

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

CV 201105792

ENDORSED
FILED IN MY OFFICE THIS

NO.: _____

JUN 06 2011

**MICHAEL ARCHULETA, RICHARD
DINEEN, CAROLE EBERHARDT, and
ART GONZALES,**

Quanita M. Duran
CLERK DISTRICT COURT

SHANNARA GREEN

Plaintiffs,

vs.

**CITY OF ALBUQUERQUE, NEW
MEXICO, RICHARD BERRY**, in his official
capacity as Mayor of the City of Albuquerque;
**DON HARRIS, TRUDY JONES, BRAD
WINTER, REY GARDUNO, DAN LEWIS,
ISAAC BENTON, DEBBIE O'MALLEY,
KEN SANCHEZ, and MICHAEL COOK**, in
their official capacities as members of the City
Council of the City of Albuquerque; and **AMY
B. BAILEY**, in her official capacity as the City
Clerk for the City of Albuquerque,

JUDGE ALAN MALOTT

**VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
FOR REDISTRICTING OF THE CITY COUNCIL DISTRICTS IN THE CITY OF
ALBUQUERQUE**

NATURE OF THE CASE

1. Plaintiffs are registered electors in the City of Albuquerque seeking declaratory and injunctive relief to vindicate their rights to equal representation in electing members to the City of Albuquerque ("Albuquerque" or "City") city council. The 2010 official federal census, conducted by the United States Department of Commerce, establishes that the current Albuquerque city council districts are grossly mal-apportioned with some districts being under-populated and hence over-represented and some districts, including the districts in which Plaintiffs reside, being unconstitutionally over-populated and hence under-represented.

Notwithstanding this illegal mal-apportionment of city council districts and the Defendants' knowledge of the mal-apportionment, Defendants have expressed their intent to conduct election for councilors from the existing, mal-apportioned city council districts in October 2011, which will result in unlawfully prolonging the mal-apportionment and dilution of Plaintiffs' (and other Albuquerque electors') voting rights. Plaintiffs seek an injunction prohibiting any election of city councilors from mal-apportioned districts, on the ground that such election from grossly mal-apportioned districts will continue the dilution of Plaintiffs' voting rights, in violation of the fundamental constitutional principle of "one person—one vote," guaranteed under the New Mexico and United States Constitutions. Plaintiffs also seek an order either requiring the Defendants to proceed expeditiously with redistricting the city council districts, employing the 2010 federal census data to achieve constitutionally apportioned districts or, in the alternative, for the Court itself to establish the constitutional districts, and also, if necessary, to alter the election date and any pre-election deadlines, as may be required.

2. The Charter of the City of Albuquerque ("Charter") requires that the City Council, through committee, and then with mayoral approval, redistrict following each federal census in order to provide residents of Albuquerque fair and balanced representation in city government. In anticipation of the 2010 federal census, and in accord with the relevant Charter provision, the City Council Albuquerque initiated, in the fall of 2010, the appropriate process to redistrict prior to the next Council elections.

3. The City Council, however, reversed course and decided not to complete its redistricting process employing the new census data in time to be used for the city council elections scheduled for October 2011, thereby ensuring, unless remedied by this Court, that the October elections will proceed in a manner that does not comport with the constitutional mandate of

equal representation, and thereby continuing the unconstitutional dilution of the voting rights of Plaintiffs and other electors residing in the grossly over-populated city council districts.

4. Plaintiffs thus seek an order by this Court that the City be enjoined from conducting elections to the city council under the existing mal-apportioned districts, that either the City expeditiously redistrict employing the official census data to achieve constitutionally apportioned districts, or in the alternative, the Court do so itself, and that the Court alter the dates of election and/or any pre-election deadlines, as necessary.

JURISDICTION, VENUE AND PARTIES

5. This action is brought pursuant to this Court's original jurisdiction under Art. VI, § 13, of the New Mexico Constitution, the equal protection clauses of Art. II, § 18, of the New Mexico Constitution, the Fourteenth Amendment to the United States Constitution, and the civil rights provisions of 42 U.S.C. §§ 1983 and 1988.

6. Plaintiffs MICHAEL ARCHULETA and ART GONZALES are registered electors in the City of Albuquerque who reside in the current City Council District 1, located on Albuquerque's west side. City Council District 1 is mal-apportioned on the basis of population and Plaintiffs Archuleta and Gonzales and the electors residing in this city council district suffer from unlawful dilution of their voting rights and under-representation in the City's political process.

7. Plaintiffs RICHARD DINEEN and CAROLE EBERHARDT are registered electors in the City of Albuquerque who reside in the current City Council District 5. City Council District 5 is mal-apportioned on the basis of population and Plaintiffs Dineen and Eberhardt and the other electors residing in this city council district suffer from unlawful dilution of their voting rights and under-representation in the City's political process.

8. Defendant CITY OF ALBUQUERQUE is a municipality within the State of New Mexico.
9. Defendant RICHARD BERRY is the mayor of Defendant City of Albuquerque and is charged, under the City Charter and the New Mexico and United States Constitutions, with responsibilities to assure that city council districts are redistricted after the decennial census to avoid mal-apportionment. He is sued in his official capacity.
10. Defendants DON HARRIS, TRUDY JONES, BRAD WINTER, REY GARDUNO, DAN LEWIS, ISAAC BENTON, DEBBIE O'MALLEY, KEN SANCHEZ, and MICHAEL COOK are members of the City Council of the City of Albuquerque, and are charged, under the City Charter and the New Mexico and United States Constitutions, with responsibilities to assure that city council districts are redistricted after the decennial census to avoid mal-apportionment. These Defendants, as the Albuquerque City Council, in conjunction with the mayor, form the governing body of the City of Albuquerque. These Defendants are sued in their official capacities.
11. Defendant AMY B. BAILEY is the City Clerk for the City of Albuquerque and has general supervisory authority and responsibility to administer municipal elections in the City of Albuquerque. She is sued in her official capacity.
12. The Defendants, both personally and through the conduct of their agents, servants and employees, were and are acting under color of state law at all times relevant to this action.
13. This judicial district is the lawful venue for this action, pursuant to NMSA 1978, § 38-3-1G (1988).

FACTUAL ALLEGATIONS

14. The City Council of Albuquerque consists of nine members, Defendants here, who are elected from nine single-member districts. The nine members of the City Council are elected on staggered terms, with four or five city councilors elected every two years.
15. The City Council is the legislative authority and governing body for Albuquerque and, as such, its members are required to be elected in conformity with the equal protection clauses of Art. II, §18 of the New Mexico Constitution and the Fourteenth Amendment to the Constitution of the United States.
16. The City Council and its members have the duty under the New Mexico and United States Constitutions and the Charter of the City of Albuquerque to redistrict the city council districts every ten years, after the federal census is completed, based upon a true and correct enumeration of the city's inhabitants.
17. The City Charter mandates that the City Council appoint a committee to review and make recommendations regarding redistricting the city council districts based on information from the federal census.
18. On August 16, 2010, the City Council passed R-10-109, which created the City Council Redistricting Committee mandated by the City Charter.
19. In March 2011, the U.S. Census Bureau released the official census population data which established that the current city council districts are unconstitutionally mal-apportioned, and provided the basis for a fair and lawful redistricting of city council districts to ensure that all electors are guaranteed that their votes are accorded equal weight in elections for their city representatives under the constitutional principle of “one person—one vote.”

