

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

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

Plaintiffs,

vs.

No. D-101-CV-2011-0-2942

**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.

**THE MAESTAS PLAINTIFFS' FIRST MOTION FOR PARTIAL SUMMARY
JUDGMENT (CONGRESSIONAL REAPPORTIONMENT)**

The Maestas Plaintiffs, by and through undersigned counsel, respectfully move this Court for partial summary judgment with regard to Congressional redistricting based upon the Apportionment Clause, U.S Const. art. I, § 2, cl. 3 (amended 1865), as interpreted by *Karcher v. Daggett*, 462 U.S. 725 (1983) and related jurisprudence.

Specifically, the Maestas Plaintiffs respectfully request the Court enter partial judgment in their favor (a) determining that the proposed Maestas Congressional plan constitutionally apportions New Mexico's population among the three Congressional Districts and (b)

establishing that all other parties must meet the burden of proof justifying their deviations from the ideal population for New Mexico's Congressional Districts. As grounds for the motion, the Maestas Plaintiffs state as follows:

STATEMENT OF UNDISPUTED MATERIAL FACT

1. Every ten years, the Census Bureau conducts a census of the population of the United States with the primary purpose of redistricting seats for the United States House of Representatives (Congress) pursuant to Article I, § 2 of the United States Constitution.

2. The Census Bureau completed the 2010 Census, which showed New Mexico's population to have grown in excess of 13% since the last decennial census in 2000.

3. The population growth over the last ten years has not been uniformly distributed over the geography of New Mexico and has therefore resulted in malapportionment in violation of the Apportionment Clause.

4. The 2011 First Special Session of the New Mexico Legislature failed to pass a Congressional redistricting plan through both houses.

5. The above-captioned cause consolidates all claims of Congressional malapportionment, and the Court now faces the task of drawing constitutionally acceptable boundaries for New Mexico's three Congressional Districts.

6. The Court has set Congressional redistricting for an evidentiary hearing to begin December 5, 2011.

7. Pursuant to the Court's Scheduling Order, some Parties have submitted proposed Congressional redistricting plans in electronic form.

8. Despite the fact that the Legislative Defendants did not submit a Congressional redistricting plan to the Court, the Parties have agreed to have the Legislative Defendants' expert Maestas Plaintiffs' First Motion for Partial Summary Judgment – Page 2

witness prepare so-called map packets for all the Congressional redistricting plans submitted, just as is being done for the proposed redistricting plans for state House, state Senate and Public Regulation Commission (PRC).

8. The Legislative Defendants' expert witness, Brian Sanderoff with Research & Polling Inc. (RPI), has prepared map packets for all Congressional redistricting plans submitted to the Court, and these map packets are available online at the New Mexico Legislature's redistricting homepage (<http://www.nmlegis.gov/lcs/redcensus/default.aspx>). (Dep. of Brian Sanderoff 11/21/2011, transcript forthcoming)

9. Brian Sanderoff affirmed the authenticity of the map packets posted online and affirmed that RPI utilized the same methods for the Congressional packets as used for state House, state Senate and PRC. (Dep. of Brian Sanderoff 11/21/2011, transcript forthcoming.)

10. Specifically, RPI has prepared map packets for the six proposed Congressional redistricting plans submitted to the Court: (a) the Maestas Plaintiffs' Congressional Plan, (b) the Executive Defendants' Congressional Plan 1, (c) the Executive Defendants' Congressional Plan 2, (d) the James Plaintiffs' Congressional Plan, (e) the Egolf Plaintiffs' Congressional Plan and (f) the Sena Plaintiffs' Congressional Plan.

11. The above Congressional map packets are hereby incorporated by reference as exhibits to the motion, and several parties have designated the Congressional map packets as exhibits for trial.

12. For each proposed Congressional plan, the packet includes maps alongside standardized demographic data in tabular form, largely drawn from the 2010 Census. Importantly, the map packet for each proposed Congressional plan includes a table showing the

“Total Population” for each proposed Congressional District according to the 2010 Census, to the person. (Congressional Map Packets.)

13. The table described above also calculates to the person how much each proposed Congressional District deviates from the “Ideal” population for a Congressional district, which is 686,393 persons. The table labels this number a “Deviation.” The ideal population is simply New Mexico’s total population as shown on the 2010 Census, divided by three. (Congressional Map Packets.)

14. A negative deviation means that the population for a proposed Congressional district falls below the ideal, while a positive deviation means the population exceeds the ideal. A zero, of course, means no deviation from the ideal. (Congressional Map Packets.)

15. Using elementary arithmetic, it is easy to compute a total cumulative deviation for each proposed Congressional plan by taking the absolute value of any negative deviations and then adding the three numbers together.

