

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,

D-506-CV-2022-00041

Plaintiffs,

Case assigned to Sanchez, Mark

v.

No. \_\_\_\_\_

MAGGIE TOLOUSE 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.

**VERIFIED COMPLAINT FOR VIOLATION OF  
NEW MEXICO CONSTITUTION ARTICLE II, SECTION 18**

COME NOW Plaintiffs Republican Party of New Mexico, David Gallegos, Timothy  
Jennings, Dinah Vargas, Manuel Gonzales Jr., Bobby and Dee Ann Kimbro and Pearl Garcia  
(collectively "Plaintiffs"), by and through their attorneys, Brownstein Hyatt Farber Schreck, LLP  
(Eric Burris, Harold D. Stratton, Jr., Chris Murray (pro hac vice forthcoming), and Julian Ellis  
(pro hac vice forthcoming)) and Harrison Hart, LLC (Carter Harrison), and for their Complaint  
for Violation of Article II, Section 18 of the New Mexico Constitution (the "Complaint") against  
Defendants allege as follows:

## **PARTIES, JURISDICTION, AND VENUE**

1. The Republican Party of New Mexico is an unincorporated nonprofit association and a political party. Steve Pearce is its Chairman and its headquarters are located at 5150 San Francisco Road NE #A, Albuquerque, New Mexico 87109.

2. Plaintiff David Gallegos resides at 907 20th Street, Eunice, New Mexico 88231, and is an elected State Senator from Senate District 41. Senator Gallegos is a registered Republican in New Mexico and a supporter of Republican candidates and policies. Senator Gallegos' ability to affiliate with like-minded Republicans and to pursue Republican associational goals has been impaired by Senate Bill 1. Senator Gallegos' home is in CD 2, which includes southwest New Mexico and parts of southeastern New Mexico, including parts of Chaves, Eddy, Lea, and Otero Counties. To create the congressional districts in Senate Bill 1, partisan drafters intentionally "cracked" Republicans like Senator Gallegos in southeastern New Mexico, thereby substantially diluting their votes. The State Legislature's cracking of Republicans in southeastern New Mexico was unnecessary, as evidenced by two maps the New Mexico Citizen Redistricting Committee adopted and presented to the State Legislature.

3. Plaintiff Timothy Jennings resides at 2716 North Pennsylvania Avenue, Roswell, New Mexico 88201. He served in the New Mexico State Senate for 34 years from 1978-2012, representing Senate District 32. He served as the Senate President Pro-Tempore from 2008-2012. Plaintiff Jennings is a registered Democrat in New Mexico and a supporter of Democratic candidates and policies. Plaintiff Jennings' ability to affiliate with like-minded members of his community in Chaves County and the greater Roswell area has been impaired by Senate Bill 1. Plaintiff Jennings' home is in CD 3, which includes northern New Mexico and parts of southeastern New Mexico, including parts of Chaves, Eddy, and Lea Counties. Historically,

Plaintiff Jennings' home has been in CD 2, which previously included all of Chaves, Eddy, Lea, and Otero Counties. To create the congressional districts in Senate Bill 1, partisan drafters intentionally "cracked" Republicans in southeastern New Mexico, thereby substantially diluting their votes. In doing so, the State Legislature also "cracked" the non-Republican voters of these counties, and especially Plaintiff Jennings' home of Chaves County, which is split between all three of New Mexico's congressional districts under Senate Bill 1. The State Legislature's cracking of Republicans in southeastern New Mexico and resulting cracking of all voters in these four counties was unnecessary, as evidenced by two maps the New Mexico Citizen Redistricting Committee adopted and presented to the State Legislature.

4. Plaintiff Dinah Vargas resides at 4707 Coors Boulevard SW, Albuquerque, New Mexico 87121, and was the Republican candidate for House District 10 in 2020. Plaintiff Vargas is a registered Republican in New Mexico and a supporter of Republican candidates and policies. Plaintiff Vargas' ability to affiliate with like-minded Republicans and to pursue Republican associational goals has been impaired by Senate Bill 1. Plaintiff Vargas' home is in CD 2, which includes southwest New Mexico and parts of southeastern New Mexico, including parts of Chaves, Eddy, Lea, and Otero Counties. To create the congressional districts in Senate Bill 1, partisan drafters intentionally "cracked" Republicans in southeastern New Mexico, thereby substantially diluting their votes. To accomplish the cracking of southeastern New Mexico, Senate Bill 1 also cracked parts of Albuquerque, including shifting Plaintiff Vargas' home from CD 1 to CD 2. Under Senate Bill 1, the same congressperson who will represent Plaintiff Vargas in southwest Albuquerque will also represent constituents as far as the City of Lordsburg and the City of Hobbs. The State Legislature's cracking of Republicans in southeastern New Mexico was unnecessary, as evidenced by two maps the New Mexico Citizen Redistricting Committee

adopted and presented to the State Legislature.

5. Plaintiff Manuel Gonzales, Jr. resides at 5 Briarwood Court, Alamogordo, New Mexico 88310-9536. Plaintiff Gonzales is the former Chairman of the Republican Party of Otero County, former Republican Party of New Mexico Vice Chairman – CD 2, and former First Vice Chairman of the Republican Party of New Mexico. Plaintiff Gonzales is a registered Republican in New Mexico and supporter of Republican candidates and policies. His ability to affiliate with like-minded Republicans and to pursue Republican associational goals has been impaired by Senate Bill 1. Plaintiff Gonzales' home is in CD 2, which includes southwest New Mexico and parts of southeastern New Mexico, including parts of Chaves, Eddy, Lea, and Otero Counties. To create the congressional districts in Senate Bill 1, partisan drafters intentionally “cracked” Republicans like Plaintiff Gonzales in southeastern New Mexico, thereby substantially diluting their votes. The State Legislature’s cracking of Republicans in southeastern New Mexico was unnecessary, as evidenced by two maps the New Mexico Citizen Redistricting Committee adopted and presented to the State Legislature.

