

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

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

Plaintiffs,

DIANNA J. DURAN, in her official
capacity as New Mexico Secretary of State,
SUSANA MARTINEZ, in her official capacity as New
Mexico Governor, JOHN A. SANCHEZ, in his official
capacity as New Mexico Lieutenant Governor and
presiding officer of the New Mexico Senate,
TIMOTHY Z. JENNINGS, in his official capacity as
President Pro-Tempore of the New Mexico Senate, and
BEN LUJAN, SR., in his official capacity as Speaker
of the New Mexico House of Representatives,

Defendants.

NO. D-101-CV-2011-02942

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

**AMENDED
FINDINGS OF FACT AND CONCLUSIONS OF LAW
(New Mexico Public Regulation Commission Trial)**

This matter came before the Court for Evidentiary Hearing regarding the creation of districts for the New Mexico Public Regulation Commission (“PRC”). The Court heard evidence on January 11 and 12, 2012. All parties appeared represented by counsel. Following completion of the hearing, the parties submitted final arguments and proposed findings of fact and conclusions of law.

The evidence and arguments having been completed, the Court hereby enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Census and New Mexico's Population Changes

1. The United States Census Bureau conducts a decennial census throughout the United States to accomplish the proper apportionment of state election districts, including the PRC.
2. The most recent census was conducted in 2010, and established that the population of the State of New Mexico increased since the 2000 census by approximately 13.2 percent.
3. According to the 2010 Census, New Mexico's population is 2,059,179 people.
4. The PRC is made up of five (5) districts.
5. The ideal population of each PRC district is 411,836 people.
6. The current districts for the PRC have deviations from the ideal population ranging from -8.2 percent in PRC District 2 to 8 percent in PRC District 4 for an overall deviation of 16.2 percent.
7. The population deviations are consistent with the major population shifts that have occurred in New Mexico over the last decade. Most of these shifts occurred in the western areas of Albuquerque and in Rio Rancho, which grew at a rate much faster than the rest of the state. Other areas, including north central and southeastern New Mexico, as well as central Albuquerque, saw dramatically slower growth and/or population declines during this period.
8. In terms of population, New Mexico does not easily and naturally divide into five districts. The population in the greater Albuquerque area significantly exceeds 411,836 persons; therefore, it is not possible to provide a single

district to the greater Albuquerque area and divide the remaining districts throughout New Mexico. Any division of New Mexico into five districts requires that portions of the population in the greater Albuquerque area be included in districts that extend out into other regions of New Mexico.

9. A redistricting plan for the PRC which keeps homogenous regions of the state together and which unifies municipalities, counties and communities of interest, where possible, offers New Mexicans a better opportunity to have PRC Commissioners who are responsive to and knowledgeable about the services regulated by the PRC in those regions, including utilities, telecommunications, transportation, fire-fighting services, pipeline safety and other services.
10. The parties jointly stipulated that the current electoral districts for the PRC are unconstitutionally apportioned.
11. Because population deviations exist between the current electoral districts, significant changes are necessary to bring the districts into compliance with law.

Legislative Efforts to Redistrict the PRC

12. Following the receipt of official census data, the Governor called the New Mexico Legislature into a special session, commencing on September 6, 2011.
13. Prior to the special session, the bi-partisan New Mexico Legislative Council adopted, without dissent, certain guidelines to control the redistricting process. The guidelines provide as follows:

- a. Congressional districts shall be as equal in population as practicable.
- b. State districts shall be substantially equal in population; no plans for state office will be considered that include any district with a total population that deviates more than plus or minus five percent from the ideal.
- c. The legislature shall use 2010 federal decennial census data generated by the United States bureau of the census.
- d. Since the precinct is the basic building block of a voting district in New Mexico, proposed redistricting plans to be considered by the legislature shall not be comprised of districts that split precincts.
- e. Plans must comport with the provisions of the Voting Rights Act of 1965, as amended, and federal constitutional standards. Plans that dilute a protected minority's voting strength are unacceptable. Race may be considered in developing redistricting plans but shall not be the predominant consideration. Traditional race-neutral districting principles (as reflected [below]) must not be subordinated to racial considerations.
- f. All redistricting plans shall use only single-member districts.
- g. Districts shall be drawn consistent with traditional districting principles. Districts shall be composed of contiguous precincts, and shall be reasonably compact. To the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries. In addition, and to the extent feasible, the legislature may seek to preserve the core of existing districts, and may consider the residence of incumbents.

