

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NMSC No. 11/33239

Representative Antonio Maestas,  
June Lorenzo, Alvin Warren,  
Eloise Gift, Henry Ochoa,

Plaintiffs-Petitioner Intervener,

D101-CV-2011<sup>1</sup>-  
D101-CV-2011-  
D101-CV-2011-  
First Judicial Court,  
County of Santa Fe

v.

DIANNA DURAN, IN HER OFFICIAL CAPACITY AS  
NEW MEXICO SECRETARY OF STATE,  
DEFENDANT-RESPONDENT

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

*Plaintiff-Petitioners,*

v.

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

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<sup>1</sup> The First Judicial Efiling did not provide a cause number or Judge assignment at the time of filing with this Court.

OCT - 7 2011

BEN LUJAN, JR., in his official capacity as Speaker of the  
New Mexico House of Representatives,

*Defendant-Respondents.*

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

*Defendant-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,

*Defendant- Real Parties in Interest.*

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

*Defendant-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,

*Defendant- Real Parties in Interest.*

**PLAINTIFF-INTERVENORS BRIEF IN SUPPORT OF PETITIONERS' EGOLF ET AL,  
EMERGENCY PETITION FOR WRIT OF SUPERINTENDING CONTROL AND  
APPLICATION FOR RELIEF**

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Petition for Writ of Superintending Control from the First Judicial District Court  
County of Santa Fe

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*Attorneys for Plaintiff-Intervenors*

## BACKGROUND

On Friday October 7, 2011 the above named Plaintiffs-Petitioner in Intervention (hereinafter described as Maestas Plaintiffs) filed suit in the First Judicial Court alleging that current districting boundaries for the State House, State Senate and Congressional seats in this State violate the voting rights act and the New Mexico and United States Constitution.<sup>1</sup> These matters were filed in the First Judicial Court, County of Santa Fe. See e.g. attachment A.

Maestas-Petitioners are Plaintiffs in three separate cases seeking lawful, constitutional redistricting of the New Mexico House of Representatives, the New Mexico Senate, and the New Mexico Federal Congressional Districts. To date, New Mexico has not accomplished any redistricting based on the 2010 U.S. Census. Plaintiffs comprise ethnic minorities, registered voters and hold public office in the current undisputed unconstitutional districting under current application by the Defendant.

Plaintiffs are aware of three Complaints filed in Santa Fe County at least two other redistricting complaints filed in two other Judicial Districts.

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<sup>1</sup> The First Judicial District Court e-filing system did not provide a case number or Judge at the time of filing of this Petition with the Court.

In addition, upon information and belief the Pueblo of Laguna filed separate complaints in the First Judicial District. Redistricting litigation experience shows that if no further complaints are filed other litigants may seek to intervene in pending cases.

Plaintiffs are aware that one of a group of litigating plaintiffs has filed a Writ of Superintending Control to Consolidate the various cases filed around the state. See NMSC No. 11/33239 Egolf et la v Dianna Duran et.al.(hereinafter described as Petitioner Egolf Writ). Plaintiffs are also aware that the Court recently granted a similar motion to intervene on behalf of Laguna Plaintiffs. See Oct. 5, 2011 Motion to Intervene by the Pueblo of Laguna. Plaintiffs will incorporate by reference some portion of Petitioner Egolf's Writ and ask for the same relief provided to Laguna Plaintiffs.

#### RIGHT TO INTERVENE

NMRA 1-024 governing intervention, states as follows:

**A. Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action:

- (1) when a statute confers an unconditional right to intervene; or
- (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Id.

It is clearly established that a proposed intervener may intervene a right to intervene where: (1) it “claims an interest relating to the property or transaction which is the subject of the action,” (2) it “is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest,” and (3) its interest is not adequately represented by the existing parties to the litigation. Nellis v. Mid Century Ins. Co., 142 N.M. 115, 118163 P.3d 502 (N.M.App. 2007).

