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

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

Plaintiffs,

v.

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

Defendants.

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

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

JOINT-PLAN PROPONENTS' CONGRESSIONAL TRIAL CLOSING ARGUMENT

The Joint Plan Proponents hereby jointly submit their written closing argument. As proved at trial, the Joint Plan puts before the Court the best option for a Court-drawn redistricting of New Mexico's three Congressional Districts. All plans before this Court achieve low population deviations and, accordingly, this Court should apply a balancing of traditional redistricting principles to determine which plan before it best satisfies those principles and best adheres to New Mexico's historical policy of Congressional redistricting. As the least-change plan that adheres most closely to the existing districting plan and moves the fewest number of people out of their existing congressional districts, and as a carefully balanced plan politically, the

Joint Plan provides this Court with the best possible expression of New Mexico's historical redistricting policy and should be adopted by this Court.

Argument

I. WHEN FACED WITH MULTIPLEPROPOSED CONGRESSIONAL REDISTRICTING PLANS, TRIAL COURTS FIRST DETERMINE WHETHER THEY ARE CONSTITUTIONAL AND LEGAL, AND THEN APPLY A BALANCE OF TRADITIONAL REDISTRICTING PRINCIPLES IN SELECTING THE APPROPRIATE PLAN.

A court exercises its equitable discretion in adopting a redistricting plan. *Connor v. Finch* 431 U.S. 407, 415, 97 S.Ct. 1828, 1834 (1977) (recognizing that in selecting a redistricting plan a court exercises its "equitable discretion."). In exercising its discretion, a court must initially ensure that the constitutional and statutory requirements of equal population and non-dilution of minority voting strength are satisfied[1]" *Carstens v. Lamm*, 543 F.Supp. 68, 81-2 (D. Colo. 1982). Once these requirements are satisfied, a court should consider other criteria that have been articulated by the state (here, New Mexico) as important state redistricting policy. *Id.* at 82–83; *Beauprez at id.* In *Upham v. Seamon*, the United States Supreme Court also expressed this principle:

> Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment.

[1] While the Maestas Plaintiffs stubbornly continue to insist that their plan is the only constitutional plan as it reaches absolute zero deviation, they fail to cite a single case requiring absolute zero deviations. As set forth in the Joint-Plan Proponents' Congressional Trial Memorandum, the applicable standard is as close to zero as is practicable. The Joint Plan, with a total deviation of 54 people, meets that standard while adhering to traditional redistricting principles and respecting precinct boundaries, which is a legal and historical requirement in New Mexico Congressional redistricting. Moreover, the evidence at trial is uncontested that the minimal differences among the Maestas Plan's absolute zero deviations (achieved only by splitting precincts) and the very, very low deviations in the Joint Plan are neither "practically" nor "statistically" significant. *See* testimony of Dr. James Williams; Dr. Theodore Arrington.

Upham v. Seamon, 456 U.S. 37, 41, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982). Thus, in the case at bar, if the Court decides that there are no issues regarding the constitutionality and legality of the competing plans the question for the Court is how to determine what are New Mexico's redistricting policies and how to apply them in exercising its discretion in selecting a plan.[2]

If a court determines that the competing plans are constitutional and otherwise legal, courts that have been forced to choose among competing plans[3] have articulated the criteria they believe should be applied in exercising their discretion. There is commonality in their views: Courts will choose plans whose population deviations are minimal and whose configurations most closely reflect what those courts believe to be the particular state's redistricting policies. In determining what a state's "redistricting policies" are, courts start with the existing districting plan and then, to the extent the existing plan must be changed (as will almost certainly be necessary following a census), will apply traditional, politically neutral redistricting criteria in selecting a new plan. What these courts have held, in one way or another, is that "least change" from a state's prior plan is desirable because least change from a state legislature's redistricting policies, as reflected in a prior plan, hews most closely to known state redistricting policies. Some courts have articulated this view by recognizing that the existing plan is what, in fact, reflects a state's redistricting policies and have used the existing plan as the starting point for analyzing competing plans in

[2] In their separate brief, the Executive Defendants, and the *James* and *Sena* Plaintiffs, argue that the LULAC plan is an unconstitutional racial gerrymander, and that the Maestas plan is inconsistent with the law because it is a political gerrymander. The *Egolf* plaintiffs take no position on these issues.

