IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

HON. ANTONIO MAESTAS and HON. BRIAN EGOLF,
members of the New Mexico House of Representatives,
and JUNE LORENZO, ALVIN WARREN, ELOISE GIFT
and HENRY OCHOA,

Plaintiffs-Petitioners,

vs. No. 33,386

HON. JAMES A. HALL,
District Judge *Pro Tempore* of the
First Judicial District Court,

Respondent,

vs.

HON. SUSANA MARTINEZ, in her capacity
as Governor of New Mexico, et al.,

Real Parties in Interest.

MAESTAS PETITIONERS' RESPONSE BRIEF

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I. INTRODUCTION

On January 3, 2012, the District Court entered its findings of fact and conclusions of law, announcing the decision to adopt the Executive Alternative 3 plan with minor modification for reapportionment of the state house. [Maestas Pet. Ex. 1, FOF and COL] On January 17, the District Court entered Judgment adopting Executive Alternative 3 with minor modification. Also on January 17, the Maestas Petitioners initiated proceedings in this Court with filing of their Verified Petition for Superintending Control. Believing the choice of plans to be in error, the Maestas Petitioners seek writ reversing the District Court's choice of Executive Alternative 3 and directing the District Court to pick from among other acceptable plans presented at trial.

In its quest to make an unblemished choice, the District Court allowed litigants much freedom to revise their proposals and to patch up flaws, even in the final days and hours of trial. By the end, eight sets of parties arrayed more than a dozen complete redistricting plans for state house before the District Court. [FOF 26 & 28] Apparently, Governor Martinez and the other Executive Defendants could not resist the temptation to mischief in the freedom afforded them. Though they began the trial with plans showing partisan fairness, which is to say a level playing field between Republicans and Democrats, they introduced Executive

Alternative 3 on the last day of trial, and this plan manipulates the lines of the seventy house districts in order to create an unconstitutional, partisan gerrymander.

Confronted now, with clear evidence that they led the Court into error they argue in the brief in Chief that the due process violations were "evidentiary issues" and that as the Governor and Secretary of State they have a right to offer into evidence a reapportionment plan and then send their expert, who would testify on the merits, and allow them to meet their burden, on a plane to New Jersey.

The Executive Defendants' fatal error is their abandonment of their role as participants in an open and deliberate redistricting process for that of a closed, tactical partisan advocate. As such, they misunderstand that it is their burden to show as part of their affirmative defense to this litigation that their plan in not unconstitutional. They may not rest, as they would like to do, on the fact they led the Court to error without proper scrutiny of the consequences of their actions.

II. ARGUMENT

A. Due Process

1. Burden of Proof:

It is not disputed and in fact it was stipulated to that current districting system is unconstitutional. Therefore, those who offered a remedy had the obligation, depending on their position, to meet their burden of proof as to the benefits of their plan. In addition, the Executive Defendants as State actors were

required to show that the plan they were imposing on the citizens of New Mexico met constitutional scrutiny. To do this, basic tenants of due process permitted other litigants to test their theory. This due process was not provided.

The Governor and Secretary of State would like this Court to agree that there only obligation is to offer a map packet at the end of litigation and literally walk away. Here the colloquy between Governor's counsel and the Court is enlightening, to wit:

> **Mr. Kennedy**: Judge, the only think I would like to put on the record is that as the Court know, our map drawer, Mr. Morgan, had to leave and go to New Jersey where he was working on a redistricting in New Jersey. I think he's finished that now. And I think he will be available to the Court, of course not on an exparte basis….
>
> **Court**: At this point, I don't believe I have need to do that, and I wouldn't even consider that without reconvening all counsel to see if there are objections to that. So at this point I think you can operate under the assumption that I won't do that.

It is not disputed that the plan offered by the Executive and eventually adopted has a partisan bias. See FOF 72. Maestas Plaintiff disagree that this was compelled by the incorporation of the Native American Working group preferences. That said, it was plan offered by the Governor as part of an affirmative defense or affirmative request for relief and it was therefore their burden to prove its merits. See *J. A. Silversmith, Inc. v. Marchiondo* 75 N.M. 290, 294, 404 P.2d 122, 124 (N.M.1965) (stating, Appellant had the burden of proof in the lower court on this defense, because it constituted an affirmative defense (§ 21-

1-1(8)(c), N.M.S.A., 1953 Comp.) and it is well settled that the party alleging the affirmative has the burden of proof).

