STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

BRIAN F. EGOLF, JR., HAKIM BELLAMY, MEL HOLGUIN, MAURILIO CASTRO, and ROXANNE SPRUCE BLY,

Plaintiffs,

v.

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

Defendants.

NO. **D-101-CV-2011-02942**
Honorable James A. Hall

CONSOLIDATED WITH
D-101-CV-2011-02944
D-101-CV-2011-02945
D-101-CV-2011-03016
D-101-CV-2011-03099
D-101-CV-2011-03107
D-202-CV-2011-09600
D-506-CV-2011-00913

EGOLF PLAINTIFFS' NEW MEXICO STATE HOUSE OF REPRESENTATIVES TRIAL BRIEF

For the State House trial before this Court, Plaintiffs Egolf, Bellamy, Holguin, Castro, and Spruce Bly (hereinafter "Egolf Plaintiffs"), by and through their attorneys, explain why the plan they propose is the most principled and reasonable approach for this decade's redistricting. Because the Egolf plan conforms to applicable principles of judicial independence and neutrality, complies with the one-person, one-vote requirement, uses only politically neutral criteria, and applies traditional districting principles grounded in our State's redistricting history and law, the Egolf plan should be adopted for this decade's redistricting.

I. Introduction

The Egolf Plaintiffs' plan is the only plan, taken together, that complies with equal protection principles and the Voter Rights Act, lowers overall population deviations, increases the amount of low-deviation districts, creates two additional VAPH districts, maintains the integrity and communities of interest of the VAPNA districts, including respect for the sovereignty and self-determination rights of the Indians, and that maintains and restores established communities of interest throughout the State.

The Egolf Plaintiffs will prove, inter alia, that while they have maintained, restored and retained historical communities of interest, a number of other parties' plans, in their quest to reduce overall deviations, hurt minority rights, substituted their judgment for that of the Native Americans, at the expense of their federally recognized sovereignty and self-determination rights, reduced or change the number and character of VAPH and VAPNA districts, and subordinated other traditional districting principles for non-neutral purposes such as partisan incumbent-pairing and strengthening Democratic or Republican districts for partisan gain.

II. Argument

A. THE EGOLF PLAINTIFFS' PLAN IS THE PROPER CHOICE AMONG THE MAPS PRESENTED TO THIS COURT.

The Egolf Plaintiffs, as a starting point, gave the Legislature's plan, HB 39, the same "thoughtful consideration" as is required by courts in recognizing it was the only plan created as a result of an open and deliberate legislative process. *O'Sullivan v. Brier*, 540 F.Supp. 1200, 1202 (D.C.Kan. 1982) (giving plan adopted by legislature and vetoed by governor "thoughtful consideration," but not deference); *Major v. Treen*, 574 F.Supp. 325, 335 n.15 (1983) (providing reapportionment plan that does not survive process entitled to thoughtful consideration). HB 39 was developed using the guidelines adopted by the Legislature, which were based on New

Mexico's law and custom regarding the creation of State and Congressional redistricting plans. The Legislative Guidelines were adopted by the Legislature in 2001, *see* 2001 N.M. Laws, ch. 220, § 3(A)(2), and reaffirmed by resolution on Jan. 17, 2011. Those Guidelines included, inter alia, crafting State districts to be substantially equal in population, with a maximum deviation not to exceed +/-5%; complying with the Voting Rights Act, including not diluting minority voting strength; using the precinct as the basic building block of each voting district; and drawing districts consistent with New Mexico's policy and application of traditional districting principles.

Notwithstanding that legislative effort, the Egolf Plaintiffs created a significantly improved plan after a considered analysis uncovered a variety and number of holes in the fabric of HB 39. The Egolf plan notably improved the overall maximum deviation from 10%, in HB 39, to 9.8%, in the Egolf plan, and did not split any precincts in the process, unlike a number of other plans before the Court. Another notable improvement to HB 39 is the Egolf plan's creation of two new districts on the Westside of Albuquerque, which has experienced the greatest growth in the state, while simultaneously avoiding the pairing of a North Central New Mexico seat and preventing the accumulation of overpopulated districts in Albuquerque (i.e., districts at the high-end of +5% from the ideal). The North Central area, which is North of Santa Fe and centrally located in the State, is made up by eleven districts.[1] In HB 39, many of the districts in the N. Central area were somewhat underpopulated (at the high-end of -5%), while Albuquerque had a significant percentage of districts that were somewhat overpopulated (at the high-end of +5%). The Egolf plan avoided "moving" or "jumping" an entire district in the North Central area by effectively shifting population to the North Central area, which eliminated the deviation pattern

