

FILED  
5th JUDICIAL DISTRICT COURT  
Lea County  
9/15/2023 4:51 PM  
NELDA CUELLAR  
CLERK OF THE COURT  
Cory Hagedoorn

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT

REPUBLICAN PARTY OF NEW MEXICO, DAVID  
GALLEGOS, TIMOTHY JENNINGS, DINAH VARGAS,  
MANUEL GONZALES, JR., BOBBY AND DEE ANN KIMBRO,  
and PEARL GARCIA,

Plaintiffs,

v.

Cause No.  
D-506-CV-2022-00041

MAGGIE TOULOUSE OLIVER, in her official capacity as New  
Mexico Secretary of State, MICHELLE LUJAN GRISHAM, in  
her official capacity as Governor of New Mexico, HOWIE  
MORALES, in his official capacity as New Mexico Lieutenant  
Governor and President of the New Mexico Senate, MIMI  
STEWART, in her official capacity as President Pro Tempore of  
the New Mexico Senate, and JAVIER MARTINEZ, in his official  
capacity as Speaker of the New Mexico House of Representatives,

Defendants.

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**ADDENDUM NO. 1 TO LEGISLATIVE DEFENDANTS' FINDINGS OF  
FACTS AND CONCLUSIONS OF LAW**

**EXHIBITS 01 TO 07**

**HINKLE SHANOR LLP**

*/s/ Richard E. Olson*

Richard E. Olson

Lucas M. Williams

Ann Cox Tripp

P.O. Box 10

Roswell, NM 88202-0010

575-622-6510 / 575-623-9332 Fax

[rolson@hinklelawfirm.com](mailto:rolson@hinklelawfirm.com)

[lwilliams@hinklelawfirm.com](mailto:lwilliams@hinklelawfirm.com)

[atripp@hinklelawfirm.com](mailto:atripp@hinklelawfirm.com)

**PEIFER, HANSON, MULLINS & BAKER, P.A.**

Sara N. Sanchez  
20 First Plaza, Suite 725  
Albuquerque, NM 87102  
505-247-4800

[ssanchez@peiferlaw.com](mailto:ssanchez@peiferlaw.com)

**STELZNER, LLC**  
Luis G. Stelzner, Esq.  
3521 Campbell Ct. NW  
Albuquerque NM 87104  
505-263-2764  
[psstelzner@aol.com](mailto:psstelzner@aol.com)

Professor Michael B. Browde  
751 Adobe Rd., NW  
Albuquerque, NM 87107  
505-266-8042  
[mbrowde@me.com](mailto:mbrowde@me.com)

*Attorneys for Mimi Stewart and Brian Egolf*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2023, I caused the foregoing Addendum along with this Certificate of Service, to be served and filed electronically through the Tyler Technologies Odyssey File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

**HINKLE SHANOR LLP**

*/s/ Richard E. Olson*

EXHIBIT 1

*File copy*

*11-29-40. App  
enter folder #2*

DEPARTMENT OF COMMERCE  
OFFICE OF THE SECRETARY  
WASHINGTON

November 29, 1940.

My dear Mr. President:

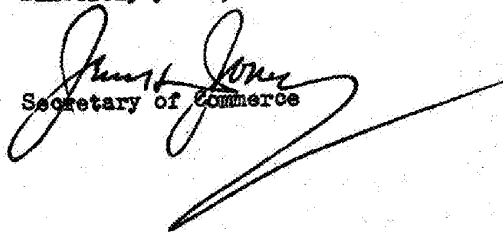
Transmitted herewith is a memorandum from the Director of the Census enclosing a tabulation giving the population of each State on April 1, 1940 as ascertained under the Sixteenth Decennial Census of the United States. This tabulation was prepared in compliance with the provisions of section 2 of the Act of June 18, 1929 under which the Sixteenth Decennial Census was taken. The tabulation also gives the number of Representatives to which each State will be entitled if the present number of Representatives (435) are apportioned by the method of major fractions, which was the method used in the last preceding apportionment, and also by the method of equal proportions.

The tabulation of total population by States for purposes of apportionment does not show any "Indians not taxed" as all Indians are now subject to Federal taxation.

You will recall that by the provisions of section 22 of the Decennial Census Act of June 18, 1929, as amended by the Act of April 25, 1940, the President is required to transmit this information to the 77th Congress during the first week of the first regular session.

There is also enclosed a table showing the gain or loss in the total population of each State between 1930 and 1940.

Sincerely yours,

  
Secretary of Commerce

The Honorable  
The President  
The White House

EXHIBIT 1

OFFICE OF  
THE DIRECTOR

*File copy*

DEPARTMENT OF COMMERCE  
BUREAU OF THE CENSUS  
WASHINGTON

November 28, 1940

MEMORANDUM

To: Secretary of Commerce  
From: Director of the Census  
Subject: Population of the United States for the apportionment of Representatives.

In compliance with the provisions of section 2 of the Act of June 18, 1929, I transmit herewith a tabulation showing the population of each State on April 1, 1940, as ascertained under the Sixteenth Decennial Census of the United States. The tabulation (Table 1) also gives the number of Representatives to which each State will be entitled if the existing number of Representatives are apportioned by the method of major fractions, which was the method used in the last preceding apportionment, and also by the method of equal proportions. This is the information which the President is required to transmit to the 77th Congress during the first week of the first regular session in compliance with section 22 (a) of the Act of June 18, 1929, as amended by the Act of April 25, 1940 (Pub. No. 481 - 76th Congress).

The tabulation of total population by States for apportionment purposes does not show any "Indians not taxed" as all Indians are now subject to Federal taxation.

The Sixteenth Decennial Census reveals important internal shifts in population that have taken place during the past decade. (See Table 2.) Although the westward movement has continued and is reflected in an increased proportion of the population in the Pacific Coast and Mountain States, the trend long established in the United States of migration from rural to urban areas has been slackened. For the first decade since 1830 the proportion of the population residing in urban areas has failed to increase markedly. Consequently, the more rural Southern States have increased at a more rapid rate than the more industrial Northern States. Actual losses in population were found in some of the Midwestern States affected seriously by the drought. These shifts in population are reflected in the new apportionment.

Enclosures

  
Director



# EXHIBIT 1

Department of Commerce  
Bureau of the Census  
Washington

Table 1

## POPULATIONS OF THE STATES, 1940, AND APPORTIONMENT OF REPRESENTATIVES IN CONGRESS, 1940, AND 1930

State	Population April 1, 1940  (1)	Present number of Represent- atives*  (2)	Apportionment of 435 Representatives, 1940					
			Method of major fractions			Method of equal proportions		
			Number of Represent- atives (3)	Change from 1930		Number of Represent- atives (6)	Change from 1930	
				Gain (4)	Loss (5)		Gain (7)	Loss (8)
United States	131,669,275	435	435	10	-10	435	9	-9
Alabama	2,832,961	9	9			9		
Arizona	499,261	1	2	1		2	1	
Arkansas	1,949,387	7	6		-1	7		
California	6,907,387	20	23	3		23	3	
Colorado	1,123,296	4	4			4		
Connecticut	1,709,242	6	6			6		
Delaware	866,505	1	1			1		
Dist. of Columbia	663,091	--	--	--	--	--	--	--
Florida	1,897,414	5	6	1		6	1	
Georgia	3,123,723	10	10			10		
Idaho	524,873	2	2			2		
Illinois	7,897,241	27	26		-1	26		-1
Indiana	3,427,796	12	11		-1	11		-1
Iowa	2,538,268	9	8		-1	8		-1
Kansas	1,801,028	7	6		-1	6		-1
Kentucky	2,845,627	9	9			9		
Louisiana	2,363,880	8	8			8		
Maine	847,226	3	3			3		
Maryland	1,821,244	6	6			6		
Massachusetts	4,316,721	15	14		-1	14		-1
Michigan	5,256,106	17	18	1		17		
Minnesota	2,792,300	9	9			9		
Mississippi	2,183,796	7	7			7		
Missouri	3,784,664	13	13			13		
Montana	559,456	2	2			2		

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(continued on next page)

## EXHIBIT 1

### POPULATIONS OF THE STATES, 1940, AND APPORTIONMENT OF REPRESENTATIVES IN CONGRESS, 1940 AND 1930 (continued)

State	Population April 1, 1940  (1)	Present number of Represent- atives*  (2)	Apportionment of 435 Representatives, 1940					
			Method of major fractions			Method of equal proportions		
			Number of Represent- atives (3)	Change from 1930		Number of Represent- atives (6)	Change from 1930	
				Gain (4)	Loss (5)		Gain (7)	Loss (8)
Nebraska	1,315,834	5	4		-1	4		-1
Nevada	110,247	1	1			1		
New Hampshire	491,524	2	2			2		
New Jersey	4,160,165	14	14			14		
New Mexico	531,818	1	2	1		2	1	
New York	13,479,142	45	45			45		
North Carolina	3,571,623	11	12	1		12	1	
North Dakota	641,935	2	2			2		
Ohio	6,907,612	24	23		-1	23		-1
Oklahoma	2,326,434	9	8		-1	8		-1
Oregon	1,089,684	3	4	1		4	1	
Pennsylvania	9,900,180	34	33		-1	33		-1
Rhode Island	713,346	2	2			2		
South Carolina	1,899,804	6	6			6		
South Dakota	642,961	2	2			2		
Tennessee	2,915,641	9	10	1		10	1	
Texas	6,414,824	21	21			21		
Utah	550,310	2	2			2		
Vermont	359,231	1	1			1		
Virginia	2,677,773	9	9			9		
Washington	1,736,191	6	6			6		
West Virginia	1,901,974	6	6			6		
Wisconsin	3,137,587	10	10			10		
Wyoming	250,742	1	1			1		

\*The present apportionment of Representatives is based on the 1930 Census. The method followed in 1930 was the method of major fractions. In that instance the use of the method of equal proportions would have resulted in the same apportionment.

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# EXHIBIT 1

DEPARTMENT OF COMMERCE  
Bureau of the Census  
Washington

Table 2

POPULATION FIGURES FOR THE UNITED STATES, BY STATES: 1940  
A minus sign (-) denotes decrease.

Division and State	Population		Increase 1930-1940	Percent of Increase	
	1940	1930		1930-1940	1920-1930
United States	131,669,275	122,775,046	8,894,229	7.2	16.1
<u>Geographic Divisions:</u>					
New England	8,437,290	8,166,341	270,949	3.3	10.3
Middle Atlantic	27,539,487	26,260,750	1,278,737	4.9	18.0
East North Central	26,626,342	25,297,185	1,329,157	5.3	17.8
West North Central	13,516,990	13,296,915	220,075	1.7	6.0
South Atlantic	17,823,151	15,793,589	2,029,562	12.9	12.9
East South Central	10,778,225	9,887,214	891,011	9.0	11.2
West South Central	13,064,525	12,176,830	887,695	7.3	18.9
Mountain	4,150,003	3,701,789	448,214	12.1	11.0
Pacific	9,733,262	8,194,433	1,538,829	18.8	47.2
<u>New England:</u>					
Maine	847,226	797,423	49,803	6.2	3.8
New Hampshire	491,524	465,293	26,231	5.6	5.0
Vermont	359,231	359,611	- 380	- 0.1	2.0
Massachusetts	4,316,721	4,249,614	67,107	1.6	10.3
Rhode Island	713,346	687,497	25,849	3.8	13.7
Connecticut	1,709,242	1,606,903	102,339	6.4	16.4
<u>Middle Atlantic:</u>					
New York	13,479,142	12,588,066	891,076	7.1	21.2
New Jersey	4,160,165	4,041,334	118,831	2.9	28.1
Pennsylvania	9,900,180	9,631,350	268,830	2.8	10.5
<u>East North Central:</u>					
Ohio	6,907,612	6,646,697	260,915	3.9	15.4
Indiana	3,427,796	3,238,503	189,293	5.8	10.5
Illinois	7,897,241	7,630,654	266,587	3.5	17.7
Michigan	5,256,106	4,842,325	413,781	8.5	32.0
Wisconsin	3,137,587	2,939,006	198,581	6.8	11.7
<u>West North Central:</u>					
Minnesota	2,792,300	2,563,953	228,347	8.9	7.4
Iowa	2,538,268	2,470,939	67,329	2.7	2.8
Missouri	3,784,664	3,629,367	155,297	4.3	6.6
North Dakota	641,935	680,845	- 38,910	- 5.7	5.3
South Dakota	642,961	692,849	- 49,888	- 7.2	8.8
Nebraska	1,315,834	1,377,963	- 62,129	- 4.5	6.3
Kansas	1,801,028	1,880,999	- 79,971	- 4.3	6.3

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# EXHIBIT 1

- 2 -

## POPULATION FIGURES FOR THE UNITED STATES, BY STATES: 1940 - Continued

Division and State	Population		Increase 1930-1940	Percent of Increase	
	1940	1930		1930-1940	1920-1930
<b><u>South Atlantic:</u></b>					
Delaware	266,505	239,380	28,125	11.8	6.9
Maryland	1,821,244	1,631,526	189,718	11.6	12.5
Dist. of Columbia	653,091	486,869	176,222	36.2	11.3
Virginia	2,677,773	2,421,851	255,922	10.6	4.9
West Virginia	1,901,974	1,729,205	172,769	10.0	18.1
North Carolina	3,571,623	3,170,276	401,347	12.7	23.9
South Carolina	1,899,804	1,738,765	161,039	9.3	3.3
Georgia	3,123,723	2,908,506	215,217	7.4	0.4
Florida	1,897,414	1,468,211	429,203	29.2	51.6
<b><u>East South Central:</u></b>					
Kentucky	2,845,627	2,614,589	231,038	8.8	8.2
Tennessee	2,915,841	2,616,556	299,285	11.4	11.9
Alabama	2,832,961	2,646,248	186,713	7.1	12.7
Mississippi	2,183,796	2,009,821	173,975	8.7	12.2
<b><u>West South Central:</u></b>					
Arkansas	1,949,387	1,854,482	94,905	5.1	5.8
Louisiana	2,363,880	2,101,593	262,287	12.5	16.9
Oklahoma	2,336,434	2,396,040	- 59,606	- 2.5	18.1
Texas	6,414,824	5,824,715	590,109	10.1	24.9
<b><u>Mountain:</u></b>					
Montana	559,436	537,606	21,830	4.1	- 2.1
Idaho	524,873	445,032	79,841	17.9	3.0
Wyoming	250,742	225,565	25,177	11.2	16.0
Colorado	1,123,296	1,035,791	87,505	8.4	10.2
New Mexico	531,818	423,317	108,501	25.6	17.5
Arizona	499,261	436,573	63,688	14.6	30.3
Utah	550,310	507,847	42,463	8.4	13.0
Nevada	110,247	91,058	19,189	21.1	17.6
<b><u>* Pacific:</u></b>					
Washington	1,736,191	1,563,396	172,795	11.1	15.2
Oregon	1,089,684	953,786	135,898	14.2	21.8
California	6,907,367	5,677,251	1,230,136	21.7	65.7

November 26, 1940.

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# EXHIBIT 1

CENSUS OF POPULATION

in addition will may furnish to the  
at body as a basis for action on

at you at this time follow your  
was full information with respect

77TH CONGRESS } HOUSE OF REPRESENTATIVES { DOCUMENT  
1st Session } { No. 45

## SIXTEENTH DECENNIAL CENSUS OF POPULATION

ROBERT H. JACKSON,  
*Attorney General.*

### MESSAGE

FROM

## THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A STATEMENT PREPARED BY THE DIRECTOR OF THE CENSUS, DEPARTMENT OF COMMERCE, GIVING THE WHOLE NUMBER OF PERSONS IN EACH STATE AS ASCERTAINED UNDER THE SIXTEENTH DECENNIAL CENSUS OF POPULATION, AND THE NUMBER OF REPRESENTATIVES TO WHICH EACH STATE WOULD BE ENTITLED UNDER AN APPORTIONMENT OF THE EXISTING NUMBER OF REPRESENTATIVES BY THE METHOD KNOWN AS THE METHOD OF MAJOR FRACTIONS, WHICH WAS THE METHOD USED IN THE LAST PRECEDING APPORTIONMENT, AND ALSO BY THE METHOD KNOWN AS THE METHOD OF EQUAL PROPORTIONS

JANUARY 8, 1941.—Referred to the Committee on the Census, and ordered to be printed

#### *To the Congress of the United States:*

In compliance with the provisions of section 22 (a) of the act approved June 18, 1929, providing for the fifteenth and subsequent decennial censuses and for the apportionment of Representatives in Congress, as amended by the act of April 25, 1940, I transmit herewith a statement prepared by the Director of the Census, Department of Commerce, giving the whole number of persons in each State as ascertained under the Sixteenth Decennial Census of Population, and the number of Representatives to which each State would be entitled under an apportionment of the existing number of Representatives by the method known as the method of major fractions, which was the method used in the last preceding apportionment, and also by the method known as the method of equal proportions.

The Director of the Census has included all Indians in the tabulation of total population since the Supreme Court has held that all Indians are now subject to Federal taxation (*Superintendent v. Commissioner*,

EXHIBIT 1

295 U. S. 418). The effect of this upon apportionment of representatives, however, appears to be for determination by the Congress, as concluded in the Attorney General's opinion of November 28, 1940, to the Secretary of Commerce, a copy of which is annexed hereto.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,  
January 8, 1941.

TABLE 1.—Populations of the States, 1940, and apportionment of Representatives in Congress, 1940 and 1930

State	Population, Apr. 1, 1940	Present number of Rep- resenta- tives <sup>1</sup>	Apportionment of 435 Representatives, 1940					
			Method of major frac- tions			Method of equal prop- ortions		
			Number of Rep- resenta- tives	Change from 1930		Number of Rep- resenta- tives	Change from 1930	
(3)	(4)	(5)	(6)	(7)	(8)			
United States.....	131,699,275	435	435	10	-10	435	9	-9
Alabama.....	2,822,061	9	9			9		
Arizona.....	499,261	1	2	1		2	1	
Arkansas.....	1,049,367	7	6	-1		6		
California.....	6,907,367	20	30	10		30	10	
Colorado.....	1,124,206	4	4			4		
Connecticut.....	1,739,742	6	6			6		
Delaware.....	259,554	1	1			1		
District of Columbia.....	665,081							
Florida.....	1,877,414	5	6	1		6	1	
Georgia.....	3,123,728	10	10			10		
Idaho.....	594,673	2	2			2		
Illinois.....	7,997,241	27	26	-1		26		-1
Indiana.....	3,422,706	13	11	-2		11		-2
Iowa.....	2,536,268	9	8	-1		8		-1
Kansas.....	1,601,028	7	6	-1		6		-1
Kentucky.....	2,845,027	9	9			9		
Louisiana.....	2,393,890	8	8			8		
Maine.....	847,226	3	3			3		
Maryland.....	1,821,244	6	6			6		
Massachusetts.....	4,214,731	15	14	-1		14		-1
Michigan.....	5,256,106	17	18	1		18	1	
Minnesota.....	2,782,359	9	9			9		
Mississippi.....	2,183,796	7	7			7		
Missouri.....	3,784,664	12	12			12		
Montana.....	536,458	2	2			2		
Nebraska.....	1,312,324	4	4			4		
Nevada.....	139,247	1	1			1		
New Hampshire.....	491,524	1	2	1		2	1	
New Jersey.....	4,160,165	14	14			14		
New Mexico.....	331,819	1	2	1		2	1	
New York.....	13,479,142	46	46			46		
North Carolina.....	3,371,623	11	12	1		12	1	
North Dakota.....	641,335	2	2			2		
Ohio.....	6,922,619	20	20			20		
Oklahoma.....	2,336,434	5	5			5		
Oregon.....	1,086,684	3	4	1		4	1	
Pennsylvania.....	9,900,180	34	33	-1		33		-1
Rhode Island.....	713,046	2	2			2		
South Carolina.....	1,899,304	6	6			6		
South Dakota.....	642,981	2	2			2		
Tennessee.....	2,812,841	9	10	1		10	1	
Texas.....	6,414,524	21	21			21		
Utah.....	550,210	2	2			2		
Vermont.....	336,231	1	1			1		
Virginia.....	3,577,773	9	9			9		
Washington.....	1,798,191	6	6			6		
West Virginia.....	1,351,924	5	5			5		
Wisconsin.....	2,137,567	10	10			10		
Wyoming.....	288,742	1	1			1		

<sup>1</sup>The present apportionment of Representatives is based on the 1930 census. The method followed in 1930 was the method of major fractions. In that instance the use of the method of equal proportions would have resulted in the same apportionment.

The honorable the  
My DEAR MR. SEN  
state, in part:

Section 2 of the four  
apportioning representa-  
of population upon whi-  
is now being prepared.

Since it appears that  
law, your opinion is res-  
not taxed, within the me-  
the fourteenth amendm-  
of the Solicitor of this I

Also enclosed with  
Department of the I

As pointed out by  
the answer to your  
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only to those  
taxed or subject to a  
not taxed or subject  
The bearing of these  
sented is apparent i  
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The question pres-  
decisions but the iss-  
decided cases. Some  
the debates in the Co  
that since all Indians  
there are no longer a  
constitutional phrase  
other statements app-  
support the contrary  
Solicitor, the questi-  
answer to it is not fr-

The Congress is a  
Supreme Court holdi-  
laws. What constru-  
"Indians not taxed"  
by it with respect to  
courts in proper case-  
tion by the Attorne-  
neither the Congress

Moreover, it does  
necessary at this tim-  
Department. In my  
heretofore followed i  
will meet every ad

# EXHIBIT 1

POPULATION

SIXTEENTH DECENNIAL CENSUS OF POPULATION

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ment of representa-  
by the Congress, as  
November 28, 1940,  
unreferred hereto.

D. ROOSEVELT.

NOVEMBER 28, 1940.

The honorable the SECRETARY OF COMMERCE.

MY DEAR MR. SECRETARY: In your letter of November 9, 1940, you state, in part:

Section 2 of the fourteenth amendment to the Constitution provides that in apportioning representatives, "Indians not taxed" shall be excluded. The census of population upon which the reapportionment of Representatives is to be based is now being prepared.

Since it appears that today all Indians are subject to the Federal income-tax law, your opinion is respectfully requested as to whether there are any Indians not taxed, within the meaning of that phrase as it appears in the Constitution and the fourteenth amendment thereto. There is enclosed herewith a recent opinion of the Solicitor of this Department on this subject.

Also enclosed with your letter is an opinion of the Solicitor of the Department of the Interior dealing with the question at some length.

As pointed out by the Solicitor of the Department of the Interior the answer to your question depends upon whether the phrase "Indians not taxed" refers (1) to Indians not actually paying taxes or only to those who are not subject to taxation and (2) to Indians not taxed or subject to taxation by any taxing authority or only to those not taxed or subject to taxation by the States in which they reside. The bearing of these preliminary questions upon the question presented is apparent in view of the recent decisions of the Supreme Court holding that all Indians are subject to the Federal income-tax law.

The question presented has been discussed in a number of court decisions but the issue has never been squarely raised in any of the decided cases. Some of the cases and some statements appearing in the debates in the Constitutional Convention lend support to the view that since all Indians are now subject to the Federal income-tax laws there are no longer any Indians not taxed within the meaning of the constitutional phrase. On the other hand, other decided cases and other statements appearing in the debates in the Convention equally support the contrary view. Thus it appears that, as stated by your Solicitor, the question presents a "perplexing problem", and that the answer to it is not free from doubt.

The Congress is aware, of course, of the recent decisions of the Supreme Court holding all Indians subject to the Federal income-tax laws. What construction the Congress will now give to the phrase "Indians not taxed" is a question for it to decide, and action taken by it with respect thereto will be final, subject only to review by the courts in proper cases brought before them. An opinion on the question by the Attorney General would not be determinative, since neither the Congress nor the courts would be bound by such opinion.

Moreover, it does not appear that an answer to your question is necessary at this time for any administrative purpose within your Department. In my opinion, a continuance by you of the practice heretofore followed in your Department with respect to the subject will meet every administrative requirement imposed upon your

ment of Representatives in

of 435 Representatives, 1940

From	Method of equal proportions		Change from 1930	
	Number of Representatives	Gain	Loss	
(6)	(6)	(7)	(8)	
-10	435	0	-0	
9		1		
8		2		
7		3		
6		4		
5		5		
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The method followed in of equal proportions would

# EXHIBIT 1

## 4 SIXTEENTH DECENNIAL CENSUS OF POPULATION

Department in the premises, and in addition will may furnish to the Congress information desired by that body as a basis for action on its part.

It is recommended, therefore, that you at this time follow your former practice, giving to the Congress full information with respect thereto.

Respectfully,

ROBERT H. JACKSON,  
*Attorney General.*

21579





EXHIBIT 1

*File*

[PUBLIC LAW 291—77TH CONGRESS]

[CHAPTER 470—1ST SESSION]

[H. R. 2665]

AN ACT

To provide for apportioning Representatives in Congress among the several States by the equal proportions method.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 23 of the Act entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress", approved June 18, 1929, as amended, is amended to read as follows:

"Sec. 22. (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

"(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of both to act, such duty shall devolve upon the Doorkeeper of the House of Representatives.

"(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number

# EXHIBIT 1

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[Pub. Law 213]

of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large."

SEC. 2. (a) Each State shall be entitled, in the Seventy-eighth and in each Congress thereafter until the taking effect of a reapportionment under a subsequent statute or such section 22, as amended by this Act, to the number of Representatives shown in the statement transmitted to the Congress on January 3, 1941, based upon the method known as the method of equal proportions, no State to receive less than one Member.

(b) If before the enactment of this Act a certificate has been sent to the executive of any State under the provisions of such section 22, as in force before the enactment of this Act, the Clerk of the House of Representatives shall, within fifteen calendar days after the date of enactment of this Act, send a new certificate to such executive stating the number of Representatives to which such State is entitled under this section.

Approved, November 15, 1941.

# EXHIBIT 1

1940

## EQUAL PROPORTIONS

STATES	1940 POPULATION	1940 NUMBER OF REPRESENTATIVES
TOTAL	131669275	435
Alabama	2832961	9
Alaska	N/A	N/A
Arizona	499261	2
Arkansas	1949387	7
California	6907387	23
Colorado	1123296	4
Connecticut	1709242	6
Delaware	266505	1
District of Columbia	663091	N/A
Florida	1897414	6
Georgia	3123723	10
Hawaii	N/A	N/A
Idaho	524873	2
Illinois	7897241	26
Indiana	3427796	11
Iowa	2538268	8
Kansas	1801028	6
Kentucky	2945627	9
Louisiana	2363880	8
Maine	847226	3
Maryland	1821244	6
Massachusetts	4316721	14
Michigan	5256106	17
Minnesota	2792300	9
Mississippi	2183796	7
Missouri	3784664	13
Montana	559456	2
Nebraska	1315834	4
Nevada	110247	1
New Hampshire	491524	2
New Jersey	4160165	14
New Mexico	531818	2
New York	13479142	45
North Carolina	3571623	12
North Dakota	641935	2
Ohio	4987612	23
Oklahoma	2336434	8
Oregon	1089684	4
Pennsylvania	9900180	33
Rhode Island	713346	2
South Carolina	1899804	6
South Dakota	642961	2
Tennessee	2915841	10
Texas	6414824	21
Utah	550310	2
Vermont	359231	1
Virginia	2677773	9
Washington	1736191	6
West Virginia	1901974	6
Wisconsin	3137587	10
Wyoming	250742	1

NOTE: This table was derived from the 1940 Apportionment file. The 1940 apportionment was based on the entire population of the 48 States. Does not include Alaska, District of Columbia and Hawaii.

# EXHIBIT 1

Year	Value
1990	1.0
1991	1.0
1992	1.0
1993	1.0
1994	1.0
1995	1.0
1996	1.0
1997	1.0
1998	1.0
1999	1.0
2000	1.0
2001	1.0
2002	1.0
2003	1.0
2004	1.0
2005	1.0
2006	1.0
2007	1.0
2008	1.0
2009	1.0
2010	1.0
2011	1.0
2012	1.0
2013	1.0
2014	1.0
2015	1.0
2016	1.0
2017	1.0
2018	1.0
2019	1.0
2020	1.0

# EXHIBIT 1

VALUES	# OF REP.	STATES	1940 POPULATION	CONTRL. NUMBERS	VALUE NUMBER	SEATS
0.70710678	2	New York	13479142	2	9531193	51
0.70710678	2	Pennsylvania	9900180	4	7000484	52
0.70710678	2	Illinois	7897241	5	5584193	53
0.40824829	3	New York	13479142	52	5502837	54
0.70710678	2	Ohio	6907612	6	4884419	55
0.70710678	2	California	6907387	1	4884260	56
0.70710678	2	Texas	6414824	3	4535966	57
0.40824829	3	Pennsylvania	9900180	54	4041732	58
0.28867513	4	New York	13479142	102	3891093	59
0.70710678	2	Michigan	5256106	8	3716628	60
0.40824829	3	Illinois	7897241	55	3224035	61
0.70710678	2	Massachusetts	4316721	11	3052383	62
0.22360680	5	New York	13479142	152	3014028	63
0.70710678	2	New Jersey	4160165	9	2941681	64
0.28867513	4	Pennsylvania	9900180	104	2857936	65
0.40824829	3	Ohio	6907612	56	2820021	66
0.40824829	3	California	6907387	51	2819929	67
0.70710678	2	Missouri	3784664	15	2676162	68
0.40824829	3	Texas	6414824	53	2618841	69
0.70710678	2	North Carolina	3571623	10	2525519	70
0.18257419	6	New York	13479142	202	2460943	71
0.70710678	2	Indiana	3427796	12	2423818	72
0.28867513	4	Illinois	7897241	105	2279737	73
0.70710678	2	Wisconsin	3137587	16	2218609	74
0.22360680	5	Pennsylvania	9900180	154	2213748	75
0.70710678	2	Georgia	3123723	13	2208806	76
0.40824829	3	Michigan	5256106	58	2145796	77
0.15430335	7	New York	13479142	252	2079677	78
0.70710678	2	Tennessee	2915841	17	2061811	79
0.70710678	2	Kentucky	2845627	23	2012162	80
0.70710678	2	Alabama	2832961	22	2003206	81
0.28867513	4	Ohio	6907612	106	1994056	82
0.28867513	4	California	6907387	101	1993991	83
0.70710678	2	Minnesota	2792300	21	1974454	84
0.70710678	2	Virginia	2677773	14	1893471	85
0.28867513	4	Texas	6414824	103	1851800	86
0.18257419	6	Pennsylvania	9900180	204	1807517	87
0.13363062	8	New York	13479142	302	1801226	88
0.70710678	2	Iowa	2538269	27	1794827	89
0.22360680	5	Illinois	7897241	155	1765877	90
0.40824829	3	Massachusetts	4316721	61	1762294	91
0.40824829	3	New Jersey	4160165	59	1698380	92
0.70710678	2	Louisiana	2363880	19	1671516	93
0.70710678	2	Oklahoma	2336434	26	1652108	94
0.11785113	9	New York	13479142	352	1588532	95
0.40824829	3	Missouri	3784664	65	1545083	96
0.22360680	5	Ohio	6907612	156	1544589	97
0.22360680	5	California	6907387	151	1544539	98
0.70710678	2	Mississippi	2183796	31	1544177	99
0.15430335	7	Pennsylvania	9900180	254	1527631	100
0.28867513	4	Michigan	5256106	108	1517307	101
0.40824829	3	North Carolina	3571623	60	1458109	102
0.18257419	6	Illinois	7897241	205	1441832	103
0.22360680	5	Texas	6414824	153	1434398	104
0.10540926	10	New York	13479142	402	1420826	105



# EXHIBIT 1

0.40824829	3	Indiana	3427796	62	1399392	106
0.70710678	2	Arkansas	1949387	33	1378425	107
0.70710678	2	West Virginia	1901974	34	1344899	108
0.70710678	2	South Carolina	1899804	24	1343364	109
0.70710678	2	Florida	1897414	7	1341674	110
0.13363062	8	Pennsylvania	9900180	304	1322967	111
0.70710678	2	Maryland	1821244	18	1287814	112
0.09534626	11	New York	13479142	452	1285186	113
0.40824829	3	Wisconsin	3137587	66	1280915	114
0.40824829	3	Georgia	3123723	63	1275255	115
0.70710678	2	Kansas	1801028	32	1273519	116
0.18257419	6	Ohio	6907612	206	1261152	117
0.18257419	6	California	6907387	201	1261111	118
0.28867513	4	Massachusetts	4316721	111	1246130	119
0.70710678	2	Washington	1736191	20	1227672	120
0.15430335	7	Illinois	7897241	255	1218571	121
0.70710678	2	Connecticut	1709242	25	1208617	122
0.28867513	4	New Jersey	4160165	109	1200936	123
0.40824829	3	Tennessee	2915841	67	1190387	124
0.22360680	5	Michigan	5256106	158	1175301	125
0.08703883	12	New York	13479142	502	1173209	126
0.18257419	6	Texas	6414824	203	1171181	127
0.11785113	9	Pennsylvania	9900180	354	1166747	128
0.40824829	3	Kentucky	2845627	73	1161722	129
0.40824829	3	Alabama	2832961	72	1156551	130
0.40824829	3	Minnesota	2792300	71	1139952	131
0.40824829	3	Virginia	2677773	64	1093196	132
0.28867513	4	Missouri	3784664	115	1092538	133
0.088064408	13	New York	13479142	552	1079195	134
0.15430335	7	Ohio	6907612	256	1065868	135
0.15430335	7	California	6907387	251	1065833	136
0.13363062	8	Illinois	7897241	305	1055313	137
0.10540926	10	Pennsylvania	9900180	404	1043571	138
0.40824829	3	Iowa	2538268	77	1036244	139
0.28867513	4	North Carolina	3571623	110	1031039	140
0.07412493	14	New York	13479142	602	999140	141
0.15430335	7	Texas	6414824	253	989829	142
0.28867513	4	Indiana	3427796	112	989519	143
0.22360680	5	Massachusetts	4316721	161	965248	144
0.40824829	3	Louisiana	2363880	69	965050	145
0.18257419	6	Michigan	5256106	208	959629	146
0.40824829	3	Oklahoma	2336434	76	953845	147
0.09534626	11	Pennsylvania	9900180	454	943945	148
0.11785113	9	Illinois	7897241	355	930699	149
0.70710678	2	Nebraska	1315834	35	930435	150
0.22360680	5	New Jersey	4160165	159	930241	151
0.06900656	15	New York	13479142	652	930149	152
0.13363062	8	Ohio	6907612	306	923868	153
0.13363062	8	California	6907387	301	923838	154
0.28867513	4	Wisconsin	3137587	116	905743	155
0.28867513	4	Georgia	3123723	113	901741	156
0.40824829	3	Mississippi	2183796	81	891531	157
0.06454972	16	New York	13479142	702	870075	158
0.08703883	12	Pennsylvania	9900180	504	841700	159
0.13363062	8	Texas	6414824	303	857217	160
0.22360680	5	Missouri	3784664	165	846277	161
0.28867513	4	Tennessee	2915841	117	841731	162
0.10540926	10	Illinois	7897241	405	832442	163
0.28867513	4	Kentucky	2845627	123	821462	164
0.28867513	4	Alabama	2832961	122	817805	165

# EXHIBIT 1

Lined paper with three binder holes on the left side.



# EXHIBIT 1

0.06063391	17	New York	13479142	752	817293	166
0.11785113	9	Ohio	6907387	356	814070	167
0.11785113	9	California	6907387	351	814043	168
0.15430335	7	Michigan	5256106	258	811035	169
0.28867513	4	Minnesota	2792300	121	806068	170
0.22360680	5	North Carolina	3571623	160	798639	171
0.40824829	3	Arkansas	1949387	83	795834	172
0.70710678	2	Colorado	1123206	28	794227	173
0.08006408	13	Pennsylvania	9900180	554	792649	174
0.18257419	6	Massachusetts	4316721	211	788122	175
0.40824829	3	West Virginia	1901974	84	776478	176
0.40824829	3	South Carolina	1899804	74	775592	177
0.40824829	3	Florida	1897414	57	774616	178
0.28867513	4	Virginia	2677773	114	773006	179
0.05716626	18	New York	13479142	802	770551	180
0.70710678	2	Oregon	1089884	30	770533	181
0.22360680	5	Indiana	3427796	162	766478	182
0.18257419	6	New Jersey	4160165	209	759539	183
0.11785113	9	Texas	6414824	353	755994	184
0.09534626	11	Illinois	7897241	453	752972	185
0.40824829	3	Maryland	1821244	68	743520	186
0.40824829	3	Kansas	1801028	82	735267	187
0.07412493	14	Pennsylvania	9900180	604	733650	188
0.28867513	4	Iowa	2538268	127	732735	189
0.05407381	19	New York	13479142	652	728869	190
0.10540926	10	Ohio	6907612	406	728126	191
0.10540926	10	California	6907387	401	729103	192
0.40824829	3	Washington	1736191	79	708797	193
0.13363062	8	Michigan	5256106	308	702377	194
0.22360680	5	Wisconsin	3137587	166	701586	195
0.22360680	5	Georgia	3123723	163	698486	196
0.40824829	3	Connecticut	1709242	75	697795	197
0.05129882	20	New York	13479142	902	691465	198
0.18257419	6	Missouri	3784664	215	690982	199
0.08703883	12	Illinois	7897241	505	687367	200
0.08908656	15	Pennsylvania	9900180	654	683177	201
0.28867513	4	Louisiana	2363880	119	682393	202
0.10540926	10	Texas	6414824	403	676182	203
0.28867513	4	Oklahoma	2336434	126	674470	204
0.15430335	7	Massachusetts	4316721	261	666083	205
0.09534626	11	Ohio	6907612	456	658615	206
0.09534626	11	California	6907387	451	658594	207
0.04879500	21	New York	13479142	932	657715	208
0.18257419	6	North Carolina	3571623	210	652886	209
0.22360680	5	Tennessee	2915841	167	652002	210
0.15430335	7	New Jersey	4160165	239	641927	211
0.06454972	16	Pennsylvania	9900180	704	639054	212
0.22360680	5	Kentucky	2845627	173	636392	213
0.22360680	5	Alabama	2832961	172	633469	214
0.08006408	13	Illinois	7897241	555	632285	215
0.28867513	4	Mississippi	2183796	131	630408	216
0.04652421	22	New York	13479142	1002	627106	217
0.18257419	6	Indiana	3427796	212	625827	218
0.22360680	5	Minnesota	2792300	171	624377	219
0.11785113	9	Michigan	5256106	358	619438	220
0.09534626	11	Texas	6414824	453	611629	221
0.08703883	12	Ohio	6907612	506	601230	222
0.08703883	12	California	6907387	501	601211	223
0.06063391	17	Pennsylvania	9900180	750	600287	224
0.04445542	23	New York	13479142	1052	599221	225

# EXHIBIT 1

This area is a large rectangular field with a dotted border. It contains horizontal lines spaced evenly down the page. There are three solid black circles positioned on the left side of the field, one in the upper third, one in the middle third, and one in the lower third. The circles appear to be punch holes or markers for a document.

