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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

**BEVERLY CLARNO, GARY
WILHELMS, JAMES L. WILCOX, and
LARRY CAMPBELL,**

Petitioners,

v.

SHEMIA FAGAN, in her official capacity as
Oregon Secretary of State,

Respondent,

and

**JEANNE ATKINS, SUSAN CHURCH,
NADIA DAHAB, JANE SQUIRES,
JENNIFER LYNCH, and DAVID
GUTTERMAN,**

Intervenor-
Respondents.

Case No. 21CV40180

**INTERVENOR-RESPONDENTS'
MEMORANDUM IN
OPPOSITION TO PETITION**

Pursuant to the Orders of the Presiding Judge dated October 14, 2021, and November 4, 2021, Intervenor-Respondents Jeanne Atkins, Susan Church, Nadia Dahab, Jane Squires, Jennifer Lynch, and David Gutterman submit the following Memorandum in Opposition to the Petition filed by Petitioners Beverly Clarno, Gary Wilhelms, James L. Wilcox, and Larry Campbell.

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1 **INTRODUCTION**

2 “Politics and political considerations are inseparable from districting and apportionment.”
3 *Gaffney v. Cummings*, 412 US 735, 753, 93 S Ct 2321, 37 L Ed 2d 298 (1973). But just because
4 the redistricting process is inherently political does not mean that a resulting map was drawn with
5 impermissible partisan intent—or that neutral criteria were not fairly and conscientiously applied
6 in its enactment.

7 Following a deliberative process that invited and incorporated comments and contributions
8 from community leaders, members of the public, and elected officials—Democratic and
9 Republican alike—the Oregon Legislative Assembly enacted a new congressional map (the
10 “Enacted Map”) that readily satisfies the requirements of the United States Constitution, the
11 Oregon Constitution, and applicable state and federal statutes. The Enacted Map is the product of
12 legislative compromise, and it both honors the neutral criteria prescribed by state law and ensures
13 that the voices of all Oregonians will be heard in the state’s congressional elections.

14 The lawfulness of the Enacted Map notwithstanding, Petitioners filed suit to challenge it,
15 contending that it constitutes an impermissible partisan gerrymander under ORS 188.010(2) and
16 the Oregon Constitution. But despite a thorough and exhaustive adjudicative process, they have
17 failed to produce a scintilla of evidence suggesting either that the Legislative Assembly acted with
18 partisan intent in drawing the map or that the new districts are gerrymandered to favor any political
19 party. Their evidentiary failings were laid bare by the Special Master, whose findings of fact
20 clearly demonstrate that the Enacted Map was adopted for neutral, legitimate reasons.

21 Petitioners clearly do not favor the Enacted Map. But it is the members of the Legislative
22 Assembly—not Petitioners—who are charged by federal law with redrawing Oregon’s
23 congressional districts. And because the Legislative Assembly complied with all applicable
24 statutes and the state and federal constitutions when they drew the Enacted Map, Petitioners’
25 claims necessarily fail. The Panel should affirm the properly enacted congressional plan.

26

1 **BACKGROUND**

2 **I. The Legislative Assembly undertook a deliberative redistricting process with**
3 **extensive public input.**

4 On April 26, 2021, the United States Census Bureau announced Oregon’s apportionment
5 and resident populations, reporting a 10.6 percent growth in the state’s population over the past
6 decade and a total resident population of 4,237,256. Special Master’s Recommended Findings of
7 Fact & Report (“FOF”) ¶¶ 8–9 (Nov 5, 2021). As a result of the population growth since the 2010
8 decennial census, Oregon was apportioned a new sixth congressional district. *Id.* ¶¶ 2–3.

9 Over the past decade, however, Oregon’s population has not grown uniformly across all
10 areas of the state; as a result, its five previous congressional districts had unequal populations by
11 the time the 2020 census results were released. *Id.* ¶ 3. These disparities were pronounced: the
12 then-First Congressional District, the most populated, contained 864,052 Oregonians, while the
13 then-Fourth Congressional District, the least populated district, contained only 823,608. *Id.* The
14 Legislative Assembly was thus tasked with establishing six congressional districts with virtually
15 equal populations: four districts with populations of 706,209 persons and two districts with
16 populations of 706,210 persons. *Id.* ¶ 4.