As is true in other voting rights cases, the Governor has the burden of proof of her plan. *Georgia v. Ashcroft* 539 U.S. 461, 472, 123 S.Ct. 2498, 2507 (U.S.,2003) (discussing the extent to which Georgia went to prove that its Senate plan was not retrogressive either in intent or affect. Understanding now that it was the Executive Defendants burden of proof, it is clear their failure to meet that burden is fatal to their plan, and the inability to test that proof violated Maestas Plaintiffs due process.

2. The Governor and the Trial Court Were Incorrect That Allowing Consideration of Executive 3 Over Objection is an "Evidentiary" and not Due Process Issue.

The Executive Defendant's argue in the Response that Judge Hall's decision to allow a plan late in the litigation was an "evidentiary issue" and thus no due process rights attach. They then argue that even if such due process rights attach, that the Maestas Plaintiffs did not preserve their objections. This Response will take the last point first. Citation to the record illustrates the Legislative Defendant's, Tribal Intervenors and Maestas Plaintiffs, frustration with trying to convince the Governor and Secretary of State that as State actors they have an obligation to create an open and deliberative process for redistricting.

Record: Motion To Strike Executive Plan Maestas Joins the Motion

As recited below, Executive Defendant's representation that the Maestas Plaintiffs did not strongly object and preserve their objection to the late consideration of the Executive plan is not correct.

First, it is important to note that he purpose of the preservation requirement is to "allow [ ] the district court an opportunity to correct error, thereby avoiding the need for appeal, [while] at the same time creating a record from which the appellate court can make an informed decision." Vigil v. Fogerson 138 N.M. 822, 827, 126 P.3d 1186, 1191 (N.M.App.,2005)(citing *Crutchfield v. N.M. Dep't of Taxation & Revenue,* 2005–NMCA–022, ¶ 14, 137 N.M. 26, 106 P.3d 1273.)

The framework for the objection to the final Executive plan is contained in the Legislature motion to strike as argued by Mr. Olson and joined by Maestas. [See Tr. P.9 ln.15-24]. Most relevant to the concerns of the Maestas Plaintiffs was Mr. Olson's argument that "the Executive seeks to do through its plan is to impose radical public policy changes in this state through the guise of litigation rather than through bringing those public policy choices Legislature." [See Tr.p. 12 ln. 6-11]. Put another way, the Executive Defendant's were not conducting themselves in a manner consistent with their Constitutional and statutory obligations, instead they were using the guise of litigation to force through a radically partisan plan without providing any due process to citizens, who for ten years, will have this plan forced upon them.

Following Mr. Olson, Ms. Leger de Fernandez argues in essence the due process concerns on behalf of the Tribal Intervenors. [See Tr. P. 20], stating, "our concerns are exactly about the process." Ms. Leger de Fernandez then distinguishes between the continued amendments by the Executive and the fixed plan by the Maestas Plaintiffs in that the Executive continued to argue each map in the alternative when the Maestas Plaintiff's discovered a discrepancy in their map with the desires of the Native American working group, the map was fixed pre-litigation. [See Tr. P.23 ln. 19]. In fact, it appears from the record the Maestas Plaintiffs' spent more time talking with representative of the Tribal Governments than the Governor of New Mexico.

Counsel for the Maestas Plaintiffs spoke next and bridged the arguments between the Legislature (Executive using litigation as vehicle to force through a partisan plan) and the Tribal Intervenors (this process of continuing to amend a plan is prejudicial because the litigants cannot keep track of or litigate all the proposed changes).

The Maestas objection:

Mr. Thomson: The Maestas Plaintiffs' position on this sort of bridges what was just described by Ms. Leger and the legislature. [See Tr. 12-22-11 p.25 ln 24,25]. "Our clients believe they are entitled to a certain amount of substance of procedural due process to address those. [this is a transcription error, Mr. Thomson argues "certain amount of Substantive and Procedural due process"]. Mr. Warren, in particular and it ties in with the Tribal argument, it's a very difficult thing to do given the common – the inability to go able to their governing body and vet some of these positions.

These objections were renewed when Mr. Kennedy offered Alternative 2 and 3. [See Tr. Id. at p. 42 ln 7-15]. The Court throughout the trial – as is the normal course in a bench trial – let the parties preserve their previous objections without having to restate them, as it did in this case stating, "so 32 and 33 from the Executive are offered. Other than the objections raised in the Motion to Strike, are there any other objections to 32 and 33?" [See Tr. Id.].

