IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

TIMOTHY Z. JENNINGS, *et al.*,

Petitioners,

vs.

Sup. Ct. No. 33,387
Ct. App. No. 31,854

THE NEW MEXICO COURT OF APPEALS,

Respondent,

and,

DIANNA J. DURAN, *et al.*,

Real Parties in Interest.

OMNIBUS RESPONSE BRIEF OF REAL PARTIES IN INTEREST GOVERNOR SUSANA MARTINEZ AND LIEUTENANT GOVERNOR JOHN A. SANCHEZ

On Writ Proceeding from the First Judicial District Court, County of Santa Fe
Honorable James A. Hall, No. 0101-CV-2011-02942, Consolidated

Charles R. Peifer
Robert E. Hanson
Matthew R. Hoyt
Peifer, Hanson & Mullins, P.A.
Post Office Box 25245
Albuquerque, New Mexico 87125
Telephone: (505) 247-4800
Facsimile: (505) 243-6458

Jessica M. Hernandez
Matthew J. Stackpole
Office of the Governor
490 Old Santa Fe Trail #400
Santa Fe, NM 87401-2704
Telephone: (505) 476-2200

-and-

Paul J. Kennedy
201 12th Street NW
Albuquerque NM 87102-1815
Telephone: (505) 842-0653

Attorneys for Real Parties in Interest.

TABLE OF CONTENTS

STATEMENT OF COMPLIANCE iii

TABLE OF AUTHORITIES .... iv-vi

INTRODUCTION 1

I. NO PARTY HAS ESTABLISHED A BASIS TO OVERTURN THE DISTRICT COURT'S DECISION THAT ITS REDISTRICTING PLAN NEEDED TO ADDRESS RURAL/URBAN POPULATION SHIFTS, PROTECT NATIVE AMERICANS, AND AVOID PARTISAN INCUMBENT PAIRINGS 4

A. The Court's Map Appropriately Addressed Population Shifts 6

B. The District Court's Map Properly Addressed Native American Voting Rights Act Issues and Policy Concerns 8

C. The District Court's Map Strove To Ensure that any Political Changes Were an Unintended Result 12

II. THE EGOLF INTERVENORS' "SAFE HARBOR" DEVIATION ARGUMENTS SUFFER FROM THE SAME FATAL FLAWS AS THOSE MADE BY THE LEGISLATIVE DEFENDANTS 15

A. Both the Legislative Defendants and the Egolf Intervenors Ignore *Larios* and the Geographic Bias of their Plans 16

B. No Authority Exists for Petitioners' and Intervenors' State Court "Safe Harbor" Deviation Argument Except the Inapposite Michigan Concurring Opinion 19

C. The Legislative Defendants' Heightened "Special Consideration" Standard Is Tantamount to a Judicial Override of the Governor's Veto and Would Harm Future Redistricting Efforts ... 24

III. THE DISTRICT COURT'S PLAN APPROPRIATELY MAINTAINS HISPANIC VOTING STRENGTH; PETIONERS'/INTERVENORS' PLANS ARE RACIAL GERRYMANDERS ... 26

A. The District Court Was Not Persuaded that the Voting Rights Act Required It to Draw any Hispanic Majority District a Particular Way, and this Finding Should Not Be Disturbed ... 26

B. Even Though Not Required by the Voting Rights Act, the District Court's Plan Maximizes the Number of Hispanic Majority Districts and Addresses Concerns Regarding Hispanic Voting Strength and Communities of Interest in the Clovis Area ... 35

C. The Egolf Intervenors' and Legislative Defendants' HD 63 Constitute Racial Gerrymandering ... 38

CONCLUSION ... 43

STATEMENT OF COMPLIANCE

Pursuant to Rule 12-213(A), (F) & (G), Plaintiffs-Appellants state that the total word count contained in the body of the brief is 10,877 words, using Microsoft Office Word 2007.

1/31/12
Dated

Matthew R. Hoyt

TABLE OF AUTHORITIES

New Mexico Cases

Amkco, Ltd. v. Welborn, 2001-NMSC-012, 130 N.M. 155, 21 P.3d 24 34

DAV v. Lakeside Veterans Club, Inc., 2011-NMCA-099, __ N.M. ___,
263 P.3d 911 32

Peters Corp. v. N.M. Banquest Inv. Corp., 2008-NMSC-039, 144 N.M. 434,
188 P.3d 1185 33

Sanchez v. Molycorp, Inc., 103 N.M. 148, 703 P.2d 925 (Ct. App. 1985) 33

Van Orman v. Nelson, 78 N.M. 11, 427 P.2d 896 (1967) 33

Federal Cases

Baird v. Indianapolis, 976 F.2d 357 (7th Cir 1992) 32

Balderas v. Texas, No. 6:01CV158-TJW, 2001 U.S. Dist. LEXIS 25740
(E.D. Tex. Nov. 16, 2001) 9

Bartlett v. Strickland, 556 U.S. 1 (2009) 28-29

Black Voters v. McDonough, 421 F. Supp. 165 (D. Mass 1976) 34

Bush v. Vera, 517 U.S. 952 (1996) 14, 30

Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982) 22

Chapman v. Meier, 407 F. Supp. 649 (D.N.D. 1975) (Supp. Op.) 21

Chapman v. Meier, 420 U.S. 1 (1975) 21, 22

Chavis v. Whitcombe, 305 F. Supp. 1364, 1371 (S.D. Ind. 1969) 34

Chen v. City of Houston, 206 F.3d 502 (5th Cir. 2000) 12

Colleton County Council v. McConnell, 201 F. Supp. 2d 618 (D.S.C. 2002) 11

Connor v. Finch, 431 U.S. 407 (1977).. 9

Cox v. Larios, 542 U.S. 947 (2004) 18

Frank v. Forest County, 336 F.3d 570 (7th Cir. 2003).. 22

Growe v. Emison, 507 U.S. 25 (1993) 28, 41

Hall v. Virginia, 276 F. Supp. 2d 528 (E.D. Va. 2003) 32

Hastert v. State Bd. of Elections., 777 F. Supp. 634 (N.D. Ill. 1991)..................... 12

Larios v. Cox, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) ....*passim*

LULAC v. Clements, 999 F.2d 831 (5th Cir. 1993) 28

LULAC v. Perry, 548 U.S. 399 (2006)... 30, 33

Mahan v. Howell, 410 U.S. 315 (1973) 21, 23

Miller v. Johnson, 515 U.S. 900 (1995)... 27, 39-40

Perry v. Perez, Nos. 11-713, 11-714, and 11-715
(U.S. Sup. Ct. Jan. 20, 2012)... 22, 23

Reynolds v. Sims, 377 U.S. 533 (1964) 6, 23

Rodriguez v. Pataki, 308 F. Supp. 2d 346 (S.D.N.Y. 2004)....................... 21-22, 32

Sanchez v. Colorado, 97 F.3d 1303 (10th Cir. 1996) 28

Sanchez v. King, 550 F. Supp. 13 (D.N.M. 1982) 30, 34, 38

Shaw v. Hunt ("Shaw I"), 509 U.S. 630 (1993) 30, 39, 40

Shaw v. Hunt ("*Shaw II*"), 517 U.S. 899 (1996).. 39, 40, 41

Smith v. Clark, 189 F. Supp. 2d 529 (S.D. Miss. 2002) 8

Thornburg v. Gingles, 478 U.S. 30 (1986) 28, 29-30, 32, 41

Uno v. City of Holyoke, 72 F.3d 973 (1st Cir. 1995)...................................... 32, 34

Voinovich v. Quilter, 507 U.S. 146 (1993) 21

Wright v. Albany, 306 F. Supp. 2d 1228 (M.D. Ga. 2003) 22

Other State Cases

Alexander v. Taylor, 51 P.3d 1204 (Okla. 2002) 22

In re Apportionment of State Legislature, 321 N.W. 2d 565 (Mich. 1982)............ 20

In re Reapportionment of Towns of Hartland, Windsor and W. Windsor,
624 A.2d 323 (Vt. 1993) 21

Statutes, Rules and Constitutions

N.M. Const. Art. III, § 1 20

Section 2 of the Voting Rights Act of 1965, 42 U.S.C.
§§ 1973 to -1973:22 .... *passim*

Other Authorities

New Mexico Legislative Council Service, A Guide to State and
Congressional Redistricting in New Mexico 2011 (April 2011) 30

INTRODUCTION

As Executive Defendants explain in their opening briefs, District Judge James Hall made a reasoned, legally supported and equitable selection of a reapportionment map for the New Mexico House of Representatives after giving due consideration to all of the evidence, and the myriad of plans, before him. [*See* Op. Br. (Legis.) at 1-6]. As explained in more detail in this brief, Judge Hall's approach makes all the more sense when this Court takes into account, as it should, the complexity of the evidence and the law, and the number of parties and proposed maps in this case. What is clear from the record below is that, in order to cut through all of the arguments made by the multitude of parties zealously advocating for their proposed maps, the District Court decided that its map should meet four neutral and prudential benchmarks. First, the map needed to balance out the population inequality that had developed in New Mexico over the last decade by moving districts out of the three slowest growing areas in central Albuquerque and the rural North Central and Southeast regions of the state and into the exploding areas of Rio Rancho and the Westside of Albuquerque. Second, the map had to comply with the Voting Rights Act because of the undisputed evidence of the need to create Native American districts in the Northwest corner of our state. Third, the map must honor state policy and traditional redistricting principles regarding Native Americans, most notably protection of tribal and pueblo

communities of interest. Fourth, the map must be as politically fair as possible; at the same time, the court must not overemphasize political issues to the detriment of the other three principles.

