BRIAN EGOLF, HAKIM BELLAMY, MEL HOLGUIN,
MAURILIO CASTRO, and ROXANE SPRUCE BLY,

Plaintiff-Petitioners,

v.

D101-CV-2011-02942
D101-CV-2011-02944
D101-CV-2011-02945
County of Santa Fe
First Judicial District Court
(CONSOLIDATED)

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, JR., in his official capacity as Speaker of the New Mexico House of Representatives,

Defendant-Respondents.

THE MAESTAS PLAINTIFFS' PRE-TRIAL BREIF FOR REDISTRICTING THE NEW MEXICO HOUSE OF REPRESENTATIVES

COMES NOW, the Maestas Plaintiffs by and through Counsel, and as directed by the Court, respectfully submit the pre-trial brief for the redistricting of the New Mexico House of Representatives. The Maestas brief demonstrates why the Court should adopt the Maestas Plan, which maintains low deviations while recognizing long-standing state and federal policies of tribal self-determination. All evidence in the brief will be supported by testimony and exhibits offered at trial.

I. Introduction

During the 2012 Special Session called by the Governor, the Legislature passed House Voters and Elections Committee Substitute for House Bill 39 ("House Bill 39") to provide for the redistricting of the New Mexico House of Representatives ("state House"), which was consequently vetoed by the Governor on October 7, 2011 in House Executive Message No. 11 (*Maestas exh. 10*). While redistricting is primarily a legislative duty, courts must intervene in the redistricting process when no redistricting law is enacted. *White v. Weiser*, 412 U.S. 783, 794-95 (1973). As established in *Growe v. Emison,* state courts – as opposed to federal courts - are particularly appropriate for this task. *Id.,* 507 U.S. 25 (1993). The law, however, as applied to plans drawn or adopted by state courts is contains specific mandates more strict than the those of the Legislatively-drawn maps and less strict than those binding the federal courts (for reasons of more limited jurisdiction). This court is now presented with the complex challenge of drawing or adopting a plan to redress the constitutional violation of malapportionment (Joint Stipulation filed December 4, 2011).

In the trial of the New Mexico House of Representatives reapportionment, this court will be presented with six complete plans and two partial plans. These plans differ in deviation and in attribute. From review of these plans and the evidence presented, this court is asked to ferret out findings and make conclusions of law in order to choose the appropriate reapportionment for the state House. While legislative plans must conform to the same governing authorities as the court, legislatures are also granted much more deference in deviations because of its well-established policy-making role. Courts, on the other hand, are bound to a stricter

standard when left with the task of redistricting. *Connor v. Finch*, 431 U.S. 407 (1977). These standards will be addressed in the following memorandum.

The Maestas Plaintiffs recognize the difficulty of identifying enumerated standards under which to evaluate and order a plan be implemented. It is with this understanding that the Maestas Plaintiffs offer a plan that can be adopted under the constraints of the court's discretion and discernable standards of law. The Maestas Plan is superior because it is the *only* plan that contains low deviations (average 1.3%), conforms to traditional redistricting principles and recognizes the well-established state policy of tribal sovereignty and self-determination.

Before turning to argument, the Maestas Plaintiffs filed an amended State House plan on December 8, 2011, which conforms to the wishes of the Multi-Tribal Plaintiffs and Navajo Intervenors with regard to the Northwest quadrant of New Mexico (House Districts 1, 2, 3, 4, 5, 6, 9, 65 and 69). Because the intent of the Maestas Plaintiffs is to defer to Native American self-determination, the original Maestas Plan conformed to the Native American Redistricting Working Group Principes and state House map (*See Maestas exh. 4 and 5*) and Isleta Resolutions dated September 9, 2011 (*See Maestas exh. 7*) and September 15, 2011 (*See Maestas exh. 6*), which expressed a preference that Isleta be districted in House District 10 or 69. After learning from the Multi-Tribal Plaintiffs that Isleta preferred to be within District 69, the Maestas Plaintiffs redrew the Maestas Plan to conform to that request. The resulting Maestas Plan Revised ("Maestas Plan") also reflects the expressed wishes of Navajo Intervenors.

