

**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,)

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**
Honorable James A. Hall

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

**CORRECTED SUBMISSION OF THE EGOLF PLAINTIFFS CONCERNING THE
DISTRICT COURT'S POST-REMAND REMEDIAL PRELIMINARY PLAN OPTIONS**

I. Introduction

1. The Egolf plaintiffs file this Submission pursuant to this Court's Order Establishing Deadlines, filed on February 13th, and responding to the Court's proposed Preliminary Plans Nos. 1 and 2, filed on February 20th. The Egolf plaintiffs are comprised of a state legislator and four

additional electors who are from racial or ethnic minorities. Throughout these redistricting proceedings – congressional, state senate and state house – the Egolf plaintiffs have presented plans focused on promoting the voting rights and interests of racial and ethnic minorities through submission of plans that seek to create electoral districts that preserve racial and ethnic minority communities and guard against dilution of the ability of these communities to effectively exercise their voting rights. [Tr. 12-15-11, pp. 84-85 (Williams).] The Egolf plaintiffs evaluate the Court’s proposed Preliminary Plan Options with the same goals in mind: preserving wherever feasible racial and ethnic minority communities within electoral districts and avoiding unnecessary dilution of the voting rights of these communities.

2. Our analysis of both Options leads us to conclude that both Preliminary Plans are derived from the Court’s previous remedial plan, which largely adopted the plan (Exec. Alt. 3) submitted by the Executive Defendants and was overturned by the New Mexico Supreme Court in its Order of February 10, 2012, and Opinion filed on February 21, 2012. As we explained in our Opening Post-Remand Brief, filed on February 15, 2012, we believe that the Court’s initial remedial plan is not a good place to start in developing a post-remand remedial plan because of the built-in biases and problems in the Exec. Alt. 3 plan, many of which harm or disregard New Mexico’s historical racial and ethnic communities and interfere with the effective exercise of the voting rights of these communities. Our analysis of the Court’s recently-filed, post-remand Preliminary Plan Options reveals that while the Preliminary Plans make some changes and

modest improvements, they continue to suffer from these underlying biases and problems and hence continue to unnecessarily harm or disregard racial and ethnic communities of interest and unnecessarily dilute the voting rights of these communities. See Part II, below. We renew our suggestion that the Court adopt or start from Egolf Plans 2 or 5, which do not suffer from these biases and problems and provide greater protection than any other plans submitted for the voting rights and interests of these racial and ethnic minority communities.

3. In addition, while both Preliminary Plan Options make corrections to HD 63 and address the splitting of at least Deming and the Hispanic community in that city, we submit suggested changes to both Preliminary Plans to (a) strengthen HD 63 as an effective Hispanic VAP district and (b) correct the continued splitting of Silver City and the Hispanic community in that city. We also suggest that if the Court requires the “jumping” of a district from North Central New Mexico to Albuquerque’s west side, the “pairing” of districts in Preliminary Plan Option 1 is preferable to that in Preliminary Plan Option 2. See Point III, below.

II. Problems and Deficiencies in the Court’s Preliminary Plans

4. The plan submitted by the Executive Defendants and largely adopted by this Court in its initial remedial plan not surprisingly contained partisan biases favoring Republicans. These biases harm racial and ethnic minority communities in two ways. First, in order to accomplish the built-in partisan biases, the Exec. Alt 3 Plan (and the Court’s initial remedial plan based on Exec. Alt. 3) had to split racial and ethnic minority communities and dilute the voting strength of

these communities. Second, since racial and ethnic minorities predominantly vote for Democratic candidates as their candidates of choice, [Tr. 12-15-11, p. 236; Tr. 12-19-11, pp. 53-54 (Arrington); Egolf House Ex. 16], the built-in partisan bias adversely affects racial and ethnic minorities.

