

**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**

CONSOLIDATED WITH
D-101-CV-2011-02944
D-101-CV-2011-02945
D0101-CV-2011-03016
D-101-CV-2011-03099
D-101-CV-2011-03107
D-202-CV-2011-09600
D-506-CV-2011-00913

DECISION ON REMAND

This matter returns back before this Court on remand from the New Mexico Supreme Court. Following an evidentiary hearing on the merits regarding the redistricting of the New Mexico House of Representatives, this Court entered its Findings of Fact and Conclusions of Law and adopted a redistricting plan for the House of Representatives. In this Decision, the initial plan adopted by this Court will be referred to as the “First Court-Adopted Plan.”

The First Court-Adopted Plan was reviewed by the New Mexico Supreme Court. The Supreme Court issued an Order (hereinafter “the Remand Order”) returning the case to this Court with specific instructions on remand. Subsequently, the Supreme Court issued an Opinion (hereinafter “the Opinion”) in *Maestas, et al. v. Hall, No. 33386*,

which further addressed the issues in this case and the Remand Order.

The Remand Order directed this Court to draw a new reapportionment plan with the assistance of an expert under Rule 11-706 NMRA. The Remand Order stated that Brian Sanderoff of Research & Polling, Inc. would be a permissible candidate to serve in the role of a Rule 11-706 expert. Remand Order at pp. 18-19. This Court appointed Mr. Sanderoff as the Rule 11-706 expert. As suggested by the Remand Order, the parties were given an opportunity to file briefs identifying state policies that would assist the Court in drawing a plan that results in less partisan performance changes and fewer divisions of communities of interest. The Remand Order further directed that this Court “should rely, as much as possible on the evidence presently in the record, and it should not admit additional evidence from the parties.”¹ Remand Order at p. 18.

Following the receipt of the briefs and with the assistance of Mr. Sanderoff, the Court developed two preliminary plans which were provided to the parties for comment. The parties commented on the preliminary plans.² This Court now adopts the plan identified as Preliminary Plan No. 1 without change. For purposes of this Decision, this

¹ In what appears to be a violation of this Supreme Court directive, the Egolf Plaintiffs submitted an Affidavit from Theodore Arrington, a witness who testified during the trial. In response to a Motion to Strike Dr. Arrington’s Affidavit, the Egolf Plaintiffs contend that the Affidavit is appropriate because it is a part of their “comment” on the Court’s Preliminary Plans. This argument is not persuasive. Clearly, an affidavit from an expert witness is evidence and the Supreme Court was quite clear that the parties not submit additional evidence; therefore, this Court does not consider the Affidavit of Dr. Arrington or any of the arguments based on that specific evidence.

Using a slightly different approach, the Maestas Plaintiffs submitted two proposed redistricting maps to this Court, but contend that the maps submitted are “for illustrative purposes only.” Maestas Brief on Remand at p. 5. While it may be arguable whether this approach violates the letter of the Supreme Court directive, it certainly violates the spirit of the Remand Order. As a result, this Court does not consider the actual maps submitted by the Maestas Plaintiffs, but does consider the comments contained in the Maestas briefs.

² Preliminary Plan No. 2 included a different pairing of legislators in the North Central region. Although one party had initially proposed this new pairing in the briefs, no party argued that this Court should adopt Preliminary Plan No. 2 in their comments on the proposed plans and several parties contended that Preliminary Plan No. 2 was not based on the evidence presented at trial. After considering the issue, this Court agrees that the existing court record does not support the adoption of Preliminary Plan No. 2.

plan will now be referred to as the Final District Court Plan. This written Decision is intended to set forth this Court's conclusions in light of the Remand Order and Opinion of the Supreme Court.

