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

No. D-101-CV-2011-02942

BRIAN F. EGOLF, JR., *et al.*,

Plaintiffs,

vs.

DIANNA J. DURAN, *et al/*,

Defendants.

- Consolidated with -

CAUSE NO. D-101-CV-2011-02944
CAUSE NO. D-101-CV-2011-02945
CAUSE NO. D-101-CV-2011-03016
CAUSE NO. D-101-CV-2011-03099
CAUSE NO. D-101-CV-2011-03107
CAUSE NO. D-202-CV-2011-09600
CAUSE NO. D-506-CV-2011-00913

THE EXECUTIVE DEFENDANTS' WRITTEN CLOSING ARGUMENT REGARDING THE NEW MEXICO HOUSE OF REPRESENTATIVES REDISTRICTING PLAN

After hearing all of the evidence in this case, the Court should order the adoption of a redistricting plan for the State House of Representatives based upon the proposals presented by the Executive Defendants. The Court should not adopt any plan based upon HB 39, whether in the form of the Legislative Defendants' plan, or the plans proposed by the Egolf or Maestas Plaintiffs. HB 39 and all plans based upon it are built upon a fundamentally flawed foundation because they were not based upon a goal of equality of representation but upon a goal of bringing districts within a 10% total range of population deviation. The United States Supreme Court has never recognized a safe harbor from seeking true population equality among districts.

Moreover, in addition to admittedly not striving for true representational equality, each of these three plans contains the consequences of the same politically motivated decision to treat similarly underpopulated areas differently depending on whether the incumbents in that area are Republican or Democrat. For these reasons, the Legislative, Egolf, and Maestas plans are inappropriate choices for court-drawn redistricting of the House of Representatives.

The parties that oppose the Executive Defendants' Plan, and proposed alternate versions, have failed to show that the Executive plans are not the best choice for reapportionment of the New Mexico House of Representatives. Their arguments fail because, unlike any other plan presented to this Court, the Executive Defendants' Plans balance all of the competing criteria in a manner appropriate for court-mandated redistricting by keeping population deviation to an absolute minimum, protecting minority voting rights, following traditional secondary redistricting criteria, and ensuring political fairness by avoiding extreme partisan changes (for either political party) in district composition.

It is undisputed that, in redistricting, maintenance of population equality and minority voting rights are legal imperatives. All other criteria, while significant, must take a back seat to the rights of all New Mexicans to have their vote count as equally as is possible. The only plan that accomplishes this task is the Executive Defendants' Plan. By contrast, the Legislative Defendants' Plan, in order to accomplish the Democratic majority's goal to preserve its incumbents in North Central New Mexico even in the face of significant slow population growth justifying the loss of one Democratic district in that region, contains impermissible population deviations and sacrifices population equality to favor certain rural areas of the state over urban areas, in violation of the equal protection clause of the 14th Amendment. *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), *aff'd*, *Cox v. Larios*, 542 U.S. 947. The Legislative Defendants'

Plan was not entitled to any deference in the first place, and, given its substantial population deviations and established geographic bias, certainly is entitled to no deference now.

Other plans, such as those offered by the Egolf and Maestas Plaintiffs, employed HB 39 as a starting point rather than making fair and neutral decisions based upon the current districts and their population deviations, and thus are saddled with the same underlying politically motivated decisions and infected with its impermissible geographic bias. While these plans may not contain the same severe *Larios* problem as HB 39, they come nowhere near the *de minimis* population deviations proposed by the Executive Defendants' Plan. Moreover, when it comes to secondary, neutral criteria, the Executive Plan does at least as well as, if not better, than the other proposed plans in almost every category, and makes as few changes as possible to the current political landscape by striving to maintain the *status quo* of political performance amongst its proposed districts. By contrast, the Legislative, Egolf, and Maestas plans each treat this redistricting litigation as an opportunity to redraw districts in the House of Representatives in a way that will advance their political party's interests by reducing the number of districts that tend to perform for Republican candidates and shifting most competitive seats toward Democrats.

The current map has performed as one would expect from a plan adopted by the majority party. In a good year for Democrats, their margin increased to 45-25. In a bad year for Democrats, when over 25 state chambers around the country became Republican, Democrats still maintained their majority in the New Mexico House of Representatives. In light of this background, it is especially important for the Court to be wary of selecting a Democratically advocated map that even further increases the number of Democratic districts.

While the Executive Defendants' Alternate Plan is an improvement upon their original plan because they made genuine efforts to address concerns raised by other parties during

litigation, each of the alternatives proposed by the Egolf and Maestas Plaintiffs continue to demonstrate their unwillingness to make fair and neutral redistricting decisions based upon population changes in the state. The Executive Alternate Plan has even lower population deviations in its proposed districts, is more compact, has higher core retention values, and has fewer municipal splits than the original executive proposal. More importantly, the Alternate Plan takes care of two major concerns raised by other parties during the litigation: first, it creates a majority Hispanic voting age population ("VAP") district in the Clovis area; and second, it addresses the concerns raised by the Multi-Tribal Plaintiffs and Navajo Intervenors by reducing the number of Native American communities that were split by the original plan. This latter change specifically addresses the Native American request that Mt. Taylor be included in a Native American district, and otherwise mimicks, as closely as possible, the Northwest quadrant maps proposed by the Native American Plaintiffs, all the while remaining faithful to the population equality objective.

The main attack against the Executive Defendants' Plans is that they split communities of interest. This argument neglects the fact that municipalities are communities of interest, and the Executive Defendants' Plans score well in that category. Further, it assumes that preservation of communities of interest – a subjective, often politically motivated criterion – should be elevated above the Constitutional principle of "one person, one vote." Applicable law states otherwise. This argument also ignores that in ***every*** plan submitted to this Court, communities of interest are divided. Finally, the communities of interest argument is rendered virtually if not totally moot by the Executive Defendants' two additional plans – Executive Alternates 2 and 3 – which adopt wholesale the districts requested by the Native American Plaintiffs and also preserve, as much as can be possible, those Native American and other communities of interest that the parties have

asked this Court to maintain in any adopted plan. Although the Executive Defendants have their own concerns with these alternatives, they recognize that this Court, acting through its equitable authority, may consider such plans in whole or in part when it decides how to redraw New Mexico's House districts.

The Executive Defendants recognize that the Court is faced with a difficult choice. It must decide amongst many plans that, with the exception of the Legislative Plan, arguably could survive constitutional scrutiny. The Executive Defendants therefore respectfully suggest that whatever prudential way in which this Court decides which plan to adopt, or draw for itself, must place the mandatory criteria – population equality and minority voting rights – at the top and only apply secondary criteria that can be evaluated in a neutral and empirical manner. Under such methodology, the Court should select, or use as a starting point for drawing its own map, the Executive Defendants' Plans.

I. THE LEGISLATIVE DEFENDANTS' PLAN IS NOT A VALID EXPRESSION OF STATE POLICY; NOR IS IT ENTITLED TO "GREATER DEFERENCE" THAN THE EXECUTIVE DEFENDANTS' PLAN.

Under the New Mexico Constitution, the Governor is a co-equal branch of government, along with the Legislature, and a necessary part of the legislative process. Unless the Governor approves a bill, it does not become law. N.M. Const. art. IV, § 22. The Governor was elected statewide by a majority of all New Mexicans. In addition, the redistricting process here was initiated by the Governor through her calling the special session. The Governor also used her executive veto to prevent an unlawful bill from becoming law. Accordingly, deferring to or adopting the legislative map would amount to a judicial override of the Governor's veto.

The plans drafted and passed by the state legislature, but subsequently vetoed by the Governor are not appropriate starting points for the drawing process. The plans never survived the political process and do not represent state policy on redistricting. *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 197 (1972) ("The present Governor's contrary recommendation … [and] the reapportionment plan that he vetoed … represented only … proffered current policy."). As such, the state legislature's plans are not entitled any particular deference.[1] *Carstens v. Lamm*, 543 F.Supp. 68, 78-79 (D.Colo. 1982) (refusing to give "priority" to a plan that was "approved by the General Assembly but vetoed by the Governor"); *O'Sullivan v. Brier*, 540 F.Supp. 1200, 1202 (D.Kan. 1982) (citing Beens and stating that the court is "not required to defer to any plan that has not survived the full legislative process to become law").

