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' WRITTEN CLOSING ARGUMENT FOR THE NEW MEXICO HOUSE OF REPRESENTATIVES TRIAL

The Egolf Plaintiffs hereby submit their written closing argument for the trial of the New Mexico State House of Representatives. As set forth herein, the Egolf Plaintiffs submitted plans which satisfy the due process, one-person one-vote standard, while doing the least violence to New Mexico's unique, diverse, and historical communities. Moreover, the Egolf Plaintiffs' plans respect New Mexico's history of violations of Section 2 of the Voting Rights Act and therefore avoid dilution of minority voting strength. The Egolf Plaintiffs' plans are therefore superior to

those offered by other parties and should be adopted by this Court to redistrict New Mexico's State House of Representatives.

Argument

I. ALL THE PLANS SATISFY THE SUPREME COURT'S 10% MINOR DEVIATION STANDARD AND ONLY THE EGOLF PLAINTIFFS' PLANS PAY PARTICULAR ATTENTION TO NEW MEXICO'S DIVERSE, ESTABLISHED COMMUNITIES OF INTEREST WHILE SATISFYING OTHER TRADITIONAL REDISTRICTING PRINCIPLES.

As demonstrated through the testimony of Dr. Jim Williams and others, the Egolf Plaintiffs' plans pay particular attention to the unique and diverse communities throughout New Mexico and achieve the goal of retaining the core of those communities within the same district(s), while avoiding damage to other traditional redistricting principles. Specifically, the Egolf Plaintiffs' plans reunite various historical, minority communities, retain minority voting strength in areas of the State with a history of Section 2 violations, and minimize incumbent pairings, while maintaining a fair partisan balance.

Traditional redistricting principles have been generally identified as: compactness; contiguity; preservation of counties and other political subdivisions; preservation of communities of interest; maintaining the cores of prior districts; and avoiding incumbent pairings. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (identifying compactness, contiguity, and respect for political subdivisions and communities defined by actual shared interests as traditional districting principles, but not limiting the principles to only those identified). When the Egolf Plans are reviewed in light of these standards, and the evidence adduced at trial, it becomes clear that the Egolf Plans present the best options for the Court in deciding how to redistrict New Mexico's State House of Representatives.

a. The Egolf Plans satisfy the one-person, one-vote standard.

The constitutional standards for allowable population deviations in a state legislative redistricting plan are significantly more flexible than the standards for Congressional redistricting. The United States Supreme Court has held that the Constitution permits "minor deviations" in population among state legislative districts and has explained its position as follows: A legislative redistricting plan is *prima facie* constitutional if its population deviations do not exceed 10%. The Court denominates a deviation of less than 10% as "minor."[1] *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983); *Connor v. Finch*, 431 U.S. 407, 418 (1977). In *Brown,* the Supreme Court summarized its view of population deviations in reapportionment plans for state legislative bodies:

> Our decisions have established, as a general matter, that 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. *See Swann v. Adams*, 385 U.S. 440, 444 (1967) ("De minimis deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed de minimis and none of our cases suggests that differences of this magnitude will be accepted, without a satisfactory explanation grounded on acceptable state policy.")

Brown, 462 U.S. at 842-843 (internal citations omitted). Conversely, if a plan has deviations of *under* ten percent, it is not immune from judicial review, but an opponent of such a plan must carry a difficult burden:

> To prevail, though, the plaintiffs have the burden of showing that the deviation in the plan [although under ten percent] results solely from the promotion of an unconstitutional or irrational state policy. Thus, the plaintiffs ... must demonstrate ... that the asserted unconstitutional or irrational state policy is the actual reason for the deviation. *See Karcher* [*v. Daggett*], 462 U.S. 725, 740-44 [(1983)]. In addition, the plaintiff must prove that the

