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

CAUSE NO. D-101-CV-2011-02942

BRAIN F. EGOLF, JR., HAKIM BELLAMY, MEL HOLGUIN, MAURILIO CASTRO and ROXANE SPRUCE BLY,

Plaintiffs,

-vs-

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.

CONSOLIDATED WITH CAUSE NOS.: D-101-CV-2011-02944; D-101-CV-2011-03016; D-101-CV-2011-03099; D-101-CV-2011-03107; D-101-CV-2011-02945; D-506-CV-2011-00913; D-202-CV-2011-09600

JAMES PLAINTIFFS' CLOSING BRIEF FOR REDISTRICTING THE NEW MEXICO HOUSE OF REPRESENTATIVES

Plaintiffs Conrad James, Devon Day, Marge Teague, Monica Youngblood, Judy McKinney and John Ryan ("the James Plaintiffs") submit the following written closing argument in connection with the December 12-22, 2011 hearing on redistricting the New Mexico House of Representatives.

> When the Court drafts the plan, it may not take into account the same political considerations as the Governor and the Legislature. Judges are forbidden to be partisan politicians. Nor can the Court stretch the constitutional criteria in order to give effect to broader political judgments, such as the promotion of regionalism or the preservation of communities of interest. More basic, it is not for the Court to define what a community of interest is and where its boundaries are, and it is not for the Court to determine which regions deserve special consideration and which do not.

In re Legislative Districting of the State, 805 A.2d 292, 298 (Md. 2002).

A. One Person One Vote is the Primary Goal of Redistricting Litigation.

The James Plaintiffs will not repeat the discussion in their December 9, 2011 Trial Brief for the House Districting Plan, at 1-7, of the case law articulating the overriding imperative -- ensuring that each district has substantially equal population -- that governs the Court's task in drawing the boundaries of New Mexico's House of Representatives districts. However, because the companion cases of Below v. Gardner, 963 A.2d 785 (N.H. 2002), and Burling v. Chandler, 804 A.2d 471 (N.H. 2002), have been mischaracterized in briefs filed by other parties, the James Plaintiffs will address these cases further.

In Below and Burling, the New Hampshire Supreme Court reapportioned that state's Senate and House of Representatives districts, respectively, following the New Hampshire Legislature's failure to do so after the 2000 census. New Hampshire's population had grown by approximately 10% between 1990 and 2000. Below, 963 A.2d at 787. However, in contrast to the much higher population deviations in New Mexico's House districts by 2010[1], deviations in New Hampshire's Senate districts ranged between -14% and +17%. Id. The New Hampshire Supreme Court appointed a demographer and map drawer to assist it with the redistricting task. Id. at 788.

The New Hampshire court unambiguously and emphatically ruled that the population deviation standard for court-drawn plans announced in Chapman v. Meier, 420 U.S. 1 (1975), applies to federal and state courts alike:

> 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, and ... the burden of articulating

[1] The current population deviation range in New Mexico's House districts is between -24.3% and +100.9%. (Exec. Dfdts. Ex. 25, 26, 27)

> special reasons for following ... a [state] policy in the face of substantial population inequalities is correspondingly higher.
>
> ....
>
> 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.
>
> All courts called upon to make redistricting decisions are governed by the same measure of restraint. Unlike legislatures, courts engaged in redistricting primarily view the task through the lens of the one person/one vote principle and all other considerations are given less weight.... [T]he high standard that governs a federal court-enacted redistricting plan applies to any plan we adopt.

Below, 963 A.2d at 791 (internal quotation marks and citations omitted). Accord, Burling, 804 A.2d at 478 ("a court devising a remedial apportionment plan for a state legislature 'must ordinarily achieve the goal of population equality with little more than de minimis variation.'" (quoting Chapman, 420 U.S. at 26-27)).

The Egolf Plaintiffs and the Legislative Defendants suggest in their trial briefs that Burling ultimately adopted the same standard, ± 5%, that establishes prima facie validity of legislatively adopted plans. See Egolf Plaintiffs' December 9, 2011 New Mexico State House of Representatives Trial Brief, at 7, 9; Legislative Defendants' December 9, 2011 Omnibus Pretrial Brief, at 15-16. In doing so these parties ignore not only the New Hampshire court's clear language set forth above, but also the special circumstances of that state's lower house. Specifically, the extremely small size and large number of New Hampshire's House of Representatives districts constituted a "special reason" that justified not meeting the "little more than de minimis variation" mandate of Chapman that otherwise would apply:

> Given the small population of this State, the unusually large size of its house of representatives, and our State Constitution and traditional redistricting policies, we hold that a deviation range of approximately 9% achieves substantial equality.