# EXHIBIT 1

0.70710678	2	Maine	847226	38	599079	226
0.22360680	5	Virginia	2677773	164	598768	227
0.07412493	14	Illinois	7897241	605	585382	228
0.15430335	7	Missouri	3784664	265	583986	229
0.13363062	8	Massachusetts	4316721	311	576846	230
0.04256283	24	New York	13479142	1162	573710	231
0.18257419	6	Wisconsin	3137587	216	572842	232
0.18257419	6	Georgia	3123723	213	570311	233
0.22360680	5	Iowa	2538268	177	567574	234
0.09716620	18	Pennsylvania	9900180	804	565956	235
0.28867513	4	Arkansas	1949387	133	562740	236
0.08703883	12	Texas	6414824	503	558339	237
0.13363062	8	New Jersey	4160165	309	555925	238
0.10540926	10	Michigan	5256106	408	554042	239
0.08006408	13	Ohio	6907612	556	553052	240
0.08006408	13	California	6907387	551	553034	241
0.15430335	7	North Carolina	3571623	260	551113	242
0.04082483	25	New York	13479142	1152	550294	243
0.28867513	4	West Virginia	1901974	134	549053	244
0.28867513	4	South Carolina	1899804	124	548426	245
0.28867513	4	Florida	1897414	107	547736	246
0.06900656	15	Illinois	7897241	655	544961	247
0.40824829	3	Nebraska	1315834	85	537187	248
0.05407381	19	Pennsylvania	9900180	854	535340	249
0.18257419	6	Tennessee	2915841	217	532357	250
0.15430335	7	Indiana	3427796	262	528920	251
0.03922323	26	New York	13479142	1202	528695	252
0.22360680	5	Louisiana	2363880	169	528580	253
0.28867513	4	Maryland	1821244	118	525748	254
0.22360680	5	Oklahoma	2336434	176	522443	255
0.28867513	4	Kansas	1801020	132	519942	256
0.18257419	6	Kentucky	2845627	223	519538	257
0.18257419	6	Alabama	2832961	222	517226	258
0.08006408	13	Texas	6414824	553	513597	259
0.07412493	14	Ohio	6907612	606	512026	260
0.07412493	14	California	6907387	601	512010	261
0.18257419	6	Minnesota	2792300	221	509802	262
0.04454972	16	Illinois	7897241	705	509765	263
0.03774257	27	New York	13479142	1252	508737	264
0.11785113	9	Massachusetts	4316721	361	508730	265
0.05129892	20	Pennsylvania	9900180	904	507869	266
0.13363062	8	Missouri	3784664	315	505747	267
0.70710678	2	Rhode Island	713346	40	504412	268
0.28867513	4	Washington	1736191	120	501195	269
0.09534626	11	Michigan	5256106	458	501150	270
0.28867513	4	Connecticut	1709242	125	493416	271
0.11785113	9	New Jersey	4160165	359	490280	272
0.03636965	28	New York	13479142	1302	490232	273
0.18257419	6	Virginia	2677773	214	488892	274
0.22360680	5	Mississippi	2183796	181	488312	275
0.15430335	7	Wisconsin	3137587	266	484140	276
0.04879500	21	Pennsylvania	9900180	954	483079	277
0.15430335	7	Georgia	3123723	263	482091	278
0.06063391	17	Illinois	7897241	755	478841	279
0.13363062	8	North Carolina	3571623	310	477278	280
0.06900656	15	Ohio	6907612	656	476671	281
0.06900656	15	California	6907387	651	476655	282
0.07412493	14	Texas	6414824	603	475498	283
0.03509312	29	New York	13479142	1352	473025	284
0.18257419	6	Iowa	2538268	227	463422	285

# EXHIBIT 1

A large rectangular area containing horizontal lines, resembling a ruled page or a form template. The lines are evenly spaced and extend across the width of the page. There are three black circular marks on the left side of the page, one near the top, one in the middle, and one near the bottom, which appear to be punch holes or registration marks.

# EXHIBIT 1

0.04652421	22	Pennsylvania	9900180	1004	460588	286
0.40824829	3	Colorado	1123206	78	438247	287
0.13363062	8	Indiana	3427796	312	458059	288
0.08703983	12	Michigan	5256106	508	457485	289
0.03390318	39	New York	13479142	1402	456966	290
0.10540926	19	Massachusetts	4316721	411	455022	291
0.70710678	2	South Dakota	642961	45	454642	292
0.70710678	2	North Dakota	641935	46	453917	293
0.05716620	18	Illinois	7897241	805	451455	294
0.15430335	7	Tennessee	2915841	267	449924	295
0.11785113	9	Missouri	3784664	365	446027	296
0.06454972	16	Ohio	6907612	706	445884	297
0.06454972	16	California	6907387	701	445870	298
0.40824829	3	Oregon	1889684	90	444862	299
0.06900656	15	Texas	6414824	653	442665	300
0.03279129	31	New York	13479142	1452	441998	301
0.04445542	23	Pennsylvania	9900180	1054	440117	302
0.15430335	7	Kentucky	2845627	273	439090	303
0.10540926	19	New Jersey	4160165	409	438520	304
0.15430335	7	Alabama	2832961	272	437135	305
0.22360680	5	Arkansas	1949387	183	435896	306
0.18257419	6	Louisiana	2163880	219	431583	307
0.15430335	7	Minnesota	2792300	271	430861	308
0.03175003	32	New York	13479142	1502	427963	309
0.05407381	19	Illinois	7897241	855	427034	310
0.19257419	6	Oklahoma	2336434	226	426973	311
0.22360680	5	West Virginia	1901974	184	425294	312
0.22360680	5	South Carolina	1899804	174	424909	313
0.22360680	5	Florida	1897414	157	424275	314
0.04256283	24	Pennsylvania	9900180	1104	421380	315
0.11785113	9	North Carolina	3571623	360	420920	316
0.08906498	13	Michigan	5256106	558	420825	317
0.13363062	8	Wisconsin	3137587	316	419278	318
0.06063391	17	Ohio	6907612	756	418836	319
0.06063391	17	California	6907387	751	418822	320
0.13363062	8	Georgia	3123723	313	417425	321
0.03077287	33	New York	13479142	1552	414792	322
0.06454972	16	Texas	6414824	703	414075	323
0.15430335	7	Virginia	2677773	264	413189	324
0.09534626	11	Massachusetts	4316721	461	411583	325
0.22360680	5	Maryland	1821244	168	407243	326
0.05329892	20	Illinois	7897241	905	406120	327
0.04082483	25	Pennsylvania	9900180	1154	404173	328
0.11785113	9	Indiana	3427796	362	403970	329
0.22360680	5	Kansas	1801028	182	402722	330
0.02985407	34	New York	13479142	1602	402407	331
0.10540926	19	Missouri	3784664	415	398939	332
0.18257419	6	Mississippi	2183796	231	398705	333
0.09534626	11	New Jersey	4160165	459	396656	334
0.70710678	2	Montana	559456	44	395595	335
0.05716620	18	Ohio	6907612	806	394882	336
0.05716620	18	California	6907387	801	394869	337
0.15430335	7	Iowa	2538268	277	391663	338
0.02985407	34	New York	13479142	1652	390741	339
0.13363062	8	Tennessee	2915841	317	389646	340
0.07412493	14	Michigan	5256106	608	389608	341
0.70710678	2	Utah	550310	36	389128	342
0.06063391	17	Texas	6414824	753	388956	343
0.03222223	26	Pennsylvania	9900180	1204	388317	344
0.22360680	5	Washington	1736191	170	388224	345

# EXHIBIT 1

A large rectangular area containing horizontal lines, resembling a ruled page or a form template. The lines are evenly spaced and extend across the width of the page. There are three black circular marks on the left side of the page, positioned at approximately the top, middle, and bottom of the ruled area.

# EXHIBIT 1

0.04879500	21	Illinois	7897241	955	385346	346
0.22366690	5	Connecticut	1709242	175	382198	347
0.13363062	8	Kentucky	2845627	323	380263	348
0.28867513	4	Nebraska	1315834	135	379849	349
0.02817181	36	New York	13479142	1702	378732	350
0.13363062	8	Alabama	2832961	322	378570	351
0.10540926	10	North Carolina	3571623	410	376482	352
0.70710678	2	New Mexico	531818	37	376052	353
0.08703883	12	Massachusetts	4316721	511	375722	354
0.63774257	27	Pennsylvania	9900180	1254	373658	355
0.05407381	19	Ohio	6907612	856	373521	356
0.05407381	19	California	6907387	851	373509	357
0.13363062	8	Minnesota	2792300	321	373117	358
0.70710678	2	Idaho	524873	41	371141	359
0.11785113	9	Wisconsin	3137587	366	369768	360
0.02739983	37	New York	13479142	1752	369326	361
0.11785113	9	Georgia	3123723	363	368134	362
0.04652421	22	Illinois	7897241	1005	367413	363
0.05716620	18	Texas	6418824	803	366711	364
0.15430335	7	Louisiana	2363880	269	364755	365
0.06908656	15	Michigan	5256106	658	362706	366
0.08703883	12	New Jersey	4160165	509	362096	367
0.10540926	10	Indiana	3427794	412	361321	368
0.09534626	11	Missouri	3784664	465	360854	369
0.15430335	7	Oklahoma	2356434	276	360520	370
0.03636965	28	Pennsylvania	9900180	1304	360066	371
0.02666904	38	New York	13479142	1802	359476	372
0.13363062	8	Virginia	2677773	314	358832	373
0.18257419	6	Arkansas	1949387	233	358908	374
0.05129892	20	Ohio	6907612	906	354353	375
0.05129892	20	California	6907387	901	354341	376
0.70710678	2	Arizona	499261	29	353031	377
0.04448542	23	Illinois	7897241	1055	351075	378
0.02597622	39	New York	13479142	1852	350137	379
0.70710678	2	New Hampshire	491524	42	347960	380
0.03509312	29	Pennsylvania	9900180	1354	347428	381
0.18257419	6	West Virginia	1901974	234	347251	382
0.05407381	19	Texas	6418824	853	346874	383
0.18257419	6	South Carolina	1899804	224	346855	384
0.18257419	6	Florida	1897414	207	346419	385
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0.08066408	13	Massachusetts	4316721	561	345614	387
0.11785113	9	Tennessee	2915841	367	343635	388
0.02531848	40	New York	13479142	1902	341271	389
0.09534626	11	North Carolina	3571623	460	340541	390
0.04454972	16	Michigan	5256106	708	339280	391
0.13363062	8	Iowa	2538268	327	339190	392
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0.04879500	21	California	6907387	951	337046	394
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0.11785113	9	Alabama	2832961	372	333868	399
0.08066408	13	New Jersey	4160165	559	333089	400
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0.18257419	6	Maryland	1821244	218	332512	402
0.10540926	10	Wisconsin	3137587	416	330731	403
0.08703883	12	Missouri	3784664	515	329413	404
0.10540926	10	Georgia	3123723	413	328269	405

EXHIBIT 1

The image shows a large rectangular frame, likely representing a page from a binder. The frame is defined by a thick black border. Inside the frame, there are numerous horizontal lines spaced evenly down the page, suggesting a ruled or lined document. On the left side of the frame, there are three solid black circles, which represent binder holes. The circles are positioned at approximately the top, middle, and bottom of the page's vertical extent. The overall appearance is that of a blank, lined page from a binder, with the title 'EXHIBIT 1' centered at the top.



# EXHIBIT 1

0.11785113	9	Minnesota	2792300	371	329076	406
0.05129892	20	Texas	6414824	903	329874	407
0.18257419	6	Kansas	1801028	232	328821	408
0.09534626	11	Indiana	3427796	462	326829	409
0.02409913	42	New York	13479142	2002	324822	410
0.03279129	31	Pennsylvania	9900180	1454	324640	411
0.28967513	4	Colorado	1123206	128	324242	412
0.04082483	25	Illinois	7897241	1155	322404	413
0.04652421	22	Ohio	6907612	1006	321371	414
0.04652421	22	California	6907387	1001	321361	415
0.07412493	14	Massachusetts	4316721	611	319977	416
0.06063391	17	Michigan	5256106	758	318698	417
0.02353104	43	New York	13479142	2052	317178	418
0.18257419	6	Washington	1736191	220	316984	419
0.13363062	8	Louisiana	2363880	319	315887	420
0.11785113	9	Virginia	2677773	364	315579	421
0.28867513	4	Oregon	1089694	130	314565	422
0.03175003	32	Pennsylvania	9900180	1504	314331	423
0.04879500	21	Texas	6414824	953	313011	424
0.13363062	8	Oklahoma	2336434	326	312219	425
0.18257419	6	Connecticut	1709242	225	312063	426
0.08703883	12	North Carolina	3571623	510	310870	427
0.02299802	44	New York	13479142	2102	309896	428
0.03922323	26	Illinois	7897241	1205	309755	429
0.07412493	14	New Jersey	4160165	609	308372	430
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0.04445542	23	Ohio	6907612	1056	307081	432
0.04445542	23	California	6907387	1051	307071	433
0.03077287	33	Pennsylvania	9900180	1554	304657	434
0.08006408	13	Missouri	3784664	565	303016	435
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0.15430335	7	Arkansas	1949387	283	300797	0
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0.11785113	9	Iowa	2538268	377	299138	0
0.10540926	10	Alabama	2832961	422	298620	0
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0.10540926	10	Minnesota	2792300	421	294334	0

# EXHIBIT 1

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# EXHIBIT 1

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Solicitor  
Washington

M. 31039.

November 7, 1940

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

My opinion has been requested as to the method of determining who are "Indians not taxed" within the meaning of the Constitution and the Fourteenth Amendment thereto. Article I, section 2, clause 3 of the Constitution provides that:

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. \* \* \*"

The expression, excluding Indians not taxed, is found in the Fourteenth Amendment, where it deals with the same subject under the new conditions produced by the emancipation of the slaves. It appears therein as follows:

"Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. \* \* \*"

The meaning of this phrase as it was used in the Constitution must be deduced largely from our knowledge concerning the purpose of

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the clause and the relationship which the Indian tribes bore to the Federal Government at the time of the adoption of the Constitution. In the debates of the Federal convention of 1787 we find no discussion which would throw any direct light upon the meaning of the phrase nor do we, upon examination of the writings of Madison and the other participants in the convention, find other than the merest reference to the existence of such a phrase. On the other hand, the problems of apportionment of representatives and direct taxes were the cause of great debate and extensive writings. In view of this, it is only reasonable to assume that the delegates to the convention were so clearly cognizant of the meaning of the phrase "Indians not taxed" as to render any consideration of it unnecessary.

In the debates over the apportionment of representatives in the lower house two principal methods were urged with great vigor. One would have apportioned the representation of the States according to the relative property of each, thus making property the basis of representation. This commended itself to some persons, because it would introduce a salutary check into the legislature in regard to taxation, by securing in some measure, an equalization of the public burdens by the voice of those who were called to give more towards the common contribution. Story on the Constitution (5th ed., p. 465); 4 Elliot's Debates (Yate's Minutes), 68, 69; Journal of Convention, 11th June, 111; Id. 5th July, 158; Id. 11th July, 169. It reflected

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a favorite theory of the American people that taxation ought to go hand in hand with representation. But, since an apportionment based upon property did not commend itself for a variety of reasons to the convention, it was dropped in favor of an apportionment, based on numbers, which secured at the same time against unequal and oppressive direct taxation. This was accomplished by providing that direct taxes, as representation, should be apportioned on a basis of numbers. The theory underlying this method of apportionment was that the number of people in each State should be the standard for regulating the proportion of those who are to represent the people of each State. The Federalist, No. 54.

The apparent intention of the convention was that representation in the lower branch of the Congress be apportioned according to the number of people who constituted the community of people of the United States. This community included non-citizens, among whom were aliens, persons bound to service, Indians subject to the laws of the Government and slaves, as well as citizens. Since all were within the United States and were subject to the laws of the Government of the United States, all were considered as entitled to be represented in that Government. Indians, members of sovereign and separate communities or tribes were outside of the community of people of the United States even though they might be located within the geographical boundaries

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of a State. Their status was well described by Chancellor Kent when in 1823 he said:

"Though born within our territorial limits, the Indians are considered as born under the dominion of their tribes. They are not our subjects, born within the purview of the law, because they are not born in obedience to us. They belong, by birth, to their own tribes, and these tribes are placed under our protection and dependent upon us; but still we recognize them as national communities. In this situation we stood in relation to each other, at the commencement of our revolution. The American congress held a treaty with the six nations, in August, 1775, in the name and on behalf of the United Colonies, and a convention of neutrality was made between them. 'This is a family quarrel between us and old England,' said the agents, in the name of the colonies; 'you Indians are not concerned in it. We desire you to remain at home, and not join either side.' Again, in 1776, congress tendered protection and friendship to the Indians, and resolved, that no Indians should be employed as soldiers in the armies of the United States, before the tribe, to which they belonged, should, in a national council, have consented thereunto, nor then, without the express approbation of congress. What acts of government could more clearly and strongly designate these Indians as totally detached from our bodies politic, and as separate and independent communities." Goodell v. Jackson, 20 Johns. 693, 711.

To describe these Indians who were not a part of the community of people of the United States the phrase "Indians not taxed" was chosen. The reasons for the choice of the particular phrase are easily surmised. It reflected, first, the prevalent notion that taxation and representation should go hand in hand. It reflected secondly the fact that in a less complex system of government taxation is the principal criterion of governmental authority. No more significant attribute of

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the condition of the Indian living in his separate and independent community could have been chosen. Being outside the control of either State or Federal Government, he was an "Indian not taxed;" and since he did not bear the financial burden of the Government, he was not entitled to representation therein. United States v. Kagama, 118 U. S. 375, 378.

The condition of these Indians as a people separate from the community of people of the United States had not changed by the time of the adoption of the Fourteenth Amendment. Their exemption from the application of State laws had been affirmed by the Supreme Court on more than one occasion. Worcester v. Georgia, 6 Pet. 515; The Kansas Indians, 5 Wall. 737. In treaty and statute their character as a separate, independent people had been observed by the Federal Government. As said by Chief Justice Marshall:

"From the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians, which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States." Worcester v. Georgia, 6 Pet. 515, 556.

At the same session of the Congress which approved the Fourteenth Amendment and which submitted it to the States for adoption, the Civil

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Rights Bill of 1866 was passed. Act of April 9, 1866 (14 Stat. 27). It provided that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States."

In the bill as originally reported from the Judiciary Committee there were no words excluding "Indians not taxed" from the citizenship proposed to be granted. Attention being called to this fact, the friends of the measure disclaimed any purpose to make citizens of those who were in tribal relations with governments of their own. In order to meet that objection, while conforming to the wishes of those desiring to invest with citizenship all Indians permanently separated from their tribes, and who, by reason of their residence away from their tribes, constituted a part of the people under the jurisdiction of the United States, Mr. Trumbull, who reported the bill, modified it by inserting the words "excluding Indians not taxed." What was intended by that modification appears from the following language used by him in debate:

"\* \* \* Of course we cannot declare the wild Indians who do not recognize the Government of the United States at all, who are not subject to our laws, with whom we make treaties, who have their own regulations, whom we do not pretend to interfere with or punish for the commission of crimes one upon the other, to be the subjects of the United States in the sense of being citizens. They must be excepted. The Constitution of the United States excludes them from the enumeration of the population of the United States, when it says that Indians not taxed are to be excluded. It has occurred to me that perhaps an amendment would meet the views of all gentlemen, which used these constitutional words, and



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said that all persons born in the United States, excluding Indians not taxed, and not subject to any foreign Power, shall be deemed citizens of the United States." (Cong. Globe, 1st sess., 39th Cong., p. 527.)

The understanding of the Congress as to the meaning of the phrase as it appeared in the Constitution was expressed by Mr. Trumbull: "It is a constitutional term used by the men who made the Constitution itself to designate \* \* \* a class of persons who were not a part of our population." (*Ibid.*, p. 572.)

It is not surprising then to find the following statement in a report of the Judiciary Committee to the Senate of the United States on the 14th of December, 1870, in obedience to an instruction to inquire as to the effect of the Fourteenth Amendment upon the treaties which the United States had with various Indian tribes of the country:

"During the war slavery had been abolished, and the former slaves had become citizens of the United States; consequently, in determining the basis of representation in the fourteenth amendment, the clause 'three-fifths of all other persons' is wholly omitted; but the clause 'excluding the Indians not taxed' is retained.

"The inference is irresistible that the amendment was intended to recognize the change in the status of the former slave which had been effected during the war, while it recognizes no change in the status of the Indians. They were excluded by the original constitution, and in the same terms are excluded by the amendment from the constituent body, the people." (Underscoring supplied.)

The exclusion of the Indians from the constituent body, the people, was reflected too in their exclusion from the operation of

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both State and Federal tax laws. As at the time of the adoption of the Constitution these Indians were not subject to taxation, so too were they not subject to taxation at the time of the adoption of the Fourteenth Amendment. This attribute of their status remained the same and it was retained as descriptive of a status which likewise had remained the same.

Though the States may have desired to tax the Indians within their borders and though they did, on more than one occasion, attempt it, they were effectively precluded from doing so by decisions of the Supreme Court. The Kansas Indians, 5 Wall. 737; The New York Indians, 5 Wall. 761. The effect of these decisions and of other decisions which enunciated the doctrine that Indian affairs are subject to the control of the Federal Government rather than that of the States (Worcester v. Georgia, 6 Pet. 515), has been to exclude Indians while in their separate communities or on reservations from the application of State laws except as the Federal Government may confer upon the States power over certain subjects.

Until recent years the Federal Government, though it possessed the power to tax the Indians, never exercised it. On the contrary, it had always evidenced throughout its negotiations with them an intention to exempt them from taxation. Surveying the treaties made with the Indians, one finds both guarantees of total exemption (Treaty of September 29, 1817, with the Wyandots and others, 7 Stat. 160) and

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guarantees that the Indians should be forever undisturbed in the peaceful possession of their domain (Treaty of May 6, 1828, with the Cherokee Nation, 7 Stat. 311). This expressed intention is particularly significant in view of the fact that contemporaneously with the making of these treaties the Federal Government was establishing a comprehensive system of internal revenue applicable to all people resident in the United States.

As early as 1798 the Federal Government had imposed a direct tax upon real estate and slaves. Act of July 14, 1798 (1 Stat. 597). In the summer of 1813 a direct tax was again assessed on real estate and slaves and Congress laid duties on carriages, a duty on refined sugar, a license tax upon distillers of spirituous liquors, stamp duties, an auction tax, and license tax upon retailers of wines and spirituous liquors. (Dewey, Financial History of the United States, page 139.) By 1862 so many internal revenue taxes were being laid by the Federal Government that one writer concisely described the revenue measure of that year as follows:

"Wherever you find an article, a product, a trade, a profession, or a source of income, tax it." (Wells Practical Economics, New York, 1885.)

In 1861 the first Federal income tax was authorized to be levied "upon the annual income of every person residing in the United States, \* \* \* derived \* \* \* from any \* \* \* source whatever." Act of August 5,

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1861 (12 Stat. 292, 309). The tax was increased in 1862 and in 1865, decreased in 1867 and finally abolished in 1872. (Dewey, Financial History of the United States, page 305.)

What is of special significance is that in no instance were any of these numerous taxes applied to Indians living in their separate tribal communities, even though, as in the case of the income tax, it was by its provisions intended to apply to "every person residing in the United States." The reason for the non-application of such a tax to Indians was the same as the reason for the non-application of all laws of general application to Indians. They were considered a people separate from the community of people of the United States and thus it was not to be inferred, in the absence of clear and unambiguous language to the contrary, that Congress intended to subject them to a law which by its terms applied to every person residing in the United States. Elk v. Wilkins, 112 U. S. 94. The extent of Indian exemption from taxation and the reasons therefor are expressed in an opinion of the Attorney General rendered in 1870:

"The questions which seem to me to be proper for my consideration at this time, upon the case and facts as stated, are contained in the third and fourth questions so propounded by the Commissioner. These two questions may very well be condensed into the following: Whether cotton raised in the Choctaw nation, by an Indian of that nation, can be taxed in any collection district of the United States outside of the Choctaw country whilst in transitu and in the hands of the original owner, or in any collection district in which it may be sold by the original owner?"

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"Our internal revenue system has not in any instance or for any purpose been extended over the Indian country.

"Collection districts have been extended over all the States of the Union and over all the organized Territories. But as to Indian territory held under treaty between the separate tribes and the United States, whether that Indian territory is situated within the limits of a State of this Union or an organized Territory of the Union, or, as is the case with the Choctaw territory, lying outside of any State or any organized Territory of the United States, there is no instance in which it has been laid out into districts for the collection of internal revenue.

\* \* \* \* \*

"I am clearly satisfied that the omission in the various internal revenue laws to provide for the organization of collection districts over the Indian territory was not fortuitous or accidental, and that it was the settled purpose of Congress not to subject the persons or the productions of Indians, existing under their regular tribal associations, to liability for any tax imposed by the acts. If the provisions as to the specific article of cotton apply to Indian territory, I see no reason why all the other forms of tax provided for in these acts are not equally applicable to Indian territory.

"We must consequently, make them subject to taxation in reference to stamps, income, and descents in succession, as well as for other purposes.

"The intent of Congress not to include them in any sort of taxation I think is clear enough from the language of the acts themselves. But all other considerations which apply to them equally forbid this idea of federal taxation. Their rights are defined by treaties. They have some of the characteristics of independent sovereignties.

"They are in a state of tutelage and protection under the United States. The general laws of the United States, in which they are not mentioned, are never understood to apply to them. Even when these Indians and their territory are situated within the bounds of a State of the Union, they are not subject to State taxation.

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"In recent cases before the Supreme Court of the United States, at its December term, 1866, speaking of the condition of Indian tribes under treaty with the United States, the court use this language: 'The object of the treaty was to hedge the lands around with guards and restrictions, so as to preserve them for the permanent homes of the Indians.

"In order to accomplish this object, they must be relieved from every species of levy, sale, and forfeiture; from a levy and sale for taxes, as well as the ordinary judicial levy and sale.'

"Again the court say, in reference to the tribal association of the Shawnees, that 'they are a "people distinct from others," capable of making treaties, separated from the jurisdiction of Kansas, and to be governed exclusively by Government of the Union. If under the control of Congress, from necessity there can be no divided authority. If they have outlived many things, they have not outlived the protection afforded by the Constitution, treaties, and laws of Congress. It may be that they cannot exist much longer as a distinct people in the presence of the civilization of Kansas, "but until they are clothed with the rights and bound by all the duties of citizens" they enjoy the privilege of total immunity from State taxation.' And again 'As long as the United States recognize their national character, they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State law.'

"Such is the well established policy of the United States with regard to the total exemption of the Indian tribes from State taxation. The tenor of all the treaties shows that the idea of subjecting them to taxation by the General Government was never entertained, and certainly hitherto it has never been attempted.

"I am therefore clearly of opinion, that the particular cotton in question was not liable to taxation under our internal revenue laws, either while in the Indian country or in transit through any collection district of the United States, or in the collection district where it may have been found or may have been sold." (12 Op. Atty. Gen. 209-210, 213-215.)

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The Supreme Court in a decision rendered subsequent to the quoted opinion of the Attorney General entertained a contrary opinion concerning the application of a Federal excise tax to tobacco owned by an Indian in the Cherokee Nation. The Cherokee Tobacco, 11 Wall. 616. The value of the case as authority has, however, been seriously questioned by the Supreme Court in a later decision (United States v. Forty-Three Gallons of Whiskey, 108 U. S. 491), wherein a unanimous court emphasized the fact that the decision in The Cherokee Tobacco was a four-to-two decision with three members of the court not hearing argument.

Between the date of the Fourteenth Amendment and the present, the Indian's status has undergone a marked change. This change is itself no more than a reflection of a changed attitude on the part of Congress and the Court. This attitude has found expression, first, in legislation which expressly subjected Indians to particular laws of general application, secondly, in the law granting them citizenship and, therefore, the same civil and political rights as other citizens, and, thirdly, in the recent recognition on the part of the Supreme Court that Indians are included within the application of a Federal revenue law which by its terms applies to every person in the United States.

Of these three expressions of a changing attitude the first is perhaps best exemplified by two statutes, one passed in 1885, the other in 1887. Under the 1885 statute it was made a Federal crime for one

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Indian to murder another Indian on an Indian reservation (act of March 3, 1885, 23 Stat. 385, 18 U. S. C. A. 548). This law also prohibited manslaughter, rape, assault with intent to kill, arson, burglary, and larceny. In later years notorious cases of robbery, incest, and assault with a dangerous weapon resulted in the piecemeal addition of these three offenses to the Federal Code of Indian Crimes (act of March 4, 1909, 35 Stat. 1151; act of June 28, 1932, 47 Stat. 336). The 1887 statute, known as the General Allotment Act, provided, among other things, that when tribal lands have been individualized the individual parcels shall be inherited in accordance with the laws of the State (act of February 8, 1887, 24 Stat. 388, 25 U. S. C. A. 331, et seq.).

The citizenship act of 1924 gave fuller and more decisive expression to the rapidly changing attitude toward these once alien people. All Indians born in the United States are by that act declared to be citizens of the United States and of the State in which they reside. As citizens they are entitled to the rights of suffrage guaranteed by the Fifteenth Amendment and they are likewise entitled to hold public office, to sue, to make contracts, and to enjoy all the civil liberties guaranteed to their fellow citizens. Brown, *The Indian Problem and the Law*, 1930, 39 Yale L. J. 307, 314, and cases cited.

A final significant change in attitude, which has a particular bearing upon the question now in issue, was effectuated by the Supreme



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Court in a decision rendered in 1935. Superintendent v. Commissioner, 295 U. S. 418. Until that year Attorneys General and courts had concluded as the Attorney General did in 1870 that Federal revenue laws did not apply to those Indians who were under the protection of the Federal Government (34 Op. Atty. Gen. 275 (1924); 34 Op. Atty. Gen. 302 (1924); 34 Op. Atty. Gen. 439 (1925); 35 Op. Atty. Gen. 1 (1925); Blackbird v. Commissioner, 38 F. (2d) 976 (1930)). By its recent decision the Supreme Court has so far modified that time-honored principle as to permit the application of the general Federal income tax law to the income of individual Indians. That the decision represents a fundamental change in attitude is illustrated by the fact that the income tax law of 1928 applied by its terms as did the income tax law of 1861 to the "income of every person residing in the United States" and to income "from whatever source derived." In 1861, however, Indians were not considered part of the people of the United States, whereas, in 1935, according to the Supreme Court, they were.

If the fact that all Indians are today subject to Federal taxation satisfies the criterion established by the phrase "Indians not taxed," then all are certainly entitled to be counted in the apportionment of representatives. Whether this criterion has been satisfied depends upon the determination of two questions which may be formulated as follows:

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1. Does the phrase "Indians not taxed" mean Indians not actually paying taxes or Indians not subject to taxation?
2. Does the phrase "Indians not taxed" refer to a particular taxing authority?

These two questions will be treated in order.

- I Does the phrase "Indians not taxed" mean Indians not actually paying taxes or Indians not subject to taxation?

If the phrase means Indians not actually paying taxes it indicates an intention on the part of the Federal convention to consider propertied Indians as entitled to become a part of the community of people of the United States and non-propertied Indians as not entitled to become a part of that community.

The fallacy of such a construction cannot be more clearly demonstrated than by analogy to the Indians who resided within the States and were subject to the laws of the Government at the time of the adoption of the Constitution. They are the so-called Indians taxed as differentiated from "Indians not taxed." If the phrase meant Indians not paying taxes, only those Indians within a State who actually paid taxes would have been counted for apportionment purposes. In other words, only the wealthy or propertied Indians would have been counted. There is, however, no indication that these Indians were regarded differently than their fellow whites in so far as apportionment was concerned. The whites were counted regardless of

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whether they paid taxes as were also the Indians. The distinction between these two groups and the "Indians not taxed" group was that the former were subject to the tax laws of the Government whereas the latter were not.

This seems clearly to have been the understanding of the Bureau of the Census. In a "Report on Indians Taxed and Indians Not Taxed in the United States at the Eleventh Census: 1890," I find the following statement:

"Indians taxed and Indians not taxed are terms that can not be rigidly interpreted, as Indian citizens, like white citizens, frequently have nothing to tax. Indians subject to tax and Indians not subject to tax might more closely express the distinction. \* \* \*

\* \* \* \* \*

"It is to be constantly borne in mind that Indians living scattered among whites were counted in the general census, while Indians on reservations, under the care of the government, the Six Nations of New York and the Five Civilized Tribes of the Indian territory, were not counted in the general census but in a special Indian census."

As recently as the census of 1930 the Bureau of the Census again reiterated its understanding of the phrase "Indians not taxed" as meaning "Indians not subject to taxation."

This interpretation of the phrase is not only the reasonable one but is, in addition, the only interpretation which can be practically administered. If the phrase were taken to mean Indians actually paying taxes, the census enumerator would be faced with a problem of

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determining at what point between census periods the payment of a tax entitled an Indian to be counted. For example, suppose a particular Indian had paid a tax in 1932 but had paid no other taxes between 1932 and 1940. Suppose in fact he had paid the tax in 1932 and then returned to his reservation and remained there continuously from 1932 until the census enumeration of 1940. Or, suppose that though a tax had been levied upon the property of this Indian he was not obliged to pay the tax until 10 days after the date of the enumeration. These hypothetical questions are but a few of the many which would arise to plague the census enumerator in the event the phrase were construed to mean Indians actually paying taxes. In order to administer the phrase as thus interpreted it would be necessary in view of the many problems that would arise to read into the phrase a great variety of implications. This might be countenanced only if such an interpretation reflected the object of the Constitution but here the object is not in doubt. It is reflected in the circumstances which prevailed at the time of the adoption of the Constitution. It has been administratively interpreted in the light of those circumstances and it has been so understood by subsequent legislators.

In the debate in Congress on the Civil Rights Bill, the objection was made that the amendment to the bill "excluding Indians not taxed" from citizenship would require an Indian to have property upon which

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a tax was levied before he could become a citizen. To this objection

Mr. Trumbull, author of the amendment, replied.

"\* \* \* The Senator from Missouri understands it to be a property qualification to become a citizen. Not at all. It is a constitutional term used by the men who made the Constitution itself to designate \* \* \* a class of persons who were not a part of our population. \* \* \*

"\* \* \* It is not intended as a property qualification. That is not the meaning of it. The Senator wants to know why, if an Indian cannot be a citizen without being taxed, should a white man or a negro be a citizen without being taxed. If the negro or white man belonged to a foreign Government he would not be a citizen; we do not propose that he should be; and that is all that the words 'Indians not taxed,' in that connection, mean." (Cong. Globe, 39th Cong., 1st sess., p. 572.)

Significantly I find the following paragraph in President Johnson's message to Congress vetoing the Civil Rights Bill:

"By the first section of the bill, all persons born in the United States, and not subject to any foreign Power, excluding Indians not taxed, are declared to be citizens of the United States. This provision comprehends the Chinese of the Pacific States, Indians subject to taxation, the people called Gypsies, as well as the entire race designated as blacks, people of color, negroes, mulattoes, and persons of African blood. Every individual of those races, born in the United States, is by the bill made a citizen of the United States. It does not purport to declare or confer any other right of citizenship than Federal citizenship. \* \* \*" (Underscoring supplied.) (Cong. Globe, 1st sess., 39th Cong., p. 1679.)

To him, as to Justice Harlan in the case of Elk v. Wilkins, 112 U. S.

94, "Indians not taxed" meant Indians not subject to taxation.

In view of the foregoing, I am clearly of the opinion that

"Indians not taxed" means Indians not subject to taxation.

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II Does the phrase "Indians not taxed" refer to a particular taxing authority?

It has been suggested that the phrase "Indians not taxed" refers only to taxation by the States. I find that neither reason nor decision supports this conclusion.

The suggested construction serves to restrict the meaning of the phrase. As such it violates a cardinal principle of constitutional construction that words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted. Pollock v. Farmers' Loan and Trust Co., 158 U. S. 601, 618. The restriction might be countenanced only if it were in consonance with the object of the Constitution. Gibbons v. Ogden, 9 Wheat. 1. It is not. As we have seen, "Indians not taxed," was a phrase used to describe individuals who were outside the community of people of the United States and hence not entitled to be counted in the apportionment of representatives. The object was not to exclude a particular group from representation but to include all who could reasonably be denominated members of this community of people. Thus, express provision was made for the inclusion of subject Indians, as well as of slaves and persons bound to service for a term of years. If the phrase is restricted to taxation by the State it means that unless a reservation Indian subjects himself to the tax laws of the State, either by settling or by purchasing property within its jurisdiction, he cannot be regarded as a member of

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the community of people of the United States, even though he is a citizen and as such entitled to the same civil and political status as other citizens.