[3] For example, plans that do not reflect invidious discrimination and whose districts do not significantly deviate from ideal populations and whose minimal deviations, if any, are necessary to accomplish legitimate state redistricting goals such as not separating communities of interest, maintaining political boundaries and the like. *Miller v. Johnson,* 515 U.S. 900, 916 (1995). *And see* discussion at pp. 4-5 of Joint-Plan Proponents' Congressional Pre-Trial Memorandum.

redistricting litigation or have identified the existing plan as the "benchmark" for analysis of competing plans. As the Oklahoma Supreme Court put it in reviewing a district court's choice:

> [T]his Court must determine whether the district court's judgment in its selection of the 'Governor's Plan,' also called the 'Continuity Plan,' is a plan that continues the policies of Oklahoma *as expressed in its previous redistricting plans.* See White v. Weiser, 412 U.S. 783, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973).[4]

Alexander v. Taylor 51 P.3d 1204, 1211 (Okla.,2002). (Emphasis added.) *See also, Below v. Gardner,* 148 N.H. 1, 963 A.2d 785, 794 (2002) ("We use *as our benchmark* the existing senate districts because the senate districting plan enacted in 1992 is the last validly enacted plan and is the clearest expression of the legislature's intent. *We consider the 1992 senate plan to be the best evidence of State redistricting policy*."). (Emphasis added).

While the Oklahoma and New Hampshire courts looked to the previous decennial redistricting plan of their state as their starting point for determining the state's redistricting policy and their analyses of competing plans, other courts have taken a similar view under the rubric of "least change" or similar phraseology. *See, e.g., Wright v. City of Albany,* 306 F.Supp. 2d 1228, 1239 (M.D. Ga. 2003) (identifying "least change" as a "traditional redistricting principle"); *Colleton County Council v. McDonnell,* 201 F.Supp. 2d 618, 655 (D.S.C. 2002) (adopting plan

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[4] In *White, 412 U.S. 783,* on which the Oklahoma Court relied, the Supreme Court reviewed a district court's selection of one proposed plan over another following the district court's determination that Texas's redistricting act included unconstitutionally high population variations among Congressional districts. In reversing the three-judge district court's selection of "Plan C" over "Plan B". The Court described the district court's duty as follows:

> Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'

White, supra, 412 U.S. at 795.

with minimal deviation that imposed least change in constituency movement); *Jepson v. Vigil-Giron,* No. D-1-1-CV-2001-02177, ¶¶ 22-35 (First Jud. Dist. Ct., Jan 2, 2002) (adopting least-change plan).

If a court is satisfied that competing plans do not contain constitutional flaws, and if it has determined that, as here, the existing plan is unconstitutionally disproportionate in population and, accordingly, that a new plan must be selected, the court will then turn to "traditional, neutral redistricting principles" to weigh which of the competing plans offered is preferable in light of the redistricting policies reflecting in the current plan and, considering other, traditional, non-constitutional criteria. The New Hampshire Supreme Court in *Below* summarized this process as follows, quoting the Oklahoma Supreme Court in *Alexander*:

> The starting point for analysis, therefore, is the [existing] 1991 Plan. See *Abrams v. Johnson*, 521 U.S. at 79, 117 S.Ct. 1925; *White v. Weiser*, 412 U.S. at 795, 93 S.Ct. 2348. Widely recognized 'neutral redistricting criteria' may be considered. See *Karcher v. Daggett*, 462 U.S. 725 (1983); *Johnson v. Miller*, 922 F.Supp. 1556 (S.D.Ga.1995), aff'd sub nom *Abrams v. Johnson*, *supra*. Included among these criteria are: (1) preserving cores of existing districts, or communities of interest; (2) providing geographically compact districts; (3) minimizing splitting of political subdivisions; (4) maintaining historical placement of district lines; (5) fairness to voters; and (6) avoiding contests between incumbents running for reelection.

