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

BRIEAN F. EGOLF, JR., HAKIM BELLAMY, MEL HOLGUIN, MAURILIO CASTRO, and ROXANE SPRUCE BLY,

Plaintiffs,

vs. **No. D-101-CV-2011-0-02942**

DIANNA J. DURAN, in her official Capacity as New Mexico Secretary of State, SUSANA MARTINEZ, in her official Capacity As New Mexico 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.

MAESTAS PLAINTIFFS' CONGRESSIONAL POST-TRIAL BRIEF

Standard for the Trial Court's Decision.

This case arises not out of a claim that the New Mexico legislature's actions in redistricting New Mexico's congressional districts did not meet the U.S. Constitution's Article 1, Section 2 one person, one vote requirements. Instead, this case arises from the fact that no bill on congressional redistricting passed through both chambers of the legislature and the status quo apportionment from 2001 is the challenged plan.

The redistricting maps that the parties have submitted are the product not of the legislature process with the built-in compromises inherent in that process, but instead plans submitted by the litigants themselves free from the constraints of the process.

Because the redistricting plans before the Court are not a product of the legislative process they are not due the deference that they would deserve were they the product of that process. As the federal court in O'*Sullivan* politely noted, they are due only "thoughtful consideration." The court explained

> Although a federal court should defer to any enacted constitutionally acceptable state redistricting plan, [cites omitted] we are not required to defer to any plan that has not survived the full legislative process to become law. [cites omitted]…We are bound to give only 'thoughtful consideration' to plans passed by the legislature but vetoes by the governor or plans urged by the governor. O'*Sullivan v Bier*, 540 F. Supp. 1200 Kansas (1982).

Further, not only are none of the plans entitled to any deference by the Court, but none of the plans are entitled to any of the presumption and related rules for proving a violation of one person, one vote that ordinarily attend questioned legislative efforts at achieving population equality. Thus, the presumption that a deviation of ± 5 is constitutional or that a proponent of a plan must prove that legitimate state interest is served by the deviation from zero in her plan all are inapplicable where the redistricting plans at issue are the work products of the litigants. This is particularly true where in congressional districting where the bottom-line issue is precise mathematical equality. There are no presumptions and no preferences here – a plan either achieves precise mathematical equality or it does not.

THE SCOPE OF THE COURT'S SUBSTATIVE REVIEW

The Threshold Issue: One Person, One Vote – The Sole Criterion for the Court's Decision.

This case is about a single issue: the equality of the vote in New Mexico's existing Congressional districts. One person, one vote is the sole issue remaining in this case raised by each of the parties in their complaints. One person, one vote has now evolved to the to the requirement of

> the precise mathematical equality between the districts is "the preeminent, if not sole, criterion on which to adjudge [the] constitutionality of Congressional districting plans." *See Hastert v. State Bd. of Election*, 777 F. Supp. 634 (1991); *Chapman v Meier*, 420 U.S. 1 (1975); *Karcher v. Daggett,* 462 U.S. 725; and *Mahan v. Howell,* 410 U.S. 315 (1973)(equality of population alone is sole criterion).

If one plan achieves precise mathematical equality, the population inequality that has brought the court into the redistricting process has been redressed and the Court's role is at an end. How that mathematically precise voter equality is achieved is of no relevance to the Court, as long as it does not amount to a political gerrymander under the Equal Protection Clause or embody Voting Act violations.

How competing plans are configured becomes relevant and a matter for the Court's consideration only when the plans that the Court must decide between all fail to achieve precise mathematical equality. It is only when none of the competing plans are winners that the Court must go further and utilize additional criteria in deciding between plans.