The courts have interpreted the law to require a court-drawn plan to start with the last *enacted* map. *See, e.g., Johnson v. Miller*, 922 F.Supp. 1556, 1559 (S.D.Ga. 1995) (finding that a minimum change plan acts as a surrogate for the intent of the state legislative body); *Stephan v. Graves*, 796 F. Supp. 468, 470 (D.Kan. 1992) (noting that the court should adopt a plan that comes the closest to deferring to the state political will, as expressed in the unconstitutional plan, and intrude on state policy as little as possible). The role of the court is to modify the benchmark plan to the extent required to conform with applicable legal standards. *See Johnson*, 922 F.Supp. at 1559; *Stephan*, 796 F.Supp. at 470; *Upham v. Seamon*, 456 U.S. 37, 43 (1982) ("An appropriate reconciliation of [the requirements of the Constitution and state political policy] can

[1] To give any deference to the state legislature's maps would allow the legislature to override the Governor's veto of the redistricting plans outside of and contrary to the political process. It is not the province of the courts to permit the state legislature, or anyone else, to circumvent the political process. *See Carstens v. Lamm*, 543 F. Supp. 68, 79 (D.Colo. 1982) ("This Court will not override the Governor's veto when the General Assembly did not do so"); *Jensen v. Wis. Elections Bd.*, 639 N.W.2d 537, 714 (Wisc. 2002) (distinguishing between enacted and proposed plans, stating that "[j]udges should not select a plan that seeks partisan advantage-that seeks to do better than it would do under a plan drawn up by persons having no political agenda …").

only be reached if the district court's modification of a state plan are limited to those necessary to cure any constitutional or statutory defect."); *Balderas v. Texas*, No. Civ. A. 6:01CV158, 2001 WL 34104833, at *2-3 (E.D. Tex. Nov. 28, 2001) (holding that court modifications must be limited to those necessary to cure the statutory or constitutional defects in a state's plan).

Legislative Defendants cite no case law that contradicts or calls into question the well-established principle that plans passed by a state legislature, but subsequently vetoed, do not receive any deference. *See* Legis. Omnibus Brief at pp. 2-9. Legislative Defendants have not found, and none of the parties have cited, any authority where a court, faced with the task of redistricting in an impasse situation, used a legislature's vetoed maps as a starting point for a court-drawn plan.

Additionally, the Legislative Council Redistricting Guidelines, upon which the Legislative Defendants and the Egolf and Maestas Plaintiffs rely, do not apply or govern this Court's redistricting of the New Mexico House of Representatives. The Guidelines for the Development of State and Congressional Redistricting Plans were adopted by the New Mexico Legislative Council "with the intent that the appropriate legislative committees involved in redistricting use them to develop and evaluate redistricting plans." Guidelines for the Development of State and Congressional Redistricting Plans adopted by the New Mexico Legislative Council (1/17/2011) (Gov. Ex. 4). These Redistricting Guidelines are silent as to their application to the court-ordered redistricting process and, therefore, can only guide the legislative redistricting process. The process of redistricting through a court is governed by different principles – principles of law that have been briefed by the Executive Defendants – and compliance with the Redistricting Guidelines does not mean that a plan complies with federal and state law.

Furthermore, HB 39 was not the product of "a lengthy and intensive process of public participation," as represented by the Legislative Defendants. *See* Legis. Omnibus Brief at p. 8. The plans presented at public hearings were "concept maps" only, not the plan outlined in HB 39. *Id.* at n.2. Senator Adair confirmed that HB 39, as a committee substitute, was never subjected to any real opportunity for public comment. TR 12/21 at 138:8-21. Accordingly, the Legislative Defendants incorrectly represent that it was subjected to any significant public input.

II. POPULATION EQUALITY IS, AND SHOULD BE, THE MOST IMPORTANT REDISTRICTING STANDARD BY WHICH ALL PLANS SHOULD BE EVALUATED.

As the Court is well aware, the Executive Defendants' Plan keeps population deviations to an absolute minimum and is the only proposal that keeps every district within one percent of ideal population. In doing so, the Executive Defendants' Plan most closely adheres to applicable case law regarding *de minimis* population deviation and the standards that apply to court-ordered redistricting of the State House of Representatives. *See Chapman v. Meier*, 420 U.S. 1, 26-27 (1975). The Executive Defendants' Plan was able to achieve near population equality while respecting and protecting minority voting interests and without sacrificing traditional, neutral redistricting principles. No other plan accomplishes this feat.

A. The Legislative Defendants' Map Contains an Obvious and Impermissible Geographic Bias that Was Based upon the Political Decision to Save Democratic Incumbents in an Underpopulated Region in North Central New Mexico.

The evidence was clear during trial that the majority party in the Legislature treated the ten percent (10%) population deviation range as a safe harbor within which they could draw districts in any way they chose. TR 12/13 at 140:7-141:2; TR 12/19 at 265:6-15, 284:18-285:17. It was also clear that the reason for the high deviations, at least in part, was because the Speaker

of the House, Representative Ben Lujan, decided early on that he refused to allow the Legislature's demographer to eliminate a Democratic district in the North Central region of the state even though that region was under-populated to the same extent as two other regions of the state where the Democratic majority recognized that it was necessary to eliminate districts. TR 12/12 at 219:13-220:8; Legis. Ex. 14. Although he refrained from criticizing this political decision by his clients, Mr. Sanderoff acknowledged that consolidating districts in the three places that the Executive Defendants selected was reasonable and justified under by the population changes. TR 12/12 at 164:15-23. The demographer for the Egolf Plaintiffs also conceded that, if he had used current districts as his starting point, rather than the politically driven HB 39, he would have consolidated a district in the north central region. TR 12/15 at 162:22-24. This testimony by Dr. Williams demonstrated in vivid fashion that HB 39 was based on political motivations rather than neutral demographic principles.

Unlike the Executive Defendants' Plans, the Legislative Defendants' Plan, HB 39, employs an overall population deviation range of up to, but less than, ten percent (10%) to discriminate in favor of certain geographic areas such as New Mexico's North Central region to the detriment of other areas of the State, including Albuquerque. And, at least two other groups of plans – those proposed by the Egolf and Maestas Plaintiffs, are based on the political and geographic biases of HB 39. The purpose of such population deviation is transparent – it results in tangible benefits for certain selected regions of the State and for the party currently in control of the New Mexico House of Representatives, allowing them to avoid pairing two incumbents in a region where underpopulation warranted such a pairing. This politically-driven geographic bias undermines the purpose of this redistricting process, which is to redraw district lines to

correct malapportionment so that the citizens of the State of New Mexico receive an equal vote when selecting their Representatives.

The Supreme Court has "underscored the danger of apportionment structures that contain a built-in bias tending to favor particular geographic areas or political interests or which necessarily will tend to favor, for example, less populous districts over their more highly populated neighbors." *Abate v. Mundt*, 403 U.S. 182, 185-86 (1971). "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the *Equal Protection Clause*, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside." *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 653 (1964) (concerning the redistricting statute apportioning the New York State Legislature).

Geographic bias was more recently invalidated by the courts in *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), *aff'd*, *Cox v. Larios*, 542 U.S. 947 (2004). In *Larios*, a state legislative plan that used a ten percent safe harbor population deviation to obtain partisan benefits was rejected as an "intentional effort to allow incumbent Democrats to maintain or increase their delegation, primarily by systematically underpopulating the districts held by incumbent Democrats, by overpopulating those of Republicans, and by deliberately pairing numerous Republican incumbents against one another." *Id.* at 1329. The court found it "clear that rather than using the reapportionment process to equalize districts throughout the state, legislators and plan drafters sought to shift only as much population to the state's underpopulated districts as they thought necessary to stay within a total population deviation of 10%." *Id.* at 1329. A state legislative reapportionment plan that systematically and intentionally creates population deviations that favor the representational interests of the citizens of a particular

geographic area over other citizens violates the one person, one vote equal protection mandate. *See WMCA, Inc.*, 377 U.S. at 653.

Here, the Legislative Defendants similarly have ignored the prohibitions on geographic bias to consistently underpopulate the districts in the North Central portion of the State, thus protecting Democratic incumbents in that area, and as a consequence, bolstering the voting power of the persons who reside within these districts. Specifically, of the eleven (11) underpopulated Democratic districts identified by their demographer in the current districts, the Legislative Defendants' Plan leaves ten (10) of those same districts in the North Central portion of the State severely underpopulated. *See* Legis. Ex. 1; TR 12/22 at 163:3-5; TR 12/13 at 44:3-23. As a result, the Legislative Defendants have avoided the proper consolidation of these Democratic districts. TR 12/12 at 164:15-23. Although HD 43, which includes Los Alamos, is adjacent to this group of Democratic districts and is underpopulated in both the current districts and in HB 39, it is important to note that HD 43 was not included in Mr. Sanderoff's original identification of the group of underpopulated north central districts. *See* B. Sanderoff email to David Adams (8/23/11) (Legis. Ex. 25) (specifically stating that the group of 11 underpopulated districts were all held by Democratic incumbents). In addition, the decision to expand the boundaries of the North Central districts in order to preserve them had a ripple effect that also left the southeastern part of the state underpopulated, despite the fact that the Legislative Plan removed a district from that area.

