IN THE NEW MEXICO SUPREME COURT

TIMOTHY Z. JENNINGS, in his official capacity as President Pro-Tempore of the New Mexico Senate, and **BEN LUJAN, SR.,** in his official capacity as Speaker of the New Mexico House of Representatives,

Petitioners,

vs. Sup Ct No. 33,387

THE NEW MEXICO COURT OF APPEALS,

Respondent,

and

DIANNA J. DURAN, in her official capacity as New Mexico Secretary of State, **SUSANA MARTINEZ**, in her official capacity as New Mexico Governor, and **JOHN A. SANCHEZ**, in his official capacity as New Mexico Lieutenant Governor and presiding officer of the New Mexico Senate,

Real Parties in Interest.

SUPREME COURT OF NEW MEXICO
FILED
JAN 31 2012

ON A WRIT OF SUPERINTENDING CONTROL
AND CERTIFIED APPEAL FROM THE COURT OF APPEALS

PETITIONERS-APPELLANTS' RESPONSE TO EXECUTIVE DEFENDANTS' BRIEF

Of Counsel:
Michael B. Browde
1117 Stanford, NE
MSC 11-6070
Albuq, NM 87131
(505) 277-5326

STELZNER, WINTER, WARBURTON, FLORES, SANCHEZ & DAWES, PA.
Luis G. Stelzner & Sara N. Sanchez
P.O. Box 528
Albuquerque, NM 87103
(505) 938-7770

HINKLE, HENSLEY, SHANOR & MARTIN, LLP
Richard E. Olson & Jennifer Heim
P.O. Box 10
Roswell, NM 88202
(575) 622-6510

Attorneys for Petitioners-Appellants' Senate President Pro Tempore Timothy Z. Jennings and House Speaker Ben Lujan, Sr.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

New Mexico Cases:

Federal Cases:

Page

Other State Cases:

State Constitutional Provisions, Statutes and Rules :

Federal Constitutional Provisions, and Rules :

Page

Other Authorities:

INTRODUCTION TO THE RESPONSE[1]

The Governor and Lt. Governor—Executive Defendants before the district court, and Real Parties in Interest before this Court—"seek no relief from this Court." Exec. Brief at 5.[2] Rather their Opening Brief is devoted primarily to their contention that this Court should not "overrule the District Court's . . . redistricting plan." *Id.* They first contend that this Court improperly employed its Superintending Control authority to consider this case, *see id.* at Argument I, and then argue that the district court should be affirmed under a substantial evidence standard of review, *see id.* at Argument II, or under an abuse of discretion standard of review. *See id.* at Argument III. In the course of those arguments, the Executive Defendants touch upon but tread lightly over the substantial constitutional and legal issues which are at the heart of Petitioners'[3] claims in this matter. Petitioners, therefore, provide this response to both those aspects of the Executive Opening Brief that mischaracterize what this case is about, and the

---

[1] To avoid unnecessary additional briefing, this single Response Brief also includes responses to those few instances where the opening briefs of other parties may take exception to essential positions taken by Petitioners.

[2] For the sake of brevity, all citations to the Opening Brief submitted by the Real Parties in Interest in this matter will be to "Exec. Brief," and all citations to Petitioners' Opening Brief will be to "Pet. Brief."

[3] In its present posture after the certification of their appeal to this Court, Petitioners are more correctly denominated Petitioner-Appellants. For the sake of brevity, however, this brief continues to refer to them as Petitioners.

erroneous treatment to the critical legal issues that require this Court's final, and authoritative corrective action.

First, the Executive Defendants' Brief misperceives the current procedural posture of this case and this Court's plenary authority to resolve the case on its merits. *See* Argument I, *infra.* Second, this is neither a substantial evidence case nor an abuse of discretion case but one in which the district court made critical errors of law having constitutional dimensions. *See* Argument II, *infra.* Third, and finally, Petitioners' request for immediate and permanent relief is required to avoid the implementation of a fatally flawed and legally defective redistricting plan for the New Mexico House. *See* Argument III, *infra.*

ARGUMENT IN RESPONSE

I. The Executive Defendants' Brief Misperceives The Current Procedural Posture Of This Case As Well As This Court's Plenary Authority To Resolve The Case On Its Merits.

While couched as a challenge to Petitioners' action invoking this Court's Superintending Control authority, the Executive Defendants' Opening Brief in essence castigates the Court for its exercise of that authority. *See* Exec. Brief at 7-16. Their Brief also contends that "[t]he District Court decisions about which Petitioners complain are no different from rulings that this Court routinely addresses on appeal," *id.* at 10, and "[t]he proper remedy for Petitioners is appellate review, not an extraordinary writ issued under this Court's original

jurisdiction," *id.* at 16, while ignoring that this case is properly before this Court as an expedited appeal.

The Executive Brief ignores entirely that contemporaneously with the filing of their Petition for a Writ with this Court, Petitioners filed a notice of appeal in the district court, a docketing statement in the Court of Appeals, and a Motion seeking an Order of the appellate court certifying the case to this Court, as provided by NMSA 1978, Section 34-5-14 (1972). That statute specifically provides for certification of any "matter" which presents significant constitutional questions, § 34-5-14(C)(1), or "issues of substantial interest that should be determined by the supreme court." § 34-5-14(C)(2). It also expressly provides that this Court has "appellate jurisdiction in matters appealed to the court of appeals, but undecided by that court" when so certified, § 34-5-14(C), and that such jurisdiction "is in addition to the jurisdiction of the supreme court in the issuance and determination of original writs directed to the court of appeals." § 34-5-14(D). *See also* Rule 12-606 NMRA; *Collins ex rel. Collins v. Tabet*, 111 N.M. 391, 404 n.10, 806 P.2d 40, 53 n.10 (1991) (noting the word "matter" in the statute "means the entire case in which the appeal is taken").

The Executive Brief also ignores that Petitioners fully appraised this Court of its actions in the Court of Appeals, and also requested that this Court use its Superintending Authority to obtain appellate jurisdiction of this case, much as the

United States Supreme Court may use its writ power to accept jurisdiction of a case pending but undecided in a federal appeals court "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in [the Supreme] Court." U.S. Sup. Ct. R. 11.

Finally, the Executive Defendants ignore that in granting the instant Petition, *see* Order Granting Petition, dated January 18, 2012, this Court also issued its Writ to the Court of Appeals on the same day, ordering that this case "currently pending in the New Mexico Court of Appeals . . . shall be CERTIFIED to this Court in accordance with Rule 12-606 NMRA," *see* Writ of Superintending Control, dated January 18, 2012, and that two days later the Court of Appeals issued its Order certifying Petitioners' *appeal* to this Court. *See* Court of Appeals Order of Certification dated January 20, 2012.