14. The Legislative Council formed a bi-partisan Interim Redistricting Committee to gather public input on redistricting, develop plans, and make recommendations to the Legislature in advance of the special session.

15. Throughout the summer of 2011, the Redistricting Committee traveled throughout the State of New Mexico and held public hearings to receive input from citizens and interest groups from all areas of the state, including Farmington, Gallup, Rio Rancho, Santa Fe, Clovis, the Pueblo of Acoma, Las

Vegas, Roswell, Las Cruces and Albuquerque.

16. In Acoma and Gallup, Native American leaders from the Navajo Nation and other tribes and pueblos in the northwest quadrant of the state consulted with the Redistricting Committee regarding their preferences and concerns for the configuration of the elective districts in that region. In Acoma, the Legislature heard comments from the Native American Redistricting Workgroup (NARW), which included representation and input from the 19 New Mexico Pueblos, the Jicarilla Apache Nation and the Navajo Nation. The NARW worked together to develop overarching redistricting principles and consensus maps to reflect the preferences of their constituent tribes. The NARW submitted these principles and consensus plans to the Legislative Redistricting Committee prior to the special session and to members of the Legislature during the special session.
17. At the public hearings held by the Legislature's Redistricting Committee, citizens in Los Alamos, Rio Rancho, Albuquerque, and Eldorado, among others, expressed a general desire that their municipalities and communities remain unified in any redistricting.
18. Members of the public expressed a general desire to have their communities remain intact to help ensure that their representative lived and worked within their communities, would recognize their values and concerns, and could thereby provide them with better representation.
19. During these interim meetings, no one outside of the Navajo interest groups expressed specific preferences for residing in a particular PRC district.

20. During the special session, redistricting plans were introduced and debated in committee meetings and on the floor of both houses. Brian Sanderoff and Research and Polling, Inc. worked and consulted with both Democratic and Republican legislators in order to create plans requested by individual legislators or caucuses.
21. During the special session, Senate Bill 24 (hereafter, "SB 24"), which provided for the redistricting of the PRC, passed both houses of the Legislature. SB 24 passed on the strength of the Democratic majorities in both chambers; no Republican legislators voted in favor of SB 24.
22. SB 24 was vetoed by the Governor.
23. In order to properly administer the upcoming election for New Mexico's state PRC seats, the Secretary of State requires that a PRC redistricting plan be adopted as soon as possible.

Plans Presented to the Court

26. The Court was initially presented with seven (7) complete PRC Plans:
 - a. Legislative Plan (SB 24);
 - b. Maestas Plan 2;
 - c. The Navajo Nation Plan;
 - d. two James/Sena Plans; and
 - e. two Executive Defendant Plans.

27. After trial commenced, the Executive Defendants withdrew their proposed plans. After the trial was completed, the James/Sena Plaintiffs withdrew one of their plans. As a result, the Court now has four plans before it:

- a. Legislative Plan (SB 24);
- b. Maestas Plan 2;
- c. Navajo Nation Plan; and,
- d. James/Sena Plan 3.

28. No plan can perfectly address all traditional redistricting principles. Certain redistricting principles are often in conflict. None of the plans submitted to the Court achieve perfect population equality between the districts. All of the plans submitted to the Court result in people being moved from one district to another. All of the plans submitted to the Court spilt some counties and municipalities. All of the plans submitted to the Court spilt some communities of interest. All of the plans submitted to the Court have districts that are contiguous.

