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**

CONSOLIDATED WITH
D-101-CV-2011-02944
D-101-CV-2011-02945
D0101-CV-2011-03016
D-101-CV-2011-03099
D-101-CV-2011-03107
D-202-CV-2011-09600
D-506-CV-2011-00913

FINDINGS OF FACT AND CONCLUSIONS OF LAW
(New Mexico Senate Trial)

This matter came before the Court for Evidentiary Hearing regarding the creation of districts for the New Mexico Senate. The Court heard evidence on January 3, 4, 5, 6, 9, 10, and 11, 2012. All parties appeared represented by counsel. Following completion of the hearing, the parties submitted proposed findings of fact and conclusions of law.

The evidence and arguments having been completed, the Court hereby enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Census and New Mexico's Population Changes

1. The United States Census Bureau conducts a decennial census throughout the United States to accomplish the proper apportionment of state legislative districts, including the New Mexico State Senate.

2. The most recent census was conducted in 2010 and established that the population of the State of New Mexico increased since the 2000 census by approximately 13.2 percent.

3. According to the 2010 census, New Mexico's population is 2,059,179 people.

4. The New Mexico State Senate is made up of forty two (42) districts.

5. The ideal population of each Senate district is 49,028 people.

6. The current districts for the State Senate have deviations from the ideal population ranging from -19.0 percent (Senate District 35) to 73.0 percent (Senate District 23), for a total range of 92 percent.

7. The population deviations amongst the current districts vary markedly. For example, one district on the Westside of Albuquerque (Senate District 23) is overpopulated by 73 percent, and others in the midtown to south central part of Albuquerque (Senate Districts 12, 14, and 16) are under-populated by -13.4 percent, -13 percent, -13.5 percent, respectively.

8. The population deviations are consistent with the major population shifts that have occurred in New Mexico over the last decade. Most of these shifts occurred in the western areas of Albuquerque and in Rio Rancho, which grew at a rate much faster

than the rest of the state. In such areas, the population is sufficient to support additional state legislative districts.

9. Areas of the state, including central Albuquerque, the north central region, and the eastern half of the state saw dramatically slower growth and/or population declines in the last ten years. As a result, there is an area in central Albuquerque in which the current population is insufficient to support the current number of state legislative districts in that region. In addition, the north central and eastern regions of the state are collectively under populated by approximately 80% of a Senate district.

10. The parties jointly stipulated that the current electoral districts for the New Mexico State Senate are unconstitutionally apportioned.

11. Because large population deviations exist between the current electoral districts, changes are necessary to bring the districts into compliance with law.

Legislative Efforts to Redistrict the New Mexico State Senate

12. Following the receipt of official census data, the Governor called the New Mexico Legislature into a special session, commencing on September 6, 2011.

13. Prior to the special session, the bi-partisan New Mexico Legislative Council adopted, without dissent, certain guidelines to control the redistricting process within the Legislature. The guidelines provide as follows:

a. Congressional districts shall be as equal in population as practicable.

b. State districts shall be substantially equal in population; no plans for state office will be considered that include any district with a total population that deviates more than plus or minus five percent from the ideal.

c. The legislature shall use 2010 federal decennial census data generated by the United States Bureau of the Census.

d. Since the precinct is the basic building block of a voting district in New Mexico, proposed redistricting plans to be considered by the legislature shall not be comprised of districts that split precincts.

e. Plans must comport with the provisions of the Voting Rights Act of 1965, as amended, and federal constitutional standards. Plans that dilute a protected minority's voting strength are unacceptable. Race may be considered in developing redistricting plans but shall not be the predominant consideration. Traditional race-neutral districting principles (as reflected below) must not be subordinated to racial considerations.

f. All redistricting plans shall use only single-member districts.

g. Districts shall be drawn consistent with traditional districting principles. Districts shall be composed of contiguous precincts, and shall be reasonably compact. To the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries. In addition, and to the extent feasible, the legislature may seek to preserve the core of existing districts, and may consider the residence of incumbents.