II. Argument

Article. IV, § 3 of the New Mexico Constitution establishes a State House of Representatives with 70 seats. In redistricting those 70 seats, an apportionment plan must conform to the standards established by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, *U.S. Const. amend XIV* ("Equal Protection Clause"), the New Mexico Constitution and the Voting Rights Act of 1965, 42 U.S.C. §§1973-1973gg-10 ("Voting Rights Act"). The ideal State House of Representatives district based upon the 2010 census has a population of 29,417.

As stipulated to by the parties to this litigation (Joint Stipulation December 4, 2011) the current plan, from 2002, is unconstitutional under the Fourteenth Amendment and the New Mexico Constitution Art. II, Section 18. Because of the suits filed, the current plan is enjoined from use in future elections.

Legal standard for deviations

For the reapportionment of state legislatures, the Equal Protection Clause rather than Article I, Section 2 of the U.S. Constitution is the legal foundation for the one person one vote requirement. This is an important difference because in contrast to Congressional districting where precise population equality is the preeminent – if not the sole – concern, the court acknowledges "leeway in the equal-population requirement" for a legislative reapportionment plan. *Chapman v. Meier*, 420 U.S. 1, 23 (1975). To a different degree, that leeway is permissible in both legislatively-enacted maps and court-drawn maps. While a legislature may adopt a state House plan with deviations of up to ten percent (the controversial and unsettled "safe harbor" articulated in *White v. Regester*, 412 U.S. 755 (1973))

without violating the Equal Protection Clause, court-drawn plans are held to a much higher standard. *Connor,* 431 U.S. 407. Unfortunately, there is no threshold deviation binding the courts with a defined standard. *Id.* The only clear direction for a court-drawn state legislative redistricting map is *approximate* population equality or *de minimis* deviation. *Id.* Constrained by this *de minimis* standard, courts seem to adopt or draw maps with average deviations below the +/-5% or total deviation of 10% that often guides Legislatures. If a plan tends towards the upward range of the +/- 5%, the plan may be considered beyond *de minimis* deviation or approximate population equality and a court may justify those deviations with an "enunciation of historically significant state policy or unique features." *Chapman*, 420 U.S. at 26.

For a court to diverge from *de minimis* deviation, a court must justify those deviations in its findings. The court has the burden to "elucidate the reasons necessitating any departure from approximate population equality and articulate clearly the relationship between the variance and the state policy furthered." *Id.* at 24. Because the state court is uniquely situated to understand the nuances of New Mexico and well-versed in the application New Mexico law, this court should be compelled to examine significant state policy in order to implement the proper redistricting solution for the state House.

In the Maestas Plan, the average and mean deviations are 1.3% and 1% or less than 1% respectively, well within the de minimis standard required for court-drawn maps. The Maestas Plaintiffs submit that this deviation is *de minimis*. The range of deviation, however, (defined as the difference between the most overpopulated and

the most under-populated districts) is 8.1% in the Maestas map, which parties will argue may require significant state policy to justify. If the court adopts this line of thinking, the Maestas Plaintiffs argue that its higher deviation districts can be accounted for by the Plan's adherence to Native American preferences and VRA requirements. The Maestas Plan maintains the six majority Native American districts adopted by the 2002 court in *Jepsen* and increases the Native American voting age population percentage in those districts to over 65%. The bookends of the range of deviation in the Maestas map correspond to further the state policy of Native American self-determination and maintenance of six majority Native American districts. Variance to this degree can be justified by the historical dilution of minority voting power[1] (*Chapman*, 420 U.S. at 24.), the special status of tribes as well as the significant state policy recognizing tribal sovereignty and self-determination.