In the Remand Order, the Supreme Court identified four areas in which the Supreme Court agreed with certain determinations made in the First Court-Adopted Plan. Remand Order at pp. 17-18. First, the Supreme Court agreed that the Native American districts should be included without change in the final court map. Second, the Supreme Court concluded that this Court "appropriately exercised its equitable powers to insist on the consolidation of districts in the underpopulated regional areas of North Central and Southeastern New Mexico, as well as Central Albuquerque." Remand Order at p. 17. Specifically, the Supreme Court recognized the partisan neutral nature of a Democrat-Democrat consolidation in North Central New Mexico and a Republican-Republican consolidation in Southeastern New Mexico. Remand Order at p. 15. Third, the Supreme Court agreed that this Court was not required to adopt the Legislative Plan as long as it gave that plan thoughtful consideration.³ Fourth, the Supreme Court agreed that this Court was not required to preclude Governor Martinez from introducing plans during the litigation. In addition, in the Opinion, the Supreme Court specifically required this Court to reject all previously submitted plans "because of the political advantage sought by the parties." Opinion at p. 32.

In the Remand Order, the Supreme Court noted that the starting point for the creation of a final plan was left to this Court's discretion. After consideration, this Court concludes that the most appropriate starting point is the First Court-Adopted Plan. This

³ This Court's thoughtful consideration of the Legislative Plan is specifically addressed in the Findings of Fact and Conclusions of Law. See Findings of Fact Nos. 32-41 and Conclusions of Law 27-28. All of those findings and conclusions are still applicable.

Court adopts the First Court-Adopted Plan as the starting point for two reasons. First, the parties had an opportunity during the course of trial to evaluate and present evidence regarding the First Court-Adopted Plan, both in its final form and in earlier iterations of the plan ultimately adopted by this Court. If this Court were to develop a completely new plan from scratch at this time, the parties' input would be limited to a three-day comment period which would seem insufficient for a completely new plan (as opposed to a modification of a plan on which they already had input).

The second reason that this Court has used the First Court-Adopted Plan as a starting point is that the Supreme Court agreed with two important components of the First Court Adopted-Plan, i.e., the inclusion of the Native American districts without change and the consolidations of certain districts. Of the plans submitted during trial, only the final few plans submitted by the Executive Defendants and the First Court-Adopted Plan included both the Native American districts without change and the basic consolidations which the Supreme Court approved (i.e., a Democrat-Democrat consolidation in North Central New Mexico, a Republican-Republican consolidation in Southeastern New Mexico and a Democrat-Republican consolidation in Central Albuquerque⁴). Because the other plans introduced at trial do not include these two important components, this Court rejected the other plans as potential starting points.

With that background, this Court addresses the specific instructions of the Supreme Court on remand as follows:⁵

⁴ The concerns of the Supreme Court regarding the Democrat-Republican consolidation in Central Albuquerque are addressed below.

⁵ As to each of the Supreme Court's four specific instructions, this Decision sets out the specific directive language of the Remand Order

1. *Population deviations.*

On remand, the district court should consider whether additional cities, such as Deming, Silver City, and Las Vegas, can be maintained whole through creating a plan with greater than one-percent deviations. While low population deviations are desired, they are not absolutely required if the district court can justify population deviations with the non-discriminatory application of historical, legitimate, and rational state policies.

Remand Order at p. 19.

In the First Court-Adopted Plan, the population deviation between districts ranged from +1.69% above the ideal population for a district to -4.99% below the ideal population for a district, a total range of 6.68%. The Remand Order of the Supreme Court directs this Court to determine whether additional cities can be maintained whole with additional deviations.⁶

⁶ The Remand Order contains the following language: “In this case, the district court concluded that it was bound to a plus-or-minus one-percent population deviation with the exception of addressing Voting Rights Act infractions.” Remand Order at pp. 13-14. This language was modified slightly in the Opinion which reads: “In this case, we interpret the district court to have concluded that it was bound to a plus-or-minus one-percent population deviation with the sole exception of addressing the requirements of the Voting Rights Act.” Opinion at p. 27.