The proposed interveners clearly have an interest related to the subject of this action as described in their complaint. See e.g. ex. A attached. Maestas Plaintiffs are on the same ground if not firmer ground regarding the challenge to New Mexico status quo districted system and thus any matter that decides where and when these claims are litigated necessary affects or impairs their ability to protect their interest. In addition, this interest is not adequately represented by the named parties. Further, there can be no dispute that this motion to intervene was timely filed as it was filed prior to the Court’s understood deadline for responses of October 10, 2011 to the original Petition for Writ of Superintending Control. Nellis v. Mid Century Ins. Co., 142 N.M. 115, 118163 P.3d 502 (N.M.App. 2007). (stating, “all motions to intervene must be timely, but the timeliness requirement is applied less stringently where a right to intervene is shown). Therefore the

above named Plaintiffs should be permitted to intervene as a matter of right.

NECESSITY FOR EXPEDITED RELIEF BY THIS COURT

Plaintiff Intervener incorporate by reference Petitioner Egolf's arguments contained in subsection II and III of their Writ Petition. The merits of having this Court consolidate this case on an expedited basis do not require repeating and are obvious.

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.

The superintending authority of this Court over the multiple district courts hearing this case of common fact and law has no better application than in this redistricting proceeding. It should not escape this Court's consideration that a lack of expedited relief would put a risk the ability of the State of New Mexico as a sovereign to decide the fundamental issue of how electoral districts are drawn. 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).

### CONSOLIDATION

This Court applies the same rules to the construction of Supreme Court rules of procedure as we apply to statutes. Roark v. Farmers Group, Inc., 142 N.M. 59,71,162 P.3d 896 (N.M. App. 2007) (relying on In re Michael L, 2002-NMCA-076, 132 N.M 479). It has been stated, “[i]n interpreting [rules], we seek to give effect to the [enacting authority's] intent, and in determining intent we look to the language used and consider the [rule's] history and background. Id.

Turning then to the Rule governing consolidation, the Supreme Court has ordered:

**A. Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

NMRA 1-042A

The only means to “avoid unnecessary cost or delay” is to order consolidation of these actions. The necessity to resolve the currently unconstitutional electoral apportionment is urgent. Candidates have started



the process of determining the office they want to run for and voters are facing the uncertainty of who may represent them and whether their votes counts the same as their neighbors. In addition, experience has shown that this litigation is conducted on a multi track expedited schedule and only delay can result from multi-judicial district litigation.

Plaintiffs-Interveners Petition this Court for a writ of superintending control to consolidate all redistricting complaints filed throughout the State and to appoint one judge in the First Judicial District to hear all redistricting matters. While the plaintiffs in all of the various cases are registered voters scattered among different counties, all Defendants are State officers that are named as acting in their official capacity and all of their offices are located in Santa Fe, the capital. "Suits against any state officers as such shall be brought in the court of the county in which their offices are located, at the capital or in the county where a plaintiff, or any one of them in case there is more than one, resides . . . ." NMSA 1978, § 38-3-1 (1988). Because all named Defendants are State officers whose offices are all located in Santa Fe, the capital, and because the venue statute, Section 38-3-1, allows for redistricting proceedings to be conducted in Santa Fe, Plaintiffs respectfully maintain that venue for these proceedings is most appropriate in Santa Fe, New Mexico. The First Judicial District has one large courtroom to

accommodate the litigation and if that is not available, the old county courthouse could be viewed as an appropriate venue to handle the large number of attorneys and litigants.

#### CONCLUSION

To preserve Plaintiff-Intervenor's right to a speedy and adequate remedy to the undisputed unconstitutional nature of the current system of electing candidates for office, consolidation of the various redistricting cases is required. To provide the most effectual use of Rule 1-042 mandate, the case should be consolidated in the First Judicial Court, Santa Fe County.

