

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

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

Plaintiffs,

and

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,

Plaintiffs in Intervention,

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.

**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-101-CV-2011-09600  
D-101-CV-2011-00913**

**NEW MEXICO LEAGUE OF UNITED LATIN AMERICAN CITIZENS (NM  
LULAC), PLAINTIFFS' IN INTERVENTION PRE-TRIAL MEMORANDUM**

**I. HISTORICAL OVERVIEW OF NM CONGRESSIONAL DISTRICT 2**

The 2<sup>nd</sup> Congressional District of New Mexico was created on January 3, 1969. It encompasses most of southern New Mexico and is the second largest congressional district in the United States of America. There has never been a Hispanic elected to

congress from this district. All whom have been elected to this House Seat have been from Southeastern New Mexico:

1. Ed Foreman (R) Portales, NM, from 1969-1971;
2. Harold Runnels (D) Lovington, NM, from 1971-1980;
3. Position vacant from August 5, 1980 (due to death of Rep. Runnels);
4. Joe Skeen (R) Roswell, NM, from 1981-2003;
5. Steve Pearce (R) Hobbs, NM, from 2003 to 2009;
6. Harry Teague (D) Hobbs, NM, from 2009-2011; and
7. Steve Pearce (R) Hobbs, NM, from 2011-Present

Each and every one of these individuals was or is from the southeast quadrant of the state.

This district, since its inception was intentionally gerrymandered to break up and prevent Hispanic voters from becoming a minority majority in southern New Mexico. This so called spirit of traditional boundaries was compromised by partisan political technocrats from both the Republican and Democratic parties. They did not represent nor did they have any consideration or input from their Latino constituency. This district was carved out to make the White non-Hispanic voters of southeastern New Mexico the majority, thereby, preventing any opportunity for a Latino of getting elected to this House Seat. This is demonstrated in both the General Elections and Primary Elections:

**General Elections 1968 to Present:**

1. 1968 – Wilfredo Sedillo (I);
2. 1992- Dan Sosa, Jr. (D);

3. 1994- Benjamin Anthony Chavez (D);
4. 1996- Shirley Baca (D);
5. 1998-Shirley Baca (D); and
6. 2000- Michael Montoya

**Republican Primaries 1968 to Present:**

1. 2004- Leo Martinez

**II. RACE RELATIONS AND DISCRIMINATION IN CONGRESSIONAL DISTRICT 2-SOUTHEASTERN NEW MEXICO**

Mr. Ed Forman was also a congressman from Texas in the early 1960's before he moved to Portales, NM. In 1963, while serving west Texas, Mr. Forman made inflammatory remarks towards the late Congressman Henry B. Gonzales (D) of San Antonio, TX. This evidently caused a physical altercation between Mr. Forman and Mr. Gonzales. Forman was supposedly angry at Gonzales' support for the 1964 Civil Rights Act and liberal views. This is according to memoirs and several biographies of the late Congressman Henry B. Gonzales (D) of San Antonio, TX. <sup>1</sup> Many of the successors to this same house seat have consistently ignored, voted against or have acted indifferently toward Hispanics and our issues in terms of employment, constituent services, housing, economic development, immigration, and race relations.

Many municipalities in southeastern New Mexico have historically recognized Jim Crow type laws or ordinances<sup>2</sup>. The late Sen. Dennis Chavez fought discrimination in

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<sup>1</sup> Biography of Henry B. Gonzales: [http://www.novelguide.com/a/discover/chb\\_02/chb\\_02\\_00045.html](http://www.novelguide.com/a/discover/chb_02/chb_02_00045.html)  
Gonzales told this story many times at the 1982 National LULAC Convention.

<sup>2</sup> New Mexico Historian's references to Jim Crow laws in southern New Mexico: <http://www.newmexicohistory.org/filedetails.php?fileID=24454%22>.

this district while in the U.S. Senate. He learned that a young girl was not allowed to use a public swimming public pool in Roswell, NM because she was Hispanic. Incensed, Chavez contacted the mayor of Roswell and demanded, "Open the swimming pools and all the public facilities to everybody in Roswell or Walker Army Air Base will not be financed." The swimming pool, golf course and other public facilities were soon open to all residents of Roswell<sup>3</sup>.

