

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 33,239

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

*Petitioners,*

v.

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,

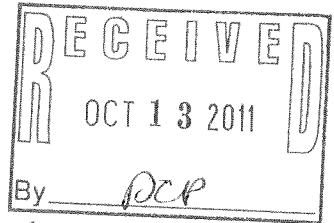
*Respondents.*

and

JONATHAN SENA, DON BRATTON, CARROLL LEAVELL,  
GAY KERNAN, REPRESENTATIVE CONRAD JAMES, DEVON DAY,  
MARGE TEAGUE, MONICA YOUNGBLOOD, JUDY MCKINNEY,  
and SENATOR JOHN RYAN,

*Real Parties in Interest.*

**RESPONDENTS 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, AND DIANNA J. DURAN, IN HER OFFICIAL CAPACITY AS  
NEW MEXICO SECRETARY OF STATE'S RESPONSE TO  
PETITIONERS' EMERGENCY PETITION FOR WRIT OF  
SUPERINTENDING CONTROL AND APPLICATION FOR RELIEF**



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Respondent Susana Martinez, in her official capacity as New Mexico Governor, by and through her attorneys, Paul J. Kennedy, Jessica M. Hernandez and Matthew J. Stackpole, Respondent John A. Sanchez, in his official capacity as New Mexico Lieutenant Governor and presiding officer of the New Mexico Senate, and Respondent Dianna J. Duran, in her official capacity as New Mexico Secretary of State, by and through their attorneys, Doughty & West, P.A. (Robert M. Doughty III), hereby submit their Joint Response to Petitioners' Emergency Petition for Writ of Superintending Control and Application For Relief (hereinafter referred to as the "Petition").

## I. INTRODUCTION

Petitioners Brian Egolf, Hakim Bellamy, Mel Holguin, Maurilio Castro, and Roxane Spruce Bly seek consolidation of six (6) separate lawsuits<sup>1</sup> currently pending in the First, Second, and Fifth Judicial Districts of the State of New Mexico, on the grounds that: (a) consolidation of these substantially similar matters is necessary; (b) the rules of procedure for consolidation across judicial districts are silent; (c) the venue statute directs suits against state officers to the

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<sup>1</sup> Petitioners, in their Petition, only refer to five (5) lawsuits. Since the filing of the Petition, a sixth lawsuit was filed by the Pueblo of Laguna in the First Judicial District. Because Petitioners request that "any future complaints raising redistricting claims be consolidated with these five complaints," all six (6) pending lawsuits will be addressed in this Response.

First Judicial District; and, (d) convenience and judicial economy militate toward consolidation in the First Judicial District.

Respondents agree that the subject matter of the six (6) pending lawsuits (“Redistricting Cases”) is substantially similar and of great public importance; consolidation of the lawsuits is appropriate; and that Rule 1-042 NMRA 2011 directly governs only intra-judicial-district consolidation. However, Petitioners are in error when they represent to this Court that: the First Judicial District is the most convenient forum; that New Mexico’s current venue statute requires selection of the First Judicial District; that priority jurisdiction should not apply; or that local rules on consolidation do not provide guidance on the fairest method of selecting the forum for consolidation. Judicial economy, convenience, priority jurisdiction, and consideration of the methodology for intra-judicial-district consolidation under Rule 1-042 NMRA 2011 all militate in favor of consolidating the Redistricting Cases in the Second Judicial District.

The impetus of the six (6) pending lawsuits, each praying for redrawing of existing voting district boundaries, is the population change reflected in the 2010 Census data. The areas most impacted by population change over the past ten years are the westside of Albuquerque and the City of Rio Rancho. At this time, voting districts across the State for the: (1) New Mexico Senate, (2) New Mexico House of Representatives, (3) New Mexico Public Regulation Commission (the

“PRC”) and (4) U.S. House of Representatives have experienced population growth and shifts in population densities. All of the Redistricting Cases are based on the potential harm, to varying degrees, of malapportionment resulting from relative population changes. While these matters affect New Mexicans statewide in all judicial districts, the majority of parties in the pending lawsuits reside within the Second Judicial District, as do the attorneys who represent them. Moreover, the greatest population changes over the past decade were realized in geographic areas located within the Second Judicial District or its neighboring community, Rio Rancho, New Mexico.