14. The Legislative Council formed a bi-partisan Interim Redistricting Committee to gather public input on redistricting, develop plans, and make recommendations to the Legislature in advance of the Special Session.

15. Throughout the summer of 2011, the Redistricting Committee traveled throughout the State of New Mexico and held public hearings to receive input from citizens and interest groups from all areas of the state, including Farmington, Gallup, Rio Rancho, Santa Fe, Clovis, the Pueblo of Acoma, Las Vegas, Roswell, Las Cruces and Albuquerque.

16. In Acoma and Gallup, Native American leaders from the Navajo Nation and other tribes and Pueblos in the northwest quadrant of the state consulted with the

Redistricting Committee regarding their preferences and concerns for the configuration of the Senate districts in that region. In Acoma, the Legislature heard comments from the Native American Redistricting Workgroup ("NARW"), which included representation and input from the 19 New Mexico Pueblos, the Jicarilla Apache Nation and the Navajo Nation. The NARW submitted these principles and consensus plans to the Legislative Redistricting Committee prior to the Special Session and to members of the Legislature during the Special Session.

17. Reaching consensus among the tribes took considerable time and energy by everyone involved. Obtaining consensus for any particular plan required the approval of those distinct and separate tribal governments obtained in compliance with tribal procedures.

18. The Legislature and Native American leaders worked extensively before and during the special session in an effort to accommodate Native American preferences as expressed in the plan presented by the NARW.

19. At the public hearings held by the Legislature's Redistricting Committee, citizens in different communities expressed a desire that their municipalities and communities remain unified in any Senate redistricting plan.

20. Members of the public expressed a desire to have their communities remain intact to help insure that their senator lived and worked within their communities, would recognize their values and concerns, and could thereby provide them with better representation.

21. During the Special Session, numerous redistricting plans were introduced and debated in committee meetings. Brian Sanderoff and Research and Polling, Inc.

worked and consulted with both Democratic and Republican legislators in order to create plans requested by individual legislators or caucuses. During the Special Session, no redistricting plan was introduced which was identified as proposed or approved by the Governor.

22. During the Special Session, Senate Bill 33 ("SB 33"), which provided for the redistricting of the New Mexico Senate, passed both houses of the Legislature. SB 33 passed on the strength of the Democratic majorities in both chambers; no Republican legislators voted in favor of SB 33.

23. SB 33 was vetoed by the Governor.

24. In order to properly administer the upcoming election for New Mexico's State Senate districts, a New Mexico Senate redistricting plan must be adopted as soon as is possible.

Plans Presented to the Court

25. At the beginning of trial, the Court was initially presented with five (5) complete Senate Plans:

a. The Legislative Defendants' Plan (SB 33);

b. The Executive Defendants' Plan;

c. The James Plaintiffs' Plan;

d. The Sena Plaintiffs' Plan; and

e. The joint Egolf/Maestas Plaintiffs' Plan, named "Egolf 2/Joint Plan".

26. The Navajo Nation and the Multi-Tribal Plaintiffs submitted a joint partial Senate redistricting plan (the "Unified Native American Plan").

27. After trial commenced, some parties amended or modified their plans and submitted them to the Court. The Egolf and Maestas Plaintiffs submitted a second joint plan named "Egolf 3/Joint Plan 2", then a third joint plan, named "Egolf 4/Joint Plan 3". The James Plaintiffs submitted an alternate plan. The Executive Defendants submitted five alternative plans. Some of the substitute and alternative plans were introduced to address criticisms by the parties to the litigation.

28. No plan can perfectly address all traditional redistricting principles. Certain redistricting principles are often in conflict. None of the plans submitted to the Court achieved perfect population equality between the districts. All of the plans submitted to the Court resulted in numerous persons being moved from one district to another. All of the plans submitted split counties and municipalities and have certain districts that are not compact. All of the plans split communities of interest.

29. All of the plans submitted to the Court have contiguous districts and are reasonably compact by quantifiable measurements.