The review of the record convinces the Court that the Maestas Plaintiffs invoked a ruling by the trial court on their contentions and thereby preserved the due process arguments they now make on appeal. See *Vigil v. Gogerson* 138 N.M. 822, 827 (N.M. App. 2005).

The Executives led the Court astray (and reiterate this argument on pages twenty two of their brief) by arguing that admitting Executive three is really a threshold evidentiary issue and whether that plan violates Maestas Plaintiff due process rights, or violates Separation of Powers is somehow a matter that the Court weighs in determining which plan to choose. Unfortunately the District Court took the bait stating:

Court: The only thing I really see is an argument as to the evidentiary issue..That's the only real argument I see that might go to admissibility.

The Court apparently takes the leap that once in, the map packet proves its own merits and there is no burden on the State to show it is not an unconstitutional

bias plan or there is no right of the Representative Maestas or others a chance to test the facts and rebut it. Not only is the map self-authenticating it is somehow self-proving. The Maestas Plaintiffs are not arguing that the map lacked foundation, in fact that is one reason everyone agreed to a standard map packet from Research and Polling. What the Maestas Plaintiffs were objecting to is the Court's consideration of this evidence without right to test its legitimacy.

The constant amendment to the plans put a strain on all parties; litigants worked day and night to at least minimally analyze every new plan that was presented. This was until the final days of trial, when the time constraints of the trial would not permit proper examination of the executive's new plans. Submitted under the guise of fixing their erstwhile refusal to accommodate the interests of the Navajo Nation and Multi-Tribal Plaintiffs, Executive Alternative 3, disclosed to the parties the day before the trial ended and introduced into evidence on the last day, was actually a Trojan horse.

III. Partisanship

A. The District Court Reversibly Erred by Adopting Executive Alternative 3 Because It Contains Significant Partisan Bias.

In their Response to the argument that Executive Alternative 3 plan was ineligible for court-adoption due to its partisan bias, the Executive Defendants in substance raise the white flag, while putting forward some face-saving words. Actually, they agree with the legal proposition that a court adopting a plan "may,

and should, take its political effect into account." [Exec. RB 31] For this proposition, Executive Defendants cite a law review article co-authored by Dr. Keith Gaddie, their own expert, which puts the point of law succinctly: "when courts have to draw maps after a legislature fails to discharge this responsibility . . . court-prepared maps aspire to partisan neutrality." Keith Gaddie & Charles S. Bullock III, *From Aschcroft to Larios: Recent Redistricting Lessons from Georgia*, 34 Fordham Urban L.J. 997, 1005 (2007). Dr. Gaddie's scholarly work therefore complements his endorsement at trial of the partisan symmetry methodology, which Dr. Katz used to analyze partisan bias in this case.

As explained in previous briefing, Dr. Gaddie credited the partisan symmetry methodology as a "very sophisticated" one designed "to estimate fairness or bias in legislative districting." [Tr. 12/14/2011, 286:14-22] Dr. Gaddie went on to admit that the methodology was "the most sophisticated mechanism we have" to measure how a proposed redistricting plan can result "in changes in partisan control of the Legislature." [Tr. 12/14/2011, 287:4-23] Furthermore, Justices Stevens and Breyer have explicitly endorsed the partisan symmetry methodology used by Dr. Katz as "widely accepted by scholars as providing a measure of partisan fairness in electoral systems." *See LULAC v. Perry*, 548 U.S. 399, 466, 126 S.Ct 2594 (2006) (Stevens & Breyer, JJ., concurring in part and dissenting in part). Dr. Gaddie actually offered an expert opinion in *LULAC v.*

Perry using the partisan symmetry methodology, and Justices Stevens and Breyer favorably cite Dr. Gaddie's work by name. 548 U.S. at 464-65.

