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

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

Plaintiffs,

v.

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

Defendants.

NO. **D-101-CV-2011-02942**
Honorable James A. Hall

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

JOINT-PLAN PROPONENTS' CONGRESSIONAL DISTRICT TRIAL MEMORANDUM

For the congressional trial before this Court, Plaintiffs Egolf, Bellamy, Holguin, Castro, and Spruce Bly (hereinafter "Egolf Plaintiffs"), have agreed with the Executive Defendants, Sena Plaintiffs, and James Plaintiffs[1] to a joint congressional plan (hereinafter "Joint Plan") that all of these parties will present to the Court. The "Joint-Plan Proponents" explain below why the Court should adopt their Joint Plan, which changes the current Congressional districts as little as

[1] The "Executive Defendants" are Governor Susana Martinez, in her official capacity and Lt. Governor John A. Sanchez, in his official capacity. The "James Plaintiffs" are Representative Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and Senator John Ryan. The "Sena Plaintiffs" are Plaintiffs Jonathan Sena, Representative Don Bratton, Senator Carroll Leavell and Senator Gay Kernan.

possible.

I. Introduction

In the trial of New Mexico's Congressional redistricting, the Court will be presented with two competing plans: One is the Joint Plan Proponents' plan, which is a "least change" plan that both minimally alters the current Congressional geography and transfers between districts as few New Mexicans (less than 25,000) as is reasonably possible in order to equalize population among the districts at issue. The other plan is the Maestas Plaintiffs plan that unnecessarily splits precincts, and, if adopted, would make major and unjustified changes in the apportionment of New Mexico's population among its three Congressional districts and the geography of those districts, resulting in the relocation of more than 180,000 New Mexicans from the Congressional districts in which they have lived for many years. The Joint Plan, in addition to moving the least number of New Mexicans from their existing districts, thereby allowing them to continue to vote for their candidates of choice, maintains existing and historical communities of interest. The Joint Plan accomplishes this with virtually zero-percent population deviations.[2] Moreover, the Joint Plan follows New Mexico law, reapportionment policy, and this Court's October 19, 2011 Order by maintaining the integrity of voting precincts.

[2] Although the Joint Plan does not reach absolute zero deviation, the law does not require a plan to achieve "mathematical precision" with regard to the population contained in each Congressional district when its minimal deviations are justified by legitimate state interests and a virtually zero-percent population deviation. *See Karcher v. Daggett*, 462 U.S. 725, 739 (1983) (noting that "any number" of state redistricting policies "might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, [and] preserving the cores of prior districts[.]"); *id.* at 750-53 (Stevens, J., concurring) (perfect population equality standard is a useful neutral criterion, but alone is an inadequate method for adjudging constitutionality of a redistricting plan). As explained in detail below, the minute deviations presented by the Joint Plan -- 0.0003% in the First, 0.004% in the Second, and 0.004% in the Third – are virtually zero percent and are justified by state law and policy requiring the use of precincts as reapportionment building blocks and avoiding the split of precincts to obtain absolute zero equality.

The Maestas plan is very different. Unlike the Joint Plan, the Maestas plan would radically alter the existing congressional map, move well over 180,000 people out of their existing Congressional districts, divide existing and historical communities of interest and, for the first time in New Mexico statewide redistricting history, would split precincts between Congressional districts, contrary to state law.

In light of the well-developed law and principles governing Congressional redistricting, it becomes clear that the Joint Plan presents this Court with the only legal and prudent alternative to reapportioning New Mexico's Congressional districts.

II. Argument

A. THE JOINT PLAN IS THE PROPER CHOICE AMONG THE MAPS PRESENTED TO THIS COURT.

The Joint Plan should be adopted by this Court as it is the only plan presented that both maintains virtually zero-percent population deviations while at the same time makes the least amount of changes to the existing Congressional map, maintaining existing and historical communities of interest and moving the least amount of people out of their existing Congressional districts.

i. The Joint Plan has virtually zero-percent population deviations.