30. Given the large population deviations in the existing district and the need for significant changes which are necessary to bring the districts into compliance with the law, all of the plans submitted to the Court are reasonable in terms of their retention of the core of previous districts.

31. Before completion of the hearing on the merits of the plans submitted by the parties, certain of the parties entered into settlement negotiations and developed a joint plan to submit to the Court. The plan submitted by these parties is the Plaintiffs', Intervenors' and Executive Defendants' Joint Plan (the "Joint Plan"). With the submission of the Joint Plan, all parties (except the Legislative Defendants) withdrew the

previous plans submitted to the Court. All parties (except the Legislative Defendants) requested that the Court adopt the Joint Plan.

Plaintiffs', Intervenors' and Executive Defendants' Joint Plan

32. The Joint Plan contains a deviation range of -4.6 to 4.1 percent, for an overall range of 8.7 percent.

33. The Joint Plan adopts, in its entirety and without alteration, the plan proposed by the Multi-Tribal Plaintiffs and the Navajo Intervenors, the Unified Native American Plan, which is discussed below.

34. The 2010 census shows that the total Native American population grew at a rate of 14.6%. This population includes Native Americans who may have also checked an additional ethnic or racial category when responding to the census.

35. Native Americans constitute 10.7 percent of the population of New Mexico.

36. Native Americans currently hold two Senate seats in the New Mexico Legislature.

37. Tribal communities are in the best position to determine what is best for their own communities.

38. Native Americans in northwestern New Mexico, including several Indian pueblos, the Jicarilla Apache Nation, and the New Mexico portion of the Navajo Nation, have a sufficiently numerous and geographically compact population to constitute a majority of voters in three (3) districts.

39. Ecological inference (King method) analysis demonstrates that elections in northwestern New Mexico involving Native American candidates and non-Native American candidates are racially polarized.

40. Native Americans in northwestern New Mexico have traditionally voted, and continue to vote, as a politically cohesive group.

41. Homogeneous precinct analyses, ecological regression analyses, and ecological inference analyses establish racially polarized voting in Native American districts in New Mexico and that non-Native voters vote sufficiently as a bloc in primary elections to veto more often than not the election of the preferred candidate of Native American voters.

42. Native Americans in New Mexico continue to suffer the effects of historic discrimination, in areas such as education, employment, and health, which hinder their ability to effectively participate in the political process.

43. The tribes who are plaintiffs to this litigation have submitted a partial redistricting plan, Unified Native American Plan 2, which draws proposed Senate districts containing Indian lands in the northwest quadrant of the state.

44. The Unified Native American Plan presented to the Court and incorporated into the Joint Plan is a partial plan for redistricting Senate Districts 1, 2, 3, 4, 22, 29, and 30 submitted jointly by the Multi-Tribal Plaintiffs (the Pueblo of Laguna, Pueblo of Acoma, Jicarilla Apache Nation, Pueblo of Zuni, Pueblo of Santa Ana, Pueblo of Isleta, Richard Luarkie, Harry A. Antonio, Jr., David F. Garcia, Levi Pesata, and Leon Reval) and the Navajo Nation Intervenors (the Navajo Nation, Lorenzo Bates, Duane H. Yazzie, Rodger Martinez, Kimmeth Yazzie, and Angela Barney Nez).

45. The Unified Native American Plan includes three (3) reasonably compact and contiguous Native American majority districts. In Districts 3, 4 and 22 the total Native American Voting Age Population ("VAP") is in excess of 66% (District 3 is 75.7%, District 4 is 68.3% and District 22 is 66.4%).

46. The Unified Native American Plan also provides for one Native American influence district (District 30) with a non-Hispanic Native American VAP of 24.7%, and a total Native American VAP of 26.7% in which there is a high likelihood that Native Americans could cast the decisive vote in electing a candidate that will be responsive to their concerns, even if they are unable to elect the candidate of their choice.