The judicial power created by U.S. Const. art. III is limited by the requirement "that judicial action must be governed by standard, by rule. *Vieth v. Juberlirer*, 541 U.S. 267, 278 (2004) (talking about political gerrymandering as grounds for challenging legislatively-passed maps.) This is the inherent difference, however, between laws promulgated by the legislature and laws pronounced by the courts. Laws passed by the legislature "can be inconsistent, illogical, and ad hoc." *Id.* In

[1] The Court found that a population deviation as high as plus 4.8% was acceptable in order to create a majority Native American seat "to remedy the dilution of Native American voting rights." Jepsen, Finding 35, at 7. If this deviation represented both the underrepresented and overrepresented extremes used to calculate overall deviation, the overall deviation would be 9. 6. The deviation was not subservient to neutral redistricting principles. The deviation was also justified by natural, political and traditional boundaries.

contrast, laws pronounced by the courts must be "principled, rational and based on reasoned distinctions." *Id.* It is with ease that this court should find that the legitimate and important state policy of self-determination may justify higher deviation districts provided that those deviations are proportional to furthering the state policy recognized.

The Voting Rights Act and Tribal Self-determination

There are two, very separate principles relevant to the Maestas Plan's recognition of Native American self-determination and the maintenance of six majority-minority districts. *Montana v. U.S.* , 452 U.S. 911(1981); *Washington v. Confederated Tribes of Colville Indian Reservation,* 447 U.S. 134 (1980); *U.S. v. Mazurie,* 419 U.S. 544 (1975).

A. Voting Rights Act

First, the courts recognize a state interest in compliance with § 2 of the Voting Rights Act. *Bush v. Vera*, 517 U.S. 952, 990 (1996). Provided that these interests are not subordinate to traditional redistricting principles, race-based factors may be considered as long as they are narrowly tailored. *Shaw v. Reno*, 509 U.S. 630 (1993); *Bush,* 517 U.S. 952. Further, the state – including this court - can make reasonable efforts to avoid § 2 liability. This compliance with § 2 mandates this court to maintain six majority Native American districts containing significant voting age populations so as to avoid dilution of voting strength.

Thornburg v. Gingles ("Gingles") establishes the test for a violation of § 2 of the Voting Rights Act. In order to demonstrate a violation, three preconditions must be established. *Id.,* 478 U.S. 30, 50-51 (1986). The *Gingles* preconditions require (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. *Id.* The Maestas Plaintiffs argue each of the preconditions are met because 1) the Native American population in the northwest quadrant is large and compact enough to create six compact majority Native American districts; 2) the Native American population is politically cohesive; and 3) that racial bloc voting is sufficient to defeat the candidate of choice for the Native Americans. Once these preconditions are established, the court must consider the totality of circumstances. *Id.* at 46.

While the Maestas Plaintiffs believe the Pueblo of Laguna Plaintiffs and the Navajo Intervenors will provide ample evidence of historical dilution and disenfranchisement, the Maestas plaintiffs compels the court to recognize the legal argument as applied to the evidence presented as requiring six majority Native American Districts. Historic electoral disenfranchisement is well documented. In fact, the state of New Mexico denied the Pueblo and Navajo people living on tribal lands the right to vote in state elections until 1948 and 1962, respectively. The courts have recognized that New Mexico has a history of racially-polarized voting against Native Americans. *Jepsen v. Vigil-Giron*, Findings 11 & 12, No. D-101-CV-2001-02177, at 14 (N.M. 1st Judicial Dist. Jan. 24, 2002); *Sanchez v. King*, No. 82-0067-M at 20-25 (D.N.M. Aug. 8, 1984). The *Jepsen* court mandated a redistricting

map that contained six majority Native American districts. *Jepsen*, Finding 34, at 7.[2] Effective majority Native American districts were defined as districts in excess of 60% non-Hispanic Native American voting age population. *Jepsen*, Finding 26, at 5. While effective majority-minority districts do not mean the minority candidate will always be elected, the 60% threshold seems to provide a reasonable opportunity for Native Americans in those districts to elect the candidates of their choice. The "ultimate right of § 2 of the Voting Rights Act….is equality of opportunity, not guarantee of electoral success for minority-preferred candidates of whatever race." *Johnson v. De Grandy*, 512 U.S. 997 (1994).