## II. PENDING LAWSUITS

On September 25, 2011, the first redistricting complaint in a lawsuit entitled James v. Duran, D-202-CV-2011-09600 was filed in Bernalillo County naming Respondents, Secretary of State Diana J. Duran and Governor Susana Martinez, as defendants, attached as Ex. D to Petition. The James Complaint seeks the re-districting of all voting districts impacted by the demographic change reflected in the 2010 Census data. The James Complaint seeks injunctive and declaratory relief to ensure constitutional redistricting of the five districts of the New Mexico Public Regulation Commission, in addition to the forty-two districts of the New Mexico State Senate, the seventy districts of the New Mexico State House of

Representatives, and the three districts of the United States House of Representatives in New Mexico.

On September 26, 2011, a lawsuit entitled Sena v. Duran, D-506-CV-2011-00913 (Fifth Jud. Dist.), attached as Ex. E to Petition, was filed in Lea County naming Respondents, Secretary of State Diana J. Duran and Governor Susana Martinez, as party defendants. The Sena Complaint also addresses constitutional redistricting of the five districts of the New Mexico Public Regulation Commission, in addition to the forty-two districts of the New Mexico State Senate, the seventy districts of the New Mexico State House of Representatives, and the three districts of the United States House of Representatives in New Mexico.

On September 26, 2011, Petitioners filed three (3) lawsuits in Santa Fe County entitled: 1) Egolf vs. Duran, D-101-CV-2011-02942 (First Jud. Dist.), attached as Ex. A to Petition; 2) Holguin v. Duran, D-101-CV-2011-02944 (First Jud. Dist.), attached as Ex. B. to Petition; and 3) Castro v. Duran, D-101-CV-2011-02945 (First Jud. Dist.), attached as Ex. C. to Petition. Petitioners in the Santa Fe County Complaints also joined representatives of the New Mexico legislative branch as party defendants, in addition to the Governor and Secretary of State.

Finally, on September 29, 2011, a lawsuit entitled Pueblo of Laguna v. Duran, D-101-CV-2011-03016 (First Jud. Dist.), attached as Ex. A to Petitioners-in-Intervention's Motion to Intervene, was also filed in Santa Fe County. In this

lawsuit, the Pueblo of Laguna names Dianna J. Duran, in her official capacity as Secretary of State for the State of New Mexico, as the only defendant.

In each of these cases, the various plaintiffs seek to accomplish the similar goal of constitutional redistricting of the New Mexico House of Representatives, the New Mexico Senate, and New Mexico's Congressional Districts. The material differences between the pending actions are that: the James Complaint was filed first; the James and Sena Complaints seeks the most complete relief by addressing the PRC voting districts; and the Santa Fe County Complaints add representatives of the New Mexico Legislature as party defendants. As detailed below, Petitioners fail to accurately present or analyze the facts and circumstances showing the burden that consolidation, in the First Judicial District compared to the Second Judicial District, would have on the majority of the parties and the attorneys of record. The Petition also fails to address the effect on judicial economy when the Santa Fe County Complaints (including the complaint filed by the Pueblo of Laguna) omit the issue of redistricting the PRC voting districts. The Second Judicial District is the most convenient forum for the expeditious resolution of the Redistricting Cases, because the complaint filed in this District addresses all voting district issues and the vast majority of parties and attorneys of record reside in Bernalillo County, which is also the location of the greatest population growth within voting districts.

### III. JURISDICTION

Under Article VI, §§ 3 and 15 of the New Mexico Constitution, the Supreme Court shall have a superintending control over all inferior courts. The Supreme Court is empowered to provide rules of pleading, practice, and procedure for the conduct of litigation in the district courts. See State v. Roy, 40 N.M. 397, 421 (1936). The power of superintending control is the power to control the course of ordinary litigation in inferior courts. Id. at 422.

In the present matter, the six (6) pending Redistricting Cases regarding the same or substantially similar subject matter are pending in three (3) separate judicial districts presenting a risk of conflicting or inconsistent rulings on a matter of substantial public interest. New Mexico Rules of Civil Procedure do not expressly prescribe the method of consolidation in these circumstances, and the exercise of superintending control may be necessary to avoid costly delay, protect the parties, and manage the judicial process.

The power of superintending control is intended to address issues that are “essential to the functioning of courts, in the absence of the clearest language to the contrary in the constitution, are to be taken as committed solely to [the Supreme Court] to avoid a confusion in the methods of procedure and to provide uniform rules of pleading and practice.” Id. at 421. The governing rules on consolidation of actions do not clearly address consolidation from diverse judicial districts, and

therefore Petitioners properly look to this Court on that issue. However, as further detailed below, the rules of procedure within each judicial district are clear regarding the method of selection of a judge. Petitioners' request that this Court exercise its power to not only consolidate the Redistricting Complaints within a single judicial district, but to designate a trial judge, at this juncture, is premature pursuant to Rule 1-088 (B) NMRA 2011.