Legislative Plan (SB 24)

29. The redistricting plan contained in SB 24 was created by Research and Polling, Inc. The initial instructions were provided by Representative Al Park, who requested that Research and Polling draw a plan with the following requirements: 1) 55% Democratic performance in District 1; 2) maximize Native American population in District 4; 3) keep District 3 as a Democrat-performing district and clean up the boundary lines for the district; 4) keep

District 2 as a Republican-performing district and clean up the boundary lines for the district; and 5) keep all of Dona Ana County unified in District 5.

30. Following receipt of the initial instructions, Brian Sanderoff of Research and Polling informed Representative Park that his request for 55% Democratic performance in District 1 would necessarily split New Mexico communities of interest. When he received this information, Representative Park abandoned the political performance goal for District 1 and the plan was drawn according to the remaining criteria.
31. The Legislative Plan contains a deviation range of 8.6 percent. The greatest deviation from the ideal among the five PRC Districts is in District 3, which contains 432,249 people and therefore deviates +5.0% from the ideal population. District 5 contains 397,015 people and therefore deviates -3.6% from the ideal population. This range is significantly higher than other plans presented to the Court. The Legislative Plan has a population imbalance of 62,765 persons.
32. The Legislative Plan attempts to follow political boundaries as the district boundaries. The Legislative Plan more closely follows county lines than the current plan. Specifically, the Legislative Plan attempts to unify Lincoln, Torrance, Dona Ana, and Otero Counties, all of which were split under the current districts.
33. The Legislative Plan significantly decreases the number of counties and municipalities split between districts, as compared to the current districts.
34. The current PRC districts contain four Democratic-leaning and one

Republican-leaning district. The Legislative Plan maintains that same composition.

35. Currently one PRC district, District 5, is a majority Hispanic voting age population (“Hispanic VAP”) district and three districts are districts in which a majority of the population identify themselves as members of some minority group (“majority-minority districts”). The Legislative Plan maintains District 5 as a majority Hispanic VAP district and maintains three majority-minority districts.

36. One district in the Legislative Plan, District 4, contains a significant Native American population with 30.6% Native American VAP. The Legislative Plan does not incorporate the Navajo Nation’s Plan completely as to District 4.

37. The Legislative Plan makes changes to current districts in an effort to have municipalities and communities unified; however, the Legislative Plan avoids drastic change to the current districts. The Legislative Plan has a core retention of 89.2%.

38. The districts in the Legislative Plan are similar in compactness to the current districts and are reasonably compact by quantitative measures.

39. The Legislative Plan pairs incumbents in only one place and this pairing involves a seat presently held by a Commissioner who cannot seek reelection in the next cycle because of term limits.

Maestas Plan 2

40. Maestas Plan 2 is a hybrid of the Legislative Plan and a plan adhering to the

current PRC districts, thus acknowledging certain “least changed” elements.

41. Maestas Plan 2 contains a deviation range of 1.0 percent. The deviations in Maestas Plan 2 are: +0.8 in District 4 and -0.2 in all the other districts. Maestas Plan 2 incorporates the desires of the Navajo Nation in District 4. The deviations are equally distributed between each district outside of District 4.
42. The minor population deviations in Maestas Plan 2 are justified in order to protect minority voting rights; to appropriately balance and address the concerns of the citizenry as expressed to the Interim Redistricting Committee; and to adhere to and accommodate traditional redistricting principles, such as following county lines and other political and geographic boundaries, maintaining the core of existing districts, unifying communities of interest, and maintaining contiguity and compactness.
43. Maestas Plan 2 maintains District 5 as a majority Hispanic VAP district and maintains three majority-minority districts.
44. Maestas Plan 2 also decreases the number of counties and municipalities split between districts, as compared to the current districts. The number of counties and municipalities split under Maestas Plan 2 is greater than the number split under the Legislative Plan.
45. Maestas Plan 2 keeps Dona Ana County and the City of Las Cruces intact in one district.
46. Maestas Plan 2 has a core retention of 93.5%.
47. The districts in Maestas Plan 2 are similar in compactness to the current districts and are reasonably compact by quantitative measures.