The Maestas Plaintiffs' map contains six majority Native American districts. Each of these districts are comprised of a Native American voting age population of over 65%, higher than the percentages identified as an effective threshold by the *Jepsen* court. Further, the Maestas Plaintiffs ensure there is no voter dilution among Native American populations who do not make up the majority in a district but, as a group, influence the outcome of an election.[3] Currently, Native Americans comprise 10.7% of the population, but only 4% of the House members. "Dilution cannot be

[2] The six majority Native American House districts in the current map are 4, 5, 6, 9, 65 and 69.

[3] Representative Nick Salazar in District 40 is an example of a candidate of choice for Native Americans who comprise a significant percentage of voters in his district. Representative Salazar lives on Ohkay Owingeh, is married into the Tribe and has served in the legislature since 1973. Evidence will be presented that Representative Salazar has been a stalwart supporter of Native American issues and particularly responsive to the needs of Ohkay Owingeh, the only Native American constituents he represents. District 40 is roughly 14% *non-Hispanic* Native American, which is sufficient for the Native American population to be able to influence elections in District 40. The Maestas Plaintiffs preserve this seat essential to the representation of the Native American population in the New Mexico House of Representatives.

inferred from the mere failure to guarantee minority voters maximum political influence." *Johnson*, 512 U.S. at 997. However, this court should consider the impact of all Native Americans when redistricting.

Under *Gingles v. Thornburg*, the court is bound to keep the six majority Native American districts.[4] All the plans submitted to the court, with the exception of the James Plan, contain six majority Native American districts. However, some of the maps stop here. Of the maps that create the six majority Native American districts, the Executive Defendants and the Sena Plaintiffs fail to recognize Native American preferences in where to be districted. This is the predominant legal failure in both plans.

B. Tribal Self-Determination

New Mexico is uniquely situated in that it encompasses 19 pueblos and three reservations. Native Americans in New Mexico constitute 10.7% of the overall population of the state. Both the state and the federal government recognize the special status of tribes as sovereign nations, often described as "domestic dependent nations." The federal government granted tribal sovereignty through treaties, Congress and the courts. There is a long line of cases precluding states from interfering with tribal nations' sovereignty. *Montana v. U.S.* (1981); *Washington v. Confederated Tribes of Colville Indian Reservation* (1080); *U.S. v. Mazurie* (1975). In

[4] Proportionality is a relevant consideration in redistricting consistent with the Voting Rights Act. LULAC, 548 U.S. 399. Proportionality is defined as the number of districts in which "a minority group forms an effective majority is equal to its share of the population." *Johnson*, 512 U.S. at 1000.

2009, the Legislature passed the New Mexico State-Tribal Collaboration Act, which codified state recognition of tribal self-determination. *NMSA 1978 §§ 11-18-1 to 15 (2009).* This is a clear expression of New Mexico state policy. Self-determination is a key aspect of Native American sovereignty and should be recognized particularly in regard to participation in the state political process.

For the first time in the history in New Mexico, some tribes collectively formed a collaborative body to attempt to assert their participation in the redistricting process. The Native American Redistricting Workgroup (NARWG) met throughout the 2011 interim to establish principles for redistricting Native American voters and endorse partial redistricting maps conforming to tribal preferences. The NARWG presented these principles and maps to the Legislative Redistricting Committee. This was an important step in the enfranchisement of Native Voters, but should also be considered an expression of Native American policy. Ultimately, the reason to recognize tribal preference is not the fact that Native Americans are a race classification protected under the Voting Rights Act, but because of the special political status of tribes and tribal lands granted by the federal government and recognized by the state of New Mexico. Because tribes are recognized as sovereign governments, tribal membership is a political classification that is an expression of the tribe's self-governance not a racial classification. *Morton v. Macari*, 417 U.S. 535, 553-54 (1974). In light of federal and state policies recognizing the sovereignty and self-determination of Indian tribes, it should be a mandate of this court to recognize the tribes' exercise of self-determination in asserting preferences for redistricting as a significant state policy in New Mexico.