> New Hampshire has the largest state house of representatives in the country. New Hampshire also has one of the smallest state populations in the country.... Because New Hampshire has such a large house of representatives (400 members) and such a small population (1,235,786), it takes very few people to affect deviation substantially. For instance, a 10% deviation represents only 309 people, and a 1% deviation represents a mere 31 people.

804 A.2d at 484 (internal quotation marks and citations omitted). In addition, the New Hampshire constitution generally prohibits splitting towns and counties into two or more districts. Id. at 476-78, 484-85. The practical impossibility under these circumstances of achieving a lower deviation compelled the court to accept a deviation range of 9.26%. Id. at 484. In contrast, the same court's senate redistricting plan limited the total deviation range to 4.96%, i.e., around ± 2.5%. Below, 963 A.2d at 795. This Court, of course, is not faced with any of these structural challenges.[2]

The New Hampshire Supreme Court was "guided primarily by the State and federal constitutional principles of one person/one vote." Id. at 794. Beyond that fundamental mandate, it followed "neutral constitutional criteria required of court-ordered remedial plans." Id. In particular, like the Maryland Court of Appeals in In re Legislative Districting of the State, supra at 1, it was "mindful that, as a court, we possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name." Id. at 788-89 (internal quotation marks and citations omitted). The court also avoided partisan political considerations. Id. at 793, 795. Instead, it attempted to maintain the cores of existing senate districts and

[2] The Egolf Plaintiffs also mischaracterize In re Legislative Districting of the State. See Egolf Plaintiffs' December 9, 2011 New Mexico State House of Representatives Trial Brief, at 7. That case simply did not address one way or another – and certainly did not question or attempt to distinguish the Chapman standard – whether a court-drawn redistricting plan must be less that the ± 5% standard that applies to legislative plans. Indeed, it is not possible to determine from the opinion what population deviation the Maryland court ultimately adopted, other than learning that it was less than 10%. 805 A.2d at 329. Further, the Court can note that the Maryland constitution requires that in redistricting "[d]ue regard shall be given to natural boundaries and the boundaries of political subdivisions." Id. at 299 n.5 (internal quotation marks and citation omitted). Thus, the Maryland court was presented with limitations in fashioning legislative district boundaries that this Court does not face, which constraints may have compelled it to accept deviations that otherwise would not have been necessary.

honored the New Hampshire state constitution's restrictions on splitting towns and counties. Id. at 795. The result was "least change" plan that minimized the number of citizens for whom a senate district was changed. Id.

This Court confronts a different set of demographic and other dynamics than the New Hampshire court faced. First, the extent of the population deviations in New Mexico in 2011 are greater, and as a result a "least change" plan that does not move a substantial number of New Mexicans to new state House districts is not feasible. Second, New Mexico's constitution does not impose any restriction on splitting communities. Indeed, the only redistricting guidance embodied in New Mexico law is the statutory requirement that districts be contiguous and "as compact as is practical and possible." NMSA 1978, § 2-7C-3 (1991). Third, New Mexico is not divided into 400 House districts. In addition, the Court does not have the assistance of its own demographer and map drawer, and thus is not in a position to create its own plan; instead, the Court will choose among the parties' proposed plans.[3] The Court nevertheless can and should follow the Below court's basic approach, keeping one person one vote as the overriding goal and otherwise adhering to neutral and objective criteria in making its decision.[4]

B. Minority Voting Rights

Hispanic Voting Rights. Before a court may conclude that Section 2 of the Voting Rights Act mandates the drawing of a majority-minority district (because failure to do so will dilute a minority group's members' votes), "[t]he minority group must be sufficiently large and geographically compact to constitute a majority in [the district]." Bartlett v. Strickland, 556 U.S.

[3] However, the Court certainly may order modifications as it sees fit to the plan that it ultimately selects. The James Plaintiffs stand ready to make any such changes to their plan.

[4] The Court especially should avoid the difficult and inherently subjective and political task of trying to prioritize among all of the communities and communities of interest that are competing to not be split. (Test. of B. Sanderoff, 12/13/11 Tr. at 9; Legis. Dfdts. Ex. 14 (all plans split communities of interest; decisions to recognize and split communities of interest are subjective)) See In re Legislative Districting of the State, 805 A.2d at 298.

