

DISTRICT COURT
LAS ANIMAS COUNTY,
STATE OF COLORADO

200 East First Street, Room 304
Trinidad, CO 81082
719-846-3316

DATE FILED: October 13, 2022
CASE NUMBER: 2018CV30068

▲ FOR COURT USE ONLY ▲

HENRY L. SOLANO,
District Attorney for the Third Judicial District, in
his official capacity and on behalf of the Third
Judicial District Attorney's Office,

Plaintiff,

vs.

**LUIS LOPEZ II, TONY HASS and FELIX
LOPEZ,** in their official capacity as
Las Animas County Commissioners,

And

**MAX VEZZANI, GERALD CISNEROS, and
RAY GARCIA,** in their official capacity as
Huerfano County Commissioners,

Intervenors/ Third Party Defendants.

Case Number: 18CV30068

FINAL ORDERS, DECREE AND JUDGMENT

INTRODUCTION TO OVERALL CASE

The Plaintiff in this case is Mr. Henry Solano, the District Attorney for the Third Judicial District, which is comprised of two counties, Las Animas and Huerfano. He brought suit to compel the county commissioners to meet the necessary and reasonable needs of his office to prosecute cases, his position being that a lack of funding has hampered the effectiveness of this office and imperiled public safety.

His suit is part of an on-going dispute between the Office of the District Attorney and the respective county commissioners over funding. This is the second suit brought by a sitting District Attorney for the same purpose. It is undenied that two of Mr. Solano's predecessors resigned because of underfunding and staff issues.

Initially this case involved only the Plaintiff and the Las Animas County Commissioners (also "the Las Animas Commissioners"). The complaint asked for declaratory and injunctive relief. As the case progressed, the Huerfano County Commissioners (also "the Huerfano Commissioners") became parties and the issues were refined.

The Order Bifurcating Trial entered July 6, 2020 provided for three phases of trial:

Phase One would address the issue of whether the tax revenues from Referendum 1A as adopted by the voters of Las Animas County to fund the Office of the District Attorney could be utilized, in part, to fund the office of the District Attorney in Huerfano County, or whether said funds were to be designated for use only for prosecutorial purposes within Las Animas County;

Phase Two of the trial would address the issue of what constitutes the regular, necessary and ordinary expenses of said the Office of the District Attorney for the Third Judicial District; and

Phase Three of the trial would address any other ancillary matters not resolved in the first two phases.

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As to the Phase One question, the Court ruled as a matter of law that 1A Referendum funds must be used or essentially are for the sole use as taxpayer money in Las Animas County for prosecutorial purposes in Las Animas County. Thus, it is clear that 1A Referendum funds cannot be used Huerfano County.

In its order of November 24, 2020 the Court held that:

(a) No, funds arising from the increased sales tax revenues in Las Animas County cannot and may not be used for operations of the Office of the District Attorney in the Third Judicial District which occur in Huerfano County. The Huerfano County Commissioners cannot consider the District Attorney's windfall in the southern section of the District in determining the District Attorney's budget.

(b) No, the District Attorney is not obligated to allocate his resources where they are needed to fulfill his legal obligations regardless of the origin of his funds.

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As to the Phase Two issues, following trial on December 16 and 17, 2020, on the issues of the necessity of the expenses claimed by Mr. Solano in his proposed budgets, and on the control exerted by the Huerfano County Commissioners over his office, the Court entered its order on March 12, 2021 providing that:

A. The Plaintiff's motion for a directed verdict is granted as to the issue of an appropriate method to calculate and to determine the necessary expenses of the Office of the District Attorney for the Third Judicial District of Colorado, in terms of the number of prosecutors needed, and that said method primarily considers the number of cases filed, and that, in this case, the ratio that should be used at this time is that of one prosecutor for each 100 felony cases filed, and one prosecutor for about each 800 traffic and/or misdemeanor cases filed; and

B. A directed verdict is also granted upon the matter of the of the Huerfano County Commissioners controlling and supervising the prosecutors of the Office of the Office of the District Attorney for the Third Judicial District of the State of Colorado through budgetary reductions, and the Court finds and hold that said conduct has occurred.