Because the Executive Defendants cannot deny that Executive Alternative 3 results in significant partisan bias under a partisan symmetry standard, they counter that the partisan gains inherent to Executive Alternative 3 are "unintended political consequences." [Exec. RB 31] But unintended by whom? The Maestas Petitioners have never suggested the District Court consciously intended unfair political consequences in its handling of the case, but the Executive Defendants and John A. Morgan, who drew up Executive Alternative 3, deserve no such benefit of the doubt. Mr. Morgan described his business as "Republican consulting and strategy." [Tr. 12/14/2011, 178:24-25 & 179:1] He had a contract with the Republican Party of New Mexico to draw reapportionment plans for Republican legislators during the Special Session of the Legislature in September 2011, which ended only weeks before trial began. [Tr. 12/14/2011, 179:2-5] Naturally, he met with many Republican legislators during the session, including those from the Roswell area, whose districts faced pressure from relative population decline in Chavez County. [Tr. 12/14/2011, 174:1-20] In preparation for his work in this case, Mr. Morgan participated on a conference call with Jay McCleskey, Governor Martinez's chief political strategist. [Tr. 12/14/2011, 180:8-20]

In any event, even if one assumes that Mr. Morgan makes for a faithful servant to political neutrality—a dubious hypothetical if there ever was one—the bare fact remains that Executive Alternative 3 achieves significant partisan advantage, rendering the plan ineligible for court adoption. As the Executive Defendants themselves put the point: it is the "political effect" that a court should take into account. [Exec. RB 31] The effect of unfair bias, not the intent or motive behind it, can result "in changes in partisan control of the Legislature," as Dr. Gaddie admitted. [Tr. 12/14/2011, 287:4-23] And due to such political effect, the District Court itself rejected the James Plan in part because it contained "significant partisan bias" based on Dr. Katz's analysis. [FOF 87; Maestas Trial Ex. 12; Maestas Pet. Ex. 4, Katz Aff.] That which disqualified the James and Sena Plans must also disqualify Executive Alternative 3. Consistency demands nothing less.

Finding no authority to support a loosening of the standards for political neutrality in a court-adopted plan, the Executive Defendants pin their hopes on *Good v. Austin*, 800 F.Supp. 557 (E.D. Mich. 1992) . [Exec. RB 32-33] Contrary to their hopes, however, *Good v. Austin* actually militates for reversal. The three-judge panel in that case was so concerned about the partisan purposes behind the plans submitted by litigants that it appointed its own map drawer under Fed. R. Evid. 706. *Good* at 559 (declining to adopt submitted plans and choosing one

drawn by court's 706 expert instead.) Appointment of a 706 map drawer is probably the best way to vindicate a court's neutrality, but in the absence of its own map drawer, a court clearly must refrain from picking a biased plan. *See, also, Prosser v. Wisconsin Elections Bd.*, 793 F.Supp. 859, 867 (W.D. Wis. 1992) (Posner, Cir. J., sitting by designation) ("We are comparing submitted plans with a view to picking the one [or devising our own] most consistent with judicial neutrality.") If anything, *Good v. Austin* and *Prosser*—as well as *Balderas v. Texas*, 2001 U.S. Dist. Lexis 25740 cited by the Executive Defendants—stand for the absolute taboo of a court's adopting a partisan biased plan, the fear of which drives courts to appoint their own map drawers.

To allow Executive Alternative 3 to govern the 2012 elections and beyond would violate both the United States and New Mexico Constitutions, and the Executive Defendants failed to respond to these constitutional arguments. First, the Bill of Rights of the New Mexico Constitution provides that "[a]ll elections shall be free and open." N.M. Const. art. II, § 8. Four states have such a "free and open" election clause in their constitutions, and thirteen other states have a similar "free and equal" clause in theirs. *See Gunaji v. Macias*, 2001-NMSC-028, ¶¶ 27-8, 130 N.M. 734, 31 P.3d 1008 (analogizing New Mexico's "free and open" clause to Kentucky's "free and equal" clause). Elections for the state house will not be free, open or equal if held under a biased redistricting plan, which by definition unfairly

favors one political party over another. Second, holding elections under a biased plan burdens associational rights under the First Amendment. *See LULAC v. Perry*, 548 U.S. at 462 (Stevens & Breyer, JJ., concurring in part and dissenting in part) (stating, in reference to claims of partisan gerrymander, "the freedom of political belief and association guaranteed by the First Amendment prevents the State, absent a compelling interest, from 'penalizing citizens because of their participation in the electoral process, . . . their association with a political party, or their expression of political views'") (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 314, 124 S.Ct. 1769 (2004) (Kennedy, J., concurring in judgment))

Finally with regard to constitutional implications of partisan bias, leaving Executive Alternative 3 in place would violate the separation of powers, allowing Governor Martinez to achieve through the judiciary a political prize she could never have obtained through the legislative process. Constitutionally, redistricting is first and foremost a legislative task. N.M. Const. art. IV, § 3 (providing that, after each census, "the legislature may by statute reapportion its membership"). Although Governor Martinez has the right to veto, the veto is a negative power, which does not permit the Governor to, in effect, create a reapportionment statute by way of the judiciary. *See State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 365, 524 P.2d 975, 981 (1974) (holding that the power of veto is the power to "disapprove" and not "the power to create or enact new legislation"). If this limit

on the power of veto is to mean anything in the context of reapportionment, then the judiciary must hew to a strict standard of neutrality, effectively establishing partisan fairness as a threshold question each plan must pass before it merits further consideration.