The Joint Plan presents the least change from existing Congressional districts while achieving near-zero population deviations. According to the 2010 U.S. Census, the total population of New Mexico is 2,059,179. The ideal population for New Mexico's three Congressional districts, therefore, is 686,393 people in each district. Respecting, and therefore maintaining, all existing precinct boundaries, the Joint Plan results in a minor population deviation of only 2 people under the ideal in the 1st Congressional district, 27 people over the ideal in the 2nd Congressional district, and 25 people under the ideal in the 3rd Congressional

district. Ex. A, Congress Plan Comparison (Egolf Ex. 4), attached. Thus, while each Congressional district would ideally have 686,393 people, the Joint Plan never misses that mark by more than 27 people (according to census figures developed a year ago). The deviation from the ideal population in the Joint Plan is virtually zero-percent, and can only be described as negligible. Any argument that the Court must slavishly adhere to precise population equality – even to the point of splitting precincts as the Maestas plan does – is incorrect. *See Karcher v. Daggett*, 462 U.S. 725, 739 (1983).

ii. The Joint Plan represents the least-change plan before the Court.

Courts have recognized that "least change" is an accepted principle of court-ordered redistricting. *See Wright v. City of Albany,* 306 F.Supp.2d 1228, 1239 (M.D.Ga. 2003) (identifying "least change" as a "traditional redistricting principle"); *see also Jepsen v. Vigil-Giron*, No. D-101-CV-2001-02177, ¶¶ 22-35 (First Judicial Dist. Ct. Jan. 2, 2002) (adopting least-change plan before the court); *Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 655 (D.S.C. 2002) (adopting plan with minimal deviation that was least change in constituency movement); *Below v. Gardner*, 963 A.2d 785, 794 (N.H. 2002) (adopting court-ordered plan that caused least change in population redistribution among districts). A visual comparison of New Mexico's current Congressional map to the Joint Plan map shows that the Joint Plan alters existing Congressional district boundaries as little as possible. In doing so, the Joint Plan achieves numerous goals that form the bedrock of the law of redistricting.

In addition to maintaining, as much as practicable, existing district boundaries, the Joint Plan also avoids, again as much as is reasonably possible, the splitting of county lines and other political subdivisions. The U.S. Supreme Court has recognized that respect for political "subdivisions" of a state (like counties, towns, and precincts) and respect for communities

defined by shared interests is a legitimate consideration when redrawing district lines. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995); *Abate v. Mundt*, 403 U.S. 182, 185 (1971) (recognizing that a departure from numerical equality is justified if it serves to preserve "the integrity of political subdivisions"); *Reynolds v. Sims*, 377 U.S. 533, 580-81 (1964) (identifying preservation of political subdivisions as a legitimate policy).

Thus, the goal is to minimize, as much as possible, the number of counties and political subdivisions split between districts. *See Moon v. Meadows*, 952 F.Supp. 1141, 1148 (E.D.Va. 1997) (criticizing "the plan's disregard for the integrity of traditional localities and regions is its increase in the number of split counties and independent cities"). Political subdivisions should not be divided more than necessary to meet constitutional requirements. *See Karcher*, 462 U.S. at 733 n.5, 740-41; *see also Colleton County Council*, 201 F.Supp.2d at 648 ("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.").

Maintaining or preserving the cores of prior districts – i.e., keeping districts basically the same from one redistricting to the next – is another traditional redistricting principle. *Karcher*, 462 U.S. at 740; *Reynolds*, 377 U.S. at 578-79. This principle of preservation of district cores can manifest itself from "keeping as many of the current congressional districts intact as possible," to maintaining the cohesion of "those counties that have been together in the same district for most of the history of the State." *Stone v. Hechler*, 782 F.Supp. 1116, 1126 (N.D. W.Va. 1992). Even if honoring this principle requires small differences in the population of congressional districts, preserving the cores of prior districts remains an important and relevant factor in selecting among redistricting plans, so long it is consistent with constitutional norms,

such as equalizing population and not subordinating minority voting interests. *Karcher*, 462 U.S. at 740.

The Joint Plan preserves New Mexico's district cores as it both keeps our current Congressional districts as intact as possible and keeps together political subdivisions that have historically been together in the same district for most of the history of the State. *See Colleton County Council*, 201 F.Supp.2d at 648 (determining a court will respect all districting principles historically observed by a state). The Maestas Plan, by shifting much of Valencia County to the First Congressional District and shifting much of Torrance County from the First Congressional District into the Second, does violence to these principles.

iii. The Joint Plan moves the least amount of people out of their existing districts.