> Courts frequently face situations in which several redistricting plans achieve virtually identical levels of population equality. In these cases, courts have considered such factors as (1) whether a proposed plan preserves county and municipal boundaries, *see Carstens,* 82, 88 (unnecessary fragmentation undermines ability of constituencies to organize effectively and increases likelihood of voter confusion regarding other elections based on political subdivision geographics) [citations omitted]; (2) whether a plan dilutes the vote of any racial minority [citations omitted]; (3) whether a plan creates districts that are compact and contiguous…(prevents partisan gerrymandering, reduces electoral costs,

> and increases effective representation) [citations omitted]; (4) whether a plan preserves existing congressional districts [citations omitted]; and (5) whether a plan groups together communities sharing common economic, social or cultural interests [citations omitted]. *O'Sullivan.*

It is important to note that none of these factors considered by the Court where redistricting plans do not achieve precise mathematical equality have any independent constitutional significance of their own. Instead, they are simply legal excuses for a state not achieving precise mathematical equality. They are not excuse for litigants' plans submitted independent of the legislative process. They may explain mapping decisions, but they do excuse deviations from the precise mathematical equality.

One Person, One Vote in Congressional Redistricting in 2010 Requires Precise Mathematical Equality.[1]

When the one person, one vote cases were decided by the Supreme Court in the early1960s, the standard for achieving that equality was articulated as requiring districts to be drawn "as nearly as practicable to achieve one person, one vote equality," a standard that accommodated the reality that perfect statistical equality was not always then possible. *See Hastert* at 642. Whether or not perfect equality was possible at the time, the Supreme Court refused to establish a statistical threshold dividing constitutionally acceptable from constitutionally unacceptable population deviations knowing that maintaining the "as nearly as practicable" standard was necessary to avoid relieving legislators of the constitutional need to "strive for perfect population equality." *Kirkpatrick v. Chrysler*, 394 U.S. 526 (1968) at 530-531. *See Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Simms*, 377 U.S. 533 (1964); *Wesberry v Sanders*, 376 U.S. 1

[1] The Maestas Plaintiffs incorporate by reference their Motion for Partial Summary Judgment and Reply to the Motion *in Limine*.

(1964). *Kirkpatrick* emphasized that "as nearly as practicable" "requires…good-faith effort to achieve precise mathematical equality."

As time passed and map-drawing technology became more sophisticated, the Court accordingly became more demanding about deviating from "precise mathematical equality." In 1983 the Supreme Court in *Karcher v. Daggett*, 462 U.S. 725 (1983) rejected a state plan with a deviation of .4514%, where the crux of the state's argument was that the population deviation was smaller than the underlying census margin of error. In doing so, the Court

> reaffirmed its commitment to precise mathematical equality as the preeminent, if not sole criterion, on which to adjudge the constitutionality of congressional districting plans.[2]

Eight years later in 1991, a three-judge panel in *Hastert v. Bd. of Elections, supra,* was asked to decide between two plans presented to the Court after the Illinois legislature had failed to redistrict. The Hastert plan deviated .000017% from the ideal, and the Rosebrook .00297% from the ideal. The .000017% deviation in the Hastert plan, when translated into absolute numbers, meant that of the twenty proposed congressional districts, eighteen contained the ideal population of 571,530 and the remaining two had populations of 571,531, for a total population deviation of 2. The Rosebrook plan, with a statistical deviation of .00297% "nearly match[ed] the Hastert figures, but not quite." *Hastert* at 644. The Rosebrook plan contained districts with 9 persons above the ideal on the high side, and 8 persons below the ideal on the low side. Each of the Rosebrook districts deviated slightly from the ideal.

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[2] *See Hastert v State Bd. of Elections*, 777 F.Supp. 634 (1991) which noted *Karcher* as the case that "broke through the final barrier to requiring absolute mathematical equality of population."

The Court, in deciding for the Hastert plan with an absolute population deviation of only 2 persons, stated

> We have recounted the history of this standard [the need to draw congressional districts as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's], however, to highlight the inescapable conclusion that 'absolute population equality' remains 'paramount' as the measure against which we must evaluate the congressional redistricting plans now before us. [Citations omitted] Our obligation is to choose the plan that best satisfies this constitutional criterion. While we view the statistical deviations in the Rosebrook plan as *de minimis* in statistical terms, the deviations remained legally significant as long as *Kirkpatrick* and *Karcher* remain the law of the land. *Hastert* at 644.