20. The data from the 2010 federal census shows that the population of the City of Albuquerque has grown, changed in demographics and shifted in location substantially since the 2000 census, which was the basis for the boundaries of the current city council districts in the City of Albuquerque. In light of the 2010 census, the current city council districts are substantially mal-apportioned.

21. Based upon the 2010 Census, the total population of the City of Albuquerque is now 545,852. The ideal population for each city council district is thus 60,650 people.

22. The population and deviation from the ideal size of each city council district is as follows:

District	2010 Population	Deviation	% Deviation
1	90,170	29,520	+ 48.67
2	54,556	-6,094	- 10.05
3	50,958	-9,692	- 15.98
4	55,217	-5,433	- 8.96
5	83,165	22,515	+ 37.12
6	52,931	-7,719	- 12.73
7	51,890	-8,760	- 14.44
8	52,572	-8,078	- 13.32
9	54,393	-6,257	- 10.32

23. The existing city council districts possess a total deviation of 64.65% from ideal district size.

24. Plaintiffs MICHAEL ARCHULETA and ART GONZALES are residents of City Council District 1, which is over-populated and hence under-represented compared to City Council Districts 2, 3, 4, 5, 6, 7, 8, and 9. As such, their votes are impermissibly diluted.

25. Plaintiffs RICHARD DINEEN, and CAROLE EBERHARDT are residents of City Council District 5, which is over-populated and under-represented compared to City Council Districts 2, 3, 4, 6, 7, 8, and 9. As such, their votes are impermissibly diluted.

26. Rather than completing the redistricting process to rectify the mal-apportionment in the city council districts established by the 2010 census population data, the City Council voted to postpone the process of redistricting. To this date, the City of Albuquerque has not accomplished any redistricting whatsoever based on the current census of its citizens.

27. Any redistricting plan consistent with equal representation and conforming to federal and state law would result in the transfer of a city council district from the east side of Albuquerque to the west side of Albuquerque, where each of the Plaintiffs in this action reside.

28. City elections for four of the nine city council district seats are scheduled for October 4, 2011. During this city election, city council members will be elected for City Council Districts 2, 4, 6, and 8, all of which are currently substantially overrepresented as compared to City Council Districts 1 and 5. For example, City Council District 8 now has only 52,572 residents, while City Council District 1 has 90,170 residents.

29. Once elected, these city council members from City Council Districts 2, 4, 6 and 8 will serve for four years until the year 2015.

30. Conducting the election of city council members from the current mal-apportioned City Council Districts 2, 4, 6 and 8 delays the creation of a new district on the west side of

Albuquerque and unconstitutionally prolongs the under-representation of electors in City Council districts 1 and 5.

31. Immediate judicial relief is necessary. Without the action of this Court, the lawfully required redistricting will not take place and the October 2011 elections will result in candidates being elected under the existing outdated and mal-apportioned plan, as well as incumbent councilors in Districts 1 and 5 being retained from under-represented and mal-apportioned districts. Defendants have no reason, much less a compelling reason, to defer redistricting until after the forthcoming election.

32. Plaintiffs, residents of the two most underrepresented city council districts, will suffer imminent, irreparable injury if the October 2011 elections are allowed to take place without the required redistricting because, rather than enjoying representation equal to those residents in other city council districts, they will continue to be underrepresented for years until redistricting is belatedly completed and city elections are held using a constitutional plan.

33. In addition, there is a substantial likelihood that many of the residents now residing in City Council District 1 and 5 will reside in a new district on the west side of Albuquerque after the appropriate redistricting is completed. If this new district is assigned an even number, then the residents of the new district will effectively be disenfranchised for six years because the next city elections for the new (even-numbered) district will not occur until 2015.

34. 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 State or municipal 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 City Council must achieve the necessary redistricting.

COUNT I

**DECLARATORY RELIEF: EQUAL PROTECTION OF THE LAW AND VIOLATION
OF THE PRINCIPLE OF ONE PERSON, ONE VOTE**

35. Plaintiffs hereby incorporate the allegations of paragraphs 1 through 34, inclusive, of this Complaint.

36. The current mal-apportioned city council districts violate the rights of Plaintiffs and all other residents in the under-represented city council districts 1 and 5 to the equal protection of the laws in violation of Article II, Section 18 of the New Mexico Constitution and the Fourteenth Amendment to the Constitution of the United States of America, 42 U.S.C. § 1983, as well as the City Charter of Albuquerque. The continuation of these mal-apportioned districts is unnecessary and it is feasible for the City Council to redistrict for the upcoming 2011 city council district elections.

37. Plaintiffs are entitled to a declaratory judgment that the current districts are mal-apportioned and cannot serve as a basis for city councilor elections in 2011 or thereafter.

COUNT II

**INJUNCTIVE RELIEF: ORDER ENJOINING ANY ELECTION FROM CURRENT
DISTRICTS AND ORDERING REDISTRICTING**

38. Plaintiffs hereby incorporate the allegations of paragraphs 1 through 37, inclusive, of this Complaint.

39. Further use by defendants of the existing mal-apportioned city council districts violates the rights of Plaintiffs and all other residents in the substantially under-represented districts 1 and 5 to the equal protection of the laws in violation of Article II, Section 18 of the New Mexico

Constitution, and the Fourteenth Amendment to the Constitution of the United States of America. Accordingly, Plaintiffs are entitled to relief under 42 U.S.C. § 1983.

40. Plaintiffs have no adequate remedy at law. Their rights to equal protection under one person-one vote principles will be violated if the October City Council election proceeds without lawful redistricting and will continue to be violated thereafter unless this Court intervenes to provide relief.

41. Plaintiffs are entitled to an order from this Court enjoining the upcoming October 2011 city councilor election; ordering the Defendants to immediately and expeditiously accomplish lawful redistricting, or, in the alternative, for the Court to redistrict the city council districts itself and if, necessary, to alter the date of the election and any pre-election deadlines.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court exercise its jurisdiction and enter, pursuant to this Court's original jurisdiction, the common law, and 42 U.S.C. § 1983:

A. A declaratory judgment adjudicating that the current districting plan for the City Council of the City of Albuquerque is in violation of the Equal Protection Clauses of the New Mexico and United States Constitutions and the City Charter of Albuquerque;

B. Preliminary and permanent injunctions restraining Defendants from using the current districting plan for the City Council in the 2011 election or any other elections;

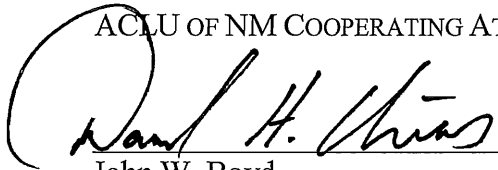
C. An Order requiring Defendants to immediately commence and expeditiously accomplish a new redistricting plan in time for the October 2011 elections that complies with the equal protection principle of "one person-one vote."

D. An order pursuant to 42 U.S.C. § 1988 awarding Plaintiffs their lawful fees and costs of suit; and

E. Such other and further relief as the court deems proper.

Respectfully submitted,

ACLU OF NM COOPERATING ATTORNEYS

A handwritten signature in black ink, appearing to read "David H. Urias", is written over a horizontal line.

John W. Boyd

David H. Urias

FREEDMAN BOYD HOLLANDER

GOLDBERG IVES & DUNCAN, P.A.