6. Plaintiffs Bobby and Dee Ann Kimbro are husband and wife and reside at 3908 West Payne Road, Lovington, New Mexico 88260. They have lived in Lovington for over twenty years. The Kimbros are registered Republicans in New Mexico and supporters of Republican candidates and policies. Their ability to affiliate with like-minded Republicans and to pursue Republican associational goals has been impaired by Senate Bill 1. The Kimbros live in CD 3, which includes northern New Mexico and parts of southeastern New Mexico, including parts of Chaves, Eddy, and Lea Counties. Historically, their home has been in CD 2, which previously included all of Chaves, Eddy, Lea, and Otero Counties. To create the congressional districts in Senate Bill 1, partisan drafters intentionally “cracked” Republicans in southeastern

New Mexico, thereby substantially diluting their votes. The State Legislature's cracking of Republicans in southeastern New Mexico was unnecessary, as evidenced by two maps the New Mexico Citizen Redistricting Committee adopted and presented to the State Legislature.

7. Plaintiff Pearl Garcia resides at 2601 Pajarito Road SW, Albuquerque, New Mexico 87105. She is retired from Sandia National Laboratories. Plaintiff Garcia is a registered Republican in New Mexico and a supporter of Republican candidates and policies. Plaintiff Garcia's ability to affiliate with like-minded Republicans and to pursue Republican associational goals has been impaired by Senate Bill 1. Plaintiff Garcia's home is in CD 2, which includes southwest New Mexico and parts of southeastern New Mexico, including parts of Chaves, Eddy, Lea, and Otero Counties. To create the congressional districts in Senate Bill 1, partisan drafters intentionally "cracked" Republicans in southeastern New Mexico, thereby substantially diluting their votes. To accomplish the cracking of southeastern New Mexico, Senate Bill 1 also cracked parts of Albuquerque, including shifting nearly all the South Valley where Plaintiff Garcia lives from CD 1 to CD 2. Under Senate Bill 1, the same congressperson who will represent Plaintiff Garcia in the South Valley will also represent constituents as far as the City of Lordsburg and the City of Hobbs. The State Legislature's cracking of Republicans in southeastern New Mexico was unnecessary, as evidenced by two maps the New Mexico Citizen Redistricting Committee adopted and presented to the State Legislature.

8. Defendant Maggie Toulouse Oliver is the elected Secretary of New Mexico. Her office is in Santa Fe County.

9. Defendant Michelle Lujan Grisham is the elected Governor of New Mexico. Her office is in Santa Fe County.

10. Defendant Howie Morales is the elected Lieutenant Governor of New Mexico.

Under the New Mexico Constitution, he is the President of the New Mexico State Senate. His office is in Santa Fe County.

11. Defendant Mimi Stewart is an elected State Senator from Senate District 17 in Bernalillo County and serves as the President Pro Tempore of the New Mexico State Senate. Her office is in Santa Fe County.

12. Defendant Brian Egolf is an elected State Representative from House District 47 in Santa Fe County and serves as the Speaker of the New Mexico House of Representatives. His office is in Santa Fe County.

13. This Court has jurisdiction over this Complaint and the matters addressed herein because the events and occurrences giving rise to the cause of action occurred in the State of New Mexico.

14. Venue is also proper in Lea County, pursuant to NMSA 1978, § 38-1-3(G), because this suit is against state officers and one or more Plaintiffs reside in Lea County.

### **GENERAL ALLEGATIONS**

15. This complaint challenges Senate Bill 1, which redraws New Mexico's three congressional districts in contravention of traditional redistricting principles endorsed by the State Legislature and the New Mexico Supreme Court in order to accomplish a political gerrymander that unconstitutionally dilutes the votes of residents of southeastern New Mexico in order to achieve partisan advantage.

16. Because the State Legislature ran roughshod over traditional redistricting principles and used illegitimate reasons to draw lines impermissibly diluting the voting strength of one region and one political party, Senate Bill 1 violates Article II, Section 18 of the New Mexico Constitution: the state's Equal Protection Clause.

17. Plaintiffs ask the Court to set aside Senate Bill 1 and to adopt a map proposed by the New Mexico Citizen Redistricting Committee (“Citizen Redistricting Committee”) in order to vindicate the rights of New Mexicans to congressional districts that do not illegitimately favor the political interests of one group over another.

**New Mexico’s Equal Protection Clause (Article II, Section 18) and Its Guarantees**

18. The New Mexico Constitution 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 (emphasis added). New Mexico’s equal protection clause mirrors the Fourteenth Amendment’s Equal Protection Clause and is coextensive with this federal analog. *See* U.S. Const. amend. XIV, § 1.

19. In interpreting the state constitution, New Mexico follows the “interstitial approach.” *State v. Gomez*, 1997-NMSC-006, ¶¶ 20-22, 33, 122 N.M. 777, 932 P.2d 1. Under this approach, New Mexico courts only reach state constitutional protections if the right being asserted is not effectively protected under the U.S. Constitution. *Id.* ¶ 19.

20. New Mexico courts also “provid[e] broader protection” under the state constitution when the federal analysis is unpersuasive, either because it 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.

21. In its seminal redistricting case, *Maestas v. Hall*, the New Mexico Supreme Court recognized the “right to vote for the candidates of one’s choice” is “precious” and “the essence of our country’s democracy.” 2012-NMSC-006, ¶ 1, 274 P.3d 66. Indeed, “[t]he idea that every voter must be equal to every other voter when casting a ballot has its genesis in the Equal Protection Clause.” *Id.* (citing U.S. Const. amend. XIV, § 1). The *Maestas* court recognized that

it is for this reason the U.S. Supreme Court has stated “that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable”—i.e., the “one person, one vote” doctrine. *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).

22. Importantly, in *Maestas*, the supreme court also expressly 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)). In other words, the court admonished the use of “illegitimate reasons” to draw maps that benefit voters in one region at the expense of voters in other regions of the state.