Thus, the Executive Defendants' challenge to this Court's authority to rule on the merits of this case must fail for several, independently compelling reasons. First, this case is properly before this Court as a certified and expedited *appeal*—something the Executive Defendants demanded. *See* Exec. Brief at 16. Second, none of the cases upon which the Executive Defendants rely for their position that this Court exceeded its Superintending Control jurisdiction, apply to direct appeals

certified by virtue of the presence of constitutional issues, and issues of great public importance.

Third, this Court also properly exercised its original Superintending Control authority over this case for the very reasons articulated by this Court in *State ex rel. Taylor v. Johnson,* 1998-NMSC-015, ¶ 17, 125 N.M. 343, 961 P.2d 768:

> The balance and maintenance of governmental power is of great public concern. Also, no factual issues require further clarification; this dispute concerns a purely legal question –the limits upon executive and legislative power under the state constitution. Moreover, because of these questions' significance to the balance of power among government branches, we have no doubt that they eventually would have reached this Court. Last, early resolution of this case is desirable. . . . Therefore, it is both necessary and proper for this Court to exercise original jurisdiction in this case.

See also State ex rel. Clark v. Johnson, 120 N.M. 562, 569, 904 P.2d 11, 18 (1995) (extraordinary writ issued by the Supreme Court because "this proceeding implicates fundamental constitutional questions of great public importance").

The cases cited by the Executive Defendants delimit *some* of the discretionary standards established by this Court for the hearing of extraordinary writs; however, those standards are neither exclusive, nor do any of those authorities undermine the most important discretionary standard this Court has always followed, and wholly ignored by the Executive Defendants—*i.e.*, whenever the matter involves important constitutional issues and is of great public importance. *See, e.g., State ex rel. Taylor,* and *State ex rel. Clark, supra.* Finally, once properly here under both its appellate and Superintending Control authority, it

is for this Court to resolve the substantive issues presented to it. Those issues involve serious questions of law and require this Court's *de novo* review, as it would give to such questions before it in any proceeding. *See, e.g., Alb. Bernalillo Cnty. Water Util. Auth. v. New Mexico Pub. Reg. Comm'n*, 2010-NMSC-013, ¶ 19, 148 N.M. 21, 229 P.3d 494 (questions of law reviewed *de novo*); *Breen v. Carlsbad Mun. Sch.*, 2005-NMSC-028, ¶ 15, 138 N.M. 331, 120 P.3d 413 (constitutional questions reviewed de *novo*).

II. This Is Neither A Substantial Evidence Case Nor An Abuse Of Discretion Case, But One In Which The District Court Made Critical Errors Of Law Having Serious Constitutional Dimensions.

The Executive Defendants' misperception of the current procedural posture of this case, *see* Point I, *supra,* facilitated their attempt to call upon this Court to review the lower court's decision under a substantial evidence standard, or under an abuse of discretion standard. Neither is appropriate, given that the questions presented for review by Petitioners are questions of law, which mandate the *de novo* review of this Court. *See Alb. Bernalillo Cnty. Water Util. Auth.,* 2010-NMSC-013, ¶ 19. Furthermore, they are legal questions involving federal and state constitutional issues of fundamental concern implicating federal redistricting principles, the proper role of state courts in redistricting, and the delicate balance of power in the relationship between the executive and the legislature. It is the necessary correction of those errors of law which Petitioners seek from this Court

by its clear declaration of the following legal principles, which the district court failed to follow in this case.

A. Population deviations "as-low-as possible" from the ideal are not constitutionally required, nor should this Court impose it as the proper standard for New Mexico state court-drawn redistricting plans.

In their Brief, the Executive Defendants persist in the argument that the district court was constitutionally required to adopt a map with near-zero population deviations unless greater deviations were justified by compliance with the Voting Rights Act and respect for Native American communities. Exec. Brief at 20-27. The source of this purported requirement, according to the Executive Defendants, lies in *Chapman v. Meier*, 420 U.S. 1 (1975) and *Connor v. Finch*, 431 U.S. 407 (1977)—the same two United States Supreme Court decisions improperly relied upon by the district court as dictating this constitutional command.

Neither *Chapman* nor *Connor* provides a constitutional basis for requiring an "as low as possible" *de minimis* deviation standard in court-ordered plans. *See* Pet. Brief at 15-19. Contrary to the Executive Defendants' position and the conclusion reached by district court, *see* Conclusion 7, the Equal Protection clause of the Fourteenth Amendment *cannot* be the source of the *de minimis* rule discussed in *Chapman* and *Connor* because if it were constitutionally compelled it

would preclude state legislatures from ever applying the + or- 5% deviations allowed under *Brown v. Thomson*, 462 U.S. 835 (1983) under any circumstances.[4]

Rather, in *Chapman* and *Connor* the Supreme Court was setting forth a *prudential rule*, derived from federalism concerns, to guide the decisions of lower federal courts when placed in the position of drawing or adopting state legislative plans.[5] *See Dickerson v. United States,* 530 U.S. 428, 437 (2000) ("This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals."). Even that view of *Chapman* and *Connor* has been eroded by the Supreme Court's recent direction to a federal district court in *Perry v. Perez*, 565 U.S. __, Nos. 11-713, 11-714, and 11-715 (January 20, 2012) (Slip Op.) that such *de minimis* such deviations when that standard would override legislative policy decisions not in violation of federal law. *Id.* at 8; *see also* Pet. Brief at 19-24.

Furthermore, when it comes to redistricting plans adopted by *state courts*, the federal constitution is not concerned with preserving or maintaining

---

[4] Nor is there any merit to the Executive Defendants' claim, *see* Exec. Brief at 32-35, that the Legislative plan suffers from some kind of "regional bias" that renders it "constitutionally suspect, if not *per se* invalid." *See* Argument at Part II(B) *infra.*

[5] That the *Chapman/Connor* application of a low *de minimis* standard is intended to limit federal courts and not state courts is also clear from the language of those cases, discussing how particularly unfit federal courts are to encroach on state policies. *See* Pet. Brief at 15-19.

institutional differences between state courts and state legislatures. *See, e.g., Gregory v. Ashcroft,* 501 U.S. 452, 460 (1991) ("Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign."); *Highland Farms Dairy v. Agnew,* 300 U.S. 608, 612, (1937) ("How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself."). And of course, as the United States Supreme Court has made clear, "we do not hold a supervisory power over the courts of the several States. . . . [and] [f]ederal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension." *Dickerson,* 530 U.S. at 438.