20 First Plaza, NW, Suite 700

Albuquerque, NM 87102

(505) 842-9960

ACLU OF NEW MEXICO

Laura Schauer Ives

MANAGING ATTORNEY

Alexandra Freedman Smith

STAFF ATTORNEY

P.O. Box 566

Albuquerque, NM 87103-0566

(505) 266-5915

Attorneys for Plaintiffs

VERIFICATION OF ART GONZALES

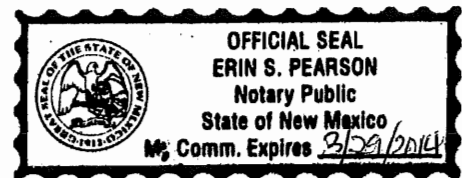
I, ART GONZALES, being sworn and upon his oath, states that he is one of the Plaintiffs in this cause, and that he has read the foregoing Verified Complaint, and that the contents therein are true and accurate to the best of his knowledge and belief.


ART GONZALES

SUBSCRIBED AND SWORN TO before me this 2nd day of June, 2011.


ERIN PEARSON
Notary Public

My Commission Expires: 3/29/2014



SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

NO.: **CV 201105792**

SHANNARA GREEN

MICHAEL ARCHULETA, RICHARD DINEEN,
CAROLE EBERHARDT, and ART GONZALES,

Plaintiffs,

vs.

ENDORSED
FILED IN MY OFFICE THIS

JUN 06 2011

CITY OF ALBUQUERQUE, NEW MEXICO,
RICHARD BERRY, in his official capacity
as Mayor of the City of Albuquerque;
DON HARRIS, TRUDY JONES,
BRAD WINTER, REY GARDUNO,
DAN LEWIS, ISAAC BENTON,
DEBBIE O'MALLEY, KEN SANCHEZ,
and MICHAEL COOK, in their official capacities
as members of the City Council of the City of
Albuquerque; and AMY B. BAILEY, in her official
capacity as the City Clerk for the City of Albuquerque,

Shannara M. Green
CLERK DISTRICT COURT

Defendants.

CERTIFICATE OF NON-ARBITRATION

Plaintiffs notify the Court that pursuant to LR2-603 this matter is not subject to court-annexed arbitration as plaintiffs are not seeking damages and seek relief which by statute can only be given by a court of general jurisdiction.

FREEDMAN BOYD DANIELS
HOLLANDER & GOLDBERG P.A.

By: 

John W. Boyd
David H. Urias
20 First Plaza, Suite 700 (87102)
P.O. Box 25326
Albuquerque, NM 87125
(505) 842-9960

Attorneys for Plaintiffs

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

ENDORSED
FILED IN MY OFFICE THIS

JUN - 6 2011

BATIM-CHAVEZ

NO.: CV 2011-05792

Juanita M. Duran
CLERK DISTRICT COURT

**MICHAEL ARCHULETA, RICHARD
DINEEN, CAROLE EBERHARDT, and
ART GONZALES,**

Plaintiffs,

vs.

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MEXICO, RICHARD BERRY,** in his official
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ISAAC BENTON, DEBBIE O'MALLEY,
KEN SANCHEZ,** and **MICHAEL COOK,** in
their official capacities as members of the City
Council of the City of Albuquerque; and **AMY
B. BAILEY,** in her official capacity as the City
Clerk for the City of Albuquerque,

Defendants.

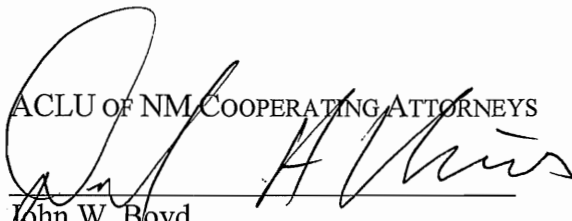
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs move the Court pursuant to Rule 1-066 NMRA for a preliminary injunction enjoining defendants from holding the October 4, 2011, Albuquerque city council district elections and any future elections for the City Council of the City of Albuquerque under the existing mal-apportioned city council districts. The current districts fail to comply with the one person, one vote standard of the equal protection clauses of the New Mexico Constitution and the Fourteenth Amendment of the Constitution of the United States. Nevertheless, Defendants intend to conduct elections for city council in October 2011 from these unconstitutionally mal-apportioned districts.

The grounds for this motion are that: (1) there is a substantial likelihood that plaintiffs will prevail on the merits of their claims in that the existing city council districts are unconstitutionally mal-apportioned, having a total deviation from ideal size of 64.65% (*see* Ex. 1, June 3, 2011 Affidavit of William Cooper); (2) plaintiffs will suffer irreparable injury unless the injunction issues because their unconstitutional dilution of voting rights will be unconstitutionally and unnecessarily continued because of the decision of Defendants not to redistrict but instead to hold elections in 2011 from these unconstitutionally mal-apportioned districts; (3) it is feasible to redistrict in time for elections in 2011 (*see* Ex. 2, June 6, 2011 Affidavit of Jaime Diaz); (4) the threatened injury outweighs whatever damage the proposed injunction may cause the defendants; and (5) the injunction would not be adverse to the public interest.

For these, and all the reasons set forth in the accompanying Memorandum in Support of Preliminary Injunction, Plaintiffs request that the Court issue a preliminary injunction enjoining defendants from holding the October 4, 2011, city elections under the unconstitutional plan. Plaintiffs' counsel, John Boyd and David Urias, have conferred with Defendants' counsel, acting City Attorney Robert Kidd, and have determined that Defendants oppose this motion.

DATED: June 6, 2011

ACLU OF NM COOPERATING ATTORNEYS

John W. Boyd
David H. Urias
FREEDMAN BOYD HOLLANDER
GOLDBERG IVES & DUNCAN, P.A.
20 First Plaza, NW, Suite 700
Albuquerque, NM 87102
(505) 842-9960

ACLU OF NEW MEXICO

Laura Schauer Ives
MANAGING ATTORNEY
Alexandra Freedman Smith
STAFF ATTORNEY
P.O. Box 566
Albuquerque, NM 87103-0566
(505) 266-5915

Attorneys for Plaintiffs

I hereby certify that a copy of this
Motion was mailed and sent by
electronic mail to Acting City Attorney,
Robert D. Kidd, Jr., and Laura Mason,
counsel for the City of Albuquerque
City Council on June 8th, 2011.



David H. Urias

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

NO. _____

**MICHAEL ARCHULETA, RICHARD
DINEEN, CAROLE EBERHARDT, and
ART GONZALES,**

Plaintiffs.

vs.

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MEXICO, RICHARD BERRY, in his official
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WINTER, REY GARDUNO, DAN LEWIS,
ISAAC BENTON, DEBBIE O'MALLEY,
KEN SANCHEZ, and MICHAEL COOK, in
their official capacities as members of the City
Council of the City of Albuquerque; and AMY
B. BAILEY, in her official capacity as the City
Clerk for the City of Albuquerque,**

Defendants.

AFFIDAVIT OF WILLIAM S. COOPER

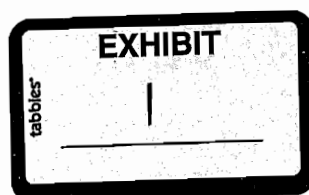
I, William S. Cooper, state as follows:

1. I am competent to provide the testimony stated herein. I am over the age of eighteen (18) years and give the facts stated in this affidavit of my own personal knowledge. If called upon to do so, I could and would competently testify to the matters set forth in this affidavit.