23. In doing so, the supreme court noted New Mexico’s adherence to the bipartisan New Mexico Legislative Council’s guidelines, which have been “recognized as legitimate by numerous courts” and which “have been followed in New Mexico since 1991.” *Id.* ¶ 34.

#### **Federal Political Gerrymandering Under the Equal Protection Clause and *Rucho***

24. This case is admittedly about “political gerrymandering.” The constitutional injury in a political gerrymandering case is vote dilution, much like the injury in one-person-one-vote decisions, which prohibit creating districts with significantly different populations. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2514 (2019) (Kagan, J., dissenting). “In such a case, . . . the districters have set out to reduce the weight of certain citizens’ votes, and thereby deprive them of their capacity to ‘full[y] and effective[ly] participat[e] in the political process[.]’” *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 565 (1964)).



25. In *Davis v. Bandemer*, a majority of the U.S. Supreme Court first recognized that gerrymandering based on political discrimination is unlawful under the Equal Protection Clause. 478 U.S. 109, 116–117 (1986). The Supreme Court, however, split on the applicable standard to apply to political gerrymandering claims. *See Rucho*, 139 S. Ct. at 2597 (majority opinion) (discussing *Bandemer* and its progeny).

26. In the years following *Bandemer*, the Supreme Court continued to struggle with defining the standard applicable in political gerrymandering cases. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 414 (2006) (noting “persist[ing]” disagreement over the applicable standard). As a result of this struggle, the justices expressed doubt on the viability of such claims in federal court. *See, e.g., Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (“Our considerable efforts in *Gaffney*, *Bandemer*, *Vieth*, and *LULAC* leave unresolved whether such claims may be brought in cases involving allegations of partisan gerrymandering.”).

27. The struggle over a definable federal standard for political gerrymandering cases came to a head in *Rucho*, where a 5-4 majority held that such claims are nonjusticiable in federal court as a prudential matter because “[t]here are no legal standards discernible in the Constitution for making such judgments.” *Rucho*, 139 S. Ct. at 2500. What’s clear is that the Supreme Court, in the nearly 40 years between *Bandemer* and *Rucho*, was unable to settle on a nationwide, one-size-fits-all constitutional standard to apply in federal political gerrymandering cases.

28. While the Supreme Court in *Rucho* ended political gerrymandering claims in **federal court**, it offered some comfort that political gerrymandering complaints will not “echo into a void.” *Id.* at 2507. “The States, for example, are actively addressing the issue on a number of fronts,” including “[p]rovisions in state statutes and state constitutions [that] **can provide standards and guidance for state courts to apply.**” *Id.* (emphasis added).

29. New Mexico has adopted such standards. As discussed next, the State Legislature has effectively codified standards and guidance in response to a tumultuous and partisan history of redistricting in this state. And, it is soundly within the province of the state's judiciary to interpret and apply these standards.

### **History of Redistricting in New Mexico**

30. Consistent with the U.S. Supreme Court's observation of the experience of many states, New Mexico's history of legislative and congressional redistricting has been characterized by partisan rancor and litigation.

31. Indeed, with the exception of the state legislative and congressional redistricting accomplished in 1991, New Mexico's state legislative or congressional maps have been the subject of litigation in state or federal court each decade beginning in the 1960s. *See* A Guide to State and Congressional Redistricting in New Mexico at 8-13, N.M. Legis. Council Serv., dated Apr. 2011, <https://bit.ly/3nwycVK>.

32. In 2011, the New Mexico Supreme Court decided *Maestas v. Hall*, which for the first time systematically articulated the "legal principles that should govern redistricting litigation in New Mexico." 2012-NMSC-006, ¶ 4, 274 P.3d 66.

33. In *Maestas*, the supreme court noted that since at least 1991, redistricting in New Mexico has been governed by policies articulated in a set of seven guidelines adopted by the bipartisan New Mexico Legislative Council. *See id.* ¶ 34.

34. These seven guidelines are:

(i) Congressional districts shall be as equal in populations as practicable.

(ii) 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.

(iii) The legislature shall use federal decennial census data generated by the United

States bureau of the census.

(iv) 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.

(v) 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.

(vi) All redistricting plans shall use only single-member districts.

(vii) 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.

Guidelines for the Development of State and Congressional Redistricting Plans, N.M. Legis. Council, dated Jan. 17, 2011.

35. The *Maestas* court noted approvingly that these guidelines “are similar to policies that have been recognized as legitimate by numerous courts,” and “should be considered by a state court when called upon to draw a redistricting map.” *Id.* ¶ 34.

36. Regarding the seventh guideline, the *Maestas* court observed that “[c]ompactness and contiguity are important considerations” in part because “it has been suggested [these considerations] greatly reduce, although they do not eliminate, the possibilities of gerrymandering.” *Id.* ¶ 35.

37. Similarly, the *Maestas* court concluded that “considering political and geographic boundaries furthers our representative government” and that “[m]inimizing fragmentation of political subdivisions, counties, towns, villages, wards, precincts, and neighborhoods allows

constituencies to organize effectively . . . .” *Id.* ¶ 36.

38. The *Maestas* court made these observations regarding the desirability of the traditional redistricting principles applicable in New Mexico in light of its overarching concern that “[d]istricts should be drawn to promote fair and effective representation for all, not to undercut electoral competition and protect incumbents. It 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.* ¶ 31.

### **The New Mexico Redistricting Act of 2021**

39. In light of this history, in April of 2021, the State Legislature adopted the Redistricting Act of 2021 (“Redistricting Act”), Laws 2021, ch. 79, § 2. The legislation is codified at NMSA 1978, § 1-3A-1, *et seq.* (2021).

40. The Redistricting Act created the Citizen Redistricting Committee, which is comprised of seven members. NMSA 1978, § 1-3A-3 (2021).