In order to underpopulate these districts in the North Central region, the Legislative Defendants' Plan overpopulates numerous central Albuquerque districts by four percent (4%) or more. Such overpopulation unfairly and impermissibly dilutes the votes of Albuquerque's residents. Moreover, the adverse impact to these voters' rights will continue and worsen in the

coming decade. Although not as grossly overpopulated as the districts in central Albuquerque, the overpopulated districts on the Westside of Albuquerque are likely to continue to grow in the coming years, thus further diluting the votes of the persons within these districts under the Legislative Defendants' Plan. *See, e.g.*, TR 12/14 at 78:23-79:13; TR 12/15 at 179:3-13; Governor's Veto Msg. (Gov. Ex. 8) at 1-2. The population growth on the Westside of Albuquerque logically mandates the creation of an additional House district in this area, and creating an additional House district will prevent these areas from becoming more malapportioned as population growth continues. The Legislative Defendants' decision to stretch an Albuquerque district (HD 10) west of the river to accommodate population growth in that area is another reason that districts in central Albuquerque are overpopulated. Bringing a district from North Central New Mexico as was justified by population shifts would have provided the necessary third new district on the Westside of Albuquerque and would have allowed population deviations to remain lower in central Albuquerque.

The Legislative Defendants did not hide their intent to avoid consolidating Democratic districts in the North Central region in spite of population changes that justified consolidation of some of these districts. Indeed, the Legislative Defendants, through Speaker of the House Lujan, explicitly instructed their demographer not to consolidate these districts. TR 12/12 at 219:13-220:8. In an attempt to surmount these predisposed intentions and results, the Legislative Defendants' key argument is that their plan's overall range of population deviation is less than ten percent and, as such, within the safe harbor of deviation adopted by the Legislative Council during the legislative redistricting process. Legis. Omnibus Brief at pp. 8, 10-13. This argument only cements that fact that the significant population deviations were specifically employed by the Legislative Defendants as a gerrymandering tool to discriminate in favor of certain

geographic areas, such as New Mexico's North Central region, to the detriment of other areas of the State. This is contrary to equal population requirements of the United States Constitution and the Legislative Defendants' plan cannot pass constitutional muster. Because it is questionable whether the Legislative Plan could survive a constitutional challenge even if it had been signed into law, it is that much clearer that it should not be the choice of this Court now that the political process is over and redistricting has been placed into judicial hands.

Moreover, even if the Court assumes that the Legislative Defendants did not intend such geographic bias to result, the Legislative Defendants' Plan nonetheless fails to address the population trends that have brought about this current redistricting effort – namely, that the current New Mexico House of Representative districts are malapportioned and must be redrawn to respond to population changes in the 2010 census. The Executive Defendants' Plan, which contains no geographic bias and lawfully addresses the current malapportionment, offers the best solution for the State as a whole.

B. The Egolf and Maestas Plaintiffs' Plans Suffer from Similar Political Motivations and Geographic Bias and Population Deviation Defects as the Legislative Defendants' Map.

As an initial matter, both Egolf and Maestas embraced the Legislative plan's politically-driven decision to save all of the Democratic districts in the north central region of the state, despite the fact that the Egolf demographer admitted he would have consolidated one of those districts if he had been using current districts as a template for his plan rather than HB 39. This decision carried with it the associated geographic biases in population deviations. Even when the Court invited Egolf and Maestas to submit alternative plans that contained a north central consolidation, both Democratic Plaintiffs selected HD 43, the only district in that region currently held by a Republican incumbent. Testimony at trial confirmed the unique nature of the

Los Alamos based district among other north central districts. This was yet another demonstration that the Democratic parties in this litigation are continuing to approach this redistricting process with political motivations despite the fact that the political process is over. On the other hand, the Executive Defendants did not hesitate to consolidate districts in the Republican leaning areas in the southeast portion of the state when required by population changes.

The Egolf expert also testified that he selected Los Alamos as the district to consolidate because his clients gave him instructions that ruled out North Central districts held by Democratic incumbents. He admitted that he would not have selected Los Alamos if he had been using current districts as a baseline because Los Alamos is not centrally located in the underpopulated region and is far less underpopuated than other districts in the region. He also testified that it would have been easy to pair any number of different combinations of Democratic incumbents in that region.

The Egolf Plaintiffs' Plan and Plan 2 fail to completely cure the geographic bias contained in the Legislative Defendants' Plan, on which the Egolf Plans are based. *See* Egolf Trial Brief at pp. 2-3 (discussing the original Egolf Plan's reliance on HB 39); TR 12/15 at 162:22-24. First, as with the Legislative Defendants, the Egolf Plaintiffs' Plans contain an unacceptable range of population deviation between -4.99 and 4.84 percent, for an overall deviation of 9.83 percent. *See* Egolf Ex. 7; TR 12/15 at 198:17-199:5. Second, the Egolf Plan also exhibits the same significant geographic bias in favor of the North Central region of the State, to the detriment of voters in other areas of the State. Specifically, the Egolf Plan exhibits a geographic bias by underpopulating seven out of eleven of the North Central districts, TR 12/15 at 177:4-178:15 (describing a range of deviation for the Egolf Plan in North Central as -2.9 to 3.4

percent), overpopulating all of the districts in Albuquerque, TR 12/15 at 181:18-182:14 (describing range of deviation in Albuquerque of 0.6 to 4.8 percent), and underpopulating all of the districts in the southeastern region of the state, Egolf Ex. 11 (showing negative population deviations for districts 51, 54, 55, 56, 57, 58, 59, 61, 64, and 67).

Maestas was able to eliminate some of these extreme deviations, but did so in politically inappropriate ways. For example, in order to avoid the underpopulation in the southeastern region of the state that was present in the Legislative and Egolf plans, the Maestas plan eliminated two districts from the southeastern region. Given that the originally existing negative cumulative deviation of nearly 100% was addressed by the removal of a single seat from that region, it is inexplicable that Maestas would then remove a second district from this Republican area while still refusing to eliminate a Democratic seat in the north central region despite nearly identical negative population deviations.

C. Only the Executive Defendants' Plan Properly Refuses to Treat ± 5% Deviation as a "Safe Harbor."

For state legislative redistricting plans, there is no "safe harbor" or deviation range for which a presumption of constitutionality applies. The Equal Protection Clause requires that state legislative districts, like congressional districts, be of "as nearly of equal population as is practicable," so that each person's vote may be given equal weight in the election of state representatives. *See Reynolds*, 377 U.S. at 577. Thus, legislative districts must "be apportioned equally, so as to ensure that the constitutional guaranteed right of suffrage is not denied by debasement or dilution of the weight of a citizen's vote." *Larios*, 300 F. Supp. 2d. at 1337.

When it is a state legislature drawing a plan, it ***may*** be permissible to have greater than *de minimis* population deviations without violating the Equal Protection Clause. The Supreme

Court has recognized that reapportionment is primarily the duty of the state through its legislative process. *Chapman v. Meier*, 420 U.S. 1, 27 (1975). As a result, "the [Supreme] Court has tolerated somewhat greater flexibility in the fashioning of legislative remedies for violations of the one-person, one vote-rule than when a federal court prepares its own" remedy. *McDaniel v. Sanchez*, 452 U.S. 130, 138-39 (1981).

The same cannot be said of court-drawn redistricting plans. Court-ordered plans are held to much higher standards than legislatively enacted plans. *Connor v. Finch*, 431 U.S. 407, 414-17 (1977). Courts "must ordinarily achieve the goal of population equality with little more than *de minimis* variation," and "any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features." *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975). This stricter standard for court-ordered plans is demanded by separation of powers and equal protection principles in state constitutions, including the New Mexico State Constitution. *See Ater v. Keisling*, 819 P.2d 296, 303 (Ore. 1991); *Wilson v. Eu*, 823 P.2d 545, 551-52 (Cal. 1992); N.M. Const. Art. III, § 1; *Bd. of Educ. v. Harrell*, 118 N.M. 470, 484, 882 P.2d 511 (1994). Thus, the starting point for any court-drawn plan is the elimination of population differences between districts or, at the very least, reduction of population disparities to an absolute minimum.

None of the authorities cited by the other parties to this litigation show otherwise. The other parties cite cases that they claim establish the validity of "safe harbor" deviations, or deviation ranges that are presumptively constitutional. None of these cases, however, applies to a court-ordered redistricting process, or a situation in which a court must redistrict due to an executive veto of the legislature's redistricting bill.