EXPERIENCE

2. I received a Bachelors Degree in Economics from Davidson College in Davidson, North Carolina in 1975.

3. I have worked as a professional in the field of redistricting since 1986.



4. I have prepared proposed redistricting maps of approximately 600 jurisdictions to promote compliance with the Voting Rights Act of 1965, for Section 2 litigation, and for Section 5 comment letters.

5. I have analyzed and prepared election plans in over 100 of these jurisdictions for two or more of the decennial censuses—either as part of concurrent legislative reapportionments, or retrospectively in relation to litigation.

6. In my experience, I have analyzed census data and prepared draft reapportionment plans involving approximately 300 local-level jurisdictions in 25 states.

7. I have produced these plans at the request of local citizens' groups, national organizations, such as the NAACP, and, in a few instances, by contract with local governments.

8. Two plans I have prepared for counties have been precleared and adopted by the United States Department of Justice, and four other local plans I have prepared have been adopted by the local governing bodies.

9. Following the 2000 census, I drafted proposed statewide legislative plans for clients in eight states—Florida, Montana, New Mexico, North Dakota, South Dakota, Tennessee, Virginia, and Wyoming.

10. Since 1986, I have also prepared election plans for Section 2 litigation in Arizona, Connecticut, Florida, Georgia, Louisiana, Maryland, Mississippi, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

11. I have testified as an expert witness regarding redistricting and demographics in federal courts in 33 trials.

12. I have also filed declarations or been deposed in an additional 23 cases.

20. I produced a digital map with the *Maptitude* software, overlaying the current council district lines onto the 2010 census blocks. (A census block is the smallest geographic tabulation area from the decennial census).

21. Using *Maptitude*, I assigned block populations to each of the nine city council districts in order to determine the population count under the 2010 Census by district.

RESULTS

22. According to the 2010 Census, the City of Albuquerque has a population of 545,852. Under a nine district system, the ideal population size for a council district is 60,650 (545,852 divided by nine).

23. Based on the 2010 Census, current District 1 has a population of 90,170 – 48.67% above the ideal district size. Current District 3 is the most under-populated of the nine districts with a 2010 population of 50,958 – 15.98% below the ideal district size.

24. Thus, the overall deviation for the existing council plan is 64.65% -- calculated by adding the absolute value of the most-populated district and least-populated district. Standard redistricting practice is that a plan should have no more than an overall deviation of 10% to comply with one-person, one-vote requirements.

25. I also produced an illustrative plan for the Albuquerque City Council that complies with one-person, one-vote requirements and meets other redistricting criteria including compactness, contiguity, respect for communities of interest, and the non-dilution of minority voting strength.

26. The illustrative plan I developed is built at the precinct level -- defined by the Census Bureau as voting tabulation districts (VTDs).

27. I also obtained a list of the residential addresses of the current incumbent councilors from Plaintiffs' attorneys. I used this information to ensure that the councilors remain in their respective districts under the illustrative plan.

28. Using the above methodology, which is now the standard in the redistricting process, the creation of a redistricting plan that incorporates current census data and complies with the one person, one vote principle, can be created in much less than one day. It took me less than one hour to create this proposed plan.

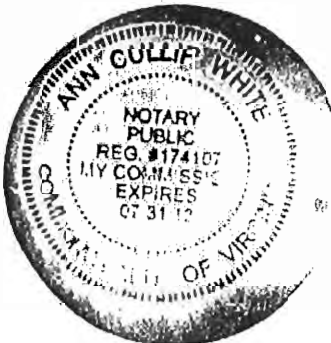
William S. Cooper
William S. Cooper

Subscribed and sworn to before me this 3rd day of June, 2011 by William S. Cooper.

Ann C. White
Notary Public

My commission expires:

7.31.13



**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

NO.: _____

**MICHAEL ARCHULETA, RICHARD
DINEEN, CAROLE EBERHARDT, and
ART GONZALES,**

Plaintiffs,

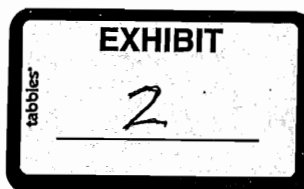
vs.

**CITY OF ALBUQUERQUE, NEW
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their official capacities as members of the City
Council of the City of Albuquerque; and **AMY
B. BAILEY,** in her official capacity as the City
Clerk for the City of Albuquerque,

AFFIDAVIT OF JAIME DIAZ

JAIME DIAZ, being duly sworn, hereby states as follows:

1. I am over 18 years of age and competent to make this Affidavit in the above referenced matter.
2. For 17 years, I was the Elections Administrator for the County of Bernalillo, New Mexico. Prior to that time, I was the Director of Elections for McKinley County, New Mexico, for several years. I am now retired from my employment with the Bernalillo County. My many duties as Elections Administrator included, but was not limited to, the supervision of an election staff of up to 85 persons, the oversight of ballot and voting machine preparation and allocation,



the compliance of election law deadlines, the interaction and communication with candidates for office regarding the election code.

3. I have extensive experience in the organization, coordination, and implementation of local elections in New Mexico. In particular, I have extensive experience and knowledge of the election processes of Bernalillo County and the City of Albuquerque.

4. During my tenure as Elections Administrator for the County of Bernalillo, I and other County employees, at the request of the City of Albuquerque, assisted the City in administering its elections by providing advice concerning the election process, and providing administrative and technical support. As part of my duties and as a result of my experience providing this advice and assistance to the City, I am knowledgeable regarding state and local laws, ordinances, regulations and City Charter provisions that govern City elections.

5. I have been retained by counsel for the plaintiffs in this case, who asked me to review the pre-election deadlines and schedule for the upcoming October 4, 2011, City elections and to determine whether the City, if required to complete the redistricting of City Council districts with all deliberate speed, could conduct these elections in a timely and lawful manner. Should a further delay in redistricting make it impossible as a practical matter to conduct the forthcoming City Council election on October 4, the plaintiffs asked me to propose a workable schedule for election-related activities based on election dates of thirty or sixty days later than the currently-scheduled date. It is my understanding from counsel for the plaintiffs in this case that courts in other jurisdictions have imposed delays on scheduled elections in order that redistricting can take place and that principles of "one-person, one-vote" can be honored.

6. It is my opinion, based on my extensive knowledge and experience as an elections administrator, and my knowledge and experience with county and city elections, that the City can adopt a truncated pre-election schedule that would allow the October elections to occur as scheduled. This truncated schedule would necessarily require the creation of shortened pre-election deadlines that do not comply with existing City regulations and ordinances, but would be necessary to ensure that the City elections are conducted in a manner that provides equal representation for all electors in the City of Albuquerque.

7. Creating alternative schedules that would allow for redistricting to take place in time for a new redistricting plan to be used for the City elections is complicated by the option of campaign public financing through the Open and Ethical Elections Code. However, even with the public financing option available to candidates, it is my opinion that if there were a redistricting or reapportionment plan in place by June 15, 2011, there would be no significant impediment to using a truncated schedule to move forward with an October election schedule. In the alternative, if a redistricting plan is not approved by June 15, 2011, there would be no impediment to the City elections being set within 60 days of the originally scheduled October 4 election date.