An added benefit of maintaining core districts, as the Joint Plan accomplishes, is that it reasonably minimizes the number of New Mexicans who will be transferred from one Congressional district to another. While New Mexico's population has grown and shifted significantly over the past decade, the Joint Plan moves less than 25,000 people out of their existing Congressional district. Considering that the total population of New Mexico is 2,059,179, and the ideal population for each of New Mexico's three congressional districts is 686,393 people, a total relocation of fewer than 25,000 people warrants the Court's adoption of the Joint Plan, particularly given the magnitude (more than 180,000) of New Mexicans who would be relocated to new Congressional districts were the Maestas plan to be adopted.

iv. The Joint Plan maintains communities of interest.

The preservation of communities of interest is a traditional redistricting principle. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (*LULAC*) (stating that

"maintaining communities of interest" is a traditional redistricting principle); *Miller*, 515 U.S. at 916 (including respect for "communities defined by actual shared interests" in list of "traditional race-neutral districting principles"). Communities of interest include, but are not limited to, similarity of interests as to racial, ethnic, geographic, governmental, regional, social, cultural, political, religious, and historic interests, and can include characteristics such as income levels, educational backgrounds, housing patterns, living conditions, employment patterns, public transport infrastructure, health conditions, media markets (both print and broadcast), and the location of institutions such as schools and churches. *See Bush v. Vera*, 517 U.S. 952, 943 (1996); *Diaz v. Silver*, 978 F.Supp. 96, 123-24 (E.D.N.Y. 1997).

By taking a "least change" approach to the current Congressional map—as was done by the court in 2001—the Joint Plan maintains existing communities of interest. For example, since 1982, when New Mexico added its third Congressional District ("CD"), Torrance County has been included in CD 1, which has historically been closely associated with the Greater Metropolitan Albuquerque area. The Joint Plan accommodates this community of interest by continuing to include Torrance County in CD 1 (which is seen as the "Greater Albuquerque" Congressional district). Similarly, as long as New Mexico has had 3 Congressional districts, Valencia County has never been included in CD 1 and, since 1992, has been in CD 2, the Southern New Mexico Congressional district. The Joint Plan maintains this community of interest by leaving Valencia County in CD 2, the Southern District. In short, the Joint Plan leaves, as much as practicable, the Greater Metropolitan Albuquerque area intact and maintains the Southern District intact as much as practicable, given the changes in population over the last decade.

B. THE MAESTAS PLAINTIFFS' RELIANCE ON ABSOLUTE ZERO POPULATION DEVIATION IS MISPLACED AS ABSOLUTE ZERO DEVIATION IS NOT REQUIRED AND COURTS SHOULD NOT SACRIFICE OTHER REDISTRICTING PRINCIPLES MERELY TO ACHIEVE ABSOLUTE ZERO DEVIATION.

New Mexico's three U.S. Congressional districts are subject to redistricting following each federal decennial census. *See* NMSA 1978, § 1-15-15.1 (2002); U.S. Const. art. I, § 2. To ensure that every person's vote is equal to another, Article I, Section 2 of the United States Constitution also requires that congressional districts within a state must have equal numbers of people based on the "one person, one vote" principle. *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964). Congressional districts should be apportioned so that "as nearly as is practicable one [person's] vote in a congressional election is to be worth as much as another's." *Id.* "[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*, 377 U.S. at 579.

The standard is to achieve population equality "as nearly as is practicable[,]" not precise mathematical equality. *Karcher*, 462 U.S. at 731. "In applying the "as nearly as practicable" requirement, Article I, Section 2 "'permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.'" *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Thus, there are "any number" of traditional state districting principles that "might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." *Id.* at 740.

The equal population requirement for court-drawn congressional plans is considered to be

stricter than that for legislatively drawn plans. *See, e.g.*, *Abrams v. Johnson*, 521 U.S. 74, 98 (1997) ("A court-ordered plan should 'ordinarily achieve the goal of population equality with little more than *de minimis* variation.'") (quoting *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975)). "With a court plan, any deviation from ***approximate*** population equality must be supported by enunciation of historically significant state policy or unique features. . . . Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted." *Chapman*, 420 U.S. at 26-27 (emphasis added).