For example, the cases cited by the Egolf Plaintiffs and the Legislative Defendants in support of "safe harbor" population deviations concern challenges to plans enacted by a legislative body and subsequently challenged in court – not plans ordered by a court in the first instance. *See Moore v. Itawamba Cnty., Miss.*, 431 F.3d 257 (5th Cir. 2005) (concerning a challenge to a reapportionment plan for the supervisor and school board voting districts that was adopted by the County Board of Supervisors); *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022 (D. Md. 1994) (involving a challenge to the reapportionment plan that became law pursuant to the unusual process outlined in the state constitution, whereby the governor submits a reapportionment plan to the state legislature, who may then adopt their own plan which can become law, or if they fail to do so by the 45th day of the session, the governor's plan becomes law); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346 (S.D.N.Y. 2004) (concerning a challenge to state legislative redistricting plans that were enacted by the state legislature and signed into law by the governor of the state); *Kidd v. Cox*, No. 1:06-CV-0997-BBM (N.D. Ga. May 16, 2006) (concerning a challenge to a Senate redistricting bill that was signed into law by the state governor); *Fairley v. Hattiesburg, Miss.*, No. 2:06cv167-KS-MTP (S.D. Miss. 2008) (concerning a challenge to a City Council adopted redistricting plan and procedure for redistricting City wards); *Dean v. Leake*, 550 F. Supp. 2d 594 (E.D.N.C. 2008) (concerning a challenge to a legislative redistricting plan fully enacted by the General Assembly); *In re Idaho Legislative Reapportionment Plan of 2002*, 129 P.3d 1213 (Id. 2005) (concerning a challenge to reapportionment of the state legislature that was enacted by the constitutionally created Commission for Reapportionment, which did not require legislative or executive approval before it became law); *In re Municipal Reapportionment of the Township of Haverford*, 873 A.2d 821 (Pa. Commw. Ct. 2005) (concerning a challenge to an ordinance adopted by a Board of

Commissioners pursuant to the legislative process for apportionment of township wards); *In re Legislative Districting of the State*, 805 A.2d 292 (Md. 2002) (concerning a challenge to the reapportionment plan enacted pursuant to the process outlined in the state constitution). None of these cases is analogous to the present case, which involves a failed legislative attempt to enact redistricting legislation, which now requires that this Court to adopt its own redistricting plan for the New Mexico House of Representatives. Furthermore, even putting aside, *arguendo*, what the law requires, the other parties' proposed "safe harbor" deviations have resulted in mal-apportioned maps that disparately affect voters' rights.

For example, the Legislative Defendants' Plan, passed as HB 39, contains a population deviation range of 9.83 percent. TR 12/14 at 28:18-29:1; TR 12/15 at 198:17-23. The Plan's average relative deviation of 3.47 percent equates to a population imbalance of 71,511 persons, a figure that is greater than the population of Santa Fe, and greater than the populations of Alamogordo and Clovis combined. TR 12/14 at 226:11-228:3. All but three districts (33, 34, and 35) in the Legislative Defendants' Plan are under or overpopulated by more than 1 percent. Numerous Albuquerque districts in the Legislative Defendants' Plan are overpopulated by four percent or more. These figures do not satisfy the requirement of *de mimimis* population deviation and, accordingly, the plan is impermissible.[2]

More specifically, the plan's overpopulation of certain districts unfairly and impermissibly dilutes the votes of Albuquerque's residents, and, in particular, will likely continue to dilute the votes of residents of the Westside of Albuquerque due to the strong

[2] Even the Legislative Defendants' Modified Plan that purports to correct the parties concerns relating to splitting communities in the Eastern portion of the state has a population deviation of up to 4.64, a deviation that is 3.73 percent greater than the deviation proposed by the Executive Defendants First Alternate Plan. TR 12/22 at 116:6-117:5.

likelihood of continued population growth in that area. *See, e.g.*, TR 12/14 at 78:23-79:13; TR 12/15 at 179:3-13; Governor's Veto Msg. (Gov. Ex. 8) at 1-2. The Legislative Defendants use of a "safe harbor" deviation of 9.83 percent does not address the overpopulation of these districts and improperly reduces the number of Representatives from this area of the State in violation of voters' rights. *See, e.g., id.* Further, notwithstanding this regional bias employed by the Legislative Defendants, the Legislative Defendants' Plan creates a problematic situation in which already overpopulated districts will continue to grow and voters within those districts will continue to have their votes diluted over the next ten years or until the next redistricting.

All of the plans proposed by the other parties similarly contain unacceptable ranges of population deviation. Both the Egolf Plaintiffs' Plan and Plan 2 contain a range of population deviation between -4.99 and 4.84 percent, for an overall range of 9.83 percent (the same as the Legislative Defendants' Plan). *See* Egolf Ex. 7; TR 12/15 at 198:17-199:5. Further, the Egolf Plaintiffs' Plans do not cure the geographic bias contained in the Legislative Defendants' Plan, on which the Egolf Plaintiffs' Plans are based. TR 12/15 at 162:22-24. The Maestas Plaintiffs' Plan contains an unacceptable range of population deviation between -4.84 and 4.91 percent, for an overall range of 9.75 percent. *See* Gov. Ex. 30. The Maestas Plaintiffs Plan 2 contains a range of population deviation between -5 and 3.6 percent, for an overall range of 8.6 percent. *See* Egolf Ex. 7. The districts proposed by the partial Navajo Intervenor's Plan contain deviations as high as -4.5 percent, and the districts proposed by the partial Multi-Tribal Plan contain deviations as high as -5.0 percent. Not one of these ranges of population deviation could be considered *de minimis*, and the parties proposing the plans have not provided evidence of any "historically significant state policy or unique features" that might justify greater population deviation. *See Chapman v. Meier*, 420 U.S. at 26-27. Instead, the parties have utilized these

population deviations under the mistaken belief that it is a safe harbor. *See, e.g.*, TR 12/19 at 230:25-231:3 (Egolf expert witness Arrington testifying that "what they've told me, if I stay below the 10 percent, then somebody else has to prove that I used the deviations for a wrong purpose."); *see also* TR 12/19 at 265:6-15, 284:18-285:17.

By contrast, the Executive Defendants' Plan contains a range of population deviation between -0.980 and 0.900 percent, for an overall range of 1.88 percent. TR 12/14 at 224:21-4, 225:19-20; TR 12/15 at 198:17-20, 199:6-8. Further, the average relative population deviation of 0.50 percent for the Executive Defendants' Plan translates to a population imbalance of only 10,295 persons. *See, e.g.*, TR 12/14 at 40:10-20; Gov. Exs. 22 and 23. Thus, the Executive Defendants' Plan has, by far, the lowest overall range of population deviation and the lowest average deviation of the proposals presented to this Court, and is the only plan that satisfies the requirements of *de minimis* population deviation.

In addition, the Executive Defendants' Plan appropriately deals with New Mexico's population shifts over the last decade by reducing the number of districts in the North Central, Southeast, and central Albuquerque regions and increasing the number of districts in the Westside of Albuquerque and Rio Rancho. Gov. Ex. 9; TR 12/14 at 29:19-23. The Executive Defendants' First Alternate Plan, contained in Gov. Ex. 28, which addresses some of the parties' concerns regarding minority voting strength and incumbency, contains an even lower overall population deviation of 1.81 percent. *See* Summary Table (Gov. Ex. 30); Egolf Ex. 7; TR 12/14 at 244:16-25, 241:20-242:6; TR 12/22 at 40:10-20. To the contrary, the Executive Defendants'

Alternate Plans 2 and 3 do not contain *de minimis* population deviations due to their wholesale adoption of the districts requested by the Muti-Tribal Plaintiffs and the Navajo Intervenors.[3]

In conclusion, while population deviations greater than *de minimis* deviations may be permitted when *a state legislature* is engaging in the redistricting process, such deviations have no place in a court-ordered redistricting. Regardless of what political branch develops the district plans, the goal of any redistricting must be population equality as required by the Equal Protection Clause of the Fourteenth Amendment. *Reynolds v. Sims*, 277 U.S. 533, 577 (1964). The United States Supreme Court has repeatedly affirmed this fact since the 1960s. *Id.*; *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975); *Connor v. Finch*, 431 U.S. 407, 414-17 (1977). Here, the New Mexico House of Representative districts should be drawn to equalize population and to accommodate the population changes this State has experienced in the past ten years, and will likely continue to experience in the next ten years. The Executive Defendants' Plan is the only plan before the Court that prevents unnecessary population imbalances and ensures that each citizen's vote counts.