41. The majority and minority leadership in the State House and the State Senate each appoint a committee member, for a total of four members appointed by the two largest political parties in the State Legislature. *Id.*

42. The remaining three members are appointed by the State Ethics Commission: the first two of these appointees may not be members of the Democratic or Republican parties (the two largest political parties in New Mexico). *Id.* The final member appointed by the State Ethics Commission is the committee chair, and this appointee must be a retired justice of the New Mexico Supreme Court or a retired judge of the New Mexico Court of Appeals. *Id.*

43. The Redistricting Act further provides that no more than three members of the seven-member committee may be members of the same political party, *id.*, and prohibits persons

particularly interested in the redistricting process (such as those who are or who have been public officials, candidates for public office, lobbyists, or family members of office holders who will be affected by redistricting) from serving as committee members. NMSA 1978, § 1-3A-4 (2021).

44. The Redistricting Act charges the Citizen Redistricting Committee with adopting at least three redistricting plans for New Mexico’s congressional districts, the State House, the State Senate, and any other offices requiring redistricting. NMSA 1978, § 1-3A-5 (2021).

45. The Citizen Redistricting Committee is required to hold at least six public meetings before publishing potential redistricting plans for comment and at least another six public meetings after publishing potential redistricting plans, but before adopting them. *Id.*

46. Indeed, the Citizen Redistricting Committee is mandated to publish, for public comment, proposed redistricting plans based at least in part on the testimony, documents, and information received from the public prior to publishing its potential redistricting plans. NMSA 1978, § 1-3A-6 (2021).

47. Tellingly, the State Legislature chose to—for the first time—enshrine the traditional redistricting principles favorably relied upon by the supreme court in *Maestas* in this statute. The Redistricting Act requires that the Citizen Redistricting Committee develop district plans in accordance with 10 provisions, which are, almost word-for-word, the Legislative Council’s redistricting guidance from prior years. *See* NMSA 1978, § 1-3A-7(A) (2021).

48. Even more, the Redistricting Act adds a further protection against political gerrymandering beyond these traditional redistricting principles: an affirmative requirement that the Citizen Redistricting Committee “*shall not use, rely upon or reference partisan data*, such as voting history or party registration data; provided that voting history in elections may be considered to ensure that the district plan complies with applicable federal law.” NMSA 1978, §

1-3A-7(C) (2021) (emphasis added).

49. Finally, after adopting the required three plans for each set of offices required to be redistricted, “the committee shall provide written evaluations of each district plan that address the satisfaction of the requirements set forth in the Redistricting Act, the ability of racial and language minorities to elect candidates of their choice, a measure of partisan fairness and the preservation of communities of interest.” NMSA 1978, § 1-3A-8 (2021).

**The Citizen Redistricting Committee Proposes Three Congressional Maps  
With Two Clearly Based On Traditional Redistricting Principles**

50. Former New Mexico Supreme Court Justice Edward Chávez—the author of the *Maestas* opinion—was appointed as Chair of the Citizen Redistricting Committee.

51. After the other members were appointed, the Citizen Redistricting Committee held its first two meetings on July 2, 2021 and July 23, 2021. At these initial meetings, the Citizen Redistricting Committee adopted rules of procedure and set a schedule for its substantive work.

52. Next, the Citizen Redistricting Committee held eight public meetings between August 2 and August 15, 2021, in different parts of New Mexico to receive testimony, documents, and information regarding the identification of communities of interest and the creation of district plans. Of these eight meetings, two were on tribal lands and all were open to the public at a minimum through Zoom. These eight meetings exceeded the six meetings required under the Redistricting Act.

53. During this first round of eight meetings, over 1,000 people attended in-person or via Zoom and over 120 individuals provided testimony to the Citizen Redistricting Committee.

54. From August 15 to September 16, 2021, the Citizen Redistricting Committee considered this testimony. It also considered submissions it received through the Committee’s

online public comment portal and drew and published initial map concepts.

55. On September 16, 2021, the Citizen Redistricting Committee met and adopted several map concepts to be published for additional public input.

56. The Citizen Redistricting Committee initially published seven potential congressional map concepts for public input and eventually added two additional congressional map concepts and one partial map concept submitted by third parties.

57. The Citizen Redistricting Committee then held an additional eight public meetings, including two on tribal lands, at which members of the public presented testimony regarding the map concepts. In total, over 900 people attended these meetings in-person or online and 242 provided testimony to the Committee.

58. The Citizen Redistricting Committee held an additional public meeting on October 15, 2021, at which it adopted three congressional redistricting plans: congressional Concepts A, E, and H.

59. Concepts A and E were drawn consistent with traditional redistricting principles.

60. Concept A was expressly adopted to “maintain status quo.” It largely maintained the existing congressional districts as drawn by the state courts in 2012 and only divided four cities and four counties, while at the same time eliminating the division of McKinley County from the 2012 map. *See* New Mexico Citizen Redistricting Committee Report on District Plans & Evaluations to the New Mexico Legislature at 30-32, dated Nov. 2, 2021, <https://bit.ly/3lc2HrN> (Citizen Redistricting Committee Report).

61. Concept E, known as the “Justice Chávez Map” was drawn by Justice Chávez in response to public comment on an earlier version published by the Citizen Redistricting Committee for public consideration. Citizen Redistricting Committee Report at 38-40.

62. 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, including Rio Rancho. *Id.*

63. 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.*

64. Concept E was the concept supported by the most members of the Citizen Redistricting Committee. Six of the seven members voted to approve this Concept E, including all four members appointed by legislative leadership. *Id.*

65. The final congressional redistricting concept adopted by the Citizen Redistricting Committee was Concept H. *Id.* at 34-36.

66. Unlike Concepts A and E, Concept H was not initially developed by the Citizen Redistricting Committee—it was based on a map submitted by a coalition of politically liberal community organizations on October 1, 2021. *See id.* at 36.

67. A core argument by the proponents of what would become Concept H was to “create a solid Hispanic voting age majority district” in CD 2. *See id.* at 36 (citing to comment of Melanie Aranda, Citizen Redistricting Committee Public Comment Portal, dated Oct. 1, 2021, <https://bit.ly/3GCtxZN> (“Aranda Comment”)).