This significant state policy may justify greater than de *minimis* deviations tailored to advance the interest.

Traditional Redistricting Principles

Traditional redistricting principles may be considered in a judicial redistricting. *O'Sullivan v. Brier*, 540 F. Supp. 1200, 1203 (D. Kan. 1982) That said, the court likely struggles with how much weight to give traditional redistricting principles within the context of this complex litigation. Conformity to traditional redistricting principles seems to be necessary, but the variations of range within conformity are likely not dispositive in judicial redistricting. The court recognizes that traditional redistricting principles – as a state policy – can justify some level of population deviation when those principles are applied in a consistent and non-discriminatory manner. *Larios,* 300 F. Supp. 2d at 1331.

Certainly, failure to conform to traditional redistricting principles is likely problematic. For instance, an odd-shape might provide a prima facie Voting Rights Act or other justiciable claim. But overall, a comparison of maps on traditional redistricting principle to extract legal findings may be unmanageable because no one principle supersedes another.

While the Maestas Plaintiffs' map ranks or scores at the top of each measurable characteristic of redistricting principles as briefly discussed below, the Maestas Plaintiffs recognize the difficulty of the court's position and again, assert that the court should draw or adopt a reapportionment plan that provides for adherence to legitimate and clear state policies (i.e. tribal self-determination) with the lowest possible deviation. The Maestas Plan provides the court with a map that

accomplishes that goal as well as conforming to all traditional redistricting principles.

A. Contiguity and Compactness

Section 2-7C-3 NMSA 1978 requires that the House of Representatives "be elected from districts that are contiguous and that are as compact as is practical and possible." Because of this clear state policy mandating contiguity and compactness, the Maestas Plaintiffs pay special care in ensuring both are important considerations in the Maestas Plan.

First, contiguity dictates that all parts of the district are connected geographically. The Maestas Plan adheres to the contiguity requirement by apportioning in such a way that constituents are able to travel from one end of a district to another without leaving the district.

Second, compactness relates to the minimum distance between all parts of the constituency. The court has recognized at least two ways to measure compactness; 1) the "eyeball" approach and 2) a Polsby-Popper analysis, a statistical compactness measurement. *Bush,* 517 U.S. at 960 and *Vieth,* respectively. Under the eyeball test, the Maestas map demonstrates strong overall compactness. Further, a Polsby-Popper measurement comparing all maps reveals the Maestas map is the second most compact map proffered (0.32), after only the Sena map (0.33), which does not contain many of the other attributes in the Maestas map.

B. Preservation of Political Subdivisions

The court recognizes that states have a legitimate interest in maintaining the integrity of political subdivisions in state legislative maps. *Reynolds v. Sims*, 377 U.S.

533 (1964). This can be accomplished by minimizing – to the extent possible – the number of counties and political subdivisions split between districts. *Rodriguez v. Pataki*, No. 02 Civ. 618, 2002 U.S. Dist. LEXIS 9272 (S.D.N.Y. 2002). The Maestas Plan splits 24 counties, fewer than the Egolf (25), Legislative (26) and the James (29) plans. This is an important consideration because local governmental entities are frequently charged with responsibilities incident to the operation of state government, including serving as fiscal agents, passing and implementing local ordinances and a responsibility for local fire and police services. *Reynolds*, 377 U.S. at 580-581.

C. Incumbent Pairings

Bush v. Vera acknowledges that incumbency protection or avoiding contests between incumbents as a legitimate state goal. *Id., 517 U.S. at 977.* A court should ensure that such pairings are politically fair such that they do not advantage one political party over another. *Larios,* 300 F. Supp. 2d. at 1347. However, one person one vote may not be compromised in order to minimize incumbent pairings. The Maestas Plan has been criticized for pairing three incumbents in Roswell (District 59-66-57) and moves two of the districts to Albuquerque's west side, where population growth is accelerating. Roswell has declined in population to a total of 48,366 people (according to the 2010 census), which justifies less than two seats.