#### **IV. ARGUMENT and AUTHORITIES**

##### **A. THE PROPER VENUE FOR CONSOLIDATION OF THE REDISTRICTING CASES IS THE SECOND JUDICIAL DISTRICT COURT**

###### **1. Convenience of Parties and Counsel**

Respondents, in their Petition, rely heavily (and almost exclusively) on the argument that convenience dictates consolidation in the First Judicial District Court.<sup>2</sup> However, an examination of the "convenience argument" advanced by Petitioners (and Petitioners-in-Intervention) shows that it is unfounded and militates in favor of the Second Judicial District.

Plaintiffs in the lawsuit that commenced the Redistricting Cases, the James case, are all registered voters in the State of New Mexico. All six (6) plaintiffs

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<sup>2</sup> Petitioners-in-Intervention, the Pueblo of Laguna, Richard Luarkie and Harry A. Antonio, Jr. assert the same "convenience" argument in their "Motion to Intervene." Petitioners-in-Intervention, like Petitioners, rely almost exclusively on this argument.



bringing the James case are residents of Bernalillo County, New Mexico. See Petition, at Ex. D. Of the five (5) Petitioner-Plaintiffs in the First Judicial District case, two (2) are residents of Bernalillo County, New Mexico, and two (2) are residents of Dona Ana County. See Petition, at ¶ 5. Of the three (3) Petitioner-in-Intervention Plaintiffs in the First Judicial District case (i.e. Pueblo of Laguna), one is the Pueblo of Laguna itself; Plaintiff Richard Luarkie resides in Pagate, New Mexico and Plaintiff Harry A. Antonio, Jr. resides in Old Laguna, New Mexico. See Petitioners-in-Intervention's Motion to Intervene, page 3-4. Of the four (4) Plaintiffs in the Sena case filed in the Fifth Judicial District, all are residents of Lea County, New Mexico. See Petition, at Ex. E.

Of the eighteen (18) total plaintiffs in the pending Redistricting Cases, eight (8), a plurality, are residents of Bernalillo County. Two (2) of the plaintiffs are residents of Dona Ana County, New Mexico. Four (4) of the plaintiffs are residents of Lea County, New Mexico and three (3) are residents (or located) in Cibola County, New Mexico. In stark contrast, upon information and belief, only one (1) plaintiff, Brian Egolf, is a resident of Santa Fe County. See Petition, at ¶ 5.

With respect to all of the currently named defendants in all of the Redistricting Cases, there are five (5) defendants. Upon information and belief, four (4) of the defendants maintain their offices in Santa Fe, New Mexico. One (1)

of the Defendants lives in Roswell, New Mexico. Significantly, however, considering there are a total of twenty-three (23) named parties (both plaintiffs and defendants) in the Redistricting Cases, only five (5) parties total in the Redistricting Cases maintain their residences or offices in Santa Fe, New Mexico.

In addition, there are presently twenty-three (23) attorneys of record in the pending Redistricting Cases. Fourteen (14) of the twenty-three (23) attorneys practice out of offices located in Albuquerque, New Mexico. Six (6) of the twenty-three (23) attorneys practice out of offices located in Santa Fe, New Mexico. Two (2) of the twenty-three (23) attorneys practice out of offices located in Roswell, New Mexico and one (1) of the twenty-three (23) attorneys practices out of an office in Laguna, New Mexico. Clearly, the majority of attorneys of record in the pending Redistricting Cases are located in Albuquerque.

Given the foregoing analysis of the location of the plaintiffs in the Redistricting Cases and the location of the attorneys of record, Petitioners' main argument of "reasonably convenient to the parties and their counsel" is without merit. The First Judicial District is clearly inconvenient. Only one (1) plaintiff out of eighteen (18) and six (6) attorneys, out of the twenty-three (23) attorneys of record, are located within the First Judicial District. The parties located in Dona Ana, Cibola and Lea Counties are fewer than the Bernalillo County parties and

would be less burdened by travel to Albuquerque than to Santa Fe. The Second Judicial District is clearly the most convenient forum for the Redistricting Cases.

