

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

LISA BERNAL; §
BRIAN BERNAL; and §
RACHEL SANCHEZ, §

Plaintiffs, §

v. §

Civil Action No. 1:26-cv-3023

CITY OF GREELEY, COLORADO; §
DALE HALL, in his official capacity as §
Mayor of the City of Greeley; §
MELISSA MCDONALD, in her official §
capacity as Mayor Pro Tem of the City of §
Greeley; RYAN ROTH, in his official §
capacity as Councilmember for the City of §
Greeley; CRAIG HUDDLESTON, in his §
official capacity as Councilmember for the §
City of Greeley; DEB DEBOUТЕZ, in her §
official capacity as Councilmember for the §
City of Greeley; JOHNNY OLSON, in his §
official capacity as Councilmember for the §
City of Greeley; BRIAN RUDY, in his §
official capacity as Councilmember for the §
City of Greeley; HEIDI LEATHERWOOD, §
in her official capacity as City Clerk for the §
City of Greeley; and BRIAN MCBROOM, §
in his official capacity as City Manager for §
the City of Greeley, §

Defendants. §

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Lisa Bernal, Brian Bernal, and Rachel Sanchez (“Plaintiffs”) bring this action under the Fourteenth Amendment to the United States Constitution to challenge the

redistricting plan of the City of Greeley, Colorado. Defendants are the City of Greeley, the members of the Greeley City Council, and the Greeley City Clerk and City Manager (“Defendants”).

2. The City of Greeley’s redistricting plan is grossly malapportioned, containing many more city residents in Wards I and II when compared to the number of residents in Wards III and IV. The population deviations across the wards in the City’s redistricting plan lack any legitimate justification and violate the United States Constitution’s guarantee of equal protection, known in this context as “one person one vote.”

3. Plaintiffs seek a declaration that the City’s redistricting plan is malapportioned and that its continued use is unconstitutional. Plaintiffs further seek a permanent injunction prohibiting Defendants from using the current redistricting plan in future elections, including the 2027 municipal elections, and an order requiring the City to use a correctly apportioned redistricting plan to elect all district-based members of the City Council in the 2027-2031 elections.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).

5. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because all Defendants reside within the District of Colorado, and the events giving rise to this claim occurred in this district.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

PARTIES

8. Plaintiff Lisa Bernal is a registered voter who lives and votes in Ward I under the City's current redistricting map. Plaintiff Lisa Bernal is Latina.

9. Plaintiff Brian Bernal is a registered voter who lives and votes in Ward I under the City's current redistricting map. Plaintiff Brian Bernal is Latino.

10. Plaintiff Rachel Sanchez is a registered voter who lives and votes in Ward I under the City's current redistricting map. Plaintiff Sanchez is Latina.

11. Defendant City of Greeley, Colorado (the "City" or "Greeley") is a municipal corporation and home-rule city located in the State of Colorado. Greeley is the county seat of Weld County. All powers of the City are vested in an elected city council (the "Council" or "City Council"), which operates under the Council-Manager form of government. Pursuant to the City's Charter, members of the Council: enact the City election code; establish election procedures for all City elections; judge the election returns and qualifications of council members; enact the City's redistricting plan by ordinance; and provide for the enforcement of City ordinances.

12. Defendant Dale Hall is Mayor of the City of Greeley. In that role, he presides over meetings of the City Council, has the same right to speak and vote as any other councilmember, and signs all ordinances approved by the Council. Defendant Hall is sued in his official capacity.

13. Defendant Melissa McDonald is an At-Large Councilmember of the City of Greeley. She currently serves as Mayor Pro Tem of Greeley. In her role as At-Large Councilmember, she participates in city council meetings and votes on and enforces ordinances, resolutions and motions. Defendant McDonald is sued in her official capacity.

14. Defendant Ryan Roth is an At-Large Councilmember of the City of Greeley. In that role, he participates in public city council meetings and executive sessions and votes on and enforces ordinances, resolutions and motions. Defendant Roth is sued in his official capacity.

15. Defendant Craig Huddleston is Councilmember of the City of Greeley, representing Ward I. In that role, he participates in city council meetings and votes on and enforces ordinances, resolutions and motions. Defendant Huddleston is sued in his official capacity.

16. Defendant Deb DeBoutez is Councilmember of the City of Greeley, representing Ward II. In that role, she participates in city council meetings and votes on and enforces ordinances, resolutions and motions. Defendant DeBoutez is sued in her official capacity.

17. Defendant Johnny Olson is Councilmember of the City of Greeley, representing Ward III. In that role, he participates in city council meetings and votes on and enforces ordinances, resolutions, and motions. Defendant Olson is sued in his official capacity.

