

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO

Court Address: 1437 Bannock Street
Denver, Colorado 80202

DOMINICK MORENO, CHRISTINE LE LAIT,
WILLIAM N. PATTERSON, RITA MAHONEY,
ROGER CLARK, KRISTI MATSUNAKA, and MIKEL
WHITNEY,

Plaintiffs,

KATHRYN H. HALL, DANNY E. STROUD, DICK R.
MURRAY, Ph.D., MARK D. HILLMAN, WAYNE W.
WILLIAMS, MARK BAISLEY, and SHIRLEY J. SEITZ,

Plaintiffs,

COLORADO LATINO FORUM, a Colorado nonprofit
corporation, and COLORADO HISPANIC BAR
ASSOCIATION, a Colorado nonprofit corporation

Plaintiffs,

v.

SCOTT GESSLER, in his official capacity as Colorado
Secretary of State,

Defendant.

▲ COURT USE ONLY ▲

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Case Number: 11CV3461;
consolidated with Case No:
11CV3463

Ctrm: 209

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Colorado Latino Forum and the Colorado Hispanic Bar Association (together, the “Hispanic Plaintiffs”), through their undersigned counsel, Faegre & Benson LLP and Mexican American Legal Defense and Educational Fund, for their Complaint for Declaratory and Injunctive Relief against Defendant Scott Gessler, in his official capacity as Colorado Secretary of State, state as follows:

PARTIES

1. Plaintiff Colorado Latino Forum is a Colorado nonprofit corporation with its principal place of business in Denver, Colorado. Plaintiff Colorado Latino Forum is a membership organization with the mission of increasing the political, social, educational and economic strength of Latinas and Latinos. Individuals who are members of the Colorado Latino Forum include Hispanic registered voters in each of Colorado’s existing congressional districts.
2. Plaintiff Colorado Hispanic Bar Association is a Colorado nonprofit corporation with its principal place of business in Denver, Colorado. Plaintiff Colorado Hispanic Bar Association is a membership organization whose mission includes seeking equal protection for the Hispanic community before the law. Individuals who are members of the Colorado Hispanic Bar Association include Hispanic registered voters in each of Colorado’s existing congressional districts.
3. Defendant Scott Gessler is Secretary of State for the State of Colorado and is responsible for the administration and enforcement of the election law of the State of Colorado.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the parties and the subject matter of this action pursuant to Colorado Constitutional Article VI, § 9(1) and Colorado Revised Statutes § 13-51-101 *et seq.*

5. Venue is proper in this Court pursuant to Colorado Rule of Civil Procedure 98(b)(2).

FACTS

6. The Colorado General Assembly (the “General Assembly”) is responsible for dividing the state into as many congressional districts as there are representatives apportioned to the state by the United States Congress. Colo. Const. art. V, § 44.

7. In redrawing the boundaries of congressional districts after the 2010 federal census, the General Assembly “shall use population data supplied by the United States bureau of the census that has been used to apportion the seats in the United States house of representatives among the states.” Colo. Rev. Stat. § 2-2-901.

8. Colorado has received the 2010 census data. The 2010 census data state that Colorado’s population is 5,029,196 people. According to the one person/one vote standard derived from Article I, Section 2 of the United States Constitution, the ideal population of each district is 718,457 people.

9. The existing Colorado congressional districts are divided according to Colorado Revised Statute § 2-1-101.

10. Under the current congressional districts, Colorado’s population is apportioned as follows:

<u>District</u>	<u>2010 Census Population</u>	<u>Deviation from Ideal</u>	<u>% Deviation</u>
1	662,039	(56,418)	(7.9 %)
2	733,805	15,348	2.1%
3	706,186	(12,271)	(1.7%)
4	725,041	6,584	0.9%
5	725,902	7,445	1.0%
6	797,813	79,356	11.0%
7	678,410	(40,047)	(5.6%)

11. The current districts are malapportioned in violation of Article I, § 2 of the United States Constitution.

12. Colorado's congressional districts must be redrawn and in place no later than precinct caucus day. Precinct caucus day is currently scheduled for March 6, 2012. *See* Colo. Rev. Stat. § 1-3-102, *amended by* S.B. 11-189, 68th Gen. Assemb., First Reg. Sess. (Colo. 2011). The last day for county commissioners to alter precinct boundaries is 29 days prior to precinct caucus day, or February 6, 2012. *See* Colo. Rev. Stat. § 1-5-103.

13. Because 2012 is a presidential election year, the political parties may choose to hold precinct caucus day on February 7, 2012. *See* Colo. Rev. Stat. 1-3-102(1)(a)(III). In that case, the precinct boundaries must be altered no later than January 9, 2012.

14. The General Assembly did not pass a redistricting plan during its regular legislative session and the governor has not convened a special session.