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The Third Phase of the case addressed the remaining issue of whether the actions of the Huerfano County Commissioners in determining the budget for the District Attorney acted arbitrarily and capriciously. The issue was litigated on December 1 and 2, 2021 and January 21, 2022.

In its order of April 28, 2022 addressing that issue the Court found that:

A. The Commissioners did not act arbitrarily and capriciously, as alleged by the Plaintiff in his first claim of arbitrary and capricious conduct, in their handling of the District Attorney's budget for 2018; thus, there being no arbitrary and capricious conduct, there has been no abuse of discretion warranting any Court action regarding that decision;

B. The Commissioners abused their discretion and, thus, acted arbitrarily and capriciously, regarding the District Attorney's budget for 2022 through their conduct in this litigation, as alleged by the Plaintiff in his second claim of arbitrary and capricious conduct; and

C. The Commissioners also abused their discretion and thus acted arbitrarily and capriciously, as alleged by the Plaintiff as his third ground of arbitrary and capricious conduct, regarding the District Attorney's budget for 2022.

THE PRESENT STATUS OF THE CASE

The Court sought the input of counsel in determining what, if any, issues remained after the conclusion of the Phase Three trial and the order regarding the same. In an order entered April 28, 2022, the Court requested “. . . that respective council shall review all pleadings filed by them and shall identify to the court by reference to the pleading in which it was filed any unaddressed, abandoned, confessed, moot or otherwise un-litigated claim or request for relief or determination of any kind.”

The Plaintiff filed his response on May 27, 2022. In it he stated that:

The remaining claims and relief requested fall into 3 categories: a) claims raised and where the rulings of the Court, Plaintiff believes, have not been clearly stated or ruled on or are partially addressed, needing further clarification/ruling (further ruling requested); b) claims raised and not addressed (outstanding claims); and c) relief requested and relief available as a result of the finding of abuse of discretions (relief).

The Las Animas County Commissioners responded on May 27, 2022, stating that they had settled with the Plaintiff, thus resolving all issues between them raised in this litigation. The Court approved of their agreement on June 14, 2022. (See Stipulated Agreement filed June 11, 2022.) They remain as parties to this suite only to address the remaining issues with Huerfano County (Stipulation ¶9(h), page 7).

The Huerfano Commissioners responded that no un-litigated claims remained from their perspective. They did not respond to the Plaintiff's list of remaining issues; a response was not required.

This order is entered as both a codification of prior findings, conclusions and orders and as a resolution of recently raised concerns.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDERS PREVIOUS ENTERED

In entering this present order, the Court takes judicial notice, on its own motion, of all findings of fact, conclusions of law and orders previously entered in this case of long duration. For ease of reference and to consolidate the location of pertinent findings and conclusions and orders previous entered, the Court sets forth the same below from previous orders.

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Findings and conclusion from the order of November 4, 2020 regarding the Phase One trial; this order was entered at the joint request of the parties asking the Court to clarify its order of June 18, 2018:

1. In November 2017 the voters of Las Animas County approved a ballot measure asking: (Text of referendum omitted here).
2. A similarly worded referendum was rejected by the voters in Huerfano County. (Citation to pleadings omitted herein).
3. In approving the budget for the district attorney for 2018 the Las Animas Commissioners withheld \$85,000 of \$580,000 in revenue anticipated to be received from the sales tax increase. (Citation to pleadings omitted herein). Ten thousand dollars of that sum was appropriated by (sic) for emergency management services, although the Plaintiff was advised of how the remainder was appropriated for other county purposes, the recipient agency is not disclosed in the pleadings. (Citation to pleadings omitted herein.)
4. There is no argument but that the approved referendum constituted a valid waiver of the requirements of the TABOR amendment. (Citation to pleadings omitted herein).