48. Maestas Plan 2 does not pair any incumbents.

49. Like the current PRC districts and the Legislative Plan, Maestas Plan 2 maintains four Democratic-leaning and one Republican-leaning district. For the competitive districts (Districts 1 and 5), the performance measure percentages for Maestas Plan 2 are somewhat closer to the performance measure percentages for the current districts than those same measures contained in the Legislative Plan:

	Democratic Performance	
	<u>District 1</u>	<u>District 5</u>
Current Districts	53.0%	50.7%
Maestas Plan 2	53.1%	51.2%
Legislative Plan	54.1%	51.4%

Navajo Nation Plan

50. The Navajo Nation Plan was created with the focus on District 4. In creating the Navajo Nation Plan, the goal was to create a single PRC district with a high Native American voting age population to provide the best opportunity for emerging Navajo politicians to succeed in PRC elections.

51. In creating the Navajo Nation Plan, a map including five full districts was created only because District 4 has common boundary lines with all of the other Districts. The creation of districts outside of District 4 attempted to follow existing district boundaries to the extent possible; however, the Navajo Nation has no interest in the district boundaries outside of District 4.

52. The 2010 census shows that total Native American population grew at a rate of 14.6%. This population includes Native Americans who may have also

checked an additional ethnic or racial category when responding to the census.

53. Native Americans constitute 10.7% of the population of New Mexico.
54. Tribal communities are in the best position to determine what is best for their own communities.
55. Ecological inference (King method) analysis demonstrates that elections in northwestern New Mexico involving Native American candidates and non-Native American candidates are racially polarized.
56. Native Americans in northwestern New Mexico have traditionally voted, and continue to vote, as a politically cohesive group.
57. Homogeneous precinct analyses, ecological regression analyses, and ecological inference analyses, establish racially polarized voting in Native American districts in New Mexico, and that non-Native voters vote sufficiently as a bloc in primary elections to veto more often than not the election of the preferred candidate of Native American voters.
58. Native Americans in New Mexico continue to suffer the effects of historic discrimination, in areas such as education, employment, and health, which hinder their ability to effectively participate in the political process.
59. Although there is not sufficient Native American population in New Mexico to create a majority Native American PRC district, a significant percentage of the Native American population lives in current District 4.
60. The Native American population in New Mexico is large enough and compact enough to create a plurality PRC district in which there is a high likelihood that Native Americans can cast a decisive vote in electing a candidate that will

be responsive to their concerns, even if they are unable to elect the candidate of their choice.

61. The PRC has historically served as stepping stone for members of the Navajo Nation who seek to enter statewide politics.
62. It is important to the Navajo Nation that all of its lands be included in a single PRC district in which the total Native American voting age population constitutes at least a third of the total voting age population to provide the best opportunity for emerging Native American politicians to succeed in PRC elections.
63. All of the plans before the Court include a significant Native American population in District 4. The Navajo Nation Plan, Maestas Plan 2, and James/Sena Plan 3 have total Native American voting age populations above one-third of the total population. The Legislative Plan has a slightly lower total Native American voting age population (32.7%).
64. The Navajo Nation Plan contains a deviation range of 1.8 percent. The deviations in the Navajo Nation Plan range from +0.8 in District 4 to -1.0% in District 5.
65. The Navajo Nation Plan maintains District 5 as a majority Hispanic VAP district and maintains three majority-minority districts.
66. The Navajo Nation Plan maintains approximately the same number of counties and municipalities splits between districts, as compared to the current districts.
67. Because the districts outside of District 4 were drawn to be consistent with

current districts, several communities remain unnecessarily split under the Navajo Nation Plan. The most notable split is of Dona Ana County.