15. The General Assembly has failed to redraw Colorado's congressional districts in a timely fashion and there are no assurances that a reapportionment plan will be validly enacted in time for the upcoming election.

16. Because precinct lines may be required to be drawn as early as January 9, 2012, and in any event must be drawn no later than February 6, 2012, the time has come for the Court to redraw Colorado's congressional districts.

17. This Court has authority to redraw Colorado's congressional districts.

18. Colorado Revised Statute § 2-1-102 provides neutral criteria for the judicial determination of congressional districts and states in full:

(1) In determining whether one or more of the congressional districts established in section 2-1-101 are lawful **and in adopting or enforcing any change to any such district, courts:**

(a) Shall utilize the following factors:

(I) A good faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States. Each district shall consist of contiguous whole general election precincts. Districts shall not overlap.

(II) Compliance with the federal "Voting Rights Act of 1965", in particular 42 U.S.C. sec. 1973; and

(b) May, without weight to any factor, utilize factors including but not limited to:

(I) The preservation of political subdivisions such as counties, cities, and towns. When county, city, or town boundaries are changed, adjustments, if any, in districts shall be as prescribed by law.

(II) The preservation of communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors.

(III) The compactness of each congressional district; and

(IV) The minimization of disruption of prior district lines.

Colo. Rev. Stat. § 2-1-102 (emphasis added).

19. The 2010 census data show that the total Hispanic population in Colorado is one-fifth (21%) of the total state population (*i.e.*, 1,038,687 Hispanic Coloradans).

20. Large Hispanic communities exist across the state, including Denver (190,965 or 32%), the larger Denver metropolitan area (823,021 or 21%), Adams County (167,878 or 38%), Pueblo County (65,811 or 41%), Aurora (93,263 or 29%), and the Colorado Springs metropolitan area (187,247 or 21%). Hispanic communities also make up a significant portion of Morgan County (34%), Weld County (28%), Eagle County (30%), and Garfield County (28%). In the six counties of the San Luis Valley, the Hispanic community comprises 47 percent of the population and, when combined with the nearby Las Animas and Pueblo counties, the percentage of Hispanics remains above 40 percent.

21. The growth of Colorado's Hispanic community contributed significantly to Colorado's overall growth, accounting for over 41 percent of the state's growth.

22. Eight Colorado counties have seen their Hispanic population increase by more than 100% over the last 10 years, including Douglas, Garfield, and Grand counties.

23. The sizable and cohesive Hispanic communities throughout Colorado represent unique communities of interest bonded through strong ethnic, social, familial, cultural, economic, trade area, geographic, and demographic ties that should be considered and respected in the federal redistricting process.

FIRST CLAIM FOR RELIEF

United States Constitution Article I, § 2: One Person/One Vote

24. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.
25. Colorado's existing congressional districts, as divided according to Colorado Revised Statute § 2-1-101, are unconstitutional in violation of Article I, § 2 of the United States Constitution.
26. The General Assembly has failed to redraw Colorado's congressional districts in a timely fashion and there are no assurances that a reapportionment plan will be validly enacted in time for the upcoming election.
27. Colorado's congressional districts must be redrawn in time for the 2012 election.
28. Colorado's congressional districts must be redrawn in accordance with constitutional and statutory mandates, including without limitation, Article I, § 2 of the United States Constitution, the Voting Rights Act of 1965, and Colorado Revised Statutes § 2-1-102.
29. The Colorado Hispanic population comprises communities of interest that should be considered in drawing district boundaries. Specifically, without limitation:
 - a. the congressional district located in the Denver metropolitan area should respect the community of interest comprising approximately 823,000 Hispanics and should not dilute the voting strength of the Hispanics in that area;
 - b. the congressional district in southern portion of the state should respect the community of interest in the six San Luis Valley counties and in Pueblo and Las Animas counties and should not dilute the voting strength of the Hispanics in that area; and
 - c. the northeastern congressional district should respect the Hispanic community of interest comprising 29 percent of the population in Morgan and Weld Counties and should not dilute the voting strength of the Hispanics in that area.

PRAYER FOR RELIEF

WHEREFORE, the Hispanic Plaintiffs pray for judgment as follows:

- a. declaratory relief pursuant to Colorado Revised Statutes § 13-51-101 *et seq.* and Colorado Rule of Civil Procedure 57 stating that Colorado Revised Statute § 2-1-101 is unconstitutional;

- b. an order enjoining Defendant Scott Gessler from using the congressional districts in Colorado Revised Statute § 2-1-101 in the 2012 election;
- c. an order that Colorado's congressional districts be drawn according to a court plan that complies with Article I, § 2 of the United States Constitution, the Voting Rights Act of 1965, and Colorado Revised Statute § 2-1-102 and considers Colorado's Hispanic communities of interest; and
- d. any such other and further relief as may be appropriate.

Respectfully submitted this 22nd day of July, 2011.

s/ Regina M. Rodriguez

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