Conclusion in the order of November 4, 2020:

(a) No, funds arising from the increased sales tax revenues in Las Animas County cannot and may not be used for operations of the Office of the District Attorney in the Third Judicial District which occur in Huerfano County. The Huerfano County Commissioners cannot consider the

District Attorney's windfall in the southern section of the District in determining the District Attorney's budget.

(b) No, the District Attorney is not obligated to allocate his resources where they are needed to fulfill his legal obligations regardless of the origin of his funds.

*

Findings and conclusions from the order of March 12, 2022 concerning the Phase Two trial:

1. The underfunding of the District Attorney's office in Huerfano County has created numerous legal, ethical, and operational problems.
2. The uncontradicted expert opinion of Mr. Solano is that the appropriate ratio of cases to prosecutors is 80-100 felony case per prosecutor and 800 traffic and /or misdemeanor cases per prosecutor throughout the Third Judicial District.
3. Mr. Solano's conclusion as to the appropriate ratio of cases to prosecutors has been accepted by the Las Animas County Commissioners and implement in in their most recent budgets for his office.
4. Mr. Solano's opinion is substantiated by the testimony of Mr. Delmas which is that he can manage 800 cases per year, and Ms. Kowert who testified that she carries about 130 cases per year, as contrasted with the 324 cases which Mr. Solano alone carries in Huerfano County.
5. The Huerfano County Commissioners presented no evidence contrary to that presented by the Plaintiff and no evidence from which any inference can be made that the staffing pattern and/or budget request presented by the Plaintiff are unreasonable or unnecessary.
6. The Huerfano County Commissioners declined to approve the budget request of Mr. Solano for his office based upon his expert opinion and his proposed caseload-to-prosecutor ratios.
7. The Huerfano County Commissioners exerted control over the performance and practices of the Office of the

District Attorney by reducing a previously approved budget allocation for a prosecutor based upon a mistaken belief as to his professional actions.

8. Quantitative measures, ratios and formulas are recognized tools used to help determine program needs.

9. The issues now before the Court concern a determination of how the necessary expenses for prosecutors are to be determined and the matter of the control and supervision the Office of the District Attorney through budgetary reductions by the

Conclusions of fact and law in the order of March 12, 2022:

A. The ratio of 80-100 felony cases per prosecutor and about 800 traffic and/or misdemeanor cases per prosecutor establishes necessary needs and concomitant expenses for the Office the district Attorney for the Third Judicial District;

B. The adoption by the Las Animas County Commissioners of the caseload-to-prosecutor ratio presented by Mr. Solano for his office recognizes and confirms the validity of his methodology, process and budget request.

C. That the failure of the Huerfano County Commissioners to have presented any evidence contrary to that presented by the Plaintiff constitutes, in effect, a confession or acquiescence to the Plaintiff's position.

D. That the reduction of the previously approved appropriation for a prosecutor dedicated to Huerfano County because of mis-information as to his handling of a specific case constitutes an act by the Huerfano County Commissioners to control the performance of the prosecutors in the Office of the District Attorney for the Third Judicial District of Colorado.

Final Conclusion

Predicated upon the foregoing findings and conclusion of facts and upon the law as above cited, the Court concludes, as a matter of law that the evidence here is undisputed, and that the weight and quality of the evidence point strongly

and overwhelmingly to the fact that reasonable men could not decide the issue against the Plaintiff, and that there here has been no evidence introduced upon which a verdict against the Plaintiff could be sustained.

Orders entered on March 12, 2022:

A. The Plaintiff's motion for a directed verdict is granted as to the issue of an appropriate method to calculate and to determine the necessary expenses of the Office of the District Attorney for the Third Judicial District of Colorado, in terms of the number of prosecutors needed, and that said method primarily considers the number of cases filed, and that, in this case, the ratio that should be used at this time is that of one prosecutor for each 100 felony cases filed, and one prosecutor for about each 800 traffic and/or misdemeanor cases filed; and

B. A directed verdict is also granted upon the matter of the of the Huerfano County Commissioners controlling and supervising the prosecutors of the Office of the Office of the District Attorney for the Third Judicial District of the State of Colorado through budgetary reductions, and the Court finds and hold that said conduct has occurred.