To this date, several of these communities oppose local Hispanic Chambers of Commerce to benefit from lodger's tax, while other non-Hispanic Chambers of Commerce receive by way of city and county government funding for promoting tourism and economic development. In 2009 NM LULAC contacted the U.S. Department of Justice Community Relations Services to conduct Alternative Dispute Mediation and intervene in Roswell, NM and other southeastern communities to mediate and encourage positive race relations with the Spanish speaking community. To say that no discrimination exists in this state and particularly in the southeastern quadrant of the state is ludicrous and false. Anti-immigrant and racial profiling is prolific in that part of the state. Hispanics have been targeted with impunity regardless of immigration status by law enforcement officials. Many of these ordinances such as those promoted in Otero and Lincoln counties compelled the NM Legislature to sponsor an anti-racial profiling bill passed by the NM Legislature and signed by Governor Bill Richardson in 2009.

These Jim Crow type initiatives are unfortunately supported and encouraged by non-Latino elected officials from both parties whom reside in the aforementioned area. Many of these elected officials and their core constituents continue to harbor a dichotomy

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<sup>3</sup> Valencia County Historical Society Article: <http://www.news-bulletin.com/lavida/64579-09-09-06.html>

of forced assimilation by encroaching their values and culture on others, without respect or regard for the historical norms, traditions, culture and customs of the Latino and indigenous population. Moreover, they have maintained idiosyncrasies of xenophobia and bigotry. Elected officials, particularly the defendant Duran continues to target Hispanics and cause voter intimidation during the elections process. These officials have only targeted Hispanics to produce proof of citizenship, while White non-Hispanics are not questioned as to their citizenship status. The Defendant and several elected officials continue to over generalize and vilify the Hispanic community with election fraud. This history of discrimination and racism has subliminally caused fear and intimidation with Hispanic voters from that part of the State. The elected officials have and continue to use the color of authority to oppress the Hispanic community. In 2007, 2008 and 2009, the majority of the State Legislators from southeastern quadrant of the state voted against the creation of either a Department or an Office of Hispanic Affairs. This Office or Department would have served as a catalyst or conduit to address education, employment and economic development for this population. Hispanics have the highest rate of school drop outs throughout New Mexico, at over 50%. This has become a crisis. Recent studies consistently show that Hispanics make less income per capita than non-Hispanic Whites do in the 2<sup>nd</sup> Congressional District.

### **III. PLAINTIFFS' IN INTERVENTION POSITION WITH RESPECT TO THE NEED OF RESIDING CONSISTENT WITH THE VOTING RIGHT ACT**

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.

The population of the State of New Mexico has grown, changed in demographic characteristics and shifted in location substantially since the 2000 census. The three current United States Congressional districts in New Mexico are based on population data from the 2000 Census. As a result, this district 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, denial of the right to equal voting rights under, Art. I, §2 of the United States Constitution and the Voting Rights Act of 1965 for plaintiffs and all other voters throughout the State of New Mexico.

Pursuant to federal law, the detailed results of the 2010 decennial census was 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 and legislative 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.”

To this date, New Mexico has not accomplished any redistricting whatsoever based on the current census of its citizens. Redistricting must be accomplished now in the short time remaining so that Defendants and other New Mexico election officials may begin their preparations for the upcoming 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 may know their districts and consider whom they wish to support to represent those districts.

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 failed to pass a plan for the three seats of the United States House of Representatives, based on population figures for the 2010 Census. As a consequence, the defendant Secretary of State is proceeding to conduct primary and general elections in 2012 for the United States House of Representatives districts under the mal-apportioned districts created in 2002.

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.

#### **A. RIGHTS TO EQUAL VOTING STRENGTH**

The current districting violates the rights of Plaintiffs and all other New Mexico voters to their rights to equal voting strength under Art. I, § 2 of the United States Constitution and the equal protection of the laws in violation of Article II, Section 18 of the New Mexico Constitution and the Fifth Amendment to the Constitution of the United States of America.

## **B. VOTING RIGHTS ACT**

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.

The U.S. Supreme Court, when asked to interpret amended Section 2 of the Voting Rights Act in *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752, 92 L.Ed.2d 25 (1986), required plaintiffs to demonstrate three threshold factors to establish a violation:

1. The minority group must be sufficiently large and geographically compact to constitute a majority in a single member district;
2. The minority group must be politically cohesive;
3. The minority group must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed – usually to defeat the minority’s preferred candidate.

## **III. AGRUMENT AND SUPPORT OF HB 46, REDISTRICTING**



NM LULAC proposes a comprehensive remedy to the overall redistricting map of the 2<sup>nd</sup> Congressional District of New Mexico. The Cervantes Bill-2011 Special Session House Bill 46, would have given this Congressional District a Hispanic minority majority of voting age. The Governor threatened to veto any redistricting plan proposed by the New Mexico Legislature. The Cervantes plan best meets the standard of minority majority and does not compromise precincts, as required by the Voting Rights Act.