68. The Navajo Nation Plan has a core retention of 94.5%.
69. The districts in the Navajo Nation Plan are similar in compactness to the current districts and are reasonably compact by quantitative measures.
70. The Navajo Nation Plan does not pair any incumbents.
71. The Navajo Nation Plan maintains four Democratic-leaning and one Republican-leaning district and maintains performance measure percentages quite close to the existing percentages in District 1 and District 5.

James/Sena Plan 3

72. James/Sena Plan 3 was prepared by Senator Rod Adair. In preparing James/Sena Plan 3, Senator Adair testified that his goals were to keep deviations between districts as low as possible, to keep the Native American population in District 4 at a significant level, to not pair any incumbents, and to establish the political performance percentages for Districts 1 and 5 as close to 50-50 as possible.
73. Senator Adair testified that he believed maintaining communities of interest was not important in establishing PRC districts due to the responsibilities of PRC Commissioners, as opposed to legislators.
74. James/Sena Plan 3 has the lowest population deviation range -- less than $\pm 0.01\%$ -- of all of the plans before the Court. The most populated district has only 27 people more, and the least populated district has only 18 people

fewer, than the ideal population of 411,836. The cumulative population imbalance, both positive and negative, is less than 100 people.

75. James/Sena Plan 3 does not maintain District 5 as a majority Hispanic VAP district; however, James/Sena Plan 3 increases the number of majority-minority districts to four. These changes represent a significant departure from existing districts.

76. James/Sena Plan 3 maintains approximately the same number of counties and municipalities split between districts, as compared to the current districts.

77. Several communities are unnecessarily split under James/Sena Plan 3. The most notable split is of Dona Ana County and the Las Cruces area. Dona Ana County is radically changed from the current districts. District 2 extends to the west side of Dona Ana County through a narrow corridor along the Texas-New Mexico border. Under the James/Sena Plan 3, District 5 extends from the border of Mexico to the University area in Albuquerque. The result is districts that are not compact.

78. James/Sena Plan 3 splits Albuquerque among four districts and unnecessarily divides distinct communities of interest within Albuquerque.

79. The districts in the James/Sena Plan 3 are significantly less compact than the current districts by quantitative measures.

80. James/Sena Plan 3 has a core retention of 84.7%. This percentage is significantly less than the other plans presented to the Court.

81. James/Sena Plan 3 appears to pair incumbents in one place and this pairing involves a seat presently held by a Commissioner who cannot seek reelection

in the next cycle because of term limits.

82. By design, James/Sena Plan 3 significantly changes the political performance in Districts 1 and 5 from the current districts. In both of these districts, James/Sena Plan 3 systematically reduces Democratic performance in an effort to reach 50-50 performance figures.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter herein.
2. The New Mexico Constitution provides that the state PRC must be composed of single-member districts. *See* N.M. Const. art. XI, § 1.
3. Due to population growth and shifts over the last decade, the current existing PRC districts are unconstitutional under the United States Constitution and New Mexico Constitution.
4. Reapportionment is, at least initially, a legislative function, “and the location and shape of districts is within the discretion of the State Legislature so long as the Constitution is complied with.” *Sanchez v. King*, 550 F. Supp. 13, 14-15 (D.N.M. 1982). However, if the legislative effort fails, then a court may assume the apportionment function and create a map through the judicial process. *See Baker v. Carr*, 369 U.S. 186 (1962). Adopting or drawing a plan by a court is an equitable remedy.
5. A court’s role in adopting or drawing a reapportionment plan is limited and is different from the role of the legislature.

Court's Role in Redistricting

6. A court-ordered reapportionment plan of a state elective body is held to a higher standard than a legislatively drawn map, because it “must ordinarily achieve the goal of population equality with little more than *de minimis* variation.” *Chapman v. Meier*, 420 U.S. 1, 26 (1975). *Chapman* makes clear that:

A court-ordered plan ... must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.... We hold today that unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature ... must ordinarily achieve the goal of population equality with little more than *de minimis* variation.”

Id. at 26-27.

