

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 House of Representatives.
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 House of Representatives is made up of seventy (70) single-member districts.
5. The ideal population of each House district, therefore, is 29,417 people.
6. The current districts for the State House of Representatives have deviations from the ideal population ranging from -24.3 percent to +100.9 percent, for a total range of 125.2 percent.
7. The population deviations amongst the current districts vary markedly. For example, one district on the west side of Albuquerque (District 29) is overpopulated by 100.9 percent, and other districts in Albuquerque (Districts 12, 13, 44 and 60) are overpopulated by 31.6 percent, 79.3 percent, 73.5 percent, and 40.1 percent, respectively.
8. A number of districts in the north central part of the state (*e.g.*, Districts 41, 42, 43, 65, 68, and 69) are under populated with deviations between -4.2 and -19.3 percent.

9. 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 three additional districts.
10. Other areas, including north central and southeastern New Mexico, as well as central Albuquerque, saw dramatically slower growth and/or population declines during this period. As a result, there are multiple regions of New Mexico in which the current population is insufficient to support the current number of districts in that region.
11. For example, 11 districts in the north central region of New Mexico – Districts 40, 41, 42, 45, 46, 47, 48, 50, 63, 68, and 70 –have almost a 100 percent negative deviation cumulatively. Regions with similar cumulative deviations exist in the southeastern part of the state and central Albuquerque.
12. The parties jointly stipulated that the current electoral districts for the New Mexico House of Representatives are unconstitutionally apportioned.
13. Because large population deviations exist between the current electoral districts, significant changes are necessary to bring the districts into compliance with law.

Legislative Efforts to Redistrict the New Mexico House of Representatives

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

15. 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.

Leg. Def's House Ex. 2.

16. 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.

17. 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.
18. 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 House 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 worked together to develop overarching redistricting principles and consensus maps to reflect the preferences of their constituent tribes. 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.
19. 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.
20. The Legislature and Native American leaders worked together extensively before and during the special session in an effort to accommodate Native

American preferences as expressed in the plan presented by the Native American Redistricting Work Group.

21. Leaders from a number of tribes attempted to communicate with the Governor's office prior to and during the special session to convey their preferences but received no response from the Governor's office.
22. At the public hearings held by the Legislature's Redistricting Committee, citizens in Los Alamos, Rio Rancho, Albuquerque, and Eldorado, among others, expressed a desire that their municipalities and communities remain unified in any House redistricting plan.
23. Members of the public expressed a desire to have their communities remain intact to help ensure that their representative lived and worked within their communities, would recognize their values and concerns, and could thereby provide them with better representation.
24. During the special session, numerous redistricting plans were introduced and debated in committee meetings and on the floor of both houses. 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.
25. The House Voters and Elections Committee Substitute for HB 39 (hereafter, "HB 39"), which provided for the redistricting of the New Mexico House of Representatives, passed both houses of the Legislature. HB 39 passed on the

strength of the Democratic majorities in both chambers; no Republican legislators voted in favor of HB 39.

26. HB 39 was vetoed by the Governor.

Plans Presented to the Court

26. The Court was initially presented with six (6) complete House Plans:

- a. the Legislative Plan (HB 39);
- b. the Executive Plan;
- c. the James Plan;
- d. the Sena Plan;
- e. the Egolf Plan; and
- f. the Maestas Plan.

27. Also submitted to the Court were partial House plans from the Navajo Nation and the Multi-Tribal Plaintiffs.

28. After trial had commenced, some parties amended or modified their plans and submitted them to the Court. The Egolf Plaintiffs submitted five alternative plans, the Maestas Plaintiffs submitted one alternative plan, and the Executive Defendants submitted three alternative plans. Some of these amendments or modifications were submitted at the suggestion of the Court to address issues raised by parties to the litigation.

29. No plan can perfectly address all traditional redistricting principles. Certain redistricting principles are often in conflict. None of the plans submitted to the Court achieve perfect population equality between the districts. All of the

plans submitted to the Court result in significant numbers of people being moved from one district to another. All of the plans submitted to the Court spilt a significant number of counties and municipalities. All of the plans have certain districts that are not compact. All of the plans submitted to the Court result in pairings of some incumbent legislators. All of the plans submitted to the Court spilt some communities of interest.