#### PRAYER FOR RELIEF

Maestas Petitioner-Intervenor's respectfully request leave to intervene as petitioners, ~~in~~ support of the Emergency Petitioner (as incorporated) and further respectfully request this Supreme Court Order the consolidation of the redistricting lawsuits filed to date or any deadlines provided by the Court, in the First Judicial District in Santa Fe, New Mexico before a judge appointed by the Supreme Court.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion to Intervene into Plaintiff-Petitioners' Emergency Petition for Writ of Superintending Control and Application for Relief was mailed via first-class U.S. mail on October 10, 2011 to all the parties below.

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Office of the Secretary of State  
New Mexico State Capitol  
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The Honorable Barbara J. Vigil  
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The Honorable Raymond Z. Ortiz  
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The Honorable William G. W.  
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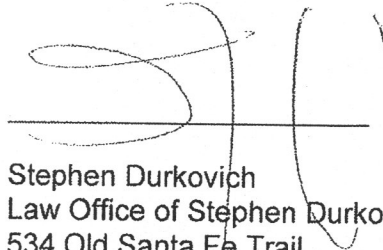
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**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT**

**No. D-101-CV-2011-**

**REPRESENTATIVE ANTONIO MAESTAS,  
JUNE LORENZO, ALVIN WARREN,  
ELOISE GIFT, and HENRY OCHOA,  
Plaintiffs,**

**v.**

**DIANNA DURAN, IN HER OFFICIAL CAPACITY AS  
NEW MEXICO SECRETARY OF STATE,**

Defendant.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY  
RELIEF FOR REDISTRICTING 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 three New Mexico Congressional Districts for election of Representatives to the United States House of Representatives.
2. Plaintiff Representative Antonio Maestas is a registered voter in the State of New Mexico who resides in Bernalillo County, New Mexico and a member of the New Mexico House of Representatives. Plaintiff is Hispanic American, a racial minority, by Bureau of Census Standards.
3. Plaintiff Alvin Warren is a registered voter in the State of New Mexico who resides in Rio Arriba County, New Mexico, and is identified as American Indian, an ethnic minority, by Bureau of Census standards.

4. Plaintiff June Lorenzo is a registered voter in the State of New Mexico who resides in Cibola County, New Mexico, and is identified as American Indian, an ethnic minority, by Bureau of Census standards
5. Plaintiff, Eloise Gift, 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, Henry Ochoa, is a registered voter in the State of New Mexico who resides in Rio Arriba, New Mexico, and is identified as Hispanic American, a racial minority, by Bureau of Census standards.
7. 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.
8. This redistricting 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.
9. This judicial district is the lawful venue for this action, pursuant to NMSA 1978, § 38-3-1G (1988).

**POPULATION AND DEMOGRAPHIC CHANGE DISCLOSED  
BY THE 2010 CENSUS DEMONSTRATES THAT THE  
CURRENT HOUSE DISTRICTING PLAN VIOLATES  
ONE PERSON ONE VOTE AND IMPERMISSABLY  
DILUTES MINORITY VOTING STRENGTH**

10. 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.
11. Since the 2000 census, New Mexico has experienced an overall population increase of approximately 13%, and has changed in demographic characteristics. The 2010 census has shown the most dramatic population increase as taking place in the urban areas of New Mexico with less than average growth in the rural areas.
12. Specifically the most dramatic increase in population was in a twenty mile swath of Bernalillo and Valencia County west of the Rio Grande. Dona Ana as a whole also made substantial gains in population. Areas whose population experienced less than average growth include generally the Eastern half, Southwestern quadrant, and portions of the North Central part of the State. (See Exhibit A).
13. The current districts for members of the New Mexico United States House of Representatives, NMSA 1978 § 2-7D-1, are based on population data from the 2000 census. Currently, 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.