Rather, it is for this Court, in the exercise of its Superintending authority to set forth rules and standards that guide New Mexico state courts. *See, e.g., State v. Roy,* 40 N.M. 397, 60 P.2d 646 (1936) (The power of superintending control is the power to control the course of ordinary litigation in inferior courts, as exercised at common law). While other state courts may have come to differing conclusions about the matter, *compare In re Apportionment of State Legislature 1982,* 321 N.W. 2d 585, 593 (Mich. 1982) (Levin and Fitzgerald, J.J., concurring) *with Below v. Gardner,* 963 A.2d 785 (N.H. 2002),[6] the instant case marks the second decade

[6] Petitioners have explained why the analysis undertaken in the Michigan case is correct and does not depend on the peculiarities of that state's constitution. Pet. Brief at 16-18. Petitioners have also demonstrated why the New Hampshire

in a row that state court litigation in New Mexico has resulted from a gubernatorial veto of a legislatively passed redistricting plan. The instant case demonstrates that such a final resolution is needed by this Court to make clear the standards applicable to its courts engaged in redistricting litigation absent a statutorily enacted plan.

Petitioners urge that this Court must reject the district court's *de minimis* rule as not compelled by the federal constitution, and adopt as its prudential standard that New Mexico state redistricting courts should respect the New Mexico Legislature's policy of the past several decades, as expressed in their guidelines and in their plans, including the flexibility of using deviations of + or – 5% to accommodate traditional redistricting principles. *See* Pet. Brief at 22-24. This was the standard applied in the 2001 *Jepsen* litigation, where Judge Allen determined that the district court, unlike a federal court, was bound only by the ten percent deviations applicable to redistricting of state legislatures. *Jepsen v. Vigil-Giron*, Case No. D-0101-CV-02177, January 24, 2002 (FOF/COL Concerning State

---

decision in *Below* is not persuasive and that the New Hampshire court's subsequent decision in *Burling v. Chandler*, 804 A.2d 471 (N.H. 2002) in fact rejected an "as low as possible" deviation standard in favor of a 9.26% deviation. Pet. Brief at 18. The Executive Defendants attempt to distinguish *Burling* based on New Hampshire's "unique features," *see* Exec. Brief at 21-22 n. 4, but, if their distinction is correct, it merely reinforces that state courts, including this Court, have the authority and the flexibility to impose a constitutional standard that is in the best interest of the state.

House of Representatives Redistricting) at Conclusion 8. This standard affords respect to the legislature as the body charged with the tasks of redistricting and policy-making in the first instance, *see* Pet. Brief at 34 n. 9, and allows for accommodation of New Mexico's communities of interest which may not rise to the level of requiring Voting Rights Act protection but nonetheless should be recognized and valued. *See id.* at 34-37, 41 (discussing the importance of the traditional districting principles employed by the Legislature and erroneously disregarded by the court below). In contrast, as Petitioners discussed in their Opening Brief, the district court's *de minimis* standard may force future legislatures to redistrict with an eye to litigation, rather than focusing on its task of determining intelligent policy choices for the state.

B. "Thoughtful consideration" requires, as a matter of law, that a New Mexico state court not deviate from the legislatively passed plan as long as such plan complies with the law and is consistent with New Mexico's long-established traditional districting principles.

Once the district court committed the fundamental error of concluding that deviations "as low as possible" are constitutionally compelled, the court precluded itself from giving the Legislative Plan the degree of consideration to which it is entitled. Petitioners set forth in their Opening Brief what "thoughtful consideration" means in this context, and the district court's failure to apply that

standard in this case.[7] Petitioners' Brief at 30-37. In their effort to persuade this Court that thoughtful consideration for the Legislative Plan was afforded below, the Executive Defendants in fact help demonstrate that it was not. This is because their Brief reinforces that the district court placed a heavy burden on Petitioners to justify their deviations greater than + or – 1%, and only accepted justifications based on compliance with the Voting Rights Act and sovereign Native American lands. *See* Exec. Brief at 18, 22 n. 4, 25-26. This improper burden effectively equates "thoughtful consideration" with enforcement of the Voting Rights Act. In imposing that burden, the district court turned thoughtful consideration on its head, which led directly to the erroneous rejection of the Legislative Plan.

Furthermore, the Executive Defendants fail to recognize that the application of thoughtful consideration to the Legislature's Plan should lead to its adoption, because there was no countervailing executive policy for the court to have weighed against it. Where a governor vetoes a legislature's passed plan but supports other plans in the legislative arena, those plans may also be entitled to some degree of special consideration which may warrant divergence from a legislature's passed plan. *See O'Sullivan v. Brier,* 540 F. Supp. 1200, 1202 (D. Kan. 1982) (governor supported a plan which was "very close to a bill unsuccessfully urged upon the ...

[7] Contrary to the claims of some parties, Petitioners do not contend that "thoughtful consideration" is equivalent to the full deference afforded to an enacted statute, or that it requires a rubber stamping of the Legislative Plan. *See* Pet. Brief at 30-37.

legislature"). However, that is not the situation here, where the Governor entirely bypassed the political arena and then sought to impose her views on the district court by repeatedly changing her plan in response to criticism in court. In this case, the district court did not find that the Executive Defendants' plans were entitled to any heightened degree of consideration and the Governor's attorney all but conceded at trial that their plans were not entitled to it. Tr. 12/22/11, p. 15 (P. Kennedy). Under these circumstances, where there is no countervailing executive policy entitled to heightened consideration, there is no basis to ignore or diverge from the legitimate state policies contained in the Legislature's adopted plan.

The Executive Defendants further contend that, even if the Legislative Plan is entitled to heightened consideration, the district court was "precluded" from adopting that plan because its population deviations suffer from a "regional bias" which renders the plan "constitutionally suspect, if not *per se* invalid."[8] *See* Exec. Brief at 32-35. The Executive Defendants attempt to analogize the Legislative Plan to the state legislative redistricting plans struck down on "one person, one vote" grounds by a Georgia federal district court in *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004),[9] which is inapposite in the present circumstances.

---

[8] Notably, the district court did not make a finding that the Legislative Plan violates one person, one vote. *See* Findings and Conclusions at 30 n. 1.

[9] It should be noted from the outset that *Larios* stands alone as the *only* decision of which Petitioners are aware in which a redistricting plan with deviations below ten percent was found to violate one person, one vote.

Larios involved egregious facts, resulting from what the Executive Defendants' own expert Dr. Keith Gaddie described as "a blatant exercise of power by a political majority bent on self-perpetuation." Ronald K. Gaddie & Charles S. Bullock, III, *From Ashcroft to Larios: Recent Redistricting Lessons from Georgia*, 34 Fordham Urb. L.J. 997, 998 (2007); Tr. 12/14/11, pp. 257-258. The legislative plans in *Larios* aggressively used population deviations and the pairing of incumbents to target Republican legislators and to maintain or increase the Democratic majority. *Larios*, 300 F.Supp.2d at 1326-27.[10]

Moreover, the Georgia legislators who drew and passed the House and Senate plans in *Larios* failed to cite *any* traditional districting principles or rational state policies in support of their plans. To the contrary, those legislators testified that they did *not* consider compactness, contiguity, preserving political subdivisions, or communities of interest in drawing their plans. *Id.* at 1325, 1331-1334.