30. All of the plans submitted to the Court have districts that are contiguous. All of the plans submitted to the Court are reasonably compact by quantifiable measurements.
31. Given the large population deviations in the existing districts and the need for significant changes which are necessary to bring the districts into compliance with law, all of the plans submitted to the Court are reasonable in terms of their retention of the core of previous districts.

Legislative Plan (HB 39)

32. The redistricting plan contained in HB 39 was created by Research and Polling, Inc. based on instructions provided by Ben Lujan, the Speaker of the House of Representatives. Speaker Lujan instructed Research and Polling to create a plan which complied with the Legislative Council guidelines and 1) included the plan proposed for the northwest portion of the state by the Native American Redistricting Workgroup, and 2) avoided eliminating a district in the north central region of the state.
33. The Legislative Plan contains a deviation range of 9.83 percent. It has an

average relative deviation of 3.47 percent which equates to a population imbalance of 71,511 persons. All but three districts (Districts 33, 34, and 35) in the Legislative Plan are under or overpopulated by more than 1 percent.

34. Under the Legislative Plan, most of the districts that have the greatest deviations in terms of *under* population are located in two areas of the state: the north central area of New Mexico and the southeastern area of New Mexico. (See Exec. Def's House Ex. 16). The districts in these areas of the state are under populated despite the fact that these areas demonstrated either no growth or slow growth over the last decade.
35. The under population of districts in north central New Mexico in the Legislative Plan is a result of Speaker Lujan's instruction to avoid eliminating a district in the north central area.
36. Although the Legislative Defendants contend that the north central area of the Legislative Plan creates districts which maintain traditional Hispanic communities marked by unique traditions, heritage, religious beliefs, and socioeconomic status, no evidence was introduced during trial which identified with specificity the individual Hispanic communities which were maintained under the Legislative Plan. Instead, only generalized testimony was presented that such communities exist in north central New Mexico.
37. To a lesser extent, districts in northwest New Mexico are also under populated under the Legislative Plan.
38. The under population of districts in northwest New Mexico in the Legislative Plan is a result of Speaker Lujan's instruction to incorporate the plan proposed

for the Northwest portion of the State by the Native American Redistricting Workgroup.

39. Under the Legislative Plan, most of the districts that have the greatest deviations in terms of *over* population are located in central Albuquerque. (See Exec. Def's House Ex. 17). Such overpopulation dilutes the votes of Albuquerque's residents.
40. Under the Legislative Plan, the fast growing districts on the west side of Albuquerque are slightly overpopulated. These districts are likely to continue to grow in the coming years which would dilute the votes of the persons within these districts.
41. The systematic under population of districts in north central and southeast New Mexico results in a significant regional imbalance between districts. Such an imbalance is not justified by any consistently applied neutral state interest.

Navajo Nation and the Multi-Tribal Plaintiffs Partial Plans

42. The Multi-Tribal Plan presented to the Court is a partial plan for redistricting Districts 6, 65, and 69 in the northwest quadrant of the state.
43. The Navajo Nation Plan presented to the Court is also a partial plan for redistricting Districts 1, 2, 3, 4, 5, 6, 9, 65, and 69 in the northwest quadrant of the state.
44. The Multi-Tribal Plan and the Navajo Nation Plan are identical as to Districts 6, 65 and 69; therefore, they can be considered together as the Multi-

Tribal/Navajo Nation Plan.

45. The 2010 census shows that 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.
46. Native Americans constitute 10.7% of the population of New Mexico.
47. Native Americans currently hold three seats in the New Mexico House of Representatives.
48. Tribal communities are in the best position to determine what is best for their own communities.
49. 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 six districts.
50. Ecological inference (King method) analysis demonstrates that elections in northwestern New Mexico involving Native American candidates and non-Native American candidates are racially polarized.
51. Native Americans in northwestern New Mexico have traditionally voted, and continue to vote, as a politically cohesive group.
52. 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.