8. My foregoing opinions are based, in part, on the affidavit of William Cooper, which I have reviewed. In it, he expresses the opinion that readily available data and technology would allow a redistricting plan for the City of Albuquerque to be created in less than a day. Once a redistricting plan is created and approved by the City Council (I have used June 15, 2011, as a target date), there is in my opinion no serious impediment to either using a truncated schedule to

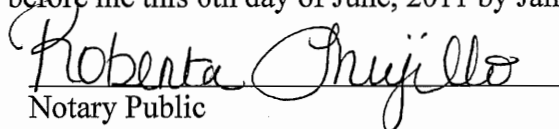
move forward with the currently-scheduled October election schedule, or, if need be, to conduct the City elections within 60 days of the originally scheduled October 4 election date.

9. I am currently working on creating two alternative pre-election schedules that would ensure that the City elections can occur after a lawful redistricting plan is put into place. I intend to provide those proposals to the Court as soon I they are completed, which should be in the next few days.


Jaime Diaz

June 6, 2011
Date

SUBSCRIBED AND SWORN TO before me this 6th day of June, 2011 by Jaime Diaz.


Notary Public

My Commission Expires:

5-27-2012

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

ENDORSED
FILED IN MY OFFICE THIS

JUN 8 2011

NO. CV 2011-05792

MICHAEL ARCHULETA, RICHARD DINEEN,
CAROLE EBERHARDT, and ART GONZALES,

Quantita M. Simon
CLERK DISTRICT COURT

CATHY CHAVEZ

Plaintiffs,

vs.

CITY OF ALBUQUERQUE, NEW MEXICO,
RICHARD BERRY, in his official capacity as
Mayor of the City of Albuquerque; DON HARRIS,
TRUDY JONES, BRAD WINTER, REY
GARDUNO, DAN LEWIS, ISAAC BENTON,
DEBBIE O'MALLEY, KEN SANCHEZ, and
MICHAEL COOK, in their official capacities as
members of the City Council of the City of
Albuquerque; and AMY B. BAILEY, in her official
capacity as the City Clerk for the City of
Albuquerque,

Defendants.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Under the fundamental constitutional command of one person, one vote, the City Council for the City of Albuquerque (the "City Council") has the duty under state and federal law and the Charter of the City of Albuquerque to redraw the city council districts every ten years, after the federal census is completed, based on a true and correct enumeration of the city's inhabitants. *See Reynolds v. Sims*, 377 U.S. 533, 577 (1964).¹

On March 15, 2011, almost seven months before Albuquerque's first city-wide elections were scheduled to take place, the U.S. Census Bureau released the population data necessary to create a fair

¹ The City Charter requires that the City Council appoint a committee to make recommendations regarding redistricting the city council districts based on information from the federal census. *See* Charter of the City of Albuquerque, Art. IV, Sec. 3 (www.cabq.gov/council/documents/charter-review-task.../city_charter.pdf) ("Charter"). On August 16, 2010, the City Council passed R-10-109, which created the Charter-required City Council Redistricting Committee for purposes of redistricting pursuant to the 2010 census.

and lawful redrawing of city council districts in the City of Albuquerque to ensure that all residents of Albuquerque are accorded equal representation in city government. In light of the new census data, there is no question that the current city council districts are severely mal-apportioned since the population growth on Albuquerque's west side has resulted in the city council districts there being grossly over-populated and the districts elsewhere in the city being substantially under-populated. Redistricting in conformity with the one person, one vote standard of the equal protection clause of the New Mexico Constitution and the Fourteenth Amendment of the Constitution of the United States would require that one of Albuquerque's east side districts be relocated to the west side, increasing the number of city councilors representing the west side from two to three and concomitantly reducing the number of councilors representing the east side of the city.

Despite being fully aware that the current city districting scheme would likely result in unconstitutional mal-apportionment, the City Council passed R-10-173, a resolution approving the postponement of the city council redistricting process. As a result, unless enjoined by this Court, the upcoming city elections, scheduled for October 2011, will be held to elect councilors to districts in gross violation of plaintiffs' state and federally protected rights and would prolong mal-apportioned council districts – and hence the violation of plaintiffs voting rights – for two to four years. Plaintiffs, residents of two of the most underrepresented districts under the outdated and unconstitutional districting plan, have filed their complaint challenging the perpetuation of the mal-apportioned city council districts and now request that the Court enter an order preliminarily enjoining Defendants from holding the 2011 elections for the City Council of the City of Albuquerque under the existing mal-apportioned plan, requiring the City Council and the City Clerk to adjust, if necessary, all pre-election deadlines and to proceed forthwith to expeditiously redistrict the City Council districts to comply with the one person, one vote standard of the equal protection clauses of the New Mexico Constitution and the Constitution of the United States, and to adjust, if necessary the date of the 2011 election of City Councilors.

II. INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE

To obtain a preliminary injunction, Plaintiffs need only show that: (1) they will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any harm the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiffs will prevail on the merits. *See LaBalbo v. Hymes*, 115 N.M. 314, 318 (N.M. App. 1993) (citing *Tri-State v. Shoshone River Power, Inc.*, 805 F.2d 351 (10th Cir.1986)); *see also Resolution Trust Corp. v. Cruce*, 972 F.2d 1195, 1198 (10th Cir.1992). Plaintiffs satisfy all four requirements and therefore are entitled to injunctive relief as requested.

A. Plaintiffs Are Likely to Prevail on the Merits of Their Claims

1. **The Existing City Council District Plan Violates the Fundamental Democratic and Constitutional Principle of One Person, One Vote.**

The one person, one vote standard of the equal protection clause of the Fourteenth Amendment requires states to construct and utilize legislative districts as nearly of equal population as is practicable. *See Reynolds v. Sims*, 377 U.S. at 577; *Brown v. Thomson*, 462 U.S. 835, 842 (1983). As such, “the Equal Protection Clause confers a substantive right to participate in elections on an equal basis with other qualified voters.” *Pinell v. Bd. Of County Com’rs of Santa Fe County*, 1999-NMCA-074, ¶ 20, 127 N.M. 452, 457, 982 P.2d 503, 508 (quoting *City of Mobile v. Bolden*, 446 U.S. 55, 77, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980)). The one person, one vote standard also applies to county and other local governing bodies. *See Avery v. Midland County*, 390 U.S. 474 (1968).

There is no doubt that the existing districts are mal-apportioned under the one person, one vote standard. “In calculating [] deviation among districts, the relevant inquiry is whether the vote of any citizen is approximately equal in weight to that of any other citizen, the aim being to provide fair and effective representation for all citizens.” *Alb. Bernalillo Co. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 38-39, 229 P.3d 494, 511-12 (quoting *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 701, 109 S.Ct. 1433, 103 L.Ed.2d 717 (1989)). The courts have established a

tripartite test for evaluating whether a districting plan satisfies or violates the one person, one vote formulation. The inquiry is directed at the total population deviation found in the districting plan. Districting plans with a total population deviation under 10% are regarded as complying with one person, one vote. See *White v. Regester*, 412 U.S. 755, 764 (1973); *Brown v. Thomson*, 462 U.S. at 842-43. Plans with deviations between 10% and 16.4% are acceptable only if they can be justified "based on legitimate considerations incident to the effectuation of a rational state policy." *Mahan v. Howell*, 410 U.S. 315, 325 (1973); see also *Abate v. Mundt*, 403 U.S. 182, 185 (1971) (approving a deviation of 11.9% for a county government). Plans with deviations greater than 16.4%, such as the City of Albuquerque plan's 64.65% total population deviation, have been regarded unconstitutional and are probably never justifiable. See *Connor v. Finch*, 431 U.S. 407, 420 (1977).

