

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,

THE BOARD OF COUNTY
COMMISSIONERS OF LEA COUNTY,

Putative Intervenor-Plaintiff,

v.

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 BRIAN EGOLF in his official capacity as Speaker of the New Mexico House of Representatives,

Defendants.

PLAINTIFFS' [PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Consistent with the Court's oral ruling on April 18, 2022, Plaintiffs submit their Proposed Findings of Fact and Conclusions of Law Granting Plaintiffs' Motion for Preliminary Injunction.

FINDINGS OF FACT

1. Plaintiffs in this case are the Republican Party of New Mexico and a bipartisan group of New Mexico voters claiming to have been injured by the New Mexico State Legislature's ("State Legislature") allegedly discriminatory partisan gerrymander of the state's

congressional map. *See* Verified Compl. for Violation of N.M. Constitution Article II, Section 18 (“Verified Compl.”) ¶¶ 1-7. The Plaintiffs filed a Motion for Preliminary Injunction on February 3, 2022, and the Court held a hearing on Plaintiffs’ Motion on April 18, 2022. The Court now makes the following findings of fact.

I. New Mexico’s 2020-2021 Redistricting Process: New Mexico Citizen Redistricting Committee.

2. In April 2021, the State Legislature adopted the Redistricting Act of 2021 (“Act”), Laws 2021, ch. 79, § 2 (codified at NMSA 1978, § 1-3A-1, *et seq.*). The Act created the New Mexico Citizen Redistricting Committee (“Committee”), which is comprised of seven members appointed by State Senate and State House leadership (four members) and the State Ethics Commission (three members, one whom must be a retired justice of the New Mexico Supreme Court or a retired judge of the New Mexico Court of Appeals). NMSA 1978, § 1-3A-3 (2021).

3. The Committee must be bipartisan, § 1-3A-3(C) (no more than three of seven members may be of the same political party); persons particularly interested in the redistricting process (i.e., current or former public officials, candidates for public office, lobbyists, or family members of officer holders) are prohibited from serving on the Committee, § 1-3A-4; the Committee must perform its work in an open forum, including holding public meetings and publishing reports and proposed maps, §§ 1-3A-5 and -6; the Committee must adhere to traditional redistricting principles outlined in the Act, § 1-3A-7(A); and the Committee is barred from using, relying on, or referencing “partisan data,” § 1-3A-7(C).

4. The Committee for the 2021 redistricting cycle began its work in July 2021. Verified Compl. ¶ 51. Former New Mexico Supreme Court Justice Edward Chávez served as Chair of the Committee. *Id.* ¶ 50. The Committee held 16 public meetings, heard testimony from over 350 New Mexicans, and considered written comments submitted through the Committee’s online portal. *See id.* ¶¶ 52-53, 57.

5. On November 2, 2021, the Committee submitted its report to the State Legislature proposing three congressional map concepts: Concepts A, E, and H. *Id.* ¶ 71. Concept A was mostly a “status quo map” that largely maintained the existing districts drawn by the courts in 2012. *Id.* ¶ 60. Concept E (known as Justice Chávez’s map) emphasized compactness by creating a single urban district centered on the greater-Albuquerque area and maintained the core of CD 2 and CD 3. *Id.* ¶¶ 61-66. All but one Committee member supported Concept E. *Id.* ¶ 64. Concept H, developed by a group of community organizations, split much of southeastern New Mexico purportedly to create a solid Hispanic-majority district in CD 2. *Id.* ¶¶ 66-69.

II. New Mexico’s 2020-2021 Redistricting Process: December 2021 Special Legislative Session.

6. The State Legislature did not adopt any of the proposed maps developed by the Committee. *Id.* ¶ 72. Instead, the State Legislature introduced and adopted Senate Bill 1 in just four legislative days. *Id.* ¶¶ 72-73.

7. Senate Bill 1 significantly redrew the core of the state’s congressional districts. *Id.* ¶¶ 72-73. For instance, CD 1 (which previously was a relatively compact area encompassing most Bernalillo and Tarrant Counties) now covers a 10-county area that sprawls south to Roswell and includes all or parts of Lincoln, Otero, Chaves, De Baca, and Guadalupe Counties, *see id.* ¶ 95.a; CD 2 (which previously included southern New Mexico) cedes nearly all the southeastern part of the state, such as Roswell, half of Hobbs, and all or parts of Eddy, Lea, Chaves, Otero, Roosevelt, De Baca, and Guadalupe Counties, and now includes the southwestern part of the state and the western suburbs of Albuquerque, *see id.* ¶ 95.b; and CD 3 (which previously included northern New Mexico) now includes the northwest part of the state and stretches eastward to the state’s boundary and as far southeast as Hobbs, *see id.* Notably, SB 1 splits Chavez County into all three congressional districts. *Id.* ¶ 74.

8. Since at least 1991, New Mexico has adhered to “historic legislative redistricting policies” in order to facilitate “drawing redistricting maps [to] avoid partisan advantage.” *See*

Maestas v. Hall, 2012-NMSC-006, ¶ 31, 274 P.3d 66. These traditional redistricting principles include the bipartisan New Mexico Legislative Council’s guidance that:

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.

Id. ¶ 34 (citing New Mexico’s Guidelines for the Development of State and Congressional Redistricting Plans).

9. The State Legislature codified these traditional redistricting principles in the Redistricting Act eight months before the adoption of Senate Bill 1. *See* NMSA-1978, § 1-3A-7 (2021). Relevant here, New Mexico’s traditional redistricting principles provide that drafters should “preserve communities of interest,” “consider[] political and geographic boundaries,” and “preserve the core of existing districts.”

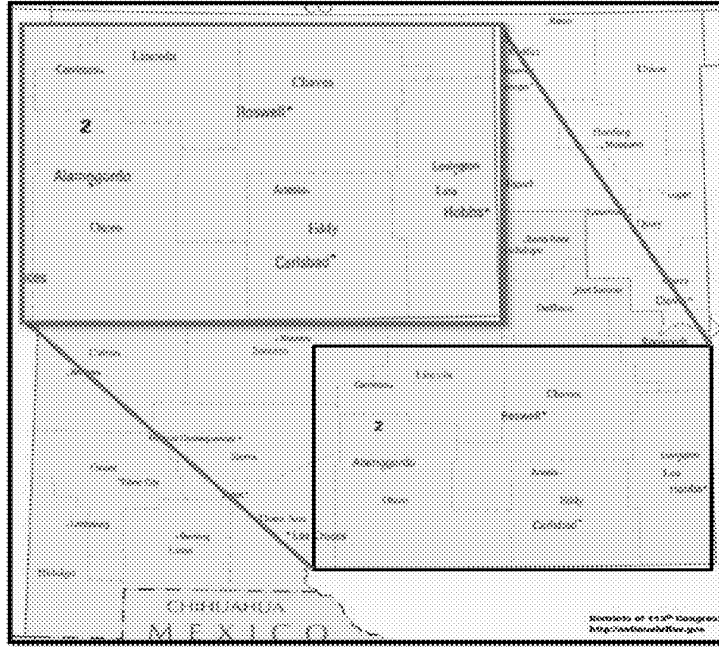
10. To the first principle, communities of interest are “contiguous population[s] that share[] common economic, social, and cultural interests which should be included within a single district for purposes of its effective and fair representation.” *Maestas*, 2012-NMSC-006, ¶ 37. These communities should be included within a single district because, “[t]o be an effective representative, a legislator must represent a district that has a reasonable homogeneity of needs and interests; otherwise the policies he supports will not represent the preferences of most of his constituents.” *Id.* (quoting *Prosser v. Elections Bd.*, 793 F. Supp. 859, 863 (W.D. Wis. 1992)).

11. Next, traditional principles emphasize preserving political and geographic boundaries to further our representative government. By “[m]inimizing fragmentation of political subdivisions, counties, towns, villages, wards, precincts, and neighborhoods,” it “allows constituencies to organize effectively and decreases the likelihood of voter confusion regarding other elections based on political subdivision geographics.” *Id.* ¶ 36.