68. Neither Concept H’s proponents nor the Citizen Redistricting Committee discussed the fact that **CD 2 is already a majority Hispanic district** and that Concept E would increase the Hispanic majority in the district to 54.4%

69. Tellingly, the proponents of Concept H argued that the map intentionally split counties in southeastern New Mexico, which had formed the core of CD 2, into three congressional districts:



This map uplifts overlooked communities in southeast NM by affording them an opportunity to be heard. In both Roswell in particular, but also in in Hobbs, we heard about the harsh economic realities facing workers and their families from communities located in and on the periphery of the Permian Basin. The challenges facing this region have enormous ripple effects, impacting the entire state economically and environmentally. Yet two-thirds of our congressional delegation is not much engaged with these constituencies. This map addresses this concern by ensuring that the entire NM congressional delegation hears the voices of these impacted communities.

Aranda Comment.

70. Indeed, Concept H disregards the traditional redistricting principles the Citizen Redistricting Committee was charged with applying. It splits seven cities—including Albuquerque—and nine counties. It also fails to preserve the core of CD 1 (by splitting Albuquerque into two congressional districts) and CD 2 (by splitting Chaves, Eddy, Lea, and Otero counties into three congressional districts).

71. The Citizen Redistricting Committee submitted a report detailing all three congressional map concepts to the State Legislature on November 2, 2021. It reissued the report with corrections on November 8, 2021. *See generally* Citizen Redistricting Committee Report.

**The State Legislature Adopts a Modified Version of Concept H  
Creating a Gerrymandered Congressional Map**

72. The State Legislature did not adopt any of the congressional map concepts proposed by the Citizen Redistricting Committee.

73. Instead, in four legislative days, it introduced and adopted Senate Bill 1 to draw New Mexico’s congressional district lines.

74. Beyond splitting nine counties, the City of Hobbs, and the greater Albuquerque area, Senate Bill 1 went even further in disregarding traditional redistricting principles than Concept H: it also divided the greater Roswell area into two districts and split Chaves County into **all three congressional districts**.

75. In essence, Senate Bill 1 seized on Concept H's scrambling of Chaves, Eddy, Lea, and Otero Counties into all three congressional districts and went even further.

76. The result is a gerrymander that does not serve New Mexicans and that cannot survive constitutional scrutiny.

### COUNT I

#### **Political Gerrymander – Equal Protection, N.M. Const. art. II, § 18**

77. Plaintiffs incorporate each of the preceding paragraphs, including subparts, as if fully restated herein.

78. Senate Bill 1 is a partisan gerrymander of such proportion that it violates Plaintiffs' rights under the New Mexico Constitution's Equal Protection Clause by unconstitutionally diluting their votes. *See* N.M. Const. art. II, § 18. When drafters of congressional maps use "illegitimate reasons" to discriminate against regions at the expense of others, including failing to adhere to New Mexico's "traditional districting principles," aggrieved voters may seek redress of this constitutional injury in the courts through an equal protection challenge. *See Maestas v. Hall*, 2012-NMSC-006, ¶ 25, 274 P.3d 66.

79. The supreme court has enshrined the use of "historic legislative redistricting policies" in "drawing redistricting maps [to] avoid partisan advantage." *Id.* ¶ 31. These traditional redistricting principles have been followed since 1991, and 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 (emphasis added) (citing New Mexico’s Guidelines for the Development of State and Congressional Redistricting Plans).

80. 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).

81. 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.”

82. 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, “To 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)).

83. 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 (emphasis added).

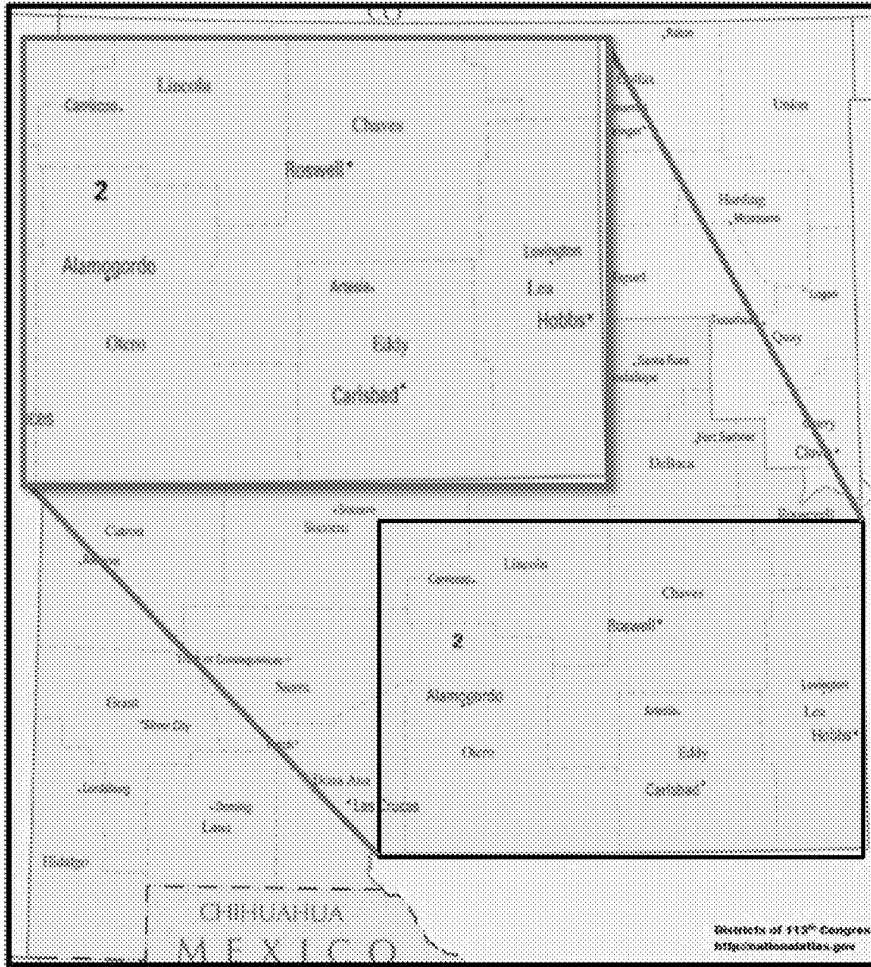
84. Lastly, preserving the core of existing districts protects against vote dilution through unlawful partisan swings. This is particularly true in New Mexico. The judiciary has drawn the maps for last two redistricting cycles. In completing its work, the courts strived for

“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 partisan fragmentation of the political core of these judicially drawn congressional districts.