[1] Brian Sanderoff, the Legislative Defendants' expert-demographer and map-drawer, identified the eleven N. Central New Mexico districts as follows: HD 40, 41, 42, 43, 45, 46, 47, 48, 50, 68, 70. Brian Sanderoff Deposition at 37-39.

at the high-end of +/-5% without jumping or moving a district. Because there was not sufficient underpopulation (i.e., enough people) in any compact geographic area of N. Central to move an entire district, shifting rather than moving or jumping an entire district is a superior approach.

The Egolf plan also increased the number of VAPH districts from the current plan by two districts, from 27 to 29, and maintained, strengthened and restored Hispanic communities of interest whenever possible. While the Executive Defendants' plan also increased the number of VAPH districts to 29, they nonetheless failed to appreciate the history of discrimination against Hispanics in splitting the VAPH district that was created by the federal district court in *Sanchez v. King*, No. 82-0246 (D. N.M. 1984), District 63, as a Section 2 remedy for the gross discriminatory practices that had occurred in the Clovis-Portales area of the State. As Legislative-expert Brian Sanderoff will testify, there is still racially polarized, Anglo block-voting in District 63, and there is no justification for splitting this community of interest for the purpose of achieving a lower population deviation. As such, the Egolf plan has retained District 63 as a VAPH district, as contemplated in *Sanchez*.

The Egolf plan retained the six VAPNA districts as found in the current plan and in HB 39. After concluding the VAPNA districts in the Northwest part of the state did not damage Hispanic or Anglo voting strength, nor negatively impact adjacent districts, the Egolf Plaintiffs adopted the Native American coalition's plan, as originally adopted in HB 39. Unlike other plans, such as the Executive Defendants, James Plaintiffs and Sena Plaintiffs, the Egolf Plaintiffs recognized the sovereignty and self-determination rights of the Native Americans, in respecting what communities of interests and political subdivisions should be split or considered in the districting process. Despite subsequent changes in the Native American coalition's plans, as currently reflected in the Navajo Intervenors' plans before the Court, all of the Native American

plans, as currently understood, will readily fit (i.e., can be dropped into) the Egolf plan's Northwest quadrant.

The Egolf plan has also minimized incumbent pairings. The Egolf plan is one of only three plans that has limited its incumbent-pairings to three, and the plan suffers from no measureable partisan bias, unlike a number of other plans.[2] The James plan, for example, pairs five sets of incumbents and suffers from a pronounced partisan bias. In addition to its plan requiring that Democrats would need to get over 50% of the vote in order to get half of the seats, the number of Republican performing districts increases considerably, while Democratic performing districts decrease.

The Egolf Plaintiffs' plan is consistent with State and federal law, the Legislature's Guidelines for redistricting, and neutrally-applied districting principles, as evidenced in the Egolf plan reuniting and restoring the Chaparrel and Silver City communities of interest. The Egolf Plaintiffs' plan effectively reduces the overall population deviation, increases the amount of low-population-deviation districts, creates two new VAPH districts, strengthens existing VAPH districts, without hurting Anglo or other minority interests, and respects the sovereignty and self-determination rights of the Native Americans in its plan.

The Egolf plan constitutionally equalized population deviations and applied historically recognized and accepted traditional redistricting criteria, including keeping districts compact and contiguous, preserving counties and other political subdivisions, maintaining and preserving communities of interest, maintaining the cores of prior districts, and avoiding incumbent

[2] In reality, the Egolf plan creates only two incumbent pairings as the pairing of Rep. Park and Rep. Picraux actually results in no pairing as Rep. Park has publically announced his retirement from the Legislature and his intention to seek an open PRC seat.

pairings. And while respecting incumbency, the Egolf Plaintiffs' plan at no point attempted to harm or help any incumbent nor favor one political party over another.