[1] In determining how to assess the matter of population deviations, the Seventh Circuit has stated the obvious: Census data has a margin of error which, coupled with population movement after a census is likely to make the formality of population "equality" under the census figures less and less compelling as the redistricting process addresses smaller political units. *Frank v. Forest County*, 336 F.3d 570, 572 -576 (7th Cir. 2003) (noting that margin of error in the data and passage of time make the "10% rule" less and less compelling as the reapportioned political districts become smaller and more sparsely populated).

minor population deviation is not caused by the promotion of legitimate state policies. *Rodriguez v. Pataki*, 308 F.Supp.2d 346, 365 (S.D.N.Y. 2004) (three-judge court) (quoting *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F.Supp. 1022, 1031 (D.Md. 1994)) (three-judge court). Thus if a plan is below the ten-percent threshold, an opponent of the plan, to successfully defeat it, "must prove that the redistricting process was tainted by arbitrariness or discrimination." *Moore v. Itawamba County*, 431 F.3d 257, 259 (5th Cir.2005) (per curiam).

If a plan's deviations *exceed* ten percent – and it is therefore *prima facie* violative of the one-person, one-vote principle, the *proponent* of such a plan must establish that its deviations are justified by the need to reasonably adhere to legitimate state redistricting principles such as maintaining contiguous and compact districts, sustaining core districts, maintaining communities of interest, the overall integrity of political subdivisions and preserving natural and historical boundary lines. *Toerner v. Cameron Parish Police Jury*, 2011 WL 3584786, *4-5 (W.D.La. 2011) (citing *Reynolds v. Sims*, 377 U.S. 533 (1964); *Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997)). In addition, the Supreme Court has suggested that protection of incumbency can be a legitimate goal of a redistricting plan. *White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the protection of incumbents is not evidence of invidiousness). Relying on *White* and the later case of *Bush v Vera*, 517 U.S. 952, 964 (1996), lower courts have explicitly factored incumbent protection into court-drawn plans. *See, e.g., Johnson v. Miller*, 922 F.Supp. 1556, 1565 (S.D.Ga. 1995) (protection of incumbents is a legitimate consideration for a court-drawn plan); *Colleton County Council v. McConnell*, 201 F.Supp. 2d 618, 647 (D.S.C. 2002) (finding incumbent protection to be

a traditional state interest in South Carolina).[2]

Applying these principles, the Supreme Court held that a deviation of over 16% was sustainable in a state's legislative reapportionment where the deviation served a state policy of preserving the boundaries of political subdivisions. *Mahan v. Howell*, 410 U.S. 315, 324-25 (1973), *see also Voinovich v. Quilter*, 507 U.S. 146, 160-62 (1993) (overruling a district court that had rejected a legislature's plan because its deviation exceeded 10% and overruling lower court's decision to adopt its own plan so it could attain deviations of less than 10%). In *Voinovich*, the Supreme Court criticized the lower court for its failure to undertake an inquiry into the legitimacy of the interests that had resulted in greater than ten percent deviations and pointed out that, in *Mahan*, it had already accepted a 16% deviation "where justified by the rational objective of preserving the integrity of political subdivision lines." *Id.*

Although the Supreme Court has cautioned that courts engaged in redistricting are held to a more stringent standard than a state legislature, it has emphasized that court-imposed redistricting plans for state legislatures need not achieve the close mathematical precision required for Congressional redistricting. *Chapman v. Meier*, 420 U.S. 1, 27 n.19 (1975) ("This is not to say, however, that court-ordered reapportionment of a state legislature must attain the mathematical preciseness required for congressional redistricting."). Instead, the Supreme Court has simply held that a court-imposed legislative redistricting plan should achieve "*de minimis*" population deviations but need not accomplish even that "[w]here important and significant state

2 "Although this is usually referred to as 'incumbency-protection,' we view the principle as more accurately protecting the core constituency's interest in reelecting, if they choose, an incumbent representative in whom they have placed their trust. Provided it does not conflict with other nonpolitical considerations such as communities of interest and compactness, it is one worthy of consideration by this court. *See, e.g., Bush [v. Vera]*, 517 U.S. 952, 964 (1996) ('[W]e have recognized incumbency protection, at least in the form of avoiding contests between incumbents, as a legitimate state goal.')." *Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 647 (D.S.C.,2002).

