

**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**

**PLAINTIFF IN INTERVENTION NEW MEXICO LEAGUE OF UNITED LATIN
AMERICAN CITIZENS' (NM-LULAC'S) FINAL ARGUMENTS**

The New Mexico League of United Latin American Citizens (NM-LULAC),
Plaintiff-in-Intervention herein, by and through its attorney, Santiago E. Juárez, hereby
submits its Final Arguments following trial in this case.

I. REVIEW OF HISTORICAL FACTS:

A. HISTORICAL OVERVIEW OF NM CONGRESSIONAL DISTRICT 2

The 2nd Congressional District of New Mexico was created on January 3, 1969. It encompasses most of southern New Mexico and is geographically 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 from Southeastern New Mexico. They include the following:

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. Each and every one of these individuals is of other than Hispanic racial and ethnic origin. Yet, Hispanics comprise a significant portion of the district's population.

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 to be elected to this House seat. This is demonstrated in both the General Elections and Primary Elections results of the past four decades, to wit:

General Elections 1968 to Present:

1. 1968 – Wilfredo Sedillo (I) – lost to Ed Forman (R) – an Anglo;
2. 1992- Dan Sosa, Jr. (D) – lost to Joe Skeen (R) – an Anglo;
3. 1994- Benjamin Anthony Chavez (D) – lost to Joe Skeen (R) - an Anglo;
4. 1996- Shirley Baca (D) – lost to Joe Skeen (R) – an Anglo;
5. 1998-Shirley Baca (D); - lost to Joe Skeen (R) – an Anglo and
6. 2000- Michael Montoya – lost to Joe Skeen (R) – an Anglo

Republican Primaries 1968 to Present:

1. 2004- Leo Martinez (R) – lost to Steve Pearce (R) – an Anglo

B. 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. ¹ Many of the successors to this same house seat have consistently ignored, voted against or have acted indifferently

¹ *Biography of Henry B. Gonzales: http://www.novelguide.com/a/discover/chb_02/chb_02_00045.html Gonzales told this story many times at the 1982 National LULAC Convention.*

towards 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 ordinances². The late Sen. Dennis Chavez fought discrimination in this district while in the U.S. Senate. He learned that a young girl was not allowed to use a public swimming 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 Roswell³.

To this date, several of these communities oppose local Hispanic Chambers to benefit from lodger's tax, while other non-Hispanic Chambers Commerce receive by 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

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

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

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 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 questions 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. These 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 voted against the creation of either a Department or an Office of Hispanic Affairs, which would have served as a catalyst or conduit to address education, employment and economic development for this population. Hispanics have the highest numbers of school drop outs of 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 2nd Congressional District.

II. TESTIMONY OF EXPERT WITNESSES

A. DEFENDANT’S WITNESSES:

1. Witness Williams:

Dr. Williams testified that since 1990, he and others have been trying to create a Hispanic minority majority district in Congressional District 2 of New Mexico. He contended that these efforts have been short-lived due to the lack of political will and threats of legal challenges and action. He also testified that even the LULAC Plan did not go far enough to be considered an “effective plan”. He also testified that he believes that the community should wait until the next census of 2020 to make an “effective” redistricting plan. Dr. Williams also testified that the likelihood of a higher Hispanic vote will in fact result, if a Hispanic minority majority district is created.

2. Witness Harrison:

Witness Harrison testified that not even the LULAC Plan went far enough to create an “effective” minority majority redistricting plan. He further opined that the parties should wait until the next census in 2020 to create what he believes will be an “effective” plan for consideration.

B. PLAINTIFF’S IN INTERVENTION NM-LULAC WITNESS:

Dr. Gabriel Sanchez:

Dr. Sanchez provided testimony of documented discrimination and that the Hispanic community is a protected class and that the LULAC Plan is both feasible and would create a Hispanic minority majority district defined and outlined in Section 2 of the Voting Rights Act. He also testified to the likelihood that given the incentive of a

minority majority district that the Hispanic community would have a fighting chance and would likely vote in higher numbers for a preferred candidate.

III. PLAINTIFFS' IN INTERVENTION POINTS OF AUTHORITY:

A. DEFENDANT THE STATE OF NEW MEXICO'S DUTY TO APPROVE AND PROVIDE COMPREHENSIVE REDISTRICTING PLANS AS PRESCRIBED BY LAW

As stated previously and through the pleadings in the pre-trial and trial phase of these proceedings, 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 deviates 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.

B. VIOLATION OF THE SECTION 2 OF THE VOTING RIGHTS ACT OF 1965

1. 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.

2. 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.