---

[10] For example, 66% of Georgia Senate seats and 50% of the House seats had deviations greater than + or - 4%. *Larios*, 300 F.Supp.2d at 1326-27. In both the Georgia House and Senate plans, the majority of the under-populated districts in the inner-city and certain rural areas were Democrat-leaning, and the majority of overpopulated districts in the suburbs were Republican-leaning. *Id.* The House plan paired 42 incumbents, 37 of whom were Republicans. *Id.* at 1326; *see also id.* at 1329 ("Republican incumbents were regularly pitted against one another in an obviously purposeful attempt to unseat as many of them as possible"). The Senate plan paired 12 incumbents, 10 of whom were Republicans. *Id.* at 1327.

It is undisputed that the Legislature's plan does not suffer from *Larios*'s blatant partisan manipulation or disregard for traditional districting criteria. On cross-examination, Dr. Gaddie acknowledged that he "did not detect" the partisan elements of *Larios* in the Legislative Defendants' plan. Tr. 12/14/11, p. 259,[11] and then testified that the deviations in the Legislative House plan are spread among Democratic and Republican districts and do not have a partisan bias. *Id.* at p. 259-262.[12] Dr. Gaddie further testified that the incumbent pairings present in the Legislative plan do not have a partisan bias. Tr. 12/14/11, p. 250. In fact, the Legislature's incumbent pairings actually result in a gain for Republicans. *See* Tr. 12/12/11, pp. 227-229 (B. Sanderoff). Finally, the Legislative plan scored well on measures of adherence to traditional redistricting criteria, including compactness, core retention, splitting of municipalities, and other factors.[13]

Despite their own expert's conclusion that the partisan problems of *Larios* are not present in the Legislative plan, the Executive Defendants seek to parse *Larios* by attempting to detach the court's discussion of geographic differences

---

[11] *See also* Tr. 12/19/11, pp. 15-16 (T. Arrington) (no partisan bias in Legislative plan); Tr. 12/20/11, pp. 43-44 (J. Katz) (same).

[12] *See also* Tr. 12/12/11, pp. 193-200 (B. Sanderoff); Tr. 12/13/11, pp. 201-202.

[13] *See* Tr. 12/14/11, pp. 249-252; Gov.'s Exh. 30; *see also* Tr. 12/21/11, pp. 222-223 (K. Martinez) (explaining Legislature's adherence to traditional districting principles embodied in Guidelines adopted by bipartisan Legislative Council).

from its essential moorings in the gross partisan manipulations of the legislative majority.

The *Larios* court makes clear that the regional differences in deviations are a *symptom* of the majority's partisan tactics, not a separate problem:

> After thorough review of the entire record in this case, we cannot escape the conclusion that the population deviations were designed to allow Democrats to maintain or increase their representation in the House and Senate through the underpopulation of districts in Democratic-leaning rural and inner-city areas of the state and through the protection of Democratic incumbents and the impairment of the Republican incumbents' reelection prospects.

Id. at 1334.[14] Finally, Dr. Gaddie, who testified in *Larios* and has studied it at length, conceded that the regional deviations in *Larios* were in fact tied to the partisan issues in that case. *See* Tr., 12/14/11, p. 259.

Unlike the legislators in *Larios*, Petitioners presented clear evidence of the rational state interests served by the minor deviations in the Legislative plan, including efforts to preserve the cores of existing districts, to unify and avoid splitting municipalities, to preserve communities of interest, and to avoid pairing

[14] *See Larios*, 300 F.Supp.2d at 1328 ("[i]n an unambiguous attempt to hold onto as much of that political power as they could . . . the plans' drafters intentionally drew the state legislative plans in such a way as to minimize the loss of districts in the southern part of the state.").

incumbents.[15] Specifically with regard to the North Central region, the evidence also showed that the Legislature could have addressed relative underpopulation in that area by consolidating the Los Alamos district, which would have resulted in the loss of a Republican seat and the gain of a Democratic seat in Albuquerque, but chose not to do so out of deference to the Los Alamos community of interest and a desire to avoid unnecessarily pitting incumbents against each other. Tr.12/13/11, pp. 194-95, 201-202 (B. Sanderoff). Finally, the evidence showed that deviations above the ideal in the Legislative plan are primarily located in the area of Albuquerque east of the Rio Grande, which is a low growth area and where it makes sense to keep districts on the high side of the ideal. Tr. 12/12/11, pp. 188-192 (B. Sanderoff). In high growth areas on the West side of Albuquerque, the Legislature's plan generally employs low deviations, as evidenced, for example by the Legislature's proposed House District 16, which has a deviation of -0.12% and House District 69, which has a deviation of -2.06%. *Id.* at 186-188 (B. Sanderoff); Legis. Def's Exh. 1. Population numbers in other districts in this area are kept near to the ideal. *Id.* at pp. 186-192.

Simply pointing to regional differences in deviations, as the Executive Defendants do here, is not enough to create a one person, one vote violation. *See,*

---

[15] *See* Tr. 12/12/11, pp. 118-119, 164-168, 207, 225 (B. Sanderoff); Legis. Def's Exh. 14; Tr. 12/21/11, pp. 227-228, 230-235, 245-246, 267-268 (K. Martinez); Exec. Def's Exh. 30; Findings 20, 38.

e.g., Rodriguez v. Pataki, 308 F.Supp.2d 346, 368 (S.D.N.Y.) *aff'd*, 543 U.S. 997 (2004) (distinguishing *Larios* and holding that evidence of regional patterns in deviations, without evidence of "impermissible considerations" at their root, does not give rise to a one person, one vote violation). Hence, as a matter of law, the *Larios* decision is plainly inapplicable to the instant matter and consequently there is no basis for deeming the Legislative Plan "constitutionally suspect," much less invalid.

C. A New Mexico district court engaged in redistricting efforts, must also, as a matter of law, adhere to proper "least change" principles in order to remain true to the limited role of the state judiciary when required to engage in judicially-drawn redistricting plans.

The Executive Defendants do not appear to dispute that redistricting courts should adhere to "least change" principles by seeking to stray no further than necessary from established state policy embodied in current districts. *See* Exec. Brief at p. 35-36. However, in rejecting the Legislative Plan and adopting the Executive Alternative 3 Plan, the district court ran afoul of these principles. The Legislative Plan scored significantly higher than the earlier iterations of the Executive Plan on "least change" measures including core retention and number of people moved among districts, Legis. Def. Exh. 16; Gov. House Exh. 10, 30,[16] and

[16] The only plan which performed better than the Legislature's plan on these metrics was the Sena Plan. The Sena Plan, however, had other serious defects. Namely, and as found by the district court, the Sena plan violated the Voting

there was no evidence presented at trial that the Executive Defendants' Alternative 3 plan improved on these measures. Moreover, the Executive Defendants' plan deviates substantially from past New Mexico redistricting policy of at least the past three decades wherein the political branches and courts alike have used deviations within plus or minus five percent to accommodate traditional redistricting principles. Tr. 12/13/11, p. 198 (B. Sanderoff); Tr. 12/22/11, pp. 70-71 (B. Sanderoff).