considerations rationally mandate departure from these standards." *Chapman*, 420 U.S. at 27. If a court departs from minimal population deviations, however, "it is the reapportioning court's responsibility to articulate precisely why . . . minimal population variance cannot be adopted." The Supreme Court has never explained what it means by a "de minimis" deviation in this context. We know from the case law, however, that a deviation of less than 10% makes a *prima facie* case that the redistricting plan does not violate one-person-one-vote. *Brown*, 462 U.S. at 842-43. Thus while reiterating that the standards for a court-imposed plan are more stringent than the standards for a legislatively-adopted plan, the Supreme Court has provided guidance only by reiterating that a court plan is unacceptable if its population deviations exceed 10% unless the court has articulated "important and significant state considerations" that "rationally mandate departure" from "minimal population variance." *Connor v. Finch*, 431 U.S. 407, 418 (1977).

It may be seen as something of an exercise in semantics, but it is possible to parse the Supreme Court's decisions and thereby derive some guidance as to what the Court means when it says that there is a "stricter standard" that governs a court in adopting a redistricting plan. Under *Brown*, a state legislature's plan to redistrict itself will be considered *prima facie* constitutional if it is under 10%. If it is over 10% it is only justified by an "acceptable" or "rational" state policy or policies. *Brown*, 462 U.S. at 842-43. Under *Connor*, a court-imposed plan *must* have population deviations of less than 10% unless the court articulates "important and significant state considerations" that "mandate" a departure. *Connor*, 431 U.S. at 418. Thus, the "strictness" required of courts apparently relates to the need for rigorous justification by a court of any plan court-adopted plan whose deviation exceeds 10%. A legislature, on the other hand, is granted greater latitude in justifying a redistricting plan whose deviation exceeds 10%.

Summarizing the foregoing decisions, a court should adopt a plan that is under 10% in its deviations and, where faced with competing plans whose deviations are less than 10% (as is the case here) should adopt the plan that most closely adheres to a state's identifiable, neutral redistricting principles, which include maintaining contiguous and compact districts, sustaining core districts, maintaining communities of interest, the overall integrity of political subdivisions and preserving natural and historical boundary lines, and reasonable deference to incumbency.

The Egolf Plans all satisfy these standards. The population deviations in each of the Egolf Plans are as follows:

Egolf 1 has a total deviation of 9.8%, and has mean and median deviations of only 2.5%. Egolf 2 has a total deviation of 9.8%, and has mean and median deviations of only 2.4%. Egolf 2 is identical to Egolf 1, except that it fully incorporates the updated Navajo Nation plan.

Egolf 4, which eliminates a district from North Central New Mexico and moves it to Albuquerque's West Side, has a total deviation of 6.8%, and a mean deviation of 1.0% and a median deviation of only .8%.

Egolf 5[3], which is based upon Egolf 2 and Egolf 3, but employs further shifting of district boundaries, has a total deviation of 6.9%, but has a mean deviation of only 1.4% and a median deviation of only 1.3%. Egolf 5 achieves these low deviations while fully retaining the Inter-Tribal Plan, the Navajo Nation Plan, avoiding removal of an historical district from North Central New Mexico, and otherwise avoiding splitting minority communities.

As set forth above, all of the Egolf Plans satisfy the Supreme Court's constitutional ± 5% (i.e. 10% total) deviation standard. While some of the Egolf Plans achieve lower deviations than

[3] Egolf 5 is Egolf 3 with a minor precinct-swap correction; the Egolf Plaintiffs do not submit Egolf 3 for consideration, and substitute Egolf 5 in its place.

others (i.e. Egolf 4 and 5), no plan before this Court can achieve total deviations below 6.2% and still incorporate the Inter-Tribal Plan and Navajo Nation Plan. However, as demonstrated above, even with the Native American plans incorporated, Egolf 4 and Egolf 5 achieve such low mean and median deviations that no constitutional question can credibly be raised, and they do so while maintaining historical communities of interest and avoiding dilution of minority voting strength.

b. The Egolf Plans best retain and unite historical communities of interest.