47. By maintaining a total Native American VAP of 26.7% in District 30, it will be a district in which the Native American voters, even if unable to elect a representative of their choice, including one from within their own group if that is their preference, cast a decisive vote among those candidates contesting the seat. The total Native American VAP percentage provides a reasonable opportunity for Native American voters in District 30 to influence the legislative behavior of the person elected to represent the district.

48. The Unified Native American Plan honors the wishes of Isleta Pueblo to remain in a single Senate district (District 29) together with its communities of interest in that district.

49. The Unified Native American Plan as adopted in the Joint Plan provides for three (3) majority districts, Districts 3, 4 and 22) with a Native American VAP greater than 64% that are reasonably compact and contiguous.

50. The proposed Senate Districts 3, 4, 22, 29 and 30 maintain shared communities of interest among the Pueblos, the Navajo Nation, and Jicarilla Apache Nation, and among the Pueblos, Tribes and their neighboring communities.

51. Compliance with the Voting Rights Act Section 2, respect for self-determination, preservation of tribal communities of interest, maintaining tribal communities whole with a district and the need to remedy the historic and continuing dilution of Native American voting rights are legitimate reasons for deviations within the range of +/- 5% in Native American Majority districts and surrounding districts affected thereby.

52. Traditional districting principles have not been subordinated to race in the drawing of the majority and influence districts in the Unified Native American Plan.

53. With the exception of the seven districts included in the Joint Plan at the request of the Navajo Nation and Multi-Tribal Plaintiffs (Districts 1, 2, 3, 4, 22, 29, and 30), all other districts are within plus or minus two percent of the ideal population.

54. The Joint Plan includes 17 districts with a Hispanic VAP over 50%. The current plan includes 16 districts with a Hispanic VAP of 50% or greater. The Joint Plan increases the number of Hispanic VAP districts by one (1).

55. Currently, there are 19 Senate districts that perform better than 50% in favor of Republican candidates. The Joint Plan reduces the number of Senate districts that perform better than 50% in favor of Republican candidates by two (2), increases the number of Senate districts that perform better than 50% in favor of Democrats by one (1), and includes one (1) district in which Republican and Democratic performance is evenly split at 50%.

56. The Joint Plan has two incumbent pairings: Senators Adair and Burt and Senators Griego and Ortiz y Pino.

57. The Joint Plan maintains the political competitiveness of currently competitive districts. Senate District 15 provides for a political performance number of 48 percent Republican and 52 percent Democrat. Senate District 9 provides for a political performance number of 49.5 percent Republican and 50.5 percent Democrat. Senate District 37 provides for a political performance number of 50 percent Republican and 50 percent Democrat.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter herein.

2. The New Mexico Constitution provides that the State Senate "shall be composed of no more than forty-two members elected from single-member districts." N.M. Const. art. IV, § 3(B).

3. Due to population growth and shifts over the last decade, the currently-existing New Mexico Senate districts are unconstitutional under the United States Constitution Amendment XIV and New Mexico Constitution art. II, § 18.

4. Reapportionment is, at least initially, a legislative function, "and the location and shape of districts is within the discretion of the State Legislature so long as the Constitution is complied with." *Sanchez v. King*, 550 F. Supp. 13, 14-15 (D.N.M. 1982). However, if the legislative effort fails, then a court may assume the apportionment function and create a map through the judicial process. *See Baker v. Carr*, 369 U.S. 186 (1962). Adopting or drawing a plan by a court is an equitable remedy.

5. A court's role in adopting or drawing a reapportionment plan is limited and is different from the role of the Legislature.

Court's Role in Redistricting

6. A court-ordered reapportionment plan of a state legislature is held to a higher standard than a legislatively drawn map, because it must ordinarily achieve the goal of population equality with little more than *de minimis* variation:

> A court-ordered plan ... must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.... We hold today that unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature ... must ordinarily achieve the goal of population equality with little more than *de minimis* variation.
>
> *Id.* at 26-27.