Although the Legislative Defendant Petitioners' and the Egolf Plaintiff Intervenors' (collectively, "Petitioners/Intervenors'") briefs dance around the edges of these principles, none directly confront them, because they cannot. Judge Hall's four principles are supported by both the law and the facts. Petitioners/Intervenors are obviously unhappy with the District Court's decision and, because Judge Hall's principles are not subject to any reasonable or rational challenge, must resort to other, inappropriate objections, none of which would justify their drastic request that this Court act as the trial court and select one of their favored reapportionment maps.

The Legislative Defendants' opening brief is little more than a repeat of the unavailing arguments made in their Petition. Petitioner Brian Egolf (who also inappropriately seeks relief under the *Maestas* Petition, No. 33,386) joins with the remaining Egolf Plaintiffs from below (collectively "the Egolf Intervenors") to echo the meritless deviation argument made by the Legislative Defendants. As explained in the opening brief, this argument fails because the District Court recognized population equality as the most important standard for court-drawn plans but did not blindly adhere to a *de minimis* standard in derogation of other

redistricting law, policy and principles. *See* Op. Br. (Legis.) at 17-27. Petitioners/Intervenors also attack the court's plan for its splitting of certain communities of interest, ignoring the fact that ***all*** of the plans presented to the District Court divided communities of interest.

Petitioners/Intervenors also attempt to flank Judge Hall's rulings by raising, for the first time in this proceeding, the specter of racial discrimination. Petitioners/Intervenors contend that the District Court's adopted plan violates Section 2 of the Voting Rights Act by declining to draw certain Hispanic majority House districts in the gerrymandered manner they propose.

There is no basis for such assertions. The District Court's decision to decline adoption of certain Hispanic districts is supported by substantial evidence and the law that cautions against the use of race as a predominant factor in drawing districts. Moreover, the District Court's plan addresses Hispanic voting concerns in the areas of the state which historically experienced such troubles, as revealed by the testimony of legislative expert Brian Sanderoff, and also increases Hispanic voting opportunity statewide as much as, or better than, any other plan presented by maximizing the number of Hispanic majority districts. In other words, the District Court protects Hispanic voting rights even in the absence of substantial evidence of a Voting Rights Act violation. For all of these reasons, the arguments

of the Legislative Defendants and the Egolf Intervenors should be rejected, the writ quashed, and the judgment of the District Court affirmed.

I. NO PARTY HAS ESTABLISHED A BASIS TO OVERTURN THE DISTRICT COURT'S DECISION THAT ITS REDISTRICTING PLAN NEEDED TO ADDRESS RURAL/URBAN POPULATION SHIFTS, PROTECT NATIVE AMERICANS, AND AVOID PARTISAN INCUMBENT PAIRINGS.

The flurry of briefing submitted by Petitioners/Intervenors in this and in the *Maestas* case would have this Court believe that Judge Hall was somehow arbitrary or capricious in his decision to select a modified version of Executive Alternate 3 instead of the plans advocated by others. They would have this Court believe that Judge Hall committed a host of unpardonable sins in violation of redistricting principles and state law and policy by ignoring, discounting, or otherwise refusing to accept particular plans or evidence submitted by the parties, all in the name of blind adherence to the population equality standard. Instead, what is clear from the record below is Judge Hall did nothing of the sort.

The District Court was faced with a formidable task. Over an eight-day trial, the District Court dealt with 34 parties proposing no less than 17 different maps. [*See* FOF/COL at FOF ¶¶ 26-28]. Despite the challenge of sifting through all of the evidence, the District Court arrived at a reasoned strategy for selecting a map. After receiving and considering all of the evidence and the plans submitted by the parties, and after a thoughtful and deliberative review of the Constitutional and

legal requirements governing reapportionment, the District Court decided that any state House map he adopted must meet four basic principles: Consolidation of underpopulated districts, Native American Voting Rights Act compliance, "thoughtful consideration" of state policy toward Native Americans, and avoidance of unnecessary political changes.

The Legislative Defendants and the Egolf Intervenors cite to no evidence, or authority, demonstrating that these four redistricting principles are illegal or erroneous, or that the modified version of Executive Alternate 3 failed to honor them. Indeed, the parties conceded below that such principles are sound. At trial the Egolf Intervenors submitted a plan, Egolf 4, that, except for the District Court's principle regarding political bias, made some attempt to address these principles.[1] [*See* Egolf Proposed FOF/COL (12/28/11) (Ex. F) at FOF ¶¶ 32-40]. And the Legislative Defendants admitted at trial that they would "love to" submit a plan that conformed with the District Court's goals, but because of supposed constitutional constraints could not. [*See* 12/15/11 TR at 284:25-285:3].

The parties do not challenge the District Court's four reapportionment priorities, because they cannot. Every one of them is fully supported by the record

[1] Notably, the Egolf Intervenors' Brief avoids discussion of Egolf 4, probably because, with the exception of partisan fairness, that plan attempts to address, up to a point, the District Court's goals of population equality and Native American voting protection.

evidence and the law governing this case. And it was these principles, not unquestioning devotion to *de minimis* deviations, which drove the District Court's adoption of its map. When the District Court's decisions are viewed through this lens, it becomes clear that its ruling should be allowed to stand.

A. The Court's Map Appropriately Addressed Population Shifts.

The Executive Defendants' opening brief explains that when a court is required to draw a reapportionment map in redistricting litigation, that court is exercising its equitable discretion such that its decision should be upheld so long as it is supported by substantial evidence, viewed in the light most favorable to the lower court's ruling. [*See* Op. Br. (Legis.) at 9-14]. Judge Hall appropriately exercised his equitable discretion to apply his four principles to select a state House map. The importance of the first priority – population equality – cannot reasonably be disputed. "[T]he ***overriding*** objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) (emphasis added); [Op. Br. (Legis.) at 17-20]. It is undisputed that New Mexico experienced major population shifts between its urban and rural areas over the last decade, with the most pronounced change occurring in the North Central and Southeast regions of the state. [*See* FOF/COL at FOF ¶¶ 2-12].

It is also undisputed that whatever map the Court selected had to address this issue. The question was how the District Court should deal with it. Should it adopt the vetoed legislative map, which purposefully avoid eliminating a district in the North Central area that indisputably can no longer support its current number of districts, and as a result leaves a number of districts in the North Central and Southeast regions underpopulated, thus denying the growing areas of Albuquerque and Rio Rancho appropriate representation in the House in the form of a much needed new district?[2] [*See id.* at FOF ¶¶ 32-41, COL ¶¶ 27-28]. Should the District Court select plans based on the vetoed legislative map that either failed to consolidate districts in the North Central region (*e.g.*, Egolf 1, 2, 3, and 5, Maestas 1)[3] or, contained geographic bias like the legislative plan as well as partisan incumbent pairings (*see e.g.*, Egolf 4, Maestas 2)? [*See id.* at FOF ¶¶ 97-111, COL ¶¶ 29-30].[4] Or should the District Court consolidate a district in the North and

---

[2] In the state Senate case, the Legislative Defendants argued in favor of giving "the rapidly growing Westside/Rio Rancho area essentially three new Senate seats" because of population shifts. [*See* Legis. Defs.' Pretrial Br. (Senate) (12/30/11) (Ex. G) at 3.]

[3] Contrary to the Egolf Intervenors' claims, there is no evidence that the District Court ignored these plans. Indeed, his findings and conclusions reference all of the proposed Egolf maps. [*See id.* at COL ¶ 29].

[4] The Egolf Intervenors' map drawer, James Williams, testified that if he had started with the current plan as opposed to the vetoed legislative plan, he would have moved a district out of North Central New Mexico to address the underpopulation in that region. [*See* 12/15/11 TR at 226:7-15]. This was likely the main reason the District Court rejected Egolf plans 1, 2, 3 and 5 – those plans

move that district to Albuquerque's Westside where, because of population growth, it appropriately belongs while maintaining political neutrality to the extent possible (the Executive Plans)? The choice made by the District Court, was, of course, the latter. The District Court's decision to rectify malapportionment by combining a North Central district with another drove the remainder of its decision, as it should have under the Equal Protection Clause and applicable redistricting jurisprudence. [*See* Op. Br. (Legis.) at 17-27, 32-37]. Petitioners/Intervenors have provided this Court no proper basis to overturn this decision.