7. The *Chapman* distinction between legislatively adopted plans and court-ordered plans is based on the equal protection clause of the Fourteenth Amendment to the United States Constitution. *Graves v. Barnes*, 446 F.Supp. 560, 564 (W.D. Tex. 1977); *Chapman*, 420 U.S. 1, 27; *Assembly v. Deukmejian*, 639 P.2d 939, 956 (Cal. 1982); *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995).
8. Other state courts have recognized that the *Chapman* distinction between legislatively adopted plans and court-ordered plans is applicable to state courts:

The degree to which a state legislative district plan may vary from absolute population equality depends, in part, upon whether it is implemented by the legislature or by a court. State legislatures

have more leeway than courts to devise redistricting plans that vary from absolute population equality. With respect to a court plan, *any* deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features. Absent persuasive justifications, a court-ordered redistricting plan of a state legislature must ordinarily achieve the goal of population equality with little more than *de minimis* variation. The latitude in court-ordered plans to depart from population equality thus is considerably narrower than that accorded apportionments devised by state legislatures.... The senate and senate president argue that because we are a state court, we should use the standard applied to state legislatures rather than the standard applied to federal district courts. We disagree.

Below v. Gardner, 963 A.2d 785, 791 (N.H. 2002) (internal quotation marks and citations omitted; emphasis in original). *Accord, Burling v. Chandler*, 804 A.2d 471, 478 (N.H. 2002).

9. The Supreme Court's distinction between court-ordered plans and legislatively adopted plans is based, not on federalism concerns, but on the institutional differences between courts and legislatures. *See Connor v. Finch*, 431 U.S. 407, 414-15 (1977).
10. The Constitution leaves to the Legislature, and the Governor through her veto power, subjective policy decisions regarding redistricting decisions, such as the protection of certain communities of interest over others. Because the Constitution limits this Court's role to construing the law, this Court must apply neutral, objective criteria, and, further, must construe those criteria strictly so that the Court's role in redrawing New Mexico's political maps is limited. *See, e.g., Balderas, et al. v State of Texas, et al.*, Civil Action No. 6:01 CV 1581 (E.D. Texas Nov. 14, 2001) (holding that court's role in redistricting was limited to curing statutory or constitutional defects in a state

reapportionment plan).

11. Although the Legislative Plan is entitled to thoughtful consideration, it is not entitled to any particular deference in this case because it was not enacted into law. *See Smiley v. Holm*, 285 U.S. 355, 373 (1932); *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187 (1972); *O'Sullivan v. Brier*, 540 F. Supp. 1200 (D. Kan. 1982).
12. The Legislative Defendants contend that overall deviations of less than ten percent are minor deviations which are presumptively constitutional and do not by themselves require a state to provide justification for the deviations, citing *Brown v. Thomson*, 462 U.S. 835, 842 (1983). The Legislative Defendants further contend that the presumption of constitutionality is rebuttable only where deviations in the plans are shown to be solely motivated by the promotion of an unconstitutional or irrational purpose and where the asserted unconstitutional or irrational state policy is the actual reason for the deviation, citing *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 370 (S.D.N.Y. 2004) *aff'd* 543 U.S. 997 (2004); *Bonneville County v. Ysursa*, 142 Idaho 464, 470-71, 129 P.3d 1213, 1219-20 (Id. 2005); and *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1032 (D. Md. 1994).
13. The Legislative Defendants' argument related to the presumption of constitutionality of deviations of less than ten percent is not persuasive because all of the cases cited as authority for the proposition are cases in which a state actually adopted into law a redistricting plan. The Legislative Defendants argument fails to recognize the important difference between

presumptions available to a redistricting plan adopted into law and a court-ordered plan. If the Legislative Defendants' argument were accepted, it would elevate the "thoughtful consideration" standard which is applicable in this case to full deference which is accorded to redistricting plans adopted into law. The law simply does not support such a conclusion.