53. 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.
54. The Voting Age Non-Hispanic Native American percentages in the current six majority Native American districts were all in excess of 60% when adopted by the Court in 2002.
55. In the decade since the court mandated districts were adopted, the districts have provided Native American voters with a reasonable opportunity to elect a representative of the Native American population's choice.
56. The Multi-Tribal and Navajo Nation Plans include six majority Native American districts: 4, 5, 6, 9, 65 and 69. In districts 6, 65 and 69 the total Native American voting age population ("VAP") is in excess of 65% (District 6 is 65.1%; District 65 is 65.8% and District 69 is 65.1%). These percentages of Native American VAP are generally higher than the percentages adopted in 2002 and provide a reasonable opportunity for Native Americans to elect a candidate of choice.
57. The Multi-Tribal and Navajo Nations Plans provide for six reasonably compact, contiguous districts.
58. The Pueblos of Laguna and Acoma share an identifiable community of interest. The Pueblos share concern for the protection of traditional cultural properties around Mt. Taylor. The Pueblos of Laguna and Acoma also share a common language and culture.
59. The Jicarilla Apache Nation and the Sandoval County Pueblos share common

interests based on size, tradition and customs, political and legal issues and inter-marriages. The Jicarilla Apache Nation reservation extends into Sandoval County.

60. Compliance with the Voting Rights Act Section 2, respect for self-determination, preservation of tribal communities of interest, maintaining tribal communities whole within 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%.

Executive Plan

61. The original Executive Plan contains a deviation range between -0.980 and 0.900 percent, for an overall range of 1.88 percent.
62. The original Executive Plan deals with New Mexico's population shifts over the last decade by reducing the number of districts in the north central New Mexico, southeast New Mexico, and central Albuquerque regions and by increasing the number of districts in westside Albuquerque and Rio Rancho areas.
63. The original Executive Plan did not conform to the preferences of either the Multi-Tribal or the Navajo Nation Plaintiffs with respect to districts in the northwest quadrant of the state. The original Executive Plan unnecessarily split Pueblos, including the Pueblo of Laguna and the Pueblo of San Ildefonso, and expanded the boundaries of Native American districts to include non-Native American communities.

64. The original Executive Plan split the Hispanic community of Clovis into two districts, District 64 and District 67. The Hispanic community in and around Clovis is sufficiently large and geographically compact to constitute a majority in a single-member district.
65. Ecological regression analysis relying on actual election returns indicates that the Hispanic community in and around Clovis is politically cohesive and that Anglos in the area vote sufficiently as a bloc to enable them to usually defeat the minority's preferred candidate.
66. Executive Alternate Plan 1 (Gov. Ex. 28) contains a deviation range at 1.81 percent. Executive Alternate Plan 1 addresses concerns raised at the hearing regarding minority voting strength in District 63, 64, and 67 and, to a certain extent, in the northwest corner of the state, as well as addressing incumbency concerns in the southwest corner of the state. Executive Alternate Plan 1 provides for a Hispanic majority VAP district in and around Clovis.
67. Executive Alternate Plan 1 did not conform to the preferences of either the Multi-Tribal or the Navajo Nation Plaintiffs with respect to districts in the northwest quadrant of the state. Executive Alternate Plan 1 continued to split some Native American communities of interest.
68. Executive Alternate Plan 2 (Gov. Ex. 32) revised Executive Alternate Plan 1 and addressed concerns regarding the southwest Districts 32, 38 and 39 and modified the northwest quadrant by inserting the Multi-Tribal/Navajo Nation Plan into that quadrant.
69. Executive Alternate Plan 3 (Gov. Ex. 33) further revised Executive Alternate

Plan 2 and addressed concerns regarding splitting certain communities of interest including Tesuque and San Ildefonso.

70. Except for Districts 2, 3, 4, 5, 9, 65 and 69 (i.e., the northwest quadrant containing the Native American Districts), Executive Alternate Plan 3 maintains deviations between -1.0 and +1.0 percent.
71. Executive Alternate Plan 3 includes thirty districts with a Hispanic VAP over 50%. The current plan has twenty-seven districts with a Hispanic VAP over 50%. Of all the plans presented to the Court, Executive Alternate Plans 1, 2 and 3 maintain the highest number of districts with a Hispanic VAP over 50%.
72. Incorporating the Multi-Tribal/Navajo Nation Plan into the Executive Plan necessarily produced political performance consequences in other districts outside the northwest quadrant. As a result of the inclusion of the Multi-Tribal/Navajo Nation Plan, the number of swing districts (49-51% Republican) increased from five to eight. The number of majority Republican districts (>50%) increased from 31 in the original Executive Plan, to 33 in Executive Alternate Plan 2, to 34 in Executive Alternate Plan 3. Leg. Def's House Ex. 30.
73. As a consequence of the population shifts in the state, all of the plans submitted to the Court include the pairing of incumbent legislators. The Executive Plans and the Legislative Plan each have three incumbent pairings: a Democrat/Democrat pairing, a Republican/Republican pairing and a Democrat/Republican pairing.