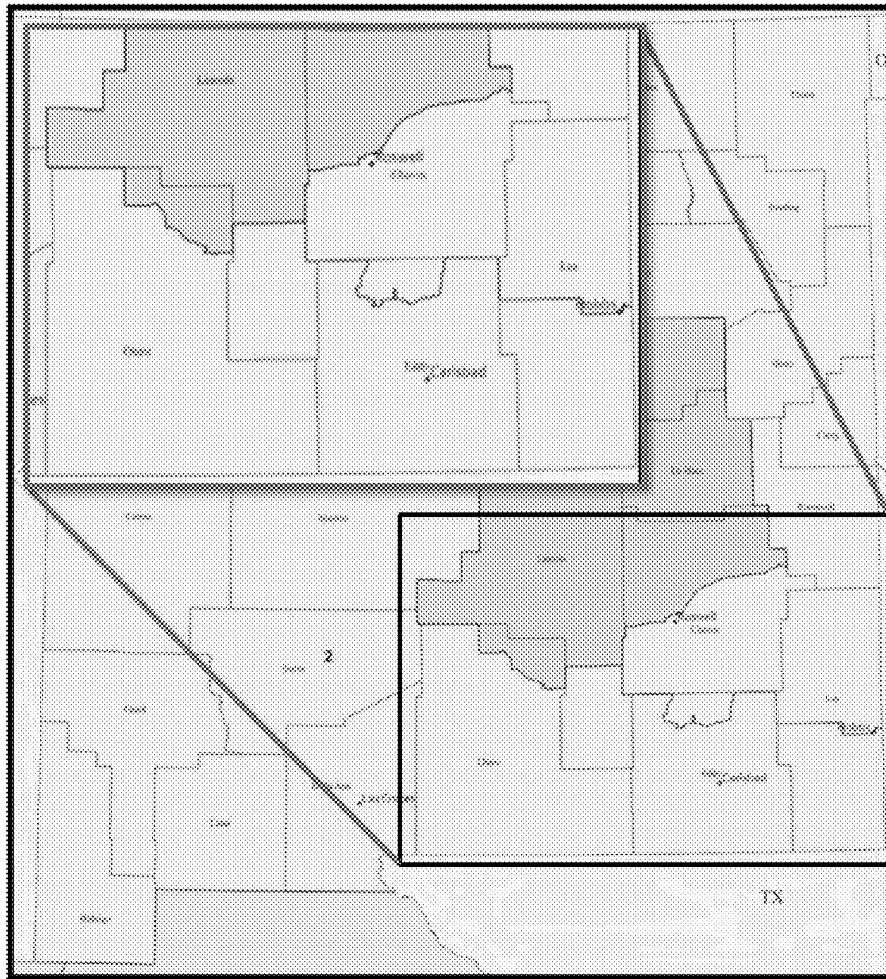
85. To be clear, the Citizen Redistricting Committee attempted to do so in Concepts A and E, which it substantively developed.

86. In passing Senate Bill 1, the State Legislature largely ignored the citizen-committee process they adopted in 2021, electing instead to approve a congressional map that was never reviewed, considered, or studied by the Citizen Redistricting Committee. In doing so, these politically motivated actors adopted a severely partisan congressional map that violates nearly every traditional redistricting principle followed since 1991.

87. Senate Bill 1 dilutes critical communities of interest, particularly in the southeast corner of the state. 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:



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



89. It is no secret why partisan map drawers were keen on splitting the communities of interest in southeastern New Mexico: Fracturing these communities of interest drastically “cracked”—and thereby diluted—a significant block of registered Republicans.

90. For instance, 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, dated Dec. 30, 2021, <https://bit.ly/3Kjzf4Z>. Significantly, the four-county area including Chaves, Eddy, Lea, and Otero Counties accounted for approximately 45% of the registered Republicans in the district 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, dated Dec. 30, 2021, <https://bit.ly/3GEyjFX>. In other words, this four-county area in New Mexico contains a highly concentrated block of registered Republicans—indeed, almost one-half of the registered Republicans in all of CD 2.

91. It is for this reason that Senate Bill 1’s treatment of southeastern New Mexico—specifically, Chaves, Eddy, Lea, and Otero Counties—is so troubling. Under New Mexico’s previous congressional map, this community of interest was housed in a single congressional district and had a real opportunity to elect a Republican member of congress. In fact, a Republican has held CD2 for all but one term since 2012. Under Senate Bill 1, however, the registered Republicans in southeastern New Mexico were split between all three congressional districts, drastically disbursing (and “cracking”) their votes.

92. Senate Bill 1’s treatment of southeastern New Mexico also illustrates the utter disregard the legislature had for geographic and political boundaries. In this one example, *all four* of the counties—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 counites are split in one way or another under Senate Bill 1, and Chaves County is split the maximum three ways.