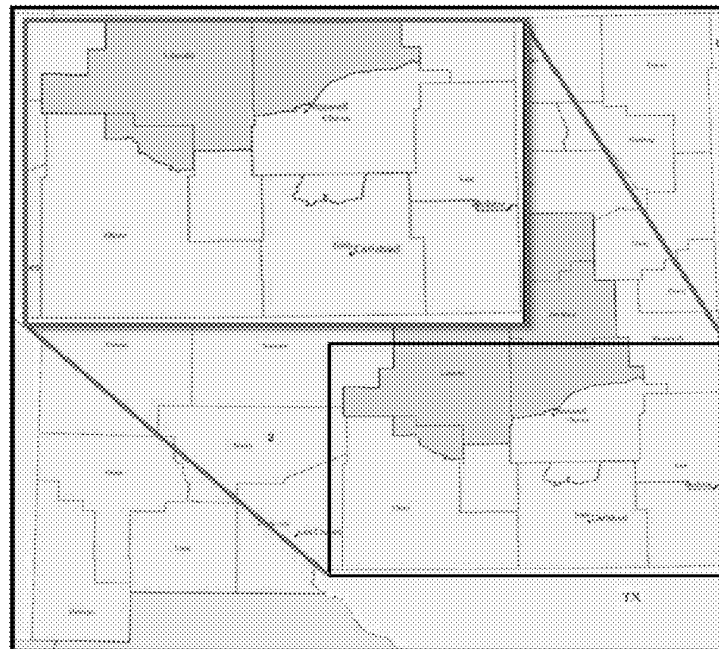
12. Lastly, preserving the core of existing districts protects against vote dilution through unlawful partisan swings. This is particularly true in New Mexico. The judiciary has drawn the maps for last two redistricting cycles. In completing its work, the judiciary strived for “the appearance of and actual neutrality” and aimed “to draw a partisan-neutral map that complie[d] with both the one person, one vote doctrine and the requirements of the Voting Rights Act.” *Id.* ¶ 31. The judiciary’s past involvement and its vision to produce partisan-neutral maps is all the more reason to avoid discriminatory partisan fragmentation of the core of these judicially drawn congressional districts.

13. In passing Senate Bill 1, the State Legislature largely ignored the citizen-committee process they adopted in 2021, electing instead to approve Senate Bill 1, which imposes a congressional map that was considered or studied by the Committee. Tellingly, Senate Bill 1 violates nearly every traditional redistricting principle followed since 1991.

14. Senate Bill 1 dilutes critical communities of interest, particularly in the southeast corner of New Mexico. It is undisputed that the communities in Chaves, Eddy, Lea, and Otero Counties share common economic, social, and cultural interests, based in part on the robust agricultural and oil and gas presence in the area. Under the prior congressional map, these communities remained in-tact and thus their interests were represented by a single congresswoman:



15. Yet, under Senate Bill 1, those same communities are fractured into **all three congressional districts** in New Mexico:



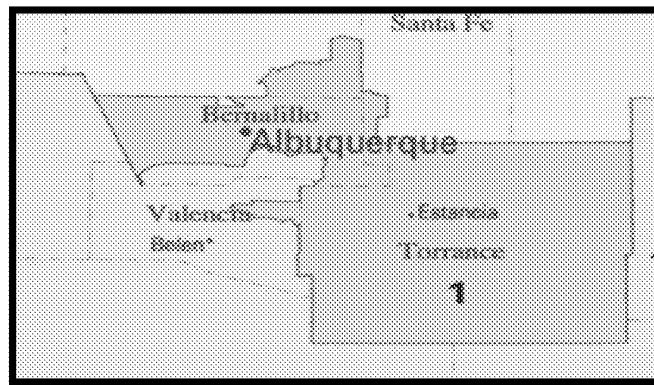
16. It is also undisputed that fracturing these communities of interest drastically “cracked”—and thereby diluted—a significant block of registered Republicans.

17. Under New Mexico’s previous congressional map (and indeed under Concepts A and E as proposed by the Committee), this community of interest was housed in a single congressional district. Under Senate Bill 1, however, the registered Republicans in southeastern New Mexico were split between all three congressional districts, thereby disbursing (and “cracking”) their votes.

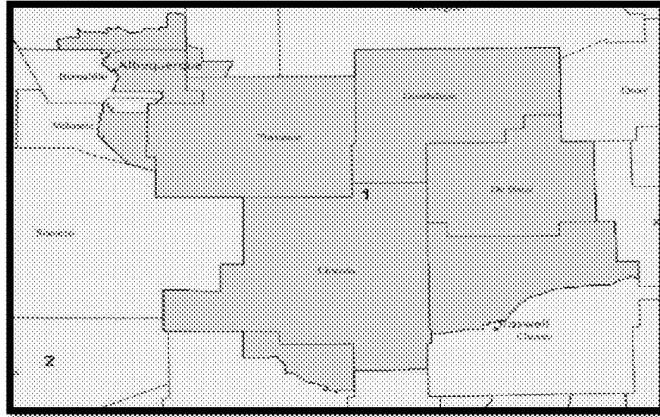
18. Senate Bill 1’s treatment of southeastern New Mexico also disregards geographic and political boundaries. In this one example, all four of Chaves, Eddy, Lea, and Otero Counties are split between multiple districts. In addition to Chaves, Eddy, Lea, and Otero Counties, Senate Bill 1 splits McKinley, Sandoval, Bernalillo, Valencia, and Santa Fe Counties. In total, nearly one-third of New Mexico’s counties are split under Senate Bill 1; Chaves County is split the maximum three ways. Senate Bill 1 further disregards geographic and political boundaries by splitting the City of Hobbs in half and splitting greater-Albuquerque into thirds and greater-Roswell in half.

19. Senate Bill 1 also fails to preserve the core of two of New Mexico’s prior three historic congressional districts.

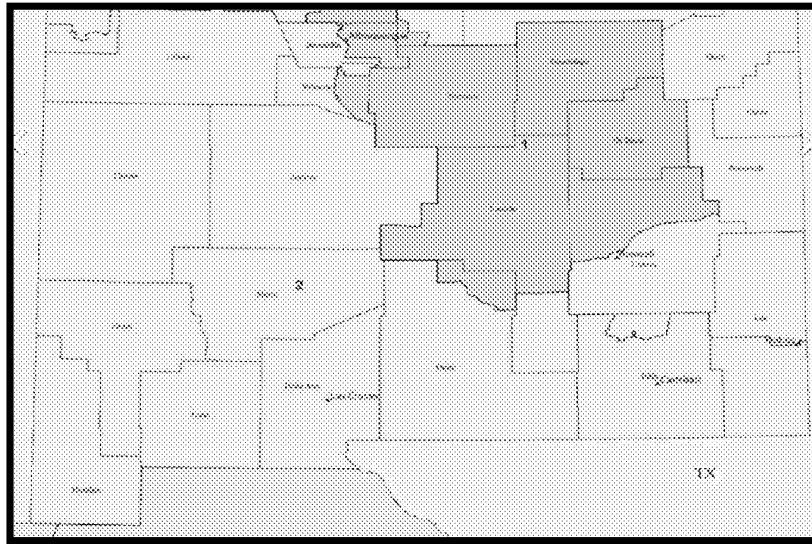
20. **CD 1:** Historic CD 1 included the City of Albuquerque and the counties of Bernalillo and Torrance.