In determining whether the maximum total deviation of a plan satisfies the "one person, one vote" standard, the United States Supreme Court has established a two-part test. *Karcher*, 462 U.S. at 730. First, the party challenging a redistricting plan must show that "the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." *Id.* Importantly, a plan is not *per se* unconstitutional just because a smaller population deviation could be achieved. *Id.* at 740; *see Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F.Supp. 394, 396-97 (D. Md. 1991) (holding Maryland's congressional redistricting plan was constitutional despite small population deviations between districts, where valid justifications offered by state for the deviations, keeping three major regions intact, creating a minority voting district, and recognizing incumbent representation with its attendant seniority).

Second, if the opponents of a redistricting plan can establish that the population differences were avoidable or were not the result of a good-faith effort to achieve equality, then the burden shifts to the party promoting that plan to prove that "each ***significant*** variance

between districts was necessary to achieve some legitimate goal." *Karcher*, 462 U.S. at 731 (emphasis added); *see Mellow v. Mitchell*, 607 A.2d 204, 207 (Pa. 1992) ("[T]he existence of plans with smaller deviations simply obligates a court to apply the second part of the test, *i.e.*, to ask whether the proponent of the plan can show that 'each ***significant*** variance between districts was necessary to achieve some legitimate goal.'" (quoting *Karcher*, 462 U.S. at 731) (emphasis added). Thus, showing that a redistricting plan could have smaller ***significant*** deviations means only that the burden then shifts to the party promoting that plan to prove that the population deviations in its plan were necessary to achieve some legitimate state objective. *See Karcher*, 462 U.S. at 740. Here, the Joint Plan does not include any significant deviations from population equality. The deviations in each district are virtually zero (2 people, 27 people and 25 people), so there is no reason to engage in any burden-shifting or other analysis that might be implicated if the Joint Plan included any *significant* population deviations, which it does not.

While population equality is the paramount objective in congressional redistricting, and even minor deviations can be important, courts recognize that perfect population equality need not be secured at the expense of other constitutional criteria and redistricting principles courts must consider. *See Karcher*, 462 U.S. at 740-41; *White*, 412 U.S. at 795. Population deviations — particularly virtually zero deviations — are not determinative considerations in court-drawn or legislatively-drawn plans. Courts must respect a state's traditional redistricting principles while working to achieve population equality "as nearly as is practicable." *Karcher*, 462 U.S. at 730. The Joint Plan meets this standard and the case law confirms that it does. *See Larios v. Cox*, 300 F.Supp.2d 1320, 1354-55 (N.D. Ga. 2004) (ruling that a congressional plan with a total deviation of 72 people was constitutional due to a legitimate state interest in avoiding precinct splits along something other than easily recognizable boundaries, despite testimony that an

alternate plan that addressed traditional redistricting principles with less deviation was possible); *Graham*, 207 F.Supp.2d at 1293-95 (providing congressional redistricting plan, which contained a deviation of 33 persons between the largest and the smallest districts, satisfied the constitutional one-person, one-vote requirement, despite alternative plans with lower deviations, because deviation was a result of balancing legitimate state goals and the adopted plan caused the least shift in population from the prior decade's plan); *Stone*, 782 F.Supp. at 1121-22 (upholding congressional plan with an overall range of .09% [versus the Joint Plan's maximum deviation of .004% in this case] even though 17 other plans had lower overall deviations, in order to further legitimate state goals of preserving cores of prior districts and making districts compact); *Hastert v. State Bd. of Elections*, 777 F.Supp. 634, 645 (N.D.Ill. 1991) ("[R]ather than reduce congressional redistricting to a 'hair splitting game,' we shall focus greater attention on other constitutional criteria that may reveal a more significant distinction" between the plans before the court).

The U.S. Supreme Court has refused to impose a fixed numerical standard for constitutional purposes; the standard is whether the plan is intended to achieve population equality "as nearly as practicable." *Karcher*, 462 U.S. at 730-32.[3] And here it is plain that the Maestas Plaintiffs' "zero deviation" plan is at the expense of a significant portion of New Mexico's electorate, as explained above, when compared with the Joint Plan's "virtually zero" deviation. To urge a distinction between the two plans based on the difference between zero percent and four one thousandths of a percent is illogical and inappropriate when one considers the violence done to the political geography of New Mexico by the "zero population deviation"

[3] "Precise mathematical equality . . . may be impossible to achieve in an imperfect world; therefore the 'equal representation' standard is enforced only to the extent of requiring that districts be apportioned to achieve population equality 'as nearly as is practicable.'" *Karcher*, 462 U.S. at 730 (quoting *Wesberry*, 376 U.S. at 18)).

plan.