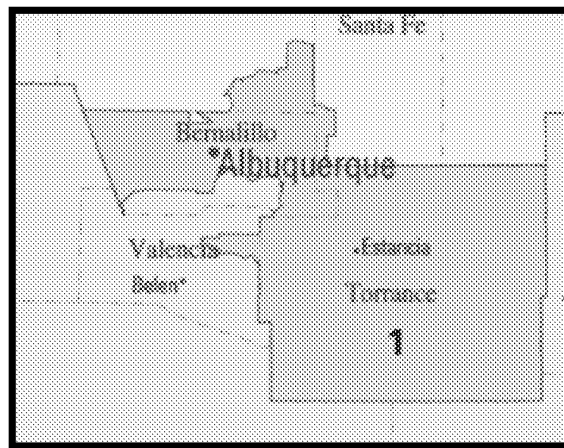
93. The New Mexico legislature’s disregard for geographic and political boundaries is not limited to counites. Senate Bill 1 also splits the City of Hobbs in half and splits greater-Albuquerque into thirds and greater-Roswell in half.

94. Senate Bill 1’s treatment of greater-Albuquerque is an overt attempt to use Albuquerque to dilute the votes in what was previously CD 2. By doing so, the New Mexico

legislature imposed a severe partisan performance swing by shifting CD 2's strong Republican block in Chaves, Eddy, Lea, and Otero Counties into majority-Democratic seats. Commentators agree: The Albuquerque Journal Editorial Board described the legislature's move as "a gerrymandered bill with congressional boundaries that split Albuquerque, Roswell and Hobbs for naked political gain." *Gov. 's Legacy Just Got More Partisan With Redistricting Maps*, Albuquerque Journal (Dec. 28, 2021, 5:02 A.M.), <https://bit.ly/3mxriR> (Journal Editorial Board).

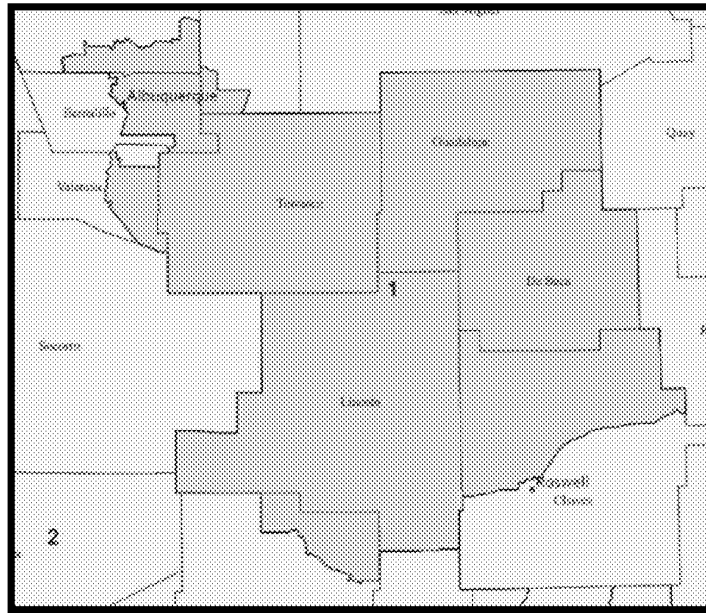
95. This partisan gerrymander is perhaps best shown through analysis of whether Senate Bill 1 preserves the cores of New Mexico's prior congressional districts.

a. **CD 1:** Senate Bill 1 in no way preserves the core of CD 1, which previously included the City of Albuquerque and the counties of Bernalillo and Torrance.



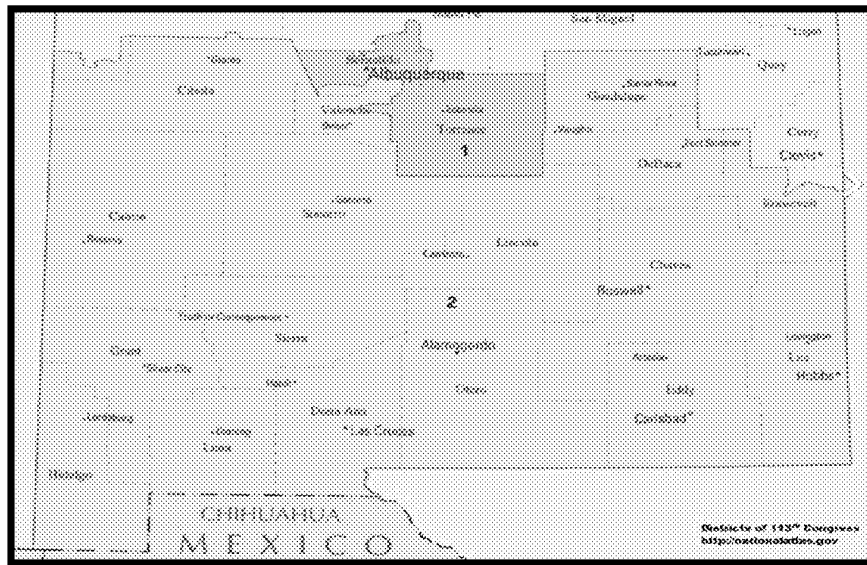
Instead, Senate Bill 1's version of the CD 1 lops off much of Bernalillo County, splits west Albuquerque from east Albuquerque, and captures parts of a new five-county area southeast of Torrance County.



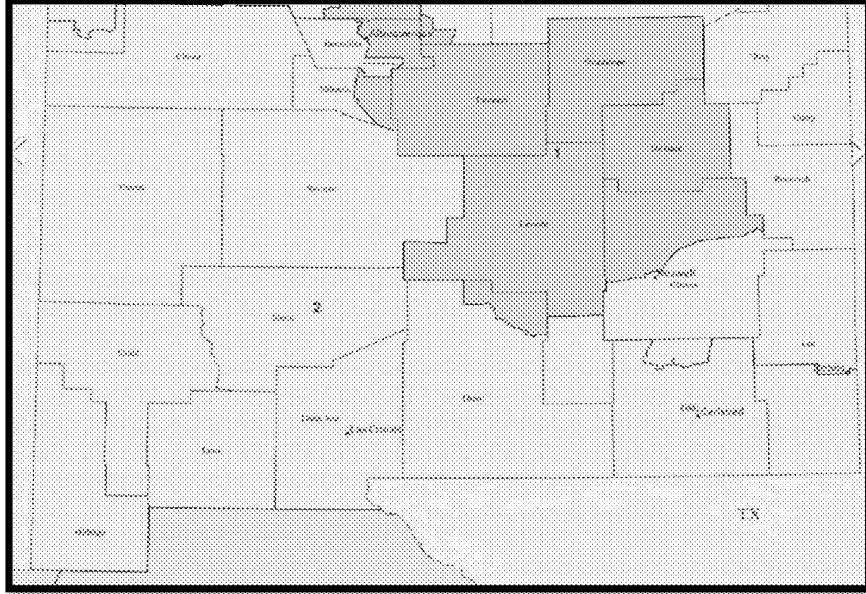


b. **CD 2:** Likewise, Senate Bill 1 completely overhauls the core of CD 2.