With all due respect to the Supreme Court, the Findings of Fact and Conclusions of Law do not support such an interpretation. This Court’s Findings of Fact and Conclusions of Law do not adopt a +/- one percent deviation standard with the sole exception being violations of the Voting Rights Act. This Court made specific findings regarding Native American communities of interest. Findings of Fact Nos. 58, 59, 60, 67, 69 and 74. This Court also specifically concluded that more substantial deviations were justified not only based on the Voting Rights Act, but also based on significant state policies including protection of communities of interest. Conclusions of Law Nos. 24, 27, 33 and 34.

In fact, the standard adopted by the Supreme Court as to population equality and deviations is identical to the standard adopted and applied by this Court. In the Opinion, the Supreme Court examines the case law related to the application of legitimate and rational state policies on reapportionment plans and notes that, for plans which are “drawn by a legislature that have become law,” ten-percent deviations are prima facie constitutional. Opinion at pp. 14-17. The Supreme Court goes on to set forth the standard as it relates to court-drawn plans:

In contrast to legislatively-drawn plans, court-drawn plans are held to a higher standard, and “must ordinarily achieve the goal of population equality with little more than de minimus variation.” *Chapman v. Meier*, 420 U.S. 2, 27 (1975). The United States Supreme Court has not defined what constitutes de minimus variations for a court-drawn plan. However, unlike a legislative body that does not have to articulate the policy reasons for minor deviations from ideal population equality, unless the range of deviations exceed ten percent, a court must enunciate the historically significant state policy or unique features that it relies upon to justify deviations from ideal population

In the Final District Court Plan, Las Vegas and Deming are maintained whole within a single district. In addition, in contrast to the First Court-Adopted Plan, Mountainair and Tijeras are each contained within a single district in the Final District Court Plan.

Because Silver City was specifically identified in the Remand Order, this Court and the Rule 11-706 expert examined Silver City closely to determine if it was possible to unify Silver City within one district while still complying with the criteria set forth by the Supreme Court in the Remand Order and Opinion. As explained below, this Court ultimately concluded that Silver City could not be unified without violating the Supreme Court's clear direction that the plan be partisan-neutral.

The southwest area of New Mexico presents difficult challenges in this redistricting cycle. Under the current map, three districts (Districts 32, 38 and 39) are included in Grant, Hildago, Luna and Sierra Counties. The largest communities in these counties are Silver City, Lordsburg, Deming and Truth or Consequences. Under the current map, Silver City is split between District 38 (which is a Republican performing district with a Republican incumbent) and District 39 (which is a Democrat performing district with a Democrat incumbent). The Republican incumbent in District 38 lives in Silver City. The Democrat incumbent in District 39 lives very near Silver City in Bayard.

Based on the most recent census, this area of New Mexico no longer has

equality. *Connor v. Finch*, 431 U.S. 407, 419-20 (1977).

Opinion at pp. 17-18 (footnote omitted). In the footnote omitted here, the Supreme Court notes that court-drawn plans have had deviations of +/-4.96%, +/-6.6% and +/-9.26%, all percentages which are similar to the deviation of 6.68% in the First Court-Approved Plan.

Although some parties argued for a different standard during the trial, the legal standard on population equality that was adopted and applied by this Court matches the Supreme Court's recitation of the applicable law almost word-for-word. See Conclusions of Law Nos. 6, 8 and 17.

sufficient population to support three full House districts. In fact, the population in this area is sufficient to support approximately 2½ House districts. As a result, at least one of these districts must now extend into Dona Ana County (where some population increases have occurred) for additional population. This expansion into Dona Ana County is necessary even if population deviations are expanded to +/- 5 percent.

Unifying Silver City presents two problems. First, it is difficult (but not impossible) to unify Silver City and still keep Lordsburg, Deming and Truth or Consequences unified in a single district. In other words, unifying Silver City most often results in splitting at least one of the other three communities. All four communities cannot be kept intact without pairing additional incumbents and/or impacting the partisan neutrality of the plan.