The *Hastert* court was careful to note that it was judging the plans free of the preferences attendant with the legislative process which otherwise would have resulted in both plans passing constitutional muster. But because they were not the product of the legislative process, each plan had to meet the technical constitutional criteria for evaluating redistricting plans.

> The Hastert and Rosebrook plaintiffs have each submitted plans that would have passed constitutional and legal muster had either plan been the product of the state legislative process. In the absence of state legislative action, however, we were constrained to establish the plan that best meets technical constitutional and legal criteria set out by the Supreme Court for evaluating congressional districting plans. We conclude that the Hastert third amended redistricting plan best satisfies the criteria. *Hastert* at 662. [3]

[3] The Court in *Hastert* in 1991 went on to focus on other "constitutional criteria" that may reveal a more significant distinction between the *Hastert* and the Rosebrook plans. Those criteria were political gerrymandering under the equal protection clause and voting rights issues.

Since *Hastert*, the Supreme Court in *Vieth* has made it clear that political gerrymandering is probably not a justiciable issue in redistricting cases. *See* Justice Breyer in *Cox v. Larios*, 542 U.S. 947 at 5 (2004), decided subsequent to *Vieth*,

> "After our recent decision in *Vieth v. Jubelirer*, the equal population principle remains the only clear limitation on improper redistricting practices, and we must be careful not to dilute its strength."

The point here is that in New Mexico now and elsewhere, absolute mathematical equality is the constitutional law of the land in plans submitted by any entity other than the legislature. The software that allowed the Illinois congressional districts to be redistricted without a single digit of absolute voter equality in 1991 is no less sophisticated today. Precise mathematical equality is absolutely practicable, and hence is the constitutional mark that must be met.

The Maestas Plan Alone Met Mathematical Equality Between the Three Districts.

Thus, the threshold criterion on which this Court is to adjudge the plans submitted to it to remedy the voter inequality alleged in their complaints is "the precise mathematical equality" between the three congressional districts. If any of the plans achieve precise mathematical equality, it becomes the sole criterion for the Court's decision on congressional redistricting. The Maestas plan achieves absolute equality in each of its districts. The Egolf/Executive plan has a total population deviation of 54. The Lulac plan 110.

The Maestas plan achieved absolute equality, not just because it was within the technical capacity of the software to achieve it, but because Rep. Antonio Maestas, the plaintiff here and the Maestas plan's author, had made absolute voter equality "a moral imperative," an imperative that had to trump all other collateral obstacles, such as preexisting congressional lines, precinct lines, or the like.

Splitting Precincts

The Maestas plan achieved mathematical equality by splitting four precincts, a path taken by parties seeking equality in other cases as a means of achieving

mathematical equality. *See Larios v. Cox*, 300 F. Supp. 2d 1320 (2004)(upholding congressional districting in Georgia legislature in which some precincts were split and other were not) and *Graham v. Thornbergh,* 207 F. Supp. 2d 1280 (2002)(where the Court upheld Kansas' legislatively enacted congressional districting where the districting plan had a total population deviation of 40 and did so by splitting voting districts [precincts] in violation of the rules the legislature had established for congressional redistricting, *Graham* at p. 1286, 1289.

> Nothing in the Record indicates that perfect equality is possible without splitting some counties and/or voting districts. *Graham* at 1293.

No case exists where a congressional district achieving precise mathematical equality has been invalidated for choosing constitutional equality over the sanctity of existing precinct lines. Doing so would place the local drawing of parochial precinct lines above the Constitutional Article I Section 2 requirements to achieve precise mathematical equality in congressional districts.