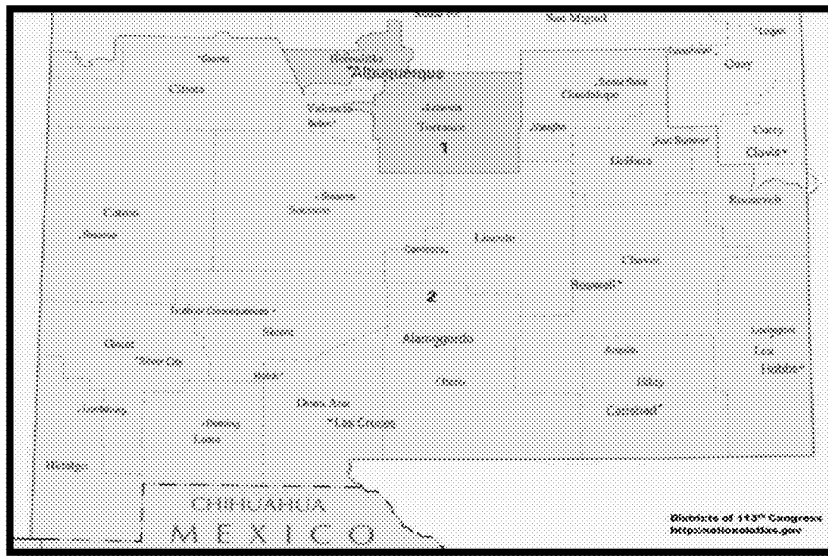


21. Senate Bill 1's version of the CD 1, however, severs much of Bernalillo County, splits west Albuquerque from east Albuquerque, and captures parts of a new five-county area southeast of Torrance County.



22. **CD 2:** Likewise, Senate Bill 1 completely overhauls the core of CD 2 by taking core portions of the historic district—particularly the southeastern core—and splitting it into all three districts. *Compare* Senate Bill 1 (first map), *with* New Mexico's 2012 Map (second map).





III. Researchers Agree Senate Bill 1 Will Result in a Severe Partisan Swing.

23. The nationwide commentary on Senate Bill 1 is uniform. The Princeton Gerrymandering Project predicts that, under Senate Bill 1, the Democratic Party will control all three congressional seats and rates none of the districts as “competitive.” New Mexico Redistricting Report Card, Princeton Gerrymandering Project (Dec. 13, 2021), <https://bit.ly/3u4EVKm>. This compares to states like Arkansas and Utah, which the Princeton Gerrymandering Project predicts the Republican Party will control all congressional seats in each state, with none classified as competitive. *See* Arkansas Redistricting Report Card, Princeton Gerrymandering Project (Nov. 6, 2021), <https://bit.ly/3AF2QRX>; Utah Redistricting Report Card, Princeton Gerrymandering Project (Nov. 10, 2021), <https://bit.ly/3rgjm89>.

24. The Brennan Center, discussing “extreme partisan gerrymandering” in 2021, describes New Mexico as a state where Democrats “are pushing back, drawing maps favorable to their party.” Michael C. Li, et al., Redistricting: A Mid-Cycle Assessment, at 5, Brennan Center for Justice (Jan. 19, 2022), <https://bit.ly/3e5gGum>; *see also* Andrew Prokop, How Democrats Learned to Stop Worrying and Love the Gerrymander, Vox (Apr. 14, 2022), <https://bit.ly/3xCGXmY> (describing “[t]he Democratic gerrymanders of 2021-2022” and

observing “[i]n New Mexico, which had two Democratic-leaning districts and one GOP-leaning one, Democrats wiped away that Republican district in an attempt to create a 3-0 map”).

25. And the Cook Political Report has designated New Mexico’s congressional map as “one of the most aggressive Democratic gerrymanders yet . . .[,] dilut[ing] GOP votes in the southeastern portion of the state in a brazen bid to oust . . . the only remaining Republican office holder in the state.” David Wasserman, *New Map and 2022 Ratings: New Mexico*, The Cook Political Report (Dec. 21, 2021), <https://bit.ly/3o4AvQ4>.

IV. Plaintiffs’ Lawsuit Alleged Senate Bill 1 Is a Political Gerrymander in Violation of the New Mexico Constitution.

26. On January 21, 2022, Plaintiffs filed their Verified Complaint, alleging that Senate Bill 1 violates their rights under the Equal Protection Clause of the New Mexico Constitution by enacting a discriminatory political gerrymander. Plaintiffs alleged—and Defendants have not meaningfully contested—that Senate Bill 1 cracked a Republican bloc in southeast New Mexico, fracturing cities, counties, and a universally recognized community of interest in order to do so.

27. Plaintiffs allege that while southeastern New Mexico has always been in one congressional district, under Senate Bill 1, it is split between all three of New Mexico’s congressional districts. *See* Verified Compl. ¶ 91. For instance, the Cities of Hobbs and Roswell are split between two districts; Chaves, Eddy, Lea, and Otero Counties are split as well, with Chaves split three ways; and the greater-Albuquerque is treated as a hub, with its more-Democratic population disbursed among the three constituent parts of the wheel. *Id.* ¶¶ 92-94.

28. First and foremost, Plaintiffs request a declaration that Senate Bill 1 violates New Mexico’s Equal Protection Clause. *Id.* ¶ 98.b. Second, recognizing this a congressional election year, Plaintiffs ask the Court to adopt a “partisan-neutral congressional map consistent with the Committee’s Concept E (Justice Chávez’s map)” for the 2022 election. *Id.* ¶ 98.c. Plaintiffs

clarified at the April 18 hearing that any Court-imposed map should only govern until the State Legislature adopts a new congressional map.

29. Plaintiffs state that Concept E was drawn by Justice Chávez in response to public comment on an earlier version of this map published by the Committee for public consideration, *id.* ¶ 61; that Concept E emphasized compactness in creating a single urban district (CD 1) centered on the city of Albuquerque and other incorporated urban and suburban communities immediately adjacent to Albuquerque, *id.* ¶ 62; that Concept E expressly retained the core of CD 3 in northern New Mexico and CD 2 in southern New Mexico and only divided five cities and six counties, *id.* ¶ 63; and that Concept E was the concept supported by the most members of the Committee (six of the seven members voted to approve this Concept E, including all four members appointed by legislative leadership), *id.* ¶ 64.

V. Plaintiffs Will Be Injured by Senate Bill 1’s Political Gerrymander.

30. The Court finds that Senate Bill 1 enacts a discriminatory political gerrymander. The Court further finds that Plaintiffs have been, and continue to be, injured by this discriminatory political gerrymander, including by the dilution of Plaintiffs’ votes by severely cracking a community of interest in southeastern New Mexico in order to solely benefit other regions of the state, primarily the greater Albuquerque area. Senate Bill 1 accomplishes this cracking by shifting voters (including Plaintiffs Vargas and Garcia) from the greater-Albuquerque area to outlying districts.

31. Publicly available voter registration demonstrates Plaintiffs’ injury. As of December 30, 2021, CD 2 (which prior to Senate Bill 1 covered a 17-county area) had 413,795 registered voters, 155,608 (or 38%) of whom were registered Republicans. N.M. Voter Registration Statistics by Congressional District, N.M. Sec’y of State (Dec. 30, 2021), <https://bit.ly/3Kizf4Z>. The four-county area, including Chaves, Eddy, Lea, and Otero Counties, accounted for approximately 45% of the registered Republicans in CD 2 and represented 34% of the total registered voters in the entire district. *Compare id.*, with N.M. Voter Registration

Statistics by County Precinct, N.M. Sec’y of State (Dec. 30, 2021), <https://bit.ly/3QEyjFX>. This four-county area in New Mexico contains a highly concentrated block of registered Republicans, including almost one-half of the registered Republicans in all of CD 2. Under the previous congressional map, the community of interest in southeastern New Mexico had a real opportunity to elect a Republican member of Congress—and in fact did so in all but one term since 2012, *id.* ¶ 91—but under Senate Bill 1 the registered Republicans in southeastern New Mexico are split between all three congressional districts thereby cracking their votes, *id.*

VI. The June 7, 2022 Primary Election is Imminent.

32. For reasons ultimately stemming from the delays in the 2020 census due to Covid-19, the State Legislature did not pass a congressional redistricting bill until mid-December 2021. *See* S.B. 1 (N.M. 2021 2d Spec. Sess.) (signed by Governor Dec. 17, 2021), *available at* <https://bit.ly/3jSfndg>; 2020 Census Delays and the Impact on Redistricting, Nat’l Conf. of State Legislatures (Sept. 23, 2021), <https://bit.ly/392S0vt>.