More importantly, unifying Silver City results in partisan change to these districts. In the split of Silver City under the current map, the precincts within Silver City which are part of District 39 tend to be more Democratic, while the precincts within Silver City which are part of District 38 tend to be more Republican than those precincts in District 39. The incumbent in District 38 lives within the city limits of Silver City; therefore, in the absence of an additional pairing of incumbents⁷, a unified Silver City would have to be included within District 38. Because this would involve the inclusion of additional precincts which tend to be more Democratic, District 38 would change from a Republican

⁷ This Court examined the possibility of pairing the two incumbents in the Silver City area. Under the Supreme Court directives, such a Democrat-Republican pairing would have to provide an equal opportunity to either party. Remand Order, p. 20. Accomplishing this goal would be very difficult without splitting communities other than Silver City. Moreover, the partisan performance measures for the newly created district would alter the partisan balance. Unlike the population growth in Rio Rancho and the west side of Albuquerque which can clearly be identified as supporting two Republican and one Democrat seat, identifying the appropriate partisan makeup of a new seat in the southwest area of the state is virtually impossible.

majority district to a Democrat majority district if Silver City is unified in District 38.⁸ The Court and the Rule 11-706 expert examined whether this partisan change could be avoided through the use of higher deviations; however, the partisan change occurs even if deviations are increased to +/- 5 percent.

For redistricting purposes, the competing interests here are unifying communities of interest as opposed to partisan neutrality. These competing interests cannot be accommodated by increased deviations up to +/- 5 percent. In the Remand Order and the Opinion, the Supreme Court emphasizes the importance of both partisan neutrality and unifying communities of interest; however, the Supreme Court does not give any guidance as to which of these two interests are to be given preference when they are in conflict and when that conflict cannot be removed with increased deviations.

This Court concludes that, in the particular circumstances present in southwestern New Mexico, maintaining partisan neutrality must take precedence over the admirable goal of unifying Silver City. This Court reaches this conclusion for several reasons. First, all plans must spilt some municipalities and communities of interest. Second, the current plan divides Silver City. Third, under most scenarios, unifying Silver City results in the split of at least one other substantial community in the region. Finally, the Supreme Court disapproved of this Court's adoption of the First Court-Approved Plan at least partially on the grounds that it had different partisan consequences than earlier versions of the Executive Plan. Many of the modifications from earlier versions of the Executive Plan were modifications made with the specific purpose of keeping identified communities of interest unified. See Findings of Fact Nos. 68 and 69 and Conclusions of

⁸ An explanation of the methodology used to determine whether a particular district is Republican majority or Democrat majority is set forth below. See p. 10.

Law 32 and 33. Because the Supreme Court concluded that the partisan effects of unifying additional communities of interest violated the requirement of partisan neutrality in the First Court-Approved Plan, this Court is hesitant to adopt a plan that unifies Silver City with attendant partisan consequences.⁹

2. *Partisan performance changes.*

On remand, the goal of any plan should be to devise a plan that is partisan-neutral and fair to both sides. If the district court chooses to begin with the plan it adopted previously, it should address the partisan performance changes and bias noted in this order, and if the bias can be corrected or ameliorated with enunciated non-discriminatory application of historical, legitimate, and rational state policies, including through the use of higher population deviations, then the district court should do so.

Remand Order at p. 20.

In reviewing the Remand Order and Opinion, the Supreme Court identified the following partisan performance changes and bias in the First Court-Adopted Plan: 1) the First Court-Adopted Plan increased Republican swing seats from five to eight over prior executive plans (Remand Order at p. 14); 2) the number of majority Republican districts increased from 31 in the original executive plan to 34 in the First Court Adopted Plan (Remand Order at pp.14-15); and 3) the incumbent pairings in the First Court-Adopted Plan contributed to partisan performance changes. (Remand Order at p. 15).¹⁰ While the Remand Order compares the First Court-Adopted Plan to earlier executive plans in terms of majority Republican districts and Republican swing seats, the Opinion focuses more