74. Recognizing that no plan is able to maintain all possible communities of interest, Executive Alternate Plan 3 avoids splitting communities of interest (particularly Native American communities of interest) to a reasonable degree.
75. Executive Alternate Plan 3 can be improved by moving Bernalillo County precinct 567 from District 65 to District 31. Such a move respects the Bernalillo/Sandoval County line and would not significantly affect any other redistricting criteria.

James Plan

76. The James Plan was prepared by Senator Rod Adair. In preparing the James Plan, Senator Adair testified that his goals were to correct what he considered to be improper Native American districting, to keep deviations below +/- 1 percent and to increase politically competitive districts.
77. Districts 4, 5, 6, 9 and 65 in the James Plan are designed to be Native American majority districts.
78. The deviations in the James Plan in all other districts except Native American majority districts range from - 1.4% to 2.4%. This is a total range of 3.8%.
79. In the Native American majority districts created by the James Plan, the deviations range from -3.8% to 2.8%. This is a total range of 6.6%.
80. The James Plan has an overall average deviation of 0.7 percent.
81. The James Plaintiffs did not seek input from the affected Native American tribes before drawing and submitting their House Redistricting Plan to the Court.

82. The James Plan does not conform to the preferences of either the Multi-Tribal or the Navajo Nation Plaintiffs with respect to districts in the northwest quadrant of the state.
83. The James Plan fails to maintain at least six Native American majority House Districts and, if adopted, would dilute Native American voting strength.
84. The James Plan fragments the Pueblo of Laguna's reservation and villages. This splitting of Laguna's community would diminish Laguna's influence in both districts, and could negatively impact voter mobilization, communication between representatives and constituents, and candidate pools.
85. Contrary to the Pueblos' wishes, the James Plan also moves Acoma, four Laguna precincts, and Alamo from District 69 to District 6, thereby severing these two Pueblos and Navajo community from the district containing Mt. Taylor. This redrawing of the district boundaries is against the self-determination wishes of the Pueblos. The James Plaintiffs offered no legitimate or compelling state interest for re-drawing the boundaries of Districts 6 and 69 in this manner.
86. The James Plan would also pack Native American voters into District 6 (72.8% total Native American VAP) and District 65 (74.1% total Native American VAP) and decrease the total Native American VAP in District 69, which is a Native American majority district in the current plan, to 39.6%.
87. The James Plan contains significant partisan bias. (See, e.g. Maestas House Ex. 12 and Egolf House E. 8).
88. The James Plan would create five incumbent pairings, three of which would

be Democrat/Democrat pairings and two of which would be Democrat/Republican pairings.

Sena Plan

89. The Sena Plan was created at the request of Representative Tim Taylor, the House Minority Leader.
90. The Sena Plan was introduced during the special session as HB 47. HB 47 was not adopted by either chamber of the Legislature.
91. In providing instructions for the Sena Plan, Representative Taylor directed that Research and Polling create a map consistent with the current composition of the legislature.
92. The Sena Plan attempts to maintain the current house composition of 37 Democrat performing districts and 33 Republican performing districts.
93. The Sena Plan maintains six Native American majority districts, three of which exceed 64 percent Native American.
94. The Sena Plan does not conform to the preferences of either the Multi-Tribal or the Navajo Nation Plaintiffs with respect to the specific districts in the northwest quadrant of the state.
95. The Sena Plan has a deviation range of 9.6% with an average deviation of 2.5%.
96. The Sena Plan includes four incumbent pairings, two of which would be Democrat/Democrat pairings, one of which would be a Democrat/Republican pairing and one of which would be a Republican/Republican pairing.