IV. PLAINTIFFS IN INTERVENTION- NM LULAC’S AGRUMENT AND SUPPORT OF HB 46 REDISTRICTING PLAN

A. LEGAL POSITION AND POINTS OF AUTHORITY

NM LULAC proposes a comprehensive remedy to the overall redistricting map of the 2nd 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, the Cervantes Plan (now the “LULAC 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 the interpretation of §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. Applying 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 was 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 in *Bartlett* 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 could be drawn in which Latinos comprised a majority of the citizenry of voting age population in one of the five districts. The post-1980 estimates of citizens of voting age population, based upon Census Bureau data, were found to be reliable as an alternative

means of proof that under the then-prevailing conditions it was possible to create a supervisorial district with a Hispanic citizen of 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, were 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 2nd 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.

B. LEGAL STANDARD FOR CREATION OF A REDISTRICTING PLAN

The Supreme Court has stated that “federal-court review of districting legislation represents a serious intrusion on the most vital of local functions,” *Miller v. Johnson*,

515 U.S. 900, 915 (1995), that “reapportionment is primarily the duty and responsibility of the State,” *Chapman v. Meir*, 420 U.S. 1, 27 (1975), and that “the States must have discretion to exercise the political judgment necessary to balance competing interests,” *Miller*, 515 U.S. at 915. Thus, “when a federal court declares an existing apportionment scheme unconstitutional, it is therefore appropriate, whenever practicable, to afford a reasonable opportunity for the [state] legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.”, *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). The court must afford a state legislature a similar opportunity when it finds a violation of section 2 of the VRA, e.g., *Garza v. County of Los Angeles*, 918 F.2d 763, 766–68 (9th Cir. 1990). “The Court also has made clear that the underlying districting decision is one that ordinarily falls within a legislature’s sphere of competence,” *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (*Cromartie II*). Thus, the Court has held that equal protection principles govern a state’s drawing of congressional districts, see, e.g., *Shaw v. Reno*, 509 U.S. 630, 642–52 (1993) (*Shaw I*), and that the Equal Protection Clause is violated when race is proven to be the predominant motive of the legislature in drawing district lines, *Shaw v. Hunt*, 517 U.S. 899, 905 (1996) (*Shaw II*); *Miller*, 515 U.S. at 916.

C. PROOF OF FACTS BASED ON EXPERT TESTIMONY

1. Hispanics constitute a minority group within the Second Congressional District of the State of New Mexico; Plaintiffs’ Interveners LULAC, et al. expert witnesses: Dr. Gabriel Sanchez and Defendant’s State expert witnesses, Williams and Harrison testified and provided expert testimony to support evidence to this fact that the proposed “LULAC” plan creates a minority majority district pursuant to Section 2 of the Voting

Rights Act of 1965. However, witnesses Williams and Harrison claim that none of the plans submitted go far enough to create an effective Hispanic minority majority district. Furthermore, efforts to draw up boundaries and create a minority majority district were previously undertaken in 1990. The lack of political will and concerns of legal challenges were the factors that discouraged efforts to create such a district. The law does not require nor mandate an “effective” plan. It compels states to interpret the Section 2 of the VRA outlining three (3) threshold criteria as so stipulated in *Bartlett* and *Gingles, supra*. Both the Plaintiffs and Plaintiffs’ in intervention do not have the burden to justify nor prove what constitutes an “effective” plan. There is no legal precedence to suggest, much less, require an “effective” plan in order for the State to implement a Hispanic minority majority district in CD 2. Plaintiff in Intervention-NM LULAC has unequivocally submitted the only redistricting plan that meets the threshold requirements in the VRA of 1965. It would be completely unreasonable and unacceptable to expect the Hispanic community of CD 2, as a protected class, to wait another ten (10) years to take another chance to see if a so called “effective” redistricting plan will be adopted. There is no credible evidence or guarantee that in 2020, the State will not return again with no plan or a baseless plan, and no substantial rationale to support the argument that our community again should wait until 2030, only to implement what our Constitution guarantees us and the law prescribes Hispanics, the right to an equal vote. Any further delay will only cause our community to suffer continued oppression and further ostracize this minority majority group from our democratic process with respect to our voting rights and equal protection of the law should we remain with the status quo.

2. The minority group is sufficiently large and geographically compact to constitute a majority in a single member district, to which witness Dr. Gabriel Sanchez testified. In *Garza, supra*, when the Hispanic community in Los Angeles County was given the fighting chance. Gloria Molina was the first Hispanic elected to the County Board of Supervisors. The Latino community came out to vote in record numbers for their preferred candidate. This also compelled the State of California in the 1990's to create Hispanic minority majority districts in southern California in which several more Hispanics were elected into congressional house, state senate and state house seats. If the Hispanic community of New Mexico CD 2 is given a fighting chance, our community will feel empowered and exercise their full rights as citizens and participate more in the democratic process.