C. THE MAESTAS PLAN BREACHES STATE LAW AND POLICY, AND THIS COURT'S ORDER, BY SPLITING PRECINCTS.

In its quest for zero population deviation, the Maestas plan promotes a radical change from the existing Congressional map, violates numerous traditional redistricting principles and violates New Mexico law by—for the first time ever in New Mexico statewide reapportionment—splitting precincts. First, the Maestas plan violates New Mexico law and this Court's direction by splitting precincts. Second, the Maestas plan relocates New Mexicans among Congressional districts in *far* greater numbers than is necessary to achieve redistricting. Third, the Maestas Plan splits communities of interest. In short, the Maestas plan is not a viable option for reapportioning New Mexico's three Congressional districts.

i. The Maestas Plan splits precincts in violation of New Mexico law, this Court's Order, and 20 years of legislative guidance on redistricting.

Attempting to distinguish itself as the "zero deviation plan," the Maestas Plan resorts to splitting precincts to achieve that title. However, New Mexico law does not permit the splitting of precincts in redistricting. Not only were the Congressional districts currently situated in New Mexico created using precinct boundaries as building blocks, *see* NMSA 1978, § 1-15-15.1, the law provides that the boards of county commissioners "shall not create any precinct that lies in more than one congressional district, nor shall the boards of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more congressional districts." NMSA 1978, § 1-15-16.1 (1991).

Further, this Court's Oct. 19, 2011 Order appropriately required all redistricting plans to be "based upon precincts used in the redistricting plans considered at the recently concluded special legislative session." *See* Order (entered 10/19/11) at ¶ 8. The Maestas Plan directly

contravenes the Court's instruction by splitting four precincts.

Despite the foregoing, the Maestas Plaintiffs state in their Findings and Conclusions, filed Nov. 28, 2011, that they are free to split districts in their Congressional plan. *See* Maestas Plaintiffs' Preliminary Proposed Findings and Conclusions for the Congressional Hearing, ¶¶ 16-18, filed Nov. 28, 2011. They premise their plan's precinct-splitting on the boards of county commissioners' statutory duty to create additional precincts or to modify precincts or to even divide precincts, for the Secretary of State's review, approval and determination as to whether such changes fall within a lawful redistricting plan. *See* NMSA 1978, § 1-3-2 (as amended). This duty, however, is only performed by the commissioners in every odd-numbered year. § 1-3-2(A). Notably, the boards of county commissioners are not given this limited authority for the purpose of redistricting (i.e., to enact a redistricting plan), the commissioners' authority comes from their duty to assist the Secretary of State in her duty to "obtain and maintain uniformity in the application, operation and interpretation of the Election Code," NMSA 1978, § 1-2-1(A)(2) (as amended), which includes effecting the Legislature's, or in this case the Court's, redistricting plans. *See also* NMSA 1978, § 1-2-2(D) (as amended) (stating among duties of Secretary of State is to advise boards of county commissioners as to the proper methods of performing their duties prescribed by the Election Code).[4]

Statutory schemes must be read as a whole, and here the county commissioners' authority to change, modify or even split precincts must be read in light of the Secretary of State's duty to

[4] In addition to restricting suggested changes to odd-numbered years, all boards of county commissioners' authority to propose any precinct changes was suspended by statute following the federal census, from July 1, 2009 until Jan. 31, 2012, "and all precinct boundaries [were] frozen." NMSA 1978, § 1-3-6.1(A). Section 1-3-6.1 will be automatically "repealed" as of Jan. 1, 2012. Again, the authority vested in the boards of county commissioners is apparently not for the purpose of splitting precincts but was apparently intended to assist the Secretary of State in her duty to effect whatever redistricting plans are created for this decade by the Legislature, which has now become the responsibility of the Court.