The Albuquerque's City Council consists of nine members elected from nine single member districts. As determined by Plaintiffs' expert, William Cooper, based on the 2010 Census, the total population of the City of Albuquerque is now 545,852. See Ex. 1 to Plaintiff's Motion for Preliminary Injunction. The ideal population for each city council district is thus 60,650 people. Albuquerque's existing city council districts, however, possess a total deviation of 64.65% from ideal district size. The population and deviation from ideal size of each city council district is as follows:

District	2010 Population	Deviation	% Deviation
1	90,170	29,520	48.67
2	54,556	-6,094	-10.05
3	50,958	-9,692	-15.98
4	55,217	-5,433	-8.96
5	83,165	22,515	37.12
6	52,931	-7,719	-12.73
7	51,890	-8,760	-14.44
8	52,572	-8,078	-13.32
9	54,393	-6,257	-10.32

There is no question that the existing districts for the City Council are severely mal-apportioned. City Council District 1, the most overpopulated district, experienced a majority of the city's growth during the last decade and now has a deviation of +48.67% from ideal district size. City Council District 3, the

most under-populated district, has a deviation of -15.98% from ideal size. The entire city plan has a total population deviation of 64.65% and is thus unconstitutionally mal-apportioned. Plaintiffs should thus prevail on the merits of their claim, justifying injunctive relief. *See Johnson v. Halifax County*, 594 F. Supp. 161, 171 (E.D.N.C. 1984) (enjoining elections where plaintiffs showed a substantial likelihood of prevailing on the merits); *Taylor v. Haywood County, Tenn.*, 544 F. Supp. 1122 (W.D.Tenn. 1982) (granting a preliminary injunction against pending elections after finding that plaintiffs established a likelihood of prevailing on vote dilution claim); *Foster v. Kusper*, 587 F. Supp. 1191, 1193 (N.D. Ill. 1984) (plaintiff entitled to preliminary injunction in election contest who established "a substantial likelihood of success on the merits").

2. Courts Have Ordered Immediate Redistricting and Enjoined Elections from Proceeding Under Unconstitutional Redistricting Schemes.

As the Supreme Court articulated in *Reynolds v. Sims*, once a plan has been found unconstitutional, "it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." 377 U.S. at 585, 84 S.Ct. at 1393. Since that admonition, under circumstances similar to those here, courts have ordered immediate redistricting and have enjoined elections from moving forward under unconstitutional districting plans. *See, e.g., Watson v. Commissioners Court of Harrison County*, 616 F.2d 105 (5th Cir. 1980) (enjoining election and ordering the fixing of "an appropriate date for the election following approval of [a constitutional] reapportionment" because election that was a month away could not be held under "an outdated, inequitable, unconstitutional apportionment plan."); *Flateau v. Anderson*, 537 F.Supp. 257 (S.D.N.Y. 1982) (three-judge court), *appeal dismissed*, 458 U.S. 1123, 103 S.Ct. 5, 73 L.Ed.2d 1394 (1983) (finding unconstitutional an eight-year old redistricting plan that was based on census numbers that were just over a decade old, and ordering immediate redistricting where elections were still months away) ; *Farnum v. Burns*, 548 F.Supp. 769, 771 (D.R.I. 1982) (three-judge court) (finding unconstitutional district plan that was eight years old and enjoining defendants from conducting

elections- the first of which was one month away- until such time as a constitutionally permissible reapportionment plan was devised); *Honsey v. Donovan*, 236 F. Supp. 8 (D. Minn. 1964) (three-judge court); *see also Whitcomb v. Chavis*, 403 U.S. 124, 162, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971) (affirming district court's order that state reapportion its state legislature in case involving a 28% total deviation).

Here, the first city elections are over four months away and, as was the case in *Watson*, *Flateau* and *Farnum*, there is ample time for the City Council to complete the redistricting process in time for use in those elections. As described by Plaintiffs' expert, Jamie Diaz, it is entirely feasible to hold elections in 2011 under redistricted city council districts in 2011. *See* Ex. 2 to Plaintiffs' Motion for Preliminary Injunction. Although there are a number of upcoming pre-election deadlines, there is no practice or otherwise legitimate impediment to adjusting any of those deadlines in order to ensure that the October 2011 city elections to the City Council take place under a reapportionment plan that would ensure that all residents of Albuquerque have an equal voice in government. This case is especially compelling given that it involves the planned use of a decade-old reapportionment plan will result in severe malapportionment. Furthermore, in the event it is necessary, this Court may use its broad equitable powers to require Defendants to fix an alternative date for conducting the city elections after a constitutional reapportionment plan has been created and approved. *See, e.g., Watson*, 616 F.2d at 107 (ordering that special elections take place after constitutional redistricting plan put into place); *see also Smith v. McKee*, 116 N.M. 34, 37, 859 P.2d 1061, 1064 (1993) ("A trial court may create broad equitable remedies to achieve substantial justice between the parties and bring an end to the litigation."); *Smith & Marrs, Inc. v. Osborn*, 2008-NMCA-043, ¶ 21, 143 N.M. 684, 180 P.3d 1183 ("Sitting in its equitable capacity, a court may avail itself of those broad and flexible powers which are capable of being expanded to deal with novel cases and conditions.").

B. Plaintiffs Will Be Irreparably Injured Absent an Injunction

The rights to vote and have equal representation are among the most fundamental rights in our

system of government. *See, e.g., Harman v. Forssenius*, 380 U.S. 528, 537 (1965); *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The Fourteenth Amendment to the United States Constitution assures that “representative government in this country is one of equal representation for equal numbers of people.” *Reynolds*, 377 U.S. at 560-61. The Supreme Court has emphasized the importance of this constitutional right:

Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged – the weight of a citizen’s vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies. A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution’s Equal Protection Clause. *This is an essential part of the concept of a government of laws and not men.* This is at the heart of Lincoln’s vision of government of the people, by the people, (and) for the people. The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.

Id. at 567-68 (emphasis added).

Here, Plaintiffs’ Fourteenth Amendment rights, as well as their equal protection rights under Article II, § 18 of the New Mexico Constitution are currently being violated and will continue to be unless this Court affords relief. When violations of constitutional rights are alleged, further showing of irreparable injury is not required, especially if what is at stake is not monetary damages. *See Elrod v. Burns*, 427 U.S. at 373 (the loss of constitutionally protected freedoms “for even minimal periods of time, constitutes irreparable injury”). Thus, courts often find that when a plaintiff demonstrates a constitutional deprivation, the plaintiff satisfies the requirement of irreparable harm. *See, e.g., LaBalbo v. Hymes*, 115 N.M. 314, 318, 850 P.2d 1017, 1021 (N.M. Ct. App. 1993) (holding that trial court erred in not considering irreparable injury when there was allegation of constitutional deprivation); *Back v. Carter*, 933 F. Supp. 738, 754 (N.D. Ind. 1996) (holding that “equal protection rights are so fundamental to our society that any violation of those rights causes irreparable harm.”); 11 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948 n. 39 (1973) (where deprivation of constitutional right is

shown, no further showing of irreparable harm need be demonstrated). This is especially true where the allegations concern violations of the fundamental right to vote. *See Dillard v. Crenshaw County*, 640 F.Supp. 1347, 1363 (M.D.Ala.1986) (Abridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury); *Cook v. Lockett*, 575 F. Supp. 479, 484 (S.D. Miss. 1983) ("perpetuating voter dilution" through use of a malapportioned plan constitutes "irreparable injury"); *Foster v. Kasper*, 587 F. Supp. 1191, 1193 (N.D. Ill. 1984) (violation of the right to vote for candidate of choice constitutes "irreparable harm").