⁹ The Court and the Rule 11-706 expert examined additional suggestions to unify other municipalities submitted by the parties in their comments on the preliminary plans. When those suggestions were incorporated into the plan, the result generally was some change in the partisan neutrality of the plan. Not surprisingly, the change in partisan neutrality generally benefitted the political party aligned with the party proposing the change. After discussion of each suggested change, the Court concludes that the partisan consequences of the proposed changes outweigh the potential benefit of the proposed unification of the identified municipality; therefore, the suggested changes were not adopted.

¹⁰ The issue of incumbent pairings is addressed below.

on the status quo: “[M]aintaining the political ratios as close to the status quo as is practicable, accounting for any changes in statewide trends, will honor the neutrality required in such a politically-charged case.” Opinion at pp. 21-22.

The first step for this Court in carrying out the direction of the Supreme Court is to identify what constitutes the “status quo” in terms of the political ratios to be maintained. The Supreme Court gives no specific guidance on this issue. Both at the trial and in briefs submitted on remand, several parties argued that the Court should adopt the present political ratio between Republicans and Democrats in the New Mexico House of Representatives as the “status quo.” See, e.g., Sena Plaintiffs Objections to Preliminary Plans No. 1 and 2, at p. 31. This Court rejects that approach because it places too much emphasis on the outcome of the most recent election. One need only consider the difference in results between the last two elections (2008 and 2010) to conclude that no single election accurately reflects the “status quo” for the State of New Mexico.

Instead, this Court concludes that a more appropriate measure of the “status quo” is the partisan make up of the current districts as reflected in the political performance data for each district as compiled by Research & Polling, Inc.¹¹ Although the trial testimony contained some criticism of the Research and Polling formula, the formula

¹¹ The Research and Polling partisan performance measurement is essentially the average of all statewide races that were held in New Mexico from 2004 to 2010, excluding outlier races in which a candidate won/lost by more than 20%. These results were then segmented at the legislative district level for each of the plans. This index does not include the legislative district races for various logistical and statistical reasons. The partisan performance measure is intended to show how the average statewide Democratic and Republican candidates have performed historically in each district. It is not intended to predict the outcome of each legislative race. The outcome of specific legislative races will be affected by many other factors such as the quality and resources of the candidates as well as the mood of the state and nation at the time of the election. Despite this, the partisan measure appears to be a very accurate indicator of the party's candidate that may win the general election. Currently there are only three incumbents who are of the opposite party of what the measure indicates. And in each case, the partisan percentage is very close to indicating a toss up race: 49.3%, 50.6%, and 51.8%.

does have the advantage of considering elections over the majority of the most recent decade, as opposed to focusing on a single election.

Applying this measure to the current districts, the political ratio for the “status quo” is 32 Republican majority districts and 38 Democrat majority districts. Because the Supreme Court Opinion mandates that the political ratios be maintained at the status quo, the Final District Court Plan incorporates the ratio of 32 Republican majority districts and 38 Democrat majority districts.¹²

In order to reach the political ratio under the status quo as required by the Supreme Court, this Court adjusted district boundaries for two districts so that those districts moved from slight Republican majority districts to slight Democrat majority districts. The two districts selected were District 32 and District 49. The Court selected these two districts because they are slight Democrat majority districts in the current plan. If one of the goals of the Supreme Court remand is to maintain the political ratios that exist under the “status quo,” it made sense to consider these districts so that they do not change their slight majority Democrat status in the current plan. In addition, it should be noted that both of these districts remain competitive districts.