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Findings, and conclusions from the order of April 28, 2022 concerning the Phase Three trial:

The order recites, in narrative fashion, the testimony of the witness upon which the conclusion were based. Because of length of the testimony it is not included this order. See order at pages 3-25.

Based upon the testimony as related, the Court concludes that the Commissioners have acted arbitrarily and capriciously toward the Plaintiff during the course of this litigation by:

1. Failing to inquire and probe into the impact on the Office of the District Attorney of the increasing felony caseload in Huerfano County, and to take such factors into account when deciding the District Attorney's budget. See prong (1) of the *Maggard, supra*, criteria; (*Maggard v. Department of Human Services*, 226 P.3d 1209 (Colo.

App.2009); reversed on other grounds 248 P.3d 708 (Colo.2011).

2. By failing and/or refusing to acknowledge or consider the quantitatively based process presented to them by the Plaintiff for use for considering the District Attorney's budget. See prong (2) of the *Maggard, supra*, criteria;

3. By failing to follow the law of the case as established in the directed verdict order; and

4. By not considering the Findings of Fact made by the Court in the directed verdict—evidence clearly before them—in deciding the District Attorney's budget for 2022.

Considering, then the *Maggard, supra*, criteria set forth above, the Court concludes that:

(1) The Commissioners did not seek, the record shows, information from the District Attorney which was readily available concerning the Huerfano County caseloads per prosecutor, or other factors, such as the crime rate, which are influential in formulating the District Attorney's budget.

(2) The record does not support a determination that the Commissioners gave honest consideration to the evidence, or the impact of the evidence, on the District Attorney's office of fully funding, or funding at a higher rate, the budget request of other agencies, primarily the sheriff's office; and

(3) The Commissioners' discretionary decision regarding the District Attorney's budget was predicted on considerations that were beyond the scope of permissible evidence, which was limited by the directed verdict order. Based upon the allowable evidence—primarily caseload—the Court concludes that reasonable persons could not reach the same conclusion as did the Commissioners.

(4) Further, the Commissioners ignored a key factor in the evidence—the directed verdict order.

The Court concludes, therefore, that the above cited facts and conclusions lead to the ultimate determination that the Commissioners abused their discretion and thus acted

arbitrarily and capriciously when deciding the budget for the District Attorney for 2021.

Final determinations contained in the Phase Three order of April 28, 2022:

A. The Commissioners did not act arbitrarily and capriciously, as alleged by the Plaintiff in his first claim of arbitrary and capricious conduct, in their handling of the District Attorney's budget for 2018; thus, there being no arbitrary and capricious conduct, there has been no abuse of discretion warranting any Court action regarding that decision;

B. The Commissioners abused their discretion and, thus, acted arbitrarily and capriciously, regarding the District Attorney's budget for 2022 through their conduct in this litigation, as alleged by the Plaintiff in his second claim of arbitrary and capricious conduct; and

C. The Commissioners also abused their discretion and thus acted arbitrarily and capriciously, as alleged by the Plaintiff as his third ground of arbitrary and capricious conduct, regarding the District Attorney's, budget for 2022.

UNRESOLVED MATTERS

In his statement of remaining issues the Plaintiff relates that:

The remaining claims and relief requested fall into 3 categories: a) claims raised and where the rulings of the Court, Plaintiff believes, have not been clearly stated or ruled on or are partially addressed, needing further clarification/ruling (further ruling requested): b) claims raised and not addressed (outstanding claims); and c) relief requested and relief available as a result of the finding of abuse of discretions (relief).

The Court now addresses these concerns.

a. Concerns for clarification is requested:

Based upon the uncontradicted testimony the Court found in its order of March 12, 2021 that:

The Huerfano County Commissioners presented no evidence contrary to that presented by the Plaintiff and no evidence from which any inference can be made that the staffing pattern and/or budget request presented by the Plaintiff are unreasonable or unnecessary. Order re Motion for directed Verdict, March 12, 2021, at page 12, paragraph 5.