In a last-ditch effort to minimize the impact of Dr. Katz's finding of statistically significant partisan bias in Executive Alternative 3, [Katz Aff. ¶ 28], the Executive Defendants suggest that the partisan symmetry methodology may be suited for "academic purposes" but not for the real worlds. [Exec. RB 38] This attack is new and unsubstantiated in the record. Peer-reviewed methodologies are good things for courts to rely upon, of course. *See LULAC v. Perry*, 548 at 466 (Stevens & Breyer, JJ., concurring in part and dissenting in part) (calling the partisan symmetry "undoubtedly a reliable standard for measuring a burden on a the complainants' representational rights") (citations and internal quotation marks omitted); *see also* Bernard Grofman & Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after LULAC v. Perry*, 6 Election L.J. 2 (pointing out that a majority of justices appear now to have endorsed the view that partisan symmetry can be used as part of broader test in resolving partisan gerrymandering claims challenging enacted plans on equal protection grounds).

B. Clear Error in Pairings and Partisan Bias: Maestas Alt v. Governor 3

Next, the Executive argues basically the fact that their plan was bias is of not great import because all plans had some partisan effect. Because of its low deviations and strict adherence to the desires of the Native American Group and it cooperative yet begrudging agreement to create a Northern Pairing upon the Court's request, the Maestas Alternative Plan was and is the best plan available of those offered into evidence.

The Court unfortunately reaches a strained and clearly erroneous conclusion regarding the pairing contained in the Maestas Alternative. As the sole reason for disqualifying the Maestas Alternative Plan the Court stated,

> The Maestas 2 Plan contains lower deviations that most plans however, some significant deviations still exist in the north central and southeast areas of New Mexico. More importantly, the Maestas 2 plan contained highly partisan incumbent pairing. While the Maestas Alternative Plan reduced the most partisan of the incumbent pairings, it did so by moving District 43, which results in the paring of the only Republican incumbent in north central New Mexico with a Democratic incumbent. (COL 30 at. P. 31)

Unfortunately the District Court erred on the facts and the law. The state interest in avoiding incumbent pairings is to avoid "perturbation in the political balance of the state." *Prosser v. Elections Bd.,* 793 F. Supp. 859, 871 (W.D. Wis. 1992) This perturbation is avoided because the Maestas Plans' pairings do not advantage a particular party.

After Judge Hall instructed the Maestas plaintiffs to incorporate a Northern pairing, an alternative map (Maestas 2) was presented to the court. Unfortunately, however, pairing in the north-central region was more challenging than in the southeast because of the desire to respect the self-determination of the many pueblos in the area[1].

As evidenced by the testimony of Governor Lovato, any pairing involving HD40 (Rep. Nick Salazar) was unacceptable to Ohkay Owingeh. The only other functional north-central pairing was HD43 and HD50—both of which had Democratic performance numbers of $\geq 50.0\%$ in both the current map and original Maestas plan. Further, the evidence presented demonstrates that the only possible pairing in the north central without running contrary to the express preferences of the pueblos is the pairing of House District 43 and House District 50, which is the

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[1] The fact that the court-adopted plan splits Ohkay Owingeh is not a trivial matter and highlights this difficulty. From the footnote to conclusion #33 (on page 33 of the court's ruling):

...While the tribal lands of Ohkay Owingeh may extend over several precincts... the majority of the members vote in a single Rio Arriba precinct.

- There are inherent problems with dividing a pueblo's people and representation from the pueblo's land, as the court-adopted map does

An example of a situation that could arise from such a division: pueblo members live in HD40, but their land and a sacred site extend into a neighboring district. The representative from the neighboring district isn't elected by the pueblo members, but is nevertheless partially responsible for protecting their sacred site. The result is that the legislator who represents the site is not elected by, or responsible to, the tribal voters with the strongest interest in the sacred site.

pairing in the Maestas Alternative Plan and the Egolf 4 Plan. The difficulty of getting tribal approval for change is not one that can be accomplished within a period of a week nor can it be done without the opportunity of the tribes to view and deliberate the plans. *See* Redirect Examination of Vice President Dorame, Dec. 19, 2011, p. 138, line 12 through p. 139, line 1.