Below v. Gardner, 148 N.H. 1, 963 A.2d 785, 794 (2002), *quoting Alexander v. Taylor* 51 P.3d 1204, 1211 (Okla.,2002).[5]

Courts have recognized that such "neutral redistricting criteria" may conflict with one another. For example, maintaining historical placement of district lines may conflict with the

[5] In *Abrams,* for example, the Supreme Court stated, "[w]hen faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Abrams v. Johnson* 521 U.S. 74, 79 (1997).

need to preserve a community of interest. In at least one case, a party to redistricting litigation objected to the court's consideration of these criteria. Speaking for the three-judge federal court, Judge Finesilver responded:

> They argue that there are internal conflicts inherent in such criteria which make their use subjective and impractical. We do not find these arguments persuasive. When faced with potentially conflicting interests, courts generally attempt to achieve an equitable result by using a balancing test. If conflicts do, in fact, occur when these criteria are applied to redistricting plans, we are convinced that balancing the competing interests represents a realistic and practical means for resolving any potential problems.

Carstens v. Lamm, 543 F.Supp. 68, 83 (D.Colo., 1982). The same court recognized that, where proposed plans are all constitutional, reference to other, neutral redistricting criteria cannot be avoided:

> The degree of sophistication in redistricting technology has reached a point where it can match the courts' increasing demands for mathematical precision. As a result, courts are often faced with situations in which several different redistricting plans achieve virtually identical levels of population equality without substantially diluting minority rights. In these cases, no reasoned decision can be based solely on these two constitutional criteria. The court must accommodate other relevant criteria in determining whether to accept a proposed plan or to adopt a new one.

Id.

On the basis of the foregoing authorities, the Joint Plan's proponents believe they can fairly summarize the approach this Court should take as follows: If it determines that none of the competing plans violates the United States Constitution or the federal Voting Rights Act, it should treat the existing redistricting plan as its starting point. Then, it should determine which of the plans changes the existing plan the least and should balance the extent to which any of the plans, including the Joint Plan Proponents' least-change plan, violates any established New Mexico

redistricting criteria, such as respect for precinct boundaries.[6] Provided there are no neutral redistricting criteria such as maintenance of district cores, preservation of communities of interest, compactness, *etc*., that are offended in some substantial way by the least change plan, the Court's inquiry should end there and it should adopt the least change plan.

If the Court determines that one or more neutral redistricting criteria *are* substantially offended by the least change plan as compared with the existing plan, then the court should proceed to compare the least change plan with the other plans and determine which redistricting plan least offends traditional, neutral redistricting criteria. If the court determines that the least change plan offends those criteria the least, then it should adopt the least change plan. In reaching this point, the Court is, of course, free to require modifications to the Joint Plan Proponents' least change plan. If, on the other hand, it determines that there is a substantial issue as to which plan least offends traditional, neutral redistricting criteria, the court should then assess whether the least change plan's offenses to those traditional criteria are so significant that another plan -- even if it is not the least change plan -- is preferable. If it is a "close call" as to whether one or another plan offends traditional, neutral criteria more, then the court should adopt the least change plan because it most closely follows state government's expression of New Mexico redistricting policy, which is manifested in the existing plan.[7]

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[6] See discussion of state policy regarding splitting precincts in Joint Plan Proponents' Congressional District Trial Memorandum at pp. 12-15.