effect the results of Legislature's redistricting efforts, or in this case the resulting Court-ordered plans. *See San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 9, 150 N.M. 64, 257 P.3d 884 (providing statutes must be read as a whole, in harmony with one another); *Bishop v. Evangelical Good Samaritan Soc'y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361 (requiring that statutory subsections be read "in reference to the statute as a whole"). Indeed, any proposal regarding a precinct change by a board of county commissioners is subject to the Secretary of State's review and determination as to whether the change complies with the Precinct Boundary Adjustment Act, NMSA 1978, §§ 1-3-10 through 1-3-14 (Act). *See* NMSA 1978, § 1-3-13(A) (as amended) (stating all county precinct-maps must be reviewed by the Secretary of State and must comply with the Act). The Act's purpose, as explicitly stated, is only to (1) ensure compliance with federal census rules "in order to obtain enumeration of the populations of election precincts" from the census bureau, and (2) to provide "such enumeration data to the New Mexico Legislature for purposes of legislative apportionment." NMSA 1978, § 1-3-11 (1995); *see also* NMSA 1978, § 1-3-6.1(B) (providing the Secretary of State "may authorize a board of county commissioners to adjust precinct boundaries in accordance with the Precinct Boundary Adjustment Act and shall notify the legislative council service of any adjustments").

Thus, the fact that the boards of county commissioners, in every odd-numbered year, are required to propose to the Secretary of State precinct changes or modifications when certain conditions exist cannot logically be read to give the authority to a court to split precincts in developing a lawful and constitutionally permissible redistricting plan, particularly when precinct splitting is entirely unnecessary.

Moreover, the Legislative Guidelines providing that "the precinct is the basic building

block of a voting district in New Mexico," and that proposed redistricting plans "shall not be comprised of districts that split districts," was explicitly adopted by the Legislature in 2001, *see* 2001 N.M. Laws, ch. 220, § 3(A)(2), and was reaffirmed by the Legislature for this decade's redistricting by resolution dated Jan. 17, 2011. *See* Ex. B, Guidelines for the Development of State and Congressional Redistricting Plans, 2011, attached; *see also In re Stovall*, 44 P.3d 1266, 1273 (Kan. 2002) (respecting legislative guidelines that establish precincts as the "building blocks" to be used for drawing district boundaries based on official 2000 United States Census maps).

While it is undoubtedly true that New Mexico law provides for changes in precincts when necessary, what is most important in this case is that *there is absolutely no reason whatsoever that any precinct would need to be split to achieve constitutional redistricting.* The Maestas Plaintiffs' plan unnecessarily does so, for the sole purpose of obtaining a precisely zero population deviation, based on the 2010 Census.

ii. The Maestas plan represents a radical change from the existing Congressional map and divides communities of interest.

The Maestas plan, for the first time in New Mexico history, moves Torrance County into the 2nd Congressional district and out of the 1st, despite the fact that Torrance has been in District 1 since New Mexico has had three Congressional districts; moves Valencia County into the 1st Congressional district and out of the 2nd; and moves the entirety of Curry and Roosevelt Counties out of the 3rd (Northern) Congressional district and into the 2nd (Southern) Congressional district. The Maestas plan makes these radical geographic changes without any demonstrated justification.

iii. The Maestas Plan moves over 180,000 people out of their existing Congressional districts.

The Maestas plan relocates over 184,000 New Mexicans into what are for those people new Congressional districts. This population relocation is due almost entirely to the Maestas plan's relocation of Torrance County from the 1st Congressional District to the 2nd Congressional District and its relocation of Valencia County from the 2nd to the 1st. While this displacement of people into entirely different Congressional districts will apparently be presented as a constitutional necessity to effect a population deviation of zero percent, the effect of the Maestas Plaintiffs' plan is to do violence to many of the traditional redistricting principles that courts must consider when they are required to assume the task of redistricting. While the Joint Plan moves a relatively minor number of people, under 25,000, between districts, the Maestas plan moves more than 184,000 people (and may be closer to 190,000, on further analysis). The Maestas plan represents a radical departure from the existing districting map and violates traditional redistricting principles.

D. THE LULAC PLAN CONSTITUTES A RADICAL DEPARTURE FROM THE EXISTING DISTRICT LINES AND FAILS TO HONOR TRADITIONAL REDISTRICTING CRITERIA.

Although the LULAC plan does not split precincts like the Maestas Plan, it is nonetheless inappropriate because it makes drastic changes to the existing districting lines, its districts are not compact, it improperly splits too many counties, and otherwise fails to comply with traditional redistricting criteria.