The Egolf/Executive plan, for whatever reason, has an absolute deviation of 54 persons. The Egolf plan was just one of a number of available plans generated by the Legislative Council Service during the special legislative session on redistricting. The considerations that went into drafting that plan are not known, and were certainly not made known, at trial. Rep. Egolf did not testify, only the experts hired after the Egolf/Executive plan had been drawn. Rep. Egolf's experts Dr. Williams and Dr. Arrington gave no explanation as to where the deviations came from or how they are justified. They only acknowledged that there was a deviation of 54 in the Egolf/Executive plan and testified that it was "statistically inconsequential and insignificant." Williams, p. 99.

Whatever the source of the deviation in the Egolf/Executive plan, it was not a matter of great importance to either of Rep. Egolf's experts. Dr. Williams, the Egolf demographer, testified that he was "not a fan" of 000 districting (transcript p. 172), and Dr. Arrington, the Egolf political scientist, testified that the whole idea zero population equality was something that he does not agree with and that did not find favor with political scientists as a whole.

> **And indeed, in doing my analysis of all of the literature on redistricting and political science, political scientists, one after another, have criticized the notion that you need to have zero deviation for two reasons. First, because the difference between a low deviation, like 27 people out of 600-some-odd thousand, and zero is irrelevant. It doesn't mean anything. But secondly, when you have to go to zero deviation, you harm other traditional districting principles. And this illustrates what I think is important in terms of when I draw districts.** 12/6/11 Testimony of Theodore Arrington, Ph.D., p. 38.

There was no evidence in the record as to which traditional redistricting principles were violated, just a simple paid opinion with no foundation. Thus, philosophically, both were opposed to constructing districts with 000 population. Whatever their philosophic leanings, the Egolf plan did <u>not</u> achieve precise mathematical equality. That threshold fact decides this case, particularly when the Lulac plan contained a deviation of 112 from precise mathematical equality and no one addressed that deviation or gave any reason for it on behalf of the Lulac parties.

The Scheduling Order Directing that All Plans be Constructed in Accordance with Existing Precinct Lines.

The Court, apparently duplicating the legislative guidelines for constructing districts to be considered during the special legislative redistricting session, requiring that all plans submitted to it in the redistricting suit be constructed using existing

precinct lines in apparent effort at obtaining uniformity of the plans formatting to be decided upon by the Court. Rep. Maestas' attorney objected to that requirement at the scheduling hearing. The Court made no comment upon the objection and thus the issue remained up in the air. *See* Pl. Maestas' Response brief to Motion *in Limine*; *Pacheco v. Cohen*, 146 NM 643.

Whatever the legislature's special redistricting guidelines or the Court's scheduling order constructing a constitutional district under which New Mexico citizens were to vote obviously could not be constrained by artificial boundaries of no real significance when achieving precise mathematical equality was the constitutional mandate and the entire purpose of the entire redistricting effort. And the existing case law at the time of the Court's scheduling order (*Larios v. Cox, supra* and *Graham v Thornburgh, supra*) recognized plans as constitutionally valid efforts at achieving voter parity by pursuing that fundamental goal ignoring any precinct lines incidentally disturbed in the process.

In fact, the Executive parties did submit alternative congressional redistricting plans, though neither dealt with the precinct-splitting issue. If it was the desire of the Egolf/Executive parties to split precincts, they could have submitted an alternate plan to do so. If, upon seeing the Maestas congressional districting plan achieving precise mathematical equality on November 8, the Egolf parties or the Executive parties could have submitted a plan of their own ignoring precinct lines to achieve mathematical equality. But as demonstrated by the testimony of their two expert witnesses, Drs. Williams and Arrington were not philosophically adverse to precise mathematical

equality in drawing redistricting maps. (*See* Arrington testimony p. 38 and Williams testimony p. 172).

Achieving Mathematical Voter Equality and the Required Decision of the Court.