14. Pursuant to federal law, the detailed results of the 2010 decennial census were provided 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. The census information was provided 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."
15. Redistricting was initially mandated by the US Supreme Court in the "One Person, One Vote" decision of Reynolds v. Sims.
16. The Constitutional "One Person, One Vote" principle is based on Article 1 Sec 2 and the 14<sup>th</sup> Amendment of the US Constitution holds that each person's vote should count the same as every other person's vote. Under this principle, each district within a jurisdiction should have the same or substantially the same population allowing each person's vote to carry the same weight as any other vote throughout the country.
17. In establishing voting districts, the Voting Rights Act "VRA", a federal law, prohibits discriminatory voting practices on the basis of race or language group. Section 2 of this law prohibits states from maintaining voting laws standards or practices that abridge the right to vote on the basis of race or language group.
18. To this date, New Mexico has not accomplished any redistricting, except for the Public Education Commission, based on the 2010 census of persons residing in New Mexico. Redistricting must be accomplished now, so that Defendant 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. Thus, candidates 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.

19. 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 a special session in September 2011 called for the purpose of accomplishing the necessary redistricting. The legislature did not pass a bill for redistricting the United States House of Representatives. As a consequence, the defendant Secretary of State will proceed to conduct primary and general elections in 2012 for the United States House of Representative districts under the malapportioned districts which were adopted using the 2000 census.

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

21. The current congressional districting plan (See Exhibit B) violates the rights of Plaintiffs and all other New Mexico voters to the equal protection of the laws guaranteed by of Article II, Section 18 of the New Mexico Constitution and the Fourteenth Amendment to the Constitution of the United States of America.

22. The current districting plan 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.

23. The current districting plan is specifically deficient in that the population in each district was not equal even at the time the current districts were created in 2002 and these deficiencies have worsened in the intervening eight years.
24. The current districting plan is also deficient in that communities of interest closely related by employment, transportation, commerce and socio-economic make up. These communities of interest are of particular importance in congressional districting where geographic expanses are greater and thus give rise to the more fundamental communities of interest arising from transportation, commerce, and employment.

**THE CONSTITUTIONAL REQUIREMENT FOR  
REDISTRICTING BY THIS COURT**

25. 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 other branches of State Government 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. If that political process should fail, the Defendant Secretary of State is required to administer the election process pursuant to a lawful redistricting plan established by order of this court.
26. A number of Federal and State Courts decisions provide guidance to legislative bodies and other entities that might ultimately establish the final redistricting plan.

27. First, the fundamental requirement of New Mexico Congressional districting is equal population in each district. The "ideal" population in each district is 686,393 persons.
28. Second, the Voting Rights Act, prohibits dilution of minority voting rights.
29. Third, through the innerplay of this law and court decisions, a number of other legal objectives have evolved which are to be observed in the redistricting process.
30. Some of the objectives that have been identified as desirable in formulating a constitutionally viable district plan include preservation of communities of interest, compactness, and contiguity.
31. Often adherence to one of these recognized objectives is at odds with the observance of other of the objectives given the nature of the district at issue.
32. Thus, there is no single constitutionally acceptable manner of constructing a constitutionally acceptable Congressional district. Districts can be constructed in a number of different ways adhering in greater or lesser degree to the desired objectives and avoiding, in greater or lesser degree, the prohibited activities and still be constitutionally acceptable.
33. The Voting Rights Act and court decisions in this area have also identified a number of activities to be avoided in the districting process including
  - a. Gerrymandering
  - b. Fragmentation
  - c. Retrogression
34. It is through a calculus aimed at achieving the desired objectives and avoiding the prohibited activities that constitutionally acceptable districts are constructed.

35. Terms that are may be or are often employed or relied upon in effecting a constitutionally acceptable district map are set forth in the attached Redistricting Glossary. (See Exhibit C).
36. The Redistricting Map for the United States of House of Representatives can be redrawn to constitutionally comport with the new 2010 census figures and be constructed to make all three congressional districts minority/majority districts, to respect balanced population allocation, and to keep communities of interest intact, and respect the wishes of New Mexico tribes.
37. Doing so would more closely adhere to the requirements articulated by the United States Constitution and the other various acts, thus does the existing districting under which New Mexico's Congressional Delegation are currently elected.

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 United States 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 United States House of Representatives in any further elections;
- C. A final judgment establishing a lawful redistricting plan for the United States House of Representatives based on the 2010 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 such other and further relief as the court deems proper.

Respectfully submitted,

    /s/    \_\_\_\_\_

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