III. THE EXECUTIVE DEFENDANTS' PLANS COMPLY WITH THE VOTING RIGHTS ACT AND, ALTHOUGH NOT REQUIRED BY THE VOTING RIGHTS ACT, MAINTAIN EXISTING MINORITY VOTING OPPORTUNITIES.

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.*, prohibits the imposition of a voting qualification, standard, practice, or procedure that results in the denial or

[3] As discussed in greater detail below, the Executive Defendants do not endorse their Alternate Plans 2 and 3 as a result of the substantial population deviations and geographic bias that could be avoided by adoption of the Executive Defendants original Plan and First Alternate Plan. Further, the Executive Defendants do not endorse their Alternate Plans 2 and 3 due to concerns that such districts are the product of racial gerrymandering and could be subject to challenge and further litigation under *Shaw v. Reno*, 509 U.S. 630 (1993). However, the Executive Defendants recognize that the Court, acting through its equitable authority, may consider such plans in whole or in part when it determines how it will draw the districts for the New Mexico House of Representatives.

abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. *Id.* § 1973(a). In reviewing the plans presented to it, the Court must ensure that no plan denies or abridges the right of any citizen to vote on account of race or color, and that minority groups have an equal opportunity to "participate in the political process and to elect representatives of their choice." *Id.* § 1973(b).[4] Section 2 of the Voting Rights Act seeks to eliminate discrimination in the electoral process, but it does not act as a bar to redistricting plans that are based on neutral, non-discriminatory, and equal population principles. *See Miller v. Johnson*, 515 U.S. 900, 927 (1995) (stating that the Voting Rights Act grants courts the authority to "uncover official efforts to abridge minorities' right to vote," and that purpose "is neither assured nor well served, however, by carving electorates into racial blocs."); *see also id.* at 927-28 ("It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of our worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids.").

The Executive Defendants have proposed a neutral and non-discriminatory redistricting plan with *de minimis* population deviation that also promotes the voting strength of New Mexico's minority groups. New Mexico contains a sizeable minority population and, indeed, is a "majority-minority" state where the collective minority population is greater than the Anglo majority. *See, e.g.*, Karen R. Humes *et al.*, Overview of Race and Hispanic Origin, www.census.gov/prod/cen2010/briefs/c2010br-02.pdf (March 2011) at 19. The Executive Defendants' Plan honors this and maintains or increases minority voting strength by creating 29

[4] The requirements and applicable standards of Section 2 of the Voting Rights Act, including the preconditions stated in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), have been fully briefed by the Executive Defendants. *See* The Executive Defendants' Pre-Trial Brief Regarding the New Mexico House of Representatives Redistricting Plan at pp. 20-24. No party has demonstrated that the *Gingles* preconditions have been met, having made only generalized and illusory allegations of discrimination.

majority Hispanic districts, an increase of 2 districts from the current plan, and by maintaining the currently existing six majority Native American districts.

A. The Executive Defendants' Plans Maintain, and in Some Instances, Increase Minority Voting Opportunities for Hispanics.

All parties agree that the districts adopted for the New Mexico House of Representatives must protect minority voting interests. The Executive Defendants disagree, however, with their party opponents' belief that the Voting Rights Act requires the creation or maintenance of majority-minority districts that are not compliant with other redistricting principles, such as compactness and contiguity.

The Executive Defendants' Plan appropriately ensures that minority voting strength has been maintained and protects against dilution of minority voting strength in accordance with the Voting Rights Act. Currently, the state has a 42.4 percent Hispanic voting age population ("VAP"). *See* Current District Data Charts (Gov. Ex. 6). The original Executive Defendants Plan creates 29 Hispanic VAP majority districts, which amounts to 40 percent of its proposed districts. *See* Exec. Defs. Plan (Gov. Ex. 9). This is, however, better than almost every other plan that was originally presented to the Court. *See* Summary Table (Gov. Ex. 30). The Executive Defendants' First Alternate Plan increases this to 30 Hispanic VAP majority districts, or 41.6 percent of its districts, again as good as or better than any other plan presented to the Court, and virtually equal to the Hispanic population percentage statewide. *See* Gov Exs. 28 and 30. The Executive Defendants' Alternate Plans 2 and 3 fare just as well. *See* Gov. Exs. 32 and 33; TR 12/22 at 43:15-44:11, 53:4-22. Thus, any one of the plans would appropriately maintain existing minority voting opportunities.

B. The Court Should Not Engage in Racial Gerrymandering.

At the same time that the Court must ensure compliance with the Voting Rights Act, the Court also must avoid subordinating traditional, race-neutral redistricting principles to racial considerations. "Racial classifications are antithetical to the Fourteenth Amendment, whose central purpose was to eliminate racial discrimination emanating from official sources in the States." *Shaw v. Hunt*, 517 U.S. 899, 907-08 (1996) (internal quotation marks and citations omitted). Yet, the Legislative Defendants and the Egolf Plaintiffs request that the Court engage in racial gerrymandering under the guise of promoting minority voting strength under Section 2 of the Voting Rights Act. Specifically, these parties have created a bizarrely shaped district in House District 63 with the intent of collecting Hispanic areas that are not geographically compact. By doing so, these parties request that the Court go beyond being simply aware of racial considerations, and instead, become motivated entirely by race. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995). To do so would be to engage in racial gerrymandering in violation of the United States Constitution.

Section 2 of the Voting Rights Act does *not* require this Court to adopt a redistricting plan that maximizes the number of majority-minority districts and subordinates traditional redistricting principles. The Voting Rights Act grants courts the authority to "uncover official efforts to abridge minorities' right to vote," and that purpose "is neither assured nor well served . . . by carving electorates into racial blocs." *Id.* at 927. To do so, in fact, constitutes racial gerrymandering and, like all other laws that classify citizens on the basis of race, is constitutionally suspect. *Id.* at 927-28 ("It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of

our worst forms of discrimination, to demand the very racial stereotyping the *Fourteenth Amendment* forbids.").

The Supreme Court has defined racial gerrymandering as the "deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes." *Shaw v. Reno* ("*Shaw I*"), 509 U.S. 630, 640 (1993) (internal quotation marks omitted). Racial gerrymandering occurs when race becomes the dominant and controlling rationale for where district lines are drawn and other redistricting principles are subordinated. *Shaw v. Hunt* ("*Shaw II*"), 517 U.S. 899, 905 (1996). While parties proposing redistricting plans will "almost always be aware of racial demographics; . . . it does not follow that race predominates in the redistricting process." *Miller*, 515 U.S. at 916. Where a party can show that the challenged redistricting plan subordinated traditional, race-neutral redistricting principles to racial considerations, the plan constitutes an impermissible racial gerrymander. *Id.*

Initially, the plaintiff "bears the burden of proving the race-based motive and may do so either through 'circumstantial evidence of a district's shape and demographics' or through 'more direct evidence going to legislative purpose.'" *Shaw II*, 517 U.S. at 905 (citations omitted); *see also Bush v. Vera*, 517 U.S. 952, 962 (1996). A party need not always demonstrate that a district is so bizarrely shaped as to be unexplainable on other grounds, *Miller*, 515 U.S. at 913, but appearances can certainly matter in racial gerrymandering and often "[a] map portrays the districts' deviance far better than words[.]" *Shaw II*, 517 U.S. at 902. For example, in *Shaw I*, the Supreme Court described one irregular district as "somewhat hook shaped . . . with finger-like extensions," and another district as "snakelike" in its appearance. 509 U.S. at 635. Racial gerrymandering also is established upon the admission by the proponent of the plan that creating

majority-minority districts was the "principal reason" for certain district lines. *Shaw II*, 517 U.S. at 906.

Once this burden is met and a court finds that traditional redistricting criteria were subordinated to race, the court must then apply strict scrutiny to determine whether the proponents of the plan have a compelling interest in creating a majority-minority district using race as a predominant factor and whether the plan is narrowly tailored to achieve that compelling interest. *Id.* at 908. Compelling interests may include a redistricting plan's attempt to remedy past discrimination or ensuring compliance with Section 2 of the Voting Rights Act. *Id.* at 909, 911-12 (assuming *arguendo* that compliance with Section 2 could be a compelling interest).

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

Similarly, where the proffered compelling interest is compliance with Section 2 of the Voting Rights Act, the Supreme Court has held that the party proponent must first meet the preconditions stated in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), and *Growe v. Emison*, 507 U.S. 25 (1993). *See Shaw II*, 517 U.S. at 914-17.[5] The party must then demonstrate that,

[5] As previously briefed, no party has demonstrated that the *Gingles* preconditions have been met to create a Voting Rights Act issue, beyond mere illusory references to past discrimination.