B. THE EGOLF PLAINTIFFS' PLAN COMPLIES WITH ONE-PERSON, ONE-VOTE PRINCIPLES.

The Egolf Plaintiffs' plan is fully compliant with state-legislative equal-protection principles that require and ensure the right of all citizens to participate in elections on an equal basis with all other citizens. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). In state legislative districting, overall maximum deviations of ten percent or less (i.e., +/-5%) are presumptively constitutional and considered minor deviations that, by themselves, do not generally require justification for the deviations. *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). While deviations of +/-5% from the ideal do not immunize a plan from constitutional scrutiny, there is a rebuttable presumption that deviations in this range are the result of an honest and good-faith effort to construct districts as equal as practicable. *Reynolds*, 377 U.S. at 577; *see Larios v. Cox*, 300 F.Supp.2d 1320, 1340 (N.D. Ga. 2004). The Egolf plan has an overall maximum population deviation of 9.8%, and is therefore not only within constitutional limits, it is the lowest deviation that can practicably be achieved that is consistent with historical and neutrally-applied redistricting policies recognized in New Mexico.

A court-ordered districting plan, as opposed to a legislatively-crafted plan, must ordinarily achieve the constitutional goal of population equality with little more than minimal variation; however, slight deviations are allowed upon enunciation of unique features or historically significant state policies, including, for example, the desire to respect municipal boundaries and to preserve the cores of prior districts. *See Abrams v. Johnson*, 521 U.S. 74, 98 (1997). While a court-ordered reapportionment plan of a state legislature must work to achieve the goal of population equality with minimal population variations, mathematical precision is not

required and case law demonstrates that deviations within +/-5% of the ideal are permissible so long as they are consistent with neutrally-applied redistricting policies recognized in the state. *See Chapman v. Meier*, 420 U.S. 1, 26-27 (1975); *Burling v. Chandler*, 804 A.2d 471, 484 (N.H. 2002) (creating court-ordered state legislative plan with maximum deviation range of 9.26%, and stating that the "deviation range of approximately 9% achieves 'substantial equality'"); *In re Legislative Districting of State*, 805 A.2d 292, 329 (Md. 2002) (holding the court-ordered plan followed the "substantially equal in population" standard for state legislative redistricting in remaining within a ten percent deviation).

The one-person, one-vote principle requires that "districts be apportioned to achieve population equality 'as nearly as is practicable.'" *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964)). In working to achieve this goal, "[s]tates have more flexibility in formulating redistricting plans for the state legislative seats by requiring only substantial population equality as opposed to strict population equality required in congressional redistricting plans." *Dean v. Leake*, 550 F.Supp.2d 594 (E.D.N.C. 2008); *White v. Regester*, 412 U.S. 755, 763 (1973) (providing "that state reapportionment statutes are not subject to the same strict standards applicable to reapportionment of congressional seats"). Districting plans for state legislative seats, as opposed to congressional seats, therefore require only "substantial" population equality. *Rodriguez v. Pataki*, 308 F.Supp.2d 346, 363 (S.D.N.Y. 2004); *Karcher*, 462 U.S. at 732-33; *Gaffney v. Cummings*, 412 U.S. 735, 748 (1973).

Mathematical precision is not the standard because "some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives" and that, generally, "an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. A plan with larger disparities in population, however, creates

a prima facie case of discrimination and therefore must be justified by the State." *Voinovich v. Quilter*, 507 U.S. 146, 161 (1993) (quoting *Brown*, 462 U.S. at 842-43); *Larios*, 300 F.Supp.2d at 1341 (stating population deviations of less than ten percent "are presumptively constitutional, and the burden lies on the plaintiffs to rebut the presumption").

Importantly, a plan is not per se unconstitutional just because a smaller population deviation could be achieved, *Karcher*, 462 U.S. at 740, and "[n]either courts nor legislatures are furnished any specialized calipers that enable them to extract from the general language of the . . . [constitution] the mathematical formula that establishes what range of percentage deviations is permissible, and what is not." *Mahan v. Howell*, 410 U.S. 315, 329 (1973). The Supreme Court has emphasized that "'the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State.'" *Id.* (quoting *Swann v. Adams*, 385 U.S. 440, 445 (1967)).