Although the order speaks most directly to the issue of the number of prosecutors required to carry the caseload, the order is not limited to that category of personnel but also includes support services and staff such as clerks, investigators and legal researchers as his budgetary proposals also extended to them.

The Court thus concluded in the order of March 12, 2021 that:

That the failure of the Huerfano County Commissioners to have presented any evidence contrary to that presented by the Plaintiff constitutes, in effect, a confession or acquiescence to the Plaintiff's position." Order re Motion for directed Verdict, March 12, 2021, at page 13, paragraph D.

Based upon the findings and conclusion the Court determined that the staffing and support portion of the budgets submitted by the Plaintiff for 2018-2021 (Exhibits 7, 8, 9, and 10) establish the reasonable and necessary funding for the effective operation of the District Attorney's office.

The budgets submitted by the Plaintiff for the years 2018-2012 are deemed to meet the reasonable and necessary needs of the District Attorney to provide prosecutorial services, and funds and funds to do so should have been.

b. Concerns about unresolved issues:

The Plaintiff is concerned about the disposition of his claim of a violation of the separation of powers doctrine by the Huerfano Commissioners.

In the order of March 12, 2021 (order re motion for a directed verdict) the Court found that:

The Huerfano County Commissioners exerted control over the performance and practices of the Office of the District Attorney by reducing a previously approved budget allocation for a prosecutor based upon a mistaken belief as to his professional actions. Order of March 12, 2021, page 12, paragraph 7.

Based thereon the Court concluded that:

That the reduction of the previously approved appropriation for a prosecutor dedicated to Huerfano County because of mis-information as to his handling of a specific case constitutes an act by the Huerfano County Commissioners to control the performance of the prosecutors in the Office of the District Attorney for the Third Judicial District of Colorado. Order of March 12, 2021, page 13, paragraph D.

The Court now further concludes that such action constituted a violation of the separation of powers between the Board of County Commissioners and the Office of the District Attorney for Huerfano County.

c. Relief for abuse of discretion:

In the order entered on April 28, 2022 (re abuse of discretion) the Court found that the Huerfano Commissioners acted arbitrarily and capriciously regarding the District Attorney's budget for 2022 and through their conduct in this litigation. Order of April 28, 2022, page 28, paragraphs B and C.

As a remedy of these abuses of discretion, in his filing on May 27, 2022 in response to the Court's solicitation of unresolved matters, the Plaintiff asked for injunctive relief, not reported verbatim below,

1. Preventing the Huerfano County Commissioners from attempting to supervise the District Attorney or DA's Office, directly or indirectly, including through the appropriation process;
2. Requiring the Huerfano County Commissioners to determine necessary expenses and make appropriation decisions regarding the District Attorney Office budget based on actual information regarding necessary expenses to meet the prosecutorial needs in Huerfano County based on the Phase 3 Order and the Defendants' failure to comply with the Court's Phase 2 Order;
3. Requiring the Huerfano County Commissioners to eliminate the disparate funding treatment of the DA's Office (substantially different funding appropriation treatment) compared to other County Departments or entities in the 2023 appropriated budget;
4. Ordering an immediate additional appropriation to the DA's Office of approximately \$185,000. This would be an

affirmative injunction rectifying the disregard of the Court's Phase 2 Order after the initial close of evidence in the Phase 3 trial and clearly punitive action to the DA's Office for presenting legitimate claims of improper actions by the Defendants.

5. Requiring the Huerfano County Commissioners to provide a written statement specifying the basis for decisions regarding what are and are not necessary expenses related to any budget proposal of the District Attorney, what are the other county needs as the basis for appropriating less than the amount to meet the necessary expenses to support prosecutorial functions in Huerfano County and why they are not able to in making future appropriations for treating the DA's Office in the same manner as other County entities whose appropriations are closer to 100% or more of the proposed budgets.

