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

BRIAN F. EGOLF, JR., HAKIM BELLAMY, MEL
HOLGUIN, MAURILIO CASTRO, and ROXANNE
SPRUCE BLY

Plaintiffs,

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, SR., in his official capacity as Speaker
of the New Mexico House of Representatives,

Defendants.

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

CONSOLIDATED WITH
D-101-CV-2011-02944
D-101-CV-2011-02945
D0101-CV-2011-03016
D-101-CV-2011-03099
D-101-CV-2011-03107
D-202-CV-2011-09600
D-506-CV-2011-00913

**DECISION AND ORDER DENYING MOTIONS
TO APPOINT A SPECIAL MASTER**

Plaintiffs Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and John Ryan, and Defendants Governor Susana Martinez and Secretary of State Dianna Duran have filed motions requesting that the Court appoint a Special Master to assist the Court in formulating and developing redistricting maps for the State of New Mexico. Plaintiffs Jonathan Sena, Don Bratton, Carroll Leavell and Gay Kernan have joined in the motions. For the reasons set forth below, the Court concludes that the motions should be denied and that these cases should proceed according to the Scheduling Order previously entered.

The moving parties request that the Court appoint a Special Master who would be tasked with the assignment of preparing maps which define districts for the United States

House of Representatives, the New Mexico House of Representatives, the New Mexico Senate and the New Mexico Public Regulatory Commission. The maps prepared by the Special Master would then be subject to approval, rejection or modification by this Court. The moving parties argue that such an approach would be beneficial because the parties to this litigation would then be focused on the Special Master's maps and the need for any modification to those maps. The moving parties contend that such an approach would be more efficient, both in terms of time and expense, than proceeding to evidentiary hearings which would involve the presentation of multiple proposed maps by the various parties involved in the litigation.

This Court is in agreement with the moving parties' desire to address the issues in this litigation as efficiently as possible, both in terms of time and expense. This desire for efficiency, however, must be realistic, must recognize the complexity of the issues involved, and must ensure that the rights of all parties are protected. After considering the issue, the Court concludes that the approach proposed by the moving parties would not lead to greater efficiency and, in fact, may well increase the time and expense involved in this litigation.

On the surface, it appears logical that the appointment of a Special Master might streamline the proceedings in that the proposed maps created by the Special Master would be the focus of any review by the Court. In reality, delegating certain responsibilities to a Special Master inserts additional procedural steps to already complex litigation. The moving parties imply that the Court could easily select a Special Master and instruct that individual as to the scope of his or her task. In reality, the selection and instruction of the Special Master would open the door to extensive disputes between the

parties. Identifying a truly neutral Special Master who is qualified to address the multiplicity of factual and legal issues involved in creating acceptable maps would likely be difficult. Moreover, the precise language of the instructions for the Special Master could have a significant effect on the final product produced by the Special Master. It seems highly likely, therefore, that the parties would endeavor to craft instructions designed to protect their own interests in this litigation. Such an approach would lead to significant disputes over the instructions to be given to the Special Master which would likely delay the process.

Once the Special Master was appointed and instructed, the Special Master would be required to take input from the parties and it would be difficult for the Special Master to avoid a full scale hearing on the parties' proposed maps. More importantly, after the Special Master made his or her recommendations to the Court, the parties would again have a right to present arguments and evidence in response to the Special Master's recommendations. At this stage, the parties would certainly have the right to present their own maps as alternatives to the maps proposed by the Special Master. Given the due process rights of the parties, it would be difficult for the Court to avoid a full evidentiary hearing on each of the maps at issue in this litigation. Ultimately, the inclusion of a Special Master may simply lead to more potential issues for appeal.

This Court concludes that appointment of a Special Master would not lead to increased efficiency in resolving the issues. This does not mean, however, that the process of resolving these issues must be unduly expensive and unnecessarily time consuming. As to the amount of time necessary to resolve these matters, the Court has entered a Scheduling Order which will complete the evidentiary hearings on all issues by

January 13, 2012. The Court has given priority to the resolution of the United States House of Representatives districts as this 2012 election has the earliest filing deadline. Under the circumstances, the issues in this case as to all new maps will be resolved timely.

As to the expense of the litigation, the moving parties express the greatest concern over the potential cost to the taxpayer of attorney fees and expert witness expenses. This is a legitimate concern although a certain level of expense to the taxpayer was assured when the legislative and executive branches failed to adopt into law any new redistricting plans. And while the complexity of the issues will require the expenditure of substantial sums for attorneys and expert witnesses, there are reasonable steps that the parties, counsel and the Court can take to limit the attorney fees and expert witness costs. For example, parties having substantially similar interests can work together in selecting experts and preparing briefs on legal issues to avoid duplication. For those parties with multiple attorneys representing them, appearances in Court can be limited to a single attorney in most circumstances and, in the case of the evidentiary hearings, appearance by more than one attorney can be limited to only certain essential parts of the hearing. For the state officials who are parties in this case, those officials have the ability to direct their counsel to avoid unnecessary conflicts on extraneous issues to reduce fees and costs. Finally, the Court, in exercising its discretion to control the proceedings, can exclude any cumulative experts and other cumulative evidence, and the Court can require counsel to focus the presentations on the central issues of the case.

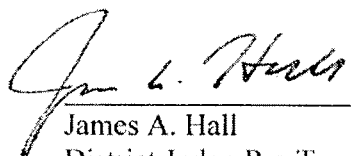
Ultimately, the taxpayers will be responsible for the fees and costs incurred for the representation of the state officials who are Defendants in this action. In addition, the

taxpayers may also be responsible for the fees of other parties pursuant to *42 U.S.C. §1988*. This provision, however, states that the Court “in its discretion, may allow the prevailing party, ... a reasonable attorney’s fee as part of the cost,” including expert fees. *42 U.S.C. §1988(b) and (c)*. For fees and costs awarded under this provision, the Court is granted considerable discretion in determining who is the prevailing party and what constitutes a reasonable fee. To the extent that some parties may be relying on this statutory provision, the Court’s discretion provides an incentive to be efficient in the presentation of the case.

For the reasons set forth above, the Motions to Appoint a Special Master are hereby denied and the case will proceed pursuant to the previously issued Scheduling Order.

IT IS SO ORDERED.

Dated: 10/24/11



James A. Hall
District Judge Pro Tempore

Copies to counsel of record via e-filing system.