5. Our Supreme Court identified the partisan bias in this Court's initial remedial plan as one reason for overturning it and remanding the plan back to this Court for further consideration, instructing this Court to remove partisan bias from any post-remand remedial plan. [2/10/12 Order, p. 20; 2/21/12 Opinion, p. 28.] While Preliminary Plan Options 1 and 2 address some of the manifestations of the built-in Republican partisan bias in Exec. Alt. 3 and in this Court's initial remedial plan – by increasing the number of districts with “Democratic performance” numbers above 50% from 36 to 38 – as the attached affidavit from the Egolf plaintiffs' political science expert, Professor Theodore Arrington, shows that, the Court's Preliminary Plan Options 1 and 2, both continuing to be based on Exec. Alt. 3, continue to reflect significant republican partisan bias. Professor Arrington applied the recognized “symmetry” analysis that he testified to in the redistricting trials, analyzing whether proposed redistricting plans treat the political parties similarly at various hypothetical election results. [Tr. 12-15-11, pp. 267-68 (Arrington); Arrington Affidavit, attached hereto as “Exhibit A”, pp. 4-7.] As Dr. Arrington shows in his attached affidavit, both of the Court's Preliminary Plans reflect a significant Republican partisan bias. In the election result posture where each party obtains 50 % of the statewide vote, rather

than resulting in an even split of the legislative seats – as would be expected if the plan were neutral – both Court plans reflect the Republican Party electing 39 representatives and the Democratic Party electing 31, a difference of 8 seats, favoring the Republican Party. [Ex. A, Arrington Affidavit, p. 7.] At the election result where either party obtains 53 % of the vote, the plans confirm this inherent Republican partisan bias, showing that the Republican Party would elect 40 representatives while the Democratic Party would elect only 38 representatives. [Ex. A, Arrington Affidavit, pp. 7-8.] As Professor Arrington concludes: “The two plans presented by the Court, Option 1 and Option 2, have severe partisan bias. . . . This confirms that the Court’s redistricting plans, if enacted, would give the Republican Party an unfair advantage.” [Ex. A, Arrington Affidavit, p. 9.]

6. The Court’s proposed Preliminary Plans have other deficiencies:

- While the plans reunite Deming and the Hispanic community there, they continue to split Silver City and the Hispanic community in that city. Moreover, the configuration of districts in the Southwestern part of the State in those plans, carried over from the Exec. Alt. 3 plan, unnecessarily dilute the voting strength of the Hispanic communities in Deming and Silver City. [Corrected Egolf Plaintiffs’ Brief in Support of Reversing District Court’s Redistricting Plan for the New Mexico House of Representatives, pp. 41-47.] The only possible justifications for these

splits of racial and ethnic minority communities and dilution of their voting strength can be the quest for unnecessarily low population deviations and/or maintenance of partisan bias. Both the Egolf Plans 2 and 5 configure districts in the Southwest that will not dilute ethnic minority voting strength.

- The electoral district of Brian Egolf (HD 47), one of the Egolf plaintiffs who appealed the Court's initial remedial plan, changes dramatically from the Court's initial remedial plan to the proposed Preliminary Plans. Eastern Santa Fe precincts that are in Representative Egolf's district currently and were in the Court's initial remedial plan (precincts 13, 48 and 57) are now removed to HD 68 and a large swath of rural land to the southwest of Santa Fe is added to his district. Together with the removal of three Eldorado precincts from HD 47 effected by the Court's initial remedial plan and continued in the proposed Preliminary Plans, these changes, unexplained, both alter significantly the core of Representative Egolf's district and isolate a significant section of central city Santa Fe (containing historic Hispanic neighborhoods) from the remainder of that city and joins these people to a large rural district stretching to Raton.

- While the detail of the proposed preliminary plans claim 29 VAPH districts, at least 5 of these districts (HDs 7, 8, 53, 58 and 61) will not be effective “opportunity” districts that will likely allow the supposed Hispanic majorities in those districts to elect candidates of their choices. Thus, there are really only 24 effective VAPH districts in these plans, as compared to 26 and 27 such districts in the Egolf 2 and 5 plans, respectively.
- Both Preliminary Plans pair two strong Democratic districts in the North Central part of the State to create a new, strong Republican district on the west side of Albuquerque. As the Egolf 4 Plan shows, it is not necessary to create a strong Republican new district on the west side. The result of the Court’s pairing in both Preliminary Plans, of course, is the creation of a net gain of one seat for the Republicans.