By reaching mathematical voter equality, the relief requested by each of the plaintiffs in bringing their redistricting lawsuits had been met. The Maestas plan drew three Congressional districts that provided for one person, one vote. The "sole criterion" and this issue on which districting maps are to be adjudged has been met. There is no reason to go further and determine how the Maestas plan was districted to achieve that population equality, as opposed to how the Egolf/ Executive plan was districted. Whatever the configuration of the districts in the Maestas plan required to achieve precise mathematical equality must be accepted by the Court when it acknowledges the precise mathematical equality of the Maestas plan.

The only further constitutional questions that require consideration of the Court are issues of political gerrymandering under the Equal Protection Act if the Court considered that to be a justiciable issue, *Vieth v. Jubelirer*, 54 U.S. 267 at 306, or Voting Act issues. Compare *Hastert* at p. 646-662. No issues have been raised on either of these grounds.

Again, any factual comparison between the three plans on collateral issues such as district composition, etc., is permissible only if the three plans are essentially constitutionally equivalent. *O'Sullivan v. Brier*, *supra* at 1203. They are not. Maestas was precisely mathematically equal. The Egolf/Executive and Lulac plans were not. The Court's intervention in redistricting is to ensure one person, one vote. Once

provision has been made to assure that end, the Court has to be absolutely neutral on any remaining facets of the plan.

The Maestas plan achieved mathematical equality, the Court had to remain neutral and can take no position on any other facets of that plan. This requirement that the Court remain neutral and refrain from any other action beyond its sole obligation to determine one person, one vote, is in keeping with its separation of powers obligation to stay clear of political considerations more properly reserved for the legislative arena.

> We believe that there is no place where particular nonconstitutional communities of interest should be considered in the redistricting process. That place is the halls and committee chambers of the state legislature. The court is not the proper arena for lobbying efforts regarding the districting efforts of local, nonconstitutional communities of interest. *Hastert* at 662.

Any initial uncertainty experienced by the Court as to how to proceed in the situation in which multiple parties claim one person, one vote violation, and one party in fact submits a plan to the Court that achieves mathematical voter equality, is understandable because the factual situation before it has not be reported, perhaps because there is no basis for an appeal once precise mathematical certainty has been achieved.

Even *Hastert* which emphasizes the Court's need to use precise mathematical equality as the ultimate determining factor is a case in which neither side achieved absolute mathematical equality. One was off by 2, and one was off by 32. The fact that neither achieved absolute mathematical equality required the Court to go further and to pick between the two. The fact that one of the two plans, the *Hastert* plan, had an absolute deviation of only 2 made it the odds-on favorite to be selected by the Court, but

it was still not absolute mathematical equality and thus the Court could consider other constitutional matters in consideration in ultimately deciding between the two.

However, the fact that the Maestas plan achieves precise mathematical equality puts an end to any need for further comparison between the plans.

Metaphorically, there was but one runner in this race who crossed the finish line with the tape across his chest, so there is no reason to look further in order to determine a winner.

THE COMPETING PLANS

If the Court proceeds to evaluate the completing plans despite the fact that only the Maestas plan achieves "precise mathematical equality," the Maestas clearly should be the Court's choice. However, in making this choice, the Court will be forced to make political decisions for which there are no established judicial standards, a situation that the Court can avoid and is advised to avoid by focusing on constitutional issues for which judicial standards do exist for deciding these issues. (Please refer to Maestas Pretrial Brief at pages 1 – 3 for the Supreme Court's clear delineation of the timeline the courts must walk in redistricting issues and the limited areas in which it can make judicial decision).

The Maestas Plan and the Egolf/Executive Plan Similarities.

In many ways the Maestas and Egolf/Executive plans were similar on their face that each had basically the same demographic composition; each created three minority majority districts; and each was composed of a large northern, a large southern, and a central metropolitan district. However, the objectives behind their creation was clearly different.

Plan Origins.