The Egolf Plaintiffs' plan is constitutional not merely because their overall deviation falls within +/-5% of the ideal, but because their plan has properly balanced its low population deviations against other traditional redistricting principles that a court is required to evaluate. The Egolf plan has lowered overall population deviations and increased the amount of low-deviation districts while respecting and strengthening minority interests, applying neutral-districting principles and in honoring the sovereignty and self-determination rights of the Native Americans to establish the communities of interest that are of fundamental importance to them.

C. THE POPULATION VARIANCES IN THE EGOLF PLAINTIFFS' PLAN ARE THE LOWEST PRACTICABLE AS A RESULT OF THE APPLICATION OF HISTORICALLY APPLIED DISTRICTING PRINCIPLES.

There are "any number" of traditional state districting principles that may justify population "variance, including, for instance, making districts compact, respecting municipal

boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." *Karcher*, 462 U.S. at 731, 740; *see Burling*, 804 A.2d at 485 (stating that to reduce the overall maximum deviation in the court-ordered state-legislative plan more than 9% would violate traditional redistricting principles honored in New Hampshire). Each party carries the burden to both justify the deviations presented in their plan, and to demonstrate that the plan presented by the party both protects and furthers legitimate state interests.

The Executive Defendants want this Court to believe that it must choose their plan simply because they have the lowest overall maximum deviation, at 1.9%. The Executive Defendants, however, fail to recognize that the reason there is no mathematical formula that establishes what range of deviations is permissible is because courts cannot ignore Section 2 concerns or redistricting principles historically applied in New Mexico. In redistricting, there are necessarily tradeoffs in balancing low population deviations against other traditional redistricting principles that a court is required to evaluate. As Legislative-expert Brian Sanderoff testified, striving for low deviations, though a very important goal, must not be at the expense of important redistricting principles and criteria historically factored into our State's plans; redistricting principles, in fact, can work against each other when a court attempts to achieve a minimal population deviation. Sanderoff Deposition at 24-26.

While the Egolf plan, for example, maintains, restores and retains historical communities of interest and political subdivisions, the Executive Defendants, in its quest to reduce overall deviations, substituted their judgment for that of the Native Americans in failing to consult the Native American coalition as to the communities of interest and political subdivisions of concern to the Indians. At the expense of their federally recognized sovereignty and self-determination rights, the Executive plan splits the Pueblo of Laguna, tears apart recognized communities of

interest, and unnecessarily moves Indian precincts, which are all changes that the Native Americans universally oppose. And the Executive plan similarly fails to honor the history of discrimination against Hispanics in splitting District 63, the VAPH district that was created by the federal district court in *Sanchez v. King*. Because there remains racially polarized, Anglo block-voting in District 63, there is no justification for splitting this community of interest for the sole purpose of achieving a lower population deviation.

The Egolf Plaintiffs, conversely, have maintained District 63 as an intact VAPH district and have respected the sovereignty and self-determination of the Native American groups to best determine what communities of interest and districting concerns should be considered in developing a plan for the Northwest area of New Mexico. All Native American plans before the Court, as currently understood, will fit within the Egolf plan's Northwest quadrant.

D. A MAXIMUM POPULATION DEVIATION WITHIN TEN PERCENT FALLS WITHIN THE CATEGORY OF PERMISSIBLE VARIANCES IN STATE LEGISLATIVE REDISTRICTING.

To the extent other parties will state that the Court must choose the plan with the lowest overall maximum deviation, or closest to a "near zero" deviation, regardless of the other redistricting criteria a court would ordinarily consider, there is no such authority in support of this improper approach. Parties that rely on *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D.Ga. 2004) for this proposition are without question misguided. A "near zero" population deviation is not the legal standard in state legislative redistricting and neither *Larios* nor any other authority preclude a state legislative plan from deviating within a +/-5% range, so long as the plan worked to achieve population equality as nearly as practicable and so long as population disparities were a result of rational and neutrally-applied state policies. *Larios*, 300 F.Supp.2d at 1341.

