

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

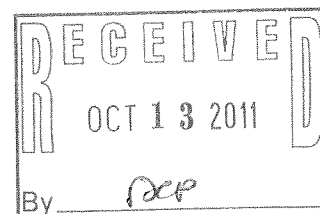
BRIAN EGOLF, HAKIM BELLAMY, MEL HOLGUIN,
MAURILIO CASTRO, and ROXANE SPRUCE BLY,

Plaintiff-Petitioners,

v.

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

Defendant-Respondents.



NMSC No. 1133239
D101-CV-2011-02942
D101-CV-2011-02944
D101-CV-2011-02945
County of Santa Fe
First Judicial District Court

CC: LGS
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JONATHAN SENA, DON BRATTON,
CARROLL LEAVELL and GAY KERNAN,

Plaintiffs-Real-Parties-in-Interest,

v.

DIANA DURAN, in her official capacity as Secretary
of State for the State of New Mexico and
SUSANA MARTINEZ, in her official capacity as
Governor of the State of New Mexico,

D-506-CV-201100913
County of Lea
Fifth Judicial District Court

Defendants-Real-Parties-in-Interest.

REPRESENTATIVE CONRAD JAMES, DEVON DAY,
MARGE TEAGUE, MONICA YOUNGBLOOD,
JUDY McKINNEY and SENATOR JOHN RYAN,

Plaintiffs-Real-Parties-in-Interest,

v.

D-202-CV-2011-09600
County of Bernalillo
Second Judicial District Court

DIANA J. DURAN, in her official capacity as Secretary
of State of the State of New Mexico and
SUSANA MARTINEZ, in her official capacity as
Governor of the State of New Mexico,

Defendants-Real-Parties-in-Interest.

**RESPONDENTS/REAL-PARTIES-IN-INTEREST (JONATHAN SENA,
DON BRATTON, CARROLL LEAVELL AND GAY KERNAN)
RESPONSE TO EMERGENCY PETITION FOR WRIT OF
SUPERINTENDING CONTROL AND APPLICATION FOR RELIEF**

Pursuant to the Court's September 30, 2011 Order, Jonathan Sena, Don Bratton, Carroll Leavell and Gay Kernan ("the Sena Plaintiffs"), Plaintiffs in Cause No. CV-2011-00913 respond to the Petitioners' Emergency Petition for Writ of Superintending Control and Application for Relief, filed in the Fifth Judicial District Court.

Judicial economy and avoiding the possibility of inconsistent determinations are important goals. For these reasons the Sena Plaintiffs do not oppose consolidation by this Court of the five actions that are the subject of the Petition. The Sena Plaintiffs concur that this Court has authority to order such consolidation. However, venue of the consolidated actions should rest in Lovington, the Fifth Judicial District, or the Second Judicial District (as the first filed) and not in Santa Fe as the Petitioners propose. The Fifth Judicial District should consolidate the First and Second Judicial District actions into the Fifth Judicial District action. If the Court rejects a consolidation in the Fifth Judicial District, the Sena Plaintiffs would urge the Court to consolidate the cases in the Second Judicial District, not the First Judicial District. As to the

determination of a judge to hear the consolidated cases, of course, the Judge should be determined in accordance with the present procedural rules that apply to all cases.

A. The Fifth Judicial District Is the Appropriate Venue for the Consolidated Actions.

For several reasons, the Petitioners' argument to place the venue of the consolidated actions in the First Judicial District should fail. The Petitioners' three First Judicial District actions were filed on September 26, 2011. The Fifth Judicial District action was filed on September 26 as well (after Petitioners' Cause No. CV-2011-2942 but before First District Cause Nos. CV-2011-2944 and CV-2011-2945). The Second Judicial District proceeding was filed first, on September 25, 2011. As a general rule, when actions are consolidated, the latter-filed action is consolidated into the first-filed action. *See, e.g.*, NMRA 2011, LR1-105(A) and LR2-203(E). Because the Fifth Judicial District action was filed before the bulk of the First Judicial District cases, and notably because several Plaintiffs in the First Judicial District action apparently reside in Doña Ana County, Lovington would be much more convenient for many of the parties.

Petitioners Petition at page 10 asserts that the only proper venue for actions against state officers in Santa Fe County. NMSA 1978, § 38-3-1(G), however, authorizes actions against state officers "in the county where a plaintiff, or any one of them in case there is more than one, resides. . . ." Proceeding in the Fifth Judicial District is proper and more convenient for many of the parties.

In their complaints, which are attached to the Petition as Exhibits A, B and C, the Petitioners state that two of them are residents of Doña Ana County, two of them reside in Bernalillo County; only the fifth, Brian Egolf, resides in Santa Fe County. Four of the five

defendant state officials reside in Santa Fe County, but the fifth resides in Chaves County. Thus, more parties reside south of Albuquerque than reside in Santa Fe County.

With the exception of three of the petitioners' seven counsel and two of the three counsel for the plaintiffs in the Laguna Pueblo action, all counsel in these actions reside and practice in, or south or west of, Albuquerque. The First Judicial District is the most inconvenient and the district with essentially no claim to a filing priority. If the Fifth District is not the venue, the Sena Plaintiffs would urge the Court to select the Second Judicial District, not the First Judicial District.

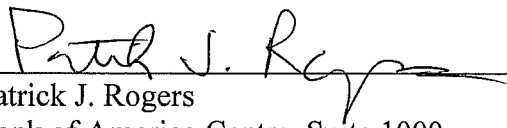
B. This Court Should Decline Petitioners' Request That It Choose a Judge to Preside Over the Consolidated Actions.

Petitioners' request that this Court select a judge to preside over these actions is inconsistent with the Rules of Civil Procedure. Judges are determined in accordance with the procedures established by NMRA 2011, Rule 1-088. Petitioners' claim that a writ of superintending control "is the only plain, speedy, and adequate remedy available," Petition at 7, is inconsistent with the existing Rules and should be rejected.

C. Conclusion.

The Sena Plaintiffs respectfully request the Court to consolidate the First and Second Judicial District actions into the Fifth Judicial District action, and deny the balance of the Petition that seeks to avoid the existing rules concerning the appointment of a judge to preside over the consolidated actions. In the alternative, if the Fifth Judicial District is not selected for the consolidated actions, the Second Judicial District is clearly preferable to the First Judicial District for almost all concerned.

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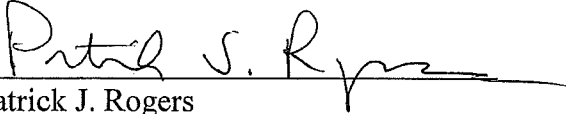
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Egolf et al. v. Duran et al.

Attached for filing:
Response to Emergency Petition for Writ of SuperIntending Control and Application for Relief

Thank you.
Norma Lockhart
(505) 848-1800 Ext. 1609
Secretary to Patrick J. Rogers

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Date: October 7, 2011

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