1, 129 S. Ct. 1231, 1241 (2009) (internal quotation marks and citation omitted). Further, the majority population must be based on numbers of citizens who may vote. LULAC v. Perry, 548 U.S. 399, 445 (2006).

Certain parties have inventoried how many majority Hispanic voting age population ("VAP") districts are created by each of the plans. See, e.g., Egolf Ex. 8. However, it is undisputed that the underlying data does not distinguish between Hispanic citizens and non-citizens. (Test. of B. Sanderoff, 12/13/11 Tr. at 53-65; Test. of J. Williams, 12/15/11 Tr. at 217-225; Test. of T. Arrington, 12/19/11 Tr. at 42) As a result, the exercise is unproductive. That is, because none of the proponents of maximizing Hispanic majority districts has provided the Court with citizen population data, it has no evidence with which to determine the legal necessity,[5] much less the geographic feasibility, of forming such districts. A fortiori, it is impossible for the Court to determine which proposed plan creates the most Hispanic majority districts. (Test. of B. Sanderoff, 12/13/11 Tr. at 65-66)

In fact, none of the parties made any attempt to establish, on a district-by-district basis, the Gingles preconditions for all of the purportedly Hispanic majority districts that their plan establish. The only House District for which any Gingles evidence was presented was District 63. As drawn by the three-judge panel in Sanchez v. King, Civ. No. 82-0067 (D.N.M. Aug. 8, 1984), District 63 was not a Hispanic majority district. (Legis. Dfdts. Ex. 5, at 137-38) Additional Hispanic voters from Guadalupe and DeBaca Counties were added by the Legislature in 2001 to increase Democrat performance (Test. of B. Sanderoff, 12/13/11 Tr. at 38), but even

[5] In drafting a court-drawn plan, "[o]ur only guideposts are the strict legal requirements." In re Legislative Districting of the State, 805 A.2d at 298 (identifying, as the only legal requirements, "federal constitutional requirements, the Federal Voting Rights Act, and the requirements of Article III, § 4 of the Maryland Constitution"). Further, Section 2 of the Voting Rights Act does not require a state to maximize the number of majority minority districts. Johnson v. DeGrandy, 512 U.S. 997, 1017 (1994). Therefore, it would not be proper for the Court to attempt to create Hispanic majority districts other than for the purpose of complying with the Voting Rights Act.

then, and certainly today, it is apparent that District 63 does not have a Hispanic citizen majority. (Legis. Dfdts. Ex. 8; James Ex. 9) In any event, given its crudely political gerrymandering, under any of its incarnations in the Legislative Defendants', the Egolf Plaintiffs' and the Maestas Plaintiffs' plans, District 63 cannot satisfy the first Gingles requirement that it be "sufficiently geographically compact." There also is no evidence that an additional predicate to Section 2 liability, less opportunity for Hispanics to participate in the political process as well as elect representatives of their choice, exists in House District 63. Chisom v. Roemer, 501 U.S. 380, 397-98 (1991).

New Mexico's adult population is 42.3% Hispanic. (Legis. Dfdts. Ex. 8) It appears that at least 5% if not 10% of the Hispanic population is non-citizen. (James Ex. 9) Therefore, Hispanic citizens likely make up around 38-40% of our adult population. While the James Plaintiffs' plan was criticized for creating "only" 25 Hispanic VAP majority districts (Egolf Ex. 8), 25/70 = 35.7%, i.e., it in fact achieves rough (particularly in view of the imprecise data) proportionality. See Johnson v. DeGrandy, 512 U.S. 997, 1017-21 (1994) (while proportionality is not a safe harbor under Section 2, it is an "indication that minority voters have an equal opportunity, in spite of racial polarization, to participate in the political process and to elect representatives of their choice" (internal citations and quotation marks omitted)). The James Plaintiffs' plan complies with the Voting Rights Act.