D. Communities of Interest

In New Mexico - because of its unique geography and shared boundaries with tribal lands, this court is uniquely situated to find that communities of interest

should be preserved and respected. The recognition of communities of interest is a legitimate and traditional goal in redistricting. *Bush,* 517 U.S. at 977. Although the term "community of interest" is difficult to define, the Maeastas Plaintiffs submit – and will show evidence that - communities of interest are groups of people with similar economic attributes and values connected to or divided from other communities by geographic boundaries or urban / rural characteristics.

Certainly, the pueblos and reservation lands are obvious and easily derived communities of interest, particularly considering the special political status of tribes and tribal lands. Further, political subdivisions (like townships, cities and counties) can form communities of interest, particularly when the subdivision plays an important role in the provision of governmental services. *Karcher v. Daggett*, 462 U.S. 725, 758 (1983). Lastly, communities that self-identify by a particular landmark or geographic boundary are communities of interest, like the "West Side" of Albuquerque. The Maestas Plaintiffs apportions seats in a way that corresponds to communities of interest, including conforming to the preferences of tribes, creating new seats where population growth demands new seats (Dona Ana and the historically underrepresented "West Side" of Albuquerque).

While ideally these choices are made by the Legislature, the court may be forced to make some of these choices because of differences in individual maps. Fortunately, the Maestas Plaintiffs will offer Indian self-determination and conformity to patterns of growth as bright-line criteria for communities of interest.

Deference to a Legislative Plan

Generally, "Thoughtful Consideration" not Deference is the standard for State Legislative Plans that passed both chambers and were vetoed by the Governor. The problem is that "thoughtful consideration" is premised on allowing for a legislation that has not been signed into law to be offered as "proffered" state policy. New Mexico in no way recognizes legislative history and therefore the concept of "proferred state policy" is a Federal invention without foundation in this State.

The Court should refer to *O'Sullivan v. Brier*, 540 F.Supp. 1200 (D.C. Kan 1982) for guidance on point. In *O'Sullivan* the Court considered first whether it owe deference either to the plan passed by the legislature and vetoed by the Governor, or to the plan supported by the Governor but rejected by the legislature. Relying on Supreme Court precedence the O'Sullivan Court states,

> Congressional redistricting is primarily the state legislature's task, but becomes a judicial task when the legislature fails to redistrict after having an adequate opportunity to do so. White v. Weiser, 412 U.S. 783, 794-95, 93 S.Ct. 2348, 2354, 37 L.Ed.2d 335 (1973). Although a federal court should defer to any enacted, constitutionally acceptable state redistricting plan, id. at 795, 93 S.Ct. at 2354, we are not required to defer to any plan that has not survived the full legislative process to become law. See Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 197, 92 S.Ct. 1477, 1484, 32 L.Ed.2d 1 (1972). In Beens, after the Minnesota legislature had reapportioned state legislative districts and the Governor had vetoed the legislation, a three-judge panel adopted a reapportionment plan. The Supreme Court, though disapproving the panel's plan, agreed with the panel that it was not required to defer to either the legislature's or the Governor's plan: "The present Governor's contrary recommendation, though certainly entitled to thoughtful consideration, represents only the executive's proffered current policy, just as the reapportionment plan he vetoed ... represented only the legislature's proffered current policy." Id. In accordance with Beens we are bound to give only "thoughtful consideration" to plans that were passed by the state legislature but subsequently vetoed by the Governor, or to plans urged by the Governor. See Carstens v. Lamm, —- F.Supp. —— at —— - —— Nos. 81-F-1713, - 1870, slip op. at 11-13 (D.Colo. Jan. 4, 1982).
> *O'Sullivan v. Brier*, 540 F.Supp. 1200 (D.C. Kan. 1982)(citations in original).