16. The deviations to the person for the proposed Congressional plans submitted are:

(a) the Maestas Plaintiffs’ Congressional plan deviates from the ideal in CD1 by 0 persons, in CD2 by 0 persons and in CD3 by 0 persons, for a total cumulative deviation of 0 persons;

(b) the Executive Defendants’ Congressional Plan 1 deviates from the ideal in CD1 by 295 persons, in CD2 by -224 persons and in CD3 by -71 persons, for a total cumulative deviation of 590 persons;

(c) the Executive Defendants’ Congressional Plan 2 deviates from the ideal in CD1 by 10 persons, in CD2 by 15 persons and in CD3 by -25 persons, for a total cumulative deviation of 50 persons;

(d) the James Plaintiffs' Congressional plan deviates from the ideal in CD1 by -2 persons, in CD2 by 2 persons and in CD3 by 0 persons, for a total cumulative deviation of 4 persons;

(e) the Egolf Plaintiffs' Congressional plan deviates from the ideal in CD1 by 10 persons, in CD2 by -37 persons and in CD3 by 27 persons, for a total cumulative deviation of 74 persons; and

(f) the Sena Plaintiffs' Congressional plan deviates from the ideal in CD1 by -8 persons, in CD2 by 11 persons and in CD3 by -3 persons, for a total cumulative deviation of 22 persons.

ARGUMENT

Article I, §2 of the United States Constitution establishes a “high standard” for the apportionment of Congressional districts: “equal representation for equal numbers of people.” *Wesberry v. Sanders*, 367 U.S. 1, 18 (1964). Article I, § 2 provides, in pertinent part:

The House of Representatives shall be composed of Members chosen by the People of the several States, and . . . shall be apportioned among the several States . . . according to their respective Numbers

This constitutional mandate “means that as **nearly as is practicable** one man’s vote in a congressional election is to be worth as much as another’s.” *Id.* (emphasis supplied). Consequently, congressional districts are to be apportioned to achieve “**precise mathematical equality.**” *Kirpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969) (emphasis supplied).

The United States Supreme Court has been exceedingly clear in requiring courts to balance population among the districts with precision. *See Karcher v. Daggett*, 462 U.S. 725, 734 (1983) (“there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.”). *Karcher* simply

Maestas Plaintiffs’ First Motion for Partial Summary Judgment – Page 5

makes clear that Article I, § 2 “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Id.* at 730 (citations and quotation marks omitted). As *Karcher* also makes explicit, “absolute population equality” is the “paramount objective” only in Congressional reapportionment, where Article I, § 2 “outweighs the local interests that a State may deem relevant in apportioning districts for representatives to state and local legislatures.” *Id.*

Karcher essentially establishes a two-step burden for the evaluation of a litigant’s Congressional plan. First, litigants bear the burden of showing a good faith effort to achieve precise mathematical equality. *See, e.g., Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 644 (N.D. Ill. 1991) (citing *Karcher* at 730). Second, if litigants fail the first burden, each deviation must be justified as “necessary to achieve some legitimate goal.” *Karcher* at 730. Because the Maestas Plaintiffs achieved absolute equality, which is to say a zero deviation plan, they are the only litigants to meet the first burden in this case. (Undisputed Fact No. 16(a).) Moreover, the existence of the Maestas Plaintiffs’ zero deviation plan places the burden on the other parties to justify their deviations. As the court in *Hastert* reasoned, “the availability of an alternative plan with a smaller total deviation effectively invalidates a good faith effort argument.” *Hastert* at 644. Even the James Plaintiffs, with a total cumulative deviation of 4 persons, (Undisputed Fact No. 16(d)), must justify their deviations under the strictures of Article I, § 2.

CONCLUSION AND PRAYER FOR RELIEF

Because the Maestas Plaintiffs’ Congressional plan achieves absolute population equality pursuant to Article I, § 2, a higher standard than that found in the Equal Protection Clause, they are entitled to partial summary judgment with regard to constitutionality. Likewise, the existence of a zero deviation plan shifts the burden to other litigants to justify any variations

Maestas Plaintiffs’ First Motion for Partial Summary Judgment – Page 6

from absolute equality. Therefore and as stated in the preamble, the Maestas Plaintiffs respectfully pray the Court enter partial judgment in their favor (a) determining that the proposed Maestas Congressional plan constitutionally apportions New Mexico's population among the three Congressional Districts and (b) establishing that all other parties must meet the burden of proof justifying their deviations from the ideal population for New Mexico's Congressional Districts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2011, I filed the foregoing electronically through the First Judicial District E-filing 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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