B. The District Court's Map Properly Addressed Native American Voting Rights Act Issues and Policy Concerns.

This does ***not*** mean that the District Court, in its desire to cure malapportionment, "threw the baby out with the bath water" and "sacrifice[ed] other redistricting criteria" to address the state's population shifts. [*See* Egolf Op. Br. at 18, 27]. As stated in the Executive Defendants' opening brief, the District Court did ***not*** adopt a "zero-deviation plan" or ignore other reapportionment criteria in the name of low deviations. [*See* Op. Br. (Legis.) at 17-27]. Recognizing its limited role, the Court next turned to the Voting Rights Act issues. *See, e.g., Smith v. Clark*, 189 F. Supp. 2d 529, 538 (S.D. Miss. 2002) (noting that

---

failed to make the District Court's desired changes to the current map to reflect undisputed population shifts. [*See, e.g.,* FOF/COL at FOF ¶ 29].

standards applicable to court-ordered redistricting are "fairly well-established: Courts must satisfy constitutional and statutory criteria and, to the extent feasible, certain neutral, secondary criteria."); *see also*, *e.g.*, *Connor v. Finch*, 431 U.S. 407, 415 (1977) ("the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly"); *Balderas v. Texas*, No. 6:01CV158-TJW, 2001 U.S. Dist. LEXIS 25740, *11-12 (E.D. Tex. Nov. 16, 2001) (holding that court's role in redistricting is limited to curing statutory or constitutional defects in a state reapportionment plan). Although, as explained below, the District Court was not persuaded by Petitioners'/Intervenors' evidence in support of their argument the Voting Rights Act mandated the drawing of a particular majority Hispanic district, *see* discussion *infra* at 26, the District Court found that its adopted plan should a) maximize the number of Hispanic majority districts in the House; and b) address concerns raised about Hispanics in House Districts 63, 64 and 67 while also avoiding a racial gerrymander. [*See* FOF/COL at FOF ¶¶ 64-66, 71, COL ¶¶ 25-26, 34]. At the same time, Judge Hall found that the Voting Rights Act does not necessitate the drawing of any particular Hispanic district. [*Id.*]. The District Court did find that the Voting Rights Act requires particular ***Native American*** districts in Northwest New Mexico, thus justifying higher population deviations in those districts. [*See id.* at FOF ¶¶ 42-60, 72, COL ¶¶ 17-25; Op. Br. (Legis.) at 17-27]. Although the Legislative Defendants do not challenge this ruling with regard

to the Native Americans, they would have this Court disturb this holding and adopt a plan that does ***not*** fully address issues regarding Navajos in the Northwest, risking the very Voting Rights Act violation the District Court sought to avoid. [*See* Navajo Closing Br. (1/28/11) (Ex. H) at 8-10]. And although the Egolf Intervenors do not ask this Court to pick a plan that potentially offends the District Court's goal of protecting Native Americans, they seek to disturb that decision by asking this Court to select a map other than the one the District Court found best addresses Native American issues while still meeting the District Court's remaining goals.

In addition, the Court, in giving "thoughtful consideration" to the legislative plan, noted a state policy favoring, among other things, preservation of Native American communities of interest. [*See* FOF/COL at COL ¶¶ 28, 34.] Although neither the Legislative Defendants nor the Egolf Intervenors attack this finding, they ask this Court to override the District Court's factual determinations regarding communities of interest by claiming that Judge Hall should have elevated Petitioners/Intervenors' favored communities of interest over others. [*See* Legis. Def. Op. Br. at 39-40; Egolf Op. Br. at 4-5].

The Legislative Defendants demand that this Court accept, without question, every policy consideration about communities of interest that went into their map ***except*** respect for how the Navajos desire their districts to be drawn, and overrule

the District Court with regard to this determination. [*See* Legis. Def. Op. Br. at 39-40, 44]. The Egolf Intervenors similarly request that this Court substitute its judgment for the District Court to decide which communities of interest should be divided and which should not by picking one of their plans, in part, because of communities-of-interest principles. [*See* Egolf Op. Br. at 30-31, 41-46].

However, the Court found that ***every*** plan submitted to it "spilt [*sic*] some communities of interest." [*See* FOF/COL at FOF ¶ 29; 12/22/11 TR at 55:6-11, 115:7-10]. For example, every plan splits counties and municipalities, which are communities of interest. [*See* 12/14/11 TR at 215:3-23; Gov. Exs. 10, 30]; *see, e.g.*, *Colleton County Council v. McConnell,* 201 F. Supp. 2d 618, 648 (D.S.C. 2002) ("Many governmental services, such as fire and police protection, are organized along political subdivision lines, and counties and cities are often representative of a naturally existing community of interest."). And although Petitioners/Intervenors ignore this fact, the Executive Alternate 3 map used by the District Court unified many of the communities of interest that the parties at trial claimed were deficiencies in earlier versions of the Executive Defendants' maps, including minority communities of interest.[5] [*See* 12/22/11 TR at 53:4-22].

[5] Egolf Intervenors complain that the Executive Defendants' plans were based on a supposed unfamiliarity with "New Mexico's geography, history and communities." [*See* Egolf Op. Br. at 11-12]. Yet they underplay the evidence that, unlike their maps, these plans employed the current districts, which reflect past choices made

These countervailing community of interest concerns are why trial courts are cautious about overemphasizing the communities of interest factor, and why appellate courts are equally cautious in substituting their judgment regarding communities of interest for that of the trial court. *See Chen v. City of Houston*, 206 F.3d 502, 517 n.9 (5th Cir. 2000) (stating that the court must "caution against general over-reliance on the communities of interest factor"); *Hastert v. State Bd. of Elections.*, 777 F. Supp. 634, 660 (N.D. Ill. 1991) (describing the communities of interest concept as "both subjective and elusive of principled application[;]" the "courtroom is not the proper arena for lobbying efforts regarding the districting concerns of local, nonconstitutional communities of interest."). Regardless, no party challenges the District Court's concern to maintain Native American communities of interest, nor have they provided any basis to disturb Judge Hall's prioritization of this issue.

C. The District Court's Map Strove To Ensure that any Political Changes Were an Unintended Result.

The District Court's final principle was to select a plan that made partisan changes only as was necessary to address population shifts and Native American concerns, and without making changes to the political landscape for the purpose of partisan gains. Thus, the District Court, concluding that it was "obligated to follow

---

about New Mexico's geography, history and communities, as a guideline. [*See* 12/14/11 TR at 17:9-24].

the legal priorities and not allow partisan considerations to control the outcome[,]" [*see* FOF/COL at COL ¶¶ 34, 35], found that the incorporation of the Democrat-heavy Native American districts into the Executive plans created a "ripple effect" whereby excess population (including some Republican-leaning precincts) would need to be dispersed across the map, thus creating a "limited effect" on the political performance in those districts where changes were made to accommodate that excess population. [*See* FOF/COL at COL ¶ 35; 12/22/11 TR at 117:9-118:1]. There was no evidence of a partisan intent behind this "ripple effect[,]" however, and the Court, by remaining politically neutral, appropriately refused to overemphasize this issue. [*See* FOF/COL at COL ¶¶ 35-36; 12/22/11 TR at 119:1-2].

By that same token, the District Court found that it could not select the Egolf 4 plan – the only plan from the Egolf Intervenors that addressed its consolidation concern – because of political problems with that plan. Specifically, Egolf 4 (along with Maestas 2) attempted to solve the consolidation problem by pairing "the only Republican incumbent in north central New Mexico with a Democratic incumbent." [*See* FOF/COL at COL ¶¶ 29-30]. Egolf's map drawer, Dr. Williams, recognized there were other, more seriously underpopulated districts in the North Central region he could have chosen (especially if he had started from the current map rather than the legislative plan), but he instead chose the lone

Republican district.[6] [*See* 12/22/11 TR at 191:5-197:23]. Incumbent pairings is a traditional neutral redistricting criterion honored by the courts. *See, e.g., Bush v. Vera*, 517 U.S. 952, 964 (1996) ("we have recognized incumbency protection, at least in the limited form of 'avoiding contests between incumbent[s],' as a legitimate state goal.") (citations omitted); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1338, 1347-49 (N.D. Ga. 2004), *aff'd mem.*, 542 U.S. 947 (2004) (redistricting plans should avoid "blatantly partisan and discriminatory" protection of incumbents in one party and pairing of incumbents in the other).

Petitioners/Intervenors nonetheless claim that the court-adopted plan suffers from "severe partisan bias" because it reduces the number of Democratic performing districts. [*See* Egolf Op. Br. at 29-30; Legis. Def. Op. Br. at 24, 41]. This argument suffers from three problems. First, it ignores the fact that the evidence demonstrating that these changes were unintentional and, as the District Court found, a necessary result of incorporation Native American districts. Second it ignores the political bias in the Egolf 4 plan's incumbent pairings. Third, it ignores the fact that Egolf plans 1, 2 and 3, and the Legislative plan, swing partisan fairness in the ***other*** direction by increasing the number of safe Democratic seats from current. [*See* Egolf Ex. 25]. In light of the undisputed evidence of partisan

[6] By contrast, the Executive Defendants' map drawer strove for partisan neutrality. [*See* 12/14/11 TR at 15:24-16:12, 17:25-18:11].

bias in the Egolf 4 plan, the District Court was clearly within its discretion to adopt a modified version of Executive Alternate 3, a plan which met both Judge Hall's and the law's reapportionment benchmarks.

II. THE EGOLF INTERVENORS' "SAFE HARBOR" DEVIATION ARGUMENTS SUFFER FROM THE SAME FATAL FLAWS AS THOSE MADE BY THE LEGISLATIVE DEFENDANTS.

The main thrust of both the Legislative Defendants' and the Egolf Intervenors' opening briefs is that the District Court supposedly erred by selecting a map with overall low population deviations, and that it did so in ignorance of all other redistricting criteria. [*See* Legis. Def. Op. Br. at 9-25; Egolf Op. Br. at 17-30]. As the Executive Defendants' opening brief explains, however, the District Court properly recognized that population equality is the most important redistricting standard, but did ***not*** sacrifice other reapportionment principles in the name of *de minimis* deviations. [*See* Op. Br. (Legis.) at 17-27].

Nothing in either the Legislative Defendants' brief or Egolf Intervenors' brief changes this fact. Indeed, those briefs only further demonstrate the lack of merit in their arguments, in three ways. First, neither the Legislative Defendants nor the Egolf Intervenors address the geographic bias contained in their plans, or the Constitutional problems with such bias recognized in *Larios*, 300 F. Supp. 2d at 1320. Second, neither the Legislative Defendants nor the Egolf Intervenors provide this Court any direct authority, other than a distinguishable, out-of-state

concurring opinion, to support their contention that court plans are held to the same population equality standard as legislatively drawn maps. Third, the Legislative Defendants continue to cling to their heightened "special consideration" standard.[7] Perhaps recognizing the weakness in this last argument, the Egolf Intervenors decline to join in it. Regardless, none of the Petitioners' and Intervenors' deviation arguments provide a basis to overturn the District Court's rulings.

