

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

NO. D101CV201102942

BRIAN EGOLF, 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 Tempore of the New Mexico Senate, and BEN LUJAN, ~~SR.~~, in his official capacity as Speaker of the
New Mexico House of Representatives,

Defendants.

SUMMONS

TO: BEN LUJAN, ~~SR.~~, in his official capacity as Speaker of the New Mexico House of Representatives

Defendant(s), Greeting:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after
service of the Summons, and file the same, all as provided by law.

You are notified that unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply
to the Court for the relief demanded in the Complaint.

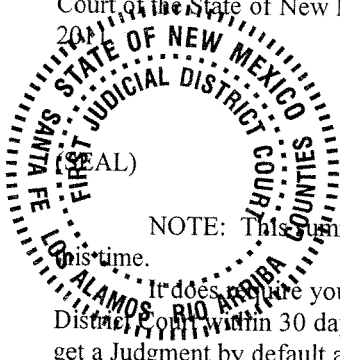
Attorney or Attorneys for Plaintiffs:

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Barbara J. Vigil

WITNESS the Honorable _____, District Judge of said
Court of the State of New Mexico and the Seal of the District Court of said County, this 26 day of September,
2011



STEPHEN T. PASHECO
CLERK OF THE DISTRICT COURT

By: [Signature]
Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at
this time.
It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the
District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may
get a Judgment by default against you.

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:

I certify that I served the within Summons in said County on the ____ day of _____, 2011, by delivering a copy thereof, with copy of Complaint attached, in the following manner:

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE:

I, being duly sworn, on oath, say that I am over the age of 18 years and not a party to this lawsuit, and that I served the within Summons in said County on the ____ day of _____, 2011, by delivering a copy thereof, with copy of Complaint attached, in the following manner:

- To Defendant _____ (used when Defendant receives a copy of Summons or Complaint or refuses to receive Summons or hear reading).
- To _____ a person over the age of 15 years and residing at the usual place of abode of Defendant _____, who at the time of such service was absent therefrom.
- By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant _____ (used if no person found at dwelling house or usual place of abode).
- To _____, an agent authorized to receive service of process for Defendant _____.
- To _____, (parent) (guardian) or Defendant . (Used when Defendant is a minor or an incapacitated person.)
- To _____, _____
Name of Person Title of person authorized to receive service. (Used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision.

Fees:

Signature of Private Citizen Making Service

SHERIFF OF _____
COUNTY, STATE OF NEW MEXICO

Subscribed and sworn to before me this ____
day of _____, 2011.

Sheriff

Notary or Other Officer

By: _____
Deputy

Title

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 02942

**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
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