17 The Legislative Assembly began its redistricting efforts during the 2021 Regular Session
18 by constituting Special Committees on Redistricting in the Senate and House of Representatives.
19 Ex 3018-E. In a normal year, the deadline for enacting a new congressional plan would have been
20 July 1. FOF ¶ 5. However, the ongoing pandemic delayed the release of the 2020 census data
21 needed to undertake redistricting. *Id.* Consequently, the Legislative Assembly passed Senate Bill
22 259 (2021) (“SB 259”) to extend the deadline for enacting a new congressional plan to September
23 27, 2021. *Id.* SB 259 also modified the statutory deadlines provided in ORS 188.125 for judicial
24 review of redistricting plans. *Id.*

25 The Legislative Assembly extensively engaged the public throughout the redistricting
26 process; during the 2021 Regular Session alone, the Redistricting Committees held ten hearings to

1 solicit public testimony to shape the redistricting process, and in total, lawmakers held 22 public
2 hearings to receive public testimony and collected more than 1,400 pieces of testimony. *Id.* ¶¶ 19,
3 21. This is more than double the ten public hearings required under ORS 188.016. *Id.* ¶ 21.

4 Shortly after the United States Census Bureau released the detailed census data needed for
5 redistricting, the Legislative Assembly released map proposals for public comment and scrutiny.
6 *Id.* ¶ 20. Two proposals for congressional district boundaries were considered: “Plan A” was
7 offered by the Redistricting Committees’ Democratic members, while “Plan B” was offered by the
8 Redistricting Committees’ Republican members. Ex 3018-A at 20:14–24 (statement of Sen.
9 Taylor); Stipulation of Facts ¶ 20. Following the release of these proposals, the House
10 Redistricting Committee held 12 public hearings and received written and oral testimony from
11 hundreds of Oregonians. FOF ¶ 9. Citizens testified in particular about the proposed district
12 boundaries contained in Plan A and Plan B. Ex 3018-G at 7:16–25 (statement of Sen. Taylor).

13 On September 20—the first day of a special legislative session—Senate President Peter
14 Courtney introduced Plan A as Senate Bill 881 (2021) (“SB 881”). FOF ¶ 10. On that same day,
15 the Senate passed SB 881 by a vote of 18 ayes to 11 nays, with one member excused. *Id.* ¶ 11.

16 Although House Speaker Tina Kotek initially gave Republicans disproportionate
17 representation on the House Redistricting Committee, House Republicans refused to work
18 collaboratively with their Democratic colleagues to develop redistricting proposals. Video
19 Recording, House Special Committee on State Legislative Redistricting, SB 881, Sept 20, 2021,
20 at 11:43, 13:10, 14:25, 15:10, 16:35, 22:55.¹ Republican members of the House Redistricting
21 Committee also sought to prevent SB 881 from receiving a vote on the House floor. Video
22 Recording, House, SB 881, Sept 20, 2021, at 2:29:05.

23

24

25 ¹ Pursuant to OEC 201(b) and 201(f), the Panel may take judicial notice of the video recordings of
26 the hearings of the Legislative Assembly, which are publicly available on a government website.
See *Oregon Redistricting*, Or State Legislature, <https://www.oregonlegislature.gov/redistricting>
(last visited Nov 10, 2021) (videos linked under “Watch Past Hearings”).

1 In response, Speaker Kotek exercised her prerogative to reconstitute the House
2 Redistricting Committee, dividing it into two committees—one for legislative redistricting and
3 one for congressional redistricting—and restoring proportionate Democratic majorities. Video
4 Recording, House, SB 881, Sept 20, 2021, at 2:14:50; Ex 3017-N at 12. When the House later
5 convened on September 25 for the second reading of the Senate’s bill, only one Republican
6 representative appeared on the House floor, denying the House a quorum to vote on SB 881. FOF
7 ¶ 13; Video Recording, House, SB 881, Sept 25, 2021, at 30:45–4:34:43.