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

Here, the Legislative Defendants and the Egolf Plaintiffs have created in HD 63 a district with a finger-like extension that resembles an elephant with a trunk. TR 12/13 at 69:23-25 (Sanderoff testimony); TR 12/15 at 185:13-20 (Williams testimony). The entire purpose of the "trunk" was to collect the Hispanic populations in Clovis and Portales, TR 12/15 at 185:17-20 (Williams testimony), or to purportedly maintain a Hispanic majority despite population shifts, TR 12/13 at 161:1-3 (Sanderoff testimony). Therefore, strict scrutiny applies to these Plans because they are primarily motivated by race and not, as the Legislative Defendants and Egolf Plaintiffs assert, simply a "race-conscious districting decision[.]" Legis. Omnibus Brief at p. 23, n.10; *see* Egolf Trial Brief at p. 15 ("race was a proper consideration in developing the Egolf plan."). As a result of their failure to acknowledge that their HD 63 constitutes an obvious racial gerrymander, the Legislative Defendants and the Egolf Plaintiffs have not offered any evidence in satisfaction of the requirements of strict scrutiny. They have not offered evidence of a compelling interest, beyond broad and illusory examples of past discrimination, sufficient to survive this scrutiny. Nor have they established that the district is narrowly tailored to address the alleged past discrimination.

By contrast, the Executive Defendants' First Alternate Plan satisfies the concerns raised over HD 63 by creating a majority Hispanic district, avoiding the racially gerrymandered "elephant trunk[,]" and maintaining consistently *de minimis* population deviations. Accordingly,

the "elephant trunk" district proposed by the Legislative Defendants the Egolf Plaintiffs for HD 63 is an impermissible racial gerrymander. Should it decide that HD 63 is in need of modification, the Executive Defendants' First Alternate Plan is the best option because it avoids entering the territory of racial gerrymandering.

C. The Executive Defendants' Plan Maintains the Number of Majority Native American Districts With High Voting Age Populations.

The Executive Defendants' Plan also maintains the existing six (6) districts of at least 50 percent Native American voting age population, and at least five of these districts exceed 65 percent total Native American voting age population. *See* TR 12/18 at 218:11-219:12; Gov. Ex. 9. None of the Native American groups challenged these VAP levels as being insufficient to allow an opportunity to elect candidates of their choice in those districts. Under their Plan, the Executive Defendants provide an opportunity for Native Americans to elect their candidates of choice that is greater than or equal to that provided by any plan proposed to this court. *See* TR 12/14 at 65:19-67:16; TR 12/19 at 210:12-213:25.

The highly underpopulated districts proposed by the Native Americans are not necessary to secure six Native American voting age population districts. The ability of Native Americans to elect their candidates of choice is not impaired by following the constitutional requirements that all districts meet *de minimis* population deviation requirements. This point is clear when you consider that the Executive Defendants' original plan and first alternative keep very high Native American voting age populations without sacrificing population equality. In addition, the Executive Defendants' first alternative plan matched even more closely the specific boundaries requested by the Native American parties without sacrificing population equality.

At trial, the Native American groups aggressively argued for the precise district boundaries that they desire. It is important to put those requests into the proper framework. Because the Executive Defendants' original and first alternative plans preserved Native American voting strength without underpopulating the Native American districts, it is clear that the requested population deviations and precisely boundary requests are not necessary to satisfy the Voting Rights Act. Instead, the Native Americans are asking the Court to deliberately under-populate those districts for the sake of including very specific areas within each district (i.e. communities of interest). That is a very different analysis than one under the Voting Rights Act and the two should not be confused. This important distinction again raises the question whether it is most appropriate to adopt plans such as the Executive Defendants' original and first alternative plans which kept deviations low while still maintaining voting strength and attempting to closely mirror specifically requested boundary lines. There is simply nothing in the law, either under a VRA or communities of interest analysis, which would require this Court to draw these Native American districts exactly as requested by the Native Americans. It is important to keep in mind that there are a significant number of non-Native Americans in those districts as well.

IV. THE EXECUTIVE DEFENDANTS' FIRST ALTERNATE PLAN ADDRESSES CONCERNS RAISED BY THE PARTIES WHILE MAINTAINING VIRTUAL POPULATION EQUALITY.

The Executive Defendants' First Alternate Plan contains several modifications from the original executive proposal for the Court's review. Specifically, the Executive Defendants' First Alternate Plan reconciles this State's tradition of maintaining low population deviations when accommodating minority voting concerns. In *Sanchez v. King*, CIV No. 82-0067 (D.N.M. 1984), the court created a House District 63 to address a Voting Rights Act violation in that district that

had a deviation of only 0.27 percent. *See* Findings and Conclusions, *Sanchez v. King* (Legis. Def. Ex. 5) at 138. Although this Court need not strictly adhere to the twenty-seven year old districts adopted by this case, *Sanchez v. King* demonstrates that, in New Mexico, the population equality maxim can still be honored in a reapportionment plan that at the same time addresses minority voting issues.

Importantly, by proposing their First Alternate Plan, the Executive Defendants have demonstrated how quickly and easily a plan can be revised to accommodate the concerns of other parties while still maintaining *de minimis* population deviation. In the State of New Mexico, there are no technical or policy barriers to drawing a statewide redistricting plan for the State House of Representatives in which the population deviations are reduced to zero, or near zero. *See* TR 12/13 at 82:22-83:10; TR 12/14 at 217:22-218:13; TR 12/21 at 152:22-153:7. There is insufficient evidence that a State House of Representatives plan cannot be drawn with *de minimis* deviations and still comport with traditional redistricting criteria and accommodate legitimate secondary concerns recognized by the Court. *See* TR 12/12 at 141:11-:19.

As discussed in greater detail below, it is unnecessary for this Court to adopt a plan that has greater than near-zero population deviation to create any majority-minority districts. For example, the Court's map may address concerns regarding preservation of minority voting strength in the existing Clovis/Portales districts (House Districts 63, 64 and 67), which were raised during the course of the hearing on the House of Representatives, even if those concerns do not rise to the level of a need to rectify a Voting Rights Act violation. The Executive Defendants' First Alternate Plan accomplishes this while still maintaining the lowest possible population deviation. In addition, the Court, in its discretion may create a redistricting plan that addresses concerns raised by the Native American parties about splitting certain Native

American communities of interest. The Executive Defendants' First Alternate Plan also was able to accomplish this goal while maintaning *de minimis* population deviation. The Executive Defendants also created Alternate Plans 2 and 3 with the specific purpose of wholly accommodating and incorporating the districts proposed by the Multi-Tribal Plaintiffs and the Navajo Intervenors. Specifically, the Executive Defendants do not endorse their Alternate Plans 2 and 3, due to their substantial departure from population equality, geographic bias, and potential violation of the Equal Protection Clause of the Fourteenth Amendment. *See Chapman v. Meier*, 420 U.S. 1 (1975).

A. The First Alternate Plan Addresses Concerns Regarding Clovis Hispanics Without Sacrificing Population Equality; Other Plans Create A Racial Gerrymander.

While it would be inappropriate for this Court to reject or accept plans simply to maintain a Hispanic majority district for the Clovis/Portales area, because it would make race the predominate factor in adopting a state House plan, this Court may exercise its discretion to address such concerns raised on behalf of Clovis Hispanics by selecting the Executive Defendants' First Alternate Plan. The Executive Defendants' First Alternate Plan responds to the substantial concerns about minority voting strength in the Clovis/Portales area, specifically proposed House Districts 63, 64, and 67, while still maintaining close-to-zero population deviation in House of Representatives districts statewide. *See* Summary Table (Gov. Ex. 30); Egolf Ex. 7; TR 12/14 at 44:3-19, 244:16-25, 241:20-242:6; TR 12/22 at 40:10-20. In fact, the Executive Defendants' First Alternate Plan contains an even lower total population deviation of 1.81 percent, despite its deliberate protection of minority voting strength in House Districts 63, 64, and 67, and the creation of a majority Hispanic district in House District 67. TR 12/14 at 44:3-:23.

By contrast, the Legislative Defendants and the Egolf Plaintiffs have created a HD 63 in the Clovis/Portales area with a finger-like extension that resembles an elephant with a trunk. TR 12/13 at 69:23-25 (Sanderoff testimony); TR 12/15 at 185:13-20 (Williams testimony). The entire purpose of the "trunk" was to collect the Hispanic populations in Clovis and Portales, TR 12/15 at 185:17-20 (Williams testimony), or to purportedly maintain a Hispanic majority despite population shifts, TR 12/13 at 161:1-3 (Sanderoff testimony). Therefore, race predominated in the design of HD 63 and, as a result, it constitutes a racial gerrymander for which no compelling state interest has been shown.