The LULAC plan radically departs from the existing district lines by placing, for the first time, a large portion of Albuquerque into the second district, thereby splitting Albuquerque between congressional districts. It also splits the city of Roswell. *See* LULAC Map (Egolf Ex. 11; LULAC Ex. B). Thus, LULAC plan proposes the movement of over 250,000 people into new districts, even more that the Maestas plan. *See id.* The LULAC plan also contains more

county splits than the other plans presented to this Court, *see* Ex. A, Congress Plan Comparison (Egolf Ex. 4), attached. The LULAC plan makes all of these radical changes to New Mexico's political geography because the LULAC plaintiffs wish to establish a "Hispanic majority" Congressional district. Whatever benefits may or may not be achieved by creating such a district, the evidence will establish that the LULAC plan fails its intended purpose. For these reasons, the Court should decline LULAC's invitation to adopt its plan for Congress.

III. Conclusion

For the reasons set forth above, the Joint Plan proponents respectfully request that the Court adopt their Joint Plan.

Respectfully submitted,

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I hereby certify that on December 2, 2011, I filed the foregoing electronically through the Tyler

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Name or Number of Plan **CONGRESS**	Population Deviation Number of Persons			% Hispanic VAP			% American Indian VAP			Democratic Performance Adjusted to 50%			Split Coun -ties[1]	Polsby-Popper Compactness Scores		
	CD 1	CD2	CD3	CD1	CD2	CD3	CD1	CD2	CD3	CD1	CD2	CD3		CD1	CD2	CD3
Current Plan Used 2002-2010	NA	NA	NA	43.8	46.9	36.3	3.3	4.6	16.0	50.7	43.8	54.2	5[3]	.30	.40	.36
Joint Plan	-2	27	-25	43.5	46.9	36.4	3.5	4.3	16.1	50.9	43.6	54.5	6[3]	.27	.40	.38
HB11 Concept F Egolf Plaintiffs	10	-37	27	43.7	46.7	36.4	3.3	4.6	16.0	50.8	43.7	54.4	6[3]	.29	.39	.35
HB46 Cervantes Plaintiffs (LULAC)	-56	18	38	38.6	52.0	36.5	3.5	3.7	16.6	49.2	46.8	53.5	9	.21	.31	.32
HB43 Sena Plaintiffs	-6	11	-5	37.5	35.3	53.8	18.9	1.8	3.5	48.3	38.4	62.6	8[3]	.23	.24	.32
Maestas Plaintiffs[2]	0	0	0	45.2	45.0	36.6	3.4	4.2	16.2	51.6	42.0	54.7	5[3,4]	.16	.33	.41
Executive Defen-dants New Plan	295	-244	-71	43.2	47.5	36.1	3.6	1.71	18.4	50.7	42.4	55.6	2[3]	.40	.50	.43
Executive Defen-dants Min Change	10	15	-25	43.7	46.7	36.4	3.3	4.5	16.1	50.8	43.6	54.5	6	.29	.40	.38
James Plaintiffs	-2	2	0	34.8	45.8	46.5	3.4	2.6	17.9	46.2	41.6	62.0	5	.20	.31	.25

[1]Number of counties in more than one district.

[2]Plan drawn splitting precincts.

[3]Bernalillo County split three ways.

[4]Torrance County split three ways.

Source: Plans submitted by all parties based on 2010 U.S. Census and Democratic Performance data from Research and Polling, Inc.

Ex. A

GUIDELINES FOR THE DEVELOPMENT OF STATE AND CONGRESSIONAL REDISTRICTING PLANS

WHEREAS, it is incumbent on the New Mexico legislative council to issue redistricting guidelines that articulate principles based on federal and state law and the prior experience of this legislature; and

WHEREAS, such guidelines are necessary to assist the appropriate legislative committees involved in redistricting in the development and evaluation of redistricting plans following the 2010 decennial census; and

WHEREAS, such guidelines are also intended to help facilitate the completion of the redistricting process before the nominating petitions are first made available in October 2011 for the 2012 primary election;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the New Mexico legislative council adopt the following redistricting guidelines with the intent that the appropriate legislative committees involved in redistricting use them to develop and evaluate redistricting plans.

1. Congressional districts shall be as equal in population as practicable.
2. 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.
3. The legislature shall use 2010 federal decennial census data generated by the United States bureau of the census.
4. 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.
5. 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 in paragraph seven) must not be subordinated to racial considerations.
6. All redistricting plans shall use only single-member districts.
7. 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.

Adopted by the New Mexico legislative council
January 17, 2011

Ex. B