In the current map, one district (HD43) is a swing seat (50.0% Democratic performance), while the other leans Democratic (HD50 is 53.2% Democratic performance). In the original Maestas map, HD43 was a borderline swing seat (52.0%), while HD50 was a solid Democratic district (54.7%).

The Maestas alternative consolidated two districts with equal to or greater than 50% Democratic performance to create a Republican district on the west side of Albuquerque (HD43 at 54.1% Republican performance) and a swing district (HD50 at 48.1% Republican performance). As a result of the shift, HD59 moved back down into the southeast at 64.6% Republican performance.

Judge Hall's ruling concluded that the Maestas alternative's north central pairing was partisan because it involved a Democrat-Republican pairing instead of two Democrats. However, the facts belie that assertion.

First of all, Los Alamos-based HD43 is an increasingly democratically performing area. At worst, it is a perfect swing seat: 50.0% partisan performance. But in 2008, HD43 supported the Democratic candidate for President by a

convincing margin (13.8%), so claiming that the district is Republican is vastly overstating the case.

Although the incumbent, Rep. Jim Hall, is a Republican, he was appointed less than a year ago to replace the beloved and long-serving Rep. Jeannette Wallace, who passed away in April 2011. Rep. Hall was not elected and has not served a single legislative session—he has never faced the voters in his district.

The pairing does not adversely affect the Republican incumbent in HD43 any more than it does the Democratic incumbent in HD50. The resulting Democratic performance (51.9%) reflects a compromise between the current Democratic performance of HD43 (50.0%) and HD50 (53.2%).

On balance, because HD43 moves to a location where its new Democratic performance is 45.9%, the advantage in the pairing is decidedly to the Republicans: they gain a solid Republican seat (54.1% Republican performance) from a marginal one (50.0%), and they create a more vulnerable Democratic district (HD50 drops from 53.2% to 51.9%).

Contra: Court-adopted Plan (based on Executive alternative 3)

The Executive defendants were obsessed with a northern pairing, but they insisted on pairing only Hispanic legislators. The Executive Defendants basically argued and the Court accepted that a northern pairing is not enough, a Hispanic pairing is required. They opted to combine HD40 and HD68—both strongly

Democratic districts at 74.7% and 61.0% Democratic performance respectively. Not only was this pairing unacceptable to Ohkay Owingeh, it also paired the longest-serving legislator in the state capitol, Rep. Nick Salazar, who has served in the legislature since 1973.

SUMMARY: partisanship of pairings in southeast and north central

Maestas *(original)*:

Southeast—2 Republican seats move from southeast to west side of ABQ/Rio Rancho, where they remain Republican; all other districts maintain similar Republican performance

North-Central—no pairing

Result: no partisan impact

Maestas *(alternative)*:

Southeast—1 Republican seat moves from southeast to Rio Rancho, where it remains Republican

North-Central—1 swing seat moves from north-central to the west side of Albuquerque, where it becomes Republican; 1 Democratic seat in north-central stays in the area, but becomes a swing seat

Result: loss of one Democratic district; gain of one Republican district

Court-adopted Plan:

Southeast—1 Republican seat moves from southeast to Rio Rancho, where it remains Republican

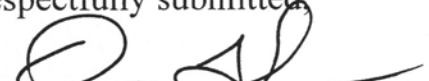
North-Central—1 Democratic seat moves from north-central to the west side of Albuquerque, where it becomes Republican

Result: loss of one Democratic district; gain of one Republican district

IV. CONCLUSION

For the reasons stated above and in the Maestas Plaintiffs Brief in Chief, Petitioner's-Appellants respectfully request that this Court reverse the District Court and order the implementation of a reapportionment plan consistent with the New Mexico and Federal Constitution and as provided in the Remedy section of the Brief in Chief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31, 2012, I caused a true and correct copy of the Maestas Plaintiffs' Reply Brief to be served by e-mail to all parties and counsel of record in the consolidated redistricting cases pending in the First Judicial District Court and to the Respondent, the Hon. James A. Hall, District Judge *Pro Tempore* of the First Judicial District Court, at the following addresses:

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