33. The Plaintiffs filed this lawsuit in the Fifth Judicial District Court within five weeks of Senate Bill 1’s passage, *see* Verified Complaint (filed Jan. 21, 2022), and moved for a preliminary injunction less than two weeks after that, *see* Motion for Preliminary Injunctions (filed Feb. 3, 2022).

34. Due to seriatim recusals by the judges of the Fifth Judicial District Court, punctuated occasionally by peremptory excusals—including an excusal filed by a putative intervenor who was not party to the case—the Motion for Preliminary Injunction was not heard until April 18, 2022, despite briefing being complete on the Motion by March 10. *See* Pls.’ Combined Reply in Supp. of the Mot. for Prelim. Inj. (filed Mar. 10, 2022).

35. The Plaintiffs were not dilatory in their prosecution of either this case as a whole or in their request for preliminary injunction.

36. Nevertheless, these delays have taken this case well into the heart of the 2022 Primary-election cycle: nominating petitions for major-party congressional candidates were filed

February 1, 2022, *see* NMSA 1978, § 1-8-26(A), with challenges due ten days later, *see* § 1-8-35(A); the major-party conventions took place between then and March 13, *see* § 1-8-21.1(B); the filing day for those major-party congressional candidates who did not receive 20% of the vote at their conventions to submit additional nominating petitions was March 8, *see* § 1-8-33(D); and the filing day for major-party write-in candidates in the primary election was March 15, *see* § 1-8-36.1(C).

37. In sum, the major-party nomination process—the series of activities that determines who will appear on the primary-election ballot, along with what names are available as write ins—is complete, and it would be impractical at this late date to reopen that process.

38. Apparently recognizing this impracticality, Plaintiffs do not ask to reopen the nomination process to either add to or subtract from the list of candidates currently set to run in the 2022 Primary Election, and the Court sees no need to do so. While such reopening might be ideal if there was unlimited time, it is not necessary and, more importantly, the drawbacks of not reopening the nomination process are not ameliorated by maintaining the Senate Bill 1 map.

39. Notably, Defendants suggest that some candidates currently running may have chosen not to do so if they had known that the Senate Bill 1 map would later be altered. If any such candidate exists, he or she can simply choose to withdraw from the race. Next, Defendants argue that some individuals who would have run had the replacement map been put into effect earlier will now be unable to run without a reopening of the nomination process. While this may be true, the deprivation of those would-be candidates exists even if the Senate Bill 1 map is retained. Finally, Defendants point out that some candidates may have chosen to run for a different congressional district had they not relied on Senate Bill 1. Like the other two arguments, there has been no evidence presented to support the existence of this speculative problem, and no party to this action has identified any candidate whose congressional district of residence would be changed by adoption of one of the two alternative maps urged by Plaintiffs.

40. In fact, a review of the voter-registration addresses of the eight congressional candidates currently qualified for the primary election—three apiece for CD 1 and CD 2, and two for CD 3—reveals that each of candidate would remain in the same congressional district under either Concepts A or E that Plaintiffs ask the Court to adopt. *See* 2022 Primary Election Contest/Candidate List, N.M. Sec’y of State, <https://bit.ly/3JUD2V0>.

41. Importantly, because congressional candidates—uniquely among candidates for elective office—do not have to reside in their district, no candidate could possibly be disqualified by replacing the Senate Bill 1 map with one of Plaintiffs’ alternative maps. *See* U.S. Const. art. I, § 2, cl. 2 (requiring Members of the House to be “Inhabitant[s] of that State in which he shall be chosen” (emphasis added)); NMSA 1978, § 1-8-18(A)(2) (requiring “residence in the district of the office for which the person is a candidate on the date of the secretary of state’s general election proclamation or in the case of a person seeking the office of United States senator or United States representative, residence within New Mexico”).

42. It is true that some registered voters—including voters who signed congressional nominating petitions—will have their congressional district of residence changed if the Court enjoins the Senate Bill 1 map and installs another map. However, no evidence has been produced suggesting that any congressional candidate received an overwhelming or even disproportionate number of signatures from voters who will no longer be in the candidate’s district upon installation of a new map. Regardless of whether such evidence exists, it would not vitiate the ultimate purpose of the nominating-petition process as a loose but quantitative barometer of a candidate’s democratic-electoral support among the constituents of a congressional district for a spot on the primary-election ballot. Although it perhaps not ideal that certain voters signed nominating petitions for candidates that they will not ultimately get to vote for, that problem is unavoidable, and that non-idealness certainly does not justify the retention of an unconstitutionally gerrymandered congressional map.

43. Thus, the fact the major-party nomination process has passed and cannot practicably be reopened does not cut against the requested preliminary injunction. The deadlines that do remain relevant to this Motion, however, are those surrounding the administration of the primary election itself—most notably the timelines for the preparation ballots for absentee and early voting.

44. The first major deadline requiring ballots to be finalized is the requirement that federal qualified electors (meaning overseas and uniformed-service voters) requesting an absentee ballot have one put in the mail for them by their county clerk by April 23, 2022, which is 45 days before the 2022 Primary Election. *See* 52 U.S.C. § 20302(a)(8); NMSA 1978, §§ 1-10-5 & 1-1-4.1. This federal requirement is imposed by the Uniform Overseas Citizen Absentee Voting Act (“UOCAVA”).

45. There are a relatively small number of UOCAVA ballots to be issued by New Mexico counties and most of them are electronic rather than paper ballots.

46. Moreover, the April 23 (45-day) deadline for the mailing of UOCAVA ballots can be extended by way of a “hardship exemption,” which is a waiver that the Secretary is expressly authorized to seek from federal officials and which “*shall* [be] approve[d]” if “[t]he State has suffered a delay in generating ballots due to a legal contest,” “[t]he State Constitution prohibits the State from complying with” the deadline, or “[t]he State’s primary election date prohibits the State from complying.” 52 U.S.C. § 20302(g)(2) & (2)(B) (emphasis added).

47. The “legal contest” basis for a hardship exemption certainly applies to the situation presented by this case, and the other two bases might as well.

48. Additionally, there was conflicting testimony at the hearing about whether state elections officials could, if ordered on April 19 to implement either Concept A or E, prepare and mail out UOCAVA ballots by the April 23 deadline.

49. It is possible that the UOCAVA default deadline might still be met if the requested preliminary injunction is granted on April 19, and, even if the deadline is not met, the extension needed is likely to be relatively short.

50. The next major deadline requiring finalized ballots is May 10, which is both the first day on which non-UOCAVA absentee ballots are allowed to be mailed out, *see* NMSA 1978, § 1-6-5(F) (“Mailed ballots shall be sent to applicants beginning twenty-eight days before the election.”), and the first day on which limited early voting opens, albeit only at the county clerks’ offices, *see* § 1-6-5.7(A). Full-scale early voting only begins May 21, which is “the third Saturday prior to” the election. § 1-6-5.7(B).

51. Unlike the UOCAVA deadlines, which can only be extended by way a federally recognized exception (namely, the hardship exemption), the state constitution trumps the statutory May 10 deadlines.

52. The May 10 deadlines does not, however, need to be extended, as both sides’ testimony was consistent that ballots can be prepared consistent with the implementation of either Concept A or E.

53. This is in large part because the Committee prepared, for each of its three proposed congressional maps, materials needed to expedite the map’s implementation, including a list of precincts in each congressional district and a “shapefile” that can be plugged into the Secretary of State’s elections software, permitting partial automation of the process of reclassifying each precinct affected into a new congressional district.

54. Also, the only ballots in New Mexico that are regularly printed out before the voter arrives at a polling place are absentee ballots. In-person ballots, for both Election Day and early voting, are printed out on-site, thus allowing all voters from a given county—including those who live outside the precinct where the polling place is located and who may thus be eligible to vote for different offices—to vote at any polling place in that county.

55. While the Election Code requires that, “[w]hen a county is using a system that is designed to print ballots at a polling location, the system shall be programmed and capable of operation at least forty days before the election,” this does not prohibit modifications to the form of the ballot after the 40-day mark. NMSA 1978, § 1-10-5. The only requirement is the voting machines (tabulators) be programmed to accept revised ballots by the time early voting begins.