Native American Voting Rights. Professor Espino's testimony confirms what is intuitively obvious: Native Americans' candidate of choice generally is a Native American.[6]

[6] Representative Ken Martinez is the apparent exception to the rule. But no one questions that, so long as District 69 retains a Democrat majority, he will be reelected for as long as he wishes to remain in office. The James Plan retains the strong, well-established Democrat majority in District 69, as do all of the other plans. It therefore is not necessary for District 69 to have a Native American VAP majority. It makes far more sense to utilize the Native American population in the Northwest to increase the supermajorities of Districts 4, 5, 6, 9 and 65 to optimize their potential for electing Native American representatives

(Test. of R. Espino, 12/20/11 Tr. at 128-29; see also Test. of R. Luarkie, 12/15/11 Tr. at 49) But as studied by him and described by Senator Adair, the electoral history of the past ten years compels the conclusion that the only effective way to draw House districts to promote and maximize Native Americans' opportunity to elect those candidates of choice is to return to the remedy of Sanchez v. King and create five districts with supermajorities of 70% or more Native American VAP. The six Native American majority districts that were created in 2002, while a well-intentioned experiment, have proved to be a failure: over the past ten years, few Native Americans have been encouraged to run for the House of Representatives, and only three have won primaries and been elected to office. (Test. of R. Espino, 12/16/11 Tr. at 122-29; Test. of R. Adair, 12/21/11 Tr. at 13-36; Legis. Dfdts. Ex. 5; James Ex. 6) Because they are declining as a percentage of the total population in the Northwest part of the state (Test. of B. Sanderoff, 12/13/11 Tr. at 72; Test. of R. Adair, 12/21/11 Tr. at 29-30; Multi-Tribal Pltfs. Ex. 19, p. 3), there is no reason to believe that Native Americans will fare any better over the next ten years if this design is perpetuated.

While the James Plaintiffs respect the views of the Multi-Tribal and Navajo Nation Plaintiffs, they cannot ignore the lessons of the elections of 2002, 2004, 2006, 2008 and 2010. Further, the James Plaintiffs respectfully submit that tribal sovereignty and self-determination principles have no place in redistricting state government bodies. State legislators represent individual citizens of the state, not tribal governments. While tribal governments properly may, as representatives of their people, voice their views on redistricting, they may not dictate the Legislature's or this Court's decision, any more than a county or municipality or even the federal government may do so. Nor indeed in the context of state legislative districting are those views

entitled, under the Voting Rights Act or any other law, to any more weight than those of the representatives of any other group of citizens. No party has cited any authority to the contrary.

Respectfully, the Native American litigants also have no legal ground for insisting that the precincts encompassing Mount Taylor must be included in the House district that includes the Acoma and Laguna Pueblos.[7] The equal protection clause and the Voting Rights Act protect people, not places. "Citizens, not history or economic interests, cast votes.... Again, people, not land or trees or pastures, vote." Reynolds v. Sims, 377 U.S. 533, 579-80 (1964). Further, as a practical matter Mount Taylor will receive no more or less protection as a cultural property if it is in House District 6 or 69. The representative of either district has no special executive or other authority over land within his or her district.

The James Plan's Districts 4, 5, 6, 9, 65 and 69 not only comply with the Voting Rights Act, they alone avoid dilution of Native American voting rights. All of the other plans "crack" Native American electoral strength.

C. Partisan Fairness and Neutrality

As set forth above, Below and In re Legislative Districting of the State counsel the Court to ensure that New Mexico's House districts are drawn in a politically fair and neutral manner. This can be achieved by drawing a map that replicates the current partisan composition of the House and maximizing competitiveness, i.e., responsiveness to changes in voter preferences.

Research & Polling Party Performance Ratio. Because of their wide use in the redistricting process, the starting point for the Court's analysis of partisan fairness necessarily must be Research & Polling's ("R&P's") performance numbers. But it is crucial to understand their flaws. The R&P numbers are derived by adding the votes for Democrat and Republican

[7] The James Plan includes the Mount Taylor precincts in House District 69, as the tribal litigants have requested. However, the Acoma and Laguna Pueblos are placed in House District 6.

candidates in fourteen statewide elections (four in 2004 and 2008, the Presidential election years, and ten in 2006 and 2010, the Gubernatorial election years) between 2004 and 2010. The result – 52.8% of the votes were for Democrats and 47.2% were for Republicans – is represented to be a rough approximation of long-term party performance. Further, because the votes can be complied and the Democrat/Republican ratio calculated on a precinct-by-precinct basis, party performance can be calculated for districts that are created by combinations of precincts. (Test. of B. Sanderoff, 12/12/11 Tr. at 120-22, 276; Test. of R. Adair, 12/21/11 Tr. at 51; James Ex. 14)