The preservation of communities of interest is a traditional redistricting principle that encourages a map drawer to refrain from dividing populations or communities that have common needs and interests. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (*LULAC*) (stating that "maintaining communities of interest" is a traditional redistricting principle); *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (including respect for "communities defined by actual shared interests" in list of "traditional race-neutral districting principles"). Communities of interest include, but are not limited to, similarity of interests as to racial, ethnic, geographic, governmental, regional, social, cultural, political, religious, and historic interests, and can include characteristics such as income levels, educational backgrounds, housing patterns, living conditions, employment patterns, public transport infrastructure, health conditions, media markets (both print and broadcast), and the location of institutions such as schools and churches. *See Bush v. Vera*, 517 U.S. 952, 943 (1996); *Diaz v. Silver*, 978 F.Supp. 96, 123-24 (E.D.N.Y. 1997).

Beyond recognizing communities of interest as a traditional redistricting principle, this Court should recognize the importance of established racial and ethnic communities of interest in New Mexico. No other state in the nation has a population as diverse and historically-established as New Mexico's. While New Mexico has Pueblos that pre-date Christ—the Lt. Governor of

Acoma, David Garcia, testified that the Pueblo dates to 500 B.C.—it also has Hispanic communities that are well established in pockets throughout the State, as well as communities where Anglos predominate. Given the history of discrimination in representation and voting, as established in the 1980s through the *Sanchez v. King* litigation and the 1990s with Department of Justice preclearance requirements of New Mexico's redistricting process, special care and attention must be placed upon respecting certain communities and communities of interest.

The evidence at trial demonstrates that the Egolf Plans do the best job of respecting the unique and diverse, established communities throughout New Mexico. Specifically, the Egolf Plans, from the beginning, adopted the Inter-Tribal Plan in the Northwest quadrant of the State (Egolf 1), and incorporated the wishes of the Navajo Nation (Egolf 2—which modified Egolf 1 only insofar as it incorporated the Navajo Nation's modified plan). Moreover, all of the Egolf Plans respected and retained an Hispanic Voting Age Population district in the Southwest corner of the State, and did so in a way that kept minority communities together that made sense to be together (Hispanics in Silver City with Hispanics in Deming; Egolf HD 32) and reunited this Hispanic community with the Representative of their choice (Rep. Rudy Martinez).

Additionally, all of the Egolf Plans retained the core of the existing HD 63, which was a district created by the Court in *Sanchez v. King*, in 1984, to remedy violations of Section 2 of the Voting Rights Act. Evidence adduced at trial demonstrated that it was necessary to retain that district as an Hispanic voting age population majority district because Hispanics make up a sufficient majority of in the district, vote cohesively, and Anglos vote as a block sufficient to defeat the minority vote. (Testimony of Brian Sanderoff; Dr. Ted Arrington; Robert Sandoval). Further, the totality of the circumstances demonstrate that Hispanics continue to suffer

discrimination in voting and in other ways in that area such that the maintenance of a voting age population, Hispanic majority district is necessary. (Testimony of Robert Sandoval).

The Egolf Plans further reunite the unincorporated and predominately Hispanic community of Chapparal in Southern New Mexico into one legislative district and, to the extent practicable, reunite Hispanic neighborhoods in Hobbs into the same legislative district. The Egolf Plans also do a better job of uniting Hispanic communities in Clovis and Carlsbad. Similarly, the city of Silver City is reunited into one legislative district in the Egolf Plans.

c. The Egolf Plans fare as well or better than other plans on other traditional redistricting criteria.