A. Both the Legislative Defendants and the Egolf Intervenors Ignore *Larios* and the Geographic Bias of their Plans.

The Legislative Defendants and Egolf Intervenors' opening briefs neglect to mention the District Court's findings that HB 39, and Egolf Plans 1 and 2, contained geographic bias that would result in the dilution of votes in certain districts. [*See* FOF/COL at FOF ¶¶ 34-40, 97-103]. They are both similarly devoid of any reference to *Larios*, 300 F. Supp. 2d at 1338-40, in which intentional geographic bias utilizing a purported "safe harbor" deviation of ten percent was rejected as unconstitutional. Petitioners'/Intervenors' failure to acknowledge *Larios*, or their plans' geographic bias, is fatal to their arguments.

---

[7] Unlike in their Petition, the Legislative Defendants avoid the "special consideration" label in their opening brief, but nonetheless argue that the "thoughtful consideration" courts give to plans proposed by legislatures is a special" or "heightened consideration" standard. [*See* Legis. Def. Pet. at 12-17; Legis. Def. Op. Br. at 31].

After eight days of testimony and full briefing, the District Court appropriately concluded – or refused to ignore the obvious conclusion – that the Legislative Defendants' plan, HB 39, sought to avoid eliminating a district in the underpopulated North Central region of the state. [*See* FOF/COL at FOF ¶¶ 32, 35]. As the Court appropriately concluded, the "districts [proposed by the legislature] in these areas of the state are under populated despite the fact that these areas demonstrated either no growth or slow growth over the last decade." [*Id.* at FOF ¶ 34]. To counter the under population of its preferred districts, the Legislative Plan utilized their purported "safe harbor" deviation of ten percent to overpopulate less preferred areas of the state such as Albuquerque. [*See id.* at FOF ¶ 39]. As explained in Executive Defendants' opening brief, the District Court correctly decided that this plan suffers from impermissible geographic bias that was "not justified by any consistently applied neutral state interest." [*See* Op. Br. (Legis.) at 32-35; FOF/COL at FOF ¶¶ 32-41].

Although the District Court found that the Egolf plans "reduce some of the problems with the population deviations contained in the Legislative Plan, the fact that [all of] the Egolf Plans started from the Legislative Plan results in similar issues related to deviations . . . which are not justified by historically significant state policy or unique features[.]" [FOF/COL at COL ¶ 29]. In other words, the District Court found that while the Egolf plans (with the arguable exception of

Egolf 4, which the Egolf Intervenors have abandoned in this proceeding) did not contain the same level of geographic bias as the legislative plan, those plans' failure to consolidate a district in the North Central region, or otherwise appropriately deal with the state's population shifts, meant that they were still tainted with the impermissible bias contained in the legislative plan. [*See id.* at FOF ¶¶ 97-103, COL ¶ 29].

The federal district court, and the United States Supreme Court, recognized in *Larios v. Cox* the inappropriateness of ***any*** attempt in a reapportionment plan to "weaken the one-person, one-vote standard by creating a safe harbor for population deviations of less than 10 percent, within which districting decisions could be made for any reason whatsoever." *Cox v. Larios*, 542 U.S. at 949 (Stevens, J., concurring). This is especially the case where, as here, plans contain impermissible geographic bias. As explained in the opening brief, *Larios* rejected as unconstitutional a state legislative redistricting plan that, "rather than using the reapportionment process to equalize districts throughout the state, legislators and plan drafters sought to shift only as much population to the state's underpopulated districts as they thought necessary to stay within a total population deviation of 10%." 300 F. Supp. 2d at 1329. [Op. Br. (Legis.) at 33-34]. Thus, and as the District Court concluded here, a state legislative reapportionment plan that systematically and intentionally creates population deviations that favor the

representational interests of the citizens of a particular geographic area over other citizens dilutes the votes of certain citizens and potentially violates the one person, one vote equal protection mandate. *See id.*

Petitioners/Intervenors make no attempt in their briefs to rebut the District Court's findings regarding the geographic bias contained in their proposed plans. They also offer no excuse or alternative explanation for their maps' geographic bias. Petitioners' and Intervenors' failure to acknowledge this bias or the *Larios* case, coupled with their failure to address why this Court should overrule Judge Hall and accept plans regardless of geographic bias, demonstrates, in and of itself, why their deviation arguments lack merit.

B. No Authority Exists for Petitioners' and Intervenors' State Court "Safe Harbor" Deviation Argument Except the Inapposite Michigan Concurring Opinion.

As opposed to squarely addressing *Larios* and their plans' geographic bias, Petitioners/Intervenors rely upon selected citations to inapposite case law to support their contention that the law grants them, and this Court, unfettered authority to enact any redistricting plan for the State House, provided that they stay within a ± 5 percent, or a total ten percent, deviation range. [*See* Egolf Op. Br. 18-27; Legis. Def. Op. Br. at 10-24]. The Legislative Defendants, in particular, would have this Court rely on a 30-year old concurring opinion from Michigan to decide, as a matter of federal and New Mexico law, that the supposed 10 percent "safe

harbor" applies equally and without question to legislatively drawn and court-drawn plans. [*See* Legis. Def. Op. Br. at 16-18]. It is only by dredging up this Michigan concurrence, and selected portions of other case law, that these parties can find support that the District Court should not have considered population deviations when selecting a plan so long as the supposed 10-percent "safe harbor rule" is met.

The Legislative Defendants continue to cite to the concurring opinion from *In re Apportionment of State Legislature*, 321 N.W. 2d 565 (Mich. 1982) (Levin and Fitzgerald, JJ. concurring). As previously briefed by the Executive Defendants, that case is readily distinguishable because it involved a substantially different state constitutional process than the one utilized in New Mexico.[8] [*See* Op. Br. (Legis.) at 23-24]. The District Court properly concluded that *In re Apportionment of State Legislature* has no application here. [*See* FOF/COL at COL ¶ 14].

The Egolf Intervenors do not rely on *In re Apportionment of State Legislature*. Indeed, these parties concede that a court-ordered reapportionment

[8] In addition to the constitutional differences explained in the opening brief, New Mexico's Constitution's separation of powers clause counsels in favor of a stricter standard for court-drawn plans. N.M. Const. Art. III, § 1. The New Mexico Constitution leaves to the Legislature, and the Governor through her veto power, subjective policy decisions regarding redistricting decisions. Because the Constitution limits courts' role to construing the law, it counsels against a liberal deviation standard for court-ordered plans.

plan of a state legislature is held to a different standard than a legislatively drawn map. [*See* Egolf Op. Br. at 23]; *see also Chapman v. Meier*, 420 U.S. 1, 26 (1975) ("A court-ordered plan, however, must be held to higher standards than a State [Legislature]'s own plan."). However, the Egolf Intervenors claim that the different standard for courts is, in reality, no different than the supposed 10 percent "safe harbor" for legislatively enacted maps. [*See* Egolf Op. Br. at 23-27].

In light of *Chapman*,[9] cases from other jurisdictions that involve only court review of legislatively-approved plans, as opposed to court-ordered plans, are of limited use. Most of the cases cited by Petitioners/Intervenors fall into this category. *See, e.g*, *In re Reapportionment of Towns of Hartland, Windsor and W. Windsor*, 624 A.2d 323 (Vt. 1993) (court review of redistricting enacted by Vermont Legislature); *Mahan v. Howell*, 410 U.S. 315 (1973) (court review of Virginia redistricting statutes); *Voinovich v. Quilter*, 507 U.S. 146 (1993) (court review of redistricting by Ohio state apportionment board); *Rodriguez v. Pataki*,

[9] Egolf Intervenors rely on the district court's decision in the remanded *Chapman* case to explain the Supreme Court's ruling in *Chapman* equates a *de minimis* standard to a 10 percent "safe harbor." [*See* Egolf Op. Br. at 23]. This is not the case, however. On remand, the district court found the deviation range *de minimis* ***because*** the court-ordered reapportionment plan specifically took "into account communities of interest in each of the legislative districts" that were in the 10 percent deviation range. *See Chapman v. Meier*, 407 F. Supp. 649, 664 (D.N.D. 1975) (Supp. Op.). This is no different than Judge Hall's decision to depart from the *de minimis* deviation principle to account for such things as Native American communities of interest. [*See* Op. Br. (Legis.) at 25-27].