**2. Priority Jurisdiction and Consolidation Rules Would Favor Consolidation of the Redistricting Cases in the Second Judicial District.**

The Redistricting Cases should be consolidated in the Second Judicial District under the principle of “priority jurisdiction.” See State v. Larrazolo, 70 N.M. 475, 375 P.2d 118 (1962). Larrazolo holds that: “Generally, a second suit based on the same cause of action as a suit already on file will be abated where the first suit is entered in a court of competent jurisdiction in the same state between the same parties and involving the same subject matter or cause of action, if the rights of the parties can be adjudged in the first action.” Id. at 482, 375 P.2d at 123.

“[T]he principle of priority jurisdiction is that where two suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit[.]” Cruz v. FTS Construction Inc., 2006-NMCA-109, 140 N.M. 284, 287, 142 P.3d 365, 368 (citation omitted) (discussing Valdez v. Ballenger, 91 N.M. 785, 581 P.2d 1280 (1978)). The Court of Appeals in the Cruz decision set out the elements of “priority jurisdiction” as articulated in Valdez as follows: (1) the two suits must involve the same subject matter or the same cause of action, (2) the two suits must

involve the same parties, (3) the first suit must have been filed in a court of competent jurisdiction in the same state, and (4) the rights of the parties must be capable of adjudication in the first-filed action. See Valdez at 786, 581 P.2d at 1281.

Priority jurisdiction is applicable to assist in establishing proper venue in this case, which is the Second Judicial District. First, the Redistricting Cases involve the same subject matter and the same causes of action. Second, the Redistricting Cases involve the same parties since the plaintiffs are acting as representatives of all voters or residents of New Mexico. There is, at a minimum, an identity of defendants. Respondents, Secretary of State Diana J. Duran and Governor Susana Martinez, are common defendants in all Redistricting Cases, with the exception of the Governor not being a defendant in the complaint filed by the Pueblo of Laguna. As with the plaintiffs, the defendants are simply representative of the state executive and legislative branches. Third, the James case was filed in the Second Judicial District Court, a court of competent jurisdiction. Fourth, the rights of all parties to the Redistricting Cases are capable of adjudication in the first filed action – the James case, pending in the Second Judicial District Court.

In addition to the doctrine of priority jurisdiction, reference to the local rules on consolidation offers guidance and support for consolidation into the Second Judicial District Court as a matter of course. Under local rules for the Second

Judicial District, the oldest or first filed case becomes the base case into which other similar cases are consolidated. LR2-105 states:

Judge. Motions to consolidate and consolidated cases shall be heard by the judge assigned to the oldest case (the case bearing the lowest case number) in which the judge has not been excused, challenged, or recused.

Filings. The motion to consolidate and the court's order to consolidate shall be filed in the oldest case (the case bearing the lowest case number); copies of the motion and order shall be filed in all the consolidated cases. Following consolidation, all pleadings, motions, and other papers shall be filed only in the oldest case; no papers including copies shall be filed in the remaining cases, except in criminal court cases copies shall be filed in all the remaining cases. LR2-105.

Similarly, in the First Judicial District, its local rules offer guidance and support for consolidation into the Second Judicial District because the oldest or first filed case becomes the base case into which other similar cases are consolidated. Specifically, under its local rules, the First Judicial District mandates:

Motions to consolidate and cases consolidated for trial shall be heard by the judge assigned to the case bearing the lowest case number (the oldest case). All pleadings will be filed in the case with the lowest case number. LR1-203 (E).

The priority of filing preference established by the local rules should be applicable to inter-district cases as well. Since there are no rules in New Mexico that specifically address inter-judicial-district consolidation, the local rules that address intra-district consolidation should be very persuasive to this Court in determining

the best judicial district to consolidate the Redistricting Cases. Because the first Redistricting Case was filed in the Second Judicial District, that jurisdiction is the jurisdiction in which the Redistricting Cases should be consolidated.

**3. Judicial Economy favors consolidation in the Second Judicial District because the cases filed in the First Judicial District do not involve redistricting of the New Mexico Public Regulatory Commission's Districts.**

It is important to recognize that the suits filed in the Second and Fifth Judicial Districts also involve the redistricting of the New Mexico Public Regulatory Commission's five (5) districts. However, the suits filed in the First Judicial District (including the lawsuit filed by the Pueblo of Laguna) do not. As a result, the First Judicial District cases are incomplete and do not properly present all the redistricting issues required to be addressed by the Respondents. Consolidation in the Second Judicial District would avoid the result of requiring a trial on disparate issues not part of the cases pending before the First Judicial District Court. Judicial economy and efficiency of the process militate in favor of consolidation in the Second Judicial District.