In the Remand Order and Opinion, the Supreme Court also noted that Republican swing seats increased in the First Court-Adopted Plan as compared to earlier executive plans. The First Court-Adopted Plan included eleven Republican majority districts

¹² In responding to the preliminary plans, the James Plaintiffs contend that the political ratio in the Final District Court Plan is not 38-32 because District 24 is evenly split at 50 percent. There are three responses to this contention. First, the split is not exactly 50-50; the actual calculation for District 24 is 50.03% Republican. A 50-50 split appears in the map packet only because the table only identifies percentages to one-tenth of a percentage point. Second, District 24 is the district that results from the Republican-Democrat pairing in Albuquerque. The Supreme Court has directed that this district should provide an equal opportunity to either party. Remand Order at p. 20. Finally, the current plan includes one district, District 43, which appears as a 50-50 split in the map packet but in reality is 50.02% Republican. To the extent it is argued that the political ratio in the Final District Court Plan is 38 Democrat majority districts, 31 Republican districts and one evenly split district, that ratio would also match the current districts as well.

within the swing seat category (defined as 50% to 53.9%) and five Democrat majority seats within the swing seat category. Although it is not completely clear, it appears that the Supreme Court was concerned that the First Court-Adopted Plan contained significantly more Republican majority seats in the swing category, thereby giving Republicans a slight advantage in closely contested districts. To address this concern, the Final District Court Plan includes a total of fifteen districts in the swing category. Of these, eight are Republican majority districts and seven are Democrat majority districts. In the current districts, there are nine Republican majority districts and six Democrat majority districts. While the distribution of those seats across the spectrum from 50% to 53.9% can never be identical between the parties, the distribution resulting in the Final District Court Plan is relatively symmetrical. See the Political Performance chart attached to Preliminary Plan No. 1.

Finally, it is worth noting that the Final District Court Plan maintains very similar political performance percentages in the individual swing districts, as compared to the current districts.¹³ In the Opinion, the Supreme Court notes that “[c]ompetitive districts are healthy in our representative government because competitive districts allow for the

¹³ In this regard, District 7 and District 8 may require some explanation. These two districts are in the Los Lunas/Belen area and are the subject of much argument from the parties because they are highly competitive districts. These districts are closely interrelated and changes in one district almost always affect the other. Consideration of these districts was further complicated by the fact that both share a boundary with District 49, which is a district that has been returned to a Democrat majority district under the mandate from the Supreme Court. To accomplish this, some Democrat leaning precincts in Belen were moved to District 49 while some Republican leaning precincts in Los Lunas were moved to District 8. Finally, there are communities within District 7 and District 8 which are split. In an apparent effort to gain a slight advantage in these competitive districts, some parties submitted suggestions under the guise of attempting to unify certain communities. Ultimately, the Final District Court Plan balanced these competing issues as follows: Both District 7 and District 8 remain as competitive districts, but District 7, which under the current plan had a Republican majority performance percentage, now has a Democrat majority performance percentage. Conversely, District 8, which under the current plan had a Democrat majority performance percentage, now has a Republican majority performance percentage. While both Los Lunas and Belen remain split under the District Court Final Plan, Los Lunas is now split between only two districts (District 7 and District 8) rather than three districts as is the case under the current plan.

ability of voters to express changed political opinions and preferences.” Opinion at p. 31. In the Final District Court Plan, the competitive seats under the current plan remain competitive.

3. *As part of the review of partisan performance changes, the district court should consider the partisan effects of any consolidation.*

Any district that results from a Democrat-Republican consolidation, if that is what the district court elects to do, should result in a district that provides an equal opportunity to either party. In the alternative, some other compensatory action may be taken to mitigate any severe and unjustified partisan performance swing. The performance of created districts as well as those left behind should be justified.