56. The uncontroverted testimony was that tabulators necessary for initial limited in-person early voting at county clerks’ offices could be so programmed in time for the May 10 opening of early voting.

57. Last, minor-party and independent candidates are not involved in the primary election, and the nomination process for independent candidates does not take place until after the primary election. *See* NMSA 1978, §§ 1-8-1, -51 & -52; N.M. Political Party Information, N.M. Sec’y of State, <https://bit.ly/3vzN7Si> (“In New Mexico, only major political party candidates will appear on the Primary Election ballot.”).

58. Thus, the requested preliminary injunction will not significantly interfere with the processes for minor-party and independent candidate, who are concerned only with the November 8, 2022 General Election.

VII. It Is Feasible to Implement a New Congressional Map Without Disrupting the June 7, 2022 Primary Election.

59. At the April 18 hearing, Curry County Clerk Annie Hogland testified credibly regarding the process for implementing a new congressional map for the state’s three congressional seats. Clerk Hogland testified—and the State Elections Director, Mandy Vigil, confirmed—that the building block of all electoral districts in the state are precincts. Each precinct represents a block of electors in a set geographic area. For instance, in Curry County, there are 43 precincts. The process for establishing precincts was completed prior to the adoption of Senate Bill 1 and is not at issue in this case. The same precincts will exist no matter what map governs the 2022 Congressional Election.

60. A congressional district is comprised of multiple contiguous voting precincts. That is, the voting precincts represent the building blocks by which map drawers build the state's three congressional districts.

61. To implement a new congressional map, the **first step** is for the Secretary to assign the existing precincts to one of three congressional districts based on the new district lines. This process is typically guided by what are called shapefiles. Ms. Vigil testified at the hearing that publicly available shapefiles already exist for Concepts A and E. Because these shapefiles exist for Concepts A and E, the Court finds it is feasible for the Secretary to expeditiously implement new congressional districts using these already existing shapefiles.

62. The **second step** is for the county clerks to proof and signoff on the Secretary's precinct reassignments. This step also can be completed expeditiously. Implementation of one of the two alternative maps offered by Plaintiffs (either Concept A or E) requires reassignment of a fraction of the state's total voting precincts. The majority of New Mexico's counties, like Curry County will have no precincts reassigned as a result of the implementation of either Concept A or Concept E, because all their precincts remain in the same district under either Senate Bill 1 or Concepts A and E.

63. The **third step** is for county clerks to complete the "election contest proofing" process, which requires some coordination between the county clerks, Dominion (the state's voting machine vendor), and the Secretary. But again, this process need not be redone in all counties. Rather, it is only required for counties with changes in districts due to the implementation of a new congressional map. Considering the narrow focus of these tasks, which, admittedly, requires some duplication of work, the Court is satisfied from Clerk Hogland's testimony that this process can be completed in several days, not weeks.

64. Once the steps outlined above are completed, the county clerks should be able to certify voting machines consistent with their statutory obligations. The testimony and argument at the April 18 hearing support the Court's finding that this is achievable before the May 10,

2022 early-voting deadline. The Court also notes that initially, early voting is limited to in-person voting at county clerk's offices; thus, the number of polling places impacted most immediately is limited and will allow county clerks to focus their limited resources.

65. In addition, the State Elections Director testified at the hearing that statewide notices of the June 7 Primary Election have not yet been mailed by the Secretary. Thus, the Court finds this Order will not prevent the Secretary from providing required notice.

66. The Court also finds that while the deadline for mailing ballots to citizens registered and eligible to receive ballots pursuant to UOCAVA is this Saturday, April 23, the Secretary may, as the state's chief election official, apply for a hardship waiver pursuant to 52 U.S.C. § 20302(g), which expressly permits an exception to the mailing deadline where mailing must be delayed as a result of a legal contest.

67. For these reasons, the Court finds that it is feasible to implement a new congressional map without moving the June 7, 2022 Primary Election.

CONCLUSIONS OF LAW

I. Standard of Review.

1. A plaintiff is entitled to a preliminary injunction if it shows: "(1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits." *LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314, 850 P.2d 1017.

II. Plaintiffs Are Likely to Prevail on Their Claim for a Violation of New Mexico's Equal Protection Clause.

2. Plaintiffs are likely to prevail on their state equal protection claim. Plaintiffs' claim under the New Mexico Constitution is straightforward: Senate Bill 1 enacted a discriminatory political gerrymander in violation of Article II, Section 18 (the Equal Protection Clause) by severely cracking Republicans in southeastern New Mexico for political gain, thereby

diluting their votes and causing constitutional injury. The Court finds that such a claim is cognizable in New Mexico, and that Plaintiffs are likely to prevail on it.

A. Political Gerrymanders Violate the U.S. Constitution.

3. The practice of gerrymandering may be as old as the practice of drawing electoral districts. *See Veith v. Jubelirer*, 541 U.S. 267, 271 (2004) (discussing history of gerrymandering in the American Colonies). Yet, it was not until 1986 that the U.S. Supreme Court recognized that political gerrymandering presents a constitutional injury. In *Davis v. Bandemer*, the Court held that a gerrymander based on political discrimination violates the Equal Protection Clause. 478 U.S. 109, 116-117 (1986). The Court in *Bandemer*, however, split on the standard by which to determine the existence of such a gerrymander.

4. Just over 33 years after *Bandemer*, a 5-4 majority of the Supreme Court held that claims to vindicate the constitutional injury caused by a political gerrymander are nonjusticiable in federal court because the Court was unable to discern a federal constitutional standard that would reliably allow the adjudication of these cases in all 50 states. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2500 (2019) (“There are no legal standards discernible in the Constitution for making such judgments.”). The Court came to this conclusion after attempting to determine the proper standard in a long line of gerrymandering cases. *See id.* at 2597 (collecting cases).

5. Defendants contend that the Supreme Court’s decision in *Rucho* stands for the proposition that politically discriminatory gerrymanders impose no recognized federal constitutional injury and therefore political gerrymander claims are nonjusticiable. The Court disagrees with Defendants’ read of *Rucho*. Defendants’ argument conflates the existence of a constitutional injury with the Supreme Court’s inability to discern a federal constitutional standard that would reliably allow the adjudication of these cases in all 50 states.

6. *Rucho* confirmed that political gerrymandering presents an injury under the federal Equal Protection Clause, *see id.* at 2498, but lawsuits to redress this constitutional injury are nonjusticiable in federal court as a prudential matter, *id.* at 2508. In fact, the Supreme Court

was careful to note that although unconstitutional political gerrymanders cannot be addressed in federal court does not “condemn complaints about districting to echo into a void.” *Id.* at 2507. The Court approvingly highlighted the efforts of the several states to combat political gerrymandering and observed that, “Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.” *Id.* Thus, the Supreme Court held that the injury resulting from a political gerrymander is real but directed that judicial redress may only be found in state court.

7. Recent cases from other jurisdictions support the Court’s read of *Rucho*. Two months ago, the North Carolina Supreme Court “emphatically disagree[d]” with a lower court’s conclusion that allowing politically gerrymandered maps to stand “‘would be usurping the political power and prerogatives’ of the General Assembly.” *Harper v. Hall*, 2022-NCSC-17, ¶¶ 5, 6, 2022 WL 496215 (N.C. Feb. 14, 2022) (quoting lower court’s decision). The court recognized that, “[a]lthough the task of redistricting is primarily delegated to the legislature, it must be performed ‘in conformity with the State Constitution.’ It is thus the solemn duty of this Court to review the legislature’s work to ensure such conformity using the available judicially manageable standards. We will not abdicate this duty by “‘condemn[ing] complaints about districting to echo into a void.’” *Id.* ¶ 6 (quoting *Rucho*, 139 S. Ct. at 2507). The court described the legislature’s justiciability argument as “essentially, an effort to turn back the clock to the time before courts entered the political thicket to review districting claims in *Baker v. Carr*. Yet, as the facts of this case demonstrate, the need for this Court to continue to enforce North Carolinians’ constitutional rights has certainly not diminished in the intervening years.” *Id.* ¶ 113. The court continued, “This case does not ask us to remove all discretion from the redistricting process. The General Assembly will still be required to make choices regarding how to reapportion state legislative and congressional districts *in accordance with traditional neutral districting criteria . . .*” *Id.* ¶ 117 (emphasis added).