**4. Petitioners rely on an outdated version of the New Mexico Venue Statute in support of their argument for consolidation of Redistricting Cases in the First Judicial District. New Mexico's current venue statute allows state officials to be sued in a county where any plaintiff resides.**

Petitioners' only "legal authority" relied upon in support of their arguments that the Redistricting Cases should be consolidated in the First Judicial District is

“New Mexico’s venue statute, NMSA 1978 §38-3-1 (1988).” See Petition, ¶12. Petitioners cite to the 1988 compilation of NMSA 1978 § 38-3-1, of the New Mexico venue statute. Petitioners’ reliance on the 1988 compilation of NMSA 1978 § 38-3-1 is either a serious mistake (by not recognizing that the law has been changed) or an attempt to intentionally mislead this Court.

During the time that the 1988 compilation of New Mexico’s venue statute was in effect, the venue statute established venue to be only in Santa Fe for any lawsuits brought against state officers. However, in 1990, the statute was subsequently expanded to include any “county where a plaintiff, or any one of them in case there is more than one, resides. . .” *Compare* NMSA 1978 §38-3-1(G) (Cum. Supp. 1986) (state officials must be sued in Santa Fe County) *with* NMSA 1978 §38-3-1(G) (Repl. Pamp. 1990) (state officials may also be sued in county where plaintiff resides). Petitioners would have the Court ignore the expansion of the venue statute in 1990 at the expense of the priority jurisdiction of the James case and the other principles established by case law such as convenience, efficiency and judicial economy, as discussed above.

Although venue is technically proper in the First Judicial District for the actions filed by Petitioners, it is not appropriate for purposes of consolidation because the First Judicial District is the *least convenient* forum for the vast majority of plaintiffs and counsel of record and priority jurisdiction and

consolidation rules do not support consolidation in that district. Petitioners' improper reliance on the 1988 outdated version of NMSA 1978 §38-3-1 to argue that venue is required in the First Judicial District is misplaced because that same statute as modified in 1990 establishes that venue in this case can be in the Second Judicial District.

**B. THIS COURT NEED NOT EXERCISE ITS SUPERINTENDING CONTROL TO ASSIGN A SPECIFIC JUDGE BECAUSE THE RULES OF PROCEDURE FOR ASSIGNMENT OF JUDGES ARE NOT UNCLEAR UNDER RULE 1-088 NMRA 2011.**

If the Redistricting Cases are consolidated into one judicial district, it would be unnecessary for this Court to designate a judge under its power of superintending control at this juncture. In each of the judicial districts where redistricting litigation is pending, judges have been designated pursuant to Rule 1-088 (A) NMRA 2011 (The judge before whom the case is to be tried shall be designated at the time the complaint is filed pursuant to local district court rule).

The rules for judicial designation are not a source of confusion in the pending Redistricting Cases requiring action by this Court to manage the litigation process. Only in the event that all of the judges in a district were excused or recused and the counsel for all parties could not agree within ten (10) days, is it appropriate for this Court to designate a judge to hear all further proceedings. See Rule 1-088 (B) NMRA 2011. As a result, Petitioners request to have this Court assign a judge is at best premature. Since Petitioners' request is premature, this



Court may summarily deny their petition asking this Court to designate a judge. See Rule 12-504(C)(2) NMRA 2011 (Extraordinary Writs- “If it appears to a majority of the Court that the petition is without merit, concerns a matter more properly reviewable by appeal, or *seeks relief prematurely*, it may be denied summarily”) (emphasis added).

Petitioners attempt to circumvent the requirements of Rule 1-088 NMRA 2011 in the proper designation of a judge by stating, in a footnote, that Article VI Section 15(B) of the New Mexico Constitution allows this Court to designate a judge at this juncture. Pursuant to this Article, “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, and two or more judges may sit in any district or county separately at the same time.” N.M. Const., art. VI, §15.

Petitioners have provided no sound reason in support of their argument that this Court needs to “designate any district judge of the state” at this juncture. Petitioners’ request for designation of a judge is premature. The “public business,” at this point in time, does not require this Court to designate a new judge under Article VI, Section 15(B) of the New Mexico Constitution. The judicial designations are clearly and predictably addressed by the judicial district courts

where the actions were filed pursuant to Rule 1-088 NMRA 2011. To date, there has been no deficiency or event other than normal peremptory challenges pursuant to Rule 1-088.1 NMRA 2011 that would prevent any of the three district courts from performing their normal adjudicatory functions. Petitioners fail to assert any basis for alleging that the public business “requires” the designation of a new judge at this juncture.