III. Suggested changes to the Court’s Preliminary Plans

7. While the Court improved HD 63 to create an effective VAPH districts where the Hispanic community can elect candidates of their choice, we suggest that a switch of two precincts will provide modest but beneficial improvement to that district. We suggest that the Court switch Curry precinct 4, presently in HD 63 in the Court’s Preliminary Plans to HD 64. We further suggest that the Court switch Curry precinct 22, currently in HD 64 in the Court’s

Preliminary Plans to HD 63. This switch of these precincts will improve HD 63 by increasing the VAPH in HD 63 by 1.4 % (from 57.04 % to 58.44%) and the commensurate citizen VAPH. The switch lowers the population deviation in HD 63 from - 1.42 % to - .81%.

8. The Court's Preliminary Plans corrects the fracture of Deming and the Hispanic community there, but does not repair the fracture of Silver City and its Hispanic community. We suggest that the division of Silver City and its Hispanic community can be repaired by employing the following precinct switches:

- Switch Grant precincts 19, 32 and 33, presently in HD 39 in the Court's Preliminary Plans, to HD 38;
- Switch Luna precinct 2, presently in HD 32 in the Court's Preliminary Plans, to HD 39;
- Switch Grant precinct 29, presently in HD 39 in the Court's Preliminary Plans, to HD 32;
- Switch Hidalgo precinct 4 and Grants precincts 6, 30, and 35, presently in HD 38 in the Court's Preliminary Plans, to HD 32; and
- Switch Sierra precinct 4, presently in HD 38 in the Court's Preliminary Plans, to HD 39.

These precinct switches restore Silver City and its Hispanic community into one district and makes only minimal, insubstantial changes to population deviations or VAPH percentages in those districts.¹

9. With respect to which pairing we prefer in the North Central area, we prefer the pairing reflected in the Court's Preliminary Plan Option 1, on the basis that we understand that the Multi-Tribal Group of Native American Plaintiffs, whose interests are affected, prefer that pairing; and the Egolf plaintiffs defer to those wishes and to the interests of tribal sovereignty.

IV. Conclusion

For the reasons set out above, we urge the Court to abandon plans based on its initial remedial plan and instead adopt a plan based on Egolf 2 or Egolf 5, which do not have the built-in problems that any plan based on Exec. Alt 3 will have.

Respectfully submitted,

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¹ Population deviations increase from + .95 % to + 1.23 % in HD 32 and from + .75 % to - 1.56 % in HD 39. VAPH percentage from 54.8 % to 53.3 % in HD 32 and from 56.8 % to 56.1 % in HD 39.

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I hereby certify that on February 23, 2012, I caused the foregoing to be electronically filed 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, and additionally all counsel of record were served via electronic mail.

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By: */s/ Joseph Goldberg*
Joseph Goldberg

3. I am a recognized expert in the fields of districting, reapportionment, racial and partisan voting patterns, and voting processes in the United States and Canada. The Firm of Freedman Boyd Hollander Goldberg Ives & Duncan, P.A., retained my expertise to provide expert testimony in this case. I am compensated for my time at the rate of \$250 per hour or \$2,000 per day for work and travel from my residence.

OBJECTIVES OF DECLARATION

4. I have been asked to evaluate the proposed redistricting plans for the New Mexico State House of Representatives, prepared by the Honorable James A. Hall of the First Judicial District Court in response to the recent decisions of the New Mexico Supreme Court, including the New Mexico Supreme Court Order, No. 33,386, filed Feb. 10, 2012, and the New Mexico Supreme Court Opinion filed on Feb. 21, 2012, in terms of partisan fairness. Judge Hall submitted two proposed plans, Option 1 and Option 2 Plans, for the parties review on Feb. 20, 2012. *See* Notice of Filing of Preliminary Plan No. 1 and No. 2, filed Feb. 20, 2012.

CREDENTIALS

5. I set forth here a summary of my experience, which is most relevant to this testimony. The full range of my professional qualifications and experience is described in my curriculum vitae previously submitted to the Court. That vita includes a complete listing of all publications authored by me, and all of the voting rights cases in which I have testified by affidavit, report, deposition, or courtroom testimony, in my career.