The Egolf/Executive plan of unknown origin had been developed as one of many possible plans by Research and Polling for the Legislative Council Service. Whatever the objectives were behind the constitutional plan are unknown. Why it was selected by the Egolf Plaintiffs, or by the Executive branch for submission to the Court, was never explained except by its experts Dr. Williams and Dr. Arrington. Neither Rep. Egolf nor any of the parties ever appeared and testified, apparently being only nominal plaintiffs. The "experts," who did not draft it, said it was selected as the "least change alternative."

The Maestas plan, in contrast, was originated by Representative Antonio Maestas of the Albuquerque west side, and grew out of a House Bill 45 plan that Rep. Maestas presented in the waning days of the 2011 legislative redistricting session.

Maestas Plan Objectives.

Rep. Maestas' plan contained a central metropolitan district (CD1) composed of Valencia and Bernalillo counties, both of whose major population areas had previously been in CD1 and where New Mexico's population growth had been the greatest over the preceding thirty-year period. Rep. Maestas had clear objectives with his plan. First and foremost was the requirement absolute population equality; one person, one vote within the district.

Rep. Maestas' aim was clearly "change" – to change the state congressional redistricting map to do what redistricting was fundamentally supposed to do; i.e., make necessary changes in the areas reflecting the greatest population increases. As both Rep. Maestas and former Chief Executive of the Middle Rio Grande Council of Government Lawrence Rael testified, the most significant population growth in all of

New Mexico in each of the last three decennial censuses has been in Valencia and Bernalillo counties. That population change was accommodated in the 1990 districting by adding the east half of Valencia County where that growth had occurred to the core metropolitan district CD1. The fact that Velancia County grew by essentially the same amount between 1990 and 2000 was not reflected in Judge Allen's 2002 plan because Judge Allen adopted a "least change" policy in 2002. When the Valencia population again grew by essentially the same amount in 2010, change in Valencia County and Bernalillo County where the growth occurred was now overdue by twenty years.[4]

Another Rep. Maestas goal was observing natural political and geographic boundaries. To that end, the Maestas plan

1) reunited Rio Rancho and the northwest communities on the west side of the river into a single district, CD3;
2) reunited Corrales into a single congressional district, CD3;
3) placed the entirety of Valencia County (as opposed to just half) along with essentially the entirety of Bernalillo County into CD1, making CD1 a two-county district containing the Middle Rio Grande metropolitan core;

[4] Judge Allen's least change policy as the court can take judicial notice of in the Jenson plan arose out of the fact that he was compelled to choose between one plan that in least in some minimal form resembled the 1990 plan, and a "pinwheel plan" which split Albuquerque into three different districts. Because the 2010 census showed the same growth that had been demonstrated in 2000 and 1990, it as time to reflect that growth in the area that it was located, which was Valencia County, and continue the amalgamation with the growth of Bernalillo County, and letting Torrance County, which had experienced no growth between 2000 and 2010, drop out of congressional district 1, just as the legislature had let DeBaca and Guadalupe counties drop out in 1990 when Valencia had experienced significant growth and those two counties had not.

4) then placed all of Torrance County, but for Moriarty and Edgewood which are joined by transportation and commerce with Santa Fe and Albuquerque, in CD3 along with other essentially rural counties in CD3; and

5) rejoined Curry County and Portales in CD2, the state's traditional southern district, with the counties it was more closely aligned in terms of economics and culture.

Rep. Maestas, who lived in the central district and in the west side where the boundaries are at issue, pointed out that the divisions between CD3 in the Rio Rancho area and CD2 were not just lines on a map in the Egolf plan, but actually followed the natural volcanic escarpment between the two areas, an escarpment that physically separates Rio Rancho from Albuquerque and cannot be traversed with traffic. In the same vein, he pointed out that the Egolf districting map which showed Torrance County and Valencia County blending together to the eye but in fact are physically separated by the Sandia and Manzano mountain ranges, one of which (the Sandias) runs 17 miles and the other (the Manzanos) picks up at the end of the Sandias and runs another 43 miles to the south. These mountains physically separate Torrance County from the Middle Rio Grande corridor.