Plaintiffs will suffer irreparable injury if a method of elections is utilized in the October 2011 and future elections that continues the dilution of their voting strength and denies them equal representation. City Council Districts 2, 4, 6 and 8 are all scheduled for elections this year. *See* Charter, Art. II, Sec.1. Once elected in October, the city council members for those districts will serve for four years, until 2015. *See id.* at Art. IV, Sec. 4. The residents of City Council Districts 1 and 5, however, including Plaintiffs, will not vote for their council members for another two years. *See id.* at Art. II, Sec.2. City Council Districts 1 and 5 are substantially over-populated (and hence are under-represented) compared to Districts 2, 4, 6 and 8. If the October 2011 city elections go forward under the outdated and mal-apportioned districting plan, as planned, the residents of Districts 1 and 5 will continue to be under-represented as compared to other districts for at least two years (assuming redistricting occurs before then that rectifies the mal-apportionment and Districts 2, 4, 6 and 8 have new elections as well) and as many as four years if the City Council members elected this Fall from Districts 2, 4, 6 and 8 are allowed to remain in their current districts for their full term.

In addition, there is a substantial likelihood that many of the residents now residing in City Council District 1 and 5 will reside in a new district on the west side of Albuquerque after the appropriate redistricting is completed. If this new district is assigned an even number, then the residents of the new district will effectively be disenfranchised for six years because the next city elections for the new (even

numbered) district will not occur until 2015. Furthermore, it is possible that some of the residents of the severely underrepresented Districts 1 and 5 may be moved into existing even numbered districts when redistricting occurs. These residents would also be deprived of their ability to vote in the upcoming election in even numbered districts. Delaying redistricting until after the election will also deprive these residents of being able to vote in their new even numbered district for six years.

In sum, because Plaintiffs can demonstrate that their constitutional rights to equal representation have been violated, they have suffered, and will continue to suffer, irreparable injury unless this Court enjoins defendants from moving forward with the October 2011 elections under the grossly mal-apportioned districts.

C. The Threatened Injury Outweighs any Harm to Defendants

The threatened injury to Plaintiffs outweighs any harm that an injunction might cause defendants. Although the October 2011 election is fast approaching, the City Council has sufficient time to create and adopt a plan that comports with the constitutional principles of equal representation -a process which with today's technology can be completed in a relatively short period of time -and more than sufficient time to do so in a manner that will allow for candidates to campaign for the newly drawn districts. The history of redistricting Albuquerque's city council districts in the past proves the point. Following past censuses, the City has accomplished redistricting immediately after the release of the official census population data, creating newly drawn boundaries that were then immediately applied to the next city election. *See* Charter of the City of Albuquerque, Historical Postscript ("On April 20, 1981 the City Council, pursuant to Article IV, Section 3, adopted Ordinance No. 35-1981 (amended by Ordinance No. 41-1981), which altered the boundaries of the nine Council districts on the basis of the 1980 Federal Census....On June 17, 1991 the City Council, pursuant to Article IV, Section 3, adopted Ordinance No. 28-1991 (amended by Ordinance No. 31-1991), which altered the boundaries of the nine Council districts on the basis of the 1990 Federal Census....[And] on June 25, 2001 the City Council, pursuant to Article IV, Section 3,

adopted Ordinance No. 26-2001, which altered the boundaries of the nine Council districts on the basis of the 2000 Federal Census and amended Appendix A to identify the Council districts according to Bernalillo County precincts.”). This historically expeditious and constitutional redistricting was accomplished without the aid of the computer programs now available for redistricting purposes that make redistricting much easier and more expeditious.

Even if the City’s constitutionally required redistricting effort would necessitate a delay in the presently-scheduled October 3, 2011 election, any harm that might cause the City is far outweighed by the harm of perpetuating the current mal-apportionment. The expense or administrative inconvenience of conducting a special election is outweighed by the loss of the equal right to vote that will be suffered by plaintiffs, and any such inconvenience and expense is of the Defendants own doing and should thus not weigh against the granting of injunctive relief. *See Cook v. Lockett*, 575 F. Supp. at 485 (the expense involved in holding a special election to remedy vote dilution "is neither onerous nor overburdensome considering the equities involved"); *Taylor v. Haywood County, Tenn.*, 544 F. Supp. at 1135 (“[a]fter a balancing of the hardships which an injunction [against further use of at-large elections] would produce, the Court finds the scale tips in favor of the plaintiffs”); *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) (“administrative convenience” cannot justify a state practice that impinges upon a fundamental right).

D. An Injunction Would Be in the Public Interest

The public has a significant interest in the integrity of elected government which is compromised by a system that fails to weigh the votes of all citizens equally. *See Cook v. Lockett*, 575 F. Supp. at 485 (“[t]he public interest must be concerned with the integrity of our representative form of government”). Subjecting the voters of Albuquerque to a government elected under an “inequitable” system would be adverse to the public interest. *Watson*, 616 F.2d at 107. Under the circumstances, an injunction would promote the public interest.

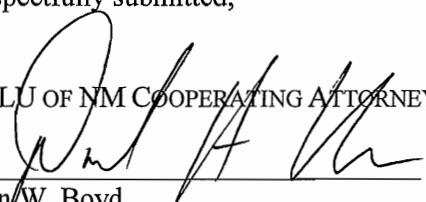
III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their motion for a preliminary injunction be granted enjoining defendants from holding the 2011 elections for the City Council of the City of Albuquerque under the existing mal-apportionment of City Council districts and from failing to conduct future elections in a manner that complies with the one person, one vote standard of the equal protection clauses of the New Mexico Constitution and the Constitution of the United States.

DATED: June 6, 2011

Respectfully submitted,

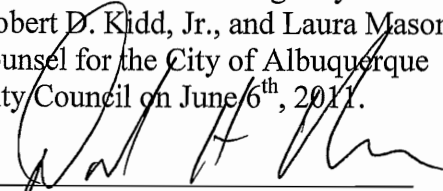
ACLU of NM COOPERATING ATTORNEYS


John W. Boyd
David H. Urias
FREEDMAN BOYD HOLLANDER
GOLDBERG IVES & DUNCAN, P.A
20 First Plaza, NW, Suite 700
Albuquerque, NM 87102
(505) 842-9960

ACLU OF NEW MEXICO
Laura Schauer Ives
MANAGING ATTORNEY
Alexandra Freedman Smith
STAFF ATTORNEY
P.O. Box 566
Albuquerque, NM 87103-0566
(505) 266-5915

Attorneys for Plaintiffs

I hereby certify that a copy of the foregoing pleading was mailed and sent by electronic mail to Acting City Attorney, Robert D. Kidd, Jr., and Laura Mason, counsel for the City of Albuquerque City Council on June 6th, 2011.


David H. Urias

ENDORSED
FILED IN MY OFFICE THIS

JUN - 6 2011

Quinita M. Duan
CLERK DISTRICT COURT
NO. CV 2011-05792

BATHY CHAVEZ

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

**MICHAEL ARCHULETA, RICHARD
DINEEN, CAROLE EBERHARDT, and
ART GONZALES,**

Plaintiffs,

vs.