8. The Ohio Supreme Court also rejected a justiciability argument by the state senate president and speaker of the house (both Republicans), concluding that a state constitutional provision that simply prohibited the state legislature from “unduly favor[ing] or disfavor[ing] a political party or its incumbents” in drawing political maps was clear and manageable enough. *Adams v. DeWine*, 2022-Ohio-89, ¶ 34, 2022 WL 129092 (Jan. 14, 2022). Like here, the petitioners in *Adams* claimed the state general assembly’s maps were unconstitutional because “the General Assembly passed a plan with a partisan advantage that ‘is *unwarranted by valid considerations*, namely, the redistricting criteria set forth in Article XIX.’” *Id.* ¶ 37. While redistricting criteria did not prohibit a map “from favoring or disfavoring a political party or its incumbents to the degree that inherently results *from the application of neutral criteria*, . . . it does bar plans that embody partisan favoritism or disfavoritism in excess of that degree—i.e., favoritism not warranted by legitimate, neutral criteria.” *Id.* ¶ 40 (emphasis added).

9. Plaintiffs, on the other hand, rely almost exclusively on the Wisconsin Supreme Court’s decision in *Johnson v. Wisconsin Elections Commission*, 2021 WI 87, 2021 WL 5578395 (Nov. 30, 2021). But *Johnson* is inapplicable here. There, the Wisconsin Supreme Court addressed an entirely different issue—namely, whether the court should consider partisan fairness in selecting political maps after the governor vetoed the state legislature’s proposed maps. *See generally id.* ¶¶ 40-63. Not only does *Johnson* address a different issue, but the decision is arguably at odds with the New Mexico Supreme Court’s decision in *Maestas*. Contrary to *Johnson*, the court in *Maestas* stated, “Despite our discomfort with political considerations, we conclude that when New Mexico courts are required to draw a redistricting map, they must do so with the appearance of and actual neutrality.” 2012-NMSC-006, ¶ 31. This includes considering “partisan symmetry” and “maintaining the political ratios as close to the status quo as is practicable, accounting for any changes in statewide trends, will honor the neutrality required in such a politically-charged case.” *Id.*

B. Political Gerrymanders Violate the New Mexico Constitution.

10. The New Mexico Constitution includes an equal protection clause that mirrors (and is in some ways broader than) the U.S. Constitution’s Equal Protection Clause. New Mexico’s Equal Protection Clause guarantees that “[n]o person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.” N.M. Const. art. II, § 18. When interpreting the state constitution, New Mexico courts follow the “interstitial approach.” *State v. Gomez*, 1997-NMSC-006, ¶¶ 20-22, 33, 122 N.M. 777, 932 P.2d 1. Under that approach, New Mexico courts reach state constitutional protections only if the right being asserted is not effectively protected under the U.S. Constitution. *Id.* ¶ 19. Further, New Mexico courts “provid[e] broader protection” under the state constitution when federal analysis is unpersuasive, either because this analysis is deemed “flawed,” “because of distinctive state characteristics,” or “because of undeveloped federal analogs.” *See id.* ¶ 20 (collecting cases); *see also State v. Wright*, 2022-NMSC-002, ¶ 21, 2022 WL 92114.

11. Given New Mexico’s Equal Protection Clause is co-extensive with its federal analogue, and federal courts recognize that political gerrymandering presents an injury under the federal Equal Protection Clause, political gerrymandering necessarily offends the New Mexico Constitution. In its seminal redistricting case, *Maestas v. Hall*, the New Mexico Supreme Court found that “an equal protection challenge will lie” if the drafters of legislative or congressional maps “use[] illegitimate reasons for population disparities and create[] the deviations *solely* to benefit certain regions at the expense of others.” *See* 2012-NMSC-006, 274 P.3d 66. ¶ 25 (emphasis in original) (quoting Legislative Redistricting Cases, 629 A.2d 646, 657 (Md. 1993)). In other words, the court held the use of “illegitimate reasons” to draw maps that benefit voters in one region at the expense of voters in other regions violates equal protection.

C. New Mexico Has Developed Standards and Guidance for Determining Political Gerrymandering Claims.

12. New Mexico has developed standards that guide judicial review of a redistricting plan. These standards were developed in response to the history of partisan redistricting fights in

New Mexico and have been deemed constitutionally legitimate by the New Mexico Supreme Court. The State Legislature likewise strengthened these standards, for the first time enshrining them in statute. The state judiciary is competent to interpret and apply these standards here.

13. *Maestas v. Hall* marked the first systematic articulation of the “legal principles that should govern redistricting litigation in New Mexico.” 2012-NMSC-006, ¶ 4, 274 P.3d 66. These principles were laid out by the supreme court in concern that “[d]istricts should be drawn to promote fair and effective representation for all, not to undercut electoral competition and protect incumbents.” *Id.* ¶ 31. The court noted that, in New Mexico, “[i]t is preferable to allow the voters to choose their representatives through the election process, as opposed to having their representative chosen for them through the art of drawing redistricting maps.” *Id.* Of course, the court in *Maestas* was not starting from a blank slate: since at least 1991 (the last time the State Legislature adopted a map without litigation) a set of seven guidelines have been used to safeguard the electorate’s right to fair and constitutional district maps. See *id.* ¶ 34. Among these guidelines is the requirement that:

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.

Id. The court incorporated these guidelines into the state’s redistricting framework, noting they track similar policies “recognized as legitimate by numerous courts.” *Id.*

14. The reason for hewing to traditional districting principles was not lost on the supreme court: “[these considerations] greatly reduce, although they do not eliminate, the possibilities of gerrymandering,” *id.* ¶ 35, and further the interests of representative government because “[m]inimizing fragmentation of political subdivisions, counties, towns, villages, wards, precincts, and neighborhoods allows constituencies to organize effectively” *Id.* ¶ 36.

15. The New Mexico Supreme Court is not alone in finding that traditional districting principles protect against political gerrymandering. Less than a year ago, the State Legislature adopted the Redistricting Act and made the traditional redistricting principles part of state statute. The Act requires the Committee—itsself created by the Restricting Act—to develop district plans in accordance with 10 provisions, including the requirement that they observe the traditional districting principles approved in *Maestas*. See NMSA 1978, § 1-3A-7(A) (2021). The State Legislature went further in protecting against political gerrymanders, forbidding the Committee from using, relying on, or referencing partisan data, such as voting history or party registration data in preparing redistricting plans. § 1-3A-7(C).

16. In this state, traditional districting principles provide a framework against which state courts can, when confronted with a claim that a redistricting plan effects a constitutional injury, measure whether the plan is presumptively based upon legitimate considerations or not. And this framework provides a basis for New Mexico state courts to accept the challenge left open to them by the U.S. Supreme Court in *Rucho*: to use state statutes and constitutions to prevent “complaints about districting [from echoing] into a void.” 139 S. Ct. at 2507.

D. The Evidence Establishes the Existence of a Political Gerrymander in Violation of the State Equal Protection Clause.

17. It cannot be reasonably disputed that the State Legislature intended to effect a political gerrymander by adopting Senate Bill 1’s congressional map. Indeed, the Court agrees with Plaintiffs that this case is the “rare” case in which the State Legislature made plain its intention to impose a political gerrymander—a fact that Defendants have not disputed in this case. Thus, the Court need not determine whether New Mexico has adopted or otherwise developed the sort of statutory or constitutional standards for determining when illegitimate reasons for line drawing results in an unconstitutional political gerrymander, because Defendants have conceded Plaintiffs’ claimed injury. Rather, they maintain such an injury is nonjusticiable under *Rucho*. But, as previously explained, the Court disagrees with this premise.