Previously, CD 2 kept most of southern New Mexico in-tact, including the unique communities of interest in southeastern New Mexico.



But under Senate Bill 1, core portions of what was CD 2—particularly the southeastern core—are split into three different districts.



Strikingly, Defendant Speaker Egolf promised this 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.’” Journal Editorial Board (quoting Speaker Egolf). With Senate Bill 1’s overhaul of CD 2 Defendant Speaker Egolf has made good on his word.

c. **CD 3:** The core of CD 3 is mostly preserved.

96. The result of Senate Bill 1’s machinations is a wildly gerrymandered congressional map through illegitimate means that drastically dilutes the votes of Plaintiffs.

97. Before, New Mexico had a partisan-neutral congressional map that was drawn using traditional redistricting principles that preserved communities of interests and preserved political and geographic boundaries. Now, New Mexico’s congressional map is a hopelessly partisan map that casts aside traditional redistricting principles to ensure a Democratic sweep through the dilution of votes. As the Journal Editorial Board put it,

It wasn't enough for [Speaker Ego] that Democrats have super-majorities in both houses of the state Legislature, hold every state office from governor to state treasurer and occupy both U.S. Senate and two of the state's three congressional seats. He and other Democrats wanted it all and took it at the expense of conservative and rural voters.

Then, the governor joined the gerrymandering circus and cemented these congressional boundaries for the next decade.

Journal Editorial Board.

98. Senate Bill 1 created a politically gerrymandered congressional map. Because the map violates the New Mexico Constitution, Plaintiffs seek redress in this Court.

WHEREFORE, Plaintiffs respectfully request it be awarded the following relief against Defendants:

- a. Final Judgment against Defendants;
- b. Declaration that Senate Bill 1 violates the New Mexico Constitution;
- c. Adoption of a partisan-neutral congressional map consistent with Congressional Concept E (Justice Chávez's map);
- d. Attorneys' fees and costs; and
- e. Such other and further relief as the Court deems just and proper.

Dated: January 21, 2022.

Respectfully submitted,

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By /s/ Eric R. Burris

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*Attorneys for Plaintiffs*

**VERIFICATION**

I, Dee Ann Kimbro, being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 4 day of January, 2022.

Dee Ann Kimbro



VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT  
Page 2 of 10

3:31 PM

1-21-2022


**VERIFICATION**

I, Bobby Kimbro, being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 21 day of January, 2022.

  
Bobby Kimbro

1/21/22 3:41 PM

**VERIFICATION**

I, Dinah Vargas, being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 21st day of January, 2022.

  
Dinah Vargas

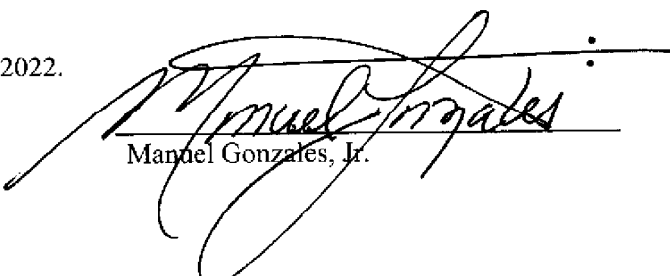
VERIFICATION

I, Manuel Gonzales, Jr., being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 21st day of January, 2022.

  
Manuel Gonzales, Jr.



**VERIFICATION**

I, Steve Pearce, being sworn upon oath, depose and state as follows:

I am the Chairman of the Republican Party of New Mexico, a Plaintiff in this action, and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

On behalf of the Republican Party of New Mexico, I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 21st day of January, 2022.

  
Steve Pearce, Chairman  
Republican Party of New Mexico

**VERIFICATION**

I, Pearl Garcia, being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 21st day of January, 2022.

A handwritten signature in cursive script that reads "Pearl Garcia". The signature is written in black ink and is positioned above a horizontal line.

---

Pearl Garcia

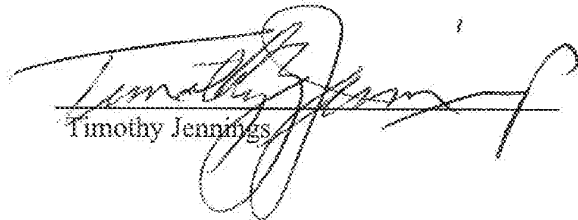
VERIFICATION

I, Timothy Jennings, being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 31 day of January, 2022.

  
Timothy Jennings

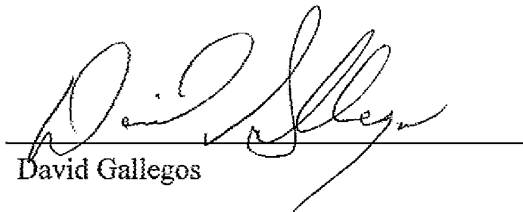
**VERIFICATION**

I, David Gallegos, being sworn upon oath, depose and state as follows:

I am a Plaintiff in this action and have reviewed the information contained in the Verified Complaint for Violation of New Mexico Constitution Article II, Section 18. The information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

Executed this 21st day of January, 2022.

  
\_\_\_\_\_  
David Gallegos