308 F. Supp. 2d 346 (S.D.N.Y. 2004) (court review of redistricting enacted by Vermont Legislature); *Wright v. Albany*, 306 F. Supp. 2d 1228 (M.D. Ga. 2003) (court review of redistricting by city commission); *Frank v. Forest County*, 336 F.3d 570 (7th Cir. 2003) (court review of county redistricting by board of supervisors).[10]

Both the Legislative Defendants and the Egolf Intervenors heavily rely on *Perry v. Perez*, Nos. 11-713, 11-714, and 11-715 (Jan. 20, 2012). But, as explained in the opening brief, this case falls into the same category of cases addressing legislatively enacted plans, and further, dealt with Voting Rights Act preclearance issues that are not present in this case. [*See* Op. Br. (Legis.) at 29]. As a result, *Perez* does not appropriately discuss the standards to apply to this court-ordered redistricting. In addition, *Perez* does not go so far as to mandate deference to a failed legislative enactment that contains, as is the case here,

---

[10] Other cases cited by the Egolf Intervenors are similarly unhelpful to their arguments. In *Alexander v. Taylor,* 51 P.3d 1204, 1211-13 (Okla. 2002), for example, the court affirmed the trial court's decision to, as here, use its equitable authority to adopt a *de minimis* deviation plan proposed by the governor instead of a plan proposed by the legislature. And in *Carstens v. Lamm*, 543 F. Supp. 68, 81 (D. Colo. 1982) (*citing Chapman*, 420 US. at 23), the court made clear that "no one will deny that [population equality] is the pre-eminent, if not the sole, criterion on which to adjudge the constitutionality" of redistricting plans. Further the *Carstens* court listed a series of cases in which court-acceptable deviations reached as low as 0.01005 percent (much lower than the District Court-adopted plan here), and ultimately adopted a plan with a relative mean deviation of .00087 percent. *See id.* at 81, 98-99.

impermissible geographic bias. *Perez* is simply not applicable here, and the remaining case law cited by Petitioners/Intervenors give no basis to overrule the District Court's selection of a state House reapportionment plan.[11]

Finally, the Egolf Intervenors' reliance on *Mahan*, 410 U.S. at 315, as "inferentially" supporting their position that a trial court should not "essentially set aside traditional redistricting criteria," [Egolf Op. Br. at 25], is misplaced. *Mahan* notes that a court, in reviewing a state's redistricting plan, may consider criteria other than population deviation, but also states that "the overriding objective in reapportionment must be 'substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state.'" *Mahan*, 410 U.S. at 322, 324-25 (*quoting Reynolds*, 377 U.S. at 579). Judge Hall's findings of fact and conclusions of law demonstrate that he did exactly that, taking other redistricting criteria into account without sacrificing the constitutional equal protection requirements. Petitioners'/Intervenors' claims that the District Court somehow abused its

---

[11] The Egolf Intervenors also argue that their 10 percent deviation standard is justified by errors inherent in the census. [*See* Egolf Op. Br. at 28-29]. Logic dictates, however, that census errors should drive courts ***toward*** population equality in their plans, not away from it. Because the census already undercounts people, courts should err on the side of population equality to avoid vote dilution amongst districts, not the other way around.

discretion by trying to keep deviations low, unless otherwise justified by the Voting Rights Act or state policy, is without merit.

C. The Legislative Defendants' Heightened "Special Consideration" Standard Is Tantamount to a Judicial Override of the Governor's Veto and Would Harm Future Redistricting Efforts.

The Legislative Defendants continue their argument that, merely because their plan passed by a handful of votes in the legislature, it was entitled to heightened, "special consideration" by the District Court.[12] As explained in the opening brief, however, "thoughtful consideration" does not mean heightened or "special" consideration such that a court is all but required to adopt the legislative plan in litigation. [*See* Op. Br. (Legis.) at 27-32]. Moreover, the impermissible geographic bias in the legislative plan precluded the District Court from giving it the consideration demanded by the Legislative Defendants. [*See id.* at 32-35.]

In arguing for heightened consideration of their plan, the Legislative Defendants totally ignore this last argument. They further ignore the danger that, if their "special consideration" standard is accepted by this Court, then not only will it result in a judicial override of the Governor's veto of the legislative plan, [*see id.* at 31], it will create the very litigation difficulties the Legislative Defendants claim

[12] The Egolf Intervenors do not join in this argument, though they do erroneously imply that plans tendered during the legislative process should be treated differently than plans, such as those presented by the Egolf Intervenors, that appear for the first time in litigation. [*See* Egolf Op. Br. at 3-4].

their "special consideration" standard is designed to avoid. [*See* Legis. Def. Op. Br. at 25-30].[13] Specifically, if "thoughtful consideration" means that vetoed plans are entitled to heightened consideration in litigation, future legislatures would have no motivation to pass a compromise plan that a future governor might sign into law. Instead of attempting to work with a governor in redistricting, legislatures would pass whatever reapportionment plan they found appropriate, knowing full well that a court would give the plan heightened consideration regardless of a gubernatorial veto. Further, future governors might be dissuaded from calling legislatures into redistricting special sessions if "thoughtful consideration" means that, contrary to the New Mexico Constitution, the governor's role in redistricting is nothing more than a pointless formality. Indeed, by inviting this Court to act as the trial court and pick their plan, the Legislative Defendants (and the Egolf Intervenors) risk the distinct possibility that ***all*** future redistricting efforts will end up before this Court if it is inevitable that litigation, not legislation, becomes New Mexico's preferred route to address malapportionment. Certainly, that is what is contemplated by "thoughtful consideration."

[13] This argument, along with the remaining arguments not fully addressed in this response, is more fully addressed in the Executive Defendants' Opening Brief (Legislative Defendants).

III. THE DISTRICT COURT'S PLAN APPROPRIATELY MAINTAINS HISPANIC VOTING STRENGTH; PETIONERS'/INTERVENORS' PLANS ARE RACIAL GERRYMANDERS.

The Egolf Intervenors and the Legislative Defendants[14] ask this Court to mandate the adoption of a plan other than the one selected by the District Court because, they argue, Judge Hall's plan violates Section 2 of the Voting Rights Act with regard to certain house districts in Curry County, Deming, and Silver City. [*See* Legis. Def. Op. Br. at 42-43; Egolf Op. Bfr. at 30-46]. These parties demand the adoption of a plan that includes their version of HD 63, an "elephant trunk" shaped district whose entire purpose is to grab Hispanic population out of the Clovis area to create a Hispanic majority district. [*See id.*; Legis. Ex. 1; Egolf Exs. 22, 26]. They further seek adoption of specific, race-based districts around Deming and Silver City, again for the sole purpose of creating majority Hispanic districts. [*See id.*]. These arguments are unavailing, for the following reasons:

A. The District Court Was Not Persuaded that the Voting Rights Act Required It to Draw any Hispanic Majority District a Particular Way, and this Finding Should Not Be Disturbed.

Petitioners/Intervenors claim that the trial evidence demonstrated a violation of the Voting Rights Act in HD 63, such that the District Court should have avoided drawing that district pursuant to the Constitutional population equality

[14] Legislative Defendants' Petition makes no mention of Hispanic Voting Rights Act concerns, and their opening brief provides no explanation as to why they have added this argument to their list of charges against Judge Hall's rulings below.

standard or in furtherance of other neutral redistricting criteria. [*See* Legis. Def. Op. Br. at 42-43; Egolf Op. Br. at 33-47]. The District Court was correct to be unpersuaded by this evidence, and to avoid being trapped into a specific construction of HD 63's boundaries, because neither the Legislative Defendants nor the Egolf Intervenors successfully demonstrated the existence of a Voting Rights Act violation in HD 63 such that the District Court needed to ignore population equality and other important reapportionment criteria.

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 to -1973:22, prohibits the imposition of a voting qualification, standard, practice, or procedure that results in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. *See id.* § 1973(a). In reviewing the plans presented to it, a trial court must ensure that no plan denies or abridges the right of any citizen to vote on account of race or color, and that minority groups have an equal opportunity to "participate in the political process and to elect representatives of their choice."[15] *Id.* § 1973(b).

---

[15] Section 2 seeks to eliminate discrimination in the electoral process, but it does not act as a bar to redistricting plans that are based on neutral, non-discriminatory, and equal population principles, as Egolf Intervenors would have this Court believe. *See Miller v. Johnson*, 515 U.S. 900, 927 (1995) (stating that the Voting Rights Act grants courts the authority to "uncover official efforts to abridge minorities' right to vote," and that purpose "is neither assured nor well served, however, by carving electorates into racial blocs."); *see also id.* at 927-28 ("It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that

To establish a Section 2 violation, a party must establish three threshold conditions: (1) that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the minority group is "politically cohesive"; and (3) "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Growe v. Emison*, 507 U.S. 25, 40 (1993) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)) (these are the "*Gingles* factors")[16]; *Sanchez v. Colorado*, 97 F.3d 1303, 1310-13 (10th Cir. 1996) (discussing the three *Gingles* factors). These are "necessary preconditions" that a plaintiff must establish. "Only when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances." *Bartlett v.*

statute, which has played a decisive role in redressing some of our worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids.").

[16] With regard to the third *Gingles* factor, the question "is not whether white residents tend to vote as a bloc, but whether such bloc voting is 'legally significant.'" *LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (*citing Gingles*, 478 U.S. at 55). In other words, it must be shown that the lack of electoral success of a minority group is due to racially significant bloc voting, rather than merely voting by partisan affiliation. *See id.* at 850-53. Thus, the mere "'lack of success at the polls' is not sufficient to trigger judicial intervention." *Id.* at 853. "Courts must undertake the additional inquiry into the reasons for, or causes of, these electoral losses in order to determine whether they were the product of 'partisan politics' or 'racial vote dilution,' 'political defeat' or 'built-in bias.'" *Id.* at 853-54.

Strickland, 556 U.S. 1, 11-12 (2009) (citations omitted). The typical factors courts consider under the "totality of the circumstances" analysis are:

> (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> (2) the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> (6) whether political campaigns have been characterized by overt or subtle racial appeals;
>
> (7) the extent to which members of the minority group have been elected to public office in the jurisdiction;
>
> (8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and
>
> (9) whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Gingles, 478 U.S. at 36-37.[17] To determine the existence of the *Gingles* preconditions and the totality of the circumstances demonstrating a Section 2 violation in a particular district, a trial court cannot simply rely on generalized evidence, but must conduct an "intensely local appraisal of the challenged district." *See LULAC v. Perry*, 548 U.S. 399, 436 (2006). As the United States Supreme Court has explained, "[a] local appraisal is necessary because the right to an undiluted vote does not belong to the minority as a group but rather to its individual members." *Id.* (internal citations and quotation marks omitted). "The question is therefore not whether line-drawing in the challenged area as a whole dilutes minority voting strength, but whether line-drawing dilutes the voting strength of Latinos" in a specific district.[18] *Id.* at 437.