7. The *Chapman* distinction between legislatively adopted plans and court-ordered plans is based on the equal protection clause of the Fourteenth Amendment to the United States Constitution. *Graves v. Barnes*, 446 F.Supp. 560, 564 (W.D. Tex. 1977); *Chapman v. Meier,* 420 U.S. 1, 27 (1975); *Assembly v. Deukmejian*, 639 P.2d 939, 956 (Cal. 1982); *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995).

8. Other state courts have recognized that the *Chapman* distinction between legislatively adopted plans and court-ordered plans is applicable to state courts.

> The degree to which a state legislative district plan may vary from absolute population equality depends, in part, upon whether it is implemented by the legislature or by a court. State legislatures have more leeway than courts to devise redistricting plans that vary from absolute population equality. With respect to a court plan, *any* deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features. Absent persuasive justifications, a court-ordered redistricting plan of a state legislature must

> ordinarily achieve the goal of population equality with little more than *de minimis* variation. The latitude in court-ordered plans to depart from population equality thus is considerably narrower than that accorded apportionments devised by state legislatures.... The senate and senate president argue that because we are a state court, we should use the standard applied to state legislatures rather than the standard applied to federal district courts. We disagree.

Below v. Gardner, 963 A.2d 785, 791 (N.H. 2002) (internal quotation marks and citations omitted; emphasis in original). *Accord, Burling v. Chandler*, 804 A.2d 471, 478 (N.H. 2002).

9. The Supreme Court's distinction between court-ordered plans and legislatively adopted plans is based, not on federalism concerns, but on the institutional differences between courts and legislatures. *See Connor v. Finch*, 431 U.S. 407, 414-15 (1977).

10. Because the Constitution limits this Court's role to construing the law, this Court must apply neutral, objective criteria, and, further, must construe those criteria strictly so that the Court's role in redrawing New Mexico's political maps is limited. *See, e.g., Balderas, et al. v State o/Texas, et al.*, Civil Action No. 6:01 CV 1581 (E.D. Texas Nov. 14,2001).

11. Although the Legislative Plan is entitled to thoughtful consideration, it is not entitled to any particular deference in this case because it was not enacted into law. *See Smiley v. Holm*, 285 U.S. 355, 373 (1932); *Sixty-Seventh Minnesota State Senate v. Beens,* 406 U.S. 187, 197 (1972); *O'Sullivan v. Brier,* 540 F. Supp. 1200, 1202 (D. Kan. 1982).

12. The Legislative Defendants contend that overall deviations of less than ten percent are minor deviations which are presumptively constitutional and do not by

themselves require a state to provide justification for the deviations, *citing Brown v. Thomson*, 462 U.S. 835, 842 (1983). The Legislative Defendants further contend that the presumption of constitutionality is rebuttable only where deviations in the plans are shown to be solely motivated by the promotion of an unconstitutional or irrational purpose and where the asserted unconstitutional or irrational state policy is the actual reason for the deviation, *citing Rodriguez v. Pataki,* 308 F. Supp. 2d 346, 370 (S.D.N.Y. 2004) aff'd 543 U.S. 997 (2004); *Bonneville County v. Ysursa*, 129 P.3d 1213, 1219-20 (Id. 2005); *and Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1032 (D. Md. 1994).

13. The Legislative Defendants' argument related to the presumption of constitutionality of deviations of less than ten percent is not persuasive because all of the cases cited as authority for the proposition are cases in which a state actually adopted into law a redistricting plan and that duly enacted plan was being challenged. The Legislative Defendants' argument fails to recognize the important difference between presumptions available to a redistricting plan adopted into law and a court-ordered plan. If the Legislative Defendants' argument were accepted, it would elevate the "thoughtful consideration" standard applicable in this case to the full deference accorded to redistricting plans adopted into law. The law simply does not support such a conclusion.

14. The case of *In re Apportionment of State Legislature 1982*, 321 N.W.2d 585 (Mich. 1982), does not provide persuasive authority for the Legislative Defendants' position as that case involved the Michigan Supreme Court's responsibility to adopt a proposed plan most consistent with certain Michigan constitutional requirements. New Mexico's constitution does not expressly contain similar requirements. Moreover, the

Michigan court recognized that an arbitrary degree of divergence from population equality was not permitted and that only the degree of divergence essential to achieve those state constitutional goals was permissible:

> An apportioning authority is justified in adopting only the degree of divergence from population equality essential to achieve the state goals. Once achieved, the flexibility is at an end.