The restricted interpretation can be founded only upon the argument that the State has the exclusive right to determine who within its borders shall be counted among its numbers for apportionment purposes. The argument, however, is fallacious. It confuses a Federal rule for the determination of the aggregate number of representatives with a State right to prescribe the qualifications of those who would vote for the representatives. As observed by the Federalist:

"It is a fundamental principle of the proposed constitution, that as the aggregate number of representatives allotted to the several States is to be determined by a federal rule, founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each state is to be exercised by such part of the inhabitants as the State itself may designate." (Underscoring supplied.) The Federalist, No. 54.

The power to recognize a person as a member of the community of people of the United States resides in the Federal Government as well as in the States. In fact, it resides, in the most important instance, exclusively within the power of the Federal Government. I refer to the admission and naturalization of aliens. The Federal Government may admit aliens and may provide for their becoming citizens of the United States as well as of the States wherein they reside. Thus, by Federal action alone, an individual may be recognized as a member

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of the community of people of the United States, and as an inhabitant of a State entitled to be counted among its numbers for apportionment purposes. Where, as in this case, the Constitution of the United States directs that all people comprising the community of people of the United States shall be counted for the purpose of apportioning representatives, and where, as here, the criterion for determining whether a person is a member of the community of people of the United States is made to depend on whether he is or is not subject to taxation, and where it has been shown that the Federal Government has the power to admit a person to the community of the people of the United States and of the State, it is only reasonable to assume in the absence of a contrary constitutional provision or legislative intent, that the phrase "Indians not taxed" refers to the exercise of Federal as well as State power.

In the Constitution, provision is made for the establishment of a system of internal revenue by the Federal Government. Had there been any expression or intention on the part of the Federal Government to subject Indians to taxation at that time or had there been any indication that Indians were within the scope of the taxing jurisdiction of the Federal Government, we should have cause to believe that only State taxation was referred to by the phrase "Indians not taxed." For if the phrase referred to Federal taxation as well as State taxation,



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and if at the time of the adoption of the Constitution, Indians were subject to Federal taxation, the phrase would be meaningless as there would have been no "Indians not taxed." But, as I have pointed out earlier, the exact contrary was the case. The treaties made by the Federal Government with the Indian tribes guaranteed them the peaceful and uninterrupted possession of their domain. Many of the treaties guaranteed total exemption from taxation. And, though the Federal Government passed both direct and indirect taxes, they were not considered as having any application to Indians living in their tribal communities.

In view of the foregoing I can only conclude that the phrase "Indians not taxed" refers to Federal as well as to State taxation. The question which has been propounded to me may then be formulated as follows: What Indians are not subject to taxation?

Since all Indians are today subject to taxation by the Federal Government (Superintendent v. Commissioner, 295 U. S. 418), there are no longer Indians not subject to taxation. The criterion for their recognition as members of the community of people of the United States has been satisfied and they are all entitled to be counted in the apportionment of representatives. That some may still be not subject to State taxes does not alter the conclusion. The position of such Indians is analogous in this regard to that of members of the United

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States army who while stationed at a military reservation within a State are counted inhabitants of the State for apportionment purposes, notwithstanding the fact that they are not subject to the tax laws of the State. I perceive no reason in either the Constitution or the apportionment process for assuming that Indians should be regarded differently.

Respectfully,

(Sgd) Nathan R. Margold,  
Solicitor.

Approved: November 7, 1940

(Sgd) W. C. Mendenhall,  
Acting Assistant Secretary.

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October 15, 1940

## Indians Not Taxed As Deducted for Apportionment Formulations

	1890	1900	1910	1920	1930
United States	189,368	129,818	71,879	63,670	194,722
Alabama	704	---	---	---	8
Arizona	28,489X	94,644X	24,129X	24,408	46,198
Arkansas					38
California	5,127	1,549	958	630	2,010
Colorado	985	597	453	459	942
Connecticut					6
Delaware					
Florida					80
Georgia					50
Idaho	4,084	2,297	2,154	1,484	7,496
Illinois					366
Indiana					23
Iowa	297				519
Kansas	946				1,501
Kentucky					14
Louisiana					
Maine					5
Maryland					4
Massachusetts					16
Michigan					273
Minnesota	8,202	1,768	1,332	1,469	12,370
Mississippi					1,667
Missouri					257
Montana	10,546	10,746	9,715	7,328	12,877
Nebraska	1,532				2,840
Nevada	1,557	1,665	1,582	1,527	4,662
New Hampshire					1
New Jersey					15
New Mexico	6,490X	2,937X	12,318X	6,922	27,335
New York	5,318	1,711	4,280	4,240	99
North Carolina					7,002
North Dakota	7,980	4,692	2,553	2,126	7,505
Ohio					64
Oklahoma	64,446X	57,380X			13,818
Oregon	3,713				3,407
Pennsylvania	98				51
Rhode Island					
South Carolina					5
South Dakota	12,072	12,970	7,912	5,708	19,844
Tennessee					59
Texas					114
Utah	2,648X	1,472	1,497	1,008	2,106
Vermont					
Virginia					22
Washington	7,076	2,231	2,056	2,026	11,273
West Virginia					6
Wisconsin	6,098	1,037	1,007	762	2,185
Wyoming	1,801		1,217	315	1,935
	87,135	42,517	57,425		

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## Priority List for Apportionment 1940 Populations - Method of Equal Proportions

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
1	(Note: The first 48			97	1,544,177	Miss.	2
.	Representatives are			98	1,527,631	Pa.	7
.	assigned one to each			99	1,517,307	Mich.	4
to	State to fulfill the			100	1,458,109	N. C.	3
.	constitutional re-			101	1,441,832	Ill.	6
.	quirement that each			102	1,434,398	Texas	5
.	State have at least			103	1,420,826	N. Y.	10
48	one Representative)			104	1,399,392	Ind.	3
				105	1,378,425	Ark.	2
				106	1,344,899	W. Va.	2
49	9,531,193	N. Y.	2	107	1,343,364	S. C.	2
50	7,000,484	Pa.	2	108	1,341,674	Fla.	2
51	5,584,193	Ill.	2	109	1,322,967	Pa.	8
52	5,502,837	N. Y.	3	110	1,287,814	Md.	2
53	4,884,419	Ohio	2	111	1,285,186	N. Y.	11
54	4,884,260	Calif.	2	112	1,280,915	Wisc.	3
55	4,535,966	Texas	2	113	1,275,255	Ga.	3
56	4,041,732	Pa.	3	114	1,273,519	Kans.	2
57	3,891,093	N. Y.	4	115	1,261,152	Ohio	6
58	3,716,628	Mich.	2	116	1,261,111	Calif.	6
59	3,224,035	Ill.	3	117	1,246,130	Mass.	4
60	3,052,383	Mass.	2	118	1,227,672	Wash.	2
61	3,014,028	N. Y.	5	119	1,218,571	Ill.	7
62	2,943,681	N. J.	2	120	1,208,617	Conn.	2
63	2,857,936	Pa.	4	121	1,200,936	N. J.	4
64	2,820,021	Ohio	3	122	1,190,387	Tenn.	3
65	2,819,929	Calif.	3	123	1,175,301	Mich.	5
66	2,676,162	Mo.	2	124	1,173,209	N. Y.	12
67	2,618,841	Texas	3	125	1,171,181	Texas	6
68	2,525,519	N. C.	2	126	1,166,747	Pa.	9
69	2,460,943	N. Y.	6	127	1,161,722	Ky.	3
70	2,423,818	Ind.	2	128	1,156,551	Ala.	3
71	2,279,737	Ill.	4	129	1,139,952	Minn.	3
72	2,218,609	Wisc.	2	130	1,093,196	Va.	3
73	2,213,748	Pa.	5	131	1,092,538	Mo.	4
74	2,208,806	Ga.	2	132	1,079,195	N. Y.	13
75	2,145,796	Mich.	3	133	1,065,868	Ohio	7
76	2,079,877	N. Y.	7	134	1,065,833	Calif.	7
77	2,061,811	Tenn.	2	135	1,055,313	Ill.	8
78	2,012,162	Ky.	2	136	1,043,571	Pa.	10
79	2,003,206	Ala.	2	137	1,036,244	Iowa	3
80	1,994,056	Ohio	4	138	1,031,039	N. C.	4
81	1,993,991	Calif.	4	139	999,140	N. Y.	14
82	1,974,454	Minn.	2	140	989,829	Texas	7
83	1,893,471	Va.	2	141	989,519	Ind.	4
84	1,851,800	Texas	4	142	965,248	Mass.	5
85	1,807,517	Pa.	6	143	965,050	La.	3
86	1,801,226	N. Y.	8	144	959,629	Mich.	6
87	1,794,827	Iowa	2	145	953,845	Okla.	3
88	1,765,877	Ill.	5	146	943,945	Pa.	11
89	1,762,294	Mass.	3	147	930,699	Ill.	9
90	1,698,380	N. J.	3	148	930,435	Neb.	2
91	1,671,516	La.	2	149	930,241	N. J.	5
92	1,652,108	Okla.	2	150	930,149	N. Y.	15
93	1,588,532	N. Y.	9	151	923,068	Ohio	8
94	1,545,083	Mo.	3	152	923,038	Calif.	8
95	1,544,589	Ohio	5	153	905,743	Wisc.	4
96	1,544,539	Calif.	5	154	901,741	Ga.	4

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## Priority List for Apportionment 1940 Populations - Method of Equal Proportions

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
155	891,531	Miss.	3	213	632,285	Ill.	13
156	870,075	N. Y.	16	214	630,408	Miss.	4
157	861,700	Pa.	12	215	627,106	N. Y.	22
158	857,217	Texas	8	216	625,827	Ind.	6
159	846,277	Mo.	5	217	624,377	Minn.	5
160	841,731	Tenn.	4	218	619,438	Mich.	9
161	832,442	Ill.	10	219	611,629	Texas	11
162	821,462	Ky.	4	220	601,230	Ohio	12
163	817,805	Ala.	4	221	601,211	Calif.	12
164	817,293	N. Y.	17	222	600,287	Pa.	17
165	814,070	Ohio	9	223	599,221	N. Y.	23
166	814,043	Calif.	9	224	599,079	Mo.	2
167	811,035	Mich.	7	225	598,768	Va.	5
168	806,068	Minn.	4	226	585,382	Ill.	14
169	798,639	N. C.	5	227	583,986	Mo.	7
170	795,834	Ark.	3	228	576,846	Mass.	8
171	794,290	Colo.	2	229	573,710	N. Y.	24
172	792,649	Pa.	13	230	572,842	Wis.	6
173	788,122	Mass.	6	231	570,311	Ga.	6
174	778,478	W. Va.	3	232	567,574	Iowa	5
175	775,592	S. C.	3	233	565,956	Pa.	18
176	774,616	Fla.	3	234	562,740	Ark.	4
177	773,006	Va.	4	235	558,339	Texas	12
178	770,551	N. Y.	18	236	555,925	N. J.	8
179	770,523	Ore.	2	237	554,042	Mich.	10
180	766,478	Ind.	5	238	553,052	Ohio	13
181	759,539	N. J.	6	239	553,034	Calif.	13
182	755,994	Texas	9	240	551,113	N. C.	7
183	752,972	Ill.	11	241	550,284	N. Y.	25
184	743,520	Md.	3	242	549,053	W. Va.	4
185	735,267	Kans.	3	243	548,426	S. C.	4
186	733,850	Pa.	14	244	547,736	Fla.	4
187	732,735	Iowa	4	245	544,961	Ill.	15
188	728,869	N. Y.	19	246	537,187	Neb.	3
189	728,126	Ohio	10	247	535,340	Pa.	19
190	728,103	Calif.	10	248	532,357	Tenn.	6
191	708,797	Wash.	3	249	528,920	Ind.	7
192	702,377	Mich.	8	250	528,695	N. Y.	26
193	701,586	Wis.	5	251	528,580	La.	5
194	698,486	Ga.	5	252	525,748	Md.	4
195	697,795	Conn.	3	253	522,443	Okla.	5
196	691,465	N. Y.	20	254	519,912	Kans.	4
197	690,982	Mo.	6	255	519,538	Ky.	6
198	687,367	Ill.	12	256	517,226	Ala.	6
199	683,177	Pa.	15	257	513,597	Texas	13
200	682,393	La.	4	258	512,826	Ohio	14
201	678,182	Texas	10	259	512,010	Calif.	14
202	674,470	Okla.	4	260	509,802	Minn.	6
203	666,084	Mass.	7	261	509,765	Ill.	16
204	658,615	Ohio	11	262	508,737	N. Y.	27
205	658,594	Calif.	11	263	508,730	Mass.	9
206	657,715	N. Y.	21	264	507,869	Pa.	20
207	652,086	N. C.	6	265	505,747	Mo.	8
208	652,002	Tenn.	5	266	504,412	R. I.	2
209	641,927	N. J.	7	267	501,195	Wash.	4
210	639,054	Pa.	16	268	501,150	Mich.	11
211	636,302	Ky.	5	269	493,416	Conn.	4
212	633,469	Ala.	5	270	490,280	N. J.	9

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## Priority List for Apportionment 1940 Populations - Method of Equal Proportions

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
271	490,232	N. Y.	28	329	402,407	N. Y.	34
272	488,892	Va.	6	330	398,939	Mo.	10
273	488,312	Miss.	5	331	398,705	Miss.	6
274	484,140	Wisc.	7	332	396,656	N. J.	11
275	483,079	Pa.	21	333	395,595	Mont.	2
276	482,001	Ga.	7	334	394,882	Ohio	18
277	478,841	Ill.	17	335	394,869	Calif.	18
278	477,278	N. C.	8	336	391,663	Iowa	7
279	476,671	Ohio	15	337	390,741	N. Y.	35
280	476,655	Calif.	15	338	389,646	Tenn.	8
281	475,498	Texas	14	339	389,608	Mich.	14
282	473,025	N. Y.	29	340	389,128	Utah	2
283	463,422	Iowa	6	341	388,956	Texas	17
284	460,598	Pa.	22	342	388,317	Pa.	26
285	458,584	Colo.	3	343	388,224	Wash.	5
286	458,059	Ind.	8	344	385,346	Ill.	21
287	457,485	Mich.	12	345	382,198	Conn.	5
288	456,986	N. Y.	30	346	380,263	Ky.	8
289	455,022	Mass.	10	347	379,849	Neb.	4
290	454,642	S. D.	2	348	379,732	N. Y.	36
291	453,917	N. D.	2	349	378,570	Ala.	8
292	451,455	Ill.	18	350	376,482	N. C.	10
293	449,924	Tenn.	7	351	376,052	N. M.	2
294	446,027	Mo.	9	352	375,722	Mass.	12
295	445,884	Ohio	16	353	373,658	Pa.	27
296	445,870	Calif.	16	354	373,521	Ohio	19
297	444,862	Ore.	3	355	373,509	Calif.	19
298	442,665	Texas	15	356	373,137	Minn.	8
299	441,998	N. Y.	31	357	371,141	Idaho	2
300	440,117	Pa.	23	358	369,768	Wisc.	9
301	439,090	Ky.	7	359	369,326	N. Y.	37
302	438,520	N. J.	10	360	368,134	Ga.	9
303	437,135	Ala.	7	361	367,413	Ill.	22
304	435,896	Ark.	5	362	366,711	Texas	18
305	431,583	La.	6	363	364,755	La.	7
306	430,861	Minn.	7	364	362,706	Mich.	15
307	427,963	N. Y.	32	365	362,096	N. J.	12
308	427,034	Ill.	19	366	361,321	Ind.	10
309	426,573	Okla.	6	367	360,854	Mo.	11
310	425,294	W. Va.	5	368	360,520	Okla.	7
311	424,809	S. C.	5	369	360,066	Pa.	28
312	424,275	Fla.	5	370	359,476	N. Y.	38
313	421,380	Pa.	24	371	357,832	Va.	8
314	420,920	N. C.	9	372	355,908	Ark.	6
315	420,825	Mich.	13	373	354,353	Ohio	20
316	419,278	Wisc.	8	374	354,341	Calif.	20
317	418,836	Ohio	17	375	353,031	Ariz.	2
318	418,822	Calif.	17	376	351,075	Ill.	23
319	417,425	Ga.	8	377	350,137	N. Y.	39
320	414,792	N. Y.	33	378	347,560	N. H.	2
321	414,075	Texas	16	379	347,428	Pa.	29
322	413,189	Va.	7	380	347,251	W. Va.	6
323	411,583	Mass.	11	381	346,874	Texas	19
324	407,243	Ma.	5	382	346,855	S. C.	6
325	405,120	Ill.	20	383	346,419	Fla.	6
326	404,173	Pa.	25	384	345,879	Me.	3
327	403,970	Ind.	9	385	345,614	Mass.	13
328	402,722	Kans.	5	386	343,635	Tenn.	9

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Equal Proportions

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
387	341,271	N. Y.	40	445	297,835	Ga.	11
388	340,541	N. C.	11	446	296,262	N. Y.	46
389	339,280	Mich.	16	447	295,561	Pa.	34
390	339,190	Iowa	8	448	294,334	Minn.	10
391	337,057	Ohio	21	449	294,229	Neb.	5
392	337,046	Calif.	21	450	294,007	Ohio	24
393	336,967	Miss.	7	451	293,998	Calif.	24
394	336,129	Ill.	24	452	293,481	W. Va.	7
395	335,648	Pa.	30	453	293,146	S. C.	7
396	335,360	Ky.	9	454	292,777	Fla.	7
397	333,868	Ala.	9	455	291,822	Miss.	8
398	333,080	N. J.	13	456	291,222	R. I.	3
399	332,844	N. Y.	41	457	289,891	N. Y.	47
400	332,512	Md.	6	458	287,219	Ill.	28
401	330,731	Wis.	10	459	287,079	N. J.	15
402	329,413	Mo.	12	460	286,992	Pa.	35
403	329,269	Ga.	10	461	285,959	N. C.	13
404	329,076	Minn.	9	462	285,174	Texas	23
405	329,074	Tex.	20	463	284,218	Mich.	19
406	328,821	Kans.	6	464	283,787	N. Y.	48
407	326,828	Ind.	11	465	282,262	Va.	10
408	324,822	N. Y.	42	466	282,002	Ohio	25
409	324,640	Pa.	31	467	281,993	Calif.	25
410	324,268	Colo.	4	468	281,024	Md.	7
411	322,404	Ill.	25	469	280,538	Mo.	14
412	321,371	Ohio	22	470	278,906	Pa.	36
413	321,361	Calif.	22	471	278,643	Mass.	16
414	319,977	Mass.	14	472	278,586	La.	9
415	318,698	Mich.	17	473	278,015	Tenn.	11
416	317,178	N. Y.	43	474	277,935	N. Y.	49
417	316,984	Wash.	6	475	277,905	Kans.	7
418	315,887	La.	8	476	277,139	Ill.	29
419	315,578	Va.	9	477	275,351	Okla.	9
420	314,565	Ore.	4	478	274,443	Ind.	13
421	314,331	Pa.	32	479	273,092	Wis.	12
422	313,011	Texas	21	480	273,033	Texas	24
423	312,219	Okla.	8	481	272,320	N. Y.	50
424	312,063	Conn.	6	482	271,885	Ga.	12
425	310,870	N. C.	12	483	271,320	Ky.	11
426	309,886	N. Y.	44	484	271,263	Pa.	37
427	309,755	Ill.	26	485	270,939	Ohio	26
428	308,372	N. J.	14	486	270,930	Calif.	26
429	307,357	Tenn.	10	487	270,112	Ala.	11
430	307,081	Ohio	23	488	269,693	Mich.	20
431	307,071	Calif.	23	489	268,537	N. J.	16
432	304,657	Pa.	33	490	267,900	Wash.	7
433	303,016	Mo.	13	491	267,742	Ill.	30
434	302,921	N. Y.	45	492	267,557	Iowa	10
435	300,797	Ark.	7	493	266,927	N. Y.	51
436	300,472	Mich.	18	494	266,235	Minn.	11
437	299,956	Ky.	10	495	264,746	W.C.	14
438	299,157	Wis.	11	496	264,028	Pa.	38
439	299,138	Iowa	9	497	263,742	Conn.	7
440	298,620	Ala.	10	498	262,488	S. D.	3
441	298,445	Texas	22	499	262,069	N. D.	3
442	298,351	Ind.	12	500	261,884	Texas	25
443	298,062	Ill.	27				
444	297,882	Mass.	15				

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Major Fractions

Page No.

Size of House	Priority value	No. of State Rep.	Size of House	Priority value	No. of State Rep.
1	(Note: The first 48 Representatives are assigned one to each State to fulfill the constitutional requirement that each State have at least one Representative)		97	1,513,866	No.
.			98	1,501,745	Mich.
.			99	1,455,864	Miss.
to			100	1,435,862	Ill.
.			101	1,428,649	N. C.
.			102	1,425,516	Texas
48			103	1,418,857	N. Y.
			104	1,371,118	Ind.
			105	1,320,024	Pa.
			106	1,299,591	Ark.
49	8,986,095	N. Y. 2	107	1,283,728	N. Y.
50	6,600,120	Pa. 2	108	1,267,983	W. Va.
51	5,391,657	N. Y. 3	109	1,266,536	S. C.
52	5,264,827	Ill. 2	110	1,264,943	Fla.
53	4,605,075	Ohio 2	111	1,255,929	Ohio
54	4,604,928	Calif. 2	112	1,255,889	Calif.
55	4,276,549	Texas 2	113	1,255,035	Wisc.
56	3,960,072	Pa. 3	114	1,249,489	Ge.
57	3,851,183	N. Y. 4	115	1,233,349	Mass.
58	3,504,071	Mich. 2	116	1,214,960	Ill.
59	3,158,896	Ill. 3	117	1,214,163	Mo.
60	2,995,365	N. Y. 5	118	1,200,685	Kans.
61	2,877,814	Mass. 2	119	1,188,619	N. J.
62	2,828,623	Pa. 4	120	1,172,099	N. Y.
63	2,773,443	N. J. 2	121	1,168,024	Mich.
64	2,763,045	Ohio 3	122	1,166,336	Tenn.
65	2,762,955	Calif. 3	123	1,166,332	Texas
66	2,565,930	Texas 3	124	1,164,727	Pa.
67	2,523,109	Mo. 2	125	1,157,461	Wash.
68	2,450,753	N. Y. 6	126	1,139,495	Conn.
69	2,381,882	N. C. 2	127	1,138,251	Ky.
70	2,285,197	Ind. 2	128	1,133,184	Ala.
71	2,256,355	Ill. 4	129	1,116,920	Minn.
72	2,200,040	Pa. 5	130	1,081,333	Mo.
73	2,182,442	Mich. 3	131	1,078,331	N. Y.
74	2,091,725	Wisc. 2	132	1,071,109	Va.
75	2,082,482	Ge. 2	133	1,062,710	Ohio
76	2,073,714	N. Y. 7	134	1,062,675	Calif.
77	1,973,603	Ohio 4	135	1,052,965	Ill.
78	1,973,539	Calif. 4	136	1,042,124	Pa.
79	1,943,894	Tenn. 2	137	1,028,464	N. C.
80	1,897,085	Ky. 2	138	1,015,307	Iowa
81	1,888,641	Ala. 2	139	998,455	N. Y.
82	1,861,533	Minn. 2	140	986,896	Texas
83	1,832,807	Texas 4	141	979,370	Ind.
84	1,800,033	Pa. 6	142	959,271	Mass.
85	1,797,219	N. Y. 8	143	955,656	Mich.
86	1,785,182	Va. 2	144	945,552	La.
87	1,754,942	Ill. 5	145	942,874	Pa.
88	1,726,688	Mass. 3	146	934,574	Okl.
89	1,692,179	Iowa 2	147	929,596	N. Y.
90	1,664,066	N. J. 3	148	929,087	Ill.
91	1,585,781	N. Y. 9	149	924,481	N. J.
92	1,575,920	La. 2	150	921,015	Ohio
93	1,557,623	Okl. 2	151	920,985	Calif.
94	1,535,025	Ohio 5	152	896,453	Wisc.
95	1,534,975	Calif. 5	153	892,492	Ge.
96	1,523,105	Pa. 7	154	877,223	Nebr.



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## Priority List for Apportionment 1940 Populations - Method of Major Fractions

Page No. 7

Size of House	Priority value	No. of State Reps.	Size of House	Priority value	No. of State Reps.
155	873,518	Miss. 3	213	629,547	Ala. 5
156	869,622	N. Y. 16	214	626,937	N. Y. 22
157	860,885	Pa. 12	215	623,942	Miss. 4
158	855,310	Texas 8	216	623,236	Ind. 6
159	841,036	Mo. 5	217	620,511	Minn. 5
160	833,097	Tenn. 4	218	618,365	Mich. 9
161	831,289	Ill. 10	219	610,936	Texas 11
162	816,918	N. Y. 17	220	600,662	Ohio 12
163	813,036	Ky. 4	221	600,642	Calif. 12
164	812,660	Ohio 9	222	600,011	Pa. 17
165	812,634	Calif. 9	223	599,073	N. Y. 23
166	809,417	Ala. 4	224	595,061	Va. 5
167	808,632	Mich. 7	225	584,981	Ill. 14
168	797,800	Minn. 4	226	582,256	Mo. 7
169	793,694	N. C. 5	227	575,563	Mass. 8
170	792,014	Pa. 13	228	573,580	N. Y. 24
171	784,858	Mass. 6	229	570,470	Wisc. 6
172	779,755	Ark. 3	230	567,950	Ca. 6
173	770,237	N. Y. 18	231	565,725	Pa. 18
174	765,078	Va. 4	232	564,817	Mo. 2
175	761,732	Ind. 5	233	564,060	Iowa 5
176	760,790	W. Va. 3	234	557,811	Texas 12
177	759,922	S. C. 3	235	556,968	Ark. 4
178	758,966	Fla. 3	236	554,689	N. J. 8
179	756,394	N. J. 6	237	553,274	Mich. 10
180	754,685	Texas 9	238	552,609	Ohio 13
181	752,118	Ill. 11	239	552,591	Calif. 13
182	748,864	Col. 2	240	550,169	N. Y. 25
183	733,347	Pa. 14	241	549,480	N. C. 7
184	728,602	N. Y. 19	242	544,637	Ill. 15
185	728,498	Md. 3	243	543,421	W. Va. 4
186	727,117	Ohio 10	244	542,801	S. C. 4
187	727,093	Calif. 10	245	542,118	Fla. 4
188	726,456	Ore. 2	246	535,145	Pa. 19
189	725,219	Iowa 4	247	530,153	Tenn. 6
190	720,411	Kans. 3	248	528,594	N. Y. 26
191	700,814	Mich. 8	249	527,353	Ind. 7
192	697,242	Wisc. 5	250	526,334	Neb. 3
193	694,476	Wash. 3	251	525,307	La. 5
194	694,161	Ca. 5	252	520,355	Md. 4
195	691,238	N. Y. 20	253	519,208	Okla. 5
196	688,121	Mo. 6	254	517,387	Ky. 6
197	686,717	Ill. 12	255	515,084	Ala. 6
198	683,697	Conn. 3	256	514,579	Kans. 4
199	682,771	Pa. 15	257	513,186	Texas 13
200	675,394	La. 4	258	511,675	Ohio 14
201	675,245	Texas 10	259	511,658	Calif. 14
202	667,553	Okla. 4	260	509,499	Ill. 16
203	664,111	Mass. 7	261	508,647	N. Y. 27
204	657,868	Ohio 11	262	507,850	Mass. 9
205	657,846	Calif. 11	263	507,702	Pa. 20
206	657,519	N. Y. 21	264	507,691	Minn. 6
207	649,386	N. C. 6	265	504,622	Mo. 8
208	647,965	Tenn. 5	266	500,582	Mich. 11
209	640,025	N. J. 7	267	496,055	Wash. 4
210	638,721	Pa. 16	268	490,151	N. Y. 28
211	632,362	Ky. 5	269	489,431	N. J. 9
212	631,779	Ill. 13	270	488,355	Conn. 4

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Priority List for Apportionment  
1940 Populations - Method of Major Fractions Page No.

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
271	486,868	Va.	6	329	400,228	Kans.	5
272	485,288	Miss.	5	330	398,368	Mo.	10
273	482,936	Pa.	21	331	397,054	Miss.	6
274	482,706	Wisc.	7	332	396,206	N. J.	11
275	480,573	Ge.	7	333	394,721	Ohio	18
276	478,621	Ill.	17	334	394,708	Calif.	18
277	476,387	Ohio	15	335	390,700	N. Y.	35
278	476,372	Calif.	15	336	390,503	Iowa	7
279	476,216	N. C.	8	337	389,341	Mich.	14
280	475,564	R. I.	2	338	388,779	Tenn.	8
281	475,172	Texas	14	339	388,777	Texas	17
282	472,952	N. Y.	29	340	388,242	Pa.	26
283	461,503	Iowa	6	341	385,820	Wash.	5
284	460,474	Pa.	22	342	385,231	Ill.	21
285	457,053	Mich.	12	343	379,832	Conn.	5
286	457,039	Ind.	8	344	379,694	N. Y.	36
287	456,920	N. Y.	30	345	379,417	Ky.	8
288	454,392	Mass.	10	346	377,728	Ala.	8
289	451,271	Ill.	18	347	375,960	N. C.	10
290	449,318	Calo.	3	348	375,953	Neb.	4
291	448,591	Tenn.	7	349	375,367	Mass.	12
292	445,652	Ohio	16	350	373,592	Pa.	27
293	445,638	Calif.	16	351	373,384	Ohio	19
294	443,255	Mo.	9	352	373,372	Calif.	19
295	442,402	Texas	15	353	372,971	Mont.	2
296	441,939	N. Y.	31	354	372,307	Minn.	8
297	440,008	Pa.	23	355	369,292	N. Y.	37
298	437,912	N. J.	10	356	369,128	Wisc.	9
299	437,789	Ky.	7	357	367,497	Ge.	9
300	435,874	Ore.	3	358	367,314	Ill.	22
301	435,840	Ala.	7	359	366,873	Utah	2
302	433,197	Ark.	5	360	366,561	Tex.	18
303	429,796	La.	6	361	363,674	La.	7
304	429,585	Minn.	7	362	362,490	Mich.	15
305	428,641	S. D.	2	363	361,753	N. J.	12
306	427,957	N. D.	2	364	360,821	Ind.	10
307	427,909	N. Y.	32	365	360,444	Mo.	11
308	426,878	Ill.	19	366	360,007	Pa.	28
309	424,806	Okla.	6	367	359,451	Okla.	7
310	422,663	W. Va.	5	368	359,444	N. Y.	38
311	422,179	S. C.	5	369	357,036	Va.	8
312	421,648	Fla.	5	370	354,545	N. M.	2
313	421,284	Pa.	24	371	354,434	Ark.	6
314	420,488	Mich.	13	372	354,237	Ohio	20
315	420,191	N. C.	9	373	354,225	Calif.	20
316	418,643	Ohio	17	374	350,988	Ill.	23
317	418,630	Calif.	17	375	350,108	N. Y.	39
318	418,345	Wisc.	8	376	349,915	Idaho	2
319	416,496	Ge.	8	377	347,375	Pa.	29
320	414,743	N. Y.	33	378	346,747	Texas	19
321	413,860	Texas	16	379	345,813	W. Va.	6
322	411,965	Va.	7	380	345,419	S. C.	6
323	411,116	Mass.	11	381	345,338	Mass.	13
324	404,987	Ill.	20	382	344,984	Fla.	6
325	404,721	Md.	5	383	343,040	Tenn.	9
326	404,089	Pa.	25	384	341,244	N. Y.	40
327	403,270	Ind.	9	385	340,155	N. C.	11
328	402,362	N. Y.	34	386	339,104	Mich.	16

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Major Fractions

Page No. 4

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
387	338,890	Me.	3	445	297,497	Ca.	11
388	338,436	Iowa	8	446	296,245	N. Y.	46
389	336,957	Ohio	21	447	295,527	Pa.	34
390	336,946	Calif.	21	448	293,941	Ohio	24
391	336,053	Ill.	24	449	293,931	Calif.	24
392	335,969	Miss.	7	450	293,926	Minn.	10
393	335,599	Pa.	30	451	292,611	N. Va.	7
394	334,780	Ky.	9	452	292,408	Neb.	5
395	333,290	Ala.	9	453	292,278	S. C.	7
396	332,841	Ariz.	2	454	291,910	Fla.	7
397	332,818	N. Y.	41	455	291,173	Miss.	8
398	332,813	N. J.	13	456	289,874	N. Y.	47
399	331,135	Md.	6	457	287,172	Ill.	28
400	330,372	Wisc.	10	458	286,962	Pa.	35
401	329,101	Mo.	12	459	286,908	N. J.	15
402	328,965	Texas	20	460	285,730	N. C.	13
403	328,813	Ca.	10	461	285,338	R. I.	5
404	328,506	Minn.	9	462	285,103	Texas	23
405	327,683	N. H.	2	463	284,114	Mich.	19
406	327,460	Kans.	6	464	283,771	N. Y.	48
407	326,457	Ind.	11	465	283,943	Ohio	25
408	324,799	N. Y.	42	466	283,934	Calif.	25
409	324,596	Pa.	31	467	283,871	Va.	10
410	322,336	Ill.	25	468	280,346	Mo.	14
411	321,284	Ohio	22	469	280,191	Md.	7
412	321,274	Calif.	22	470	278,878	Pa.	36
413	320,942	Colo.	4	471	278,498	Mass.	16
414	319,757	Mass.	14	472	278,104	La.	9
415	318,552	Mich.	17	473	277,920	N. Y.	49
416	317,156	N. Y.	43	474	277,699	Tenn.	11
417	315,671	Wash.	6	475	277,096	Ill.	29
418	315,184	La.	8	476	277,081	Kans.	7
419	315,032	Va.	9	477	274,875	Okla.	9
420	314,391	Pa.	32	478	274,224	Ind.	13
421	312,918	Texas	21	479	272,971	Tex.	24
422	311,524	Okla.	8	480	272,634	Wisc.	12
423	311,338	Ore.	4	481	272,306	N. Y.	50
424	310,771	Conn.	6	482	271,628	Ca.	12
425	310,576	N. C.	12	483	271,236	Pa.	37
426	309,865	N. Y.	44	484	271,012	Ky.	11
427	309,696	Ill.	26	485	270,887	Ohio	26
428	308,160	N. J.	14	486	270,878	Calif.	26
429	307,005	Ohio	23	487	269,806	Ala.	11
430	306,995	Calif.	23	488	269,544	Mich.	20
431	306,931	Tenn.	10	489	268,398	N. J.	16
432	304,621	Pa.	33	490	267,703	Ill.	30
433	302,902	N. Y.	45	491	267,186	Iowa	10
434	302,773	Mo.	13	492	267,106	Wash.	7
435	300,349	Mich.	18	493	266,914	N. Y.	51
436	299,906	Ark.	7	494	265,933	Minn.	11
437	299,540	Ky.	10	495	264,565	N. C.	14
438	298,818	Wisc.	11	496	264,005	Pa.	38
439	298,620	Iowa	9	497	262,960	Conn.	7
440	298,364	Texas	22	498	261,830	Texas	25
441	298,207	Ala.	10	499	261,731	N. Y.	52
442	298,069	Ind.	12	500	261,619	Mass.	27
443	298,009	Ill.	27				
444	297,705	Mass.	15				

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Harmonic Mean

Size of House	Priority value	No. of State Rep.	State	Size of House	Priority value	No. of State Rep.	State
1	(Note: The first 48 Representatives are assigned one to each State to fulfill the constitutional requirement that each State have at least one Representative)			97	1,554,162	5	Calif.
.				98	1,533,031	4	Mich.
.				99	1,532,171	7	Pa.
to				100	1,488,176	3	N. C.
.				101	1,462,040	2	Ark.
.				102	1,447,827	6	Ill.
.				103	1,443,335	5	Texas
.				104	1,428,248	3	Ind.
48				105	1,426,480	2	N. Va.
				106	1,424,853	2	S. C.
49	10,109,356	2	N. Y.	107	1,423,060	2	Fla.
50	7,425,135	2	Pa.	108	1,422,798	10	N. Y.
51	5,922,931	2	Ill.	109	1,365,933	2	Ma.
52	5,616,309	3	N. Y.	110	1,350,771	2	Kans.
53	5,180,709	2	Ohio	111	1,325,917	8	Pa.
54	5,180,540	2	Calif.	112	1,307,328	3	Wis.
55	4,811,118	2	Texas	113	1,302,143	2	Wash.
56	4,125,075	3	Pa.	114	1,301,551	3	Ca.
57	3,942,080	2	Mich.	115	1,286,645	11	N. Y.
58	3,931,416	4	N. Y.	116	1,281,932	2	Conn.
59	3,290,517	3	Ill.	117	1,266,996	6	Ohio
60	3,237,541	2	Mass.	118	1,266,354	6	Calif.
61	3,120,124	2	N. J.	119	1,259,044	4	Mass.
62	3,032,807	5	N. Y.	120	1,222,192	7	Ill.
63	2,887,553	4	Pa.	121	1,214,934	3	Tenn.
64	2,878,172	3	Ohio	122	1,213,981	4	N. J.
65	2,878,078	3	Calif.	123	1,185,678	3	Ky.
66	2,838,498	2	Mo.	124	1,182,624	5	Mich.
67	2,678,717	2	N. C.	125	1,180,400	3	Ala.
68	2,672,843	3	Texas	126	1,176,051	6	Texas
69	2,570,847	2	Ind.	127	1,174,319	12	N. Y.
70	2,471,176	6	N. Y.	128	1,168,771	9	Pa.
71	2,353,190	2	Wis.	129	1,163,458	3	Miss.
72	2,342,792	2	Ca.	130	1,115,739	3	Va.
73	2,303,362	4	Ill.	131	1,103,860	4	Mo.
74	2,227,540	5	Pa.	132	1,080,060	13	N. Y.
75	2,190,044	3	Mich.	133	1,069,035	7	Ohio
76	2,186,881	2	Tenn.	134	1,069,800	7	Calif.
77	2,134,220	2	Ky.	135	1,057,666	8	Ill.
78	2,124,721	2	Ala.	136	1,057,612	3	Iowa
79	2,094,225	2	Miss.	137	1,045,019	10	Pa.
80	2,086,058	7	N. Y.	138	1,041,723	4	N. C.
81	2,014,720	4	Ohio	139	999,826	14	N. Y.
82	2,014,655	4	Calif.	140	999,774	4	Ind.
83	2,008,330	2	Wa.	141	992,770	7	Texas
84	1,903,701	2	Iowa	142	986,876	2	Neb.
85	1,870,990	4	Texas	143	984,950	3	La.
86	1,815,033	6	Pa.	144	973,514	3	Okla.
87	1,805,242	8	N. Y.	145	971,262	5	Mass.
88	1,798,634	3	Mass.	146	963,619	6	Mich.
89	1,776,879	5	Ill.	147	945,017	11	Pa.
90	1,772,910	2	La.	148	936,037	5	N. J.
91	1,752,326	2	Okla.	149	932,313	9	Ill.
92	1,733,402	3	N. J.	150	930,703	15	N. Y.
93	1,637,847	2	Miss.	151	925,127	8	Ohio
94	1,591,288	9	N. Y.	152	925,096	8	Calif.
95	1,576,943	3	Mo.	153	915,130	4	Wis.
96	1,554,213	5	Ohio	154	911,086	4	Ca.