18. The Court finds persuasive Plaintiffs’ argument that legislative leadership’s statements prove that the State Legislature used illegitimate reasons. For one, Defendant Speaker Egolf promised a gerrymander in November 2020, over a year before the State Legislature adopted Senate Bill 1. After Republican Yvette Herrell defeated incumbent Democrat Xochitl Torres Small, Speaker Egolf “warned [CD 2] would be redrawn in such a way that ‘we’ll have to see what that means for Republican chances to hold it.’” Verified Compl. ¶ 95.b (quoting Speaker Egolf). Defendant President Stewart confirmed the gerrymander after Plaintiffs filed this case and moved for a preliminary injunction:



@Sen_MimiStewart, Twitter (Feb. 19, 2022) (April 18 Hearing, Exhibit 1).

19. Such direct and overt evidence from legislative leadership that Senate Bill 1 was intended to effect a partisan gerrymander is extraordinary. The Court finds this evidence is dispositive proof of Plaintiffs’ constitutional claim; therefore, Plaintiffs are likely to succeed on the merits of their claim under New Mexico’s Equal Protection Clause.

E. Even If the Direct Evidence Were Not Enough, Senate Bill 1 Objectively Violates New Mexico’s Standards for Redistricting and Is Therefore Not Presumptively Based on Legitimate Considerations.

20. Applying the framework provided by *Maestas* and the Redistricting Act, there is no question Senate Bill 1 violates traditional districting principles. It needlessly fails to preserve the core of two existing congressional districts, disregards political boundaries, and breaks up a universally acknowledged community of interest in southeastern New Mexico, which could have been maintained in a single congressional district. As such, Senate Bill 1 is not entitled to any presumption that is based upon legitimate considerations.

1. Senate Bill 1 Fails to Preserve the Core of Two of New Mexico’s Three Congressional Districts.

21. Senate Bill 1 disregards the cores of CD 1 and CD 2. CD 1 previously included Albuquerque and Bernalillo and Torrance Counties. Senate Bill 1’s version of CD 1, however, cuts off much of Bernalillo County (for placement into CD 2) and splits west Albuquerque from east Albuquerque (to allow west Albuquerque to be drawn into CD 2). Verified Compl. ¶ 95. To make up for this loss of these population centers, Senate Bill 1 draws into CD 1 parts of a new five-county area southeast of Torrance County. *Id.*

22. Senate Bill 1 also fails to preserve the core of CD 2. Consistent with decades of congressional maps in the state, CD 2 previously kept most of southern New Mexico in-tact, including southeastern New Mexico. But under Senate Bill 1, the southeastern population centers in Chaves, Eddy, Lea, and Otero Counties are divided into all three districts. The northwestern portion of Otero County joins the northeastern portion of Chaves County in CD 1 (helping to make up for the population lost because of the break-up of the core of that district), the northwestern portion of Chaves County joins the northern portions of Eddy and Lea Counties in CD 3, and only the southern portions of Chaves, Eddy, Lea, and Otero Counties remain in CD 2.

2. Senate Bill 1 Disregards Political Boundaries.

23. Senate Bill 1 also disregards political boundaries. It splits nine counties—nearly one third of New Mexico’s counties—between congressional districts. Indeed, the map actually

includes a 10-county split because it splits Chaves County between all three congressional districts. It also splits cities and towns, including the major municipalities of Albuquerque, Roswell, and Hobbs. These divisions are concentrated in southeastern New Mexico: five of the 10-county-split affects Chaves, Eddy, Lea, and Otero Counties. The divisions are also unnecessary, as no map proposed by the Committee included a 10-county split, and no map proposed by the Committee split any county into all three congressional districts.

3. *Senate Bill 1 Fails to Preserve Critical Communities of Interest in Southeastern New Mexico.*

24. It is undisputed the communities in Chaves, Eddy, Lea, and Otero Counties share common economic, social, and cultural interests, based in part on the robust agricultural and oil and gas presence in the area. Verified Compl. ¶ 87. Under the prior congressional map—and indeed under congressional maps going back decades—these communities remained in-tact allowing their interests to be represented by a single member of Congress on whose election they had material influence. Senate Bill 1 scatters this community of interest into all three congressional districts, effecting the maximum dilution of this community-of-interest’s voice in Congress. As with the violence done to the core of existing districts and political boundaries, the break-up of this community of interest is in no way unavoidable and its maintenance in a single district is undeniably feasible: two of the three plans proposed by the Committee preserved this community of interest in a single congressional district, and none of the three plans adopted by the Committee split it into all three districts.

4. *Because Senate Bill 1 Effects a Political Gerrymander Made Possible by Its Violation of New Mexico’s Standards for Redistricting, It Violates New Mexico’s Equal Protection Clause.*

25. In *Maestas*, the New Mexico Supreme Court found that “an equal protection challenge will lie” if the drafters of legislative or congressional maps “use[] illegitimate reasons for population disparities and create[] the deviations *solely* to benefit certain regions at the expense of others.” *See id.* ¶ 25 (emphasis in original) (quoting Legislative Redistricting Cases,

629 A.2d 646, 657 (Md. 1993)). Here, while there are no population disparities—such disparities are not permitted in congressional map drawing—the activity forming the core of the supreme court’s concern, namely, the use of illegitimate reasons to draw maps to benefit one group of people over another, is obvious. It was only by disregarding legitimate reasons—traditional redistricting principles—that the State Legislature was able to achieve an illegitimate and unconstitutional dilution of Republican votes in southeastern New Mexico.

26. The dilution of Republican votes is undeniable. Prior to the adoption of Senate Bill 1, CD 2 had 413,795 registered voters, 155,608 (or 38%) of whom were registered Republicans. The four-county area most affected by the State Legislature’s disregard of traditional redistricting principles accounted for approximately 34% of all the registered voters in CD 2, but contained 45%—almost half—of the registered Republicans in the district. Indeed, these four counties, Chaves, Eddy, Lea, and Otero, are the most geographically concentrated block of Republican voters in New Mexico. Until the passage of Senate Bill 1, these Republican voters, including Plaintiffs and their counties and community of interest, were within a single congressional district and had a real opportunity to elect a Republican member of Congress. Senate Bill 1, however, by failing to preserve the core of CD 2, disburses these Republican voters into all three congressional districts in such portion to effectively dilute their votes.

27. The State Legislature’s failure to adhere to legitimate traditional redistricting principles is obvious. And, because this failure was how the State Legislature accomplished an unconstitutional discriminatory political gerrymander diluting Plaintiffs’ votes, Plaintiffs are likely to succeed on the merits of their claim under New Mexico’s Equal Protection Clause.

III. Plaintiffs Have Suffered Irreparable Injury to Rights Protected by the New Mexico Constitution.

28. Defendants do not reasonably dispute that, if shown, Plaintiffs’ claimed constitutional violation establishes irreparable harm to Plaintiffs. *See, e.g., LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 12, 115 N.M. 314, 850 P.2d 1017 (collecting cases); *Elrod v. Burns*, 427

U.S. 347, 374 (1976) (the loss of constitutional rights “unquestionably constitutes irreparable injury”); 11A Fed. Prac. & Proc. Civ. (Wright & Miller) § 2948.1 (3d ed.) (“When an alleged deprivation of a constitutional right is involved . . . most courts hold that no further showing of irreparable injury is necessary.” (footnotes omitted)).

29. Rather, Defendants claim that Plaintiffs’ constitutional theory fails in the first instance. *See* Legis. Defs. Resp. at 13; Exec. Defs. Resp. at 13. The Court respectfully disagrees. As stated, Plaintiffs are likely to prevail on their claim under the state Equal Protection Clause. And, if a preliminary injunction is not granted, the 2022 Congressional Election in New Mexico will proceed based upon a politically gerrymandered map that violates the New Mexico Constitution. Plaintiffs, along with voters in the critical communities of interest, will have their votes unconstitutionally diluted. On the other hand, if the preliminary injunction is granted and the 2022 Congressional Election proceeds using the Concepts A or E, the election will take place in the absence of partisan gerrymandering and pursuant to maps that otherwise satisfy equal protection under the constitution. The Court concludes that failure to issue the requested preliminary injunction will result in the dilution of a large number of New Mexicans’ votes in the upcoming 2022 Congressional Election, and the harm from this constitutional violation is irreparable. *Johnson v. Mortham*, 926 F. Supp. 1540, 1543 (N.D. Fla. 1996) (“Deprivation of a fundamental right, such as limiting the right to vote in a manner that violates the Equal Protection Clause, constitutes irreparable harm.”)