18. Defendant Brian Rudy is Councilmember for the City of Greeley, representing Ward IV. In that capacity, he participates in city council meetings and votes on and enforces ordinances, resolutions and motions. Defendant Rudy is sued in his official capacity.

19. Defendant Heidi Leatherwood is the City Clerk for the City of Greeley. In that capacity, she carries out the procedures set forth in the City Charter and election code for general

and special elections, serves as the City's designated election official, and either administers elections or coordinates the administration of City elections with the Weld County Clerk and Recorder. Defendant Leatherwood is sued in her official capacity.

20. Defendant Brian McBroom is the City Manager for the City of Greeley. As City Manager, he oversees all City operating departments and is responsible for the administration of City programs and enforcing the City's laws and ordinances. Defendant McBroom is tasked with appointing directors to and oversight of City departments, including the City Clerk and the Department of Community Development. Defendant McBroom is sued in his official capacity.

FACTUAL ALLEGATIONS

The City of Greeley

21. The City of Greeley is governed by seven elected members of the City Council, including the mayor.

22. The mayor serves a term of two years. The six councilmembers serve four-year staggered terms.

23. Two councilmembers are elected city-wide (at-large). The remaining four councilmembers are each elected by ward. At each general municipal election, voters in Greeley elect the mayor, one councilmember at large, and two councilmembers from wards.

24. Municipal general elections are non-partisan and held in odd-numbered years.

City of Greeley Redistricting

25. The City redistricting plan includes four wards which are bounded and numbered consecutively in a clockwise fashion beginning with the northeast ward, which is known as Ward I. Greeley Mun. Code, Part 1 § 2-2.

26. The Greeley City Charter requires councilmembers to equalize the population of city inhabitants across the wards whenever the Council creates a new ward redistricting plan. The Charter provides: “[t]he City Council shall not more often than once in four (4) years, by ordinance, readjust the ward boundaries, so as to comprise compact and contiguous territory, *and so as to contain, as nearly as possible, an equal number of inhabitants.*” Greeley Mun. Code, Part 1 § 2-2 (emphasis added).

27. Historically, the City of Greeley has redistricted after the decennial Census so as to equalize the number of City inhabitants across its four wards. For example, following the 2010 Census, the Greeley City Council redistricted its ward boundaries. That redistricting plan, adopted in 2012, apportioned the City’s population roughly equally across the wards, in compliance with the City Charter.

28. As a result, the total population difference between the most and least populous wards in the City’s 2012 redistricting plan was approximately 1,334, or 5.7% of the ideal population of a city ward (*i.e.*, the 2010 City population divided by four).

29. The City’s 2012 redistricting plan complied with the City Charter’s requirement to create wards that “contain, as nearly as possible, an equal number of inhabitants.” Greeley Mun. Code, Part 1 § 2-2.

30. The City used its 2012 redistricting plan to elect ward-based councilmembers through the 2021 municipal elections.

Greeley Adopts a Malapportioned Ward Map after the 2020 Census

31. The 2020 Census revealed that Greeley had grown in total population, and the population growth was uneven across the wards. As a result, the City was obligated by its Charter to redistrict in order to equalize the number of inhabitants across its four wards.

32. On or about November 1, 2022, the City Council adopted a redistricting plan for use in City elections beginning in 2023. *See* Ord. No. 42, 2022, codified at Greeley Mun. Code, Part 1 § 2-60.

33. The City’s redistricting plan is grossly malapportioned.

34. Based on the 2020 Census, the population of the City of Greeley is approximately 108,795. The ideal population of a ward that “contain[s], as nearly as possible, an equal number of inhabitants,” is approximately 27,199 (108,795 divided by four).

35. In the City’s redistricting plan, the most populous district, Ward I, contains approximately 32,572 inhabitants. The least populous district, Ward 3, contains approximately 20,925 inhabitants. The total deviation between the most and least populous wards is approximately 11,647 inhabitants – 42.8% of the ideal ward population. The approximate population and deviation of each ward is as follows:

City of Greeley Current Redistricting Plan (2020 Decennial Census Data)			
Ward	Total Population	Deviation	% Deviation
I	32,572	5,373	19.7%
II	32,115	4,916	18.1%
III	20,925	-6,274	-23.1%
IV	23,183	-4,016	-14.8%
Total Deviation 42.8%			

36. The City purposefully and intentionally enacted a malapportioned redistricting plan.

37. During a work session on redistricting on March 22, 2022, City staff presented councilmembers with two options for a ward redistricting plan. City staff explained that Option A had a more equal distribution of population across the wards. Councilmembers discussed both proposed redistricting plans and decided to move forward with Option B, which contained the greatest imbalance of population between districts. Councilmembers subsequently enacted Option B into law on or about November 1, 2022. *See* Ord. No. 42, 2022, codified at Greeley Mun. Code, Part 1 § 2-60.