14. The case of *In re Apportionment of State Legislature 1982*, 321 N.W.2d 585 (Mich. 1982), does not provide persuasive authority for the Legislative Defendants' position as that case involved the Michigan Supreme Court's responsibility to adopt a proposed plan most consistent with certain Michigan constitutional requirements. New Mexico's constitution does not expressly contain similar requirements. Moreover, the Michigan court recognized that an arbitrary degree of divergence from population equality was not permitted and that only the degree of divergence essential to achieve those state constitutional goals was permissible:

An apportioning authority is justified in adopting only the degree of divergence from population equality essential to achieve the state goals. Once achieved, the flexibility is at an end.

Id. at 576.

*Appropriate Deviations Under the Voting
Rights Act and Significant State Policy*

15. Although a court-ordered plan need not have exactly zero population deviation, "any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features." *Chapman*, 420 U.S. 1, 26-27. "Where important and significant

state considerations rationally mandate departure from [population equality] standards, it is the reapportioning court's responsibility to articulate precisely why a plan . . . with minimal population variance cannot be adopted." *Id.*

16. The federal Voting Rights Act protects against the dilution of voting strength on the basis of race, ethnicity or color.
17. Section 2 of the Voting Rights Act is violated if, "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of [protected] citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).
18. In order to demonstrate a violation of Section 2 of the Voting Rights Act, the following three preconditions must be met: (1) a particular racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).
19. The evidence establishes that Native Americans meet the threshold criteria required under *Gingles*, at 50-51, to establish a Section 2 violation of the Voting Rights Act by showing: a) the Native American population in the northwest quadrant of the state is large and geographically compact enough to

create Native American districts; b) the Native American population is politically cohesive; and, c) that racial bloc voting exists to defeat candidates of the Native Americans' choice.

20. Under the totality of circumstances, Native Americans in New Mexico do not possess the same opportunities to participate in the political process as other New Mexicans, in violation of Section 2 of the Voting Rights Act. *Gingles* at 46.
21. All four plans presently before the Court comply with the Voting Rights Act.
22. All four plans before the Court establish a single Native American influenced plurality PRC district in the northwest quadrant of the state that is reasonably compact, contiguous, and maintains communities of interest.
23. Influence districts, while not mandated by the Voting Rights Act, are recognized as a useful tool for states to utilize to increase the ability of minorities to influence the electoral and legislative processes. See, Georgia v. Ashcroft, 539 U.S. 461, 482 (2003).
24. All four plans before the Court create a PRC district in which Native Americans should have the power to influence a particular PRC election, and also comply with redistricting principles of compactness, continuity, respect for incumbency, preservation of communities of actual shared interests, and the preservation of geographical and political boundaries.
25. Creating a Native American influenced PRC district is the best remedy for historic discrimination and increasing the strength of Native American voting power in PRC elections in New Mexico.

26. A population deviation of +0.8% in District 4 is justified by: 1) the need to comply with the Voting Rights Act in creating a plan that does not dilute Native American voting strength; and 2) the furtherance of significant state policies of maintaining multiple reservation precincts within a district and respect for tribal self-determination.
27. Race and tribal political affiliation was properly considered in the plans before the Court for the purpose of assuring compliance with the Voting Rights Act, but race was not the predominate factor in the drawing of the district lines and other race-neutral districting principles were not subordinated to race.
28. The Court finds no persuasive evidence that Sec. 2 of the Voting Rights Act requires any particular Hispanic majority district be drawn; however, the continuation of one district with a Hispanic majority is consistent with established New Mexico policy.