Remand Order at p. 20.¹⁴

In the First Court-Adopted Plan, an incumbent pairing was created in central Albuquerque between Representative Al Park (Democrat) and Representative Jimmie Hall (Republican) in District 28. The Supreme Court concluded that this consolidation “resulted in a strongly partisan district favoring one party, in effect tilting the balance for that party without any valid justification.” Remand Order at p. 16. The Supreme Court also observed that District 28 in the First Court-Adopted Plan was an “oddly shaped” district. *Id.*

In the Final District Court Plan, this Court again adopts a Democrat-Republican consolidation in Central Albuquerque because such a consolidation is consistent with the overall population trends of the state. Because the Supreme Court has directed that any such pairing must provide an equal opportunity to either party, the Final District Court

¹⁴ The final sentence in this provision of the Remand Order states: “[t]he performance of created districts as well as those left behind should be justified.” This Court interprets this sentence to apply if this Court elected to include some consolidation other than those contained in the First Court-Adopted Plan. To the extent this Court needs to provide justification for the created districts in the Final District Court Plan, this Court would adopt the following statement of the Supreme Court: “The three new seats, two Republican and one Democrat, correctly reflected the political affiliation of the population in those high-growth areas on the west side of Albuquerque and in Rio Rancho, a result we do not question.” Remand Order at p. 15.

Plan adopts an incumbent pairing between Representative Al Park (Democrat) and Representative Conrad James (Republican) in District 24. Due to the political makeup of the individual precincts, it would be difficult (if not impossible) to create a district which pairs Representative Park and Representative Hall and results in near equality in the political performance percentages. As a result, the Court identified District 24 as a district which could pair Representative Park with a Republican legislator and still produce near equality in the political performance percentages. While the resulting District 24 is not as compact as the Court would prefer, the district does maintain some approximation of the shape of the prior District 24.

4. *Hispanic “Majority” District in House District 67*

It does not appear that the district court considered Hispanic citizen voting age populations in reaching its decision, and it should do so on remand. Whatever its eventual form, the relevant Clovis community must be represented by an effective, citizen, majority-minority district as that term is commonly understood in Voting Rights Act litigation, and it has been represented, as least in effect, for the past three decades.

Remand Order at p. 20-21.¹⁵

¹⁵ The first sentence of this remand provision sets forth a very serious allegation regarding this Court’s prior decision. The Remand Order contends that this Court did not consider Hispanic citizen voting age populations in reaching the decision. The consideration of minority voting issues is one of the central responsibilities of a Court in redistricting cases, both from a legal and a moral perspective. Given the Findings of Fact and Conclusions of Law, it is very difficult for this Court to understand how the Supreme Court could conclude that this Court did not consider Hispanic citizen voting age populations in reaching its decision. As it relates to the minority community in Clovis, this Court made specific findings regarding that community. Findings of Fact Nos. 64, 65 and 66. Most importantly, this Court made the specific finding that “Executive Alternate Plan 1 provides for a Hispanic majority VAP district in and around Clovis.” Finding of Fact No. 66. This is the same district that is included in the First Court-Adopted Plan. The fact that the very district that contains the most significant Hispanic community in Clovis is a majority Hispanic voting age district should be a clear indication that this Court did consider Hispanic voting age populations in reaching a decision.

Moreover, a review of the entire First Court-Adopted Plan shows that this Court paid close attention to Hispanic voting age populations. This Court entered five Findings of Fact and Conclusions of Law specifically addressing Hispanic voting age population. Findings of Fact Nos. 64, 65, 66, and 71 and Conclusions of Law No. 26. Under the current plan, there are twenty-seven majority Hispanic voting age population districts. In the First Court-Adopted Plan, the number of majority Hispanic voting age population districts is increased to thirty. Of all the plans submitted to this Court by the Legislative Defendants, the James Plaintiffs, the Sena Plaintiffs, the Egolf Plaintiffs, the Maestas Plaintiffs, and the

During the trial, this Court heard evidence regarding the minority population in Clovis and the history of District 63. Under the current plan, the bulk of the Hispanic population in and around Clovis was included District 63, a geographically large district which stretched from Clovis east through Fort Sumner and Santa Rosa, extending to the western boundary of Guadalupe County. The incumbent in District 63 resides in Santa Rosa, approximately 100 miles from Clovis. Under the current plan, the Hispanic voting age population in District 63 is 54.6%.¹⁶

