

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

| | | |
|---|---|-------------------------|
| BRIAN F. EGOLF, JR., HAKIM BELLAMY, |) | |
| MEL HOLGUIN, MAURILIO CASTRO, and |) | |
| ROXANE SPRUCE BLY, |) | |
| |) | NO. D-101-CV-2011-02942 |
| Plaintiffs, |) | |
| |) | CONSOLIDATED WITH: |
| v. |) | D-101-CV-2011-02944 |
| |) | D-101-CV-2011-02945 |
| DIANNA J. DURAN, in her official capacity as |) | D-101-CV-2011-03016 |
| New Mexico Secretary of State, SUSANA |) | D-101-CV-2011-03099 |
| MARTINEZ, in her official capacity s New |) | D-101-CV-2011-03107 |
| Mexico Governor, JOHN A. SANCHEZ, in his |) | D-202-CV-2011-09600 |
| official capacity as New Mexico Lieutenant |) | D-506-CV-2011-00913 |
| 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. |) | |

**LEGISLATIVE DEFENDANTS’ PRETRIAL BRIEF
CONCERNING REDISTRICTING OF THE NEW MEXICO SENATE**

Prior to the trial on redistricting for the New Mexico House of Representatives, the Legislative Defendants submitted to the Court their *Omnibus Pretrial Brief*, which endeavored to set forth the legal principles and factual considerations that should guide the Court’s decision-making throughout all of these consolidated redistricting cases. That discussion, which was extensive, will not be repeated here. Rather, the purpose of this Pretrial Brief is to alert the Court to the following key issues that are expected to arise in the trial for redistricting the New Mexico Senate.

I. The Legislative and Executive Defendants take opposite approaches to consolidation of districts outside Albuquerque in their Senate plans as they did in their House plans, which reinforces that there is no one “right way” for a map to address under- and over-population.

In the trial for redistricting the New Mexico House of Representatives, the Executive Defendants criticized the Legislature’s plan for not consolidating a district in the North Central region of the state. The Executive Defendants argued that such a consolidation was mandatory given the low population growth in that area. However, the Legislative Defendants, through their expert Brian Sanderoff, explained that there were actually several options for dealing with under-population in the North Central area, only one of which involved consolidating a district there. In its House plan, the Legislature chose an option which involved expanding the boundaries of the North Central districts to pick up additional population, and employing deviations below the ideal in those districts, in order to maintain the core of existing districts and preserve traditional Hispanic majority districts and communities of interest. Mr. Sanderoff explained that there was no single “right” way to address population pressures in redistricting, but rather that each map reflects the choices made and the consequences of those choices.

The evidence in the Senate trial will aptly illustrate Mr. Sanderoff’s point, because here the approaches taken by the Legislative Defendants and the Executive Defendants are reversed. In its Senate plan, the Legislature responded to the significant under-population on the East side of the state and on the East side of Albuquerque Metro by consolidating one district in the Southeast region and two districts on the East side of Albuquerque. By contrast, the Executive Defendants’ Senate plan does not consolidate any districts outside of the Albuquerque Metro area, and consolidates just one district within the city.

The Legislative Defendants point out this difference not because the Executive Defendants' approach is "wrong" (although it does result in some substantial negative consequences for their map which will be proved at trial) but rather because it reinforces Mr. Sanderoff's point that there are multiple ways to tackle population pressures in redistricting. The evidence will show that in the Senate, the Legislature chose to consolidate districts in low-growth areas inside and outside of Albuquerque, in order to give the rapidly growing West side/Rio Rancho area essentially three new Senate seats.¹ The Executive Defendants, on the other hand, chose to consolidate just one district in a low-growth area of Albuquerque, and stretched other districts into the West side in order to pick up population and bring down the deviations in the high growth areas.²

At trial, the Legislative Defendants will show the Court the consequences of the choices made by both the Legislative and the Executive maps (and those of the other parties) in response to the dramatic population shifts in the state since the 2000 Census. While the Legislative Defendants will contend that, for many reasons, their Senate plan is the one the Court should adopt, it is not because there is only one "right way" to address under- and over-population around the state. Rather, the Legislature's approach should be adopted because it does the best job of maintaining continuity with existing districts while making sufficient changes to the map to satisfy legal requirements and honor traditional districting principles, all in the context of a

¹ The Egolf and Maestas Plaintiffs also took this approach.

² Like the Executive Defendants, the Sena and James Plaintiffs did not consolidate any districts outside of Albuquerque Metro, but they did consolidate more than one district inside the metro area.

public, transparent process that reflects the will of the people as expressed by a majority of their elected representatives.