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Harmonic Mean

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
155	909,915	Miss.	3	213	636,941	Miss.	4
156	870,528	N. Y.	16	214	635,420	Mo.	2
157	862,516	Pa.	12	215	632,792	Ill.	13
158	859,128	Texas	8	216	628,429	Ind.	6
159	851,549	Mo.	5	217	628,268	Minn.	5
160	850,454	Tenn.	4	218	627,276	N. Y.	22
161	842,472	Colo.	2	219	620,513	Mich.	9
162	833,598	Ill.	10	220	612,324	Texas	11
163	829,975	Ky.	4	221	602,499	Va.	5
164	826,280	Ala.	4	222	601,800	Ohio	12
165	817,668	N. Y.	17	223	601,780	Calif.	12
166	817,269	Oreg.	2	224	600,562	Pa.	17
167	815,482	Ohio	9	225	599,369	N. Y.	23
168	815,455	Calif.	9	226	585,784	Ill.	14
169	814,421	Minn.	4	227	585,722	Mo.	7
170	813,445	Mich.	7	228	578,132	Mass.	8
171	812,245	Ark.	3	229	575,224	Wisc.	6
172	803,615	N. C.	5	230	573,840	N. Y.	24
173	793,284	Pa.	13	231	572,683	Ca.	6
174	792,489	W. Va.	3	232	571,110	Iowa	5
175	791,585	S. C.	3	233	568,571	Ark.	4
176	791,399	Mass.	6	234	566,187	Pa.	18
177	790,589	Fla.	3	235	558,867	Texas	12
178	781,017	Va.	4	236	557,165	N. J.	8
179	771,254	Ind.	5	237	554,811	Mich.	10
180	770,866	N. Y.	18	238	554,742	W. Va.	4
181	762,697	N. J.	6	239	554,110	S. C.	4
182	758,852	Md.	3	240	553,493	Ohio	13
183	757,306	Texas	9	241	553,477	Calif.	13
184	753,828	Ill.	11	242	553,412	Fla.	4
185	750,428	Kans.	3	243	552,751	N. C.	7
186	740,328	Iowa	4	244	550,398	N. Y.	25
187	734,354	Pa.	14	245	548,264	Neb.	3
188	729,137	Ohio	10	246	545,286	Ill.	15
189	729,135	N. Y.	19	247	535,536	Pa.	19
190	729,113	Calif.	10	248	535,010	R. I.	2
191	723,413	Wash.	3	249	534,571	Tenn.	6
192	712,184	Conn.	3	250	531,873	La.	5
193	705,957	Wisc.	5	251	531,196	Md.	4
194	703,943	Mich.	8	252	530,492	Ind.	7
195	702,838	Ca.	5	253	528,797	N. Y.	26
196	693,855	Mo.	6	254	525,698	Okla.	5
197	691,693	N. Y.	20	255	525,300	Kans.	4
198	689,465	La.	4	256	522,698	Ky.	6
199	688,017	Ill.	12	257	519,376	Ala.	6
200	683,584	Pa.	15	258	514,008	Texas	13
201	681,460	Okla.	4	259	512,378	Ohio	14
202	677,120	Texas	10	260	512,361	Calif.	14
203	668,064	Mass.	7	261	511,922	Minn.	6
204	659,363	Ohio	11	262	510,030	Ill.	16
205	659,342	Calif.	11	263	509,613	Mass.	9
206	657,910	N. Y.	21	264	508,828	N. Y.	27
207	656,064	Tenn.	5	265	508,036	Pa.	20
208	654,798	N. C.	6	266	506,875	Mo.	8
209	643,835	N. J.	7	267	506,389	Wash.	4
210	640,266	Ky.	5	268	501,719	Mich.	11
211	639,387	Pa.	16	269	498,529	Conn.	4
212	637,416	Ala.	5	270	491,354	Miss.	5

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Harmonic Mean

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
271	491,131	N. J.	9	329	404,670	Ind.	9
272	490,925	Va.	6	330	404,257	Pa.	25
273	490,313	N. Y.	28	331	402,432	N. Y.	31
274	485,579	Wisc.	7	332	400,363	Miss.	6
275	483,433	Ca.	7	333	399,492	Mo.	10
276	483,223	Pa.	21	334	398,864	N. M.	2
277	482,221	N. D.	2	335	397,107	N. J.	11
278	481,451	N. D.	2	336	395,043	Ohio	18
279	479,061	Ill.	17	337	395,030	Calif.	18
280	478,342	N. C.	8	338	393,653	Idaho	2
281	476,954	Ohio	15	339	392,827	Iowa	7
282	476,939	Calif.	15	340	390,782	N. Y.	35
283	475,825	Texas	14	341	390,643	Wash.	5
284	473,098	N. Y.	29	342	390,514	Tenn.	8
285	468,040	Calif.	3	343	389,876	Mich.	14
286	465,349	Iowa	6	344	389,135	Texas	17
287	460,723	Pa.	22	345	388,392	Pa.	26
288	459,080	Ind.	8	346	385,441	Ill.	21
289	457,918	Mich.	12	347	384,579	Conn.	5
290	457,051	N. Y.	30	348	383,785	Neb.	4
291	455,654	Mass.	10	349	381,111	Ky.	8
292	454,035	Oreg.	3	350	379,769	N. Y.	36
293	451,640	Ill.	18	351	379,414	Ala.	8
294	451,261	Tenn.	7	352	377,005	N. C.	10
295	446,801	Mo.	9	353	376,078	Mass.	12
296	446,117	Ohio	16	354	374,446	Aris.	2
297	446,102	Calif.	16	355	373,969	Miss.	8
298	442,928	Texas	15	356	373,725	Pa.	27
299	442,058	N. Y.	31	357	373,657	Ohio	19
300	440,395	Ky.	7	358	373,645	Calif.	19
301	440,225	Pa.	23	359	370,410	Wisc.	9
302	439,129	N. J.	10	360	369,361	N. Y.	37
303	438,612	Ark.	5	361	368,773	Ca.	9
304	438,434	Ala.	7	362	368,643	N. M.	2
305	433,378	La.	6	363	367,512	Ill.	22
306	432,142	Miss.	7	364	366,861	Texas	18
307	428,346	Okla.	6	365	365,839	La.	7
308	428,017	N. Y.	32	366	362,922	Mich.	15
309	427,944	W. Va.	5	367	362,439	N. J.	12
310	427,456	S. C.	5	368	361,823	Ind.	10
311	427,190	Ill.	19	369	361,591	Okla.	7
312	426,918	Fla.	5	370	361,263	Mo.	11
313	421,650	N. C.	9	371	360,126	Pa.	28
314	421,475	Pa.	24	372	359,508	N. Y.	38
315	421,162	Mich.	13	373	358,630	Va.	8
316	420,213	Wisc.	8	374	357,388	Ark.	6
317	419,592	Mont.	2	375	354,470	Ohio	20
318	419,028	Ohio	17	376	354,458	Calif.	20
319	419,014	Calif.	17	377	353,011	Mo.	3
320	418,356	Ca.	8	378	351,162	Ill.	23
321	414,841	N. Y.	33	379	350,167	N. Y.	39
322	414,417	Va.	7	380	348,695	W. Va.	6
323	414,291	Texas	16	381	348,297	S. C.	6
324	412,732	Utah	2	382	347,859	Fla.	6
325	412,051	Mass.	11	383	347,482	Pa.	29
326	409,780	Md.	5	384	347,001	Texas	19
327	405,253	Ill.	20	385	345,891	Mass.	13
328	405,231	Kans.	5	386	344,231	Tenn.	9

# EXHIBIT 1

## Priority List for Apportionment 1940 Populations - Method of Harmonic Mean

Size of House	Priority value	State	No. of Rep.	Size of House	Priority value	State	No. of Rep.
387	341,299	N. Y.	40	445	298,059	Mass.	15
388	340,928	N. C.	11	446	297,228	N. I.	3
389	339,947	Iowa	8	447	296,281	N. Y.	46
390	339,457	Mich.	16	448	296,063	Nebr.	5
391	337,968	Miss.	7	449	295,594	Pa.	34
392	337,127	Ohio	21	450	294,743	Illm.	10
393	337,146	Calif.	21	451	294,353	N. Va.	7
394	336,205	Ill.	24	452	294,074	Ohio	24
395	335,942	Ky.	9	453	294,064	Calif.	24
396	335,696	Pa.	30	454	294,017	S. C.	7
397	334,447	Ala.	9	455	293,647	Fla.	7
398	333,895	MA.	6	456	292,473	Miss.	8
399	333,347	N. J.	13	457	289,907	N. Y.	47
400	332,869	N. Y.	41	458	287,267	Ill.	28
401	331,190	Wisc.	10	459	287,249	N. J.	15
402	330,188	Kans.	6	460	287,022	Pa.	35
403	329,726	Ga.	10	461	286,188	N. C.	13
404	329,725	Mo.	12	462	285,244	Tex.	23
405	329,647	Miss.	9	463	284,322	Mich.	19
406	329,182	Tex.	20	464	283,803	N. Y.	48
407	327,628	Calif.	4	465	282,654	Va.	10
408	327,199	Ind.	11	466	282,061	Ohio	25
409	324,846	N. Y.	42	467	282,052	Calif.	25
410	324,683	Pa.	31	468	281,859	MD.	7
411	322,471	Ill.	25	469	280,731	Mo.	14
412	321,458	Ohio	22	470	279,069	La.	9
413	321,448	Calif.	22	471	278,934	Pa.	36
414	320,196	Mass.	14	472	278,788	Mass.	16
415	318,845	Mich.	17	473	278,731	Kans.	7
416	318,302	Wash.	6	474	278,330	Tenn.	11
417	317,825	Oreg.	4	475	277,950	N. Y.	49
418	317,200	N. Y.	43	476	277,181	Ill.	29
419	316,591	La.	8	477	275,829	Okla.	9
420	316,126	Va.	9	478	274,663	Ind.	13
421	314,371	Pa.	32	479	273,350	Wisc.	12
422	313,361	Conn.	6	480	273,093	Texas	24
423	313,104	Texas	21	481	272,334	N. Y.	50
424	312,915	Okla.	8	482	272,143	Ga.	12
425	311,164	N. C.	12	483	271,628	Ky.	11
426	309,906	N. Y.	44	484	271,289	Pa.	37
427	309,815	Ill.	26	485	270,991	Ohio	26
428	308,584	N. J.	14	486	270,982	Calif.	26
429	307,783	Tenn.	10	487	270,419	Ala.	11
430	307,157	Ohio	23	488	269,721	Mich.	30
431	307,147	Calif.	23	489	269,423	Vt.	2
432	304,693	Pa.	33	490	268,696	Wash.	7
433	303,258	Mo.	13	491	268,677	N. J.	16
434	302,940	N. Y.	45	492	267,928	Iowa	10
435	301,691	Ark.	7	493	267,900	S. D.	3
436	300,594	Mich.	18	494	267,780	Ill.	30
437	300,372	Ky.	10	495	267,473	N. D.	3
438	299,657	Iowa	9	496	266,940	N. Y.	51
439	299,497	Wisc.	11	497	266,538	Miss.	11
440	299,035	Ala.	10	498	264,928	N. C.	14
441	298,634	Ind.	12	499	264,526	Conn.	7
442	298,525	Texas	22	500	264,052	Pa.	38
443	298,174	Ga.	11				
444	298,115	Ill.	27				

## EXHIBIT 2

U.S. Department of Commerce  
U.S. Census Bureau

Apportionment of Seats in the U.S. House of Representatives and Average Population Per Seat: 1910 to 2020

Area	2020 Census			2010 Census			2000 Census		
	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per
Alabama	7	0	718,579	7	0	686,140	7	0	637,304
Alaska	1	0	736,081	1	0	721,523	1	0	628,933
Arizona	9	0	795,436	9	1	712,522	8	2	642,585
Arkansas	4	0	753,439	4	0	731,557	4	0	669,933
California	52	-1	761,091	53	0	704,566	53	1	640,204
Colorado	8	1	722,771	7	0	720,704	7	1	615,983
Connecticut	5	0	721,660	5	0	716,326	5	-1	681,907
Delaware	1	0	990,837	1	0	900,877	1	0	785,068
Florida	28	1	770,376	27	2	700,029	25	2	641,156
Georgia	14	0	766,091	14	1	694,826	13	2	631,306
Hawaii	2	0	730,069	2	0	683,431	2	0	608,321
Idaho	2	0	920,689	2	0	786,750	2	0	648,637
Illinois	17	-1	754,279	18	-1	714,688	19	-1	654,686
Indiana	9	0	754,476	9	0	722,398	9	-1	676,754
Iowa	4	0	798,102	4	-1	763,447	5	0	586,385
Kansas	4	0	735,216	4	0	715,953	4	0	673,456
Kentucky	6	0	751,557	6	0	725,101	6	0	674,905
Louisiana	6	0	776,911	6	-1	758,994	7	0	640,039
Maine	2	0	681,791	2	0	666,537	2	0	638,866
Maryland	8	0	773,160	8	0	723,741	8	0	663,486
Massachusetts	9	0	781,497	9	-1	728,849	10	0	635,557
Michigan	13	-1	775,726	14	-1	707,973	15	-1	663,722
Minnesota	8	0	713,719	8	0	664,360	8	0	615,709
Mississippi	4	0	740,979	4	0	744,560	4	-1	713,232
Missouri	8	0	770,035	8	-1	751,435	9	0	622,918
Montana	2	1	542,704	1	0	994,416	1	0	905,316
Nebraska	3	0	654,444	3	0	610,608	3	0	571,790
Nevada	4	0	777,116	4	1	677,358	3	1	667,344
New Hampshire	2	0	689,545	2	0	660,723	2	0	619,208
New Jersey	12	0	774,541	12	-1	733,958	13	0	648,027
New Mexico	3	0	706,740	3	0	689,091	3	0	607,940
New York	26	-1	777,529	27	-2	719,298	29	-2	655,344
North Carolina	14	1	746,711	13	0	735,829	13	1	620,590
North Dakota	1	0	779,702	1	0	675,905	1	0	643,756
Ohio	15	-1	787,257	16	-2	723,031	18	-1	631,919
Oklahoma	5	0	792,703	5	0	752,976	5	-1	691,764
Oregon	6	1	706,917	5	0	769,721	5	0	685,709
Pennsylvania	17	-1	765,403	18	-1	707,495	19	-2	647,404
Rhode Island	2	0	549,082	2	0	527,624	2	0	524,831
South Carolina	7	0	732,102	7	1	663,711	6	0	670,844
South Dakota	1	0	887,770	1	0	819,761	1	0	756,874
Tennessee	9	0	768,544	9	0	708,381	9	0	633,337
Texas	38	2	767,981	36	4	701,901	32	2	653,250
Utah	4	0	818,813	4	1	692,691	3	0	745,571
Vermont	1	0	643,503	1	0	630,337	1	0	609,890
Virginia	11	0	786,777	11	0	730,703	11	0	645,518
Washington	10	0	771,595	10	1	675,337	9	0	656,520
West Virginia	2	-1	897,523	3	0	619,938	3	0	604,359
Wisconsin	8	0	737,184	8	0	712,279	8	-1	671,401
Wyoming	1	0	577,719	1	0	568,300	1	0	495,304
United States	435	7	761,169	435	12	710,767	435	12	646,952

X Not applicable. Represents date prior to becoming a state.

Note 1: Apportionment is the process of dividing up the number of representatives (or seats) in the U.S. House of Representatives among the 50 states. The District of Columbia and Puerto Rico are not included.

Note 2: The value for the "United States" row that is shown in each "Change in Seats" column indicates the total number of seats that were reassigned that decade (except for the 1910 value, which indicates the number of seats added to the U.S. House of Representatives since 1900).



## EXHIBIT 2

Apportionment of Seats in the U.S. House of Representatives and Average Population Per Seat: 1910 to 2020 (continued)

Area	1990 Census			1980 Census			1970 Census		
	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per
Alabama	7	0	580,373	7	0	555,723	7	-1	496,555
Alaska	1	0	551,947	1	0	400,481	1	0	304,067
Arizona	6	1	612,998	5	1	543,573	4	1	446,905
Arkansas	4	0	590,560	4	0	571,378	4	0	485,576
California	52	7	573,832	45	2	525,968	43	5	467,415
Colorado	6	0	551,319	6	1	481,472	5	1	445,354
Connecticut	6	0	549,278	6	0	517,929	6	0	508,449
Delaware	1	0	668,696	1	0	595,225	1	0	551,928
Florida	23	4	565,364	19	4	512,631	15	3	457,047
Georgia	11	1	591,674	10	0	546,427	10	0	462,731
Hawaii	2	0	557,637	2	0	482,500	2	0	392,451
Idaho	2	0	505,993	2	0	471,968	2	0	359,961
Illinois	20	-2	573,334	22	-2	519,021	24	0	466,013
Indiana	10	0	556,423	10	-1	549,018	11	0	475,287
Iowa	5	-1	557,485	6	0	485,565	6	-1	474,487
Kansas	4	-1	621,400	5	0	472,642	5	0	453,169
Kentucky	6	-1	616,495	7	0	523,062	7	0	463,783
Louisiana	7	-1	605,459	8	0	525,497	8	0	459,001
Maine	2	0	616,612	2	0	562,330	2	0	503,160
Maryland	8	0	599,828	8	0	527,056	8	0	494,212
Massachusetts	10	-1	602,905	11	-1	521,549	12	0	477,223
Michigan	16	-2	583,049	18	-1	514,352	19	0	470,379
Minnesota	8	0	548,379	8	0	509,644	8	0	479,147
Mississippi	5	0	517,289	5	0	504,128	5	0	446,770
Missouri	9	0	570,867	9	-1	546,383	10	0	471,803
Montana	1	-1	803,655	2	0	393,345	2	0	350,787
Nebraska	3	0	528,206	3	0	523,335	3	0	498,940
Nevada	2	0	603,076	2	1	399,592	1	0	492,396
New Hampshire	2	0	556,958	2	0	460,305	2	0	373,142
New Jersey	13	-1	596,049	14	-1	526,011	15	0	480,536
New Mexico	3	0	507,260	3	1	433,323	2	0	513,332
New York	31	-3	582,081	34	-5	516,391	39	-2	470,207
North Carolina	12	1	554,803	11	0	534,039	11	0	465,930
North Dakota	1	0	641,364	1	0	652,695	1	-1	624,181
Ohio	19	-2	573,017	21	-2	514,163	23	-1	466,530
Oklahoma	6	0	526,267	6	0	504,211	6	0	430,914
Oregon	5	0	570,747	5	1	526,533	4	0	527,703
Pennsylvania	21	-2	567,843	23	-2	515,945	25	-2	475,373
Rhode Island	2	0	502,992	2	0	473,577	2	0	478,899
South Carolina	6	0	584,285	6	0	519,868	6	0	436,220
South Dakota	1	0	699,999	1	-1	690,178	2	0	336,624
Tennessee	9	0	544,071	9	1	510,083	8	-1	495,133
Texas	30	3	568,660	27	3	526,977	24	1	470,783
Utah	3	0	575,928	3	1	487,012	2	0	533,905
Vermont	1	0	564,964	1	0	511,456	1	0	448,327
Virginia	11	1	565,143	10	0	534,628	10	0	469,074
Washington	9	1	543,105	8	1	516,270	7	0	491,927
West Virginia	3	-1	600,542	4	0	487,411	4	-1	440,833
Wisconsin	9	0	545,194	9	0	522,815	9	-1	494,113
Wyoming	1	0	455,975	1	0	470,816	1	0	335,719
United States	435	19	572,466	435	17	519,235	435	11	469,088

## EXHIBIT 2

Apportionment of Seats in the U.S. House of Representatives and Average Population Per Seat: 1910 to 2020 (continued)

Area	1960 Census <sup>1</sup>			1950 Census			1940 Census		
	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per
Alabama	8	-1	408,343	9	0	340,194	9	0	314,773
Alaska	1	1	226,167	X	X	X	X	X	X
Arizona	3	1	434,054	2	0	374,794	2	1	249,631
Arkansas	4	-2	446,568	6	-1	318,252	7	0	278,484
California	38	8	413,611	30	7	352,874	23	3	300,321
Colorado	4	0	438,487	4	0	331,272	4	0	280,824
Connecticut	6	0	422,539	6	0	334,547	6	0	284,874
Delaware	1	0	446,292	1	0	318,085	1	0	266,505
Florida	12	4	412,630	8	2	346,413	6	1	316,236
Georgia	10	0	394,312	10	0	344,458	10	0	312,372
Hawaii	2	2	316,386	X	X	X	X	X	X
Idaho	2	0	333,596	2	0	294,319	2	0	262,437
Illinois	24	-1	420,048	25	-1	348,487	26	-1	303,740
Indiana	11	0	423,863	11	0	357,657	11	-1	311,618
Iowa	7	-1	393,934	8	0	327,634	8	-1	317,284
Kansas	5	-1	435,722	6	0	317,550	6	-1	300,171
Kentucky	7	-1	434,022	8	-1	368,101	9	0	316,181
Louisiana	8	0	407,128	8	0	335,440	8	0	295,485
Maine	2	-1	484,633	3	0	304,591	3	0	282,409
Maryland	8	1	387,586	7	1	334,714	6	0	303,541
Massachusetts	12	-2	429,048	14	0	335,037	14	-1	308,337
Michigan	19	1	411,747	18	1	353,987	17	0	309,183
Minnesota	8	-1	426,733	9	0	331,387	9	0	310,256
Mississippi	5	-1	435,628	6	-1	363,152	7	0	311,971
Missouri	10	-1	431,981	11	-2	359,514	13	0	291,128
Montana	2	0	337,384	2	0	295,512	2	0	279,728
Nebraska	3	-1	470,443	4	0	331,378	4	-1	328,959
Nevada	1	0	285,278	1	0	160,083	1	0	110,247
New Hampshire	2	0	303,461	2	0	266,621	2	0	245,762
New Jersey	15	1	404,452	14	0	345,381	14	0	297,155
New Mexico	2	0	475,512	2	0	340,594	2	1	265,909
New York	41	-2	409,324	43	-2	344,888	45	0	299,536
North Carolina	11	-1	414,196	12	0	338,494	12	1	297,635
North Dakota	2	0	316,223	2	0	309,818	2	0	320,968
Ohio	24	1	404,433	23	0	345,506	23	-1	300,331
Oklahoma	6	0	388,047	6	-2	372,225	8	-1	292,054
Oregon	4	0	442,172	4	0	380,335	4	1	272,421
Pennsylvania	27	-3	419,236	30	-3	349,934	33	-1	300,005
Rhode Island	2	0	429,744	2	0	395,948	2	0	356,673
South Carolina	6	0	397,099	6	0	352,838	6	0	316,634
South Dakota	2	0	340,257	2	0	326,370	2	0	321,481
Tennessee	9	0	396,343	9	-1	365,746	10	1	291,584
Texas	23	1	416,508	22	1	350,509	21	0	305,468
Utah	2	0	445,314	2	0	344,431	2	0	275,155
Vermont	1	0	389,881	1	0	377,747	1	0	359,231
Virginia	10	0	396,695	10	1	331,868	9	0	297,530
Washington	7	0	407,602	7	1	339,852	6	0	289,365
West Virginia	5	-1	372,084	6	0	334,259	6	0	316,996
Wisconsin	10	0	395,178	10	0	343,458	10	0	313,759
Wyoming	1	0	330,066	1	0	290,529	1	0	250,742
United States	435	21	410,481	435	14	344,587	435	9	301,164

<sup>1</sup> In 1959, Alaska and Hawaii became states and were each granted a seat—temporarily increasing the size of the House to 437. The size of the House for the 1960 apportionment reverted back to the fixed size of 435 seats.

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Apportionment of Seats in the U.S. House of Representatives and Average Population Per Seat: 1910 to 2020 (continued)

Area	1930 Census			1920 Census <sup>2</sup>			1910 Census <sup>3</sup>		
	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per	Number of Seats	Change in Seats	Average Population Per
Alabama	9	-1	294,027	10	0	234,817	10	1	213,809
Alaska	X	X	X	X	X	X	X	X	X
Arizona	1	1	389,375	1	1	309,495	X	X	X
Arkansas	7	0	264,921	7	0	250,315	7	0	224,921
California	20	9	283,412	11	0	311,457	11	3	216,051
Colorado	4	0	258,712	4	0	234,790	4	1	199,643
Connecticut	6	1	267,816	5	0	276,126	5	0	222,951
Delaware	1	0	238,380	1	0	223,003	1	0	202,322
Florida	5	1	293,638	4	0	242,118	4	1	188,155
Georgia	10	-2	290,845	12	0	241,319	12	1	217,427
Hawaii	X	X	X	X	X	X	X	X	X
Idaho	2	0	220,768	2	0	215,221	2	1	161,720
Illinois	27	0	282,607	27	0	240,196	27	2	208,837
Indiana	12	-1	269,873	13	0	225,415	13	0	207,760
Iowa	9	-2	274,491	11	0	218,547	11	0	202,252
Kansas	7	-1	268,500	8	0	221,157	8	0	211,369
Kentucky	9	-2	290,508	11	0	219,694	11	0	208,173
Louisiana	8	0	262,699	8	0	224,814	8	1	207,049
Maine	3	-1	265,806	4	0	192,004	4	0	185,593
Maryland	6	0	271,920	6	0	241,610	6	0	215,891
Massachusetts	15	-1	283,307	16	0	240,772	16	2	210,401
Michigan	17	4	284,827	13	0	282,186	13	1	216,167
Minnesota	9	-1	283,509	10	0	238,566	10	1	207,438
Mississippi	7	-1	286,879	8	0	223,827	8	0	224,639
Missouri	13	-3	279,162	16	0	212,753	16	0	205,833
Montana	2	0	262,365	2	0	270,756	2	1	183,169
Nebraska	5	-1	275,025	6	0	216,062	6	0	198,702
Nevada	1	0	86,390	1	0	75,820	1	0	80,293
New Hampshire	2	0	232,646	2	0	221,542	2	0	215,286
New Jersey	14	2	288,666	12	0	262,992	12	2	211,431
New Mexico	1	1	395,982	1	1	353,428	X	X	X
New York	45	2	279,733	43	0	241,409	43	6	211,836
North Carolina	11	1	287,934	10	0	255,912	10	0	220,629
North Dakota	2	-1	336,670	3	0	214,651	3	1	191,468
Ohio	24	2	276,943	22	0	261,791	22	1	216,687
Oklahoma	9	1	264,691	8	0	253,535	8	8	207,144
Oregon	3	0	316,793	3	0	261,130	3	1	224,255
Pennsylvania	34	-2	283,274	36	0	242,223	36	4	212,920
Rhode Island	2	-1	343,749	3	0	201,466	3	1	180,870
South Carolina	6	-1	289,793	7	0	240,532	7	0	216,486
South Dakota	2	-1	336,503	3	0	210,413	3	1	191,892
Tennessee	9	-1	290,722	10	0	233,789	10	0	218,479
Texas	21	3	277,362	18	0	259,068	18	2	216,475
Utah	2	0	252,871	2	0	224,194	2	1	185,932
Vermont	1	-1	359,611	2	0	176,214	2	0	177,978
Virginia	9	-1	269,092	10	0	230,919	10	0	206,161
Washington	6	1	258,737	5	0	270,919	5	2	228,027
West Virginia	6	0	288,200	6	0	243,950	6	1	203,520
Wisconsin	10	-1	293,172	11	0	239,210	11	0	212,078
Wyoming	1	0	223,630	1	0	193,487	1	0	144,658
United States	435	27	280,675	435	0	241,864	433	47	210,328

<sup>2</sup> In 1912, Arizona and New Mexico became states and each were granted a seat—temporarily increasing the size of the House to 435. In 1920, the Census Bureau did transmit apportionment counts to Congress, but Congress did not reapportion. The size of the House during the next apportionment, in 1930, was fixed at 435.

<sup>3</sup> In 1900, there were 386 seats in the House. In 1907, Oklahoma became a state and was granted 5 seats—temporarily increasing the size of the House to 391. The size of the House during the next apportionment, in 1910, was increased to 433.

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**A GUIDE  
TO  
STATE AND CONGRESSIONAL REDISTRICTING  
IN  
NEW MEXICO**

**2011**

Prepared by the  
New Mexico Legislative Council Service  
Room 411, State Capitol  
Santa Fe, New Mexico  
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### **INTRODUCTION**

No other single issue ignites the interests of legislators, sparks such a variety of alternatives or creates such an intense atmosphere of maneuver and compromise as does redistricting. Redistricting can be an agonizing experience. Shifts in population leave some legislators in the unhappy position of having to vote on a redistricting bill that may cost them their legislative seats. Some residents will find themselves in new districts. Some areas of the state lose power in the lawmaking process to other areas. Political control of the legislature may move from one party to another or from one political philosophy to another.

On March 15, 2011, the United States Census Bureau released the decennial count of the population of New Mexico — 2,059,179 — as assigned to its 1,448 precincts. The New Mexico Legislature is now faced with the task of redistricting its house and senate seats, the Public Regulation Commission districts and the state's three congressional districts.

In view of this impending drama and the importance of redistricting to basic citizenship, it is appropriate for the Legislative Council Service to summarize the basic process of redistricting and provide an overview of that process in New Mexico. We hope the following will provide all New Mexicans with a nontechnical and informative introduction to the subject.

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### **WHAT DOES IT MEAN TO REAPPORTION OR REDISTRRICT?**

#### **Reapportionment**

"Reapportionment" is the process of dividing or redividing a given number of seats in a legislative body among established governmental units, usually according to a plan or formula. We generally use the term reapportionment when referring to the process by which the 435 seats of the United States House of Representatives are apportioned among the 50 states. This is accomplished through the use of a mathematical formula, which is recalculated every 10 years following the federal census. At that time, the 435 congressional seats are reapportioned among the 50 states. The fastest growing states are apportioned more representatives, and states that are not growing as fast lose representatives.

#### **Redistricting**

"Redistricting" is often used synonymously with reapportionment but the terms do not mean the same thing. Redistricting means redrawing the boundaries of existing voting districts. In this process, the number of representatives per district does not change but the district's boundaries do. For example, New Mexico has 70 house districts and 42 senate districts. Redistricting will not change the number of districts but it will change the boundaries of those districts.

Unlike reapportionment, which is a mathematical process, redistricting is a political process. In redistricting, there is discretion in where new boundaries are placed.

### **WHY REAPPORTION AND REDISTRRICT?**

#### **Constitutional and Statutory Authority**

The history of redistricting begins with the United States Constitution and its requirement that members of the United States House of Representatives be apportioned among the states according to the number of persons in each state as determined by an actual enumeration every 10 years. Section 2 of the Fourteenth Amendment and Article 1, Section 2 of the United States Constitution, in pertinent part, state:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State<sup>1</sup> . . . The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct<sup>2</sup> . . .

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Beginning with the first census in 1790, there has been a census every 10 years, for an unbroken series of 23 nationwide population counts. The census provides the statistical basis for state-drawn congressional district lines, almost all state legislative redistricting plans, most local redistricting measures and many distribution formulas for allocating revenues and government funds.

Congress has delegated the responsibility for taking the census to the United States Department of Commerce and its Census Bureau. The law directs the secretary of commerce to take a decennial census of the population as of the first day of April of the first year in each decade. The census must be completed within nine months and the state population totals reported to the president by December 31 of the census year.<sup>3</sup>

Following the census, the president transmits to Congress the apportionment of the 435 representatives among the states. Each state is guaranteed at least one representative. The remaining 385 seats are apportioned among the states based on census results and a mathematical formula known as the "method of equal proportions".

New Mexico's population did not grow enough between 2000 and 2010 to warrant the addition of a fourth congressional district.

Statutory law further requires that the secretary of commerce, no later than April 1, 2011, provide more detailed reports by state sub-units to the governors and bodies or officials charged with state legislative redistricting. This population data is commonly referred to as PL 94-171 data, after the federal law requiring the data reports.<sup>4</sup> It is this data that is used to redraw congressional and legislative districts in New Mexico.

### **The Drawing of Boundaries**

While redistricting has been a fundamental issue in American representative democracy since the 1787 constitutional convention, the Founding Fathers did not design a set of blueprints for achieving fair and equal representation for all people. It was not until 1911 that Congress established redistricting criteria for use by the states in the drawing of congressional districts. However, Congress dropped those criteria in 1921, allowing states to once again redistrict on any basis, which in practice was rarely on the basis of population figures.

By 1946, the failure of the legislative branch to remedy the inequities of the redistricting process led to the question being put to the United States Supreme Court in *Colegrove v. Green*. The Court determined the issue was nonjusticiable. Justice Felix Frankfurter, in the majority opinion, concluded:

Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure state legislators that will apportion properly, or to invoke the ample powers of Congress.<sup>5</sup>



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Judicial nonintervention continued to be the Court's policy for the next 16 years. Then, in 1962, in *Baker v. Carr*, the Court changed direction, holding that state legislative districting cases are subject to judicial review.<sup>6</sup> Since *Baker*, the Court has consistently held that legislative and congressional redistricting cases are subject to review by the courts. Over time, this review has focused on two major areas — the population of districts and the dilution of voter strength in minority districts.

### **The Population of Districts**

In the year following *Baker*, the Supreme Court issued its now famous opinion in *Gray v. Sanders*. In *Gray*, the Court was asked to consider the constitutionality of districts that varied significantly in population. Writing for the majority, Justice William O. Douglas wrote the historic words:

. . . the conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing — one person, one vote.<sup>7</sup>

Once the Supreme Court opted for judicial review of districting cases, it stayed in the fray, handing down 17 redistricting rulings the next year. In 1964, in *Wesberry v. Sanders*, the Court held that congressional districts must be redrawn so that "as nearly as is practicable one man's vote in a congressional election is . . . worth as much as another's".<sup>8</sup> By 1983, the Court developed a standard of equality for congressional districts that required them to be mathematically equal unless justified by some "legitimate objective".<sup>9</sup> Since 1983, mathematical equality for congressional districts has remained the standard.

While the population of congressional districts must be as nearly equal as practicable, the Court has allowed a more lenient standard for state legislative districts. The Court has held that legislative districts need not be mathematically equal; nonetheless, absent some rational state policy, they should not differ by more than plus or minus five percent from the ideal and, even then, may be subject to an equal protection challenge if traditional redistricting principles are ignored.<sup>10</sup>

### **Reporting Population Data**

In 1975, in order to facilitate the drawing of districts with equal populations, Congress enacted PL 94-171. The law requires the secretary of commerce to report census results no later than April 1 of the year following the census to governors and officials charged with state legislative redistricting.<sup>11</sup> It also requires the secretary to cooperate with state redistricting officials in developing a nonpartisan plan for reporting census tabulations.

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While such a requirement may appear relatively noncontroversial, the reporting of census data has in fact generated significant controversy. Questions about how census numbers were obtained and what numbers were reported brought the Census Bureau under significant scrutiny in the 1990s. The bureau has long acknowledged that its federal decennial census misses some people, and post-enumeration surveys show that some populations are more likely to be undercounted than others. This situation set the stage for significant undercount litigation in the 1990s.

After the release of the 1990 census figures, New York City and other jurisdictions challenged the release of census figures that undercounted minority populations, alleging a violation of minority voting rights.<sup>12</sup> Although acknowledging an undercount, the secretary of commerce declined to allow the bureau to adjust the count to make it more accurate. Subsequently, Wisconsin and Oklahoma joined the suit on the side of the Department of Commerce in order to preserve their federal funding under the 1990 census. Without dissent, the Supreme Court held that in light of the United States Constitution's broad grant of authority to Congress, which delegated its authority to the secretary of commerce through the Census Act, "the Secretary's decision not to adjust need only bear a reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purposes of the census".<sup>13</sup> Thus, the federal government did not have to adjust census figures that undercounted minority populations if the secretary had a reasonable explanation for not doing so. The Court found that the secretary's emphasis on distributional accuracy over numerical accuracy of the census was within the secretary's discretion.<sup>14</sup>

As the country prepared for the 2000 census, undercount and statistical sampling issues once again occupied the spotlight. When the Department of Commerce announced its intention to use statistical sampling techniques to adjust the 2000 census, several sets of plaintiffs filed suit. Among the plaintiffs was the United States House of Representatives, which sought to enjoin the Department of Commerce from using statistical sampling. Ruling in January 1999, the Supreme Court held that the Census Act prohibits the use of statistical sampling for purposes of apportioning representatives among the states.<sup>15</sup> However, the Court did not rule on whether adjusted figures could be used for redrawing congressional district lines within each state. In March 2001, the Department of Commerce announced that it would not statistically adjust the 2001 census numbers and would only release data based on the actual count.