**CITY OF ALBUQUERQUE, NEW
MEXICO, RICHARD BERRY,** in his official
capacity as Mayor of the City of Albuquerque;
**DON HARRIS, TRUDY JONES, BRAD
WINTER, REY GARDUNO, DAN LEWIS,
ISAAC BENTON, DEBBIE O'MALLEY,
KEN SANCHEZ, and MICHAEL COOK,** in
their official capacities as members of the City
Council of the City of Albuquerque; and **AMY
B. BAILEY,** in her official capacity as the City
Clerk for the City of Albuquerque,

Defendants.

**REQUEST FOR EXPEDITED HEARING ON MOTION
FOR PRELIMINARY INJUNCTION**

1. This case presents a matter of constitutional urgency because, unless plaintiffs obtain immediate relief from this Court, the October 4, 2011 City Council election will be held in City Council districts that are grossly mal-apportioned. Accordingly, Plaintiffs respectfully request that this Court set a hearing as soon as reasonably possible on Plaintiffs' motion for a preliminary injunction.

2. As explained more fully in Plaintiffs' Memorandum in Support of Their Motion for Preliminary Injunction, unless enjoined by this Court, the City of Albuquerque elections currently scheduled for October 4, 2011, will take place utilizing city council district boundaries

that are over a decade old, have not been adjusted to reflect the current census data and will necessarily result in significant, unlawful over-representation in some City Council districts and corresponding under-representation in other City Council districts, including those in which plaintiffs reside.

3. In light of the new census data, it cannot be seriously disputed that the current city council districts are severely mal-apportioned, since the population growth on Albuquerque's west side over the last ten years has resulted in the city council districts there being grossly over-populated (and therefore grossly underrepresented) and the districts elsewhere in the city being substantially under-populated (and therefore grossly overrepresented). As a result, absent an injunction, the first city elections of the decade will be held to elect councilors to districts that will grossly violate plaintiffs' state and federally protected rights, thereby prolonging for years the mal-apportionment of council districts – and hence prolonging the violation of plaintiffs' voting rights.

4. Given the constitutional importance of this case and given the fact that certain pre-election deadlines have been put into place by the City of Albuquerque, time is of the essence. As the Supreme Court stated in the seminal redistricting case of *Reynolds v. Sims*, once a districting plan has been found unconstitutional, "it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." 377 U.S. at 585, 84 S.Ct. at 1393. Since that admonition by the Supreme Court, under circumstances similar to those here, courts have ordered immediate redistricting and have enjoined elections from moving forward under unconstitutional districting plans. See, e.g., *Watson v. Commissioners Court of Harrison County*, 616 F.2d 105 (5th Cir.

1980) (enjoining election and ordering the fixing of “an appropriate date for the election following approval of [a constitutional] reapportionment” because election that was a month away could not be held under “an outdated, inequitable, unconstitutional apportionment plan.”).

5. Here, the city elections are four months away and, although there has been sufficient time for the City Council to complete the redistricting process in time for use in those elections, the City Council has declined to do so. Accordingly, immediate intervention by this Court is required in order to ensure that redistricting is accomplished and pre-election deadlines are modified in a manner that ensures that all prospective candidates for office will have the opportunity to campaign in their respective districts. Once redistricting is completed, the current council district boundaries will undoubtedly change. Since, as things stand now, the City Council has decided that no redistricting plan will be adopted and made effective until *after* the October elections, voters in the affected districts will for years remain under or over-represented and may for a period of years be represented by councilors who do not even reside in their new district.

6. In addition, because the City of Albuquerque now provides for public financing of campaigns for those candidates who qualify, the schedule regarding that process must also be immediately adjusted to ensure that qualified candidates receive that funding for use as they campaign in their respective districts.

7. Immediate redistricting is also required because once new city council boundaries are drawn, the Bernalillo County Clerk will need some time to update voter registration records prior to the election.

8. As is set forth in the affidavit of William Cooper, attached as Ex. 1 to Plaintiffs' Motion for Preliminary Injunction, given the routine availability of modern redistricting data processing, an appropriate and lawful redistricting plan can be created in one day, and then adopted or modified by the City Council as soon as the Defendants meet, as we request that this Court direct.

9. As set forth in the affidavit of Jaime Diaz, attached as Ex. 2 to Plaintiffs' Motion for Preliminary Injunction, if the Court determines that the plaintiffs are entitled to preliminary injunctive relief, and the Court enters an order requiring reapportionment by June 15, 2011, it will be reasonable to hold the election on the date currently scheduled, October 4, 2011. If the reapportionment plan is adopted significantly after that date, then it is likely that the election will have to be rescheduled for later in the year.

10. For the foregoing reasons, Plaintiffs respectfully submit that it is imperative that the Court schedule this matter for an immediate hearing. Plaintiffs have not moved for a temporary restraining order because there is time within which to allow Defendants to respond and for the Court to hold a hearing before the week of June 12, 2011.

11. Plaintiffs' counsel has spoken with the Acting City Attorney, Robert Kidd, Esq., and he has confirmed that the Defendants oppose the relief sought in this motion.

For the foregoing reasons, Plaintiffs request an expedited hearing on their motion for preliminary injunction. Plaintiffs further request that the Court require Defendants to respond forthwith to the matters raised by the plaintiffs.

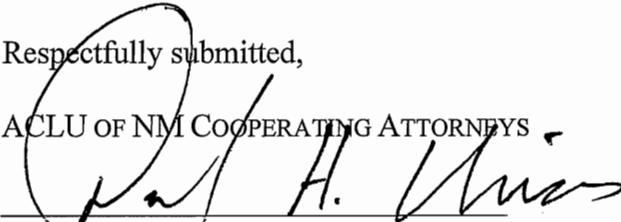
The October 4, 2011, City elections cannot lawfully be held under the current, unconstitutional city council district plan. The City Council must thus be required to move

immediately to create a new redistricting plan that will ensure that the first post-census city elections are administered in a manner consistent with the fundamental democratic and constitutional principle of one person, one vote. If the October election proceeds under the current districts, the principle of one person, one vote will be violated significantly, and the violation will necessarily persist for years. Under the circumstances, Plaintiffs and their fellow citizens merit immediate relief.

DATED: June 6, 2011

Respectfully submitted,

ACLU OF NM COOPERATING ATTORNEYS

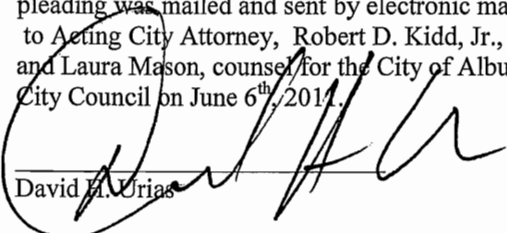


John W. Boyd
David H. Urias
FREEDMAN BOYD HOLLANDER
GOLDBERG IVES & DUNCAN, P.A.
20 First Plaza, NW, Suite 700
Albuquerque, NM 87102
(505) 842-9960

ACLU OF NEW MEXICO
Laura Schauer Ives
MANAGING ATTORNEY
Alexandra Freedman Smith
STAFF ATTORNEY
P.O. Box 566
Albuquerque, NM 87103-0566
(505) 266-5915

Attorneys for Plaintiffs

I hereby certify that a copy of the foregoing pleading was mailed and sent by electronic mail to Acting City Attorney, Robert D. Kidd, Jr., and Laura Mason, counsel for the City of Albuquerque City Council on June 6th, 2011.



David H. Urias