---

[17] It is important to note that *Sanchez v. King*, 550 F. Supp. 13 (D.N.M. 1982), was rendered, prior to *Gingles*. *See* Egolf Op. Br. at 8-10; *Gingles*, 478 U.S. at 50-51. Thus the *Sanchez* court did not analyze the claimed vote dilution under the *Gingles* standards; nor did it issue a ruling on the existence of intentional discrimination. New Mexico Legislative Council Service, A Guide to State and Congressional Redistricting in New Mexico 2011, at 10-11 (Apr. 2011). As such, the *Sanchez* court's creation of HD 63 was not based on a finding of vote dilution or intentional discrimination necessary to require the creation of the same district today.

[18] Such intense, district-level analysis is appropriate because any reapportionment plan containing a district that is drawn with race as the predominate factor must be analyzed with strict scrutiny under the Equal Protection Clause of the United States Constitution. *See Bush*, 517 U.S. at 976-77. For such plan to pass constitutional muster, it must be justified by a compelling need to comply with Section 2 of the Voting Rights Act, and it must also be narrowly tailored to achieve that goal. *See id.*; *Shaw v. Hunt, ("Shaw I")* 509 U.S. 630, 642 (1993) (a redistricting plan that "expressly distinguishes among citizens because of their race [must] be narrowly

The Egolf Intervenors claim that the District Court should have found Voting Rights Act violations with regard to Hispanics in Deming (HD 32) and Silver City (HD 39). [*See* Egolf Op. Br. at 41-47]. Yet neither Intervenors, nor any other party, cite to ***any*** evidence from the record below establishing the *Gingles* preconditions, much less the totality of the circumstances establishing a Section 2 violation. The only trial evidence cited by the Egolf Intervenors is the Hispanic population numbers in these districts. [*See id.* at 41-46]. While such evidence ***might*** establish the first *Gingles* prong (geographic compactness and numerosity), it plainly does ***not*** establish the second (political cohesion) and third prongs (racial block voting defeating candidates of choice). Egolf Intervenors' failure to point to any such evidence before the trial court shows that their Voting Rights Act claims with regard to Deming and Silver City are meritless.[19]

Egolf Intervenors' and Legislative Defendants' claims of a Section 2 violation with regard to HD 63 is only slightly less problematic than the claims related to Deming and Silver City. The Egolf Intervenors claim that the evidence below "amply established" the need to draw a particular district, HD 63, in a

---

tailored to further a compelling governmental interest."). As explained below, the District Court was within its discretion to reject the Petitioners'/Intervenors' proposed HD 63 because it is a racial gerrymander.

[19] There is also nothing evident from the record below indicating that the Egolf Intervenors raised with the District Court, and therefore preserved their claimed errors regarding, supposed Section 2 violations in Deming and Silver City.

particular way "to remediate entrenched discrimination" against certain Hispanic minority precincts in the "Clovis-Portales area[.]" [Egolf Op. Br. at 8-9]. As opposed to "ampl[e][,]" this evidence was limited, generalized, and legally questionable.[20] Nevertheless, the District Court found the existence of the *Gingles* preconditions in HD 63. [*See* FOF/COL at FOF ¶¶ 64, 65]. But the District Court found no persuasive evidence of a Voting Rights Act violation in HD 63 under a totality of the circumstances analysis. [*See id.* at COL ¶ 26].

The District Court's decision is not clearly erroneous. *See, e.g., DAV v. Lakeside Veterans Club, Inc.*, 2011-NMCA-099, ¶ 19, __ N.M. ___ , 263 P.3d 911 ("[t]his Court will not disturb the district court's findings of fact unless they are demonstrated to be clearly erroneous or not supported by substantial evidence."), *cert. denied* 2011 N.M. Lexis 419 (Sept. 7, 2011) (internal citation and quotation marks omitted). Other than expert opinion, which the District Court was entitled to

---

[20] For example, Egolf expert Ted Arrington testified that Hispanics in HD 63 needed a districting in which they could elect not a Hispanic candidate of choice, but a ***Democratic*** candidate. [*See* 12/15/11 TR at 237:9-238:20]. This very argument – that in an area with a cognizable minority population, Section 2 requires the creation of a majority-minority district so that the minority-preferred Democrat usually wins – has consistently been rejected. *See, e.g., Gingles*, 478 U.S. at 83 (White, J., concurring); *Uno v. City of Holyoke*, 72 F.3d 973, 981 (1st Cir. 1995); *Hall v. Virginia*, 276 F. Supp. 2d 528, 530 (E.D. Va. 2003), *aff'd*, 385 F.3d 421 (4th Cir. 2004); *Rodriguez*, 308 F. Supp. 2d at 382, 386, 403, 427 n.134 (S.D.N.Y. 2004); *Baird v. Indianapolis*, 976 F.2d 357, 362 (7th Cir 1992) ("The Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party's candidates.").

discount,[21] the only totality-of-circumstances evidence cited by Intervenors and Petitioners is a) testimony from a single fact witness, Robert Sandoval, and b) a single exhibit, Legislative Defendants Exhibit 17, showing census data for Curry County. [*See* Egolf Op. Br. at 40; Legis. Def. Op. Br. at 42].

This evidence is far too generalized to qualify as the "intensely local appraisal" required by the Voting Rights Act and the Equal Protection clause. *See LULAC v. Perry*, 548 U.S. at 436. Mr. Sandoval's testimony consisted of little more than generalized beliefs and impressions about discrimination experienced by Hispanics in the whole of Curry County, not the Clovis Hispanics of HD 63. [*See, e.g.,* 12/13/11 TR at 229:13-231:10; 242:20-243:13]. And Exhibit 17 provided

---

[21] "[I]t is the prerogative of the finder of fact to accept or reject expert testimony and to select which parts of the witness' testimony to believe or disbelieve." *Peters Corp. v. N.M. Banquest Inv. Corp.*, 2008-NMSC-039, ¶ 49, 144 N.M. 434, 188 P.3d 1185. Further, "[t]he opinion of an expert although uncontradicted is not conclusive of the fact in issue[,]" and a trial court is free to reject such opinions in whole or in part. *Van Orman v. Nelson*, 78 N.M. 11, 23, 427 P.2d 896, 908 (1967); *Sanchez v. Molycorp, Inc.*, 103 N.M. 148, 153, 703 P.2d 925, 930 (Ct. App. 1985). Intervenors/Petitioners relied on two experts for their voting rights act claims: Brian Sanderoff and Ted Arrington. In testimony that neither Petitioners nor Intervenors refuted, political science and redistricting expert Dr. Keith Gaddie seriously questioned the methodology that Mr. Sanderoff used to study minority voting opportunities in HD 63. Dr. Gaddie testified that Mr. Sanderoff's analysis did not appear to have employed proper weighting methodology recognized as part of a proper analysis in the social science community. [*See* 12/14/11 TR at 199:10-203:19]. And Dr. Arrington gave no direct testimony regarding any of the *Gingles* preconditions or the totality of the circumstances as they related directly to the Clovis Hispanic population in HD 63.

only countywide statistics, not demographic data on the particular Clovis Hispanic population at issue.[22] [*See* Legis. Ex. 17].

As this Court has previously explained, "[w]e cannot say the trial court abused its discretion by its ruling unless we can characterize it as clearly untenable or not justified by reason." *Amkco, Ltd. v. Welborn*, 2001-NMSC-012, ¶ 8, 130 N.M. 155, 21 P.3d 24. Judge Hall was well within his discretion to discount the countywide and generalized evidence proffered by Petitioners/Intervenors, and, in the absence of substantial and persuasive evidence of a Section 2 violation within the Hispanic precincts that currently make up HD 63, acted well within his discretion to find no need to draw HD 63 in a particular manner pursuant to the Voting Rights Act.

---

[22] To the extent that Petitioners/Intervenors are relying upon the facts found in the 27 year-old *Sanchez v. King* case, numerous courts have declined to apply collateral estoppel effect in voting rights cases because of changed circumstances over the passage of time. *See, e.g., Uno*, 72 F.3d at 990, 992 ("The ultimate question in any section 2 case must be posed in the present tense, not in the past tense."); *Black Voters v. McDonough*, 421 F. Supp. 165, 168-169 (D. Mass 1976), *aff'd* 565 F.2d 1 (1st Cir. 1977) ("Important factual and legal developments [defeat of referendum for change in election procedure; judicial determinations of de jure segregation of the Boston schools; Supreme Court clarification of guidelines for challenging at-large voting systems] have occurred during the seven years that have passed since the [prior] decision."); *Chavis v. Whitcombe*, 305 F. Supp. 1364, 1371 (S.D. Ind. 1969) *rev'd on other grounds*, 403 U.S. 124 (1971) ("The question whether the voting strength of citizens is diluted or minimized by apportionment and districting statutes, . . . is not one which is easily accommodated by classical concepts of res judicata or stare decisis").

B. Even Though Not Required by the Voting Rights Act, the District Court's Plan Maximizes the Number of Hispanic Majority Districts and Addresses Concerns Regarding Hispanic Voting Strength and Communities of Interest in the Clovis Area.

Although Petitioners'/Intervenors' Section 2 challenge has no merit, it was appropriate for the District Court to take Hispanic voting interests into account and select a plan that both a) maximized the number of Hispanic majority districts; and b) maintained Hispanic voting strength for minorities living in the Clovis/Portales area. While neither of these were required by the Voting Rights Act, they demonstrate that, contrary to the allegations of the Egolf Intervenors and the Legislative Defendants, Judge Hall was appropriately sensitive to Hispanic voting issues and that his final plan took such concerns into account.

