed the foregoing electronically, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing and we e-mailed a true and correct copy of the foregoing pleading on this 6th day of January, 2012 to the following:

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