II. The evidence will show that the Legislature’s Senate Plan complies with all legal requirements, promotes partisan fairness and follows traditional redistricting criteria, and is entitled to thoughtful consideration.

The Court heard in the State House trial extensive testimony about the rigorous and public process of redistricting that the Legislature undertook over the course of many months in the interim and during the 2011 Special Session. In the Senate trial, the Legislative Defendants will demonstrate how the Legislature’s Senate plan, SB 33, takes into account the public input garnered through that process, accommodates New Mexico’s communities of interest, and employs other neutral redistricting criteria to achieve a fair plan that maintains significant continuity with the existing map. The Legislative Defendants will also show that the drafters of SB 33 worked closely with Native American tribes and Pueblos and endeavored to incorporate their concerns and wishes. The evidence will also demonstrate that the plan complies with the Voting Rights Act and preserves important Native American and Hispanic majority and influence districts.

The evidence will also show that the Legislative plan’s use of incumbent pairings and population deviations comply with one person, one vote and are fair from both a regional and a partisan perspective. The plan’s overall deviation is 9.5%, which is a presumptively constitutional “minor deviation” that constitutes “substantial equality” under well-established U.S. Supreme Court precedent. *See Brown v. Thomson*, 462 U.S. 835, 842 (1983) (overall deviations below ten percent are minor and do not by themselves trigger a state’s burden to justify them); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (requiring “substantial equality of population among the various districts” and recognizing that flexibility is needed for state

legislative redistricting). This Court is neither required nor compelled to achieve lower population deviations, *see generally, Legislative Defendants' Post-Trial Brief for Redistricting of the State House of Representatives*, at pp. 23-28, nor should the Court adopt a plan with *de minimus* deviations, as it would represent a drastic change in New Mexico's established redistricting policy and can be achieved only at the expense of communities of interest and other important and neutral redistricting goals. *Id.* at 31-34. By contrast, the Legislative Defendants will show that the minor population deviations in their plan help to preserve New Mexico's communities of interest and political subdivisions, respect minority voting rights and Native American self-determination, and promote compactness.

At trial, the Legislative Defendants will show that the incumbent pairings in the Legislative plan equally affect the political parties, as the plan pairs two Democrats, two Republicans, and a Republican and a Democrat. Neither party is harmed by the plan's consolidations, either: a strong Republican seat is consolidated in the Southeast and emerges in Rio Rancho as a strong Republican seat; a strong Democrat seat is consolidated on the East side of Albuquerque and becomes a strong Democrat seat located over 90% on the West side of the Rio Grande; and a strong Republican seat is consolidated in the northern part of Albuquerque and emerges as a strong Republican seat in the West side/Rio Rancho area.

In addition, the evidence will demonstrate that the Legislature's plan embodies "least change" principles, by preserving the cores of existing districts where possible, and by minimizing the number of people shifted from one district to another to comply with equal population mandates. As noted by this Court in its Congressional Findings and Conclusions, "There is significant value in maintaining the continuity of present district lines to the extent possible given population shifts in the state. When new areas join a district, new constituencies

By: approved 12/30/2011
RICHARD E. OLSON
JENNIFER M. HEIM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 30, 2011, I caused a true and correct copy of **Legislative Defendants' Pretrial Brief Concerning Redistricting of the New Mexico Senate** to be e-mailed to all parties or counsel of record as follows and caused a copy of Legislative Defendants' Pretrial Brief Concerning Redistricting of the New Mexico Senate and this Certificate of Service to be filed electronically through the Tyler Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

The Honorable James A. Hall
James A. Hall, LLC
jhall@jhall-law.com

Joseph Goldberg
John Boyd
David H. Urias
Sara K. Berger
jg@fbdlaw.com
jwb@fbdlaw.com
dhu@fbdlaw.com
skb@fbdlaw.com

*Attorneys for Plaintiffs Brian F. Egolf, Hakim Bellamy,
Mel Holguin, Maurilio Castro, Roxane Spruce Bly*

Patrick J. Rogers
Modrall, Sperling, Roehl, Harris
& Sisk, P.A.
pir@modrall.com

and

Paul M. Kienzle III
Duncan Scott
Paul W. Spear
paul@kienzlelaw.com
duncan@dscottlaw.com
spear@kienzlelaw.com

*Attorneys for Plaintiffs Jonathan Sena, Don Bratton,
Carroll Leavell and Gay Kernan*

David P. Garcia
Ray M. Vargas
Erin B. O'Connell
Garcia & Vargas, LLC
david@garcia-vargas.com
ray@garcia-vargas.com
erin@garcia-vargas.com
leslie@garcia-vargas.com
leslie@garcia-vargas.com
abqfront@garcia-vargas.com