B. The First Alternate Plan Addresses, to the Best Extent Practicable, Concerns Regarding Native American Communities of Interest Without Sacrificing Population Equality or Creating a Racial Gerrymander Like Other Plans.

The Executive Defendants continue to assert that it is inappropriate for this Court to accept or reject plans merely because they include, or fail to include, Mt. Taylor in a district heavily populated by Native Americans, as is advocated by the Navajo Intervenors and Multi-Tribal Plaintiffs, but this Court may exercise its discretion to address such concerns by selecting the Executive Defendants' First Alternate Plan. Specifically, the First Alternate Plan reduces the number of Native American communities that split by the original executive Plan and addresses concerns raised by the Navajo Intervenors and Multi-Tribal Plaintiffs. It also includes Mt. Taylor in a majority Native American district. Importantly, it mimics, as closely as is possible, the Northwest quadrant maps proposed by the Navajo Intervenors and Multi-Tribal Plaintiffs. TR 12/14 at 69:20-70:15. The Executive Defendants' First Alternate Plan results in increased voting strength in the six (6) Native American districts initially created in the original Plan, so that each district has over 65% total Native American voting age population. TR 72:10-22. The

First Alternate Plan also does not split the Pueblo of Laguna. TR 12/14 at 69:23-25. Importantly and unlike the other plans proposed to address these concerns, the Executive Defendants' First Alternate Plan does all of this while remaining faithful to the constitutional objective of population equality.

C. Although the Executive Takes No Position on These Maps, the Executive Defendants' Alternate Plans 2 and 3 Adopt the Native American Plaintiffs' Partial Plans for the Northwest Region, Maintain Native American Communities of Interest, But Still Have Low Deviations.

The Executive Defendants Alternate Plans 2 and 3 were created to wholly incorporate the concerns presented by the Navajo Intervenors and the Multi-Tribal Plaintiffs. Specifically, the Executive Defendants' Alternate Plan 2 wholly incorporates the Native American parties' maps concerning the Northwest quadrant of the State, while relying on the First Alternate Plan for the remaining portion of the State. Gov. Ex. 32; TR 12/22 at 43:15-44:11. The Executive Defendants' Alternate Plan 3 contains the districts changes of Alternate Plan 3, but also avoids splitting certain communities of interest in Tesuque Pueblo and San Ildefonso Pueblo. Gov. Ex. 33; TR 12/22 at 53:4-22. Alternate Plans 2 and 3 were intended to wholly incorporate and address the specific Native American concerns and objections to the original and First Alternate Plans.

However, the Executive Defendants neither take a position nor endorse the Executive Defendants' Alternative Plans 2 and 3, since those plans uniformly underpopulate the districts in this quadrant and result in a geographic bias in violation of the Fourteenth Amendment that Executive Defendants have specifically sought to avoid. Importantly, the Alternate Plans 2 and 3 potentially create an impermissible racial gerrymander. Thus, the Executive Defendants do not wish to endorse any plan that could be subject to further challenge by the citizens of the State of

New Mexico. The Executive Defendants, however, recognize that this Court, acting through its equitable authority, may consider such plans in whole or in party when it decides how to redraw the districts for the New Mexico House of Representatives.

D. The Remaining Community of Interest Concerns Should Not Be Elevated Above Population Equality.

Due to the subjective and elusive application of communities of interest concerns, the Executive Defendants urge the Court to avoid endorsing one community of interest over another to the detriment of population equality. While communities of interest concerns can play an important role in the legislative process of redistricting, court-ordered redistricting must not overly rely on this factor. *See Chen v. City of Houston*, 206 F.3d 502, 517 n.9 (5th Cir. 2000), *cert. denied*, 532 U.S. 1046 (2001) (stating that the court must "caution against general over-reliance on the communities of interest factor."); *see also Hastert v. State Bd. of Elecs.*, 777 F. Supp. 634, 660 (N.D. Ill. 1991) (describing the communities of interest concept as "both subjective and elusive of principled application" and that the "courtroom is not the proper arena for lobbying efforts regarding the districting concerns of local, nonconstitutional communities of interest."*)*. The Executive Defendants' original Plan deliberately avoided selecting certain communities of interest over others except where those communities are preserved by political boundaries or existing district lines. TR 12/14 at 17:9-17, 107:4-10, 122:19-123:1. In the remaining, Alternate Plans, certain Native American and other communities of interest are preserved in case the Court seeks to maintain those communities pursuant to concerns raised by the parties during this case. In doing so, the Executive Defendants sought to avoid disputes among the parties regarding what properly constitutes a community of interest and whether one disputed community of interest should prevail over another. Primarily, the Executive Defendants

sought to avoid unnecessary frustration of the *de minimis* population deviation that they achieved in their Plans.

Notwithstanding the above, the Executive Defendants' Plan and Alternate Plan demonstrate a good faith effort to protect existing, recognized communities of interest. For example, unlike other plans, the Executive Defendants' Plans maintain certain communities of interest within Albuquerque and appropriate communities of interest between West and East Las Vegas, New Mexico. *See, e.g.*, B. Sanderoff Dep. (11/21/11) at 66:19-68:17 (testifying that the legislative plan combines disparate East Mountain and Kirtland Air Force Base communities of interest in House District 22), *id.* at 131:4-17 (Executive Defendants' Plan mostly maintains Westside Albuquerque's communities of interest); *id.* at 153:9-154:19 (Executive Defendants' Plan splits Las Vegas on East-West line thereby maintaining those communities of interest). This is contrasted with other plans that inappropriately split communities of interest, or combine disparate communities of interest. *See, e.g.*, B. Sanderoff Dep. (11/21/11) at 175:24-176:2, 177:11-16 (testifying that the Maestas plan combines Las Vegas, Ruidoso, and Carrizozo, which are different communities of interests); *id.* at 76:17-77:15 (agreeing that Legislative Defendants' proposed House District 68 contains significantly different communities of interest than current district). The Executive Defendants' First Alternate Plan accomplishes the above, while also preserving the communities of interest in the Clovis/Portales area, *see* Summary Table (Gov. Ex. 30); Egolf Ex. 7; TR 12/14 at 44:3-19, 244:16-25, 241:20-242:6; TR 12/22 at 40:10-2, and preserving certain Native American communities of interest, TR 12/14 at 69:20-70:15.

Furthermore, the Executive Defendants' Alternate Plans 2 and 3 were developed to address seemingly undisputed communities of interest concerns raised by the parties over the course of the hearing. Specifically, Alternate Plans 2 and 3 wholly incorporate the concerns

presented by the Navajo Intervenors and the Multi-Tribal Plaintiffs concerning the Northwest quadrant of the State (Alternate Plan 2), Gov. Ex. 32; TR 12/22 at 43:15-44:11, and avoid splitting certain communities of interest in Tesuque Pueblo and San Ildefonso Pueblo (Alternate Plan 3), Gov. Ex. 33; TR 12/22 at 53:4-22. While other plans accomplish these goals, none have preserved population equality and other categories of traditional redistricting principles as well as the Executive Defendants' Plans.

V. ALL OF THE EXECUTIVE DEFENDANTS' PLANS HONOR SECONDARY, NEUTRAL REDISTRICTING CRITERIA TO THE EXTENT POSSIBLE WHILE STILL MAINTAINING LOW POPULATION DEVIATIONS.

A. The Executive Defendants' Plans Are At Least As, if Not More, Compact than Others.

Under the applicable Polsby-Popper test, the Executive Defendants' Plan and Alternate Plan score as some of the most compact. Specifically, the Executive Defendants' Plan scores 0.31, only behind the Maestas (0.32) and Sena plans (0.33) as the most compact. Gov. Ex. 10. By contrast, the Egolf and Legislative Defendants' plans are the least compact, scoring at 0.28 and 0.29 respectively. See Gov. Ex. 10. The Executive Defendants' First Alternate Plan has even a higher Polsby-Popper score of 0.32. Gov. Ex. 20; TR 12/14 at 241:20-242:6. As expected, however, the Executive Defendants' Alternate Plans 2 and 3 are less compact than the other Executive Plans, due to their intentional incorporation of other parties' districts in the northwest quadrant. TR 12/22 at 200:19-24.

B. The Executive Defendants' Plan and First Alternate Plan Pair Only Three Sets of Incumbents, and Those Pairings Have Equal Political Effect.