As Senator Adair explained, however, the problem is that vastly different numbers of persons vote in Presidential election years versus Gubernatorial election years. (Test. of B. Sanderoff, 12/13/11 Tr. at 14; Test. of R. Adair, 12/21/11 Tr. at 52-53; James Ex. 10) This results in different electorates voting in each cycle, depending on which election contest is at the top of the ballot. This phenomenon is not unique to New Mexico. (Test. of R. Adair, 12/21/11 Tr. at 54-55; James Ex. 14)

This difference is dramatic. As is shown in James Exhibit 14, average Democrat/ Republican performance in New Mexico is 55.3/44.7% in Presidential election years and 51.5/48.5% in Gubernatorial years.[8] (Test. of R. Adair, 12/21/11 Tr. at 56-57) This difference also explains the marked disparity in the Republican versus Democrat performance necessary to win House seats held by the other party over the past decade. (Test. of R. Adair, 12/21/11 Tr. at 57-61; James Ex. 12)

[8] At the end of his rebuttal testimony, Mr. Sanderoff contended that there is no significant difference in Democrat-Republican performance during Presidential versus Gubernatorial election years, and that Senator Adair's figures in James Ex. 14 result from the Obama race being "a rout." (Test. of B. Sanderoff, 12/22/11 Tr. at 77) Simple math disproves this. The statewide election results from 2004 and 2006 are set forth on James Exhibit 14 and can be segregated from the 2008 data. When they are, they confirm the basic pattern of Republican performance being depressed during the 2004 Presidential election year (45.54%, notwithstanding the fact that Bush carried the state) and then rising during the following 2006 Gubernatorial election year (46.49%, notwithstanding the fact that Richardson won by a landslide). This pattern is seen when previous statewide election results are studied as well.

But as a consequence of this significantly different electoral outcome in Presidential and Gubernatorial election years, it is not appropriate to use a "one size fits all" Democrat/Republican performance ratio. Averaging all the elections together generates a ratio that does not approximate the performance of the parties' candidates in any election. (James Ex. 12) Rather, one ratio should be calculated for use during Presidential election years and one for Gubernatorial election years. (Test. of R. Adair, 12/21/11 Tr. at 55-62)

A fortiori, it is not appropriate to generate a ratio based on what effectively amounts to a simple averaging of the four Presidential election year races with the ten Gubernatorial election year races. Instead, even assuming a single ratio could be justified, the Presidential election year races at a minimum should be given equal weight in the averaging to the ten Gubernatorial election year races. Because R&P does not do this, the rounded composite 53/47 ratio effectively overstates average Republican and understates average Democrat performance. (Test. of B. Sanderoff, 12/13/11 Tr. at 54-55)

Because all of the R&P standardized map packets utilize this formula, each of the parties' plans overstate Republican and understate Democrat performance. Whereas a plan might appear to replicate the current 37-33[9] make-up of the House, in reality it can be expected to result in the election of more Democrats and fewer Republicans. And the Legislative Defendants', Egolf Plaintiffs' and Maestas Plaintiffs' plans understate Democrat performance even more than the numbers (41, 41/40 and 43, respectively) shown on Egolf Ex. 24. (James Exs. 8, 13)

Partisan Bias. None of the witnesses disputed the proposition that, as a matter of good government, there should be a direct relationship between the number of votes cast for a party's candidates and the number of seats won by those candidates. (Test. of T. Arrington, 12/19/11 Tr. at 31) Partisan bias is the extent to which there is a disparity between votes cast and seats won.

[9] Actually 36-33-1.

(Test. of J. Katz, 12/20/11 Tr. at 51) Professors Arrington and Katz, engaged by the Democrat plaintiffs herein, testified about their partisan bias analyses. Their calculations purport to show that the parties who engaged them implausibly drew plans that are biased in favor of Republicans. They also single out the James Plaintiffs' plan as being extremely biased in favor of Republicans. (Egolf Ex. 8; Maestas Ex. 12)

Neither analysis deserves credence. The Court can note initially that Arrington and Katz disagree with each other over which Democrat plan – the Legislative Defendants', the Egolf Plaintiffs' or the Maestas Plaintiffs' – is more biased in favor of Republicans. (Egolf Ex. 8; Maestas Ex. 12) Next, both witnesses acknowledged that their plans rely on the flawed R&P performance formula. (Test. of T. Arrington, 12/19/11 Tr. at 38; Test. of J. Katz, 12/20/11 Tr. at 55-56) Further, rather than recognize that in New Mexico elections on average are not 50-50, Professor Arrington also made the obviously unrealistic assumption that the electorate splits its votes evenly among Democrats and Republicans. (Test. of T. Arrington, Tr. at 32-34) While this approach might be viewed as somehow "normal" in academia, its relevance to the real world of New Mexico politics, where the norm is a 53/47 or higher Democrat/Republican performance ratio, is unclear.