As Petitioners have noted, this Court has the power to exercise superintending control and that such power “is an *extraordinary power*.” Petition at ¶ 14 (citing to In re Extradition of Martinez, 2001-NMSC-009, ¶12, 130 N.M. 144, 20 P.3d 126). 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.* (emphasis added). The Court is to exercise its power of superintending control *when the matter is of the most urgent nature*. See Jones v. Murdoch, 2009-NMSC-002, ¶17, 145 N.M. 473, 200 P.3d 523.

To the extent that the Petitioners are invoking this “extraordinary power” for the purpose of removing any existing judge and designating a new judge does not rise to the level of public importance potentially triggering the exercise of the Court’s extraordinary powers. There currently is no “urgent nature” regarding

designation of a judge. Petitioners request for designation of a judge, at this juncture, is premature pursuant to Rule 1-088 (B) NMRA 2011.

## V. CONCLUSION

Respondents agree that under the present circumstances of the six (6) Redistricting Cases pending in several judicial districts, without a clear rule of procedure to guide consolidation, that this Court should exercise its power of superintending control to consolidate these substantially similar matters in a single venue. The criteria for consolidation should uphold the tenets of judicial efficacy and economy, convenience, priority of filing, and comprehensiveness of relief. All practical considerations and the guidance of the consolidation rules weigh heavily in favor of consolidating the litigation in New Mexico's Second Judicial District.

The Second Judicial District is clearly the most convenient forum for the Redistricting Cases. Only one (1) plaintiff out of eighteen (18) plaintiffs, and six (6) attorneys, out of the twenty-three (23) attorneys of record, are located within the First Judicial District. In addition, since the first Redistricting Case was filed in the Second Judicial District, priority jurisdiction and consolidation rules favor consolidation of the Redistricting Cases in the Second Judicial District. This is especially true given that local rules on consolidation do, in fact, provide guidance on the fairest method of selecting the forum for consolidation - the first filed lawsuit becomes the base case into which other similar cases are consolidated. In

addition, since 1990, New Mexico's venue statute allows state officials to be sued in a county where a plaintiff resides. Due to the fact that a plurality of Plaintiffs reside in Albuquerque, New Mexico, this Court should consolidate the Redistricting Cases into the Second Judicial District.

Since cases filed in the Second and Fifth Judicial Districts seek remedies relating to all redistricting matters, including the redistricting of the New Mexico Public Regulatory Commission's five (5) districts, Respondents seek consolidation to the Second Judicial District Court so that all matters involving redistricting can be litigated concurrently.

## **VI. PRAYER FOR RELIEF**

Respondents pray that this Court:

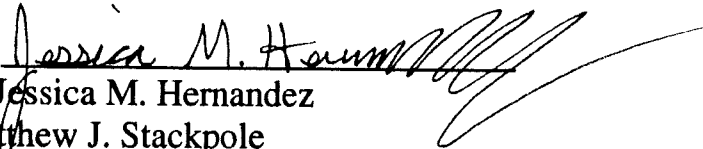
1) Expedite consideration of this matter, issue a Writ of Superintending Control to consolidate all redistricting proceedings in the Second Judicial District, in Albuquerque, New Mexico, or alternatively, deny the Petitioners' request and direct the parties to file appropriate motions to change venue and for consolidation to accomplish the same result;

2) Deny Petitioners' request to designate a judge to preside over all redistricting proceedings at this juncture because Petitioners' request is premature pursuant to Rule 1-088 (B) NMRA 2011;

3) If, in the event this Court shall issue a Writ of Superintending Control to consolidate all redistricting proceedings in the Second Judicial District, in Albuquerque, New Mexico, that the Court enters an order requiring that any future complaints raising redistricting claims be consolidated with the Redistricting Cases in the same proceeding in the Second Judicial District; and

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

Respectfully submitted,


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I hereby certify that on October 11<sup>th</sup>, 2011, a copy of this pleading was served by U.S. Mail on:

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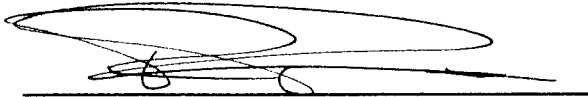
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