IV. The Threatened Constitutional Injury to Plaintiffs Outweighs the Inconvenience a Preliminary Injunction Would Impose on Defendants.

30. Much of the April 18 hearing focused on the difficulties associated with implementing a new congressional map within 50 days of the June 7 Primary Election. To be sure, the Court does not doubt the Secretary’s position that implementing a new congressional map at this time will be inconvenient and will require the Secretary and some county clerks to redo election-preparation work that has already been (or will soon be) completed. That said, the

public has a “profound and long-term interest in upholding an individual’s constitutional rights,” including the right to vote, which is one of the most sacred rights, *see Awad v. Ziriya*, 670 F.3d 1111, 1132 (10th Cir. 2012), and it must “be the unusual case in which a court would be justified in not taking appropriate action to insure that . . . elections are conducted under [a valid map].” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

31. In addition, the Court finds that the narrow relief Plaintiffs have proposed to cure the constitutional defect in Senate Bill 1 cuts against Defendants’ claimed prejudice. *First*, unlike other redistricting cases, Plaintiffs are not asking the Court to draw a new map, which would require additional time and would require more evidence than presently before the Court. Rather, Plaintiffs, quite reasonably, have asked the Court to order the implementation of one of two ready-made maps that the bipartisan Committee studied, adopted, and reported to the State Legislature. One of these maps (Concept E) was proposed by Justice Chávez and received near-unanimous approval by the members of the Committee. The shapefile for Concept E has already been prepared (and is publicly available) and can be plugged into the Secretary of State’s elections software, allowing partial automation of the process of reassigning each precinct affected into a new congressional district, and thus minimizing disruption.

32. *Second*, Plaintiffs do not seek to reopen the nomination process for candidates currently set to run in the 2022 Primary Election. For this reason, the Secretary’s (understandable) concern about reconducting the candidate qualification process has been eliminated. While Defendants argue that some existing and would-be candidates may have changed their minds based on a new congressional map, there is no evidence before the Court to support the existence of this speculative problem. Nor does it detract from the fact that, by fixing the candidate qualification process as completed, significant potential disruption can be avoided. Indeed, by doing so, the Court can order effective relief ahead of the 2022 Primary Election to redress the unconstitutional congressional map in Senate Bill 1.

33. With this narrowing, the Court finds that, while there will some inconvenience and burden associated with implementing a new congressional map ahead the 2022 Primary Election, it is greatly reduced and makes implementing the Committee’s Concept E map achievable. On this point, the Court credits Clerk Hogland’s testimony on the feasibility of implementing the new map. Once the Secretary implements the Concept E map and reassigns the precincts impacted by the change, counties affected will have to redo the “election contest proofing” process, which can be accomplished in a few days. Once this is done, clerks will be able to certify the voting machines to be used for early voting, starting May 10, 2022.

34. *Third*, while less relevant to the 2022 Primary Election, Concept E does not preclude the State Legislature from adopting a new congressional map at a later date. To be clear, the Court’s Order finding Senate Bill 1’s congressional map unconstitutional and ordering the Secretary to implement the Committee’s Concept E map for the 2022 Congressional Election, does not foreclose further legislative action on redistricting. For now, in this state, it is the State Legislature’s prerogative to adopt congressional maps, albeit the courts must continue to determine whether the Legislature’s maps violate federal or state law. For this reason, nothing in this Order should be construed as to limit the State Legislature’s authority to consider and adopt a new congressional map after the 2022 Congressional Election.

35. It bears reminding that lower courts may “permit elections to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements,” but proceeding with an election under an unconstitutional map must be unquestionably necessary. *See Upham v. Seamon*, 456 U.S. 37, 44 (1982). Here, necessity is not a factor. The Court can order the Secretary to proceed with a 2022 Primary Election based on a congressional map with no constitutional infirmity.

36. Finally, invoking the “*Purcell* Principle” (based on *Purcell v. Gonzalez*, 549 U.S. 1 (2006)), the Secretary puts heavy emphasis on Plaintiffs’ alleged undue delay in bringing this complaint, arguing it will result in irreparable harm to the state’s ability to uniformly administer

the primary election. Initially, the Court disagrees that Plaintiffs delayed seeking a preliminary injunction. The facts, including this case rotating through every judge in the Fifth Judicial District, simply do not support a finding of undue delay. Further, the concern motivating the principle (voting confusion from last-minute changes), is greatly minimized here. As Director Vigil testified, the state has not yet mailed its statewide notices of the June 7 Primary Election. Even further, *Purcell* is most commonly used as a limitation on appellate courts, i.e., limiting injunctions and stays of lower court decisions pending appeal that would change the rules for an upcoming election.

37. Based on the facts and the narrowing of Plaintiffs' claimed relief, the Court finds the constitutional injury to Plaintiffs outweighs the potential burden imposed on Defendants by enjoining the Secretary's use of Senate Bill 1's congressional map and directing the Secretary to implement the Committee's Concept E map for the 2022 Congressional Election.

V. A Preliminary Injunction Will Further Public Interest.

38. Lastly, the public interest factor favors Plaintiffs. The public has a "profound and long-term interest in upholding an individual's constitutional rights," including the right to vote, which is one of the most sacred rights. *See Awad v. Ziriya*, 670 F.3d 1111, 1132 (10th Cir. 2012). Plaintiffs' claim raises equal treatment in exercising the fundamental right to vote, particularly New Mexicans' right to not have their votes diluted through unconstitutional means. Because the Court has found that Plaintiffs are likely to succeed on their constitutional claim, the public harm is plain and inflicted on every voter in the unconstitutional districts.

39. Without question "[t]he public has an interest in having congressional representatives elected in accordance with the Constitution." *Common Cause v. Rucho*, 284 F. Supp. 3d 780, 787 (M.D.N.C. 2018); *Republican Party of N.C. v. Hunt*, 841 F. Supp. 722, 732 (E.D.N.C. 1994) ("[P]ublic interest requires the furtherance of the constitutional protections that attach to the franchise."); *see also Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 560-61 (E.D.V.A. 2016) (recognizing that "[t]he public has an interest in having congressional

representatives elected in accordance with the Constitution”); cf. *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (“The associational and franchise-related rights . . . [are] without question in the public interest.”).

40. As the U.S. Supreme Court as reminded, it would “be the unusual case in which a court would be justified in not taking appropriate action to insure that . . . elections are conducted under [an invalid map].” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

ORDERED RELIEF

Upon consideration of Plaintiffs’ Motion for Preliminary Injunction, along with the Verified Complaint and evidence submitted at the April 18, 2022 hearing, it is hereby

ORDERED that Plaintiffs’ Motion for Preliminary Injunction is GRANTED.

(1) Defendants, including Defendant Secretary of State, are enjoined from using the congressional map adopted in Senate Bill 1 for the 2022 Congressional Election;

(2) Defendant Secretary of State shall implement the New Mexico’s Committee’s Concept E Map for the 2022 Congressional Election, including for the June 7, 2022 Primary Election;

(3) In ordering Defendant Secretary of State to implement the Committee’s Concept E Map, the Court is not requiring new candidate qualification. The candidates who have qualified for the ballot as of the date of this Order shall remain so qualified; and

(4) The Committee’s Concept E Map will remain in effect until the State Legislature reconvenes and adopts a replacement congressional map.

Dated: April 19, 2022.

Respectfully submitted,

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Attorneys for Plaintiffs

I HEREBY CERTIFY that on April 19, 2022, a true and correct copy of the foregoing **PLAINTIFFS' [PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** was emailed to Chambers, including a cc to all counsel of record.

/s/ Eric R. Burris

Eric R. Burris