Lastly, the professors' analyses are entirely at odds with the basic facts of votes cast and seats won in this state. Over the last decade New Mexico's electorate has voted somewhere in the vicinity of 53/47 (R&P's number) or between 51.5/48.5 and 55.3/44.7 (Adair's numbers). (Test. of B. Sanderoff, 12/12/11 Tr. at 120-21, 276; Test. of R. Adair, 12/21/11 Tr. at 56-57; James Ex. 14) If New Mexico's current House districting plan was unbiased, these votes cast therefore should result in somewhere between 36 (51.5%) and 39 (55.3%) Democrat seats won. But as Brian Sanderoff testified, Democrats typically (since 1970) have held 40 or more House

seats – 2010, in which Democrats won only 37 seats, was highly anomalous, even though 37/33 ≈ 53/47. (Test. of B. Sanderoff, 12/13/11 Tr. at 200) The conclusion unavoidably follows that New Mexico's current House districting plan is clearly biased in favor of Democrats. Yet based on their respective analyses both Arrington and Katz opine that the current plan is biased in favor of Republicans. (Egolf Ex. 8, Maestas Ex. 20) [10]

The reality is that the current New Mexico House districting plan is highly biased in favor of Democrats -- it has resulted in more Democrats winning House seats over the past decade than the votes cast for them justify. The Legislative Defendants', Egolf Plaintiffs' and Maestas Plaintiffs' proposed plans seek to either perpetuate or exacerbate this bias, a result that is out of line with New Mexico voters' preferences. Stated another way, these parties are asking the Court to continue the gerrymandering that is inherent in the existing district boundaries.

Competitiveness. The existing House districting plan not only is biased in favor of Democrats, it is uncompetitive. Over the past ten years only 12 of the 70 House seats have changed hands. (Test. of R. Adair, 12/21/11 Tr. at 57-61; James Ex. 12) While the other academics' "swing ratios" suggest that the various plans are similar in this respect, Professor Gaddie's comparison, Gov. Ex. 30, reveals otherwise. As uncompetitive as the existing districting plan is, it does contains five districts that are "competitive," that is, have between 49 and 51% (by R&P's calculations) Republican performance; four districts "lean" (51 to 53%) Republican and two lean Democrat. The Legislative Defendants', Egolf Plaintiffs' and Maestas Plaintiffs' plans all reduce the aggregate number of competitive and lean districts, while the Executive Defendants and James plans by R&P's number either maintain or increase them. And when Senator Adair disaggregates Presidential and Gubernatorial election year performance, the

[10] Professor Katz concludes that the R&P 53/47 performance ratio actually overstates Democrat performance. (Maestas Ex. 10) If that is the case, then Democrats logically should have been holding fewer than 37 seats in the House over the past ten years. Either Katz is wrong, or the current House districting plan is biased, or both.

James Plaintiffs' plan is revealed as creating far more competitive districts than any of the other plans. (James Ex. 13)

The witness testimony was uniform that districting plans should promote competitive elections. (Test. of B. Sanderoff, 12/13/11 Tr. at 20; Test. of T. Arrington, 12/19/11 Tr. at 38-39) The Court can do accomplish this goal by adopting the James Plaintiffs' plan, which maximizes responsiveness to voter preference.

D. Conclusion

The James Plaintiffs' redistricting plan for the New Mexico House of Representatives minimizes population deviation. The James Plaintiffs' plan is the only plan that avoids cracking Native American populations and offers them a realistic opportunity to elect representatives in proportion to their numbers. The James Plaintiffs' plan, better than any of the other plans, promotes partisan fairness and neutrality, and competitive districts in which the people select their representatives and not the other way around. The Court should adopt the James Plaintiffs' plan.

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CERTIFICATE OF SERVICE:

WE HEREBY CERTIFY that on the 28th day of December, 2011, we filed the foregoing electronically, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing and we e-mailed a true and correct copy of the foregoing pleading on this 28th day of December, 2011 to the following:

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