### **Racial and Ethnic Discrimination**

In the 1960s, as the courts forced states to seek population equality in voting districts to ensure that one person's vote was equal to any other person's vote, the issue of ethnic and racial discrimination in state and congressional redistricting also loomed large. The passage and ratification in 1870 of the Fifteenth Amendment to the United States Constitution guaranteed citizens that their right to vote shall not be abridged by the United States or any state on account of race, color or previous condition of servitude. However, in practice, states often circumvented the spirit and intent of this guarantee. Nearly a century after the passage of the Fifteenth Amendment, Congress passed the Voting Rights Act of 1965.<sup>16</sup> The Voting Rights Act was

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primarily intended to enforce the Fifteenth Amendment but also to enforce the equal protection clause of the Fourteenth Amendment and Article 1, Section 4 of the United States Constitution. Additionally, the act was later amended to provide for protection of language minorities as well as racial minorities.

Over the years, many cases have been brought before the courts alleging discrimination in the districting process. Most of the cases alleged violations of the equal protection clause of the Constitution and Section 2 of the Voting Rights Act of 1965. Section 2 prohibits a state or political subdivision from imposing any voting qualification, standard, practice or procedure that results in denial or abridgment of a United States citizen's right to vote on account of race, color or status as a member of a language minority group.<sup>17</sup> It creates a legal cause of action against a jurisdiction violating this mandate. The legal test by which such cases are adjudicated is the "results" test.<sup>18</sup> This means that a plaintiff may prove a Section 2 violation if, as a result of the challenged practice or structure, the plaintiff did not have equal opportunity to participate in the political process and to elect candidates of the plaintiff's choice.

Section 5 of the Voting Rights Act has also been used to battle discriminatory practices in redistricting. Section 5 does not apply to all jurisdictions but only to "covered" jurisdictions, which originally included only those state and local jurisdictions that, as of November 1, 1964, maintained literacy or educational prerequisites, evidence of good moral character or other similar qualifying prerequisites for voting and that had less than 50 percent of the voting-age population either registered on November 1, 1964 or voting in the presidential election of 1964.<sup>19</sup> Under Section 5, a covered jurisdiction must preclear changes in its electoral laws, practices or procedures with either the United States Department of Justice or the United States district court for the District of Columbia. The same preclearance requirement is imposed on those jurisdictions where discriminatory voting practices have been found.<sup>20</sup>

In the years following the passage of the Voting Rights Act of 1965, Congress continued to broaden the scope of the law. Subsequent amendments to that act created additional categories of "covered jurisdictions" subject to preclearance. For New Mexico, the most significant were the amendments passed in 1975, which expanded the scope of Section 5 beyond race and color to include members of language minority groups.<sup>21</sup> The law requires the use of preclearance procedures in jurisdictions in which more than five percent of the voting-age citizens are members of a single language minority and in which printed election materials are available only in the English language. American Indians, Asian Americans, Alaska Natives and persons of Spanish heritage are members of language minority groups.<sup>22</sup> These amendments brought New Mexico under Section 5 of the Voting Rights Act of 1965 for a short time in the 1970s, but New Mexico was released from preclearance requirements in 1976.

### **Applying the Voting Rights Act**

During the 1990s redistricting process, Sections 2 and 5 of the Voting Rights Act and the equal protection clause of the United States Constitution provided the basis for significant voting rights litigation across the country. Much of that litigation came about when states created

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additional majority-minority voting districts — districts configured so that a racial or language minority population constituted a majority — often in an effort to forestall Section 2 challenges. This was a particularly common occurrence in jurisdictions subject to Section 5 preclearance. In those jurisdictions, Department of Justice officials frequently pushed to maximize the number of majority-minority districts without regard for the traditional districting principles of compactness, contiguity and the preservation of communities of interest.

Eventually, many jurisdictions found themselves in court, forced to justify the creation of bizarrely shaped districts created for the purpose of increasing minority voting strength. In *Shaw v. Reno* and subsequent cases, the Supreme Court rejected the creation of bizarrely shaped districts created for the purpose of maximizing minority voting strength, holding that the use of race as the predominant factor in making districting decisions violated the equal protection clause.<sup>23</sup> In subsequent cases, however, the Court stated that race may still be a factor appropriately considered in the districting process. Nonetheless, when legislative bodies set aside traditional districting principles (such as compactness, contiguity, the preservation of communities of interest and political subdivisions) in favor of race-based districting, the districting process may violate the equal protection clause.<sup>24</sup> Writing for the Court in *Bush v. Vera*, Justice Sandra Day O'Connor stated that when traditional districting principles are subordinated to race-based decisions, the Court would apply a standard of strict scrutiny.<sup>25</sup> And though the court, in *Hunt v. Cromartie*, stressed that the plaintiff has a high burden of proof in challenging a plan on these grounds,<sup>26</sup> once a strict scrutiny standard applies, the Court will allow race-based districts only if the state can demonstrate that the district is narrowly tailored to further a compelling state interest.

#### **A BRIEF HISTORY OF REDISTRICTING IN NEW MEXICO**

While neither the Constitution of New Mexico nor state law mandates redistricting after every decennial census, Article 4 of the Constitution of New Mexico authorizes it,<sup>27</sup> and the process has become necessary as the population of each district changes dramatically each decade. Redistricting is necessary to ensure population equality and to prevent dilution of minority voting strength, as required under federal law.

Legislative redistricting in New Mexico has a turbulent history. A study of that history, *Legislative Apportionment in New Mexico: 1844-1966*,<sup>28</sup> shows that the job of allocating representation among the counties of the territory, and of the state prior to the 1960s, was at some times neglected and at other times circuitous. Until 1949, population was the major basis of representation in both houses, although equal representation, as the courts use the term today, was seldom achieved.

In 1949, a constitutional amendment provided for the apportionment of the New Mexico Senate in a fashion similar to that of the United States Senate. One senator was allotted to each county, except counties of the sixth class. The districts of the New Mexico House of Representatives were changed little from the original 1910 constitutional apportionment. The

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size of the house increased from 49 to 55, with the additional six representatives going to fast-growing Bernalillo County.

### 1960s

Then came the 1960s and the impact of the federal reapportionment cases. In 1962, a suit was filed in state district court challenging the 1949 constitutional apportionment of the house. Two years later, a suit was filed in the United States district court for the district of New Mexico challenging the 1949 apportionment of the senate. The result of those two suits was that the courts declared the 1949 apportionment provisions of the Constitution of New Mexico unconstitutional and in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

The state was then without an apportionment law, and, with the exception of 1964, the legislature spent every year from 1963 to 1966 trying to find a workable solution. This apportionment marathon resulted in the legislature adopting, in 1965, a house plan based on 70 members, with five multicounty districts and, in 1966, a 42-member senate plan.

The 42-member plan for the senate was subsequently modified twice by a three-judge federal district court. Those modifications included two at-large positions in counties that were already districted and three at-large positions in multicounty districts. Voters in at-large districts were allowed to vote for two senators instead of one. This decision was not appealed.

### 1970s

Faced with redistricting in the 1970s, the 1971 legislature passed a 71-member reapportionment house plan and a 45-member senate plan. Both plans were based on estimated population derived from the vote for governor at the previous general election, using the so-called "votes cast formula". Actual census figures were not used because New Mexico's precinct boundary lines in most cases did not coincide with census enumeration district lines.

Two suits challenging the 1971 acts were filed, one in state district court and the other in United States district court. The state court directed that because redistricting is primarily a legislative function, the issue should be submitted to the 1972 legislature.

The 1972 acts passed by the legislature retained 70 representatives and 42 senators. In both houses, two plans were enacted, one for the 1972 elections and one for the 1974 and 1976 elections for the house and senate. The provisional districts drawn for the 1972 plans were based on census-enumeration districts, and precincts were to be redrawn so their boundaries would correspond to census-enumeration district lines. The provisional 1972 house apportionment plan included one flatorial district in which six representatives were to run from districts and one was to run at large. The provisional senate plan provided for staggered terms, subject to court determination.

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In 1972, the state district court in Santa Fe ruled the house provisional plan constitutional except for the sections relating to the floterial district, accepting instead the alternate provisions for seven single-member districts. The provisional senate plan was also ruled constitutional except for the sections relating to the terms of office of the eight senators elected in 1970 whose new districts were either coterminous or wholly composed of the area within their old districts. Under the plan, they were not required to run for re-election until 1974. The remaining senators had to run for re-election in 1972, and the court ruled that staggered terms, where one-half of the senate ran every two years, were no longer acceptable.

The federal district court dismissed its case in 1972, finding that the state court had adequately handled the situation. For a variety of reasons, in 1973 the legislature repealed both the house and senate census-enumeration district plans. The 1972 provisional plans, as modified by the state court, remained in effect until the 1980s.

Federal congressional action provided the next reapportionment hurdle for New Mexico. With the passage of the 1975 amendments to the Voting Rights Act of 1965, New Mexico, because of the minority language extension, joined a number of other, mostly southern, states as a jurisdiction covered under Section 5 of the act. However, under Section 4 of the act, a covered jurisdiction could "bail out" if it could prove to the satisfaction of the federal court that it had not used a discriminatory test or device for a specified period of time.

In 1975 and 1976, New Mexico petitioned the United States district court for the District of Columbia for permission to be exempt from preclearance. The state successfully showed that for the prior 10 years, New Mexico did not have any discriminatory election laws on its books. In 1976, by order of the United States district court for the District of Columbia, the state was released from preclearance procedures.

### 1980s

Following the tradition of the 1960s and 1970s, the 1980s redistricting task in New Mexico was difficult. First, in 1981, the Census Bureau provided states detailed breakdowns of population data in enumerator districts in rural areas and in blocks in urban areas. This posed a huge problem for New Mexico because the bureau's enumerator district and block boundaries still did not coincide with New Mexico's voting precinct lines. Many, if not most, of New Mexico's precinct boundaries were not along visible boundaries acceptable to the bureau. Therefore, New Mexico continued to use the votes cast formula, which had been used in the 1960s and 1970s and defended successfully in court in 1972, to determine precinct population. Using the population so derived, the legislature, in a special session in early January 1982, redistricted both houses and the congressional districts. However, a number of New Mexico's residents and some of its legislators challenged the constitutionality of these districts. The various cases were consolidated and cited as *Sanchez v. King*.<sup>29</sup>

On April 8, 1982, the United States district court for the district of New Mexico found that using the votes cast formula to ascertain precinct population "causes substantial variations

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between the numbers thereby derived and United States census figures".<sup>30</sup> Consequently, the 1982 Reapportionment Acts were declared unconstitutional due to the deviations in population between districts that resulted from using the votes cast formula, which violated the one-person, one-vote principle established in *Reynolds v. Sims*. The court noted "that the census figures, with adjustments for obvious errors which can always occur, are the only reliable and official figures available" and required that "the Legislature employ a good-faith effort to construct legislative districts on the basis of actual population" rather than population figures derived using its votes cast formula.<sup>31</sup>

The result was that, with the help of the Census Bureau and contract demographers, the legislature was able to obtain estimated populations for each of the precincts in the state and make a good-faith effort to construct districts on the basis of actual population. In a third special session in June 1982, the legislature repealed its unconstitutional redistricting efforts and enacted a new 1982 Senate Reapportionment Act and 1982 House Reapportionment Act.

This was not the end of the road. The plaintiffs, in the second phase of *Sanchez v. King*, challenged 19 of the 70 districts adopted by the legislature, claiming that the legislature's second redistricting effort constituted an intentional, racially motivated gerrymander and that it also resulted in an impermissible dilution of minority voting strength.<sup>32</sup>

The federal three-judge court stated that although it was apparent that racially motivated gerrymandering existed in the state redistricting plan, because the Voting Rights Act no longer required a finding of intentional discrimination, the court would not rule on the issue of intent with respect to any particular district.<sup>33</sup> However, on August 8, 1984, the court did find that the redistricting plans for 16 house districts in six counties — Sandoval, Cibola, McKinley, Curry, Otero and Chaves — were illegal under Section 2 of the Voting Rights Act. In December 1984, in its final judgment, the court:

- declared house districts 5, 6, 7, 44, 51, 52, 53, 57, 58, 59, 63, 64, 65, 66, 67 and 69 invalid and implemented a remedial redistricting plan for those districts contained in the August decision;
- declared the results of the June 5, 1984 primary contests for house seats in those districts void;
- appointed federal examiners for a period of 10 years in McKinley, Cibola, Sandoval, Curry, Chaves and Otero counties;
- ordered that all future legislative redistricting be based on actual population and race data by precinct provided by the Census Bureau rather than on population figures derived from the state's votes cast formula; and
- ordered state legislative redistricting plans adopted prior to 1994 to be precleared pursuant to the Voting Rights Act by court determination or submission to the United States attorney general before the plans could be enforced.<sup>34</sup>

A special primary was held on September 18, 1984 for contested legislative races in those districts redrawn by the court. This brought the 1980s round of redistricting to an end and set the stage for the 1990s.

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### 1990s

The 1990s decennial redistricting of New Mexico's congressional and legislative districts was really a decade-long process. Though the 1980s decennial redistricting was not finished until 1984, preparation had already begun in 1983 for the 1990s decennial redistricting.

This preparation began when the legislature enacted the Precinct Boundary Adjustment Act and appropriated funds to provide for readjustment and mapping of all precincts in the state to conform with visible boundaries acceptable to the Census Bureau.<sup>35</sup> Participating in the "1990 Census Redistricting Data Program" administered by the bureau, New Mexico joined the majority of the states in working with the bureau to prepare maps that would for the first time show precinct lines and provide for reporting 1990 census data by precinct.

In Phase I of that program, called the "Block Boundary Suggestion Project", New Mexico began the task of collecting election precinct information from counties and redrawing those boundary lines that did not coincide with visible features on the ground. Phase II of the program involved making sure all precinct boundary lines and existing boundary lines on the census maps were correct, thus allowing the Census Bureau to report census data to the state precinct by precinct. New Mexico received population data by precinct for the first time in 1991.

In September 1991, the governor called the Fortieth Legislature into its first special session. The legislature convened on September 10 and adjourned on September 19. During that time, the legislature considered 30 house bills and 25 senate bills and passed legislation to provide for the redistricting of the State Board of Education, the New Mexico House of Representatives, the New Mexico Senate and the New Mexico seats in the United States House of Representatives.

Pursuant to the court order stemming from the litigation following redistricting in the 1980s, the legislature submitted for review its completed legislative redistricting plans to the United States Department of Justice on October 9, 1991. On December 10, 1991, the department precleared the redistricting plan for the state house but objected to the state senate redistricting plan, citing the state's failure to sufficiently explain creation of districts in southeastern New Mexico that potentially fragmented minority voting strength in that area.

In response to the Department of Justice decision, the governor called the legislature into a second special session beginning on January 3, 1992. At that time, the legislature passed an amended senate redistricting act that changed the boundaries of state senate districts 27, 32, 33, 34, 41 and 42, resulting in the creation of two additional majority-minority districts in southeastern New Mexico. The newly amended act was resubmitted to the Department of Justice and, on January 17, 1992, the department precleared the amended plan.

In August 1995, the United States and the remaining *Sanchez* plaintiffs agreed not to pursue a motion extending the Section 3 preclearance requirements that the court had imposed in December 1984.



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The 1990s marked the first time in more than 30 years that New Mexico conducted its decennial redistricting without any involvement in litigation. In large part, this was due to extensive preparation — extensive public hearings and public input, participation in the Census Bureau's census redistricting data program and setting and carefully following redistricting guidelines. Much of the attention to detail was probably due to the fact that New Mexico was required to preclear its redistricting plans prior to implementation. As noted above, though the first senate plan was rejected by the Department of Justice, the five districts in question, along with an adjacent sixth district, were redrawn and approved before the regular legislative session, and no judicial challenges ensued.

### 2000s

New Mexico began preparing for the 2001 redistricting in 1995 by participating in the "Census 2000 Redistricting Data Program". This program once again enabled the Census Bureau to report precinct level census data to the state. Phase II of the program, which entailed matching precinct lines with Census Bureau block boundaries and redrawing precinct lines as necessary to account for estimated changes in population, was completed in the spring of 2000, though some minor adjustments had to be made following the 2000 election to comply with the Precinct Boundary Adjustment Act.

During the 2000 legislative session, all precinct boundaries were frozen until February 2002 so that the precinct level census data supplied to the state under Phase III of the program would match the actual precincts used for redistricting.

During the 2001 session, the New Mexico Legislature created a redistricting committee (Laws 2001, Chapter 220) to review the requirements of redistricting law, conduct public hearings and recommend legislation in line with guidelines for redistricting that were approved by the New Mexico Legislative Council. The committee held 14 public meetings in 12 communities, beginning May 14, 2001 and ending August 30, 2001, during which time it heard from more than 100 New Mexicans and developed numerous redistricting concepts.

The New Mexico Legislature met in special session from September 4, 2001 to September 20, 2001, but only a plan to redistrict the Public Regulation Commission was signed into law; the governor vetoed two senate plans, two house of representatives plans, a congressional plan and a State Board of Education plan. Litigation followed, with the first lawsuit being filed while the legislature was still in special session. Suits were filed challenging the state's legislative, congressional, State Board of Education and Public Regulation Commission districts.

The challenge to the Public Regulation Commission districts was eventually dropped, and the lawsuit over the State Board of Education was resolved relatively easily. Upon agreement of the parties, the state district court ordered the adoption of the legislatively approved State Board of Education plan.<sup>36</sup> Trial on the senate districts was averted when, during

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the 2002 regular session, the legislature approved and the governor signed a senate plan<sup>37</sup> (Laws 2002, Chapter 98), effectively ending that litigation before the trial started.

The suits over the congressional and house of representatives plans<sup>38</sup> were not as easily resolved. After an extensive round of jockeying among various plaintiffs and defendants over whether the cases should be heard in federal or state court and, once that issue was decided in favor of state court, the disqualification by the governor of the state judge assigned to the matter, the New Mexico Supreme Court appointed State District Court Judge Frank H. Allen, Jr., to hear the congressional, house of representatives and senate cases.

The congressional case was tried in mid-December 2001. On January 2, 2002, Judge Allen adopted a plan submitted by the *Vigil* plaintiffs that shifted just eight precincts to equalize the populations among the three congressional districts.<sup>39</sup> The decision was not appealed.

The house of representatives case was heard immediately after Judge Allen issued his decision in the congressional case. On January 24, 2002, Judge Allen adopted a house of representatives plan that had been approved by the legislature but altered eight districts to accommodate plans submitted at trial by the Navajo Nation and the Jicarilla Apache Nation.<sup>40</sup> The decision was appealed by the governor, and the *Vigil*, *Padilla* and *Gutierrez* plaintiffs-in-intervention moved unsuccessfully to have the federal court declare the plan unconstitutional. The governor and lieutenant governor then appealed to state court and the appeal eventually was dismissed with prejudice by the New Mexico Supreme Court on September 6, 2002.<sup>41</sup>

All told, the litigation surrounding the 2001 redistricting efforts cost the state more than \$3.5 million.

### REDISTRICTING IN NEW MEXICO IN 2011

As in previous decades, the 2011 redistricting process began years earlier as the state and the Census Bureau worked to update geographic information and political boundaries to ensure that census population counts would be correctly assigned to the correct precincts. Precinct boundaries were frozen from July 1, 2009 until January 31, 2012, except for those boundaries that need adjustment as approved by the secretary of state to meet the legal requirements of the redistricting process. A redistricting committee was created by Senate Bill 408 (2011) to hold public hearings around the state during the summer of 2011.

The legislature expects to meet in special session in September 2011 to consider legislative, congressional, Public Education Commission and Public Regulation Commission redistricting plans.

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1. U.S. CONST., amend. XIV, §2.

2. U.S. CONST., art. I, §2.

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3. 13 U.S.C. § 141.
4. *Id.*
5. 328 U.S. 549, 556 (1946).
6. 369 U.S. 186 (1962).
7. 372 U.S. 368, 381 (1963).
8. 376 U.S. 1, 8 (1964).
9. *Karcher v. Daggett*, 462 U.S. 725 (1983).
10. *White v. Regester*, 412 U.S. 755 (1973), *Brown v. Thomson*, 462 U.S. 835 (1983).
11. 13 U.S.C. § 141.
12. *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996).
13. *Id.* at 20.
14. *Id.*
15. *Department of Commerce v. House of Representatives*, 525 U.S. 316 (1999).
16. 42 U.S.C. § § 1971, 1973 to 1973bb-1 (1996).
17. 42 U.S.C. § 1973 (a) (1982).
18. *Thornburg v. Gingles*, 478 U.S. 30, 35, 43-44 (1986).
19. 42 U.S.C. § 1973c (1996).
20. *Id.*
21. Act of June 29, 1982, Pub. L. 94-73. Title II, §§ 203, 206, 207, 89 Stat. 400, 401-02 (codified as amended at 42 U.S.C. §§ 1973 (a), 1973b(f), 1973d, 1973k, 1973l(c)(3)).
22. *Id.*
23. *Shaw v. Reno*, 509 U.S. 630 (1993).
24. *Bush v. Vera*, 517 U.S. 952 (1996).
25. *Id.* at 971.
26. *Hunt v. Cromartie*, 532 U.S. 234 (2001).
27. N.M. CONST. art. IV, § 3.
28. RICHARD FOLMAR, LEGISLATIVE APPORTIONMENT IN NEW MEXICO, 1844-1966 (New Mexico Legislative Council Service, 1966).
29. 550 F. Supp. 13 (N.M. 1982), *aff'd*, 459 U.S. 801 (1982).
30. *Id.* at 14.
31. *Id.* at 15.
32. *Sanchez v. King*, No. Civ. 82-0067-M Consolidated New Mexico Redistricting Litigation, at 2 (D.N.M. filed Aug. 8, 1984).
33. *Id.* at 9.
34. *Sanchez v. Anaya*, No. Civ. 82-0067-M Consolidated New Mexico Redistricting Litigation, (D.N.M. filed Dec. 17, 1984).
35. Precinct Boundary Adjustment Act, N.M. Laws 1983, Chap. 223, §§1-5, as amended.
36. *Sanchez v. Vigil-Giron*, No. D-101-CV-2001-02250 (N.M. 1st Jud. Dist. Feb. 6, 2002) (order adopting redistricting plan for state board of education).
37. 2002 Senate Redistricting Act, N.M. Laws 2002, Chap. 98.
38. *Vigil v. Lujan*, No. CIV 01-1077 (consolidated with *Padilla v. Johnson*, No. CIV 01-1081) (D.N.M. March 15, 2001) (order dismissing case); *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (consolidated) (N.M. 1st Jud. Dist. filed Sept. 13, 2001).
39. *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (consolidated) (N.M. 1st Jud. Dist. Jan. 8, 2002) (order adopting congressional redistricting plan).
40. *Jepsen v. Vigil-Giron*, No. D-0101-CV-2001-02177 (consolidated) (N.M. 1st Jud. Dist. Jan. 28, 2002) (order adopting house of representatives redistricting plan).
41. *Jepsen v. Vigil-Giron*, No. 27,540 (N.M. Sup. Ct. Sept. 6, 2002) (order dismissing appeal).

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### GUIDELINES FOR THE DEVELOPMENT OF STATE AND CONGRESSIONAL REDISTRICTING PLANS

WHEREAS, it is incumbent on the New Mexico legislative council to issue redistricting guidelines that articulate principles based on federal and state law and the prior experience of this legislature; and

WHEREAS, such guidelines are necessary to assist the appropriate legislative committees involved in redistricting in the development and evaluation of redistricting plans following the 2010 decennial census; and

WHEREAS, such guidelines are also intended to help facilitate the completion of the redistricting process before the nominating petitions are first made available in October 2011 for the 2012 primary election;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the New Mexico legislative council adopt the following redistricting guidelines with the intent that the appropriate legislative committees involved in redistricting use them to develop and evaluate redistricting plans.

1. Congressional districts shall be as equal in population as practicable.
2. 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.
3. The legislature shall use 2010 federal decennial census data generated by the United States bureau of the census.
4. 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.
5. 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 in paragraph seven) must not be subordinated to racial considerations.
6. All redistricting plans shall use only single-member districts.
7. 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.

Adopted by the New Mexico legislative council  
January 17, 2011

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### GLOSSARY OF REDISTRICTING TERMS

**Apportionment:** The process of assigning the number of members of Congress that each state may elect following each census.

**At Large:** When one or several candidates run for an office, and they are elected by the whole area of a local political subdivision, they are being elected at large.

**Census:** The enumeration or count of the population as mandated by the United States Constitution.

**Census Block:** The smallest unit of geography used by the Census Bureau for counting people. Blocks are almost always bounded by visible features such as roads and rivers.

**Census Tract:** A geographic area made up of block groups recommended by the states and used by the Census Bureau for the collection and presentation of decennial census data.

**Community of Interest:** A community defined by actual shared interests, be they political, social or economic.

**Compactness:** Having the minimum distance between all the parts of a constituency (a circle is the most compact district). There are various methods of measuring compactness.

**Contiguity:** All parts of a district being connected at some point with the rest of the district and not divided into two or more discrete pieces.

**Deviation:** The degree by which a single district's population varies from the "ideal" may be stated in terms of "absolute deviation" or "relative deviation". Absolute deviation is equal to the difference between a district's actual population and its ideal population, expressed as a plus (+) or minus (-) number indicating that the district's population exceeds or falls short of that ideal. Relative deviation is the more commonly used measure and is attained by dividing the district's absolute deviation by the ideal population.

**Digital Map Layer:** A set of polygons representing geographic units. For redistricting, the primary map layers used include the following:

- Minor Civil Divisions (MCD):** Includes cities, towns and villages;
- Voting Tabulation Districts (VTD):** The census geographic equivalent of an election precinct, created for the purpose of relating election data to census data; and
- Census Blocks (CNS):** The smallest unit of census geography, normally bounded on all sides by visible features such as city or county limits and property lines or by imaginary extensions of roads.

**Floterial District:** A legislative district whose geographic boundaries overlap those of another legislative district in the same house. The consequence is that the voters living in the overlapping territory are entitled to vote twice, once in each district.

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**Fracturing/Fragmentation:** The splitting of an area where a minority group lives so that it cannot form an effective majority in a district, for the purpose of minimizing the group's voting strength.

**Gerrymander:** To draw districts in a way that gives one group or party an advantage over another.

**Geographic Information System (GIS):** A computer-based method for the automation, storage, manipulation, integration, analysis, display and dissemination of spatial data and related attribute data in the form of maps.

**Homogenous District:** A voting district in which at least 90 percent of the population share a common ethnic background.

**Ideal District Population:** A population measure equal to the total state population divided by the total number of districts.

**Majority-Minority Districts:** A term used by the courts for seats where an ethnic minority constitutes a majority of the population.

**Metes & Bounds:** A detailed description of district boundaries using specific geographic features.

**Method of Equal Proportions:** A mathematical formula provided by federal statute to reapportion congressional seats after each decennial census.

**Multi-Member District:** A district that elects two or more members to a legislative body.

**Natural Boundaries (Visible Boundaries):** District boundaries that are natural geographic features.

**One Person, One Vote:** The constitutional standard established by the Supreme Court mandating or directing that all legislative districts should be approximately equal in population.

**Overall Range or Overall Deviation:** For a redistricting plan, the difference in population between the smallest and largest district, normally expressed as a percentage.

**Packing:** A term used when one group is consolidated into a small number of districts in a districting plan. Drawing a minority-controlled district with an excessively high percentage of a minority population "wastes" the additional people who could increase the minority population of another district.

**Phase I and Phase II:** The programs run by the Census Bureau to collect boundary information from state and local governments. Phase I allows states to suggest boundaries for census blocks. Phase II lets states group blocks into precincts so the official census data will contain precinct population totals.

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**PL 94-171:** The law passed in 1975 by Congress that requires the Census Bureau to furnish state governments data by April 1 of the year after the census for use in redistricting. The law requires that the bureau allow states to define the boundaries of the areas in which population data is collected.

**Plurality:** A winning total in an election involving more than two candidates, where the winner received less than a majority of the votes cast.

**Population Projection:** An approximation of the population of a geographic unit at a point in the future based on specific assumptions regarding future demographic trends.

**Reapportionment:** The allocation of seats in a legislative body (such as Congress) among established districts (such as states) where the district boundaries do not change but the number of members per district does.

**Redistricting (Districting):** The drawing of new political district boundaries.

**Retrogression:** The drawing of a redistricting plan that reduces the chances for minority groups to elect representatives of their choice.

**Sampling:** A statistical technique used to estimate the whole population based on a sample. Proposed as a remedy for the undercount.

**Single-Member District:** A district that elects only one representative.

**Standard Deviation:** A statistical formula measuring variance from a norm.

**Tabulation:** The totaling and reporting of the census data.

**Topologically Integrated Geographic Encoding and Referencing (TIGER):** The TIGER/Line files are a digital database of geographic features, such as roads, railroads, rivers, lakes, political boundaries, census statistical boundaries, etc., covering the entire United States. The database contains information about these features, such as their location in latitude and longitude, the name, type of feature, address ranges for most streets, geographic relationship to other features and other related information. TIGER was developed by the Census Bureau to support the mapping and related geographic activities required by the decennial census and sample survey programs.

**Undercount:** The estimated number of people who are not counted by the census.

**Voting Age Population (VAP):** The number of people over the age of 18.

**Voting Rights Act of 1965:** The federal law prohibiting discrimination in voting practices on the basis of race or language group.



## EXHIBIT 3

**Voting Tabulation District (VTD):** The census geographic equivalent of an election precinct created for the purpose of relating elections data to census data.

**EXHIBIT 4**

STATE OF NEW MEXICO  
COUNTY OF LEA  
FOURTH JUDICIAL DISTRICT COURT  
No. D-506-CV-2022-00041, JUDGE VAN SOLEN  
REPUBLICAN PARTY OF NEW MEXICO;  
DAVID GALLEGOS; TIMOTHY JENNINGS;  
DINAH VARGAS; MANUEL GONZALES, JR.;  
BOBBY and DEANN KIMBRO, and PEARL GARCIA,

Plaintiffs,

-vs-

MAGGIE TOULOUSE OLIVER, in her official capacity as  
New Mexico Secretary of State; MICHELLE LUJAN  
GRISHAM, in her official capacity as Governor of New  
Mexico; HOWIE MORALES, in his official capacity as  
New Mexico Lieutenant Governor and President of the  
New Mexico Senate; MIMI STEWART, in her official  
capacity as President Pro Tempore of the New Mexico  
Senate, and JAVIER MARTINEZ, in his official  
capacity as Speaker of the New Mexico House of  
Representatives,

Defendants.

VIDEO DEPOSITION OF BRIAN SANDEROFF  
September 11, 2023  
10:02 a.m. to 12:22 p.m.  
Via Zoom Videoconference

PURSUANT TO THE NEW MEXICO RULES OF CIVIL

PROCEDURE, this deposition was:

TAKEN BY: MOLLY DIRAGO, ESQ.  
ATTORNEY FOR PLAINTIFFS

REPORTED BY: JAN WIMBERLY, CCR No. 13  
Trattel Court Reporting & Videography  
609 12th Street NW  
Albuquerque, NM 87102

Trattel Court Reporting & Videography  
505-830-0600

EXHIBIT 4

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1 And we -- anyone who wanted a plan  
2 introduced as a bill had to go through Research &  
3 Polling and have that plan processed. We would make  
4 the maps. We would run the statistics on the  
5 population and the percentage deviations, the  
6 partisan performance index, make sure that their  
7 map's not missing precincts. And so we were really  
8 mechanics. We're not playing a political role. We  
9 worked for everyone equally in honoring requests and  
10 answering questions along the way.  
11 Q. Okay. That's helpful. So can we skip  
12 ahead then to your work for the CRC.  
13 A. Okay.  
14 Q. I think that's page 5.  
15 A. Okay. So initially we were going to work  
16 for the legislature, then the legislature passed a  
17 law creating the CRC.  
18 Q. Okay.  
19 A. And so then the question was: Who's going  
20 to staff the process for the CRC? And so the  
21 logical group, government officials concluded, would  
22 be Research & Polling. So we entered into a  
23 memorandum of understanding with the Census and  
24 Redistricting Committee to staff their process. And  
25 during that time we would no longer staff the

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1 process of legislature, because we couldn't have --  
2 couldn't handle both at the same time. So we  
3 stopped work for the legislature and took on the  
4 staff role for the Citizen Redistricting Committee.  
5 Q. Okay. So what did RPI do for CRC?  
6 A. The CRC was required to hold up to 12  
7 meetings around the state, get public input in two  
8 rounds: One, six or seven meetings on the front  
9 end, six or seven meetings on the back end where the  
10 CRC traveled the state and got public input. In the  
11 first round, we showed the current plans that  
12 existed for the different House, Senate, and  
13 Congress and we asked people their input. What do  
14 you think? What do you want the CRC to do?  
15 Their mission was to recommend at least  
16 three plans for House, Senate, and Congress to the  
17 legislature. And so Research & Polling basically  
18 staffed the process of these public meetings where  
19 we presented to the public what the current plans  
20 looked like. Then -- that was in August of 2021.  
21 Then in September/October, there was a  
22 second round of CRC meetings where we presented  
23 ideas that we listened to the public and presented  
24 plans for the consideration of the CRC. The CRC  
25 also accepted a lot of plans on their public portal

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1 where any group could put a plan -- suggest a plan  
2 to the CRC. And those plans were in play as well  
3 for the CRC's consideration.  
4 Q. Did RPI create any plans for the CRC?  
5 A. Yes.  
6 Q. How many?  
7 A. And those are all on the CRC website.  
8 For -- well, should we talk a lot about the  
9 legislature or just stick to Congress?  
10 Q. Well, we were talking about CRC, is  
11 that --  
12 A. Yeah, they did legislature, Congress,  
13 public --  
14 Q. Oh, okay. Let's stick to Congress. Thank  
15 you.  
16 A. Off the top of my head -- and this is all  
17 on the CRC website, let's see, A, B, C, D, E, F,  
18 G -- I think Research & Polling submitted maybe  
19 seven plans to the CRC for their consideration that  
20 we either drew or we saw on the portal in treating  
21 plans that we wanted to bring to the attention of the  
22 CRC for their consideration. And then the CRC  
23 was open to look at other plans that were on the  
24 portal for their consideration that we didn't  
25 necessarily bring.

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1 It was quite a democratic process where  
2 anybody could submit a plan on the portal. So some  
3 were submitted by us, some were submitted by the  
4 public.  
5 Q. Yeah.  
6 A. Some were drawn by us, but we even showed  
7 some plans that weren't drawn by us just to show the  
8 commission members other ideas.  
9 Q. Um-hmm. And was it plan H that actually  
10 did come from a public organization?  
11 A. Yes. Plan H came from -- was placed on  
12 the portal by another organization.  
13 Q. Can you remind me what organization that  
14 was?  
15 A. Center for Civic Policy.  
16 Q. So did RPI create the plan A?  
17 A. Yes.  
18 Q. And that was adopted by the CRC, correct?  
19 A. That was one of them, yes. They adopted,  
20 I think, three.  
21 Q. Okay. And plan H was another one that was  
22 adopted, right?  
23 A. A was one of the three plans that were  
24 adopted, correct.  
25 Q. And H -- sorry. I said H.