6. I am Professor Emeritus of Political Science at The University of North Carolina at Charlotte (UNC Charlotte). I received my Doctor of Philosophy degree from The University of Arizona in 1973. I joined the UNC Charlotte faculty in 1973. I have taught both

undergraduate and graduate courses in topics such as research methodology, voting behavior, political parties, interest groups, Congress, the Presidency, and Southern politics. I retired from the University in July 2010. During my tenure at UNCC, I served as Chair of the Department of Political Science for 18 years, and was elected President of the University Faculty. I was President of the North Carolina Political Science Association in 2010-11.

7. I have co-edited one book and coauthored two monographs, published 37 refereed articles, and delivered numerous papers in the last 40 years. Most of these works concern the effects of party and race on voting behavior. Included in my research are several published studies on the impact of campaign finance on elections. Much of this work also examined racial and partisan variables in single-member and multi-seat elections. My continuing research is focused on: districting; the effects of party, race, and ethnicity on voting; alternative voting systems in local elections. I recently published a detailed analysis of what political scientists know about the redistricting process in the United States (see "Redistricting in the U.S.: A Review of Scholarship and Plan for Future Research," *The Forum* 8 (Number 2, Article 7, 2010). DOI: 10.2202/1540-8884.1351 Available at: <http://www.bepress.com/forum/vol8/iss2/art7>).

8. My academic specialties have led to my retention as an expert witness in 41 lawsuits involving voting rights. In 20 of these cases I have given trial testimony.

9. For 12 years I was a member of the Mecklenburg County Board of Elections. For six years I was the chair of the Board. During that 12-year period I attended all of the training sessions for board members.

METHODOLOGY

10. The source of all data for this affidavit is the Geographic Information System of the firm called Research & Polling, Inc., located in Albuquerque, New Mexico. This firm has supplied the Egolf Plaintiffs with a spreadsheet showing the demographic and political data for all of the districts in both of the plans prepared by the District Court. The Egolf Plaintiffs have provided me with the spreadsheets.

11. My analysis reveals the underlying partisanship of the districts. It relies on the concept of the "seat/vote relationship." The methodology involves holding constant the effects of everything except that underlying partisanship, and then observing the relationship of the statewide vote and the seats won by each party. One way to think of it is like a sporting event with two teams. If both teams are equally matched and the playing field (i.e., the districts) is level, the game should end up as a tie. If team "D" is better and the field is level, then team "D" should win more seats. If team "R" is better and the field is level, then team "R" should win more seats.

12. To eliminate differences between the players (i.e., the parties), the first step is to "hold constant" or "control for" the effects of individual candidates in the legislative elections. To do that I use the "Democratic performance" (Demperf) measure prepared for the use of the State Legislature by Research & Polling, Inc. Both Plaintiffs and Defendants have been using these data, although not always appropriately. Demperf is the average Democratic percentage of the two-party vote for almost all statewide offices from 2002 to 2010. A few elections that were not competitive were omitted from the calculation. As I stated in my testimony in the previous trials in this matter, Demperf is exactly the measure I would use if I were designing a metric to evaluate the partisanship of

districts. I am not making any methodological compromise simply because Demperf is readily available.

13. The average statewide vote for these offices in the last decade was 53% Democratic, 47% Republican. This could be called the “normal vote,” but that is misleading. Since I initially want to know how the districts treat the two parties when the two teams are evenly matched, I adjust Demperf by reducing it systematically for all districts by three percentage points. This simulates the situation where the two parties each received 50% of the vote statewide. That is, it simulates the condition in which the two teams are evenly matched. The concept here is that if the statewide vote is split down the middle, the two parties should also split the seats in the House evenly (35 seats each). This assumes, of course, that different candidates in the districts, money spent, attractiveness of the party platforms, etc. are irrelevant. And that is exactly the point. The districts are the playing field, which should be level. We are not concerned about which team (party) is better, we simply want to create districts which do not favor one party or the other. Then the results of the election will be determined by the ability of the teams, not the playing field.