[7] Similarly, if there is an area where the Court feels adjustments should be made to the least-change plan to more strictly adhere to any redistricting requirements, it should adopt the Joint Plan and order such an adjustment. Indeed, ten years ago in the 2001 redistricting litigation, *Jepsen v. Vigil-Jiron*, First Judicial District Court Cause No. D-0101-2001-02177 (Consolidated), the Court substantially adopted the Legislative Defendants' House of Representatives Plan, but ordered various minor precinct changes to adjust a few precincts affecting Native American interests. Such an option would be available to this Court.

II. THE JOINT PLAN IS UNDOUBTEDLY THE LEAST CHANGE PLAN AND BEST SATISFIES TRADITIONAL REDISTRICTING CRITERIA, INCLUDING NEW MEXICO'S HISTORICAL POLICIES OF RESPECT FOR PRECINCT BOUNDARIES.

The Joint Plan is unquestionably the "least change" plan insofar as it displaces the fewest number of people from their existing congressional district (approximately 25,000, as opposed to approximately 180,000 in the Maestas Plan and approximately 260,000 in the LULAC Plan), and therefore adjusts the district boundaries as little as possible while satisfying the constitutional, one-person, one-vote requirements. In addition to hewing closely to the existing plan, it maintains the legal and historical redistricting principle that Congressional districts not split voting precincts. It does not radically relocate citizens within New Mexico's political geography. It maintains existing political boundaries and communities of interest as well as they can reasonably be maintained. Its population deviations are, for all practical and statistical purposes, zero.

The Joint Plan also best balances other, recognized traditional redistricting principles, in addition to the least change standard. The Joint Plan maintains, as much as practicable, existing boundaries, maintaining county and other political subdivisions (including precincts) as much as practicable. The U.S. Supreme Court has expressly recognized respect for political "subdivisions" of a state (like counties, towns, and precincts) and respect for communities defined by shared interests, as traditional redistricting principles. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995). "[A] desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality." *Abate v. Mundt*, 403 U.S. 182, 185 (1971); *see Reynolds*, 377 U.S. at 580-81 (identifying preservation of political subdivisions as a clearly legitimate policy). The goal is to minimize, as much as possible, the number of counties and political subdivisions split between districts. *See Moon v. Meadows*, 952 F. Supp. 1141, 1148

(E.D. Va. 1997) (concluding an example of "the plan's disregard for the integrity of traditional localities and regions is its increase in the number of split counties and independent cities"). Political subdivisions should not be divided more than necessary to meet constitutional requirements. *See Karcher v. Daggett*, 462 U.S. 725, 733 n.5, 740-41 (1983); *see also Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 648 (D.S.C. 2002) ("Many governmental services, such as fire and police protection, are organized along political subdivision lines, and counties and cities are often representative of a naturally existing community of interest.").

Maintaining or preserving the cores of prior districts is a traditional redistricting principle that refers to how much the district stays basically the same from one redistricting session to the next. *Karcher*, 462 U.S. at 740; *Reynolds*, 377 U.S. at 578-79. Preserving district cores can vary in definition from "keeping as many of the current congressional districts intact as possible," to "those counties that have been together in the same district for most of the history of the State." *Stone*, 782 F.Supp. at 1126. Even if it requires small differences in the population of congressional districts, preserving the cores of prior districts is a relevant factor in selecting among redistricting plans, so long it is consistent with constitutional norms, such as equalizing population and not subordinating minority voting interests. *Karcher*, 462 U.S. at 740.

The Joint Plan preserves New Mexico's existing districts to the greatest practicable extent and maintains continuity with existing districts. The Joint Plan preserves New Mexico's district cores as it both keeps our current congressional districts as intact as possible and keeps together political subdivisions that have historically been together in the same district for most of the history of the State. For example, the evidence is clear that both the Maestas Plan and the LULAC Plan shift substantial numbers of people in Torrance and Valencia Counties between the

First and Second Congressional districts, accomplishing what we suggest are minimal and irrelevant redistricting ends. Torrance County, which has been in the First Congressional District for thirty years, would be shifted to the Second Congressional District under the Maestas and LULAC Plans. *See Colleton County Council*, 201 F.Supp.2d at 648 (determining a court will respect all districting principles historically observed by a state).