8 Two days later, on September 27, the House passed an amended version of SB 881—
9 introduced by President Courtney and known in legislative parlance as SB 881-A—by a vote of
10 33 ayes to 16 nays, with 11 members excused. FOF ¶ 14. SB 881-A contained alterations based
11 on feedback received at public hearings and during legislative deliberations. Ex 3018-A at 6:25–
12 9:1 (statement of Sen. Taylor) (summarizing in detail changes made to Plan A based on public
13 feedback); Ex 3018-C at 6:14–13:18 (statement of Rep. Salinas) (same). That same day, the Senate
14 also passed SB 881-A by a vote of 18 ayes to 6 nays, with six members excused. FOF ¶ 15.
15 Following the votes in the House and Senate, Governor Kate Brown signed SB-881-A—now
16 known post-passage as SB 881—into law. *Id.* ¶ 16.

17 **II. The Enacted Map was the product of compromise and consideration of neutral**
18 **redistricting criteria.**

19 Members of the Legislative Assembly offered neutral, nonpartisan reasons for supporting
20 the Enacted Map throughout the legislative process. Senator Kathleen Taylor described the new
21 districts in detail, noting that each was contiguous, of equal population, connected by
22 transportation links, and based on geographic boundaries. Ex 3017-A (floor letter of Sen. Taylor);
23 Ex 3018-A at 6:17–21 (statement of Sen. Taylor). Similarly, Representative Andrea Salinas
24 provided a detailed rationale for the Enacted Map. Ex 3018-E at 8:3–11:17 (statement of Rep.
25 Salinas); Ex 3018-D at 4:8–6:25 (statement of Rep. Salinas). Legislators also considered
26 communities of common interest; as Representative Salinas stated, “we took seriously the need to

1 keep communities of common interest together.” Ex 3018-D at 12:16–17 (statement of Rep.
2 Salinas).

3 Moreover, even though they did not vote for the amended bill, Republican lawmakers
4 nevertheless acknowledged that SB 881-A incorporated feedback received during the legislative
5 process. Ex 3018-A at 11:18–21 (statement of Sen. Knopp) (“[T]he public testimony for [Plan A]
6 said to change it. This map does change it. It doesn’t make all the changes that [were] suggested,
7 but it definitely is different.”); Ex 3018-A at 15:1–7 (statement of Sen. Findley) (“When we spoke
8 to the Senate Bill 881 a few days ago, I raised some concerns that I felt the biggest issue was that
9 none of the public testimony about the bill was incorporated in the bill as we voted it out of this
10 body. So thankfully, that has changed, and this 881-A reflects a lot of that testimony, which I think
11 is a great thing.”). Ultimately, as even Republican Senator Tim Knopp admitted, the legislative
12 process “did accomplish what the statute lays out . . . in both the constitution and our statutes.”
13 Ex 3018-A at 14:9–17 (statement of Sen. Knopp).

14 **III. Petitioners failed to uncover any evidence of unlawfulness during this adjudicative**
15 **process.**

16 On September 28—the day after the Enacted Map was signed into law—Chief Justice
17 Martha Walters appointed a special judicial panel (the “Panel”) to hear challenges to redistricting
18 plans pursuant to SB 259. CJO No 21-045 (Sept 28, 2021).