Finally, the district court's adoption of Executive Alternative 3 violates least change principles because that plan represents a dramatic partisan shift from current districts – and from the balance of power in the Legislature historically. *See Jepsen*, at Congressional Redistricting Finding 20 and State House Finding 39 (applying least change principles to avoid making political decisions more properly made by the political branches). Indeed, the plan's increases in Republican performing districts and Republican performance in key "swing" districts would create the highest number of Republican seats in the House since 1967, when the House went to 70 districts. *See* Tr. 12/13/11, pp. 198-201 (B. Sanderoff).

Rights Act in its treatment of Native Americans in the Northwest Quadrant, *see* Conclusion 31. The Sena plan also performed worse than the Legislature's plan on another metric of least change, incumbent pairings. *See* Gov. House Exh. 10. Additionally, while the Sena plan was introduced during the special session, it did not emerge with the support of a majority of legislators in both houses, *see* Finding 90, and therefore is not entitled to the same heightened degree of consideration to which the Legislature's passed plan is entitled.

In an effort to downplay the partisan bias in their Alternative 3 Plan, the Executive Defendants mischaracterize the evidence at trial. They contend that Petitioners' expert, Mr. Sanderoff, stated that increasing Republican performance was "simply one method" of handling the ripple effects of incorporating the Native American plan; that Executive Alternate 3 actually reduces Republican performance compared to current districts; and that Mr. Sanderoff "admitted that he could discern no partisan intent from this plan." Exec. Opening Brief (Maestas) (Sup. Ct. No. 33,386) at 10. None of these assertions are accurate.

In fact, Mr. Sanderoff testified that "there are ways that could have dispersed [the population left over when the Native American partial plan was incorporated in the Executive Plan] with less partisan change in those precincts," and while still remaining within the Executive's + or – 1% deviation range. Tr. 12/22/11, p. 118. Mr. Sanderoff never said he "could discern no partisan intent" from the plan, *id.* at 119; rather, he appropriately refrained from commenting on the map drawer's intent, as there was no direct evidence of it because the Executive Defendants chose not to put on any testimony in support of their Alternate 3 Plan. However, an increase of three Republican seats and increased Republican performance in nine hotly contested swing districts, *see* Legis. Def's Exh. 30, combined with the undisputed evidence that such change was not necessary, leaves little question about the map drawer's intent.

Finally, the adopted Executive plan represents a significant increase in Republican performance in comparison with current districts. There are currently 38 Democratic performing districts, 31 Republican performing districts and one district with 50/50 performance. *See* Legis. Def's Exh. 8 at 49-51 (political performance tables for current districts). Thus, the gap between Democratic and Republican performing districts is currently seven (7) districts. Under the original Executive Plan there were 39 Democratic performing districts and 31 Republican performing districts, resulting in a gap of eight (8) districts. See Exec. Def's Exh. 9 at 49-51 (political performance tables for original Executive plan). Under the Executive Alternate 3 Plan adopted by the court below, there are 36 Democratic performing districts and 34 Republican performing districts, a margin of two (2) districts. *See* Exec. Def's Exh. 33 at 51-53 (political performance data tables for Executive Alternate 3). To put this in historical perspective, the adopted plan would create the highest number of Republican seats in the House since 1967, when the House went to 70 districts. *See* Tr. 12/13/11, pp. 198-201 (B. Sanderoff).[17] That is exactly the type of significant partisan change that Judge Allen rejected in 2001 and which is inappropriate in a court-ordered plan under

[17] In Contrast, the Legislative Plan provides for thirty (30) Republican performing districts, which represents a high water mark for Republicans since 1967, with the exception of the 2010 elections, which resulted in 33 Republican incumbents. *See* Tr. 12/13/11, pp. 198-201 (B. Sanderoff).

"least change" principles. *See Jepsen* FOF/COL for Congressional Redistricting at Conclusion 7.[18]

In sum, the district court erred as a matter of law in selecting the Executive Alternative 3 Plan and rejecting Legislature's passed plan which outperformed all earlier iterations of the Executive Defendants' maps on least change measures and which fully complied with all applicable legal requirements.

III. The consequences of the district court's failure to follow the foregoing principles of law, when coupled with the actions of the Governor effectively undermined principles of separation of powers and corrupts the redistricting processes, requiring the reversal of the district court's judgment and adoption of the Legislative plan.

The Executive Defendants err in equating this case with any "garden variety" civil law suit in which the Governor is free to act as "any other party in [the] case." Exec. Brief at 43. This error led them to wrongly conclude that once the Governor has exercised her veto power and forced the issue of redistricting into the courts, there are no separation of powers concerns at work, thereby missing the many ways in which separation of powers have been violated in this case. *See*

[18] The Executive Defendants mischaracterize the *Jepsen* court's rulings, asserting that the court "heavily modified" the legislatively passed plan for the House and "refused to defer" to the legislatively passed plan for Congress. Exec. Brief at 31 n. 12. In fact, the *Jepsen* court adopted the Legislative House plan in full, except for the incorporation of the Native American plan in the Northwest to comply with the Voting Rights Act. That court rejected the legislative plan for Congress because – much like the Executive Alternate 3 Plan here – that plan departed dramatically from historic redistricting policy, not based on a lack of thoughtful consideration. *See Jepsen* FOF/COL for House at Findings 33, 41 and Conclusion 16; *Jepsen* FOF/COL for Congress at Findings 12, 18, 19, 24, and 25.

Argument III(A), *infra*. Also, the Executive Defendants cannot sidestep the conclusion that the legal errors of the district court require reversal of the district court's judgment, *see* Argument III(B), *infra,* and mandate the adoption of the Legislative plan. *See* Argument III(C), *infra*.

A. This district court's action together with the Governor's action and inaction in this matter violates separation of powers principles by disrupting traditional redistricting processes.

The district court's errors, in conjunction with the Governor's actions and inaction in this case, created serious separation of powers consequences, and a corruption of the normal redistricting process, under the doctrine as elaborated in this Court's two seminal decisions: *State ex rel. Clark v. Johnson*, 120 N.M. 562, 574, 904 P.2d 11, 23 (1995) and *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶¶ 21 & 22, 125 N.M. 343, 961 P.2d 768. *See* Pet. Brief at 26-28.