14. Political scientists have been studying the seat/vote relationship in single-member district systems for generations. (This literature is summarized in two of my articles listed in my vita: The *Forum* article cited above and “Affirmative Districting and Four Decades of Redistricting: The Seats/Votes Relationship 1972-2008.” *Politics and Policy* 38, Number 2, 2010, 223-253.) The seat vote relationship almost always involves a “swing” greater than 1.0 in single member district systems. This means that the majority party will normally receive a higher percentage of the seats than votes. For example, if the

Democrats receive 53% of the vote statewide, we would expect them to receive more than 53% of the seats in the House. Similarly, if the Republicans receive 53% of the vote statewide, we would expect them to receive more than 53% of the seats. Virtually all of the plans submitted to the Court for both the House and the Senate had a “swing” of about 2.0. Meaning that if the majority party received 53% of the vote statewide, that party would receive about 56% of the seats (about 39 seats). In a plan without built-in partisan bias, the swing should be symmetrical. That is, the Democrats and Republicans should be treated the same way when each of them is the majority party statewide. This means that if the Democrats get 53% of the statewide vote and win 39 seats in the House, then the Republicans should also win 39 seats if they get 53% of the statewide vote.

15. Otherwise, something would be causing one party to have a greater (favorable) swing; and since this analysis reasonably controls for other factors, that factor promoting a favorable swing must be that the districting plan favors that party. By adjusting Dem-perf it is possible to simulate all three of the conditions we wish to examine: Democratic statewide vote 50%, Democratic statewide vote 53%, and Republican statewide vote 53%. Thus we can measure bias (what happens at 50/50), and the symmetry of the swing.

16. It may be desirable, but unrealistic, to expect the bias to be absolutely zero (35 seats each). I have opined in this case and in my publications that a bias of less than 1% is reasonable and would probably not be considered “severe” by the Federal Courts (see *Davis v. Bandemer*, 478 U.S. 109 (1986)). If there is a bias then the next question is what majority of the statewide vote would the party that does not have 35 seats need to win 35 seats? Suppose, for example, that at 50/50 statewide vote the Republicans have 36 seats and the Democrats 34. If the Democrats could win that additional seat to make the divi-

sion equal by winning just 50.6% of the statewide vote, then I would opine that the bias was not severe. But if, in this hypothetical, the Democrats needed to win 51.6% of the statewide vote, then I would conclude that the bias was severe and unacceptable. The courts may someday establish bright lines to define how much of a bias is severe, but to my knowledge neither the New Mexico nor the Federal courts have done so.

ANALYSIS OF THE COURT'S PLANS

17. In terms of partisan bias and the adjusted Demperf figures for the most competitive districts, both of the Court's plans, Option 1 and Option 2 (filed for the parties review on Feb. 20, 2012) are identical. Table 1 (attached) presents the adjusted Demperf figures for the ten districts for each party that are nearest the 50% mark. If the statewide vote were 50% Democratic and 50% Republican, the Democrats would win only 31 seats (44% of the House) and the Republicans would win 39 seats (56% of the House). This is a bias of four seats from evenly divided, but a total difference between the two parties of eight seats or 11% of the entire House membership. In order for the Democrats to "pick up" the four seats they need for parity, they need to get 51.72% of the vote. This can be readily seen in Table 1 by recognizing that there are four districts in which the adjusted Demperf figures are within 1.72% of 50%. In the Table these four districts, located adjacent to the center "50/50" box, are House Districts 4, 36, 63, and 32. If the Democrats got 51.72% of the statewide vote they would win these four districts and have 35 seats in the House.

18. The symmetry of the swing can also be confirmed by the figures in Table 1. If the Democrats received 53% of the vote statewide, they would win 38 seats (54% of the House). This can easily be seen in Table 1 by simply noting the districts to the left of the

center cell that are within three percentage points of the 50% mark. The districts that the Democrats would pick up at 53% adjusted Demperf are the four listed in the previous paragraph plus 15, 39, and 7. (District 24 is actually at 46.97% Adjusted Demperf, so the Democrats would not win that district if they received 53% of the statewide vote.)