19 Petitioners then initiated this action by filing their petition two weeks later, on October 11.
20 *See generally* Petition (“Pet”). They alleged that the Enacted Map violates ORS 188.010(2)
21 (Count I), *id.* ¶¶ 58–76; Article I, sections 8 and 26, of the Oregon Constitution (Count II), *id.*
22 ¶¶ 77–87; Article I, section 20, of the Oregon Constitution (Count III), *id.* ¶¶ 88–94; and ORS
23 188.010(1) (Count IV), *id.* ¶¶ 95–104.²

24 _____
25 ² Petitioners later voluntarily dismissed Count IV with prejudice. Although Petitioners have
26 suggested that the dismissal of this cause of action renders irrelevant any evidence and findings
regarding the Legislative Assembly’s consideration and application of the statutory neutral criteria,
Intervenor-Respondents agree that “proposed findings related to [] ORS 188.010(1) remain

1 Soon thereafter, the Panel requested and received the appointment of a special master,
2 Judge Henry Breithaupt (the “Special Master”). In this role, the Special Master considered more
3 than 3,000 pages of evidence from the parties—including testimonial and documentary evidence
4 developed over the course of a two-day hearing—and considered the parties’ evidentiary
5 objections. *See* FOF 2.

6 In his Recommended Findings of Fact and Report, the Special Master found that the
7 Legislative Assembly considered and satisfied each of the neutral districting criteria outlined in
8 ORS 188.010(1), *id.* ¶¶ 33–216, and that the Enacted Map had been enacted with neither
9 impermissible partisan intent nor partisan effect, *id.* ¶¶ 217–302. In particular, he exhaustively
10 recounted the extensive public testimony received by the Legislative Assembly, concluding that
11 each congressional district in the Enacted Map is “organized around critical transportation links”
12 and maintains Oregon’s communities of common interest. *Id.* ¶¶ 52–214.

13 In ruling on Petitioners’ evidentiary objections, the Special Master underscored the paucity
14 of evidence submitted in support of their claims. Petitioners objected to the Special Master’s
15 findings relating to the Enacted Map’s compliance with the neutral redistricting criteria
16 enumerated in ORS 188.010(1), arguing that their voluntary dismissal of Count IV rendered these
17 findings irrelevant or, alternatively, that they should “now be allowed to seek alternative ORS
18 188.010(1) findings to those proposed by Respondent and Intervenors and adopted by the Special
19 Master.” *Id.* at 4. The Special Master overruled this objection:

20 Petitioners’ objections and attempts to further supplement the factual findings at
21 this stage are not well taken. The Special Master rejects Petitioners’ attempts to
22 question proposed findings on which they proposed no contrary factual findings,
23 and offered no citation to evidence within the evidentiary record. Petitioners
24 voluntarily dismissed their fourth claim and had notice that other parties would seek
proposed findings on the requirements of 188.010(1) even in light of that dismissal.
Petitioners could have proposed their requested additional findings in their
submissions dated October 29, 2021 and chose not to do so.

25 _____ relevant in light of Petitioners’ first claim for relief pursuant to ORS 188.010(2).” FOF 5; *see also*
26 *infra* at 16–17 (explaining that evidence of map drawers’ adherence to neutral criteria can rebut
claims of partisan gerrymandering).

1 *Id.* at 4–5. The Special Master also described Petitioners’ ill-received objection to the other parties’
2 expert evidence—and Petitioners’ failure to develop a factual record to buttress their claims:

3 [W]hat Petitioners now argue is only a view of a lawyer drafting the material
4 submitted. There is no place in the record where any witness reached the
5 conclusion, testified, or based any conclusion on the significance of “current
6 political landscape.” The same is true with respect to a more pejorative statement
7 by Petitioners’ counsel that the other parties’ experts’ conclusions do not reflect the
8 real world. This statement makes “the real world” the standard for review of the
9 enacted map. However, no fact or expert witness has told this court what “the real
10 world” is. . . .

11 The objections made by Petitioners based on the failure of other experts to consider
12 the current political landscape are not supported by expert opinion. They are
13 therefore impermissible factual suggestions as they are based only on lay opinion
14 and speculation.

15 *Id.* at 13–14.

16 EVIDENTIARY OBJECTIONS

17 Intervenor-Respondents previously asserted evidentiary objections before the Special
18 Master, both in written submissions and during the evidentiary hearing. *See, e.g.*, Intervenor-
19 Respondents’ Objections to Special Master’s Tentative Findings of Fact & Parties’ Evidentiary
20 Submissions. Intervenor-Respondents reassert and preserve all evidentiary objections already
21 stated on the record and have no additional requests for evidentiary or procedural rulings at this
22 time.