38. The City also purposefully apportioned more inhabitants to the wards that contain greater proportions of Latino residents. During the March 2022 work session, City staff advised the councilmembers that “Ward I has the highest number in concentration of persons who identify as Hispanic, and that has been pretty much traditional in terms of the city’s development.” As seen below, the 2022 redistricting plan overpopulates the more Latino Wards I and II.

Ward	Total Population	Total % Hispanic Origin
I	32,572	54.5%
II	32,115	44.9%
III	20,925	27.4%
IV	23,183	25.2%
2020 Decennial Census Data		

39. Plaintiffs, who live in Ward I, live in a significantly overpopulated ward when compared to Wards III and IV.

40. Plaintiffs' ward-based representative, the City Council member elected from Ward I, represents over 11,000 more constituents as the City Council member who represents Ward III, and over 9,000 more constituents as the City Council member who represents Ward IV. As a result, Plaintiffs have a smaller share of representation, and compete with significantly more fellow constituents for the attention and resources of the Ward I City Council member, when compared to the inhabitants of Wards III and IV. Plaintiffs' representation is diluted as a result.

41. Plaintiffs intend to continue to live in Ward I and vote in future municipal elections in Ward I.

42. Plaintiffs have been irreparably harmed by being redistricted into an overpopulated ward. This irreparable harm includes both reduction in representation by their City Council ward-based representative and dilution of their voting strength.

COUNT I
Malapportionment
(14th Amendment, 42 U.S.C. § 1983)

43. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

44. Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

45. Malapportionment of election districts violates the Equal Protection Clause of the Fourteenth Amendment because “the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State.” *Reynolds v. Sims*, 377 U.S. 533, 560–61 (1964).

46. The Equal Protection Clause of the Fourteenth Amendment requires states and localities to create districts with substantially equal population. *See Avery v. Midland Cnty.*, 390 U.S. 474, 480 (1968).

47. The City of Greeley’s redistricting plan, which overpopulates Ward I, denies Plaintiffs the equal protection of the laws. *See Bd. of Estimate of New York v. Morris*, 489 U.S. 688, 693–94 (1989) (“If districts of widely unequal population elect an equal number of representatives, the voting power of each citizen in the larger constituencies is debased and the citizens in those districts have a smaller share of representation than do those in the smaller districts.”).

48. In state and local jurisdictions, when the total population deviation between the largest and smallest districts exceeds 10%, the jurisdiction’s districts are presumptively impermissible under the Equal Protection Clause and must be justified by the jurisdiction. *Evenwel v. Abbott*, 578 U.S. 54, 60 (2016); *see also Swann v. Adams*, 385 U.S. 440, 443–44 (1967).

49. The City of Greeley’s redistricting map contains a total population deviation of over 40% – more than four times the presumptive maximum deviation permitted under law.

50. The large population deviations in the City of Greeley's redistricting map are not based on any legitimate considerations incident to the effectuation of a rational state policy.

51. The City's redistricting plan has caused and will, in future elections, cause Plaintiffs irreparable harm in the absence of an injunction preventing Defendants' continued use of the current redistricting map.

52. The harms Plaintiffs face from continued use of the City's redistricting plan outweigh any harm that an injunction might cause Defendants, and an injunction will benefit the public interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Declare that the City of Greeley's redistricting plan is malapportioned and violates Plaintiffs' rights to equal protection under the Fourteenth Amendment to the Constitution of the United States;
- b. Permanently enjoin Defendants from calling or holding any further elections under the current redistricting plan;
- c. Order Defendants to redraw the City's redistricting plan to comply with the Fourteenth Amendment's requirements of equal population and all other applicable legal requirements;
- d. Order Defendants to hold a special election, at the earliest opportunity, for all of the district-based City Council seats under the redistricting plan redrawn pursuant to paragraph (c) above;

e. Order Defendants to use a correctly apportioned redistricting plan to elect all district-based members of the City Council in the 2027-2031 elections, and to adopt correctly apportioned redistricting plans in the future;

f. Award Plaintiffs their costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988;

g. Maintain jurisdiction over this matter through December 2032 to ensure Defendants' compliance with the Court's orders;

h. Award Plaintiffs any other or further relief the Court deems appropriate.

Respectfully submitted,

/s/ Antonio DelGrande

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