In *State ex rel. Clark* this Court set forth the following separation of powers principles which were violated by the district court and the Governor in this matter. First, "[t]he Governor may not exercise power that . . . infringes on the power properly belonging to the legislature." 120 N.M. at 573, 904 P.2d at 22. The Court went on to recognize that the applicable test requires a nuanced and carefully calibrated approach to determine "whether the Governor's action disrupts the proper balance between the executive and legislative branches." *Id.* at 574, 904 P.2d at 23. In doing so, this Court made clear that "the proper inquiry focuses on

the extent to which the action by one branch prevents another branch from accomplishing its constitutionally assigned functions." *Id.* (quoting *Nixon v. Administrator of General Services,* 433 U.S. 425, 443 (1977)), and that "[o]ne mark of undue disruption would be an attempt to foreclose legislative action in areas where legislative authority is undisputed." *Id.* at 574, 904 P.2d at 23.

Thus, the matter begins not with the veto, but with the fact, as recognized by the district court, that the Governor failed to participate in the legislative process, waited on the sidelines throughout the interim and the special session, ignored the important concerns put forward by Native American and other groups, and only after litigation ensued came forward with a plan constructed without any public input and only after litigation had commenced. *See* Findings 21 & 24. That failure to participate, coupled with a veto that made no suggestion of the need for very low deviations and the trial court's adoption of the Executive's + or – 1% deviation formula, has dire separation of powers consequences, as this Court has made clear in *State ex rel. Clark* and *State ex rel. Taylor, supra.*

Here there can be no doubt that the Governor's failure to engage in the public and political processes of redistricting. This, coupled with her veto, and the district court's adoption of the Executive Defendants' draconian, and impermissibly low deviation principle—forged by executive defendants' lawyers and out-of-state consultant as part of a litigation strategy—" was an attempt to

foreclose legislative action in areas where legislative authority is undisputed" . . . [and thereby] preventing "another branch from accomplishing its constitutionally assigned functions." *See id.; see also* N.M. Const. art. IV, § 3(D) (constitutionally assigning redistricting to the legislature.)

Similarly, in *State ex rel. Taylor,* this Court struck down the Governor's attempt to enact a welfare law reform program without legislative participation on separation of powers grounds, concluding that "the Respondents' [including the Governor] actions implicate the doctrine of separation of powers . . . . [in ways which are significant] to the balance of power among government branches." 1998-NMSC-015, ¶ 17. This Court in *Taylor* reiterated its *Clark* admonitions that "this Court must give effect to Article III, Section 1, and will not be reluctant to intervene where one branch of government unduly encroaches or interferes with the authority of another branch . . . . when the action by one branch prevents another branch from accomplishing the constitutionally assigned functions . . . . [thereby] disrupt[ing] the proper balance between the executive and legislative branches." *Id.* ¶¶ 23 & 24. Furthermore, the Court stressed that "the past practices of the New Mexico Legislature and Executive are instructive on these issues." *Id.* ¶ 32.

Those same principles apply when it is the impermissible conduct of the executive's litigation strategy, adopted by the district court, that interferes with the

legislature's "constitutionally assigned functions" thereby disrupting the proper balance of governmental powers. Furthermore, in looking to "past practices" as the Court found instructive in *Taylor,* never before has the Governor attempted to use the "stand above the fray and then draft" strategy to attempt to undermine redistricting processes.[19]

Indeed, the record here is clear that the Executive Defendants created a plan for litigation in private, without any public input, and which violated the Voting Rights Act and disregarded Native American and other communities of interest, *see* Tr. 12/14/11, pp. 88-90 (J. Morgan) (testimony of Governor's hired map drawer, stating that he was not informed about districts created in 1982 to address Voting Rights Act concerns and that he was not familiar with New Mexico communities of interest), but which contained lower deviations and, ultimately, more Republican performing districts than the plan passed by the Legislature. *Compare* Leg. Def. House Exh. 1 *with* Gov. House Exh. 33. *See also* Argument III(B), *infra.*

The Executive Defendants, after the serious defects in their plan were identified by parties to the litigation, asked the court to provide suggestions for

---

[19] In the litigation of a decade ago the Governor unsuccessfully urged that the state court should apply the same standards that federal courts apply, but reflecting an understanding that the Governor was not like other private litigants, the Governor did not engage in the stand aside tactic and then attempt to present plans as did other individuals and groups.

modifications to their plan while ensuring that they, the Executive Defendants, maintained control of how and when those changes were incorporated, *see* Tr. 12/14/11, p. 80-82 (J. Morgan). The district court obliged. Tr. 12/15/11, p. 284 (Hall, J.) (recommending that the Executive Defendants insert the Multi-Tribal/Navajo Nation Plan into their plan and make changes in their plan regarding the Southwestern part of the state). On the last day of trial, December 22, 2011, the Executive Defendants submitted two additional plans with the court's recommended changes, *see* Tr. 12/22/11, p. 43-44 (B. Sanderoff), and declined to introduce any evidence regarding their maps through their map drawer or any other witness. Submitting these plans the last day of trial, the Executive Defendants successfully denied other parties to the litigation adequate time to fully scrutinize their final maps.[20]

Ultimately, the Executive Defendants were permitted to circumvent the legislative process and constitutional constraints on their roles in redistricting to achieve adoption of a map largely of their own design, incorporating their own partisan political bias. The dire consequences of allowing this unconstitutional situation to continue to exist—because of its disruption to the proper balance of

[20] The Executive Defendants now seek to further capitalize on this improper tactic, criticizing Petitioners and other parties for not including the Executive Defendants' last minute plans in their exhibits containing analysis across plans. *See* Exec. Brief at 39.

separation of powers and its undermining of the integrity of the legislative process of redistricting, as is fully elaborated in Pet. Brief at 25-30.[21]

Finally, the Executive Defendants argue that that adoption of the Legislature's plan would amount to a "veto override" by the court, and that the district court may not "override the governor's veto when the Legislature did not do so." Exec. Brief at 31. Such a rule would mandate that the only plan which undergoes the legislative process and is approved by a majority of the Legislature, the body tasked with redistricting for the state in the first instance, is the only plan which *must* be rejected by a court regardless of its merits. Meanwhile, under this framework, the Governor would be free to submit an unlimited number of plans to

---

[21] The Executive parties also suggest that the Speaker of the House and the President Pro Tempore of the Senate were free to submit amendments to the Legislature's passed plan, though they too were named in their official capacities as presiding officers of the House and Senate and though the Legislature may only legislate through majority vote. See N.M. Const. art. 4, § 17; *see also Aldridge v. Williams*, 44 U.S. 9, 24 (1845) ("The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself..."). Indeed, the trial court recognized the absurdity of this contention. See Tr. 12/22/11, pp. 16-17 (Hall, J.) ("...I would have trouble believing that the Speaker of the House could come in when he's sued in [his official] capacity and purport to speak about alternatives without some action on behalf of that body.")