As demonstrated by the comparison chart, admitted as Exhibit Egolf 8, the Egolf Plans fare as well or better than other plans on other traditional redistricting criteria. Indeed, all of the plans perform about the same on compactness, contiguity, and split counties, although the James Plan stands out as splitting the highest number of counties. As to political fairness, all plans fare similarly, except for the James Plan, which contains the most partisan bias, in favor of Republicans. As for incumbent pairings, the Egolf Plans contain no partisan bias, pairing one set of Democrats, one set of Republicans, and an additional Democrat pairing involving a retiring Democrat. Egolf 4, which eliminates a district from North Central New Mexico, has two Democrat-Democrat pairings, one Democrat-Republican pairing, and one Republican-Republican pairing. No witness testified that any of the Egolf Plans present any sort of improper political advantage to any one party and, as testified-to by the Executive Defendants' political science expert, Dr. Thomas Brunell, he found it "unusual" that plans put forth by the Egolf Plaintiffs, as Democrats, would pair more Democrats than Republicans. Clearly, there is no partisan bias present in the Egolf plans.

II. AS PLANS DESIGNED WITH LOW DEVIATIONS AS THEIR OVERRIDING GOAL, THE EXECUTIVE PLANS SUFFER IRRECONCILABLE CONFLICTS WITH ESTABLISHED COMMUNITIES AND COMMUNITIES OF INTEREST.

As testified-to by the Executive Defendants' map drawer, John Morgan, his first instructions, which he carried out, were to design a redistricting map that came as close to zero deviation as he could. His second directive was to draw a map that was politically fair, which, for Mr. Morgan, meant maintaining the same number of Democrat seats and Republican seats as are in the current map. In doing so, however, Mr. Morgan (who was and is unfamiliar with New Mexico's people and communities) drew a map with districts that had the same numerical characteristics as the current—i.e. minority district numbers and Republican performance numbers—but that had no regard for actual communities or communities of interest. As a consequence, the Executive Defendants arrived at a redistricting map that split numerous, established communities for no good reason (*see* Legis. Defendants' Ex. 15—identifying 14 communities that were split in order to maintain low deviations, but could be reunited and stay within Constitutionally accepted ± 5%), and failed to accommodate the concerted efforts of the Inter-Tribal Group and the Navajo Nation.

As testified-to by the Executive Defendants' map expert, John Morgan, he had no idea that the Northwest quadrant of the State was subject to Section 5 preclearance in the 1990s, and was only somewhat aware that House District 63 in the Southeast was judicially-created to remedy Section 2 violations in the 1980s. As a consequence, and following his overriding directive to keep deviations low, he produced a map that split Laguna Pueblo into two separate legislative districts, split Gallup three (3) ways, and diluted House District 63's minority voting strength. In an effort to remedy the situation, Executive Defendants' Plan 2 increased minority voting strength

in House District 63, and made some adjustments to the Native American districts in the Northwest quadrant, but fell far short of accommodating the carefully crafted districts agreed-to by the Inter-Tribal Group and the Navajo Nation. Moreover, Executive Defendants' Plan 2 continued to pair Representative Nick Salazar in its fervor to eliminate a North Central district, and had the deleterious effect of depriving the Ohkay Owingeh Pueblo of its ability to elect its candidate of choice—one of the longest-sitting legislators in New Mexico history. Indeed, the testimony at trial overwhelmingly established that Representative Salazar was the candidate of choice for both Hispanics and Native Americans in the North Central part of New Mexico and the Executive Defendants' plans sought to eliminate him, and those minority groups' choice, in a single pairing.

In his final effort to remedy the failings of the Executive Defendants' plan to accommodate the districts agreed-to by the Inter-Tribal Group and the Navajo Nation, Mr. Morgan produced Exec. Plan 3, which no longer met his overriding goals of low deviations and "political fairness." Indeed, while Exec. Defendants' Plan 1 had a total deviation of 1.88%, a plan that avoids splitting as many communities and communities of interest results in Exec. Plan 3, with a total deviation of 6.2%. Furthermore, while accepting higher total deviations, Exec. Plan 3 continues to split numerous communities, including Hispanic neighborhoods in Hobbs, for apparently no reason other than ignorance of where historical communities are located. *See* Legis. Def's Ex. 29.