In *Larios*, the court concluded that the population deviations in the state legislative districts created for the Georgia House and Senate after the release of the 2000 census data were not driven by any traditional redistricting criteria, but were instead driven by impermissible factors of regional favoritism and the discriminatory protection of Democratic incumbents. *Id.* at 1341-42. There was a wholesale distortion of district lines throughout the state in order to target and oust members of the minority political party. *Id.* at 1329. Notably, while the guidelines used to fashion the Georgia state plans required that overall population deviations should not exceed +/-5%, the Democratic majority that created the plans did not and would not consider any traditional redistricting criteria. *Id.* at 1325. Because the deviations were the result of grossly partisan political purposes, and nothing else, there was no rational policy justifying the deviations on the high-end of +/-5%. *Id.*

Unlike *Larios*, there is simply no evidence in this case demonstrating that the Egolf or Legislative plans impermissibly crafted their deviations for improper political or any other improper purpose. The court in *Larios* merely stated that deviations of less than ten percent did not insulate a state from justifying its redistricting plan, if challenged, and that districting decisions within that variance cannot be made for any reason whatsoever. *Larios*, 300 F.Supp.2d at 1340.

In fact, case law post-*Larios* confirms that deviations within +/-5% remain within the category of permissible variances in state legislative redistricting, so long as they can be justified on the basis of that state's recognized neutral-districting principles. *See Fairley v. Hattiesburg, Miss.*, No. 2:06cv167, 2008 WL 3287200, *10 (S.D.Miss. 2008) ("In general, an apportionment plan with a maximum population deviation under 10% falls within the category of permissible variances."); *Kidd v. Cox*, No. 1:06-CV-0997, 2006 WL 1341302, *6 (N.D.Ga. 2006) (quoting

Larios in stating that "population deviations of less than ten percent 'are presumptively constitutional, and the burden lies on the plaintiffs to rebut the presumption'"); *Moore v. Itawamba County, Miss.*, 431 F.3d 257, 259 (5th Cir. 2005) (recognizing that ten percent threshold functions primarily as a burden-shifting device in one person, one vote cases and that a plan within the threshold could still be discriminatory if so proven); *In re Municipal Reapportionment of Tp. of Haverford*, 873 A.2d 821, 835-36 (Pa. Commw. Ct. 2005) (disagreeing that *Larios* stands for the proposition that a state legislature cannot deviate from the ideal within the long-held ten percent standard, and concluding the 2-Justice summary affirmance of the U.S. Supreme Court, over Justice Scalia's dissent, does nothing to change the state of the law in this area).

Nothing in *Larios* so much as suggests that a court must choose the plan with deviations closest to "near zero," and nothing changes the state of the law which provides that a +/5% maximum deviation is permissible in state-legislative districting, whether court-ordered or legislatively created. The Court must evaluate all plans in determining whether each has properly balanced its low population deviations against other state polices and districting principles as recognized in the State.

E. ALL OTHER PLANS BEFORE THE COURT FAIL TO EQUALIZE THE POPULATION OF DISTRICTS WHILE RESPECTING MINORITY INTERESTS AND NEUTRALLY APPLYING REDISTRICTING POLICIES LONG-RECOGNIZED IN NEW MEXICO.

i. The other parties' plans cannot demonstrate that their population deviations are justified on neutrally-applied districting principles.

In working to achieve the goal of population equality, courts evaluate whether the deviations of any given redistricting plan comply with that state's traditional redistricting principles. *See Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 628 (D.S.C. 2002)

(providing court-imposed plans will follow traditional state districting principles, although courts do not possess the same latitude afforded a state legislature); *Rodriguez*, 308 F.Supp.2d at 363 ("Particular state policies that justify minor deviations from absolute population equality generally include 'making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.'") (quoting *Karcher*, 462 U.S. at 740). Because it is important to keep communities of interest together for the relationship between the elected officials and members of that community, no redistricting plan should split significant communities of interest.

While all of the plans before the Court have maximum deviations within +/-5% of the ideal, only the Egolf plan has achieved population as nearly as practicable while neutrally applying our State's recognized districting principles. The Executive Defendants, Sena Plaintiffs and James Plaintiffs have all have developed plans for the Native Americans in the Northwest quadrant without respecting the sovereignty and self-determination of the tribes to determine what communities of interest and districting concerns are of importance to them. The Executive and James plans, while having the lowest overall deviations, at 1.6% and 6.6% respectively, split the Pueblo of Laguna, split recognized and respected communities of interest, and move precincts into VAPNA districts that the Native Americans fundamentally oppose, inter alia. The James plan even goes so far as to reduce the number of VAPNA districts, to five, from the current plan, which has six. Moreover, at the time that HB 39 was passed, it was understood that the Native American coalition participated in and endorsed what the Legislature crafted for the VAPNA districts in the Northwest quadrant of the state. As such, the Executive Defendants, James Plaintiffs and Sena Plaintiffs knew what was of concern for the Native Americans, but

nonetheless developed plans on the belief that they should substitute their judgment for the Native Americans.