Thus, the Middle Rio Grande urban core that has traditionally been the nucleus of CD1 since 1980 would remain under the Maestas plan by ensuring that Valencia County remained joined with Bernalillo County in that urban core and allowing Torrance to drop off into CD2 as had DeBaca and Guadalupe in 1990 when Valencia County began to grow.

Lawrence Rael, who served as the Assistant Director for the Department of Transportation, Chief Administrative Officer to four mayors in Bernalillo County, and the head of the Middle Rio Grande Council of Governments which comprises the four counties at issue in this case: Sandoval, Bernalillo, Valencia and Torrance provided actual facts demonstrating the combination of Valencia and Bernalillo counties that constitute a single metropolitan area. Mr. Rael, who was not a professional witness like Dr. Arrington and Dr. Williams, sought to provide the Court with objective facts to establish economic communities of interest in New Mexico which might serve as an objective way of dividing the state. Mr. Rael never looked at any of the redistricting maps prepared by any of the parties in this case and has declined to do so in order to be an independent witness.

Mr. Rael testified that the established communities of economic interest in New Mexico were based on objective facts such as transportation, commerce, health care, and education. Further, these economic communities of interest have already been established by the Federal Census Bureau and are denominated as metropolitan statistical areas constituting areas with cities over 50,000 with major transportation corridors. Mr. Rael's point was that Valencia and Albuquerque have been growing together for the past 30 years by factual data such as population, daily traffic counts, employment statistics and the like. Albuquerque is the employment center for Valencia County. Valencia County is essentially Albuquerque's bedroom community.

Mr. Rael pointed out that twenty thousand cars per day go back and forth over Valencia and Albuquerque. Only 3500 cars travel back and forth between Torrance and Albuquerque. Further, the growth in the last 20 years has been in Valencia County, and

has been north from Belen to Los Lunas with the northern end of Valencia County becoming the most populous. Growth in Torrance County has been stagnant.

These two counties which have been growing faster than any other two areas in the state and which have been growing together as well will continue to come together in the future because of established economic infrastructure such as the I-25 and 447 corridors. Valencia and Bernalillo Counties on both sides of the Rio Grande are an economic unit as a consequence of the bridges that crossed them, and the traffic that crosses them are the political ties that join them, such as the Middle Rio Grande Conservancy District, etc.

Thus, even though this is not a case where there is no basis for the Court choosing between the competing plans given the Maestas plan's zero deviation, the testimony on behalf of the Maestas map was based on actual facts by two persons intimately familiar with the ins and outs of the Middel Rio Grande metropolitan area compel the selection of the Maestas plan.

The Egolf Plan – Least Change.

The object of the Egolf/Executive plan was advanced by testimony of two experts who had not drawn the map, who had not asked the map to be drawn, and who had been brought in only to testify in favor of the map. Their testimony was basically to the effect that the Egolf/Executive plan was somehow superior because it represented the "least change" map. It kept Torrance County with Bernalillo County, rather than Valencia. By so doing, less people were "moved."

In fact, no one was moved. As in every redistricting case, lines are drawn on a map to reflect population changes, but no one moves. It is because of the fact that

people have been born or moved in before the census that the lines have to be changed to reflect those moves. The shift in the Maestas district lines means only 180,000 will be in different voting districts. The 180,000 shift covers all of the necessary changes in the Maestas plan, including

1. Reuniting the western half of Valencia County and the population increase in Valencia since 2000 to CD 1 with the eastern half of Valencia County which has been in CD1 since 1990;
2. Reuniting Rio Rancho and allied communities in CD3;
3. Placing Clovis and Portales in CD2 with the remainder of the southside counties, as opposed to in the north in CD3 where by culture and other characteristics they have no identity; and
4. Leaving Torrance County as essentially a single county unfragmented, with the exception of Moriarty which is included in CD1 in that it is closely tied by transportation and is tied with Albuquerque, and Edgewood with Santa Fe in CD3 based on the transportation lines established by Mr. Rael's testimony.