3. The minority group is politically cohesive; which Dr. Gabriel Sanchez and Defendant's expert witness, Williams, testified to. As strongly suggested by the *Garza* decision, *supra*, if the Hispanic community of CD 2 is given a fighting chance it's a foreseeable fact and likelihood that this group will be most cohesive politically.

4. 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. This was established by the expert testimony from Dr. Gabriel Sanchez and election results from 1968, 1992, 1994, 1996, 1998, 2000 General Elections and 2004 Republican Primary Elections. These facts were not disputed nor challenged by the Defendants. The Plaintiffs' in Intervention witness Sanchez has testified to the validity and veracity the non-Hispanic White majority has voted as a bloc to enable Hispanics in

the voting process. Defendant Duran's office has in fact continued to use voting suppression tactics to discourage Hispanics from voting using immigration status as a pretext and forcing officials to only review the Hispanic voters to scrutiny in the production of identification or proof of citizenship. Many of the elected White officials from the southeastern quadrant of the state have historically encouraged racial profiling under the cloak of national security. The Defendant offered no evidence to refute or challenge the veracity of these facts;

5. Plaintiffs in Intervention have proposed the creation of a "Minority/Majority" District within the Second Congressional District. This is the only plan that meets the necessary threshold to constitute a Hispanic minority majority district. It even exceeds the 50% margin as interpreted in *Bartlett* and *Gingles, supra*. None of the other plans properly address these thresholds or requirement in the VRC of 1965. The only difference in the number of voters from the current to the LULAC Plan is 120 votes. The LULAC Plan is less invasive because it does not break up the precincts;

6. The voting-age population of the minority group in the proposed or designated minority majority district constitutes "a numerical majority" (exceeds 50% by at least one). The law does not require the Census Bureau to identify legal or immigration status of those whom participate in a census count. There is no legal precedence that requires states to take immigration status into consideration when redistricting. It is not the duty of the Plaintiffs or Plaintiffs' in Intervention to demonstrate a redistricting plan with such an inflammatory and unfounded assumptions of facts;

7. Plaintiffs in Intervention have based their proposal on House Bill 46, which in fact yields a district with a 52% Hispanic voting-age population. This plan was the only plan submitted that provides the necessary threshold required in *Bartlett* and *Gingles*, **supra**. For this reason the League supported this initiative because it was the only plan that met the standards so prescribed in the VRA of 1965.

V. CONCLUSION

A. As stated in previous pleadings and previously outlined herein, the League's interest is not the partisan outcome, but the minority majority outcome, which is a significant factor with respect to the Voting Rights Act of 1965 as outlined above.

B. Based on the facts, expert testimony and merit of this case presented in the trial, the Plaintiff in Intervention, NM-LULAC, has met its burden of proof by a preponderance of the aforementioned evidence.

C. As stipulated and argued above, the NM LULAC Plan (HB 46) is consistent with §2 in meeting the following criteria:

1. Hispanics will constitute a minority group within the Second Congressional District of the State of New Mexico;
2. The minority group is sufficiently large and geographically compact to constitute a majority in a single member district;
3. The minority group is politically cohesive;
4. 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.

D. The Court has equitable powers to decide the merits of this case and render a judgment that compels the State to implement a redistricting plan that is conducive and compliant with the VRA of 1965.

VI. RELIEF REQUESTED

Plaintiff in Intervention NM-LULAC et al, requests this Court to issue a judgment that effects the following:

1. Adopting the redistricting plan submitted by the Interveners'-NM LULAC et al;

2. Ordering both the New Mexico State Legislature and Governor to enact a redistricting plan for CD 2 in both the spirit and letter of a Hispanic minority majority plan consistent with the VRA of 1965, within 15 months. This will allow both powers sufficient time to implement such a plan by either the end of the Regular Legislative Session of 2012 or latest 2013; and

4. Further ordering that, should both the Legislature and/or Governor fail to produce a conducive redistricting plan that meets the Hispanic minority majority outlined in the VRA of 1965, by no later then the end of the aforementioned sessions, the Court will adopt and impose its own plan as outlined in the Section 2 of the Voting Right Act of 1965;.

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

Respectfully submitted,

/s/ Santiago E. Juarez, Esq.

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I hereby certify that on December 9 , 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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