5 (Pages 14 to 17)

EXHIBIT 4

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1 **come to me.**  
 2 Q. Okay. If it comes to you, let me know.  
 3 In all of the three races that we're thinking of  
 4 here that were 20 points or greater, did a Democrat  
 5 win?  
 6 A. Yes.  
 7 Q. So there were no races since 2012 in New  
 8 Mexico where a Republican candidate won by 20 points  
 9 or more?  
 10 A. **In races where there was a Democrat and a**  
 11 **Republican in the race, yes.**  
 12 Q. Okay. Of course.  
 13 A. **Sometimes we have Libertarians or**  
 14 **write-ins and we just didn't include any of that, so**  
 15 **yes.**  
 16 Q. Okay. Well, so the only races that you  
 17 exclude from your partisan index are races where a  
 18 Democrat won, right?  
 19 A. Correct.  
 20 Q. So your partisan index doesn't really take  
 21 into consideration unique candidate considerations,  
 22 does it?  
 23 A. **I think it does.**  
 24 Q. How does it?  
 25 A. **Well, when you say "unique candidate**

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1 **considerations," could you clarify what you mean by**  
 2 **that? Maybe I misunderstood that.**  
 3 Q. Well, and maybe I'm misunderstanding you,  
 4 but it seems to me that it's based solely on  
 5 statistics, but not on who the particular candidate  
 6 was during a particular race --  
 7 A. **That is correct.**  
 8 Q. -- is that correct?  
 9 A. **That is correct. It's based on the**  
 10 **election returns.**  
 11 Q. So the partisan index doesn't take into  
 12 account what's going on nationally either, does it?  
 13 A. **Only to the extent that some of the races**  
 14 **are, you know, federal races, like president and**  
 15 **U.S. Senate. And of course, federal issues that are**  
 16 **involved in presidential and senate races, but the**  
 17 **election returns are only for the State of New**  
 18 **Mexico.**  
 19 Q. Do you study national election trends?  
 20 A. **I keep up with it.**  
 21 Q. Do you know how Republicans did nationally  
 22 in 2008?  
 23 A. **2008 would be a presidential year. And**  
 24 **that would be -- the Democrat won for president and**  
 25 **so what else can I say? Yes, that was a Barack**

Page 24

1 **Obama year and Barack Obama won nationally and in**  
 2 **New Mexico.**  
 3 Q. Beyond presidential -- beyond Barack Obama  
 4 winning, do you know how the Republicans did, like  
 5 congressionally nationally?  
 6 A. **Nationally in 2008? They would have lost**  
 7 **some seats, congressional seats. I don't know the**  
 8 **number off the top of my head.**  
 9 Q. What about 2018? Do you know the number  
 10 off the top of your head?  
 11 A. **I don't know the number off the top of my**  
 12 **head.**  
 13 Q. Do you know how Republicans did generally  
 14 nationally in 2018?  
 15 A. **2018 was -- let's see. That was a midterm**  
 16 **election. Democrats did well in 2018.**  
 17 Q. And Republicans did poorly?  
 18 A. **Well, they did less well. They did --**  
 19 **yeah, Democrats did well.**  
 20 Q. Okay. What about the trend in the races  
 21 for 2022, the national trend? Have you caught up  
 22 with that?  
 23 A. **The national trend in 2022, the**  
 24 **Republicans were very hopeful it would be a**  
 25 **solid year, because it was a midterm election for**  
**Joe**

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1 **Biden and oftentimes in midterm elections the party**  
 2 **not in the White House gains. So I would say that the**  
 3 **Republicans were very disappointed in what**  
 4 **happened in the state -- the U.S. Senate. And they**  
 5 **did take over in the House, but not by the kind of**  
 6 **margins they were hoping.**  
 7 Q. So generally, has the political landscape  
 8 of New Mexico changed much since 2012?  
 9 A. **New Mexico has generally trended more**  
 10 **blue. It's a bit more of a polarization where in**  
 11 **some cities New Mexico's trended more blue and some**  
 12 **rural areas New Mexico's trended more red. You**  
 13 **know, the polarization.**  
 14 Q. Um-hmm. So would you say Albuquerque has  
 15 trended blue?  
 16 A. **Albuquerque has trended more blue over**  
 17 **time.**  
 18 Q. Has it changed a lot since 2012?  
 19 A. **It varies. You know, you still have to**  
 20 **look at every year in a vacuum. Of course averages**  
 21 **are great, partisan performance indexes are great,**  
 22 **but you still have trends that come and go. But**  
 23 **generally, Albuquerque -- I don't want to put a**  
 24 **number on it, but it has trended more blue.**  
 25 Q. Okay. That's fair. What about the

7 (Pages 22 to 25)

EXHIBIT 4

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1 southeast corner of New Mexico? How has that  
2 trended since 2012?  
3 **A. I think, as mentioned earlier, this is**  
4 **polarization in New Mexico as well as other places.**  
5 **So I think that Southeast New Mexico continues to**  
6 **trend more red.**  
7 Q. So what I'm wondering -- and hopefully you  
8 can explain this to me -- if you're using election  
9 results from races, like from 2012 and 2014 that  
10 were, you know, two years -- I'm sorry, ten years  
11 ago, and if those regions are trending differently,  
12 is that going to affect the partisan index that you  
13 use?  
14 **A. Well, of course, that is what we use for**  
15 **districting. That was the most recent available**  
16 **data at that time. At the time where redistricting**  
17 **was done, the 2022 election had not occurred yet.**  
18 **So we used the most current information. I am a big**  
19 **believer in having lots of races and letting the**  
20 **vicissitudes of politics equalize themselves out.**  
21 In any given year, in any given race  
22 regionalism comes into play where a candidate lives  
23 or doesn't live. So the more races you include, the  
24 more you're going to equalize or flatten out any  
25 particular oddities. In any given decade, there's

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1 going to be years where Republicans do well,  
2 Democrats do well. Something could change  
3 tomorrow in Albuquerque and the Republicans could  
4 fare better despite the way the trends are moving. So  
5 I'm a believer in broad-based information and I've  
6 seen trends come and go. What's going to happen in  
7 2024? We don't know. Maybe it'll move back in a  
8 different direction and so we have to be cautious  
9 when it comes to that.  
10 Q. But isn't it true that since 2012,  
11 Albuquerque, for example, has become more Democrat?  
12 **A. Albuquerque has -- as stated, yeah, it's**  
13 **more blue than it used to be, uh-huh.**  
14 Q. Okay. So by including a race such as  
15 2012, which is ten years ago, in the partisan index,  
16 that's going to make Albuquerque look more  
17 Republican than it actually is today, right?  
18 **A. As to -- one would -- let's see, 2012.**  
19 **'18. So much of it would depend on which races were**  
20 **in there, how many races there were. I just want**  
21 **to -- 2020 is a Constitutional year. And so we'd**  
22 **have to look a little deeper into how many races**  
23 **were included and whether it would really -- how**  
24 **much it would really affect the averages.**  
25 Q. Okay.

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1 **A. It may or may not affect the averages,**  
2 **depending upon, you know, what the performance was**  
3 **of the individual candidates that year and so I'd**  
4 **have to look deeper.**  
5 Q. If I use the term "DPI," would you know  
6 what that means?  
7 **A. DPI?**  
8 Q. Yes.  
9 **A. D, as in dog?**  
10 Q. Yes.  
11 **A. Probably Democrat Performance Index,**  
12 **partisan index.**  
13 Q. And what does that mean?  
14 **A. I would guess that it would be some sort**  
15 **of index that averaged election returns. People use**  
16 **different words or different terms or acronyms. I'm**  
17 **just -- I don't know which one you're referring to,**  
18 **but that's -- if it's a Democratic Partisan Index,**  
19 **it would be an index of election returns, average of**  
20 **particular races.**  
21 Q. Of how many votes went for the Democrats?  
22 **A. I'm sorry?**  
23 Q. And is it measuring how many votes went  
24 for the Democrats?  
25 **A. Well, you're asking me about something**

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1 **that I'm not really sure what you're referring to.**  
2 Q. Okay, that's fair. Then, yeah, that's  
3 fine. I thought you would know what DPI meant from  
4 your experience.  
5 **A. Yeah, I know it is Democratic Partisan**  
6 **Index, which would give you the election return**  
7 **average for both the Democrats and the Republicans.**  
8 Q. Okay. All right. So you mentioned  
9 already a couple of cases in which you were -- at  
10 least one case in which you were qualified as an  
11 expert, but on page 4 of your report, you describe  
12 two of those cases. So I just wanted to talk a  
13 little bit more about those. And the first you  
14 write about is the Jepsen case.  
15 **A. Right.**  
16 Q. And I don't know if you were referring to  
17 this earlier. So can you tell me what opinions you  
18 rendered in the Jepsen case?  
19 **A. I'm basing this now on recollection.**  
20 Q. Okay.  
21 **A. So when it came to Congress, which you're**  
22 **sounding like you want me to focus more on than the**  
23 **legislature.**  
24 Q. Yeah.  
25 **A. So at 2001 -- so the legislature and the**

8 (Pages 26 to 29)

EXHIBIT 4

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1 governor were at an impasse, they kept on passing  
 2 and vetoing plans, so there was no congressional map  
 3 that was being critiqued or that passed the state  
 4 legislature and signed by the governor in 2001. And  
 5 so the judge decided on his own that he was going to  
 6 adopt a congressional plan that was called the least  
 7 change plan, the plan that made the smallest  
 8 boundary shifts to account for population changes  
 9 and that the judge would choose the plan that  
 10 changed things the least.  
 11 And if my memory holds, different parties  
 12 suggested plans, but all of them were minor  
 13 variations because the judge had already said he was  
 14 going to choose a plan that made the most minor of  
 15 boundary shifts. So I don't think it was that  
 16 contentious, different people submitted plans, and  
 17 the judge chose a least-change plan.  
 18 Q. And so what was your opinion that you  
 19 rendered?  
 20 A. I don't recall even giving an opinion on  
 21 that. I think -- I think the different parties  
 22 pitched their plans to the judge, my recollection.  
 23 Q. Okay. What services did you offer, then,  
 24 in that case?  
 25 A. We, both in 2001 and particularly

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1 in 2011 -- well, we would simply process plans. We  
 2 were not forming opinions. On Congress, if someone  
 3 wanted to submit a plan, we'd process it to make  
 4 sure they included their precincts and ran the  
 5 statistics on it, but we didn't play a big role.  
 6 Q. Did you write an expert report for either  
 7 Jepsen or Egolf?  
 8 A. If we did, it would have been on the  
 9 legislature, not on Congress, to my recollection.  
 10 Q. So who were you hired by in the Jepsen  
 11 case?  
 12 A. Same situation as this. We were working  
 13 for the legislature. In 2001 and 2011, we processed  
 14 the plans during the sessions, just like we did this  
 15 time and so we were there for staff support for the  
 16 court case as well.  
 17 Q. Well, in this case, you were hired by the  
 18 defendants, correct?  
 19 A. Well, yeah. I view it as just continuing  
 20 our work for the legislature, yes. So it was the  
 21 same capacity. Although, in 2011, the Supreme  
 22 Court, on remand, suggested to the judge that we  
 23 assist him and all the parties agreed to that,  
 24 Democrats, Republicans, Native Americans, Hispanic  
 25 groups, they all agreed to allow us to assist the

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1 judge in accomplishing the changes that the Supreme  
 2 Court required of the district judge.  
 3 Q. So in Jepsen, when you were hired as an  
 4 expert, was it -- you're saying it was just for the  
 5 legislature, generally?  
 6 A. Again, this is a long time ago.  
 7 Q. Um-hmm.  
 8 A. Being that I recall the judge, in both  
 9 2001 and 2011, adopting a least-change plan, you  
 10 know, that just adjusted the boundaries. In 2001, we  
 11 were adjusting the congressional boundaries based  
 12 on 1991. The judge said that 1991 was the last  
 13 expression of legislative and governor intent, so he  
 14 was not going to decide himself what a good plan was  
 15 for Congress. He was just going to make the most  
 16 minor of boundary adjustments. That happened in  
 17 both the Jepsen and the Egolf cases where Congress  
 18 just -- to my recollection, was just less  
 19 controversial because of the least-change plans that  
 20 were submitted by the parties and the judge chose  
 21 the one he liked.  
 22 Q. Okay. So in Jepsen, did you offer any  
 23 opinions about whether any of the maps were  
 24 gerrymandered?  
 25 A. For Congress, no.

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1 Q. But for the legislature, you did.  
 2 A. I don't think that for Congress -- for the  
 3 legislature, no. We didn't look at whether they  
 4 were gerrymandered.  
 5 Q. What did you look at?  
 6 A. We may have testified about the merits of  
 7 the plans. So every attorney for all the different  
 8 parties might, you know, ask some statistical  
 9 question about, you know, population or something in  
 10 this plan versus that plan. So we were speaking to  
 11 the merits of the plans, but I don't remember  
 12 partisan gerrymandering being an issue. It was a  
 13 matter of different parties submitting a plan and  
 14 people pitching their plan.  
 15 Q. Okay. Was that the same in the Egolf  
 16 case?  
 17 A. Yes.  
 18 Q. So you didn't render an opinion about  
 19 whether any of the maps were gerrymandered in the  
 20 Egolf case?  
 21 A. Not to my recollection. You know, some  
 22 race issues may have come up, but no.  
 23 Q. Have you ever been excluded as a witness  
 24 in a case?  
 25 A. No. I assume I know what you mean by

9 (Pages 30 to 33)

EXHIBIT 4

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1 Q. Is it your opinion that competitiveness is  
2 a desirable goal in a map?  
3 A. **Well, my personal philosophy is -- I'm not**  
4 **sure how relevant that is, but yeah, I think**  
5 **competitiveness is a good thing.**  
6 Q. Is it more desirable than keeping  
7 communities of interest together?  
8 MS. SANCHEZ: Object to the form.  
9 Foundation.  
10 Q. (By Ms. DiRago) I guess -- sorry. If you  
11 understand the question, you can answer.  
12 A. Yeah. Having made presentations hundreds  
13 of times on that topic, you know, there are many,  
14 many factors that come into play in the drawing of  
15 a map and some of them have tension with each  
16 other. You know, do you keep it population perfect  
17 to make sure you don't violate the Voting Rights  
18 Act, compactness, contiguity, competitiveness, you  
19 being incumbents impaired? There's so many  
20 factors that go into play. There's no such thing as a  
21 perfect map. So the map-drawer has to decide  
22 which are their highest priorities compared to  
23 others and try to come up with a map that fits their  
24 particular objective. So I would say there's always  
25 a give-and-take on those matters.

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1 Q. Would you say the voters in the southeast  
2 corner of New Mexico are a community of interest?  
3 A. **The voters -- well, many of the voters,**  
4 **not all of them, but many of the voters in Southeast**  
5 **New Mexico have a common outlook. And if one**  
6 **considered a common outlook a community of**  
7 **interest -- communities of interest are in the eyes**  
8 **of the beholder. And so there is a common outlook**  
9 **among some people in Southeastern New Mexico.**  
10 **And as to whether that's a community of interest is,**  
11 **again, in the eyes of the beholder.**  
12 Q. Are you aware that there are a lot of oil  
13 wells in the southeast corner of New Mexico?  
14 A. Yes.  
15 Q. Do a lot of people who live in the  
16 southeast corner of New Mexico work for the oil  
17 wells in some form?  
18 A. Yes.  
19 Q. Do you think that's why they might have  
20 similar outlooks, as you said?  
21 MS. SANCHEZ: Object to the form.  
22 A. **One of the reasons, yes.**  
23 Q. (By Ms. DiRago) Did you look for signs of  
24 vote dilution in SB-1?  
25 A. **In our report, my report -- not vote**

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1 **dilution, per se, but we do, you know, go over the**  
2 **election returns within those districts.**  
3 Q. So did you see signs of vote dilution?  
4 A. **I was not studying vote dilution, per se,**  
5 **in this report. But, again, we do go over election**  
6 **returns as it relates to competitiveness.**  
7 Q. So you don't have an opinion one way or  
8 another if there's vote dilution existing in SB-1,  
9 right?  
10 A. **Well, when you say "vote dilution in**  
11 **SB-1," do you mean in SB-1 or --**  
12 Q. Anywhere in SB-1.  
13 A. **Well, we see within our numbers that**  
14 **Republican performance drops in Senate District 2.**  
15 **But, again, the crux of our work was more on**  
16 **competitiveness.**  
17 Q. So do you know if there's vote dilution  
18 under SB-1 in District 2?  
19 A. **I know that again, due to our work, that**  
20 **the percent Republican performance dropped in CD2.**  
21 Q. So do you think there's vote dilution in  
22 CD2?  
23 A. No, I'm not --  
24 MS. SANCHEZ: Objection. Form and  
25 foundation.

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1 A. **No, I'm not -- well, I'm not speaking to**  
2 **dilution, per se. I'm not getting into the legal**  
3 **issues about whether dilution goes to a point of**  
4 **entrenchment or whether it's sufficient or not to**  
5 **affect the outcome of an election. I focused more**  
6 **on competitiveness.**  
7 Q. (By Ms. DiRago) Mr. Sanderoff, you do give  
8 an expert opinion about entrenchment, though.  
9 A. **Yes, based on election returns.**  
10 Q. So you looked only at election returns to  
11 form your opinion on entrenchment?  
12 A. **Well, within our report, we, I think,**  
13 **restricted ourselves -- I restricted myself to the**  
14 **actual endogenous races, the actual election returns**  
15 **in the three congressional districts.**  
16 Q. So to determine -- well, and let's say --  
17 so your expert report says that SB-1 does not  
18 entrench the Democratic Party in power. So that's  
19 your ultimate conclusion of your report, correct?  
20 A. **Correct. And that's based on the election**  
21 **returns.**  
22 Q. And do you still agree with that opinion  
23 today?  
24 A. **Yes.**  
25 Q. So I'm sorry if you feel like I keep

11 (Pages 38 to 41)

EXHIBIT 4

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1 asking this, but I don't feel like I've gotten,  
 2 like, a yes or no. In determining whether SB-1 does  
 3 not entrench the Democratic Party in power, did you  
 4 look for evidence of vote dilution?  
 5 **A. I looked at the election return and I saw**  
 6 **that under the new district boundaries, the**  
 7 **Democrat won the election by seven-tenths of 1**  
 8 **percentage point. And to me that would not be**  
 9 **consistent with entrenchment where entrenchment**  
 10 **would imply some sort of long-term outcome,**  
 11 **political outcome that would be difficult to overturn.**  
 12 **My opinion, based on the election returns**  
 13 **of Gabe Vasquez winning by seven-tenths of**  
 14 **1 percent, that district -- the Democrats are not**  
 15 **entrenched in that district. It's a very**  
 16 **competitive race. The Republicans have a great**  
 17 **chance of winning in the future election.**  
 18 Q. I really don't want to put words in your  
 19 mouth, but that sounds like, no, you did not look  
 20 for evidence of vote dilution in forming that  
 21 opinion; is that right?  
 22 **A. That's correct.**  
 23 Q. Okay. And so you say that SB-1 does not  
 24 entrench the Democratic Party in power, because -- I  
 25 believe you said one reason at least is that it's

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1 very competitive, but I want to get this right.  
 2 Sorry. So strike that.  
 3 So your expert opinion that SB-1 does not  
 4 entrench the Democratic Party in power is based, at  
 5 least in part, on the fact that D2 [sic] is  
 6 competitive now under SB-1; is that right?  
 7 **A. That is correct.**  
 8 Q. All right. And for that opinion that SB-1  
 9 does not entrench the Democratic Party in power, you  
 10 adopted the Oxford English definition of  
 11 "entrenched." Is that right?  
 12 **A. Yes.**  
 13 Q. Okay. And under SB-1, the partisan  
 14 performance measure of SD2 -- I'm sorry, CD2 is  
 15 53 percent Democrat and 47 percent Republican,  
 16 correct?  
 17 **A. Correct.**  
 18 Q. What was the partisan performance measure  
 19 of CD2 under the previous map?  
 20 **A. I don't recall off the top of my head.**  
 21 Q. Did you look at that in order to write  
 22 this report?  
 23 **A. No.**  
 24 Q. So it wasn't important for your analysis  
 25 to see how the districts changed under the previous

Page 44

1 map to the current map?  
 2 **A. Well, we were focused on the issue of**  
 3 **competitiveness and whether or not the district, in**  
 4 **its current form, under its current boundaries is**  
 5 **competitive or not. We were not focused on voter**  
 6 **dilution issues.**  
 7 Q. Okay. So when you say the word  
 8 "competitive," your definition is that -- well, let  
 9 me ask you. What is your definition of competitive?  
 10 **A. Well, in this context it would be two bits**  
 11 **of evidence that we used. One was the actual**  
 12 **election returns under the new district in which**  
 13 **Vasquez won by seven-tenths of a point, which I**  
 14 **deemed as a very close race. And then the second**  
 15 **one was a Democratic Performance Index, which used**  
 16 **those same races that we've talked about already**  
 17 **that showed that over the course of the years, the**  
 18 **average statewide Democrat gets 53 percent, the**  
 19 **average statewide Republican gets 47 percentage.**  
 20 **So it was on those two data elements that**  
 21 **I formed the conclusion, both using a partisan index**  
 22 **and using the Vasquez race itself. And so yes. So**  
 23 **it turned out that the actual election derived even**  
 24 **a closer outcome than the performance index itself.**  
 25 Q. Okay. So I think what you said, like sort

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1 of the second half of your answer, were you talking  
 2 about the New York [sic] map as a whole when you  
 3 said -- I think you said the 53-to-47 range?  
 4 **A. That would be within CD2.**  
 5 Q. Is that the range that CD2 is right now?  
 6 **A. I don't know. I mean, the only thing I**  
 7 **looked at was the election return. We have not**  
 8 **incorporated anything new. We're using all the data**  
 9 **from the time of redistricting, plus the '22**  
 10 **election returns.**  
 11 Q. Okay. Do you know the partisan  
 12 performance measure of the state as a whole?  
 13 **A. Under this index, I think it was 54.2.**  
 14 Q. And that's at DPI?  
 15 **A. That's the -- yes.**  
 16 Q. And so if you could just explain. So if  
 17 the DPI is 54.2 percent, what does that mean  
 18 exactly?  
 19 **A. It means that if you take the average of**  
 20 **all of the election returns for all of the races**  
 21 **from 2012 to 2020 that were run statewide and**  
 22 **exclude the three races a candidate won by more than**  
 23 **20 percent points and average them all together, the**  
 24 **average statewide Democrat gets that number.**  
 25 Q. Okay. I put your report back up on the

12 (Pages 42 to 45)



EXHIBIT 4

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1       **A. Yeah. I think based on the examples I was**  
 2 **given and that I gave in the report, you know, that**  
 3 **you know, holding aside partisan performance indexes**  
 4 **is nothing like looking at an actual -- the**  
 5 **endogenous races within a district and the fact**  
 6 **that -- and the reason I went back to 20 years was**  
 7 **because the district boundaries didn't change much**  
 8 **between 2001 and 2010, and then 2012 onward to 2020**  
 9 **the boundaries stayed pretty much the same. And in**  
 10 **circumstances where you had a powerful incumbent,**  
 11 **like Steve Pearce, he'd win by big margins. And**  
 12 **circumstances where twice he decided to run for**  
 13 **higher office and resigned his seat, the Democrats**  
 14 **won. And so I therefore concluded that it's not a**  
 15 **safe seat, it's not a guaranteed Republican seat.**  
 16 **It's a seat where the Democrats have an opportunity.**  
 17 **But at the same time I did say it's strong-leaning**  
 18 **Republican. It is. It was strong-leaning**  
 19 **Republican, but the Democrats have a shot and they**  
 20 **proved it in two circumstances where the incumbent**  
 21 **stepped aside.**  
 22       Q. Okay. I know we just took a break, but if  
 23 you don't mind, I'm going to take just three minutes  
 24 and come back and I think I might be able to end.  
 25       THE WITNESS: Great.

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1       MS. DIRAGO: Okay.  
 2       THE VIDEOGRAPHER: We're going off the  
 3 record. The time is 11:57.  
 4       (Recess from 11:57 a.m. to 12:07 p.m.)  
 5       THE VIDEOGRAPHER: We're back on the  
 6 record. The time is 12:07.  
 7       Q. (By Ms. DiRago) Okay. So Mr. Sanderoff, I  
 8 do have a few more questions for you, but I am  
 9 nearing the end. So that's good. So do you know  
 10 who Mimi Stewart is?  
 11       **A. Yes.**  
 12       Q. Who is she?  
 13       **A. President Pro Tem of the Senate.**  
 14       Q. Oh, and I have a question: You mentioned  
 15 the CCP map quite a while ago. I think it was the  
 16 concept plan H; is that right?  
 17       **A. Correct.**  
 18       Q. Did you ever talk to anyone at the CCP  
 19 about that plan before or after they submitted it on  
 20 the portal?  
 21       **A. Could you repeat your question?**  
 22       Q. Yeah. So in reference to the concept plan  
 23 H, which I think you testified was submitted by the  
 24 CCP, did you ever talk to anyone at the CCP about  
 25 that map around the time when they submitted it to

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1 the portal --  
 2       **A. No.**  
 3       Q. -- for the CRC?  
 4       **A. Not that I recall. I think -- not that I**  
 5 **recall. I recall speaking a lot about it in the**  
 6 **public meetings, but I don't recall speaking to them**  
 7 **about the map beforehand.**  
 8       Q. Did you speak to them about what -- you  
 9 know, some of the designs that they made, why they  
 10 made them, why they made those choices?  
 11       **A. No. I think that they spoke of their**  
 12 **reasons in their meetings. And then once the**  
 13 **commission considered that plan, I would bring it up**  
 14 **in public meetings to just explain to people what**  
 15 **the authors -- the description of the plan was, but**  
 16 **I don't remember any private conversations.**  
 17       Q. Have you ever been asked to spread apart  
 18 oil wells in a redistricting map before?  
 19       **A. No.**  
 20       Q. Have you ever heard of that being a goal  
 21 in redistricting?  
 22       **A. Have I heard of people talk about**  
 23 **spreading oil wells in redistricting? I**  
 24 **haven't heard that.**  
 25       Q. Okay. But oil wells are pretty important

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1 in New Mexico, right?  
 2       **A. Yes.**  
 3       Q. It's an important industry?  
 4       **A. Yes.**  
 5       Q. So does it make sense to split the oil  
 6 wells among the districts?  
 7       MS. SANCHEZ: Object to the form.  
 8       **A. I guess -- I mean, it just depends on the**  
 9 **perspective of the author, whether you want to**  
 10 **concentrate all your power in one district or**  
 11 **have two voices. I've seen a lot of people try**  
 12 **different arguments of consolidating power or**  
 13 **having two voices and so...**  
 14       Q. (By Ms. DiRago) But you've never been  
 15 asked to do that before in any of the maps that  
 16 you've created?  
 17       **A. No.**  
 18       Q. Okay. So I want to go back to Mimi  
 19 Stewart. Did you talk to her about SB-1 at all?  
 20       MS. SANCHEZ: Object to the form and  
 21 assert the legislative privilege and the Legislative  
 22 Council Service confidentiality in statutes that's  
 23 been asserted in the pending motions. And I will  
 24 instruct the witness not to answer to reveal any  
 25 privileged or confidential communication with any

17 (Pages 62 to 65)

**EXHIBIT 5**

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT COURT  
REPUBLICAN PARTY OF NEW MEXICO, DAVID  
GALLEGOS, TIMOTHY JENNINGS, DINAH VARGAS,  
MANUEL GONZALES, JR., BOBBY and DEANN  
KIMBRO, and PEARL GARCIA,

Plaintiffs,

vs. CASE NO.: D-506-CV-2022-00041

MAGGIE TOULOUSE OLIVER in her official  
capacity as New Mexico Secretary of State,  
MICHELLE LUJAN GRISHAM in her official  
capacity as Governor of New Mexico, HOWIE  
MORALES in his official capacity as New  
Mexico Lieutenant Governor and President  
of the New Mexico Senate, MIMI STEWART in  
her official capacity as President Pro  
Tempore of the New Mexico Senate, and  
JAVIER MARTINEZ in his official capacity  
as Speaker of the New Mexico House of  
Representatives,

Defendants.

VIDEO-RECORDED DEPOSITION OF  
JUSTICE EDWARD L. CHAVEZ

August 14, 2023  
9:34 a.m. Mountain Time

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE, this deposition was:  
TAKEN BY: Carter B. Harrison, IV, Esq.  
Attorney for the Plaintiffs

REPORTED BY: JO LANGSTON, RPR (Remote via Zoom)  
New Mexico CCR #553  
Trattel Court Reporting & Videography  
609 12th Street, Northwest  
Albuquerque, New Mexico 87102

Trattel Court Reporting & Videography  
505-830-0600

EXHIBIT 5

Page 6

1 **Graduated in 1981. I went into -- clerked for**  
 2 **Justice Dan Sosa, Jr., out of law school. Then went**  
 3 **to work for Ed Casillas and his law firm, and after**  
 4 **that joined a couple of law school buddies, and we**  
 5 **had a law firm, Torres, Louis & Chávez.**  
 6 **I then went to the University of New**  
 7 **Mexico, worked with Joe Goldberg, university**  
 8 **counsel's office. After that went and joined with**  
 9 **Bill Carpenter and practiced with Bill for probably**  
 10 **15 years.**  
 11 **And then in 19 -- no, 2003, I went on the**  
 12 **New Mexico Supreme Court and retired March 9th, 2018.**  
 13 **Since then, I've done volunteer work for all three**  
 14 **branches of government. And the best was Roadrunner**  
 15 **Food Bank. And that's it.**  
 16 Q Okay. Tell me about your -- so obviously,  
 17 when you were on the Court, you wrote the court's  
 18 opinion in Maestas v. Hall, correct?  
 19 A Correct.  
 20 Q Tell me more generally, before you became  
 21 chair of the CRC -- and when I say "CRC," I mean the  
 22 Citizen Redistricting Commission.  
 23 A Yes.  
 24 Q What kind of experience did you have with  
 25 redistricting?

Page 7

1 A Well, the 2011 litigation was one area.  
 2 Before that, I chaired a committee along with Rod  
 3 Kennedy, where we started to study the use of citizen  
 4 redistricting committees throughout the United  
 5 States. And we proposed legislation to the  
 6 legislature that would create such a committee. And  
 7 I testified quite a bit in favor of the legislation,  
 8 and -- but I was very happy that they adopted it.  
 9 It's not an independent redistricting  
 10 committee, in the sense that we could only make  
 11 recommendations to the legislature. We were told  
 12 what the law was, what the interests of the  
 13 government were with respect to redistricting, what  
 14 our criteria would have to be. And we had  
 15 prohibitions as well, which I can go over.  
 16 I was told to bring whatever documents I  
 17 thought were relevant, so I brought the act and the  
 18 rules.  
 19 Q Excellent. So at the time, did you -- and  
 20 this is before, obviously, the CRC actually  
 21 existed -- did you favor a -- what I'll call a  
 22 mandatory redistricting commission?  
 23 A Definitely. Still do.  
 24 Q Okay. And basically why is that?  
 25 A Because I think you eliminate politics from

Page 8

1 it as much as possible. You can't eliminate it, but  
 2 I think you can minimize the risks of politicians  
 3 deciding who the voters will be as opposed to the  
 4 voters deciding.  
 5 Q What was your understanding of why the  
 6 legislature ultimately passed what I'll call an  
 7 advisory committee?  
 8 MR. BAKER: Objection, foundation.  
 9 A I don't know. My sense is that they were  
 10 worried about delegating the duty to us and whether  
 11 or not that would be constitutional if they fully  
 12 delegated the responsibility. That's debatable. But  
 13 it doesn't matter. It was their call. And frankly,  
 14 in my mind, that was a good beginning.  
 15 And they got to sample what it would be  
 16 like to have an independent citizen commission go out  
 17 and hold public meetings. And I think we had a very  
 18 successful time, despite all of the hurdles that we  
 19 faced.  
 20 So it could be that they just wanted to see  
 21 what kind of recommendations we would come up with,  
 22 but they also set the legal standards for what New  
 23 Mexico was interested in and what they were not  
 24 interested in. And that's in the written documents.  
 25 Q You say "what they're not interested in."

Page 9

1 What do you have in mind when you say that?  
 2 A Well, they were not interested in  
 3 competitiveness, for example, in the sense that we  
 4 could not consider any data, partisan data during the  
 5 drafting of the maps and the deliberations and the  
 6 adoption of maps. And so that was one thing that  
 7 they definitely did not want us to consider, is  
 8 whether or not we had reached partisan balance.  
 9 In the end, we had to send it, and despite  
 10 not looking at the information ourselves, to an  
 11 expert because we had to have the maps evaluated.  
 12 And the maps ultimately were evaluated by David  
 13 Cottrell.  
 14 Q Okay.  
 15 A But that was an interesting exercise.  
 16 Q Yeah. So tell me about your decision to  
 17 apply to be the chair position on the CRC and what  
 18 the application process was like.  
 19 A Well, I had participated in thinking about  
 20 the redistricting commission, so I decided to apply,  
 21 although I encouraged -- I called a number of people  
 22 and suggested and encouraged them to apply. The only  
 23 other one that I guess talked into applying was  
 24 Barbara Vigil from the Supreme Court. And the others  
 25 thought it would be too much work. They were right.

3 (Pages 6 to 9)

EXHIBIT 5

Page 10

1 **But it's -- it was well worth it.**  
 2 Q Okay. Now, obviously I've read the act, of  
 3 course, and I guess you can call them values that the  
 4 legislature put forth in the act. But what kind of  
 5 goals and values did you bring to your chairmanship  
 6 of the CRC?  
 7 A Objectivity.  
 8 Q What does that mean?  
 9 A I didn't have a partisan view. And I,  
 10 above all, wanted to have the public be able to  
 11 testify about what their communities of interest  
 12 were, because I would say that that's probably a  
 13 dominating criteria, is communities of interest and  
 14 keeping them together. But first you have to  
 15 identify them.  
 16 And I think that frankly, because of my  
 17 approach, which was unusual in the sense that I did  
 18 not put any limits on anybody's time to speak,  
 19 because I wanted the committee to hear fully and  
 20 fairly from all individuals, ask as many questions  
 21 they had of those giving testimony so that we could  
 22 properly identify the communities of interest.  
 23 Q Do you believe that redistricting should be  
 24 nonpartisan?  
 25 A Yes.

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1 Q So I don't have the clip here. I'm going  
 2 to be characterizing something that you said in one  
 3 of the earlier CRC meetings. But you said that one  
 4 of the things that disappointed you about past  
 5 legislative redistricting processes -- and I believe  
 6 you were referring to two processes where in fact the  
 7 legislature didn't pass a -- or didn't enact a map,  
 8 but was the lack of public input.  
 9 Do you recall making a statement like that,  
 10 or do you recall what I'm talking about?  
 11 A I'm sure I did, because I was trying to  
 12 encourage the public to speak up. And, in fact, they  
 13 did. That first meeting, I'm glad I was in Costa  
 14 Rica because had I been there, I think I might have  
 15 been attacked. They were very upset about -- I  
 16 proposed an ex parte rule and -- but they discovered  
 17 why the rule would have been important once they went  
 18 to the legislature.  
 19 Q That was going to be my next set of  
 20 questions. So starting off, you obviously had the  
 21 act in front of you. Did you perceive any particular  
 22 strengths or weaknesses of the act?  
 23 A I thought the strength was -- we used to  
 24 have guidelines. Ever since 1991 we had guidelines  
 25 in New Mexico that the Legislative Council Service --

Page 12

1 anyway, they were adopted and they governed. They  
 2 haven't changed much, slightly. But we had those  
 3 since 1991. I think 1990 was maybe the first time  
 4 courts weren't involved in drawing maps, but then it  
 5 became a habit again, which is not a good thing, to  
 6 have the courts be involved.  
 7 So I thought that now that it was actually  
 8 written in law, the interests of the State with  
 9 respect to redistricting are clearly stated. And  
 10 that was helpful.  
 11 Q I see.  
 12 A And the fact that we were told to have so  
 13 many meetings. We actually had more meetings than  
 14 what were recommended. That was useful. The  
 15 drawback was we didn't really articulate a good way  
 16 to select members of the committee, because really  
 17 what we wanted, the intent was geographic  
 18 representation, and we didn't get that.  
 19 And we were criticized throughout the  
 20 process about the fact that we had -- well, number  
 21 one, we only had one female. We didn't have a Native  
 22 American on the committee. Everybody was pretty much  
 23 Albuquerque, with the exception of Senator Sanchez,  
 24 who was just south of here.  
 25 Q In your view, could that issue be resolved

Page 13

1 by better coordination among the appointing  
 2 authorities?  
 3 A That could be, but we were so pressed for  
 4 time that that clearly didn't happen. I don't know  
 5 if they made the effort to do it or not, but I think  
 6 it -- it was the first go-around.  
 7 I think if we write another bill, we ought  
 8 to articulate, if we can, that it should involve  
 9 somebody from each quadrant of the state and central  
 10 New Mexico. I don't know that you can specify that  
 11 you have to have a Native American, but they are  
 12 sovereign territory, so you could identify that  
 13 geographically as a member of a sovereign nation. I  
 14 don't know. But I would try to be more specific.  
 15 And the bottom line is, if they allow this  
 16 to continue in the future -- by "this," I mean the  
 17 redistricting committee -- it's going to start almost  
 18 a year ahead of schedule. We started -- our first  
 19 meeting was in July. The first time we got of it  
 20 that we were going to be authorized was basically  
 21 April, is my memory.  
 22 And you had to organize. You had to select  
 23 committee members. You had to come up with a budget.  
 24 You had to contract with people. It was really  
 25 compressed. And to boot, the Census Bureau didn't

4 (Pages 10 to 13)

EXHIBIT 5

Page 26

1       **A I'm sorry. I really didn't understand the**  
 2 **question.**  
 3 BY MR. HARRISON:  
 4       Q That was a bad question. You felt that it  
 5 was the mandate of the CRC to produce fully legal  
 6 maps that pass muster under federal law and state  
 7 law, correct?  
 8       **A Yes.**  
 9       Q And then the portal that -- what's it  
 10 called? Districtr? Is that right?  
 11       **A Yes.**  
 12       Q Does it allow for -- when members of the  
 13 public would draw maps, did it allow for district  
 14 splitting, or I'm sorry, precinct splitting?  
 15       **A No. I didn't design it, but that was a**  
 16 **criteria, that it would not allow that. I'm assuming**  
 17 **that the contractors did their job.**  
 18       Q I'm going to go through real fast kind of  
 19 the thoroughness of the process. So my understanding  
 20 in Section 5 of the act, 5-A-2, that the CRC was  
 21 required to have 12 meetings, six pre-map proposal,  
 22 six post-map proposal; is that correct?  
 23       **A Yes.**  
 24       Q You guys in fact had 23; is that right?  
 25       **A I don't think that the 23 are necessarily**

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1       **relevant to what you're asking or what that required.**  
 2 **That was public meetings, to get public input, as I**  
 3 **recall the rule. And instead of going six and six,**  
 4 **we went eight and eight, because we decided to hold**  
 5 **an additional meeting, as I recall, on sovereign**  
 6 **territory.**  
 7       **But we did have a lot of meetings. First**  
 8 **one was rule-making, and then the last was adoption.**  
 9 **I think we had to have a supplemental meeting or**  
 10 **something like that.**  
 11       Q Sure. And they were all OMA compliant,  
 12 correct, Open Meetings Act?  
 13       **A Yes, yes. Well, I believe it -- somebody**  
 14 **challenged us and said that our first meeting with**  
 15 **Princeton, they thought that I had maybe violated the**  
 16 **Open Meetings Act. That was just to educate the**  
 17 **members. They were held public. But now after that,**  
 18 **we started to announce that we would have a meeting**  
 19 **that would educate the members.**  
 20       Q Okay.  
 21       **A That was important. You've got to know**  
 22 **what you're doing.**  
 23       Q Can you give me an idea -- I'll ask how  
 24 many hours, but if you have a qualitative explanation  
 25 as well. Outside of the meetings themselves, how

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1 much work did you put into your service on the CRC?  
 2       **A I worked seven days a week and usually**  
 3 **started at 3:00 in the morning, would end 10:00,**  
 4 **11:00 at night.**  
 5       Q Throughout the period that the CRC was  
 6 active?  
 7       **A Yeah. It took an enormous amount of time.**  
 8       Q And what staff did the CRC have?  
 9       **A We used the State Ethics Commission staff.**  
 10 **Really Sonny Haquani was the one who did our IT for**  
 11 **us, basically ran the meetings for us, the Zoom**  
 12 **meetings.**  
 13       Q So, I guess, realistically how many folks  
 14 did you have working with the CRC staff-wise?  
 15       **A That might be a better question for Jeremy**  
 16 **Farris. But Jeremy would have been involved to some**  
 17 **extent. They have a lawyer on staff that might have**  
 18 **contributed something initially until we got a lawyer**  
 19 **involved. Then Sonny and then Mike, who helped do**  
 20 **the minutes. That's four. And it wasn't for all the**  
 21 **time. Sonny and Mike were the ones that worked the**  
 22 **hardest. No. The most.**  
 23       Q And that staff support consisted of stuff  
 24 like compiling the agenda and then the minutes; is  
 25 that correct?