The Egolf Plan as Furthering the Creation of a Hispanic Majority District.

The Egolf/Executive experts, Dr. Williams and Dr. Arrington, opposed the Maestas plan because both testified that it is critical that the total of Valencia County not become a part of CD1 in 2010, because placing Valencia in CD1 would interfere with the creation of a Hispanic majority district in 2020, centered in Las Cruces, which Dr. Williams has been attempting to do for 30 years, but which the numbers would not support.

In short, a major objection to the Maestas plan and the inclusion of all of Valencia County into CD1 is that it interferes with a future plan to redistrict in 2020. That argument, of course, is dependent upon the court adopting a "least change" philosophy each time it redistricts, rather than embracing the change required by the U.S. census figures are making the changes in the areas where the population changes occur. The argument also violates the fundamental principle that redistricting each ten years is to accommodate the population changes that have been made during that brief snapshot of time, and second, ignores the proper redistricting dynamic, which is to make changes in the areas that demand them.

The 2010 decennial census clearly indicates that Valencia and Bernalillo should be in the same district based on their population growth now and the lack of growth further south in the Middle Rio Grande corridor. If positive population changes occur in CD2 south of Belen demonstrating a community of interest up and down the Rio Grande valley, then in 2020 that change can be made.

Thus, the factual choice for the Court is what has transpired with the population of the Middle Rio Grande Valley from 1990 to 2000 when Judge Allen accepted the least change plan and between 2000 and 2010 when New Mexico's population grew in the metropolitan core at the same rate and in the same place as in 1990 to 2000. Is it finally time to accommodate that population change in the very area where it occurred? Does the Court accept the reality of demonstrated by existing transportation and commerce patterns, or the picture drawn by the paid demographers for whom redistricting has become a cottage industry?

CONCLUSION

Since *Baker v. Carr* in the early 60s, Congressional and State Legislative redistricting has become decennial events through which the various participants in the political process, ethnical leagues, political parties, and defined interest groups have sought to either preserve or increase their traction in the political process. As legal proceedings they have been the subjects of broad and far flung efforts to obtain and ensure a voice of possible and better yet dominance. The expense to the state of the inevitable Court cases are that the unconstitutional nature of the existing districting is enormous. It has become a decennial celebration of attorneys and demographers.

However, as the years have passed, the Supreme Court has winnowed down the basis upon which relief can in fact be granted, i.e. eliminating political gerrymandering, the existence of partisan politics, and the requirement of proportionate representation as either justifiable issue or winnable issue. See *Veith* 541 U.S. at 285-286.

And it is now clear that the sole criterion at least in Congressional redistricting for determining "one person, one-vote" is precise mathematical equality of voters between the districts. That fact allows both Court and the parties to cut to the chase. How districts are fashioned and shaped is fundamentally irrelevant. Precise mathematical equality becomes the threshold criterion and if satisfied, the sole criterion for determining which of any numbers of proposed plans is acceptable.

This requirement of precise mathematical equality provides a clear and unmistakable standard for determining the winner in the contest between competing plans. The state need not pay the scores of lawyers that proposed the numerous plans to the Court and argue the issues collateral to the fundamental issue of precise mathematical equality. The Court has set a single standard and the parties either

achieve it or they don't. Here the Maestas' Plaintiffs have achieved it. Having achieved it, the case has ended. There is and was no other basis for choosing between the plans as the threshold matter.

The Court should order the Maestas plan to take effect immediately as the basis for the New Mexico 2012 Congressional elections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2011, **I** filed the foregoing pleading 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.

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