The Executive Defendants also suggest that amendments might have been approved by the Legislative Council on behalf of the Legislature in the interim. *See* Exec. Brief at 43. But that ignores the express statutory prohibition for such actions by the Council. *See* NMSA 1978, §2-3-3(F) (1978) (The Council must "refrain from advocating or opposing the introduction or passage of legislation.").

the court for consideration in an effort to gain Court approval.[22] For all the foregoing reasons, the district court erred in adopting the Executive Defendants' Alternative 3 Plan and impermissibly permitted the Executive Defendants to circumvent constitutional requirements in violation of separation of powers principles.

B. Reversal by this Court is necessary to prevent the implementation of fatally flawed and legally defective redistricting plan for the New Mexico House.

Because the court erroneously believed it was required to apply the *de minimis* deviation standard, it adopted a plan which impermissibly imposes too much change upon the core of current districts and deviates too far from past and present state redistricting policy. *See* Pet. Open. Brief at Parts I and IV; Pet. Resp. Brief, at Parts II(A) &(C), *supra*. The rule of *Upham* and *Perry* is clear that courts, even though acting in equity in redistricting, should go no farther than necessary to correct constitutional and statutory violations. *See* Pet. Brief at Part I (C). Misunderstanding the requirements of the federal Constitution, the trial court selected a plan which creates more change upon current districts than is appropriate in a court-drawn plan.

---

[22] Additionally, the law is clear that the Legislature's passed plan is entitled to thoughtful consideration; this established legal principle would mean nothing if a court is foreclosed from adopting the Legislature's plan at the outset.

Additionally, driven by the belief that he was required to apply the *de minimis* standard, the court was persuaded to adopt a plan which violates the Voting Rights Act with respect to its treatment of the Hispanic population in and around Clovis. *See* Pet. Brief at Part V; Egolf Open. Brief at Part IV(B) (i) &(ii). The district court found that the three *Gingles* preconditions for a violation of Section 2 of the Voting Rights Acts were satisfied with respect to the Hispanic community in and around Clovis. Petitioners presented undisputed evidence that the totality of the circumstances showed that decreasing the Hispanic voting age population in HD 63, the district in which this population is currently located, would dilute Hispanic voting strength and make it difficult for Hispanics to elect candidates of their choice. *See* Tr. 12/13/11, pp. 228-235 (R. Sandoval) (testifying about disparities in educational attainment, income, and socioeconomic status between Anglos and Hispanics in Clovis, and racial appeals in a recent local election contest).[23] Dr. James Williams testified that the Executive Defendants' plans failed to create an effective Hispanic majority district in the Clovis area

[23] Petitioners also introduced extensive evidence of the history of official racial discrimination against Hispanics in Clovis, the lack of responsiveness of elected officials to the Hispanic community there, and the history of policies underlying low voter registration and turnout among Hispanics there, as found by the three-judge court in *Sanchez v. King*, 550 F.Supp. 13 (D.N.M. 1982). *See* Legis. Def's Exh. 5 (federal district court's Findings of Fact and Conclusions of Law, dated August 8, 1984) at pp. 63-84.

sufficient to allow them to elect a candidate of their choice. This dilution of voting strength amounts to a violation of Section 2 of the Voting Rights Act.

Finally the court's plan is the product of overreaching by the Executive branch and a disregard for lawful and legitimate policy choices made by the Legislature, the body tasked with creating public for the state. *See* Pet. Open. Brief at Parts II and III; Pet. Resp. Brief at Part III, *supra*. The resulting map impermissibly contains the Executive branch's partisan biases and lacks the proper input of the people's elected representatives.

C. Correction of the district court's legal errors and application of proper legal standards will result in the adoption of the Legislature's plan.

This Court has the authority, both in its capacity as an appellate Court and upon the issuance of its writ, to reverse the erroneous determinations of the district court and to select a lawful and appropriate plan among those presented below. *See Gerety v. Demers*, 92 N.M. 396, 403-404, 589 P. 2d 180,187-188 (1978) (explaining that an appellate court may render final judgment where the facts were developed at trial). The Court should exercise this authority here and adopt the Legislature's passed plan, rather than remand these matters to the district court, as election deadlines are fast-approaching and because correction of the district court's errors, in light of the requirement that the Legislature's plan receive

thoughtful consideration, necessarily requires the adoption of the Legislature's plan.

The district court's erroneous conclusion that it was bound by law to achieve *de minimis* population deviations led the court to stray widely from state policy embodied in the Legislature's passed plan, the current House districts, and past redistricting practices of the state. Correction of the court's error necessarily leads to the adoption of the Legislature's plan, as the Legislature's plan is the *only* plan that fully embodies the Legislature's most recent expression of legitimate redistricting policy, was shown by least change measures to avoid major changes to current districts and in fact performed better than virtually every other plan before the court on least change measures, and is wholly consistent with New Mexico's historic practice of accommodating traditional redistricting principles within range of deviations of + or – 5%. *See* Pet. Brief at Part III(A). Because courts are required to give thoughtful consideration to the Legislature's expression of policy and because the Legislature's plan respects other sources of state policy as well or better than any of the other plans before the Court, there is no just reason for failing to adopt the Legislature's plan.

Unlike the plan adopted by the trial court, the Legislature's plan is in full compliance with applicable law, including the Equal Protection Clause and the Voting Rights Act. *See* Pet. Brief at Part III(A)(1); *see also* Part II(B), *supra*. The

Legislature's plan fully incorporates the Native American Redistricting Working Group ("NARWG") Plan for the Northwest quadrant which was proposed during the special session. *See* Finding 32.[24]

Moreover, unlike the Executive Defendants' plans, which were created in private, after litigation commenced, and were amended only in response to specific criticism raised in litigation without consideration of the broader interests of New Mexicans, the Legislature's plan was the result of the open, deliberative, and public legislative process and is the only plan which represents the balancing and reconciliation of competing claims and objectives undertaken by the people's elected representatives. *See* Pet. Brief at Argument, Points II and III. Because it underwent this process and reflects careful policy choices by the people's representatives, it is the only plan entitled to heightened consideration, and there is no just reason for failing to adopt the Legislature's plan.

CONCLUSION

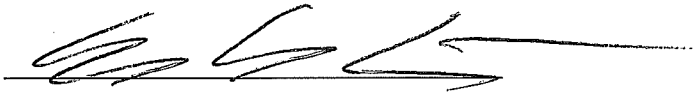
For the foregoing reasons, and the reasons put forward in Petitioners' Opening Brief, this Court should reverse the Judgment of the district court, and

[24] After the session, the Navajo Nation made some changes to a small number of districts in the NARWG plan, such that the Navajo Nation Intervenors' Plan submitted to the district court below differs from the Legislative Plan by only 11 precincts, and could be fully incorporated into the Legislative Plan without creating any "ripple effects." Tr. 12/22/11 at 96-99 (B. Sanderoff).

direct that Judgment be entered adopting the Legislative Plan as the Redistricting Plan for the New Mexico House of Representatives.