HB 46 was drawn up specifically to meet and comply with the most recent Supreme Court case *Bartlett v. Strickland* (2009), *infra*; wherein in order to qualify for the creation of a majority-minority district, the voting-age population of the minority group in the proposed or designated minority majority district had to "constitute a numerical majority", exceeding 50% by at least one. In HB 46 Cervantes Plan shows a 52% Hispanic voting-age population.

In *Bartlett v. Strickland*, 556 U.S. 1 (2009), the United States Supreme Court held that a minority group must constitute a numerical majority of the voting-age population in an area before §2 of the Voting Rights Act would require the creation of a legislative district to prevent dilution of that group's votes. The decision struck down a North Carolina redistricting plan that attempted to preserve minority voting power in a state legislative district that was 39 percent black.

This case requires parties to interpret §2 of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U. S. C. §1973 (2000 ed.). The question is whether the statute can be invoked to call for state officials to draw election-district lines to allow a racial

minority to join with other voters to elect the minority's candidate of choice, even where the racial minority is less than 50 percent of the voting-age population in the district to be drawn. The use of election-law terminology: In a district that is not a majority-minority district, if a racial minority can elect its candidate of choice with support from crossover majority voters, can §2 require the district to be drawn to accommodate this potential? State authorities who created a district now raise the Voting Rights Act as a defense. In *Bartlett*, it disputed that §2 compelled them to draw the district in question in a particular way, regardless of state laws to the contrary. The state laws were provisions of the North Carolina Constitution that prohibited the General Assembly from dividing counties when drawing legislative districts for the State House and Senate.

In *Garza v. County of Los Angeles*, 918 F. 2d 763 (1990), the Court found that the Hispanic community was sufficiently large and geographically compact such that a plan can be drawn in which Latinos comprised a majority of the citizen voting age population in one of the five districts. The post-1980 estimates of citizen voting age population, based upon voting age citizens by the Census Bureau, are reliable as an alternative means of proof that under current conditions it is possible to create a supervisorial district with a Hispanic citizen voting age population majority. The explosive and continuous growth of the Los Angeles County Hispanic community was evident at the time of the adoption of the 1981 redistricting plan as was the decline of the County's non-Hispanic white population. These facts, together with a history of discrimination against Hispanics in that County considered profoundly in favor of the conclusion that even relying solely on the 1980 Census data, the plaintiffs met their burden under *Gingles*, *supra*. The Court also found that Hispanics were politically

cohesive and that voting behavior was polarized between Hispanics and non-Hispanics. Specifically, the Court concluded that Hispanic voters repeatedly provided overwhelming support for Hispanic candidates while the degree of non-Hispanic cross-over voting is minimal. Given the estimated levels of polarization, including the effects of non-Hispanic bloc voting, a Hispanic candidate was unable to get elected to the Board under the current configuration of supervisorial districts.

This is consistent with the voting patterns with respect to both Hispanic and non-Hispanic White bloc voting in New Mexico. Like in *Garza, supra*, Hispanics would more than likely vote for a Hispanic candidate, particularly in the 2<sup>nd</sup> Congressional District. The demographics continue to show a proliferation of voting age Hispanics in this Congressional District. Under the present district plan, a Hispanic candidate cannot get elected.

#### **IV. CURRICULUM VITAE (CV) FOR PLAINTIFFS' IN INTERVENTION NM LULAC EXPERT WITNESSES**

Attached are the Plaintiffs' in Interventions NM LULAC Witnesses curriculum vitae (CV).

#### **V. CONCLUSION**

1. The interest of the League is not the partisan outcome, but the minority majority outcome. This is a significant factor with respect to the Voting Rights Act. The HB 46 Plan is consistent with §2 in meeting the following criteria:

A. Hispanics will constitute a minority group within the Second Congressional District of the State of New Mexico;

B. The minority group is sufficiently large and geographically compact to constitute a majority in a single member district;

C. The minority group is politically cohesive;

D. The minority group has demonstrated that the White majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed – usually to defeat the minority’s preferred candidate.

2. It is likely that the Governor will use veto power regardless if the New Mexico Legislature lawfully passes a Congressional redistricting bill.

3. Judicial relief is necessary at this time. Without the action of this court, the lawfully required redistricting clearly will not take place.

Respectfully submitted,

*(Electronically filed)*

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I hereby certify that on December 4 , 2011, I filed the foregoing 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; all counsel of record were additionally served via email.

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