23 LEGAL STANDARD

24 SB 259, the statute governing this proceeding, dictates the standard for the Panel’s review
25 of a legislatively adopted congressional redistricting plan: “the panel must affirm the plan if the
26 plan complies with all applicable statutes and the United States and Oregon Constitutions.” SB 259
§ 1(8)(a). This directive captures the longstanding deference Oregon courts have paid to
legislatively adopted redistricting plans:

When the Legislative Assembly is able to achieve agreement in this difficult
decennial assignment, that achievement is entitled to be respected if possible. This
court does not inquire if a more nearly ideal apportionment could be designed, even

1 assuming agreement on what is ideal. Our review is confined to whether the
2 measure before us meets the constitutional criteria.

3 *McCall v. Legis. Assembly*, 291 Or 663, 685, 634 P2d 223 (1981); *accord Hartung v. Bradbury*,
4 332 Or 570, 587, 33 P3d 972 (2001) (“In reviewing a plan of reapportionment, this court is not
5 privileged to substitute its judgment about the wisdom of the plan. Rather, our task is to determine
6 whether the [map drawer] has complied with [applicable law].” (citation omitted) (citing *Ater v.*
7 *Keisling*, 312 Or 207, 213, 819 P2d 296 (1991))).

8 Similarly, the Special Master’s credibility determinations and findings of fact are entitled
9 to great weight by the Panel. SB 259 provides that, once appointed, the Special Master must
10 “receive evidence” and “prepare recommended findings of fact,” although the ultimate task of
11 determining whether “a legislatively adopted reapportionment plan . . . complies with all
12 applicable statutes and the United States and Oregon Constitutions” remains with the Panel.
13 SB 259 § 1(7)(c), (8)(a). This division of labor is a familiar one; despite framing the Special
14 Master’s findings as recommendations to the Panel, it is well established that courts performing
15 de novo review of proceedings below should nevertheless assign “great weight” to a trial judge’s
16 credibility determinations and findings of fact, including when retrying cases in equity. *Phillips v.*
17 *Johnson*, 266 Or 544, 554, 514 P2d 1337 (1973); *accord Lichty v. Merzenich*, 278 Or 209, 213,
18 563 P2d 690 (1977) (“This court gives substantial weight to the trial court’s appraisal of conflicting
19 testimony even on review [d]e novo in equity cases.”); *Multnomah County v. Howell*, 9 Or App
20 374, 379, 496 P2d 235 (1972) (holding that even when “an appeal from a decree in a suit in equity
21 . . . is tried anew upon the record [t]he trial court’s findings as to the facts are persuasive and
22 entitled to great weight”).³ The same model of deferential review also governs appeals from bar

23
24 ³ Moreover, despite the ability to retry equity cases on appeal, there is a strong presumption against
25 doing so. *See* ORAP 5.40(8)(c) (“The Court of Appeals will exercise its discretion to try the cause
26 anew on the record or to make one or more factual findings anew on the record only in exceptional
cases.”); *In re J.M.M.*, 268 Or App 699, 703, 342 P3d 1122 (2015) (“We exercise such discretion
sparingly and only in exceptional cases.”).

1 disciplinary proceedings, *see In re Conduct of Fitzhenry*, 343 Or 86, 103, 162 P3d 260 (2007), and
2 proceedings for the termination of parental rights, *see In re A.B.*, 233 Or App 360, 365, 226 P3d
3 66 (2010). This deference should be afforded to the Special Master’s credibility determinations
4 and findings of fact in this case.

5 Petitioners assert that the Enacted Map violates both ORS 188.010(2) and several
6 provisions of the Oregon Constitution. Different standards govern the merits of their statutory and
7 constitutional claims.