Id. at 576.

Appropriate Deviations Under the Voting Rights Act and Significant State Policy

15. Although a court-ordered plan need not have exactly zero population deviation, "any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features." *Chapman*, 420 U.S. 1, 26-27. "Where important and significant state considerations rationally mandate departure from [population equality] standards, it is the reapportioning court's responsibility to articulate precisely why a plan . . . with minimal population variance cannot be adopted." *Id.*

16. The federal Voting Rights Act protects against the dilution of voting strength on the basis of race, ethnicity or color.

17. Section 2 of the Voting Rights Act is violated if, "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of [protected] citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice[.]" 42 U.S.C. §1973(b)

18. Congress extended the protections of the Voting Rights Act to American Indians in 1975 after finding that "'a pattern of educational inequity exists with respect to children of Indian . . . origin'" and "'substantial' evidence of discriminatory practices that affected the right of Indians to vote". *Windy Boy v. County of Big Horn*, 647 F.Supp. 1002, 1007 (D. Mont. 1986) (quoting and citing 1975 U.S.C.C.A.N. at 774, 795, 797).

19. In order to demonstrate a violation of Section 2 of the Voting Rights Act, the following three preconditions must be met: (1) a particular racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

20. The evidence establishes that Native Americans meet the threshold criteria required under *Gingles*, at 50-51, to establish a Section 2 violation of the Voting Rights Act by showing: a) the Native American population in the northwest quadrant of the state is large and compact enough to create multiple, compact Native American majority districts; b) the Native American population is politically cohesive; and, c) that racial bloc voting exists to defeat the representatives of the Native Americans" choice.

21. Under the totality of circumstances, Native Americans in New Mexico do not possess the same opportunities to participate in the political process as other New Mexicans, in violation of Section 2 of the Voting Rights Act. *Gingles,* at 46.

22. The Unified Native American Plan 2 for Districts 1, 2, 3, 4 and 22 complies with the Voting Rights Act. The Unified Native American Plan 2 presents the best remedy under the Voting Rights Act.

23. In addition to creating the number of Native American majority Senate districts as is practical, the creation of minority influence districts has also been recognized as a way to address the dilution of minority voters. *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003).

24. An influence district is one in which "minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process." *Id.* Influence districts are expected to result in "representatives sympathetic to the interests of minority voters." *Id.* at 483 (citation omitted).

25. By maintaining a total Native American VAP of 26.7% in District 30, it will be a district in which the Native American voters, even if unable to elect a representative of their choice, including one from within their own group if that is their preference, cast a decisive vote among those candidates contesting the seat. The total Native American VAP percentage provides Native American voters in District 30 with a reasonable opportunity to influence the legislative behavior of the person elected to represent the district, which is in keeping with the standard set by the United States Supreme Court for influence districts in *Georgia v. Ashcroft*.

26. The Unified Native American Plan and the Multi-Tribal Plaintiffs' requests regarding maintaining Native American communities of interest provides for fair and effective representation of the citizens of New Mexico in compliance with federal and state law and neutral standards adopted by the Legislative Council. It also honors tribal self-determination, which is consistent with both the federal policy of respecting tribal self-determination and the New Mexico State-Tribal Collaboration Act, which

reflects and codifies the state policy of respecting tribal self-determination. NMSA 1978, Sections 11-18-1 through 11-18-5.

27. Population deviations inherent in the Unified Native American Plan 2 are justified by: 1) the need to comply with the Voting Rights Act in creating a plan that does not dilute Native American voting strength; and 2) the furtherance of significant state policies, such as providing equal protection under the law to all citizens, New Mexico's historical policy of crafting legislative districts based on precincts, the geography of the state, maintaining multiple reservation precincts within a district and respect for self-determination.