Egolf Plan

97. The Egolf Plan used the Legislative Plan as a starting point under the belief that the Legislative Plan reflected the product of an open, public process, incorporating the input of the public generally, various interest groups and legislators and further reflected certain decisions consistent with traditional redistricting principles.
98. If the starting point for the Egolf Plan had been the current districts rather than the Legislative Plan, the Egolf Plan would have moved a district out of north central New Mexico to address the under population in that area.
99. The original Egolf Plan made certain modifications to the Legislative Plan. The Egolf Plaintiffs later created an alternate plan (identified as “Egolf 2” at the hearing), which only altered the original Egolf Plan insofar as Egolf 2 incorporated the amended Multi-Tribal/Navajo Nation Plan in its entirety.
100. Egolf 2 has an overall maximum population deviation of 9.8%, and has mean and median deviations of 2.4%.
101. Egolf 2 has the following deviations among the 70 House districts: 8 districts fall between -5% and -4%; 2 districts fall between -4% and -3%; 11 districts fall between -3% and -2%; 27 districts fall between -2% to +2%; 11 districts fall between +2 and +3%; 8 districts fall between +3 and +4%; and 3 districts fall between +4% and +5%. No district is over +/-5%.
102. Egolf 2 created two new districts on the west side of Albuquerque, which has experienced the greatest growth in the state, while simultaneously avoiding the pairing/elimination of a north central New Mexico seat and

preventing the accumulation of overpopulated districts in Albuquerque (i.e., districts at the high-end of +5% from the ideal).

103. Although Egolf 2 improves upon the deviations contained in the Legislative Plan, it fails to completely cure the geographic bias contained in the Legislative Plan. Districts in the north central and southeast areas of the state are significantly under populated. The following southeast districts have the following deviations: District 51: -2.7%, District 54: -4.9%, District 55: -4.7%, District 56: -3.9%, District 57: -4.4%, District 58: -4.8%, District 59: -4.6%. The following north central districts have the following deviations: District 43: -2.2%, District 45: -1.9%, District 47: -1.6%, District 48: -2.5%.

104. At the Court's suggestion, the Egolf Plaintiffs developed Egolf Plan 4 ("Egolf 4") with the objective of consolidating a district in the north central area of the State and creating a full third district on the west side of Albuquerque, retaining the Native American VAP districts as proposed by the Multi-Tribal/Navajo Nation Plan, and retaining District 63, a VAP Hispanic district.

105. Egolf 4 consolidates District 43 in Los Alamos and moves it to the west side of Albuquerque. Egolf 4 pairs the only Republican incumbent in north central New Mexico with a Democratic incumbent. Los Alamos is split from White Rock. Los Alamos is moved into District 41 which primarily covers Rio Arriba County. White Rock is moved into District 50 which extends across southern Santa Fe County into Moriarity.

Maestas Plan

106. The Maestas Plaintiffs submitted to the Court two plans (Maestas 2 Plan and the Maestas Alternative Plan).
107. The Maestas 2 Plan has a mean deviation of 1.3%.
108. The Masetas Alternative Plan has a mean deviation of 1.1%.
109. The higher deviations in the Maestas Plans, particularly the -5.0% deviation in District 65 and the -4.5% deviation in District 9, are due to respect for the expressed districting preferences of the Multi-Tribal and Navajo Nation Plaintiffs.
110. The Maestas 2 Plan is unique among all plans in its pairing of incumbents. The Maestas 2 Plan places a total of nine incumbents in potential races against other members of the House of Representatives. Under the Maestas 2 Plan, one district located in Roswell would include three Republican incumbents. Other incumbent pairings under the Maestas 2 Plan would include a Democrat/Democrat pairing, a Republican/Republican pairing and a Democrat/Republican pairing.
111. The Maestas Alternative Plan eliminates the triple pairing of incumbents in Roswell and consolidates a district in north central New Mexico. Like the Egolf 4 Plan, the Maestas Alternative Plan consolidates District 43 in Los Alamos and moves it to the west side of Albuquerque. The Maestas Alternative Plan pairs the only Republican incumbent in north central New Mexico with a Democratic incumbent in District 50.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter herein.
2. The New Mexico Constitution provides that the State House of Representatives “shall be composed of no more than seventy members elected from single-member districts.” N.M. Const. art. IV, § 3(C).
3. Due to population growth and shifts over the last decade, the currently-existing New Mexico House of Representatives 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.”