Respectfully submitted,

STELZNER, WINTER, WARBURTON,
FLORES, SANCHEZ & DAWES, PA.

By: 

Of Counsel:

Michael B. Browde
1117 Stanford, NE
MSC 11-6070
Albuquerque, NM 87131
(505) 277-5326

Luis G. Stelzner
Sara N. Sanchez
P.O. Box 528
Albuquerque, NM 87103
(505) 938-7770

and

HINKLE, HENSLEY, SHANOR & MARTIN, LLP
Richard E. Olson
Jennifer Heim
P.O. Box 10
Roswell, NM 88202
(575) 622-6510

Attorneys for Defendant Senate President Pro Tempore Timothy Z. Jennings and Speaker of the House Ben Lujan, Sr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31st, 2012, I caused a true and correct copy of the foregoing ***Petitioners-Appellants' Response*** to be e-mailed to all parties or counsel of record as follows:

The Honorable James A. Hall
James A. Hall, LLC
jhall@jhall-law.com

Joseph Goldberg
John Boyd
David H. Urias
Sara K. Berger
jg@fbdlaw.com
jwb@fbdlaw.com
dhu@fbdlaw.com
skb@fbdlaw.com
Attorneys for Plaintiffs Brian F. Egolf, Hakim Bellamy, Mel Holguin, Maurilio Castro, Roxane Spruce Bly

David P. Garcia
Ray M. Vargas
Erin B. O'Connell
Garcia & Vargas, LLC
david@garcia-vargas.com
ray@garcia-vargas.com
erin@garcia-vargas.com
leslie@garcia-vargas.com
leslie@garcia-vargas.com
abqfront@garcia-vargas.com
Attorneys for Plaintiffs Brian F. Egolf, Hakim Bellamy, Mel Holguin, Maurilio Castro, Roxane Spruce Bly

Patrick J. Rogers
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
pjr@modrall.com

and

Paul M. Kienzle III
Duncan Scott
Paul W. Spear
paul@kienzlelaw.com
duncan@dscottlaw.com
spear@kienzlelaw.com
Attorneys for Plaintiffs Jonathan Sena, Don Bratton, Carroll Leavell and Gay Kernan

Casey Douma
In-House Legal Counsel
Pueblo of Laguna
cdouma@lagunatribe.org
Attorneys for Plaintiffs Pueblo of Laguna, a federally recognized Indian Tribe, Richard Laurkie and Harry A. Antonio, Jr.

Teresa Leger
Cynthia A. Kiersnowski
Nordhaus Law Firm, LLP
tleger@nordhauslaw.com
ckiersnowski@nordhauslaw.com
Attorneys for Plaintiffs Pueblo of Laguna, a federally recognized Indian Tribe, Richard Laurkie and Harry A. Antonio, Jr.

David K. Thomson
Thomson Law Office, P.C.
david@thomsonlawfirm.net
Attorneys for Plaintiffs Representative Antonio Maestas, June Lorenzo, Alvin Warren, Eloise Gift, and Henry Ochoa

John V. Wertheim
Jerry Todd Wertheim
Jones, Snead, Wertheim & Wentworth, P.A.
johnv@thejonesfirm.com
todd@thejonesfirm.com
Attorneys for Plaintiffs Representative Antonio Maestas, June Lorenzo, Alvin Warren, Eloise Gift, and Henry Ochoa

Stephen G. Durkovich
Law Office of Stephen Durkovich
romero@durkovichlaw.com
sonya@durkovichlaw.com
Attorneys for Plaintiffs Representative Antonio Maestas, June Lorenzo, Alvin Warren, Eloise Gift, and Henry Ochoa

Christopher T. Saucedo
Iris L. Marshall
SaucedoChavez, P.C.
csaucedo@saucedochavez.com
imarshall@saucedochavez.com
Attorneys for Plaintiffs Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan

Henry M. Bohnhoff
Rodey, Dickason, Sloan, Akin & Robb, P.A.
hbohnhoff@rodey.com
Attorneys for Plaintiffs Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan

Patricia G. Williams
Jenny J. Dumas
Wiggins, Williams & Wiggins
pwilliams@wwwlaw.us
jdumas@wwwlaw.us
Attorneys for Prospective Plaintiffs in Intervention, the Navajo Nation, a federally recognized Indian tribe, Lorenzo Bates, Duane H. Yazzie, Rodger Martinez, Kimmeth Yazzie, and Angela Barney Nez (collectively "Navajo Intervenors")

David A. Garcia
David A. Garcia, LLC
lowthorpe@msn.com
Attorneys for Plaintiffs Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan

Dana L. Bobroff,
Deputy Attorney General
Navajo Nation Department of Justice
dbobroff@nndoj.org
Attorneys for Prospective Plaintiffs in Intervention, the Navajo Nation, a federally recognized Indian tribe, Lorenzo Bates, Duane H. Yazzie, Rodger Martinez, Kimmeth Yazzie, and Angela Barney Nez (collectively "Navajo Intervenors")

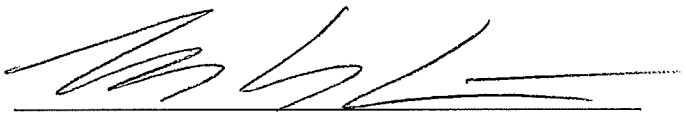
Santiago Juarez
santiagojuarezlaw@gmail.com
Attorney for Plaintiffs New Mexico League of United Latin American Citizens (NM LULAC), Paul A. Martinez, J. Paul Taylor, Peter Ossorio, Christy L. French, Matt Runnels, Rae Fortunato

Hon. Paul J. Kennedy
Kennedy & Han. PC
pkennedy@kennedyhan.com
Attorneys for Defendant Susana Martinez, in her official capacity as New Mexico Governor

Robert M. Doughty, III
Judd C. West
Doughty & West, P.A.
rob@doughtywest.com
judd@doughtywest.com
yolanda@doughtywest.com
Attorney for Defendants Dianna J. Duran, in her official capacity of NM Secretary of State and John A. Sanchez, in his official capacity as NM Lieutenant Governor and presiding office of the NM Senate

Charles R. Peifer
Robert E. Hanson
Matthew R. Hoyt
Peifer, Hanson & Mullins, P.A.
cpeifer@peiferlaw.com
rhanson@peiferlaw.com
mhoyt@peiferlaw.com
Attorneys for Defendant John A. Sanchez

Jessica Hernandez
Matthew J. Stackpole
Office of the Governor
jessica.hernandez@state.nm.us
matthew.stackpole@state.nm.us
Attorneys for Defendant Susana Martinez, in her official capacity as New Mexico Governor

By: 

Luis G. Stelzner