In short, none of the Executive Defendants' plans are able to respect New Mexico's unique history and culture, while at the same time providing low population deviations. Even in their last effort, Executive Plan 3, the Executive Defendants continue to split numerous communities that are well-established, historical communities that deserve an effective voice. To split these

communities, and not even achieve the low population deviations originally sought, the Executive Defendants are left with a plan that does violence to communities, but fails to achieve its overriding goal of low population deviations. By "aiming for zero" population deviations, as Mr. Morgan testified-to as his goal, the Executive Plans suffer inherent flaws that prevent them from being able to repair the damage done to so many communities throughout the state. None of the Executive Defendants' plans provide this Court with a viable alternative. As we demonstrate in Section 1(a), *supra*, the Supreme Court has made it clear that precise population parity among state legislative districts is not required. The Court has instead instructed courts involved in redistricting to utilize up to a ten percent population deviation, as necessary, so that courts can adopt *good* redistricting plans for state legislatures, not just plans in which the populations of districts are precisely equal and which, as a consequence, split communities of interests and political subdivisions. The Egolf Plans are within the 10% deviation range and are the most appropriate plans for New Mexico's communities of interest.

III. THE SENA, JAMES, AND MAESTAS PLANS DO NOT MERIT CONSIDERATION BY THIS COURT AS VIABLE ALTERNATIVES TO REDISTRICTING THE HOUSE OF REPRESENTATIVES.

The Sena Plan does not merit consideration because it does not incorporate the Inter-Tribal Group plan, nor the Navajo Intervenors' plan. While it maintains 6 majority Native American districts, it does so without careful consideration of the communities contained within those 6 districts and does not meet with the concerted, negotiated wishes of those populations. Moreover, the Sena Plan unduly manipulates the core of House District 38 in the Southwest corner of the State, thereby shifting the Rio Grande Valley's representation from the Socorro area to Las

Cruces. Finally, the Sena Plan imposes a shift in political balance in favor of the Republican Party by increasing the number of Republican performing districts by two.

The James Plan stands out as "a clear gerrymander" in political terms, as testified-to by Dr. Theodore Arrington. One need look no further than the incumbent pairings in the James plan to determine its motive—to create more Republican seats in the New Mexico House of Representatives. *See* Egolf Ex. 8. Indeed, its creator, Sen. Rod Adair, testified to his intent: he would like to see the New Mexico State House become a Republican majority House.

Additionally, the James Plan stands out for ignoring the Navajo Intervenors' and Inter-Tribal Group's wishes with respect to the Northwest quadrant and in fact reduces the number of Native American VAP districts. As a consequence, the James Plan splits Laguna Pueblo into two separate legislative districts, adopts fewer Native American majority districts than any other plan, and separately creates fewer Hispanic majority districts than the other plans.

The Maestas Plan fails to provide the same level of respect for communities of interest and minority voting strength as the Egolf Plans. Moreover, the Maestas Plan was repeatedly criticized by the political science experts at trial for being an outlier as to partisan bias that can be readily ascertainable from the incumbent pairings. By having only one Democrat-Democrat pairing, but a triple Republican pairing, a Republican-Republican pairing, and a Democrat-Republican pairing, the Maestas Plan would have an obvious political effect on the current makeup of the House of Representatives.

Conclusion

As plans that meet the constitutional, one-person, one vote requirement, but that do so while best retaining and respecting New Mexico's historical, established, racial and ethnic

communities of interest without doing violence to other traditional redistricting principles, the Egolf Plaintiffs' Plans present the best options for redistricting New Mexico's State House of Representatives. The Egolf Plaintiffs therefore respectfully urge this Court to adopt either Egolf 2, Egolf 4, or Egolf 5 as its plan for redistricting the New Mexico State House of Representatives.

Respectfully submitted,

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I hereby certify that on December 28, 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 and the Honorable James A. Hall were additionally served via email.

/s/
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