Currently, the state has a 42.4 percent Hispanic voting age population ("VAP"), and 27 Hispanic majority VAP districts. [*See* Gov. Ex. 6; Egolf Ex. 24]. The Executive Defendants' Alternate 3 plan increases this to 30 Hispanic VAP majority districts, or 41.6 percent of its districts, as good as or better than any other plan presented to the Court, and virtually equal to the Hispanic population percentage statewide. [*See id.*; 12/22/11 TR at 43:15-44:11, 53:4-22]. By

comparison, other plans, such as the legislative plan and Egolf 2, have less Hispanic majority VAP districts than Alternate 3.[23] [*See id.*]

Executive Alternate 3 also took a suggestion from the Legislative Defendants' expert, Brian Sanderoff, to address the HD 63 issue and place HD 63's Hispanic community at issue – those that live around the 21st Street area in Clovis – and put them into a compact, Hispanic voting age majority (50.9 percent) district in HD 67. [*See* 12/12/11 TR at 235:13-22, 237:11-239:7, 241:10-242:24; 12/14/11 TR at 39:12-46:3, 92:13-21, 96:17-97:8; 12/22/11 TR at 40:4-17; Legis. Ex. 23(H)]. It was this modification that the District Court used in its plan. [Court Plan Pack (Op. Br. Ex. B)]. The Egolf Intervenors criticize this approach, claiming that HD 67 in the Court plan is impermissible because, although it is a adult Hispanic majority district, it does not ensure that enough citizen Hispanics are part of the district pursuant to the Voting Rights Act.[24] [*See* Egolf Op. Br. at 38].

This criticism is misplaced, for two reasons. First, as explained above, no party has established that the Voting Rights Act requires a particular remedy for

[23] The Egolf Intervenors take issue with this fact, claiming that the Court's plan does not contain districts with sufficiently high percentages of citizen voting-age Hispanics, [*see* Egolf Op. Br. at 35, n.17], but cite to no authority that the District Court was required to select a plan with the highest citizen percentages.

[24] The Legislative Defendants also criticize the District Court's handling of HD 63, [*see* Legis. Op. Br. at 42-43], but their arguments are also unavailing for the reasons discussed below.

HD 63. *See* discussion *supra.* at 33-34. Second, it ignores the testimony heard by the District Court.

The Legislative Defendants' and the Egolf Intervenors' briefs are correct that the Executive Defendants' maps did not draw HD 63 exactly as those parties insisted at trial, as they contend is required by *Sanchez v. King*, Civil No. 82-0067-M (D.N.M. Aug. 8, 1984) [Legis. Ex. 5(H)].[25] Yet they gloss over, or plainly misstate, the testimony that, starting with Executive Alternate 1, the Executive Defendants maps "***addressed*** the concerns that we had brought up regarding the unification of Clovis precincts – Hispanic precincts and placing them into a majority Hispanic district" by adopting a solution proposed by the Legislative Defendants' expert, regarding the concern for Clovis Hispanic communities. [*See* 12/12/11 TR at 235:13-22, 237:11-239:7, 241:10-242:24; 12/14/11 TR at 39:12-46:3, 92:13-21, 96:17-97:8; 12/22/11 TR at 40:4-17; Legis. Ex. 23(H)].

---

[25] In light of the fact that these parties insist that HD 63 should be drawn pursuant to *Sanchez*, it is important to note that their plans ***fail*** to draw HD 63 in the manner that the *Sanchez* court drew the district. [*See, e.g.*, 12/15/11 TR at 185:4-20; Legis. Ex. 1, Egolf Exs. 17, 22, 26]. Moreover, when the Sanchez court drew HD 63 in 1984, it did ***not*** create a majority Hispanic voting age population district, [*see* 12/15/11 TR at 184:3-9], and also, unlike Petitioners' and Intevenors' plans, kept HD 63 with a *de minimis* population deviation of 0.27 percent. [*See, e.g.,* Legis. Ex. 5(H) at 138; Legis. Ex. 1, Egolf Exs. 17, 22, 26]. Indeed, the *Sanchez* HD 63 was compact, while the Legislative Defendants' and Egolf Intervenors' HD 63 is a gerrymandered "elephant trunk[.]" [*See id.*; 12/15/11 TR at 185:4-20].

At trial, the Legislative Defendants' expert, Brian Sanderoff, testified that with regard to the Executive Defendants' ***original*** proposed HD 63, "in terms of it being an effective district in electing, giving Hispanics an opportunity to elect a candidate of their choice, I have no quibbles about that at all." [12/12/11 TR at 235:16-22; 12/13/11 TR at 161:4-21]. He then proposed a "fix" for the Executive Defendants' HD 67 to account for the entirety of the Clovis 21st Street Hispanic community, a "fix" that was adopted wholesale into Executive Alternate 3, and which continued into the Court-adopted plan. [*See* 12/13/11 TR at 170:16-19, 172:8-173:5, 173:23-25; Court Plan Packet (Op. Br. Ex. B)]. The Legislative Defendants' proffered Mr. Sanderoff as an expert in *Sanchez v. King*, in which HD 63 was altered to address a Voting Rights Act violation.[26] [*See* TR 12/12/11 at 209:17-210:5]. The District Court had every reason to trust his opinions that Executive Alternate 3 had appropriately addressed the concerns raised regarding HD 63.

C. The Egolf Intervenors' and Legislative Defendants' HD 63 Constitute Racial Gerrymandering.

Both the Egolf Intervenors and the Legislative Defendants invited the District Court, and invite this Court, to adopt a bizarrely shaped HD 63 with the

[26] Egolf expert Williams provided only cursory criticisms of HD 63 as contained in the original and alternative Executive plans and at no time expressed a Voting Rights Act concern with regard to HD 63. [*See* 12/15/11 TR at 135:8-136:6, 146:22-147:11].

dominant, if not the sole, intent of collecting Hispanic areas that are not geographically compact. [*See* Legis. Ex. 1; Egolf Exs. 22, 26]. By doing so, these parties requested that the District Court go beyond being simply aware of racial considerations, and instead, become motivated entirely by race. The District Court appropriately declined this invitation, as should this Court.

At the same time a court must ensure that any plan it adopts complies with the Voting Rights Act, it also must avoid subordinating traditional, race-neutral redistricting principles to racial considerations. "Racial classifications are antithetical to the Fourteenth Amendment, whose central purpose was to eliminate racial discrimination emanating from official sources in the States." *Shaw v. Hunt*, ("*Shaw II*"), 517 U.S. 899, 907-08 (1996) (internal quotation marks and citations omitted). Thus, a court must ensure that its plan does not constitute the "deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes[,]" otherwise known as racial gerrymandering. *Shaw I*, 509 U.S. at 640 (internal quotation marks omitted).

Racial gerrymandering occurs when race becomes the dominant and controlling rationale for where district lines are drawn and other redistricting principles are subordinated. *Shaw II*, 517 U.S. at 905. While parties proposing redistricting plans will "almost always be aware of racial demographics; . . . it does not follow that race predominates in the redistricting process." *Miller v. Johnson*,

515 U.S. at 916. Where a party can show that the challenged redistricting plan subordinated traditional, race-neutral redistricting principles to racial considerations, the plan constitutes an impermissible racial gerrymander. *See id.*

Initially, the plaintiff "bears the burden of proving the race-based motive and may do so either through 'circumstantial evidence of a district's shape and demographics' or through 'more direct evidence going to legislative purpose.'" *Shaw II*, 517 U.S. at 905 (citations omitted); *see also Bush*, 517 U.S. at 962. A party need not always demonstrate that a district is so bizarrely shaped as to be unexplainable on other grounds, *Miller*, 515 U.S. at 913, but appearances matter in racial gerrymandering and often "[a] map portrays the districts' deviance far better than words[.]" *Shaw II*, 517 U.S. at 902. For example, in *Shaw I*, the Supreme Court described one irregular district as "somewhat hook shaped . . . with finger-like extensions," and another district as "snakelike" in its appearance. 509 U.S. at 635. Racial gerrymandering also is established upon the admission by the proponent of the plan that creating majority-minority districts was the "principal reason" for certain district lines. *Shaw II*, 517 U.S. at 906.

Once this burden is met and a court finds that traditional redistricting criteria were subordinated to race, the court must then apply strict scrutiny to determine whether the proponents of the plan have a compelling interest in creating a majority-minority district using race as a predominant factor and whether the plan

is narrowly tailored to achieve that compelling interest. *Id.* at 908. Compelling interests may include a redistricting plan's attempt to remedy past discrimination or ensuring compliance with Section 2 of the Voting Rights Act. *Id.* at 909, 911-12 (assuming *arguendo* that compliance with Section 2 could be a compelling interest).

Where the proffered compelling interest is to remedy past discrimination, a party must demonstrate that the discrimination is identified "with some specificity." *Id.* at 909. "A generalized assertion of past discrimination in a particular industry or region is not adequate because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy." *Id.* (internal quotation marks and citation omitted). As a result, alleviating the effects of societal discrimination is not a compelling interest. *See id.* After having identified the discrimination with specificity, the party must then present a "strong basis in evidence to conclude that remedial action was necessary." *Id.* (internal quotation marks and citation omitted).

Similarly, where the proffered compelling interest is compliance with Section 2 of the Voting Rights Act, the Supreme Court has held that the party proponent must first meet the preconditions stated in *Gingles*, 478 U.S. at 50-51, and *Growe*, 507 U.S. at 40. *See Shaw II*, 517 U.S. at 914-17. The party must then demonstrate that, under the totality of the circumstances, members of the proffered

protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. *See id.* at 914. Having accomplished this, the party must then demonstrate that the proposed district is narrowly tailored to remedy the alleged Section 2 violation. *See id.* at 917.