Both the Governor and the Legislature are integral components of the legislative process; thus any plan that does not survive this process to become law must be regarded as "proffered current policy" which, though entitled to thoughtful consideration, cannot be deemed a clear articulation of established state goals. *See Sixty-Seventh Minnesota State Senate v. Beens,* 406 U.S. 187, 92 S.Ct. 1477, 32 L.Ed.2d 1 (1972); *Carstens v. Lamm,* 543 F.Supp. 68 (D.Colo.1982); *Shayer v. Kirkpatrick,* 541 F.Supp. 922 (W.D.Mo.1982) (three-judge court); *O'Sullivan v. Brier,* 540 F.Supp. 1200 (D.Kan.1982) (three-judge court). Courts have nonetheless recognized that the farther a bill progresses in the legislature, the more probative it is of a discrete state policy. *Shayer v. Kirkpatrick; Skolnick v. State Electoral Board,* 336 F.Supp. 839 (N.D.Ill.1971) (three-judge court). However, that cannot be true for New Mexico a State that has clearly established that there is such thing as legislative history and that a only duly enacted legislation is the law not a partially drafted statute.

The Court in *Regents of University of New Mexico v. New Mexico Federation of Teachers,* 125 N.M. 401 (N.M. 1998) indicated there is no such thing as "legislative history" especially as it regards statements by legislators stating,

> The statements of legislators, especially after the passage of legislation, cannot be considered competent evidence in establishing what the Legislature intended in enacting a measure. *United States Brewers Ass'n,* 100 N.M. at 218–19, 668 P.2d at 1095–96 (quoting *Haynes v. Caporal,* 571 P.2d 430, 434 (Okla.1977)). If the testimony of actual legislators is not recognized as competent, then statements from citizens who drafted early versions of legislation are even less competent. The same can be said of descriptions by labor representatives of what their constituents desired from a particular piece of legislation. Further, we can see no point in attempting to construct the language of statutory provisions that were never enacted. The exclusion of such provisions from the final statute tells us nothing dispositive about the Legislature's intentions; such

> exclusions are not even necessarily indicative of what the Legislature did *not* intend.
> *Id* at 412.

In sum, the Supreme Court "will therefore not consider any of the evidence presented by any party as "legislative history" of redistricting. *Id*., and this Court should not either. Because there is no legislative history, there can be no proffered state policy and therefore no "thoughtful consideration" to any proposed legislative plan.

The precedent it would set could discourage partisan legislatures from compromise and offer a majority party with a minority governor an inherent motivation to pass a partisan redistricting plan knowing that the Court would give deference. Likewise, a Governor would be encouraged to veto a more balanced bill hoping for a judicial preference when the Governor turns to the courts for remedy.

III. Conclusion

In light of the legal standards for the state court's exercise of jurisdiction over state legislative reapportionment, the Maestas Plan is the only viable option for the court. The Maestas Plan has the lowest deviations possible while recognizing the expressed preference of Native Americans as a significant state policy. The Maestas Plan also creates majority-minority districts proportional to the voting age population of the corresponding minority group (six Native American; 28 Hispanic). The Maestas Plaintiffs assert that these facts conform to the correct definable and measurable standards under current law. The Maestas Plaintiffs respectfully request that this Court adopt the Maestas Plan, as submitted.

Respectfully submitted,

_____/s/_____

David K. Thomson,
Thomson Law Office, P.C.
303 Paseo de Peralta
Santa Fe, New Mexico
87501 505-982-1873

And

John V. Wertheim
Jones, Snead, Wertheim & Wentworth, P.A.

1800 Old Pecos Trail
Santa Fe, NM 87505
505.982.0011

And

Stephen Durkovich
Law Office of Stephen Durkovich
534 Old Santa Fe Trail
Santa Fe, NM 87505
505-986-1800

And
Kate Ferlic, Esq.
Law Office of
Katherine Ferlic
128 Grant Avenue, Suite 301
Santa Fe, NM 87501

Certificate of Service

I HEREBY CERTIFY that on this 9 day of November, the foregoing was served by electronic means pursuant to the First Judicial Court E-filing system to counsel of record:

_____/s/_____
David K. Thomson, Thomson Law Office, P.C.