The Executive Defendants' Plan and First Alternate Plan minimize the pairing of incumbents such that elected officials are not forced, by the redrawing of districts, to run against

each other. *See Bush*, 517 U.S. at 964 ("we have recognized incumbency protection, at least in the limited form of 'avoiding contests between incumbent[s],' as a legitimate state goal[.]") (citations omitted). Where incumbents must be paired, the Courts should ensure that such pairings are politically fair such that they do not advantage one political party over another. *See Larios*, 300 F. Supp. 2d at 1347-48. The Executive Defendants' Plans contain a minimum number of incumbent pairings with an equal political impact.

Specifically, the Executive Defendants' and Legislative Defendants' proposed Plans contain three (3) districts with incumbent pairings as follows: each have one district that pairs two Democrats, one district that pairs two Republicans, and one district that pairs a Democrat with a Republican. TR 12/14 at 214:9-24. In a similar fashion, the Egolf Plan contains two districts that pair two Democrats and one district that pairs two Republicans. *Id.* In comparison, the Maestas Plan contains one district that pairs three Republicans with each other, one district that pairs two Republicans with each other (for a total of five paired GOP members), and one district that pairs two Democratic members. *Id.* Thus, the Executive Defendants' Plan minimizes the overall effects of pairing of party incumbents and, for those pairings that are necessary, does not provide an advantage to one political party over the other. Importantly, the Executive Defendants' First Alternate Plan did not alter these incumbent pairings. TR 12/14 at 242:11-12.

C. The Executive Defendants' Plan Fares Well in the Core Retention Category Despite Its Low Deviations.

The Executive Defendants' Plan also preserves the core of the existing districts and protects core constituencies. The preservation of district cores recognizes that there is significant value in continuity of present district lines. *See Karcher v. Daggett*, 462 U.S. 725, 758 (1983)

(Stevens, J. concurring). Plans that fail to preserve the core of existing districts threaten to disrupt the smooth and efficient administration of New Mexico's elections, and can cause voter confusion. *See* TR 12/12 at 115:12-23. Core retention and continuity can be measured by determining what percentage of a current district continues to exist in a proposed new district.

The Executive Defendants' Plan preserves New Mexico's existing House of Representatives districts in most cases by maintaining continuity with existing districts. In addition, the Executive Defendants First Alternate Plan performs even better than the original Plan, and results in an increase in core retention and a decrease in subdivision splits. TR 12/14 at 242:3-243:3.

D. The Executive Defendants' Plan Has Fewer Municipal Splits than Most Plans.

Of all of the plans submitted to this Court, the Executive Defendants' Plan splits the least number of counties. It contains only 106 county splits, and only 23 divided counties. *See* TR 12/14 at 215:18-20; Gov Ex. 10. By contrast, the Legislative Defendants' Plan contains 121 county splits and 26 divided counties, the Maestas Plan contains 120 county splits and 28 divided counties, and the Egolf Plan contains 119 county splits and 26 divided counties. *See* Gov. Ex. 10; *see* TR 12/14 at 215:16-23. The Executive Defendants' Alternate Plan also decreases the number of subdivision splits. TR 12/14 at 241:20-25, 243:10-14. Thus, the Executive Defendants' Plans perform the best in this category.

E. The Executive Defendants' Plans Are the Most Politically Fair.

The Legislative Defendants argue that political competitiveness and/or representational fairness fail as appropriate standards in the judicial evaluation of redistricting plans. Because no party has used the terms "political competitiveness" or "representational fairness," it is unknown

to which party this argument is directed or why it is argued by the Legislative Defendants. Assuming that this argument is directed at the Executive Defendants' use of politically neutral principles and maintenance of the partisan *status quo*, the Legislative Defendants are misguided.

Political competitiveness, representational fairness, and proportional representation, as characterized by the Legislative Defendants, is an attempt to draw district lines that come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be. Legis. Omnibus Brief at pp. 30-32 (citing *Davis v. Bandemer*, 478 U.S. 109, 130 (1986)). Political fairness, on the other hand, seeks to maintain the political *status quo* of prior districts, so as to not favor or benefit any party over the other through the redistricting process. *See* Executive Defendants Pre-Trial Brief at pp. 32-33. Maintaining the *status quo*, so that no redistricting plan unfairly obtains an advantage over the other, is not the equivalent of drawing districts so that legislative seats may be allocated to political parties based on their anticipated statewide vote.

Furthermore, political fairness is no different than the least change arguments advanced by the Legislative Defendants. As argued by the Legislative Defendants, the "least change" principle allows courts to appropriately consider "which [of the plans] most clearly approximate[] the reapportionment plan of the state legislature, while satisfying constitutional requirements." *White v. Weiser*, 412 U.S. 783, 796 (1973); *see also* Egolf Trial Brief at p. 6 ("And while respecting incumbency, the Egolf Plaintiffs' plan at no point attempted to harm or help any incumbent nor favor one political party over the other."). A politically fair map attempts to provide the least change to the current partisan make-up of the legislative districts. Political fairness prohibits parties from promoting partisan interest or gains during the redistricting process, when the goal should be to achieve constitutional compliance.

The Executive Defendants' Plan comes the closest to maintaining this *status quo*, and thus does not tend to give one political party an advantage over another. Currently, there are 38 state House of Representatives districts that either lean Democratic or are safe Democrat seats (50 percent or greater Democratic performance in previous state-wide elections), and 32 seats that either lean Republican or are safe Republican seats. The Executive Defendants' Plan creates 39 safe Democratic or lean Democratic seats, and 31 safe or lean Republican seats. *See* Summary Table (Gov. Ex. 10). By contrast, the Legislative Defendants' Plan creates 40 safe or lean Democratic seats, the Egolf Plan creates 41 safe or lean Democratic seats, and the Maestas Plan creates 43 safe or lean Democratic seats. TR 12/21 at 182:11-24, 189:7-21; *cf.* Egolf Trial Brief at p. 6, 14 (claiming that its plan did not "favor one political party over the other" and "suffers from no partisan bias"). Thus, under the Maestas Plan, Democratic performing districts are increased from 38 to 43, strong Democratic districts are increased from 32 to 35, and lean Republican districts are reduced by six. *See* TR 12/20 at 308:19-310:4. The necessary conclusion is that, of the plans before this Court, the Executive Defendants' plan best keeps partisan interests out and is the most politically fair. The other plans advocated by the Democratic groups before the Court each try to advance the ball for the Democratic party by increasing the number of Democratic seats in a chamber already controlled by the Democrats.

According to the Egolf and Maestas' own experts, the Executive Plan is also fair from a partisan bias perspective. TR 12/20 at 46:3-11 (Dr. J. Katz testimony). This means that it treats Republican and Democratic districts equally in terms of translating votes into actual seats. The other political fairness considerations also show that the Executive plans are the most politically neutral. The Maestas plan is the most extreme Democratic plan before the Court, with its high number of Republican pairings, its steep reduction of Republican leaning seats, and its

movement of swing districts toward Democrats. The Egolf plan, while slightly less egregious, is still a plan intended to benefit the majority party.

CONCLUSION

The Court should adopt either the Executive Defendants' Plan or First Alternate Plan because they present the best redistricting plan for the citizens of the State of New Mexico. Specifically, the Executive Defendants' Plans are the only plans that achieve near population equality while respecting and protecting minority voting interests and without sacrificing traditional, neutral redistricting principles.

Respectfully submitted,

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

-and-

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

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

PEIFER, HANSON & MULLINS, P.A.

By: */s/ Matthew Hoyt*
Charles R. Peifer
Robert E. Hanson
Matthew R. Hoyt
PO Box 25245
Albuquerque NM 87125-5245
(505) 247-4800

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of December 2011, I served via electronic mail and filed the foregoing pleading electronically, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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

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

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

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

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

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

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

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

Casey Douma
Attorney at Law
PO Box 812
Laguna NM 87026-0812
(505) 552-5776
cdouma@lagunatribe.org

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

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

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

John V. Wertheim
Jones, Snead, Wertheim & Wentworth, P.A.
PO Box 2228
Santa Fe, NM 87505-2228
(505) 982-0011
johnv@thejonesfirm.com
todd@thejonesform.com
Attorneys for Plaintiffs in Maestas v. *Duran*, D-101-CV-2011-03107

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

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

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

Luis G. Stelzner
Sara N. Sanchez
Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A.
PO Box 528
Albuquerque NM 87103
(505) 988-7770
lgs@stelznerlaw.com
ssanchez@stelznerlaw.com

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

Jenny J. Dumas
Wiggins, Williams & Wiggins
PO Box 1308
Albuquerque NM 87103-1308
(505) 764-8585
pwilliams@wwwlaw.us
jdumas@wwwlaw.us

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

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

PEIFER, HANSON & MULLINS P.A.

By: */s/ Matthew Hoyt*
Matthew R. Hoyt