Chapman v. Meier, 420 U.S. 1, 26 (1975). *Chapman* makes clear that:

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*, 420 U.S. 1, 27; *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 of 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*, 142 Idaho 464, 470-71, 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.

15. The Legislative Defendants also argue that the Court should not consider adopting any plans submitted by the Executive Defendants because the Executive Defendants failed to meaningfully participate in the redistricting efforts during the special session and only presented specific plans during litigation. The Legislative Defendants argue that consideration of the Executive Plans would set poor precedent for future efforts at redistricting:

Adopting the Executive approach would set a terrible precedent that would provide a judicially approved roadmap for any future Governor who disagrees with the Legislature to undermine the entire political process of redistricting that is mandated by our constitution and laws. This approach, if sanctioned by this Court, would allow – nay, encourage – such future Governors to stand aside from the political process; veto whatever is passed by the legislature; and use the resulting litigation to finally dictate his or her vision of the ideal political landscape of the state without the opportunity or any regard for public participation and transparency that are the hallmark of our democratic tradition—thereby disrupting our constitutional order of political checks and balances.

Legislative Defendants' Post-Trial Brief and Closing Argument Regarding State House of Representatives Redistricting, p. 30.

16. This argument of the Legislative Defendants is not persuasive for at least two reasons. First, the Legislative Defendants provide no authority for the

proposition that a Court may properly take into account what legislatures or governors may do in future redistricting cycles. There is no evidence, and this Court is unaware of any authority holding, that encouraging future performance of legal responsibilities is a legitimate state goal justifying deviation from population equality. Second, it is not the role of the Court to encourage future legislatures and governors to perform their legal responsibilities. It would be improper for this Court to assume that future legislatures and governors will not recognize their obligations and responsibilities simply because the present Legislature and Governor failed to accomplish what the law requires.

*Appropriate Deviations Under the Voting
Rights Act and Significant State Policy*

17. 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.*
18. The federal Voting Rights Act protects against the dilution of voting strength on the basis of race, ethnicity or color.
19. 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).

20. 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).
21. 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.
22. 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.

23. The Multi-Tribal/Navajo Nation Plan for Districts 1, 2, 3, 4, 5, 6, 9, 65 and 69 complies with the Voting Rights Act. The Multi-Tribal/Navajo Nation Plan presents the best remedy under the Voting Rights Act.
24. Population deviations inherent in the Multi-Tribal/Navajo Nation Plan 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 tribal self-determination.
25. Race and tribal political affiliation were properly considered in the Multi-Tribal/Navajo Nation Plan for the purpose of assuring compliance with the Voting Rights Act, but race was not the predominant factor in the drawing of the district lines and other race-neutral districting principles were not subordinated to race.
26. 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

27. The Legislative Plan presented to the Court is entitled to thoughtful consideration; however, after giving the Legislative Plan thoughtful consideration, the Court concludes that the Plan 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 1, 2, 3, 4, 5, 6, 9, 65 and 69 are justified under the Voting Rights Act and traditional redistricting principles such as maintaining communities of interests, the remaining systematic geographic deviations of under population of districts in the north central and southeast areas of the state and over population of districts in Albuquerque are not justified by any significant state policy or unique feature. These population deviations are not *de minimis* for a court-ordered plan.¹

28. 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.

29. Although the Egolf Plans reduce some of the problems with the population deviations contained in the Legislative Plan, the fact that the Egolf Plans

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

started from the Legislative Plan results in similar issues related to deviations (particularly in southeast New Mexico) which are not justified by historically significant state policy or unique features. The candid admission by the Egolf Plaintiffs' expert that he would have moved a district out of north central New Mexico to address the under population in that area if the starting point had been the current districts rather than the Legislative Plan demonstrates the inherent problem with the Legislative Plan. The final attempt to correct the problems inherent in the Legislative Plan, i.e., the consolidation of a district in north central New Mexico as contained in Egolf 4, does not present a viable solution under traditional redistricting policies because it pairs the only Republican incumbent in north central New Mexico with a Democratic incumbent and splits Los Alamos from White Rock.