28. Race and tribal political affiliation were properly considered in the Unified Native American Plan for Senate Districts 1-4, 22, 29, and 30 for the purpose of assuring compliance with the Voting Rights Act, but race was not the predominate factor in the drawing of the district lines and other race-neutral districting principles were not subordinated to race. *Shaw v. Reno*, 509 U.S. 630, 657 (1993).

29. The Unified Native American Plan for Senate Districts 1-4, 22, 29, and 30 does not violate the Fourteenth Amendment prohibition against racial gerrymandering.

30. All of the plans before the Court contain a significant number of Hispanic majority districts; however, the Court finds no persuasive evidence that Sec. 2 of the Voting Rights Act requires any particular Hispanic majority district be drawn.

Legal Conclusions Regarding Plans Presented to the Court

31. The Legislative Plan is entitled to thoughtful consideration; however, after giving the Legislative Plan thoughtful consideration, it fails to satisfy the requirements

necessary for a court-ordered plan. The Legislative Plan contains significant population deviations between districts which are not justified by historically significant state policy or unique features. While deviations in Districts 4 and 22 are justified under the Voting Rights Act and traditional redistricting principles such as maintaining communities of interest, the deviation range of -4.2 to 4.6 in the remaining districts, for an overall deviation of 8.8, is not justified by any significant state policy or unique feature. These population deviations are not *de minimis* for a court-ordered plan.[1]

32. While the Legislative Plan fails to satisfy the requirements for a court-ordered plan, thoughtful consideration of the Legislative Plan does lead to the conclusion that protection of Native American voting rights is a significant state policy and that some population deviations are necessary to protect such rights. Moreover, the Legislative Plan includes the determination that incumbent pairings should occur in southeast New Mexico and central Albuquerque and the Joint Plan adopts incumbent pairings in these areas. Finally, the Joint Plan was derived from the Egolf 3/Joint Plan 2, which in turn was derived from the Legislative Plan. By adopting the Joint Plan, the Court has respected several determinations made during the legislative process.

33. The Joint Plan satisfies the requirements of population equality and compliance with the Voting Rights Act as required by law. Those districts that contain higher deviations, Districts 3, 4, and 22, are necessitated by the rights of Native Americans under the Voting Rights Act and by the historically significant state policy of maintaining tribal communities of interest to the extent practicable. The districts are contiguous and reasonably compact. The political and geographic boundaries are

---

[1] The Court makes no determination as to whether the Legislative Plan would be constitutional if it had been adopted into law.

preserved to a reasonable degree. Although the large population changes necessitate significant changes in district boundaries, the core of previous districts is retained to a reasonable degree. Incumbents are paired only as necessary and are paired in a manner that is politically neutral. To a reasonable degree, communities of interest are maintained.

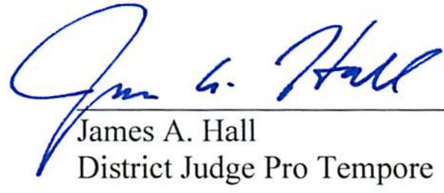
34. The Joint Plan presented to the Court recognizes the importance of low population deviations in court-ordered plans.

35. Under the law, population equality and compliance with the Voting Rights Act are given the highest priority in redistricting, followed by the traditional redistricting principles of contiguity, compactness, respect for political boundaries, maintenance of communities of interest, protection of incumbents, and political fairness. The Joint Plan has significantly lower population deviations than the Legislative Plan and, at the same time, complies with the Voting Rights Act while recognizing the importance of the traditional redistricting principles.

36. The Joint Plan satisfies the need to establish Native American districts as contained in the Unified Native American Plan 2 under the Voting Rights Act and under the traditional redistricting criteria of not splitting clear communities of interest.

37. The Court hereby adopts the Joint Plan for the New Mexico Senate. The Executive Defendants shall submit a proposed judgment to the Court.

Dated: 1/16/2012



James A. Hall
District Judge Pro Tempore

Copies to counsel of record via e-filing system.