In the First Court-Approved Plan, the Court adopted a plan which changed District 63 and District 67. The First Court-Approved Plan reconfigured District 67 as a compact, majority Hispanic voting age population district which included the principle minority populations in Clovis and Portales. Previously, District 67 had not been a majority Hispanic voting age population district; therefore, the First Court-Approved Plan added one additional majority Hispanic voting age population district to this area of the state. Under the First Court-Approved Plan, District 63 changed to a geographically large, but still compact, district which extended from Fort Sumner and Santa Rosa to the northeast corner of New Mexico. The Hispanic voting age population of District 63 remained relatively constant at 54.0%.

In adopting the First Court-Approved Plan, this Court noted the substantial

Executive Defendants, this Court selected a plan that had the highest number of majority Hispanic voting age population districts. This Court made an express finding to this effect. Finding of Fact No. 71.

The omission of these facts from the majority Opinion is important because the Opinion will become a permanent part of New Mexico law through its publication in the New Mexico Reports. Future readers of the majority Opinion, both in New Mexico and outside the state, will be left with the mistaken impression that this Judge failed to consider Hispanic voting age population in rendering a decision in this case, when in fact both the plan that was adopted and the Findings of Fact and Conclusions of Law demonstrate thorough consideration of minority populations.

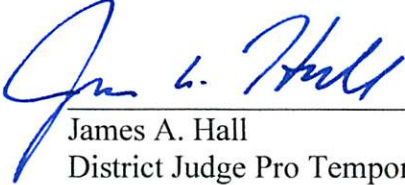
¹⁶ At the time of the litigation in *Sanchez v. King*, No. 82-00670M (D.N.M. 1984), the Hispanic population in District 63 was well below 50%.

increase in the number of majority Hispanic voting age population districts contained in the plan overall (Finding of Fact No. 71), but concluded, based on the totality of the circumstances, there was not “persuasive evidence that Sec. 2 of the Voting Rights Act requires any particular Hispanic majority district be drawn.” Conclusion of Law No. 26. This Court was of the view that the burden of proof on the need for a particular minority-majority district rested with the party proposing such a district.

The Supreme Court Opinion shifts the burden of proof on this issue as it relates to a majority-minority district in Clovis: “Any redistricting plan ultimately adopted by the district court should maintain an effective majority-minority district in and around the Clovis area unless specific findings are made based on the record before the district court that Section 2 Voting Rights Act considerations are no longer warranted.” Opinion at p. 14. This shift in the burden of proof changes the outcome. This Court cannot find on the present record that any party affirmatively proved that Section 2 Voting Rights Act considerations are no longer warranted; therefore, this Court interprets the remand from the Supreme Court to require that District 63 remain as close as possible to its present configuration and that, at a minimum, the percentage of the Hispanic voting age population not be decreased. These requirements are met in the Final District Court Plan. In the Final District Court Plan, 89.7% of the population in current District 63 is also contained within the boundaries of District 63. The Hispanic voting age population for District 63 in the Final District Court Plan is 57.0%, an increase of 2.4% over the current District 63. These changes do result in a decrease in the Hispanic voting age population in District 67 down to 39.7%, thereby reducing by one the total number of majority Hispanic voting age population districts in New Mexico.

For the reasons set forth above, this Court concludes that the District Court Final Plan complies with the Remand Order of the Supreme Court. Counsel for the Secretary of State is directed to immediately prepare an Amended Judgment and Final Order consistent with this Decision, obtain approval as to all counsel as to form, and submit it to the Court for immediate entry.¹⁷

Dated: 2/27/12


James A. Hall
District Judge Pro Tempore

Copies to counsel of record via e-filing system.

¹⁷ This Court would like to thank Brian Sanderoff, Michael Sharp and all the staff at Research and Polling, Inc. for their assistance as the Rule 11-706 expert. Their work was invaluable to this Court in addressing the issues raised in the remand from the Supreme Court.