19. The position of the Republicans, were they to win 53% of the statewide vote, is also easily calculated by examination of Table 1. If that party received 53% of the statewide vote they would win 40 seats. In addition to the 39 seats they have at 50/50, they would pick up one additional seat – District 50. That is the only district that has an adjusted Demperf between 50.0 and 53.0%. These plans are not only defective in having a bias at the 50/50 point, but the plans are also defective in that the Republicans essentially have limited potential growth on the upside.

COMPARED TO WHAT?

20. All redistricting analysis must come down to the question: “Compared to what?” Several of those who testified at the hearings and the arguments of several of the attorneys used unadjusted Demperf numbers in an unhelpful fashion. Some analyses often cited the number of districts the Democrats would win at the average statewide vote over the last ten years – the unadjusted Demperf. But the appropriate question is: “What do we compare this figure to?” The appropriate answer is given above. We should compare the number of districts that the Democrats would win with 53% of the statewide vote (unadjusted Demperf) to the number of districts that the Republicans would win if they received 53% of the statewide vote. The success of the Democrats at unadjusted Demperf has no meaning unless this proper comparison is made. That is simply the way redistricting plans are compared by knowledgeable political science expert witnesses.

21. A second “compared to what” involves the comparison of these plans to a number of plans submitted to the Court during the redistricting hearings. Several plans, including several plans submitted by the Egolf Plaintiffs drawn with my help, had less bias and greater symmetry than these plans while also abiding by the compromise plans of the Native Americans, keeping communities of interests together, and providing a reasonable number of districts in which Hispanic voters would have the ability and the opportunity to elect representatives of their choice. In other words, there is no reason for the Court to adopt plans with this degree of partisan bias when better plans have been presented.

CONCLUSIONS

22. The two plans presented by the Court, Option 1 and Option 2, have severe partisan bias. If the two parties were equally competitive statewide, the Republicans would win 39 seats and the Democrats only 31. This shows that the redistricting plans, themselves, are providing advantage to the Republican Party. In order to win half the seats the Democrats would have to win 51.72% of the statewide vote. This bias is compounded by a severe asymmetry in the seat/vote relationship. If the Democrats won 53% of the statewide vote they would win 38 seats (54%). If the Republicans won 53% of the statewide vote they would win 40 seats (57%). This confirms that the Court’s redistricting plans, if enacted, would give the Republican Party an unfair advantage.

FURTHER AFFIANT SAYETH NAUGHT.

Theodore S. Arrington 23 Feb 2012
THEODORE S. ARRINGTON

Subscribed and sworn-to before me this 23 day of February, 2012.

[Signature]
Notary Public

My Commission Expires:



OFFICIAL SEAL
ERIN B O'CONNELL
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires July 8, 2010

Table 1 of Arrington Affidavit 23 February 2012

Presentation of Adjusted Demperf Figures for Competitive Districts

In the Court's Two Plans for the New Mexico House of Representatives

(Shows the 10 Districts from each party that are closest to 50% Adjusted Demperf)

(In terms of Partisanship and the Adjusted Demperf percentages for these 20 districts in both plans are identical)

-10	-9	-8	-7	-6	-5	-4	-3	-2	-1	50/50	+1	+2	+3	+4	+5	+6	+7	+8	+9	+10
46.4	46.6	47.0	47.1	47.8	47.8	48.3	48.4	49.1	49.8	Adjusted Demperf Bias= -4 seats	51.7	53.7	54.4	54.7	55.0	55.0	55.9	56.4	56.6	59.4
37	43	24	15	49	7	32	63	36	4	District Numbers	50	39	33	21	35	52	16	25	26	17

Bias= -4 meaning at 50/50 Statewide vote the Republicans win 39 seats (56%) and the Democrats 31 (44%)

In order for the Democrats to win 35 seats they must get 51.72% of the statewide vote

If the Democrats got 53% of the statewide vote, they would win 38 seats (54%)

If the Republicans got 53% of the statewide vote, they would win 40 seats (57%)