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1       **A Yes.**  
 2       Q Did they keep -- did the staff keep  
 3 minutes?  
 4       **A Yes.**  
 5       Q By which I mean I know there were minutes.  
 6       **A Yes.**  
 7       Q Were they kept by staff?  
 8       **A Yes. But I went through them myself.**  
 9       Q Obviously, running the technical aspects of  
 10 the -- I think all the meetings were at least  
 11 available for participation virtually, correct?  
 12       **A Yes.**  
 13       Q Any other major functions that the staff  
 14 performed?  
 15       **A A lot of coordination. I had the idea,**  
 16 **which it didn't work as well, probably because it**  
 17 **wasn't advertised as well, but I wanted to have**  
 18 **satellite facilities so that people didn't have to**  
 19 **travel. For example, people from Silver City**  
 20 **wouldn't have to travel to Las Cruces to provide**  
 21 **public testimony.**  
 22       **So we'd set up a venue in Silver City, I**  
 23 **think at Western. We set up a venue at Eastern New**  
 24 **Mexico University, so that they could show up there**  
 25 **and testify. And so we contracted with somebody that**

8 (Pages 26 to 29)

EXHIBIT 5

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1 the committee was pretty deeply concerned about?  
 2 **A Right. We ultimately concluded that that**  
 3 **was a legislative function and wasn't our function.**  
 4 **And so as a result, we wrote a recommendation that it**  
 5 **be taken up by the legislature and gave them some**  
 6 **different ideas.**  
 7 Q Sure. And I guess to be clear, though, am  
 8 I right that the real reason that it wasn't addressed  
 9 was that it was logistically impossible, at least on  
 10 the time frame that you guys had available to you?  
 11 **A That also. And the other question is**  
 12 **whether or not it would require legislation to**  
 13 **accomplish that.**  
 14 Q Because in your view, an inmate is in fact  
 15 a resident of their jail?  
 16 MR. BAKER: Objection, form.  
 17 **A I'm not sure I agree with that. That's**  
 18 **fairly debatable. Let me put it that way.**  
 19 BY MR. HARRISON:  
 20 Q Okay. But is that the reason that  
 21 legislation might be needed to change that construct?  
 22 **A It could be. It's just something that**  
 23 **requires a lot more policy discussion and a lot more**  
 24 **input from the public. I know that there's plenty of**  
 25 **information out there for the legislature to**

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1 **consider, but it probably should be delegated to a**  
 2 **seven-member committee.**  
 3 Q So moving on to Section 7-A-10, it says, To  
 4 the extent feasible, the committee may seek to  
 5 preserve the core of existing districts.  
 6 Tell me what -- I guess tell me, was there  
 7 an overarching governing philosophy that was ever  
 8 voted on or agreed upon by the committee on how to  
 9 treat that factor?  
 10 **A Not that I recall, but I think we did a**  
 11 **fairly good job of doing just that. New Mexico is**  
 12 **really unique. In the last census, I think our**  
 13 **population only grew like 2.3 percent statewide.**  
 14 **There were a lot of shifts in the population, some**  
 15 **coming from the northwest down to the southeast. The**  
 16 **southeast had a larger population, as I recall. I**  
 17 **can get that information for you if you need it.**  
 18 **But all of that influenced what you did.**  
 19 **But when it comes to the congressional districts, I**  
 20 **think they've existed pretty much the same until now**  
 21 **since 1991. Most of the south of the state has been**  
 22 **that way. It could be because they all resulted in**  
 23 **litigation. But that's the way it's been. There**  
 24 **wasn't -- you were going to have to dip into the**  
 25 **south at some point to equalize the populations. And**

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1 **we did that with a couple of plans.**  
 2 Q Sure. But I guess not much, by which I  
 3 mean you had a five-figure population decrease up in  
 4 the San Juan County region, the northwest region, a  
 5 five-figure increase in population down in the  
 6 southeast. You would agree that the districts from  
 7 the last decade wouldn't actually have to change all  
 8 that much to maintain equal population.  
 9 MR. BAKER: Objection to form.  
 10 **A Well, my recollection is we adopted one --**  
 11 **the first map we adopted -- it may have been A. My**  
 12 **memory is that one did not dip much into the south.**  
 13 **I can look it up if you want me to.**  
 14 BY MR. HARRISON:  
 15 Q No. I think that's correct. Concept A was  
 16 as much of a status quo map as possible.  
 17 **A It was probably the closest to status quo.**  
 18 **And the H dipped in. It took, as I recall, Chavez**  
 19 **County and maybe Lincoln. And then the map that they**  
 20 **called E Revised also went into Lincoln County. We**  
 21 **put half of Mescalero on it because that's what they**  
 22 **wanted. They testified that that's what their**  
 23 **preference would be, to have two representatives.**  
 24 Q So can you tell me what -- what is your  
 25 view on the redistricting value of preserving the

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1 core of existing districts?  
 2 **A Continuity of representation. I think you**  
 3 **have -- you have communities of interest. Do they**  
 4 **have economic, social issues in common, things of**  
 5 **that nature, school districts? If you have**  
 6 **continuity, I think it benefits the public, because**  
 7 **they know how to organize themselves so that they can**  
 8 **talk with their legislator or people from Congress.**  
 9 **And that's the idea. You try not to split cities,**  
 10 **you try not to split counties, because they tend to**  
 11 **have common interests.**  
 12 **I actually drew a map, because I kept**  
 13 **hearing about this urban/rural divide, which does**  
 14 **exist, and I think I'd be a fool to suggest it**  
 15 **doesn't. And it had Bernalillo County, going through**  
 16 **Edgewood and then capturing Santa Fe. Put all the**  
 17 **city slickers together, with the exception of folks**  
 18 **from Edgewood, and keep everything else rural.**  
 19 **And now the folks who -- the cattle**  
 20 **industry, the acequias, the dairies, oil and gas**  
 21 **would have a way to organize themselves. I did it in**  
 22 **a way that would try to keep everything whole, to the**  
 23 **extent you can. I don't think -- well, I'll let you**  
 24 **ask the questions.**  
 25 Q So I guess what I'm trying to -- so the act

10 (Pages 34 to 37)

EXHIBIT 5

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1 says, again, may seek to preserve the core of  
 2 existing districts. Obviously, all of these  
 3 redistricting principles are going to be subject to  
 4 each other, and they can limit each other.  
 5 But you don't have any doubt that that is a  
 6 worthwhile redistricting principle, again, subject to  
 7 countervailing interests, but that should be pursued  
 8 to the extent possible.  
 9 MR. BAKER: Objection to form.  
 10 A Yeah. And I think we made that effort.  
 11 BY MR. HARRISON:  
 12 Q And to clean up that question a little bit.  
 13 Preservation of the core of existing districts is in  
 14 and of itself a worthwhile and positive value in  
 15 restricting.  
 16 A In my opinion, yes.  
 17 Q And do you think that opinion was shared by  
 18 the committee?  
 19 MR. BAKER: Objection, foundation.  
 20 A I think so. The majority voted for Map A.  
 21 BY MR. HARRISON:  
 22 Q Okay. And I'll contrast that with the  
 23 avoidance of pairing incumbents, which would you  
 24 agree that there was disagreement among the committee  
 25 about whether that value mattered at all?

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1 A I suspect some were more concerned about it  
 2 certainly than me. I remember testifying about that.  
 3 My plate was full. I wasn't worried about protecting  
 4 incumbents. If somebody else wanted to protect an  
 5 incumbent and they found a way to do it, have at it.  
 6 I didn't take the time to try to solve any of those  
 7 problems.  
 8 Q Somebody else being the legislature?  
 9 A No. The members of the committee.  
 10 Q Okay.  
 11 A Everybody had a right to draw maps if they  
 12 wanted to draw maps. They could go to Brian  
 13 Sanderoff and meet with him and his team and ask them  
 14 to consider certain criteria and draw a map that  
 15 followed that criteria.  
 16 So if you saw that incumbents were paired,  
 17 you could say, is there a way that we can do this  
 18 without subordinating other redistricting principles.  
 19 And if you could, then you should. I think that's  
 20 the way the rule read.  
 21 And that's where I admitted that had I had  
 22 more time and interest, I might have looked at that  
 23 and at least looked at it and said, Here's why I  
 24 couldn't do that. Here's why I could not avoid  
 25 pairing you.

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1 Q Okay. And I'll read you the -- The  
 2 committee shall not consider the voting address of  
 3 candidates or incumbents, except to avoid the pairing  
 4 of incumbents, unless necessary to conform to other  
 5 traditional redistricting principles.  
 6 A Yeah. I think that's what I told the  
 7 legislature. Had I had the time and interest, I  
 8 would have said, Okay, who's paired? Now, can I, in  
 9 my imagination, working with the maps, which is not  
 10 easy -- it's very time-consuming when you're a  
 11 novice -- could I have somehow avoided that split  
 12 without destroying a community of interest.  
 13 Q So am I correct that your resolution of  
 14 this was that the committee allowed the stars with  
 15 the incumbent addresses to be on the maps; is that  
 16 correct?  
 17 A My recollection is that when we went to  
 18 vote on maps, we knew who was paired, by the number,  
 19 not names. We had numbers of who was paired. That  
 20 would probably be -- you could find that in the  
 21 meetings. And I'm sure Brian Sanderoff reported that  
 22 information to us. That's my recollection. I would  
 23 have really prepared better had I known what all you  
 24 were interested in.  
 25 Q Do you recall seeing, I guess, significant

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1 effort or prioritization being given by the other  
 2 members of the committee in the avoidance of  
 3 incumbent pairing?  
 4 MR. BAKER: Objection, foundation.  
 5 A My recollection is that somebody did raise  
 6 issues about some pairings. I don't remember  
 7 specifically. It may have been Lisa Curtis.  
 8 BY MR. HARRISON:  
 9 Q And then would you agree that this issue,  
 10 the incumbent pairing issue, was one of the bigger  
 11 controversies that the CRC faced, at least in the  
 12 media?  
 13 A I don't remember facing that in the media.  
 14 I remember that the Senate was upset about it.  
 15 Q Okay. So the legislature expressed a  
 16 discontent with that aspect?  
 17 A They did.  
 18 Q Okay. And then I guess my question is, so  
 19 am I correct that a congressperson doesn't actually  
 20 have to live in their district, they just have to  
 21 live in the state, right?  
 22 A Correct, as I recall.  
 23 Q So does the avoidance of pairing incumbents  
 24 play any role in the fashioning of a congressional  
 25 map?

11 (Pages 38 to 41)

EXHIBIT 5

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1       **A No.**  
2       Q And can you recall it playing any role in  
3 any of the discussions on the congressional maps?  
4       **A No. I mean, you know that what you're**  
5 **going to do, if you're going to take the first**  
6 **congressional district and bring it south, that**  
7 **they're going to have new people to take care of**  
8 **and -- that were taken care of by somebody else. We**  
9 **didn't think about that.**  
10      Q And the last here is, Section 7-C-1, quote,  
11 The committee shall not use, rely upon or reference  
12 partisan data, such as voting history or party  
13 registration data, provided that voting history and  
14 elections may be considered to ensure the district  
15 plan complies with applicable federal law.  
16      So I assume this referred -- when they talk  
17 about applicable federal law, I assume this refers to  
18 the VRA Section 2 standard about whether a racial  
19 minority is, quote, unquote, politically cohesive  
20 and/or whether the majority votes as a block?  
21      MR. BAKER: Objection, form and foundation.  
22      **A Yeah. The Gingles factors, yeah.**  
23 BY MR. HARRISON:  
24      Q Okay. Do you read that section of the  
25 Redistricting Act as allowing any other consideration

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1 of partisan or voting history data?  
2      **A No. I think it was very clear that we**  
3 **shouldn't consider voting data, other than for VRA**  
4 **purposes. I'm sorry. I dropped the mic.**  
5      THE WITNESS: Court reporter, did I make a  
6 mistake there, or were you able to get it?  
7      COURT REPORTER: I heard you.  
8      THE WITNESS: Okay. Sorry about that.  
9 BY MR. HARRISON:  
10     Q The CRC did not subject the congressional  
11 maps to a VRA analysis; is that correct?  
12     **A No, we did not.**  
13     Q Can you explain why?  
14     **A Not necessary. You don't -- I don't think**  
15 **you had a -- I think I put something in a footnote**  
16 **about that, because it was not anything we ever**  
17 **discussed. But the idea is, would you meet the**  
18 **criteria anyway.**  
19     Q Sure. And so for --  
20     **A The population size is so large for each**  
21 **district that it would be hard to satisfy the**  
22 **criteria.**  
23     Q I see. So for natives, let's talk natives  
24 specifically, you just couldn't draw a majority  
25 native --

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1       **A Right.**  
2       Q -- district, correct?  
3       **A Correct.**  
4       Q And I think you further noted that to have  
5 a, quote, unquote, effective majority, a native  
6 district would have to be around 60 percent, given  
7 what I assume is voter turnout data among those  
8 populations?  
9       MR. BAKER: Objection to form.  
10      **A That is what I recall, 60 percent.**  
11 BY MR. HARRISON:  
12      Q And so that just wasn't possible.  
13      **A That's true.**  
14      Q And then with the -- what I understood a  
15 little less was on the Hispanic side. Obviously, we  
16 do have a majority Hispanic district. Can you  
17 explain to me why the VRA wouldn't require the  
18 drawing of a majority Hispanic district?  
19      **A Do you think they're cohesive?**  
20      Q And I wanted to be fair. So I'm going to  
21 quote the footnote that I think addresses this. I  
22 didn't want you to think that I was sandbagging you.  
23 So, quote -- this is from your report. This is one  
24 of the two footnotes, I think, that you were  
25 referring to. The first addressed natives, and the

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1 second I'm going to quote here.  
2      Likewise, while narrow Hispanic VAP  
3 congressional districts contained in several of the  
4 plans, the size of the districts requires the  
5 southeastern portion of the New Mexico be combined  
6 with other parts of the state. I did copy and paste  
7 that. Can you tell me what that means?  
8      **A I'm not sure you can prove cohesiveness.**  
9      Q Okay. So the VRA wouldn't be implicated  
10 just because the Hispanic population of New Mexico  
11 isn't sufficiently distinct from the way New Mexicans  
12 in general vote?  
13      MR. BAKER: Objection, form and foundation.  
14      **A I'm not sure you could fairly conclude that**  
15 **all Hispanics vote a particular way. And that's**  
16 **becoming less and less true actually.**  
17 BY MR. HARRISON:  
18      Q Sure. Okay.  
19      **A So that the white voters could not overcome**  
20 **other their vote or a representative of their choice.**  
21 **I don't think anybody has even argued that you need**  
22 **to satisfy VRA for either -- any of the districts,**  
23 **congressional districts.**  
24      Q Okay. So the fact that CD-2, both  
25 previously and now, is a majority Hispanic district

12 (Pages 42 to 45)



EXHIBIT 5

<p style="text-align: right;">Page 54</p> <p>1 <b>legislature, then their services would end.</b>  2 Q Explain to me, they were prohibited from  3 talking to any legislators during the period where  4 the CRC was doing its work?  5 A <b>Correct.</b>  6 Q Prohibited by what?  7 A <b>By the contract.</b>  8 Q Okay. And this contract was -- this was a  9 Research &amp; Polling contract with the legislature that  10 was kind of effectively assigned over or they were  11 loaned out to you on a legislative contract?  12 A <b>They were paid by Raúl's outfit. Is that</b>  13 <b>the Legislative Council Service?</b>  14 Q Okay. Burciaga?  15 A <b>Yes.</b>  16 Q Okay.  17 A <b>But, yeah, it should be -- in the first</b>  18 <b>meeting we had, the committee approved the agreement,</b>  19 <b>and the agreement was, they don't get to talk to</b>  20 <b>legislators, that they're -- they are exclusively</b>  21 <b>ours.</b>  22 Q And what services did Research &amp; Polling  23 provide to the CRC?  24 A <b>They drew maps for us, and they attended</b>  25 <b>every meeting with the public, and they educated the</b></p>	<p style="text-align: right;">Page 56</p> <p>1 Q Okay. And when you say that Research &amp;  2 Polling would assist with the drawing of maps, you  3 would -- obviously, any member of the public or  4 member of the committee could go onto Districtr and  5 draw their own maps for congressional, House or  6 Senate, correct?  7 A <b>Correct.</b>  8 Q But Research &amp; Polling could provide a way  9 that -- you could describe qualitatively what you  10 wanted to do, and Research &amp; Polling would handle the  11 draftsmanship for the person making that request?  12 A <b>Correct.</b>  13 Q Was Research &amp; Polling made available to  14 the public to do that or just the members of the  15 committee?  16 A <b>Just to the members of the committee. But</b>  17 <b>they were at the -- they were at the meetings with</b>  18 <b>the public, and so they heard public testimony. And</b>  19 <b>I remember hearing public testimony and, at the</b>  20 <b>conclusion, saying, Now, Research &amp; Polling, here's</b>  21 <b>what I've got. I heard the public. Will you go draw</b>  22 <b>a map based on the criteria I have just articulated.</b>  23 <b>And any other member, if you've got -- want to</b>  24 <b>express some criteria right here now, feel free to do</b>  25 <b>so. So we did that. I think I may have submitted</b></p>
<p style="text-align: right;">Page 55</p> <p>1 <b>public about the maps, explained the maps to the</b>  2 <b>public and to us. If any one of us wanted to give</b>  3 <b>them criteria to draw maps, they would then have the</b>  4 <b>responsibility of drawing a map following the</b>  5 <b>criteria we gave them. It's, I imagine, the same</b>  6 <b>thing they do for the legislature.</b>  7 <b>And, again, every member was at liberty to</b>  8 <b>meet with Research &amp; Polling and talk about maps. I</b>  9 <b>know I did. And I know I drew maps and I sent them</b>  10 <b>their way, and they might have a suggestion, you need</b>  11 <b>to squeeze -- you're not quite equal.</b>  12 Q So Districtr was a Tufts University  13 project?  14 A <b>That's my recollection, yes.</b>  15 Q And Research &amp; Polling obviously didn't  16 have any direct involvement with Districtr.  17 A <b>I think they had to give them the data.</b>  18 <b>Once we got the census data, I think they may have --</b>  19 <b>whatever their files are, they would have transferred</b>  20 <b>it to Districtr, so that when the public drew maps,</b>  21 <b>they would be using correct data.</b>  22 Q Okay. Research &amp; Polling would have to  23 give New Mexico's data to Districtr?  24 A <b>I'm pretty sure they did. You'd have to</b>  25 <b>check with Brian on that.</b></p>	<p style="text-align: right;">Page 57</p> <p>1 <b>something to them in writing.</b>  2 <b>Yeah. They're a lot better at drawing maps</b>  3 <b>than I am. They could have probably drawn the maps</b>  4 <b>that I came up with in one-tenth the time.</b>  5 Q So Concept E, which was the Justice Chavez  6 compromise map, was kind of its tagline.  7 A <b>Yeah, it was. But that was -- that</b>  8 <b>actually, I think, was Research &amp; Polling maybe.</b>  9 Q Okay. That was going to be my question.  10 A <b>And then I modified it to accommodate the</b>  11 <b>Mescaleros, and I think that was it.</b>  12 Q So, again, I assumed you were the --  13 Concept E was your brainchild, but you said Research  14 &amp; Polling drafted it, correct?  15 A <b>Right.</b>  16 Q Do you remember what inputs you gave  17 Research &amp; Polling?  18 A <b>As I sit here, no. But I think -- I might</b>  19 <b>be able to find that. I don't know.</b>  20 Q Would that be written somewhere?  21 A <b>It may have been stated verbally at a</b>  22 <b>meeting.</b>  23 Q Okay. So you would have said on the record  24 if Research -- by the next meeting, if Research &amp;  25 Polling can prepare me a map that --</p>

15 (Pages 54 to 57)

EXHIBIT 5

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1 A Right.  
 2 Q -- X, Y, Z?  
 3 A Yeah.  
 4 Q And is your understanding, in general, that  
 5 was how Research & Polling assisted members of the  
 6 committee with map drawing, was that the request was  
 7 made orally at a committee meeting?  
 8 MR. BAKER: Objection, foundation.  
 9 A No. It could be privately. They could go  
 10 meet with Research & Polling and learn all they could  
 11 and offer criteria.  
 12 BY MR. HARRISON:  
 13 Q And we say "criteria." We're not talking  
 14 about what I'll call vague stuff like the Section 7  
 15 traditional redistricting principles. We'd be  
 16 talking like, Draw me a map that keeps Chaves and Lea  
 17 together, and over in the -- you know, puts counties  
 18 X and Y together in the other side of the state,  
 19 et cetera?  
 20 A Yeah. That's pretty much it. The  
 21 International District is a great example. I think  
 22 they had two representatives, and I said just one. I  
 23 want a map with one. I want the International  
 24 District to have their own representation, because it  
 25 seemed obvious that they felt like they were being

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1 ignored. They had two, but they were being ignored.  
 2 Q I see.  
 3 A And so you do something like that. With  
 4 the congressional districts, I don't remember. But I  
 5 remember talking to them about going down into the  
 6 southern part of the state.  
 7 Q With the Albuquerque --  
 8 A Concept E looks right. And I remember  
 9 listening to testimony from the South Valley that  
 10 they thought they had more in common with going  
 11 south. And so I said, okay, let's take a portion of  
 12 South Valley and let's include it in CD-2.  
 13 Q Let me ask you about that real fast. The  
 14 claim that folks in the South Valley have more in  
 15 common with the southern half of the state than with  
 16 the Albuquerque metro area, did you find that  
 17 persuasive?  
 18 A I thought there was enough commentary to  
 19 where it was persuasive. That's why I thought it's  
 20 worth looking at.  
 21 Q Okay. So you got a lot of witness  
 22 testimony in support of that concept?  
 23 A A lot -- I don't know that you can say a  
 24 lot. You know what would be fascinating right now is  
 25 to go to the South Valley and see how the voters feel

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1 after this last election. That would be more  
 2 informative.  
 3 But, you know, you invite people to come  
 4 and testify. And a number of them from the South  
 5 Valley did come. I think it was at West Mesa High  
 6 School. And they did testify. And the testimony is  
 7 still recorded. You can go to our report link.  
 8 There's a link for it. You can go listen to the  
 9 testimony.  
 10 I felt that there was enough there that I  
 11 wanted a map that -- with the South Valley, just the  
 12 South Valley, a portion of it, into the southern  
 13 district. And I guess CD-2 is the best way to refer  
 14 to it.  
 15 Q Okay. Are you familiar with the Center for  
 16 Civic Policy?  
 17 A Sounds familiar.  
 18 Q Sometimes abbreviated CCP.  
 19 A Yeah.  
 20 Q They were the progenitor of the Concept H,  
 21 the, quote, unquote, people's map.  
 22 A Ah, okay.  
 23 MR. BAKER: Objection, form.  
 24 BY MR. HARRISON:  
 25 Q You remember?

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1 A Center for Civic Policy, yeah.  
 2 Q Okay. Did you observe that being a -- so  
 3 am I correct the witnesses would come in and identify  
 4 themselves as being maybe not on behalf of but they  
 5 would mention the CCP?  
 6 A They would mention the people's map. They  
 7 had a lot of testimony about that throughout the  
 8 state.  
 9 Q Yeah. So you would say that was a  
 10 visible -- I'll call it a campaign?  
 11 MR. BAKER: Objection to form and  
 12 foundation.  
 13 A You can call it a campaign if you want. In  
 14 my mind, that was somebody who finally taught people  
 15 how to come forward and actively participate in our  
 16 democracy. And it was the most beautiful thing I'd  
 17 seen in my entire life --  
 18 Q Oh, sure.  
 19 A -- when it comes to the democracy.  
 20 Q I'm not impugning it. I just mean you --  
 21 sometimes as you sit there --  
 22 A (Indiscernible) people did.  
 23 Q I mean, as you sat there as a committee  
 24 member, you saw that this was an organized --  
 25 A Yeah.

16 (Pages 58 to 61)

EXHIBIT 5

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1 Q -- and mobilized effort, correct?  
 2 A Yeah. They were concerned. It was like  
 3 the rule. You know, they -- there were people that  
 4 really opposed, and they expressed themselves  
 5 clearly. And when you have a large group of people  
 6 that are willing to show up and testify and give some  
 7 personal testimony also -- some were just, I support  
 8 the people's map. Others would get up and they would  
 9 articulate the reasons for it. You can't ignore  
 10 that, not when you tell them that we're here to  
 11 listen to you.  
 12 Q Sure. And I've mostly been listening while  
 13 trying to do other stuff, so I -- am I right that  
 14 they would wear distinctive like yellow T-shirts,  
 15 something like that?  
 16 A That's my memory, is there was something  
 17 distinctive. You knew that they were together.  
 18 Q Okay. Would you say that the CCP and the  
 19 people's map had the most visibly organized, I'll use  
 20 the word again, campaign that you saw during your  
 21 time on the CRC?  
 22 MR. BAKER: Objection, form.  
 23 A That was probably the most consistent  
 24 discussion we had, so much so that I remember in one  
 25 of the public meetings with Robert Aragon, with the

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1 Republican Party, I asked him if he would like for us  
 2 to move the adoption of the people's map so that they  
 3 would have an opportunity to address it in  
 4 Farmington, because he said, We're going to have maps  
 5 for you in Farmington.  
 6 And I said, Well, do you have any comments  
 7 about this map? He said, Not at this time. I said,  
 8 Would you like for us to pass it so that you will  
 9 have that opportunity? He said, Yes. Which I  
 10 thought was a good idea. But they did not have maps  
 11 in Farmington.  
 12 Q So one of the hallmarks of what I'll call  
 13 the CCP testimony was this idea of putting the South  
 14 Valley into the southern congressional district. Do  
 15 you agree with that?  
 16 A You know what? I don't remember that being  
 17 the case. I think ultimately it ended up that way,  
 18 but I don't remember them really pushing that idea.  
 19 What I remember is they were really focused on the  
 20 southeastern part of the state.  
 21 Q Okay. Explain that to me.  
 22 A We had a lot of testimony in the  
 23 southeastern part of the state about the  
 24 Congressional District 2 map. And I remember that  
 25 they did go down into Chaves County. They kept

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1 Chaves County together, is my memory. They didn't  
 2 split it. But they put it in the first congressional  
 3 district, is what I remember.  
 4 But it could very well be. I don't  
 5 remember them making a big deal about the South  
 6 Valley.  
 7 Q Okay.  
 8 A It is in the map, though, right?  
 9 Q It is. I guess it strikes me as unusual  
 10 that someone would -- that anyone would feel  
 11 passionately about dividing up the southeastern  
 12 portion of the state.  
 13 MR. BAKER: Objection, form. Is that a  
 14 question?  
 15 BY MR. HARRISON:  
 16 Q Are you aware that's a criticism, that the  
 17 so-called oil patch is divided up three ways?  
 18 A Oh, I saw that. I hadn't studied -- I  
 19 hadn't studied the map that was ultimately adopted  
 20 until a few days ago. And it is. I mean, you no  
 21 longer have Chaves County in there. You no longer  
 22 have -- well, you do have. You have Precinct 104,  
 23 like 71 votes that stay in the second congressional  
 24 district.  
 25 And then Lea County seemed to be split at

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1 Hobbs. Chaves County largely between one and three.  
 2 But that wasn't the people's map, was it?  
 3 Q No. I agree with you. I think your  
 4 recollection is correct. And so I -- I guess I -- so  
 5 you interpreted the CCP testimony as being highly  
 6 geared toward how to draw the boundaries in the  
 7 southeastern portion of the state and, in particular,  
 8 to keep Chaves and Lea County together in a single  
 9 congressional district?  
 10 MR. BAKER: Objection, form and foundation.  
 11 A Yeah. My interpretation and the reason I  
 12 supported their map is because they kept Chaves  
 13 County all together. But they wanted representation.  
 14 Their biggest complaint was they were not being  
 15 listened to. And they were pretty persuasive in that  
 16 regard, that they did not have a congressional  
 17 representative who really cared about them.  
 18 And so they did not mess with that  
 19 geographic boundary. They did not split those  
 20 communities of interest. Ezzell -- Representative  
 21 Ezzell was very good about that. She apparently  
 22 had -- in her district, she said she had most of  
 23 Roswell and didn't reach as far as Lake Arthur, is my  
 24 recollection, which she pretty much verified that  
 25 that is a community of interest.

17 (Pages 62 to 65)

EXHIBIT 5

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1           And they -- they left it intact, so I  
2 didn't think that they were destroying the primary  
3 principles of, you know, try to keep things pretty  
4 much status quo. But communities of interest I think  
5 dominate that. In my mind, that's the most important  
6 thing. I understand you have to have continuity  
7 and --  
8 BY MR. HARRISON:  
9       Q Sure.  
10       A But that's only for purposes so people  
11 don't have to travel so far for their  
12 representatives. That's not true with -- I don't  
13 think that really applies to congressional districts.  
14 They're going to have to travel.  
15       Q...And I realize there's going to be some  
16 fuzziness in what a community of interest is, but  
17 based on the testimony that you saw, you said that is  
18 a community of interest. What is the community of  
19 interest down in the southeastern part of the state?  
20       MR. BAKER: Objection, form.  
21       A Largely economic, but they also have  
22 agriculture. They have oil and gas. There was  
23 discussion about oil and gas and those employed by  
24 oil and gas, discussion about people coming in from  
25 Mexico.

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1           But here's an example. Senator Jennings,  
2 he always says what's on his mind. He got up and he  
3 told us that used to be you could talk to all the  
4 people in oil and gas working. But if you want to do  
5 that these days, you better know Spanish. So in my  
6 mind, he was making the point that most people  
7 working in the oil and gas industry are Hispanic.  
8       Representative Ezzell, I asked her who --  
9 what she talked to -- what she talked about with her  
10 constituents during her townhall meetings that she  
11 had referenced. And she said, We talk about all  
12 those, you know, druggies and people coming from  
13 south of the border.  
14       So the next question is, Well, tell me, how  
15 are you doing economically in this area? And she  
16 said, We're doing great. If it weren't for us, New  
17 Mexico wouldn't live. Which is -- I don't discount  
18 that. I think oil and gas is very important to New  
19 Mexico.  
20       So then my next question is, Well, that's  
21 wonderful. If your economy is thriving, I'm sure  
22 your poverty level is low. Oh, no, it's not. I  
23 can't reconcile those two, other than to understand  
24 what the people are talking about, that they're not  
25 getting representation, they're not being helped with

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1           their economics or their concern for economics, pay  
2 or maybe working conditions, whatever the issues  
3 were. There seemed to be a divide.  
4           And so I thought their map was fair, in  
5 that it addressed those issues.  
6       MR. BAKER: Can we take a five-minute  
7 break?  
8       MR. HARRISON: Yeah.  
9       VIDEOGRAPHER: The time is 11:02 a.m. We  
10 are going off the record.  
11       (Recess from 11:02 a.m. until 11:10 a.m.)  
12       VIDEOGRAPHER: The time is 11:10 a.m. We  
13 are back on the record.  
14 BY MR. HARRISON:  
15       Q So while I have you kind of thinking about  
16 this topic, I'll go ahead and ask you. So you said  
17 you looked at the final SB 1, the enacted  
18 congressional map just recently?  
19       A Right, yeah.  
20       Q And you view it as doing something  
21 different with the southeastern part of the state  
22 than what Concept H, the people's map, did.  
23       A Yeah.  
24       Q And I'm not asking you to opine on whether  
25 it's good or bad, but the legislature took a

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1           different view of what the community of interest down  
2 there is than from what the people's map embodied.  
3 Do you agree with that?  
4       MR. BAKER: Objection to form and  
5 foundation.  
6       A I don't know that I can agree with that.  
7 BY MR. HARRISON:  
8       Q Okay. Why not?  
9       A Because I don't think they articulated that  
10 as a basis for the decision. The only thing I'm  
11 aware of is they said they wanted to improve  
12 competitiveness, which has never been a criteria in  
13 New Mexico.  
14       Q Okay. So I guess then, to put it  
15 differently, there was an idea of what the community  
16 of interest in the southeastern part of the state is.  
17 It was embodied in the people's map, Concept H, and  
18 not reflected in the enacted SB 1 map. Would you  
19 agree with that?  
20       A Yeah.  
21       MR. BAKER: Objection, form and foundation.  
22       A The map is different. The only thing that  
23 might be the same with regard to Chaves County is the  
24 boot or the heel, whatever you want to call it.  
25 BY MR. HARRISON:

18 (Pages 66 to 69)

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1 Q You're talking about the -- it's a --  
 2 A Chaves County has this strange -- on the  
 3 lower left-hand side, that's I think Precinct 104.  
 4 That's what they left for the CD-2 candidates, is  
 5 the -- I think it's a total of like 97 votes.  
 6 Q I see. So at the first meeting, I'm going  
 7 to read you a quote that you gave off the cuff at  
 8 your first meeting in response to a question about  
 9 whether the committee could be nonpartisan. And you  
 10 said, quote, This is a balanced committee,  
 11 Republicans, Democrats and decline-to-state  
 12 individuals, and they'd each pledged to work together  
 13 in a nonpartisan fashion. And I believe in people  
 14 and I believe in their desire to be effective, and my  
 15 assurance to you is that if we follow our process, we  
 16 are going to succeed in being nonpartisan. Is  
 17 that --  
 18 A That sounds like something I would say,  
 19 because I do believe in people and their desire to be  
 20 effective.  
 21 Q Do you think the committee succeeded?  
 22 A Yes, I do.  
 23 Q Okay. One of the -- I mean, some obviously  
 24 we've already discussed. But in kind of broad  
 25 strokes, what steps were taken by the committee, by

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1 you and by the committee, to be assiduously  
 2 nonpartisan?  
 3 A Everything was done in the open. All of  
 4 our discussion regarding maps took place in the open.  
 5 All of our votes, whatever we articulated, our basis  
 6 for our votes, took place in open meetings.  
 7 Q So it kind of -- I've expressed, I think, a  
 8 couple of times today like surprise at how true that  
 9 has seemed to be, that everything that the CRC did  
 10 happened at these meetings. And it sounds like that  
 11 was an intentional feature of the CRC?  
 12 A Yes.  
 13 Q And you're not aware that -- you've already  
 14 said that you didn't, but you're not aware that some  
 15 members would meet separately from the group to  
 16 discuss maps or the work of the CRC?  
 17 A I'm not aware of any.  
 18 Q Did you -- and this is a bit of an awkward  
 19 question, but did you observe any acts of  
 20 partisanship or any acts that you thought could  
 21 reasonably appear to be partisan from any of the CRC  
 22 members or staff during the period where the CRC was  
 23 active?  
 24 A I would say not me. I don't think that  
 25 they acted partisan. People would look at that, who

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1 were skeptical, would look at the vote on the first  
 2 map and see that -- I think it was the Democrats  
 3 voted against, and on the people's map the  
 4 Republicans voted against. If you wanted to be  
 5 skeptical, you would say, well, that was partisan. I  
 6 don't think that's true.  
 7 Q Okay. And that's just the final vote.  
 8 A Yeah, just as the final vote. But they had  
 9 open discussions about what they were doing, why they  
 10 were voting. I think even my map drew a dissent,  
 11 which is fine.  
 12 Q It did. I actually had a question about  
 13 that. The CRC -- I just noticed this today. The CRC  
 14 lists the no vote, the single no vote as being  
 15 Joaquín Sanchez, who was one of the Ethics Commission  
 16 appointees. Is that correct?  
 17 A Yeah, that's correct, yeah. A wonderful  
 18 teacher. He's a teacher.  
 19 Q So throughout the legislative -- the  
 20 discussion at the legislature on SB 1, that was  
 21 misattributed to Lisa Curtis, I don't know why, as  
 22 being the sole no vote. And so I was surprised to  
 23 see that. What was Mr. Sanchez's opposition to the  
 24 Concept E map?  
 25 A I don't recall. If he commented on it, it

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1 would be in the meetings.  
 2 Q And then what factors --  
 3 A By the way, now that I -- I did talk to  
 4 Joaquín specifically about going on Spanish radio,  
 5 because he speaks very beautiful Spanish. I could do  
 6 it, but I thought he'd be ideal, but he declined.  
 7 Q And that was before the committee decided  
 8 to have you be the spokesman?  
 9 A Right.  
 10 Q What do you think the reasons for the  
 11 opposition, the no votes to Concept A were?  
 12 MR. BAKER: Objection, foundation.  
 13 A That would be on the tape.  
 14 BY MR. HARRISON:  
 15 Q Okay. And can you explain to me in broad  
 16 strokes -- I think I understand, but explain to me in  
 17 broad strokes. So you had a bunch of maps submitted  
 18 by the public and drawn by the members of the  
 19 committee, presumably with help from Research &  
 20 Polling. What was the process of deciding which  
 21 three would be approved?  
 22 A First we came up with concepts that were  
 23 based on public testimony. That was after the first  
 24 round of meetings. We published those, gave a couple  
 25 of weeks for the public to digest. We announced that

19 (Pages 70 to 73)

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1 **they were out there on the website.**  
 2 **We then went and got more feedback from the**  
 3 **public on the concepts. And now we had solid**  
 4 **numbers. Let me take that back. We had numbers from**  
 5 **the Census Bureau. And so we made the adjustments**  
 6 **that were needed to be made. And we had the maps,**  
 7 **and whoever wanted to make a motion at the meeting to**  
 8 **adopt a map, that's how it would be discussed.**  
 9 **So the committee members knew what maps**  
 10 **were on the table. They could study them for their**  
 11 **own purposes. And if they wanted to move the**  
 12 **adoption of one, they could.**  
 13 Q... As a simple majority vote, up or down?  
 14 A... Yes.  
 15 Q... Okay. And you were required to adopt at  
 16 least three maps.  
 17 A... Correct.  
 18 Q... But am I right that you, in fact, adopted  
 19 only three maps for all three, House, Senate and  
 20 congressional?  
 21 A... That was it, yes.  
 22 Q... Was that a deliberate decision?  
 23 A... No. I wouldn't say that we said we're only  
 24 going to adopt three, but we wanted to do our job,  
 25 and we thought if we filtered that for the

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1 **legislature, that that might maximize the opportunity**  
 2 **that the legislature would adopt one of them. And my**  
 3 **recollection is there were three motions, and then**  
 4 **nobody else had a motion for any other maps. That's**  
 5 **my recollection.**  
 6 Q... With the congressional specifically?  
 7 A... With all three. And toward the end, we  
 8 still had issues with the Native American area,  
 9 because we were hoping that we could get their full  
 10 input. And I don't remember why we couldn't quite  
 11 get there, but we did. But we still went ahead and  
 12 adopted maps because we had a deadline.  
 13 My memory, which has faded, so I can't tell  
 14 you precisely what was said or how it was done, but I  
 15 can tell you that it's on videotape.  
 16 Q... So you're obviously aware the congressional  
 17 maps have a uniquely strict equal population  
 18 requirement, correct?  
 19 A... Yes. I tried to keep that at zero.  
 20 Q... And are you confident that all three of the  
 21 approved concepts satisfied the equal population  
 22 requirements?  
 23 A... Yes.  
 24 Q... And so where the act requires that you  
 25 provide, quote, written evaluations of each adopted

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1 map, what -- can you describe for me how that  
 2 information was -- how the distillation I see in your  
 3 report was arrived upon by the committee?  
 4 A... My recollection is the first meeting in  
 5 Santa Fe we set forth what we wanted the data to  
 6 reflect. That was just strictly the data, not the  
 7 partisan analysis. And that would be on the record.  
 8 But it's basically demographic data. You want to  
 9 know the population so that you can make sure that  
 10 you don't deviate too much.  
 11 It was demographic information that was  
 12 pretty routine with prior maps drawn by Research &  
 13 Polling, except that we were not asking for partisan  
 14 data. We were not asking for performance measures or  
 15 registrations for Democrats, Republicans, others,  
 16 DTS.  
 17 Q... So when you did your back-end, what I'll  
 18 call the anti-gerrymandering analysis by David  
 19 Cottrell --  
 20 A... Yes.  
 21 Q... -- is the statutory authorization -- the  
 22 statutory basis for that -- I'm going to give you my  
 23 guess or my assumption -- is 1-3A-8 has a reference  
 24 to the aforementioned written evaluation containing,  
 25 quote, a measure of partisan fairness. Is that the

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1 basis for commissioning this anti-gerrymandering  
 2 analysis?  
 3 A... That was the basis for asking for  
 4 partisan -- to weigh the partisanship of the maps.  
 5 Q... And was it -- at the first meeting, you  
 6 mentioned that you had someone in mind, but then  
 7 didn't name a name, to conduct this back-end  
 8 analysis. Was that always Dr. Cottrell?  
 9 A... No. No. I -- No. I'm not going to  
 10 remember the names, but they were busy. They were  
 11 doing redistricting in other states.  
 12 Q... Okay.  
 13 A... But he was highly recommended by whoever we  
 14 vested with.  
 15 Q... So my recollection is that, as you know or  
 16 as you alluded to earlier, the committee stripped you  
 17 of a little bit of authority to enter into contracts  
 18 for legal services.  
 19 A... Correct.  
 20 Q... But you retained full authority to go out  
 21 and contract for most other services, correct?  
 22 A... For everything else, as far as I was  
 23 concerned.  
 24 Q... Including the anti-gerrymandering  
 25 consultant?