Legal Conclusions Regarding Plans Presented to the Court

29. The Legislative Plan presented to the Court is entitled to thoughtful consideration; however, after giving the Legislative Plan thoughtful consideration, the Court concludes that the Plan fails to satisfy the requirements necessary for a court-ordered plan. The Legislative Plan contains significant population deviations between districts which are not fully justified by historically significant state policy or unique features. While some deviation in District 4 is justified under the Voting Rights Act and traditional redistricting principles such as maintaining communities of

interests, the deviation range of +5.0 to -3.6 in the remaining districts, for an overall deviation of 8.8, is not justified by any significant state policy or unique feature. These deviations are not *de minimis* for a court-ordered plan.¹

30. While the Legislative Plan fails to satisfy the requirements for a court-ordered plan, thoughtful consideration of the Legislative Plan does lead to the conclusion that protection of Native American voting rights is a significant state policy and that some population deviations are necessary to protect such rights. Moreover, the Legislative Plan reflects legitimate policy decisions to reduce dividing of communities and counties (especially Don Ana County) and to respect communities of interest, particularly in Albuquerque. Maestas Plan 2, to the extent practicable, adopts these legitimate state policies while substantially decreasing population deviations. By adopting Maestas Plan 2, the Court has respected determinations made during the legislative process.

31. Of the plans submitted to the Court, Maestas Plan 2 best complies with legal standards for court-ordered redistricting. It properly places the highest priority on population equality and compliance with the Voting Rights Act. The population deviations between districts are small. The district that contains a slightly higher deviation (District 4) is necessitated by the rights of Native Americans under the Voting Rights Act and by the historically significant state policy of maintaining tribal communities of interest to the extent practicable. The districts are contiguous and reasonably compact. Political and geographic boundaries are preserved to a reasonable degree and

¹ The Court makes no determination as to whether the Legislative Plan would be constitutional if it had been adopted into law.

the important legislative decision to keep Don Ana County in a single district is respected. The core of previous districts is retained to a high degree. Under Maestas Plan 2, political performance percentages change only slightly from the current districts.

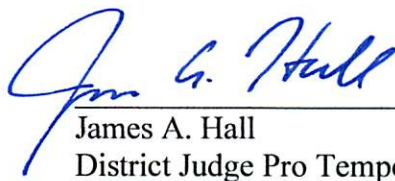
32. The Navajo Nation Plan shares some of the same features as Maestas Plan 2; however, it is somewhat inferior as to several important redistricting principles. The population deviations between districts in the Navajo Nation Plan are higher than Maestas Plan 2 and the deviations that do exist are not evenly spread throughout the districts. In addition, because the Navajo Nation Plan was prepared with a focus on District 4 and with far less attention given to other district boundaries, some political subdivisions and communities of interest are unnecessarily split.
33. Although James/Sena Plan 3 achieves the lowest population deviations between districts, it does so with significant change in redistricting policy and at significant cost to other traditional redistricting principles. James/Sena Plan 3 has a significantly lower core retention percentage than Maestas Plan 2 which results in a greater number of New Mexico voters who would be in new PRC districts. By quantifiable measures, James/Sena Plan 3 creates less compact districts, resulting in districts which extend into varied communities with differing interests. Large communities, such as Las Cruces and portions of Albuquerque, are unnecessarily split.² Finally, James/Sena Plan 3

² The parties supporting James/Sena Plan 3 argue that splitting of communities is unimportant in PRC redistricting because of the nature of the duties of a PRC Commissioner; however, these parties provide no redistricting case law which adopts such a novel argument. While PRC Commissioners have different legal responsibilities than legislators, particular areas of the state may have unique issues in the industries

represents a serious change in the political performance criteria for two targeted districts, District 1 and District 5. While this Court recognizes that the application of traditional redistricting principles may have some partisan consequences, James/Sena Plan 3 takes the approach of imposing specific partisan consequences first, thereby subordinating traditional redistricting principles. Such an approach is not appropriate for a court-ordered redistricting plan.

34. The Court hereby adopts Maestas Plan 2 for the New Mexico Public Regulation Commission. The State Executive Defendants shall submit a proposed judgment to the Court.

Dated: September 19, 2012



James A. Hall
District Judge Pro Tempore

Copies to counsel of record via e-filing system.

regulated by the PRC. For example, testimony from representatives of the Navajo Nation emphasized the importance of a PRC Commissioner who is knowledgeable regarding sacred sites of the tribe.