An added benefit of maintaining core districts, as the Joint Plan does, is that it moves the least possible amount of people out of their existing Congressional district. While New Mexico's population has grown, and shifted significantly, over the past decade, the Joint Plan moves less than 25,000 people out of their existing Congressional district. Considering that the total population of New Mexico is 2,059,179, and the ideal population for each of New Mexico's three congressional districts is 686,393 people, a total moving of less than 25,000 people warrants the Court's adoption of the Joint Plan.

The preservation of communities of interest is a traditional redistricting principle that encourages a map drawer to refrain from dividing populations or communities that have common needs and interests. *See LULAC*, 548 U.S. at 433 (stating that "maintaining communities of interest" is a traditional redistricting principle); *Miller*, 515 U.S. at 916 (including respect for "communities defined by actual shared interests" in list of "traditional race-neutral districting principles"). Communities of interest include, but are not limited to, similarity of interests as to racial, ethnic, geographic, governmental, regional, social, cultural, political, religious, and historic interests, and can include characteristics such as income levels, educational backgrounds, housing patterns, living conditions, employment patterns, public transport infrastructure, health conditions,

media markets (both print and broadcast), and the location of institutions such as schools and churches. *See Bush*, 517 U.S. at 943; *Diaz v. Silver*, 978 F.Supp. 96, 123-24 (E.D.N.Y. 1997).

By taking a "least change" approach to the current Congressional map—as was done by the court in 2001—the Joint Plan achieves the goal of maintaining existing communities of interest. For example, as long as New Mexico has had 3 Congressional Districts (until 1982, New Mexico had only 2 Congressional Districts), Torrance County has been included in CD 1, which has historically been mostly comprised of the Greater Metropolitan Albuquerque area. The Joint Plan accommodates this existing and historical community of interest by including Torrance County in CD 1, which continues to be made up of the Greater Metropolitan Albuquerque area. Similarly, as long as New Mexico has had 3 Congressional Districts, Valencia County has never been fully included in CD 1; and, since 1992, has been largely in CD 2, the Southern New Mexico Congressional District. The Joint Plan maintains this community of interest by leaving portions of Valencia County in CD 2 that have been in CD 2 for the last 20 years. In short, the Joint Plan leaves, as much as practicable, the Greater Metropolitan Albuquerque area intact and maintains the Southern District intact as much as practicable, given the changes in population over the last decade. Moreover, the Joint Plan leaves Torrance County, which is more dependent upon Albuquerque for services than Valencia County, in CD1, maintaining that obvious economic community of interest.

Finally, the Joint Plan presents the best option for the Court to maintain political fairness. As demonstrated by Dr. Theodore Arrington's testimony, and as summarized on Exhibit Egolf 4, at trial, the Joint Plan presents the best possible plan to balance New Mexico's three congressional districts politically. CD3 reliably leans democratic, CD2 reliably leans Republican, and CD1

provides a more evenly matched district that can be won by democrats or republicans. Only the Joint Plan provides a proven level of fairness and balance upon political lines.

III. THE MAESTAS PLAN RELIES UPON NUMERICALLY ZERO POPULATION DEVIATION AS ITS ONLY REDEEMING QUALITY, BUT DOES SO AT THE EXPENSE OF ALL OTHER TRADITIONAL REDISTRICTING PRINCIPLES.

The Maestas Plan relies upon numerically zero population deviations as its selling point. However, it does so in a way that sacrifices all other traditional redistricting principles and has no other redeeming qualities. First, the Maestas plan radically reorganizes New Mexico's political geography in violation of New Mexico redistricting policy as reflected by New Mexico law, *see* NMSA 1978, §§ 1-15-15.1, 1-15-16.1, and in the existing plan which, as the New Hampshire Supreme Court stated in *Below, supra,* is the "benchmark" for ascertaining what a state's redistricting policy actually is. There is no decision, by any court, that would justify a substantial departure from a state's articulated redistricting policy, as reflected in its existing plan, in exchange for a minuscule improvement in numerical equality among districts.