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Predicated upon the findings and conclusions recited above, the Court concludes, further, that injunctive relief is justified in granting relief in several areas:

First, to preclude the Huerfano Commissioners from attempting to supervise the Plaintiff's office through the appropriation process;

Second, to require the Huerfano Commissioners to base their decisions regarding the District Attorney's upon information presented to them, specifically in the budget requests of the Plaintiff, and, conformative with the same, requiring the Huerfano Commissioners to comply with the terms of the Phase Two order as to the formula and process for determining the number of prosecutors required for the office; and

Third, to require the Huerfano Commissioners to eliminate disparate treatment of the District Attorney's budget in the manner found by the Court.

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However, predicated upon a lack of cited legal authority to do so, the Court declines to impose an affirmative injunction as requested by the Plaintiff to restore about \$185,000 to the District Attorney's 2022 budget as a consequence of the Huerfano Commissioners' disregard of the directed verdict portion of the Phase Two order approving the presented criteria for determining the number of prosecutor needed. Given the other injunctive relief granted herein, the Court also deems such an affirmative injunction to be more punitive rather than corrective.

As a matter of policy, and because the Court perceives a lack of authority to do so, the Court declines to enter affirmative injunctive relief requiring written

rationalization by the Huerfano Commissioners for the decisions regarding the budget of the District Attorney. Further, the matter is addressed by other injunctive relief provided in this order and by statutes regarding the decision making process of public bodies.

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Incorporating the findings, conclusions and orders previous entered by the Court in it orders of November 24, 2020 (order clarifying and amending), its order of March 12, 2021 (order re directed verdict), and is order of April 28, 2022 (order re abuse of discretion) and based upon the Court's conclusions above concerning injunction relief,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

A. Funds arising from the increased sales tax revenues in Las Animas County cannot and may not be used for operations of the Office of the District Attorney in the Third Judicial District which occur in Huerfano County; the Huerfano County Commissioners cannot consider the District Attorney's windfall in the southern section of the District in determining the District Attorney's budget (Order of November 24, 2020);

B. The District Attorney is not obligated to allocate his resources where they are needed to fulfill his legal obligations regardless of the origin of his funds (Order of November 24, 2020);

C. The Plaintiff's motion for a directed verdict is granted as to the issue of an appropriate method to calculate and to determine the necessary expenses of the Office of the District Attorney for the Third Judicial District of Colorado, in terms of the number of prosecutors needed and that the ratio that should be used at this time is that of one prosecutor for each 100 felony cases filed, and one prosecutor for about each 800 traffic and/or misdemeanor cases filed and as to staff (Order of March 12, 2022);

D. The Plaintiff's motion for a directed verdict is also granted upon the matter of the of the Huerfano County Commissioners controlling and supervising the prosecutors of the Office of the Office of the District Attorney for the Third Judicial District of the State of Colorado through budgetary reductions (Order of March 12, 2022);

E. The Huerfano County Commissioners abused their discretion and, thus, acted arbitrarily and capriciously regarding the District Attorney's budget for 2022 through their conduct in this litigation, (Order of April 28, 2022);

IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT,
based upon the findings and conclusions set forth above,

F. That the staffing and support portions of the budgets submitted by the District Attorney for the years 2018-2021 establish the necessary and reasonable funding requirements for the operation of Office of the District Attorney as to both prosecutors and staff, and appropriations should be made to meet such costs and expenses; and

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT
THE HUERFANO COUNTY COMMISSIONERS ARE HEREBY ENJOINED,
PROHIBITED AND REQUIRED TO :**

G. Refrain from controlling, or attempting to control, the personnel and Office of the District Attorney for the Third Judicial District through the appropriation process;

H. Eliminate disparate treatment of the District Attorney's budget;

I. Comply with the directed verdict order and the process and formula approved therein to determine the necessary expenses of the District Attorney's office, and, in particular as to the number of prosecutors needed and that the ratio that should be one prosecutor for each 100 felony cases filed, and one prosecutor for about each 800 traffic and/or misdemeanor cases filed (Order of March 12, 2022).

Done on October 13, 2022.

BY THE COURT

/s/ M. Jon Kolomitz
Judge