The Maestas Plaintiffs' and the James Plaintiffs' plans blatantly violate New Mexico law, historical redistricting policy, and this Court's order, in splitting precincts in their plans. The House districts currently situated in New Mexico were created using precinct boundaries as the building blocks of each district, and there is no principled reason for any plan to split precincts in violation of New Mexico law and policy. The Egolf plan, conversely, used precincts as the building blocks for its districts. Dr. Williams testified that in addition to being the law, using whole precincts as the basis for a redistricting map is good policy because precincts have their own history and the precinct has been an organizing unit that has not changed greatly over time. Williams Deposition at 37.

The avoidance incumbent pairings is a traditional redistricting principle that attempts to minimize incumbent pairings in the same district. While the Egolf plan has minimized incumbent pairings, to a total of three pairings, and suffers from no partisan bias, the Maestas, James and Sena plans have not similarly worked to avoid such pairings and partisan bias. The Maestas plan has three pairings of incumbents, and one triple-incumbent pairing, in addition to reflecting a partisan bias in having an overall increase in Democratic performing districts. The James plan pairs five sets of incumbents, which is the greatest of any other plan, and suffers from a pronounced partisan bias compared to all other plans. The Sena plan pairs four sets of incumbents, and, like the James plan, suffers from a partisan bias. In the Sena and James plans, Democrats would need to get over 50% of the vote in order to get half of the seats, and the number of Republican performing districts increases considerably, while Democratic performing districts decrease.

ii. The other parties' plans cannot demonstrate that they have respected minority interests in creating their plans.

The Egolf Plaintiffs' plan has not only prevented the dilution of minority voting strength, it has maximized the effective voting strength of racial and ethnic minority communities to the extent practicable, and without affecting Anglo electoral success. According to the 2010 Census results, Hispanics constitute 46.3% of the total state population and Native Americans total 9.6% of the total population (Non-Hispanic Native American is at 8.5%). Non-Hispanic Whites or Anglos constitute 40.5% of the total population. The voting preferences of Hispanics and Native Americans are racially polarized. While Hispanics and Native Americans have traditionally voted, and continue to vote, as a cohesive group, the Anglo electorate tends to vote as a block against minority-preferred candidates in New Mexico. As is well known, Hispanics and Native Americans have historically been denied equal electoral opportunities in New Mexico, have a history of inequalities in education and employment, have suffered from depressed rates of participation in the political process, and there is a history of official discrimination, racially polarized voting, and lack of responsiveness to Hispanics, despite particular races to the contrary.

The Egolf Plan increased the number of VAPH districts from the current plan by two districts, to 29, and retained the six VAPNA districts found in the current plan, while preserving the communities of interest as recognized by the Native Americans themselves. The Egolf Plaintiffs developed their plan with the belief that the Native Americans are best equipped to determine their own communities of interest. The Egolf plan similarly increases VAPH districts while preserving communities of interest, respecting political subdivisions, retaining a favorable population parity, and minimizing partisan bias. While race was a proper consideration in developing the Egolf plan, it was not the predominate consideration. The Egolf plan did not subordinate traditional race-neutral districting principles to racial considerations.

The Executive, James and Sena plans, conversely, split Native Amerian lands without respecting the makeup of their majority Native American districts. The Executive Defendants increase in VAPH districts also comes at the cost of splitting recognized Hispanic communities of interest, as seen in their plan's splitting of the Clovis VAPH district, District 63. Not only has the Hispanic population increased in Clovis since the *Sanchez* opinion, District 63 is still racially polarized and should not be diluted in the manner in which the Executive Defendants suggest.

III. Conclusion

For the reasons set forth above, the Egolf Plaintiffs respectfully request that the Court adopt their New Mexico State House of Representatives plan.

Respectfully submitted,

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I hereby certify that on December 9, 2011, I filed the foregoing electronically through the Tyler

Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing; all counsel of record were additionally served via email.

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