As proven at trial, with no contrary evidence offered by the Maestas Plaintiffs, their plan displaces 180,000 out of their existing congressional districts. That means that as many as 180,000 who may have voted for their current congressman will be deprived of the ability to be represented by their candidate of choice going forward.

The Maestas Plan further radically alters the geographical boundaries of existing congressional districts, thereby cutting off strong ties between dependent communities of interest. By removing almost but not quite all of Torrance County from CD1 and splitting the small population of Torrance County among three congressional districts, the Maestas Plan sacrifices representation for an entire community that depends upon Albuquerque for work, medical

services, shopping, banking, and other services and places it in a new district where such services may be hours away, rather than minutes away.

Finally, as summarized by Exhibit Egolf 4, offered at trial with no rebuttal evidence presented, the Maestas Plan does worse than the Joint Plan in compactness of districts[8] and alters political performance in such a way that multiple, minor changes in initial conditions could result in drastic changes in representation for New Mexico in the Congress. In short, the Maestas Plan does violence to traditional redistricting principles, all in the name of attempting to achieve a requirement that does not exist—absolute zero population deviations. On balance, the Maestas Plan does not present this Court with a viable option for Congressional redistricting and should not be considered.

IV. THE LULAC PLAN IS A "MOST CHANGE" PLAN THAT DOES NOT EVEN ACHIEVE ITS STATED GOALS AND DOES NOT MERIT CONSIDERATION BY THIS COURT.

Violating virtually every traditional redistricting principle, the LULAC plan attempts to justify its viability by arguing that New Mexico requires an Hispanic majority voting age population district. However, LULAC fails in its stated goal by creating a district that, when population figures are adjusted for citizen population, fails to create a majority Hispanic district. Moreover, the LULAC Plan alters the existing map in ways that violate each and every traditional redistricting principle recognized by courts. The LULAC plan does not merit consideration as a serious option.

As proven at trial, the LULAC plan fails in its stated goal of creating an Hispanic majority voting age population district. While LULAC purports to have created a district (CD2) that is

[8] Interestingly, the Maestas Plaintiffs proffered no evidence that their plan was compact, or that their proposed districts were contiguous. Given their choice to illegally split precinct boundaries, it is obvious why such evidence was not presented.

52.0% VAP Hispanic, it fails to acknowledge that at least 4% of the Hispanics in its proposed CD2 are not citizen population, and therefore cannot vote. Given the inability to vote, those Hispanics will not participate in the political process, and will add nothing to Hispanics' ability to elect their candidate of choice in the newly created district. Thus, the LULAC Plan fails in its stated goal, and does so at the expense of other, traditional redistricting principles.

The LULAC plan radically reorganizes New Mexico's political geography by relocating 264,000 people from their former Congressional districts into different districts. In doing so, the LULAC plan alters existing communities of interest and drastically splits the City of Albuquerque multiple ways. In short, the LULAC plan is a "most change" plan that would irreversibly alter the landscape of New Mexico's congressional delegation, with no justification. Adoption of the LULAC plan would remove any confidence or predictability that has been reliably present in the current congressional districting scheme, but without any benefit to Hispanics, as claimed by LULAC.

Conclusion

Clearly, only the Joint Plan meets the applicable constitutional requirements, while maintaining the clearest expression of New Mexico policy on congressional redistricting. Moreover, the Joint Plan does this without offending traditional redistricting principles, and while maintaining the political fairness embodied in the current plan. The Joint Plan is therefore the best option for this Court to select in reapportioning New Mexico's three congressional districts and should be adopted by this Court.

Respectfully submitted,

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I hereby certify that on December 9, 2011, I filed the foregoing electronically through the Tyler Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing; all counsel of record were additionally served via email.

/s/ Ray M. Vargas, II