Both the Legislative Defendants and the Egolf Plaintiffs invited the District Court, and this Court to create in HD 63 a district, centered not in Clovis but in Santa Rosa, with a finger-like extension that resembles an elephant with a trunk. [*See* 12/13/11 TR at 69:23-25; 12/15/11 TR at 185:13-20]. The entire purpose of the "trunk" was to collect the Hispanic populations in Clovis and Portales, [*see* 12/15/11 TR at 185:17-20], or to purportedly maintain a Hispanic majority despite population shifts. [*See* 12/13/11 TR at 161:1-3]. Therefore, strict scrutiny applies to these plans because they are primarily motivated by race.

As explained above, the Petitioners/Intervenors have not offered appropriate evidence in satisfaction of the requirements of strict scrutiny. They have not offered evidence of a compelling interest, beyond broad and nonspecific examples of past discrimination, sufficient to survive this scrutiny. Nor have they established that the district is narrowly tailored to address the alleged past discrimination.

By contrast, Executive Alternate 3 satisfies the concerns raised over HD 63 by creating a majority Hispanic district, avoiding the racially gerrymandered "elephant trunk[.]" The District Court appropriately exercised its discretion to use Executive Alternate 3 as the starting point for its plan instead of the racially gerrymandered maps proposed by Petitioners/Intervenors.

CONCLUSION

For the reasons stated above, in the Executive Defendants' opening brief, and in the Executive Defendants' briefs filed pursuant to the *Maestas* Petitioners' Petition, this Court should decline to employ its original jurisdiction to mandate that the lower courts adopt any particular plan, deny the requested relief sought by Petitioners and Intervenors in both this and in the *Maestas* case, and affirm the ruling of the District Court.

Respectfully submitted,

PEIFER, HANSON & MULLINS, P.A.

By:
Charles R. Peifer
Robert E. Hanson
Matthew R. Hoyt
P.O. Box 25245
Albuquerque NM 87125-5245
(505) 247-4800

Attorneys for Defendant/Appellee John A. Sanchez, in his official capacity as New Mexico Lieutenant Governor and presiding officer of the New Mexico Senate

Jessica M. Hernandez
Matthew J. Stackpole
Office of the Governor
490 Old Santa Fe Trail #400
Santa Fe, NM 87401-2704
Telephone: (505) 476-2200

-and-

Paul J. Kennedy
201 12th Street NW
Albuquerque NM 87102-1815
Telephone: (505) 842-0653

Attorneys for Defendant/Appellee Susana Martinez, in her official capacity as New Mexico Governor

Robert M. Doughty, III
Doughty & West, P.A.
20 First Plaza NW, Suite 412
Albuquerque, NM 87102
(505) 242-7070

Attorneys for Defendant/Appellee Dianna J. Duran, in her official capacity as New Mexico Secretary of State

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing OMNIBUS RESPONSE BRIEF OF REAL PARTIES IN INTEREST GOVERNOR SUSANA MARTINEZ AND LIEUTENANT GOVERNOR JOHN A. SANCHEZ was emailed to the following counsel of record this 31st day of January, 2012:

The Honorable James A. Hall
James A. Hall LLC
505 Don Gaspar Ave
Santa Fe, NM 87505-4463
(505) 988-9988
jhall@jhall-law.com

Robert M. Doughty, III
Judd C. West
Doughty & West, P.A.
20 First Plaza NW, Suite 412
Albuquerque, NM 87102
(505) 242-7070
rob@doughtywest.com
susan@doughtywest.com
yolanda@doughtywest.com
Attorneys for Defendant Dianna J. Duran, in her official capacity as New Mexico Secretary of
State

Jessica M. Hernandez
Matthew J. Stackpole
Office of the Governor
490 Old Santa Fe Trail #400
Santa Fe, NM 87401-2704
(505) 476-2200
jessica.hernandez@state.nm.us
matthew.stackpole@state.nm.us

Paul J. Kennedy
201 12th Street NW
Albuquerque NM 87102-1815
(505) 842-8662
pkennedy@kennedyhan.com
Attorneys for Defendant Susana Martinez, in her official capacity as New Mexico Governor

Ray M. Vargas, II
David P. Garcia
Erin B. O'Connell
Garcia & Vargas, LLC
303 Paseo del Peralta
Santa Fe, NM 87501
(505) 982-1873
ray@garcia-vargas.com
david@garcia-vargas.com
erin@garcia-vargas.com

Joseph Goldberg
John W. Boyd
David H. Urias
Sara K. Berger
Freedman Boyd Hollander
Goldberg & Ives
20 First Plaza Ctr. NW, #700
Albuquerque, NM 87102
(505) 842-9960
jg@fbdlaw.com
jwb@fbdlaw.com
dhu@fbdlaw.com
skb@fbdlaw.com
Attorneys for Plaintiffs in Egolf v.Duran, D-l01-CV-2011-02942; *Holguin v. Duran,* D-l01-CV-
2011-0944; and *Castro* v. *Duran,* D-101-CV -2011-02945

Patrick J. Rogers
Modrall, Sperling, Roehl, Harris & Sisk P A
P.O. Box 2168
Albuquerque, NM 87103
(505) 848-1849
pjr@modrall.com

Duncan Scott
Paul Kienzle
Paul Spear
Scott & Kienzle, P.A.
1011 Las Lomas NE
Albuquerque, NM 87103
(505) 246-8600
duncan@DScottlaw.com
paul@kienzlelaw.com
spear@kienzlelaw.com
Attorneys for Plaintiffs in Sena v. Duran, D-506-CV-2011-00913

Casey Douma
In-House Legal Counsel
Pueblo of Laguna
PO Box 194
Laguna NM 87026
(505) 552-5776
cdouma@lagunatribe.org

Teresa Leger
Cynthia Kiersnowski
Nordhaus Law Firm LLP
1239 Paseo de Peralta
Santa Fe NM 87501-2758
(505) 982-3622
tleger@nordhauslaw.com
ckiersnowski@nordhauslaw.com
Attorneys for Plaintiffs in Pueblo of Laguna v. *Duran,* D-101-CV-2011-03016

David K. Thomson
Thomson Law Firm
303 Paseo de Peralta
Santa Fe NM 87501-1860
(505) 982-1873
david@thomsonlawfirm.net
Attorney for Plaintiffs in Maestas v. Duran, D-101-CV-2011-03099 and *Maestas* v. *Duran,* D-101-CV -2011-03107

Stephen G. Durkovich
Law Office of Stephen Durkovich
534 Old Santa Fe Trail
Santa Fe, NM 87505-0372
(505) 986-1800
sonya@durkovichlaw.com

John V. Wertheim
Jerry Todd Wertheim
Jones, Snead, Wertheim & Wentworth, P.A.
PO Box 2228
Santa Fe, NM 87505-2228
(505) 982-0011
johnv@thejonesfirm.com
todd@thejonesfirm.com

Katherine Ferlic
The Law Office of Katherine Ferlic
128 Grant Ave, Suite 301
Santa Fe, NM 87501
(505) 982-0172
kate@ferliclaw.com
Attorneys for Plaintiffs in Maestas v. *Duran,* D-101-CV-2011-03107

Henry M. Bohnhoff
Rodey, Dickason, Sloan, Akin & Robb, P.A.
PO Box 1888
Albuquerque NM 87103
(505) 765-5900
hbohnhoff@rodey.com

Christopher T. Saucedo
Iris L. Marshall
Saucedo Chavez P.C.
100 Gold Ave. SW, Suite 206
Albuquerque NM 87102
(505) 338-3945
csaucedo@saucedochavez.com
imarshall@saucedochavez.com

David A. Garcia
David A. Garcia, LLC
1905 Wyoming Blvd. NE
Albuquerque NM 87112
(505) 275-3200
lowthorpe@msn.com
Attorneys for Plaintiffs in Representative Conrad James v. Duran, D-202-CV-2011-09600

Luis G. Stelzner
Sara N. Sanchez
Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A.
PO Box 528
Albuquerque NM 87103
(505) 938-7770
lgs@stelznerlaw.com
ssanchez@stelznerlaw.com

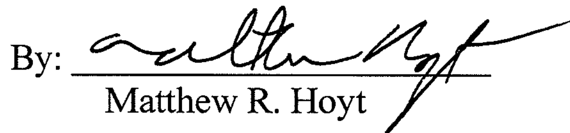
Richard E. Olson
Jennifer M. Heim
Hinkle, Hensley, Shanor & Martin, LLP
PO Box 10
Roswell NM 88202-0010
(575) 622-6510
rolson@hinklelawfirm.com
jheim@hinklelawfirm.com
Attorneys for Defendants Timothy J. Jennings, in his official capacity as President Pro-Tempore of the New Mexico Senate and Ben Lujan, Sr., in his official capacity as Speaker of the New Mexico House of Representatives

Patricia G. Williams
Jenny J. Dumas
Wiggins, Williams & Wiggins, PC
PO Box 1308
Albuquerque NM 87103-1308
(505) 764-8400
pwilliams@wwwlaw.us
jdumas@wwwlaw.us

Dana L. Bobroff, Deputy Attorney General
Navajo National Department of Justice
PO Box 2010
Window Rock AZ 86515
(928) 871-6345
dbobroff@nndoj.org
Attorneys for Navajo Intervenors

Santiago E. Juarez, Esq.
1822 Lomas Blvd NW
Albuquerque, NM 87104
(505) 246-8499
santiagojuarezlaw@gmail.com
Attorneys for Plaintiff Intervenors New Mexico League of United Latin American Citizens (NM LULAC), Paul A. Martinez, J. Paul Taylor, Peter Ossorio, Christy L. French, Matt Runnels, and Rae Fortunato in *Holguin v. Duran*, D-101-CV-2011-02944

PEIFER, HANSON & MULLINS, P.A.

By: 
Matthew R. Hoyt