30. The Maestas 2 Plan contains lower deviations than most plans; however, some significant deviations still exist in the north central and southeast areas of New Mexico. More importantly, the Maestas 2 Plan contained highly partisan incumbent pairings. While the Maestas Alternative Plan reduced the most partisan of the incumbent pairings, it did so by moving District 43 which results in the pairing of the only Republican incumbent in north central New Mexico with a Democratic incumbent.
31. The Sena and James Plans fail to meet the requirements of a court-ordered plan because they fail to satisfy to need to establish Native American districts as contained in the Multi-Tribal/Navajo Nation Plan under the Voting Rights

Act and under the traditional redistricting criteria of not splitting clear communities of interest.

32. The initial Executive Plan also fails to meet the requirements of a court-ordered plan because it fails to satisfy to need to establish Native American districts as contained in the Multi-Tribal/Navajo Nation Plan under the Voting Rights Act and under the traditional redistricting criteria of not splitting clear communities of interest. In addition, the initial Executive Plan appears to have made no effort to recognize New Mexico communities of interest other than those identified by political boundaries. It is troubling that statewide elected officials would not at least recognize that New Mexico does contain some recognizable communities of interest outside of political subdivisions. More active participation in the special session may have at least provided the Executive Defendants with a better perspective on Native American voting rights and the special nature of Native American communities of interest.
33. The original Executive Plan did, however, recognize the importance of low population deviations in court-ordered plans. Executive Alternate Plan 3 incorporates the Multi-Tribal/Navajo Nation partial plan which is justified under the Voting Rights Act and the historically significant state policy of maintaining tribal communities of interest to the extent practicable. Executive Alternate Plan 3 should be modified by moving Bernalillo County precinct 567 from District 65 to District 31. Such a move respects the

Bernalillo/Sandoval County line and would not significantly affect any other redistricting criteria.²

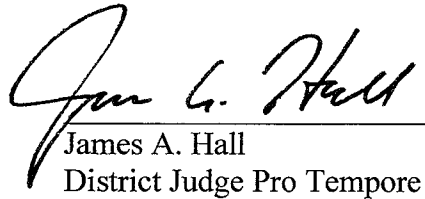
34. Of the plans submitted to the Court, Executive Alternate Plan 3 as modified above best complies with legal standards for court-ordered redistricting. It properly places the highest priority on population equality and compliance with the Voting Rights Act as required by law. Those districts that contain higher deviations 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. Political and geographic boundaries are 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.
35. The Court is cognizant of the fact that incorporation of the Multi-Tribal/Navajo Nation Plan into the Executive Plan has some limited impact on the partisan performance measures of individual districts. Under the law, population equality and compliance with the Voting Rights Act are given the highest priority in redistricting, followed by the traditional redistricting

² Some parties have contended that Executive Alternate Plan 3 unreasonably splits the Pueblo of Ohkay Owingeh between Districts 40 and 41. While the tribal lands of Ohkay Owingeh may extend over several precincts, the testimony of the Governor of Ohkay Owingeh, Ron Lovato, indicates that the majority of the tribal members vote in a single Rio Arriba precinct. The Court is operating under the assumption that the precinct containing the majority of the members of the Pueblo of Ohkay Owingeh is a part of District 40 in Executive Alternate Plan 3. If the precinct that contains the majority of the members of the Pueblo of Ohkay Owingeh is in a district other than District 40, the Court would consider amending these Findings and Conclusions to include that precinct in District 40.

principles of contiguity, compactness, respect for political boundaries, maintenance of communities of interest and the protection of incumbents. All plans submitted to the Court have some partisan effect. The Court is obligated to follow the legal priorities and not allow partisan considerations to control the outcome. *See, e.g., Peterson v. Borst*, 876 N.E.2d 668, 673 (Ind. 2003).

36. The Court hereby adopts the Executive Alternate Plan 3 as modified above for the New Mexico House of Representatives. The State Executive Defendants shall submit a proposed judgment to the Court.

Dated: 1/3/2012


James A. Hall
District Judge Pro Tempore

Copies to counsel of record via e-filing system.