20 (Pages 74 to 77)

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1 little booklet by the Princeton gerrymandering  
 2 project that identified those as good measuring tools  
 3 for partisan fairness. And so we gave him that.  
 4 But we did use the word "including,"  
 5 because it's their expertise. If they have other  
 6 criteria that they wanted to look at, I suppose they  
 7 could. My recollection is he did. I think he looked  
 8 at symmetry, asymmetry.  
 9 BY MR. HARRISON:  
 10 Q Okay. And so I guess to give you another  
 11 idea of kind of what I'm looking for, so he --  
 12 Dr. Cottrell ran, I believe, a thousand simulations  
 13 of each map.  
 14 A That's my memory.  
 15 Q You could do any number, right, 5,000, a  
 16 million? Did you have any particular opinion on what  
 17 number of simulations should be run?  
 18 A No. I relied on his expertise.  
 19 Q Okay. And so you selected Dr. Cottrell  
 20 then based on sort of gathering qualitative feedback  
 21 that he was a knowledgeable expert who is good at  
 22 what he does.  
 23 A Yes.  
 24 Q Okay. And do you happen to know, who all  
 25 did you talk to that you got that feedback on

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1 Dr. Cottrell about?  
 2 A I don't have a memory of who all I talked  
 3 to.  
 4 Q Okay.  
 5 A Yeah. I don't want to guess. But, you  
 6 know, I talked to the folks at Harvard, too. And  
 7 there was the Princeton gerrymandering project, so --  
 8 Q Okay.  
 9 A I tried to be diligent about it. I'll tell  
 10 you what. This next time it's going to work much  
 11 better because there's going to be a lot more time to  
 12 get organized and get this done.  
 13 Q Sure. Now, you said that you had initially  
 14 had someone else in mind. That person was  
 15 unavailable. Was Dr. Cottrell the next person that  
 16 you engaged and tried to get interested in the  
 17 project?  
 18 A That's my memory.  
 19 Q Okay. So, again, I mentioned that line in  
 20 the statute about the written evaluation of each map  
 21 containing, quote, a measure of partisan fairness.  
 22 Was there any other -- aside from commissioning  
 23 Dr. Cottrell's analysis, was there any other way that  
 24 that statutory dictate was manifested in the  
 25 committee's work?

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1 A I'm sorry. I didn't --  
 2 Q That was a horrible question. Did you do  
 3 anything else, other than hiring Dr. Cottrell, to  
 4 fulfill the statutory mandate that you comment on or  
 5 you give a measure of the partisan fairness of each  
 6 proposed concept?  
 7 A All I did was with Dr. Cottrell. I haven't  
 8 looked at -- well, there's data now, not on our maps,  
 9 but there's data on the existing map.  
 10 Q Are you aware that at the time that Concept  
 11 H, the people's map, was approved, The Journal  
 12 editorial board wrote an editorial essentially  
 13 opining that they felt the Concept H was motivated by  
 14 partisan intent?  
 15 MR. BAKER: Objection, form and foundation.  
 16 A Did they really?  
 17 BY MR. HARRISON:  
 18 Q They did. I'm just asking --  
 19 A I don't even remember them being critical.  
 20 I think they were critical of the people who proposed  
 21 the map.  
 22 Q They were, yeah.  
 23 A But, you know, that's The Journal. They do  
 24 write editorials. I do read some of them. But who  
 25 cares? I mean, that's the truth. They're entitled

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1 to their opinion. That map was evaluated by  
 2 Dr. Cottrell. And my memory is that he thought that  
 3 it satisfied the criteria, which, yeah, I was happy  
 4 about that, because I had to think, well, what  
 5 happens if one of our maps is bad? What am I going  
 6 to do? I'm running out of time.  
 7 Q So the other two approved concepts, A and  
 8 E, were drafted by committee members, correct?  
 9 A Concepts A and E? Concept A was drafted by  
 10 Research & Polling. Concept E was drafted by  
 11 Research & Polling, but I modified it myself.  
 12 Q And drafted by Research & Polling at the  
 13 behest of the committee?  
 14 A Correct, yeah.  
 15 Q Now, Concept H was drafted by the CCP.  
 16 A Correct.  
 17 Q Correct? Okay. And the CCP, of course, is  
 18 not barred from considering partisan data if it wants  
 19 to.  
 20 A No. Right. The public would know about  
 21 partisan data if they wanted to, I suppose.  
 22 Q Sure, yeah. And I guess, did you view that  
 23 as a particular vulnerability of the people's map or,  
 24 I guess, any map that was submitted by an outside  
 25 entity versus a committee member?

22 (Pages 82 to 85)

EXHIBIT 5

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1 **we won't take into consideration addresses of**  
 2 **incumbents, period, in HJR 1. Although let me be**  
 3 **clear. I'm not a hundred percent with that, because**  
 4 **there is something to be said about continuity of**  
 5 **representation. And I've expressed that opinion, but**  
 6 **I'll go with the majority.**  
 7 Q Okay. That's interesting. I mean, and  
 8 you've expressed support for that concept in  
 9 connection with the importance of the value of  
 10 retaining the cores of existing districts, correct?  
 11 A Well, that and -- but incumbents. If you  
 12 have the same incumbent, it could be useful, the  
 13 continuity of representation. I recognize that as an  
 14 idea that supports it. And I've expressed it to the  
 15 people that I've worked with on the committee. They  
 16 have better reasons, I guess, not to want to consider  
 17 addresses.  
 18 Q Would it be -- just throwing this out  
 19 there. Would it be superior or at least a perfectly  
 20 adequate substitute to eliminate residency  
 21 requirements?  
 22 A I think, if you eliminated it, you still  
 23 have competition. Whoever lives in the district, if  
 24 they're paired well, they're going to have to  
 25 campaign against each other. That's all there is to

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1 **it. And the voters get to decide. The whole idea is**  
 2 **for the voters to pick the representatives, not the**  
 3 **representatives picking the voters.**  
 4 Q This is a little specific, and so you might  
 5 not be familiar with it. Do you know who  
 6 Representative Jane Powdrell is?  
 7 A Yes.  
 8 Q Okay.  
 9 A Yeah.  
 10 Q Are you familiar with the changes to her  
 11 House -- State House district that came about this  
 12 redistricting session?  
 13 A No. I'm aware it happened, but I don't  
 14 have -- no.  
 15 Q Okay.  
 16 A I really wasn't focused anymore on  
 17 redistricting after January.  
 18 Q You voted in favor of all three approved  
 19 congressional maps, correct?  
 20 A That's correct.  
 21 Q But whether expressed or not, subjectively,  
 22 your preference was for Concept E, correct?  
 23 A Yeah. I liked Concept E. I thought that  
 24 was workable. I thought A was workable. And I also  
 25 voted in favor of H, because I thought H kept

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1 **communities of interest together. I thought there**  
 2 **was a good expression of opinion as to why you would**  
 3 **want to move Chaves County away and give them a**  
 4 **different representative. But I figured the**  
 5 **legislature can choose between the three.**  
 6 Q But if it was your choice, it would have  
 7 been Concept E?  
 8 A Yeah.  
 9 Q And then, again, recognizing that obviously  
 10 the legislature has the constitutional authority to  
 11 be the final word on redistricting in New Mexico, you  
 12 were disappointed that the legislature did not adopt  
 13 one of the three congressional concepts proposed by  
 14 the CRC, correct?  
 15 A It would have been great had they adopted  
 16 one.  
 17 Q... You were disappointed that they didn't.  
 18 A Yeah. You know, a lot of work went into  
 19 that, and I thought we did a fair job.  
 20 Q Did you observe the same work from the  
 21 legislature and the modifications they made to  
 22 Concept H?  
 23 MR. BAKER: Objection, foundation.  
 24 A I don't -- did I observe the what?  
 25 BY MR. HARRISON:

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1 Q I'll phrase it. Am I correct that you did  
 2 not observe the same level of work, right, from the  
 3 legislature and the modifications they made to  
 4 Concept H to create their final bill?  
 5 MR. BAKER: Objection, foundation.  
 6 A I watched very little of the legislature  
 7 and their adoption of the new maps, but what I saw  
 8 didn't impress me.  
 9 BY MR. HARRISON:  
 10 Q Okay. And they certainly didn't reach out  
 11 to you or, as far as you know, the other members of  
 12 the committee?  
 13 A No. They didn't reach out to me.  
 14 Q Okay. And this shows how little I know  
 15 about the other two maps, but am I right that, in  
 16 fact, the legislature didn't wholesale adopt any of  
 17 the nine concepts that was proposed by the committee?  
 18 A I think they may have adopted the House --  
 19 one of our House maps, I think, or they at least got  
 20 closest. It's okay. That's the way it was designed,  
 21 and I understood that. You know, you put in work and  
 22 you hope that it was good enough. It wasn't good  
 23 enough.  
 24 Q It wasn't good enough, and that's purely  
 25 your expression of the fact that the legislature did

25 (Pages 94 to 97)



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1 not adopt those maps, not any comment on defects in  
2 the work product of the CRC, correct?  
3 **A The work was solid.**  
4 Q The work was honest.  
5 **A But it was -- yes. But it was not enough**  
6 **to get the legislature to adopt any of the**  
7 **congressional maps, or any of the Senate maps for**  
8 **that matter. And I do think they adopted one of the**  
9 **House maps. Maybe they modified it slightly.**  
10 **Anyway . . .**  
11 Q And as far as you can tell, the reason for  
12 the legislature adopting maps that were not maps  
13 proposed by the CRC is that they considered factors  
14 that were outside of the Section 7 of the  
15 Redistricting Act factors?  
16 MR. BAKER: Objection, foundation.  
17 **A If they were motivated by competitiveness,**  
18 **historically New Mexico has not used that as a**  
19 **criteria. That's known nationally, and it's known**  
20 **here in New Mexico. And so if that was the basis,**  
21 **then I don't get it.**  
22 BY MR. HARRISON:  
23 Q Competitiveness being an aspect of  
24 consideration of partisan data?  
25 **A Right. We were forbidden from looking at**

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1 **partisan data. They obviously were not. I've seen**  
2 **the performance measures back in 2011. I've seen**  
3 **them in 2021 on that basis. And the only material**  
4 **change was to CD-2. It reversed the swing from swing**  
5 **Republican to swing Democrat.**  
6 **Otherwise, the first remained virtually the**  
7 **same. The third remains a stronger than swing**  
8 **district for the third. So I don't know if they**  
9 **accomplished what they intended.**  
10 Q Those changes appear to you to have been  
11 the motivation for the modifications that were made  
12 from Concept H to the final enacted SB 1.  
13 MR. BAKER: Objection, foundation.  
14 **A Yeah. I don't know, but I'm presuming**  
15 **that's the case, since they talked about**  
16 **competitiveness.**  
17 MR. HARRISON: I'll pass the witness.  
18 MR. BAKER: Kyle, I'm happy for you to go  
19 next if you'd like, or I'll go next. You pick.  
20 MR. DUFFY: No, I don't have anything.  
21 MR. BAKER: Okay.  
22 EXAMINATION  
23 BY MR. BAKER:  
24 Q All right, Justice Chavez. In terms of  
25 what you know or don't know about why any legislator

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1 voted for the final SB 1, I know that Mr. Harrison  
2 asked you to speculate about that. But you don't  
3 personally know the rationale that any individual  
4 legislator relied on to vote.  
5 **A No, I do not.**  
6 Q And you knew, coming out of the CRC, that  
7 the report you submitted would be treated the same as  
8 an interim committee report, per the Redistricting  
9 Act, right?  
10 **A Yes.**  
11 Q And so, as you acknowledged, you knew  
12 that that would be --  
13 **A They collect dust. Interim reports collect**  
14 **dust. That's what they do.**  
15 Q And obviously, you worked hard and you  
16 hoped that it would get traction --  
17 **A Yeah.**  
18 Q -- and that they would approve, but you  
19 knew that there was -- it was the legislature's  
20 opportunity to take what you did and consider it,  
21 alter it or vote in favor of one that you proposed,  
22 right?  
23 **A Or not even consider it.**  
24 Q Or just leave it to collect dust.  
25 **A Yeah, exactly.**

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1 Q And here you understand that the  
2 legislature started with Concept H as the foundation  
3 for what ended up being SB 1, correct?  
4 **A I could see how that could be the case,**  
5 **yeah.**  
6 Q And based on the report you submitted, that  
7 was presented to the legislature following  
8 Dr. Cottrell's analysis as a partisan-neutral map,  
9 correct?  
10 **A H was, yes.**  
11 Q Yes. So at least as the legislature  
12 started its work, if it started with Concept H, it  
13 fairly could have treated that as a partisan-neutral  
14 map from which to build SB 1, correct?  
15 **A Yes.**  
16 Q And in terms of competitiveness, I just  
17 wanted -- I remembered as you were talking something  
18 from Maestas v. Hall, and so I've got it up on my  
19 screen.  
20 **A Yes.**  
21 Q Do you recall that you commented on  
22 competitiveness in Maestas?  
23 **A I did. Court-drawn maps.**  
24 Q Yes.  
25 **A If evidence is presented on**

26 (Pages 98 to 101)

EXHIBIT 5

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1 **competitiveness, then, Judge, be careful because of**  
 2 **the political thicket that you're about to get in and**  
 3 **because they considered partisanship for all the**  
 4 **other maps and not the ones that ultimately was**  
 5 **adopted.**  
 6 **We sent it back and said, hear from**  
 7 **everybody, give everybody a fair chance to comment on**  
 8 **partisanship.**  
 9 MR. BAKER: And, Carter, this is paragraph  
 10 41 of Maestas.  
 11 BY MR. BAKER:  
 12 Q... In addressing competitiveness, you wrote  
 13 for the Supreme Court, Competitive districts are  
 14 healthy in our representative government because  
 15 competitive districts allow for the ability of voters  
 16 to express changed political opinions and  
 17 preferences.  
 18 A... Yes.  
 19 Q... And do you still believe that's true today,  
 20 that competitive districts are healthy for  
 21 representative government?  
 22 A... I do. Now, how you define competitiveness  
 23 is the issue.  
 24 Q... Right. And in New Mexico, the ultimate  
 25 decision rests with the legislature, the elected

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1 representatives in the legislature, with approval by  
 2 the governor, correct?  
 3 A... Definitely. It would have been good if  
 4 they would have allowed us to consider competitive  
 5 maps.  
 6 Q... But for your purposes, you had marching  
 7 orders as to what was in or out for the CRC, knowing  
 8 it would be different for the legislature itself.  
 9 A... No, I don't agree with that.  
 10 Q... Okay. You thought that the legislature was  
 11 going to be tied to the --  
 12 A... The Redistricting Act was the Redistricting  
 13 Act. This is how redistricting would be performed.  
 14 It didn't say that, You, Legislature, can now start  
 15 thinking about other criteria or superseding  
 16 traditional redistricting principles. I would not  
 17 agree with that.  
 18 Q... Okay. In terms of redistricting history in  
 19 New Mexico, the only cycle when the -- well, the  
 20 first time there were three districts was 1980,  
 21 correct, after the 1980 census?  
 22 A... Court-drawn?  
 23 Q... The first time that we got a third  
 24 congressional seat --  
 25 A... Oh, yes. Sorry, sorry.

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1 Q... -- was in the early eighties. And that was  
 2 the subject of litigation, correct?  
 3 A... Yes.  
 4 Q... And then in '91 we had maps that were drawn  
 5 by the legislature and approved by the governor, and  
 6 the court didn't have to intervene, correct?  
 7 A... The first time, right.  
 8 Q... Correct?. And then the next two cycles  
 9 ended up in litigation with court-drawn maps.  
 10 A... Correct.  
 11 Q... So when the legislature considered SB 1, it  
 12 was the first time in 30 years that the legislature  
 13 had had the opportunity to pass, submit to the  
 14 governor a legislatively drawn map as the system  
 15 contemplates.  
 16 A... Yes.  
 17 Q... And so when we're talking about the length  
 18 of time that certain principles have been in place,  
 19 the issue only comes around once every decade, right?  
 20 A... That's right.  
 21 Q... And in terms of the way maps have looked  
 22 traditionally, have you ever looked at the map from  
 23 1980, in terms of how it divided up the state?  
 24 A... I don't recall looking at 1980.  
 25 MR. BAKER: So I'm going to just mark this

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1 as -- are we on Exhibit 1?  
 2 MR. HARRISON: 2.  
 3 MR. BAKER: 2. I'll mark it as Exhibit 2.  
 4 I don't have a sticker.  
 5 (Exhibit No. 2 was marked.)  
 6 BY MR. BAKER:  
 7 Q... But I'll represent to you that this is  
 8 taken from the plaintiffs' expert report and shows  
 9 the map. And do you see that it swings the southern  
 10 district up into the north?  
 11 A... Yes.  
 12 Q... And so there's at least a history in New  
 13 Mexico of maps that don't just follow the version  
 14 that was in place coming into this redistricting  
 15 cycle, with a circle in the middle and north and the  
 16 south.  
 17 A... Yeah. The 1982 map. I think I had one of  
 18 those concepts that I was going to propose. I wish I  
 19 would have had that.  
 20 Q... So whether you have a dog leg up or a dog  
 21 leg down, it's not a new thing in New Mexico to have  
 22 the districts swing up and down vertically north and  
 23 south rather just east and west. There was a decade  
 24 where that was the case.  
 25 A... There was a decade where that was the case.

27 (Pages 102 to 105)

EXHIBIT 5

Page 110

1 **subjective. What's egregious to you may not be**  
 2 **egregious to me.**  
 3 Q Like shocks the conscience.  
 4 A **It's like the reasonable person standard.**  
 5 Q Fair enough. Or shocks the conscience  
 6 for --  
 7 A **Or shocks the conscience, yeah.**  
 8 Q But it accepts that there's going to be  
 9 partisan consideration in the drawing of maps as a  
 10 baseline for how legislators are allowed to do their  
 11 work, correct?  
 12 A **Yes. That's exactly right. There will be**  
 13 **some partisanship, and people will acknowledge that.**  
 14 **In fact, I think the Supreme Court said that. The**  
 15 **only exception they created was, if you don't**  
 16 **consider partisan data, then it's not a partisan map.**  
 17 **So the CRC map would have passed muster under the**  
 18 **New Mexico Supreme Court order, is the way I read it.**  
 19 Q Going back to Concept H, I just wanted to  
 20 hear a little bit more from you on your -- I think  
 21 you said that it was -- let me find the word you  
 22 used -- beautiful example of -- the people's map is  
 23 one of the most beautiful things you'd seen in terms  
 24 of the process?  
 25 A **Not the map. The participation.**

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1 Q Yeah.  
 2 A **I really enjoyed listening to everyone who**  
 3 **testified. To me, it was beautiful that people would**  
 4 **get up in their mother language and speak to us. I**  
 5 **really enjoyed that. And, yes, there were a number**  
 6 **of them. But that's -- I mean, to witness people**  
 7 **actively participate in the democracy is a beautiful**  
 8 **thing. That's what I meant.**  
 9 Q Under the Redistricting Act, part of that  
 10 is not just speaking but also submitting actual maps,  
 11 correct? I mean, the statute contemplates that  
 12 people can submit maps.  
 13 A **They've got to do that, yes.**  
 14 Q And so from your perspective as the chair  
 15 of the CRC, was there anything about the fact that  
 16 Concept H was submitted by members of the public  
 17 rather than drawn by the CRC, is there anything  
 18 inappropriate about that or surprising or  
 19 questionable about that?  
 20 A **No. We were hoping for more maps. I**  
 21 **actually thought we were going to get maps from the**  
 22 **Republican Party and the Democrat Party. They were**  
 23 **silent.**  
 24 Q Along that line, I was going to ask you.  
 25 You mentioned that Robert Aragon was present and

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1 there was discussion of them coming forward with  
 2 Republican maps in Farmington. Did I understand that  
 3 right?  
 4 A **That's what I understood him to say.**  
 5 Q And did Mr. Aragon or others acting at his  
 6 behest submit maps to the CRC in Farmington that  
 7 would have been different from the people's map?  
 8 A **No.**  
 9 Q Did they submit maps at all?  
 10 A **No, not that I recall, and none were drawn**  
 11 **on the portal. I went through every map on the**  
 12 **portal and tried to comment and offer suggestions for**  
 13 **what they might do to tweak them, because some**  
 14 **exceeded the deviation, for example, and so you'd let**  
 15 **them know. But go back, and if you can fix this, but**  
 16 **we can't consider it with this large of a deviation.**  
 17 **Things of that nature. And I don't remember reading**  
 18 **a map from any political party.**  
 19 Q What about from Tim Jennings? Did he  
 20 submit a map?  
 21 A **No.**  
 22 Q Hold on one second. Let me find some other  
 23 names I wanted to run by you on that. Dinah Vargas,  
 24 or Dinah Vargas, did she submit maps?  
 25 A **I don't know.**

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1 Q Or Manuel Gonzales, Jr.?  
 2 A **The names of those who submitted maps are**  
 3 **identified, and I'm not going to remember names.**  
 4 Q That's fair.  
 5 A **Senator Jennings I know.**  
 6 Q That was easier. As I went down the line,  
 7 I realized I was probably asking you to pull a rabbit  
 8 out of the hat. But in any event, it's documented  
 9 who submitted the maps, and you don't recall any from  
 10 the Republican Party.  
 11 A **That's correct.**  
 12 Q Do you remember any, what we could call oil  
 13 patch maps, where people from the oil patch came in  
 14 in an organized group and said, We don't like Concept  
 15 H. We want an oil patch map that says X, Y and Z?  
 16 A **I don't remember anybody commenting on**  
 17 **somebody else's map and saying, We offer this as an**  
 18 **alternative. Whether or not the oil patch submitted**  
 19 **one, I'd have to go back and look, because we did get**  
 20 **communities of interest maps as well, and we did get**  
 21 **some from the southeastern part. But I don't**  
 22 **remember.**  
 23 **The wonderful thing about the independent**  
 24 **redistricting committee is it's all for the public to**  
 25 **still see, for the public.**

29 (Pages 110 to 113)

EXHIBIT 5

Page 114

1 Q Sorry. I'm just checking things off here.  
 2 You probably remember the drill, trying to figure out  
 3 what you covered when you go second on depositions.  
 4 A Yes.  
 5 Q And Concept H was approved by the CRC by a  
 6 vote of five to two, correct?  
 7 A I don't remember.  
 8 Q Okay.  
 9 A Yeah. Yes. I do remember. Yes.  
 10 Q And do you recall that both Joaquín Sanchez  
 11 and Robert Radigan, the Ethics Commission appointees  
 12 to the CRC, both voted in favor of the people's map?  
 13 A Yes.  
 14 Q And to your knowledge, all rules and  
 15 regulations that govern the CRC were followed in the  
 16 proposal and recommendation of Concept H?  
 17 A Yes.  
 18 Q And then after your work was done, then  
 19 Professor Cottrell did the evaluation that showed  
 20 that each of the three maps that the CRC approved for  
 21 Congress passed the partisan bias test.  
 22 A That's the way I read his report.  
 23 MR. BAKER: Okay. I'll pass the witness.  
 24 Kyle, did that prompt anything from you?  
 25 MR. DUFFY: No. We're still good. Thank

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1 you.  
 2 MR. BAKER: All right.  
 3 EXAMINATION  
 4 BY MR. HARRISON:  
 5 Q Just briefly. Mr. Baker brought up the  
 6 Rucho analysis and the New Mexico Supreme Court's  
 7 partial adoption of the Rucho analysis. So I'll  
 8 also --  
 9 A The minority opinion.  
 10 Q The dissent, that's right. But I wanted to  
 11 address another aspect of what the New Mexico Supreme  
 12 Court just decided, which is -- and I'm going to  
 13 quote from the order we have. It's paragraph 4 of  
 14 the Supreme Court's order. Intermediate scrutiny is  
 15 the proper level of scrutiny for adjudication of a  
 16 partisan gerrymandering claim under Article II,  
 17 Section 18 of the New Mexico Constitution.  
 18 And they cite to a case called Breen v.  
 19 Carlsbad Municipal Schools. You were -- I believe  
 20 Justice Maes wrote that opinion, but you were on the  
 21 Supreme Court when that opinion came down. It's been  
 22 a while.  
 23 A Yes.  
 24 Q Do you recall the opinion?  
 25 A Uh-huh.

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1 Q Is intermediate scrutiny an easy standard  
 2 for the government to satisfy?  
 3 MR. BAKER: Objection, form and foundation.  
 4 A No. The interesting thing about  
 5 intermediate scrutiny is it shifts the burden. You  
 6 would think that you would begin with those who are  
 7 complaining. But in this case, the government is  
 8 going to have the burden, and they're going to have  
 9 to show a connection with a substantial governmental  
 10 interest.  
 11 BY MR. HARRISON:  
 12 Q What's a substantial governmental interest?  
 13 A I guess that will be left to testimony.  
 14 Although I think the law and the history will be  
 15 useful.  
 16 Q Would you suspect that the traditional  
 17 redistricting -- in the context of a restricting  
 18 case, the traditional redistricting factors would be  
 19 substantial government interest?  
 20 MR. BAKER: Objection, foundation.  
 21 A They will be important, as will over- or  
 22 under-inclusiveness. Just look at the history of  
 23 intermediate scrutiny in New Mexico.  
 24 BY MR. HARRISON:  
 25 Q It's a rigorous and searching standard,

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1 correct?  
 2 MR. BAKER: Objection.  
 3 A Well, it's more rigorous than rational  
 4 basis, for sure, but less than strict scrutiny.  
 5 BY MR. HARRISON:  
 6 Q Indeed. Can you recall -- tell me about  
 7 laws that have withstood intermediate scrutiny.  
 8 A I can't think of any off the top of my  
 9 head. I think we held in Breen that -- I think we  
 10 found a constitutional violation. I don't remember  
 11 what it was.  
 12 Q And then under the federal constitution,  
 13 for example, sex discrimination is subject to  
 14 intermediate scrutiny, correct?  
 15 A That's my memory.  
 16 Q Is sex discrimination something that the  
 17 government is allowed to do lightly and for reasons  
 18 that aren't truly convincing?  
 19 MR. BAKER: Objection to form and  
 20 foundation.  
 21 A No. I think Breen laid out the standard  
 22 that we follow in New Mexico pretty well. The burden  
 23 is on the government, and they have to show  
 24 connection with a substantial governmental interest.  
 25 I think it would be easier if you adhere -- if they

30 (Pages 114 to 117)

## EXHIBIT 6-1



### New Mexico Counties Population Change 2000 to 2010 and 2010 to 2020

Ranked By Percent Population Change, 2010 to 2020					
County (Largest City)	2010 Population	2020 Population	Population Change 2010 - 2020	% Population Change 2000 - 2010	% Population Change 2010 - 2020
Eddy County (Carlsbad)	53,829	62,314	8,485	4.2%	15.8%
Lea County (Hobbs)	64,727	74,455	9,728	16.6%	15.0%
Sandoval County (Rio Rancho)	131,561	148,834	17,273	46.3%	13.1%
Los Alamos County (Los Alamos)	17,950	19,419	1,469	-2.1%	8.2%
Santa Fe County (Santa Fe)	144,170	154,823	10,653	11.5%	7.4%
Otero County (Alamogordo)	63,797	67,839	4,042	2.4%	6.3%
Doña Ana County (Las Cruces)	209,233	219,561	10,328	19.8%	4.9%
Taos County (Taos)	32,937	34,489	1,552	9.9%	4.7%
Bernalillo County (Albuquerque)	662,564	676,444	13,880	19.0%	2.1%
McKinley County (Gallup)	71,492	72,902	1,410	-4.4%	2.0%
Luna County (Deming)	25,095	25,427	332	0.3%	1.3%
Rio Arriba County (Española)	40,246	40,363	117	-2.3%	0.3%
Curry County (Clovis)	48,376	48,430	54	7.4%	0.1%
Cibola County (Grants)	27,213	27,172	-41	6.3%	-0.2%
Valencia County (Los Lunas)	76,569	76,205	-364	15.7%	-0.5%
Chaves County (Roswell)	65,645	65,157	-488	6.9%	-0.7%
Lincoln County (Ruidoso)	20,497	20,269	-228	5.6%	-1.1%
Quay County (Tucumcari)	9,041	8,746	-295	-11.0%	-3.3%
Roosevelt County (Portales)	19,846	19,191	-655	10.1%	-3.3%
Sierra County (T or C)	11,988	11,576	-412	-9.7%	-3.4%
Catron County (Reserve)	3,725	3,579	-146	5.1%	-3.9%
Grant County (Silver City)	29,514	28,185	-1,329	-4.8%	-4.5%
Guadalupe County (Santa Rosa)	4,687	4,452	-235	0.1%	-5.0%
Harding County (Roy)	695	657	-38	-14.2%	-5.5%
San Juan County (Farmington)	130,044	121,661	-8,383	14.3%	-6.4%
Socorro County (Socorro)	17,866	16,595	-1,271	-1.2%	-7.1%
San Miguel County (Las Vegas)	29,393	27,201	-2,192	-2.4%	-7.5%
Torrance County (Moriarty)	16,383	15,045	-1,338	-3.1%	-8.2%
Colfax County (Raton)	13,750	12,387	-1,363	-3.1%	-9.9%
Union County (Clayton)	4,549	4,079	-470	9.0%	-10.3%
Mora County (Wagon Mound)	4,881	4,189	-692	-5.8%	-14.2%
Hidalgo County (Lordsburg)	4,894	4,178	-716	-17.5%	-14.6%
De Baca County (Fort Sumner)	2,022	1,698	-324	-9.7%	-16.0%
<b>New Mexico</b>	<b>2,059,179</b>	<b>2,117,522</b>	<b>58,343</b>	<b>13.2%</b>	<b>2.8%</b>

Source: U.S. Bureau of the Census. 2020 Census population, released August 12, 2021

## EXHIBIT 6-2



### New Mexico Counties Population Change: 1990 to 2000 and 2000 to 2010

<i>Ranked By Percent Population Change, 2000 to 2010</i>					
County (Largest City)	1990 Population	2000 Population	2010 Population	% Population Change 1990 - 2000	% Population Change 2000 - 2010
Sandoval County (Rio Rancho)	63,319	89,908	131,561	42.0%	46.3%
Doña Ana County (Las Cruces)	135,510	174,682	209,233	28.9%	19.8%
Bernalillo County (Albuquerque)	480,577	556,678	662,564	15.8%	19.0%
Lea County (Hobbs)	55,765	55,511	64,727	-0.5%	16.6%
Valencia County (Belen)	45,235	66,152	76,569	46.2%	15.7%
San Juan County (Farmington)	91,605	113,801	130,044	24.2%	14.3%
Santa Fe County (Santa Fe)	98,928	129,292	144,170	30.7%	11.5%
Roosevelt County (Portales)	16,702	18,018	19,846	7.9%	10.1%
Taos County (Taos)	23,118	29,979	32,937	29.7%	9.9%
Union County (Clayton)	4,124	4,174	4,549	1.2%	9.0%
Curry County (Clovis)	42,207	45,044	48,376	6.7%	7.4%
Chaves County (Roswell)	57,849	61,382	65,645	6.1%	6.9%
Cibola County (Grants)	23,794	25,595	27,213	7.6%	6.3%
Lincoln County (Ruidoso)	12,219	19,411	20,497	58.9%	5.6%
Catron County (Reserve)	2,563	3,543	3,725	38.2%	5.1%
Eddy County (Carlsbad)	48,605	51,658	53,829	6.3%	4.2%
Otero County (Alamogordo)	51,928	62,298	63,797	20.0%	2.4%
Luna County (Deming)	18,110	25,016	25,095	38.1%	0.3%
Guadalupe County (Santa Rosa)	4,156	4,680	4,687	12.6%	0.1%
Socorro County (Socorro)	14,764	18,078	17,866	22.4%	-1.2%
Los Alamos County (Los Alamos)	18,115	18,343	17,950	1.3%	-2.1%
Rio Arriba County (Española)	34,365	41,190	40,246	19.9%	-2.3%
San Miguel County (Las Vegas)	25,743	30,126	29,393	17.0%	-2.4%
Colfax County (Raton)	12,925	14,189	13,750	9.8%	-3.1%
Torrance County (Moriarty)	10,285	16,911	16,383	64.4%	-3.1%
McKinley County (Gallup)	60,686	74,798	71,492	23.3%	-4.4%
Grant County (Silver City)	27,676	31,002	29,514	12.0%	-4.8%
Mora County (Wagon Mound)	4,264	5,180	4,881	21.5%	-5.8%
Sierra County (T or C)	9,912	13,270	11,988	33.9%	-9.7%
De Baca County (Fort Sumner)	2,252	2,240	2,022	-0.5%	-9.7%
Quay County (Tucumcari)	10,823	10,155	9,041	-6.2%	-11.0%
Harding County (Roy)	987	810	695	-17.9%	-14.2%
Hidalgo County (Lordsburg)	5,958	5,932	4,894	-0.4%	-17.5%
<b>New Mexico</b>	<b>1,515,069</b>	<b>1,819,046</b>	<b>2,059,179</b>	<b>20.1%</b>	<b>13.2%</b>

Source: U.S. Bureau of the Census.

# EXHIBIT 7

## New Mexico: 2020 Core Based Statistical Areas and Counties