*Attorneys for Plaintiffs Brian F. Egolf, Hakim Bellamy, Mel
Holguin, Maurilio Castro, Roxane Spruce Bly*

Casey Douma
In-House Legal Counsel
Pueblo of Laguna
cdouma@lagunatribe.org

*Attorneys for Plaintiffs Pueblo of Laguna, a federally
recognized Indian Tribe, Richard Laurkie and Harry A.
Antonio, Jr.*

Teresa Leger
Cynthia A. Kiersnowski
Nordhaus Law Firm, LLP
tleger@nordhauslaw.com
ckiersnowski@nordhauslaw.com
Attorneys for Plaintiffs Pueblo of Laguna, a federally recognized Indian Tribe, Richard Laurkie and Harry A. Antonio, Jr.

John V. Wertheim
Jerry Todd Wertheim
Jones, Snead, Wertheim &
Wentworth, P.A.
johnv@thejonesfirm.com
todd@thejonesfirm.com
Attorneys for Plaintiffs Representative Antonio Maestas, June Lorenzo, Alvin Warren, Eloise Gift, and Henry Ochoa

Christopher T. Saucedo
Iris L. Marshall
SaucedoChavez, P.C.
csaucedo@saucedochavez.com
imarshall@saucedochavez.com
Attorneys for Plaintiffs Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan

Patricia G. Williams
Jenny J. Dumas
Wiggins, Williams & Wiggins
pwilliams@wwwlaw.us
jdumas@wwwlaw.us
Attorneys for Prospective Plaintiffs in Intervention, the Navajo Nation, a federally recognized Indian tribe, Lorenzo Bates, Duane H. Yazzie, Rodger Martinez, Kimmeth Yazzie, and Angela Barney Nez (collectively "Navajo Intervenors")

Dana L. Bobroff,
Deputy Attorney General
Navajo Nation Department of Justice
dbobroff@nndoj.org
Attorneys for Prospective Plaintiffs in Intervention, the Navajo Nation, a federally recognized Indian tribe, Lorenzo Bates, Duane H. Yazzie, Rodger Martinez, Kimmeth Yazzie, and Angela Barney Nez (collectively "Navajo Intervenors")

Hon. Paul J. Kennedy
Kennedy & Han, PC
pkennedy@kennedyhan.com
Attorneys for Defendant Susana Martinez, in her official capacity as New Mexico Governor

David K. Thomson
Thomson Law Office, P.C.
david@thomsonlawfirm.net
Attorneys for Plaintiffs Representative Antonio Maestas, June Lorenzo, Alvin Warren, Eloise Gift, and Henry Ochoa

Stephen G. Durkovich
Law Office of Stephen Durkovich
romero@durkovichlaw.com
sonya@durkovichlaw.com
Attorneys for Plaintiffs Representative Antonio Maestas, June Lorenzo, Alvin Warren, Eloise Gift, and Henry Ochoa

Henry M. Bohnhoff
Rodey, Dickason, Sloan,
Akin & Robb, P.A.
hbohnhoff@rodey.com
Attorneys for Plaintiffs Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan

David A. Garcia
David A. Garcia, LLC
lowthorpe@msn.com
Attorneys for Plaintiffs Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan

Santiago Juarez
santiagojuarezlaw@gmail.com
Attorney for Plaintiffs 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

Robert M. Doughty, III
Judd C. West
Doughty & West, P.A.
rob@doughtywest.com
judd@doughtywest.com
yolanda@doughtywest.com

Attorney for Defendants Dianna J. Duran, in her official capacity of NM Secretary of State and John A. Sanchez, in his official capacity as NM Lieutenant Governor and presiding office of the NM Senate

Jessica Hernandez
Matthew J. Stackpole
Office of the Governor
jessica.hernandez@state.nm.us
matthew.stackpole@state.nm.us

Attorneys for Defendant Susana Martinez, in her official capacity as New Mexico Governor

Charles R. Peifer
Robert E. Hanson
Matthew R. Hoyt
Peifer, Hanson & Mullins, P.A.
cpeifer@peiferlaw.com
rhanson@peiferlaw.com
mhoyt@peiferlaw.com
Attorneys for Defendant John A. Sanchez

STELZNER, WINTER, WARBURTON,
FLORES, SANCHEZ & DAWES, P.A.

 /s/ Luis G. Stelzner
LUIS G. STELZNER
SARA N. SANCHEZ
302 8TH Street NW, Suite 200
Albuquerque, New Mexico 87102
(505) 938-7770