8 **I. Petitioners’ statutory claim requires deference to the Legislative Assembly.**

9 ORS 188.010 provides that

10 [t]he Legislative Assembly or the Secretary of State, whichever is applicable, shall
11 consider the following criteria when apportioning the state into congressional and
12 legislative districts:

12 (1) Each district, as nearly as practicable, shall:

- 13 (a) Be contiguous;
- 14 (b) Be of equal population;
- 15 (c) Utilize existing geographic or political boundaries;
- 16 (d) Not divide communities of common interest; and
- 17 (e) Be connected by transportation links.

17 (2) No district shall be drawn for the purpose of favoring any political party,
18 incumbent legislator or other person.

18 (3) No district shall be drawn for the purpose of diluting the voting strength of any
19 language or ethnic minority group.

20 The Oregon Supreme Court has indicated that legislative deference is owed so long as reasonable
21 choices flow from the mapmakers’ consideration of these directives. Applying these statutory
22 criteria to then-Secretary of State Bill Bradbury’s 2001 legislative redistricting plan, the Court
23 explained that it

24 will void a reapportionment plan only if we can say from the record that the
25 Secretary of State either did not consider one or more criteria or, having considered
26 them all, made a choice or choices that no reasonable Secretary of State would have
made. A party challenging a reapportionment plan has the burden to show that one
of those circumstances is present.

1 *Hartung*, 332 Or at 587. Furthermore, to establish that the Legislative Assembly violated the
2 statutory admonition against drawing districts for partisan purposes, a challenger must do more
3 than demonstrate “the mere fact that a particular reapportionment may result in a shift in political
4 control of some [] districts.” *Id.* at 599.

5 Petitioners suggest that, to prevail on their statutory claim under ORS 188.010(2), a
6 showing of only partisan intent—and not actual partisan effect—is all that is required. *See* Pet
7 ¶ 61. Ultimately, they cannot show either. *See infra* at 16–35. But as a legal matter, the partisan
8 effect of an enacted map is, at the very least, useful evidence of intent. *See, e.g., Davis v. Bandemer*,
9 478 US 109, 127, 106 S Ct 2797, 92 L Ed 2d 85 (1986) (plurality op) (“[W]e are confident that if
10 the law challenged here had discriminatory effects on Democrats, this record would support a
11 finding that the discrimination was intentional.”); *see also* FOF 15 (“Because of the court’s rulings
12 on legislative privilege, no expert can support a conclusion of [partisan] intent directly, i.e., by
13 interviewing those who drew the plan about their intent. Rather, as in most often the case in
14 litigation, subjective intent of one or more persons must be based on permissible inferences from
15 the objective facts available.”). Indeed, as Justice Kennedy explained in *League of United Latin*
16 *American Citizens v. Perry*,

17 [w]e should be skeptical . . . of a claim that seeks to invalidate a statute based on a
18 legislature’s unlawful motive but does so without reference to the content of the
19 legislation enacted. Even setting this skepticism aside, a successful claim
20 attempting to identify unconstitutional acts of partisan gerrymandering must . . .
show a burden, as measured by a reliable standard, on the complainants’
representational rights.

21 548 US 399, 418, 126 S Ct 2594, 165 L Ed 2d 609 (2006) (plurality op). In short, while Petitioners
22 concede that a showing of partisan effect is needed to prevail on their constitutional claims, *see*
23 Pet ¶¶ 82, 92, such a showing is also essential evidence for their intent-focused statutory claim.

24 **II. The Panel need not establish a clear standard for Petitioners’ constitutional claims
because they fail under any articulable standard.**

25 The Oregon Supreme Court has not established a legal standard for partisan
26 gerrymandering claims under the Oregon Constitution.

1 Petitioners, for their part, have proposed that “an unconstitutional partisan gerrymandered
2 redistricting map is one that the Oregon Legislative Assembly drew with the intent to favor one
3 political party over another *and* that has the effect of so favoring that political party.” *Id.* ¶¶ 82,
4 92. This general framework is consistent with cases from other jurisdictions that have grappled
5 with the showing required for successful partisan gerrymandering claims under the federal and
6 state constitutions; these courts concluded that a showing of partisan intent *and* partisan effect is
7 required. *See, e.g., Davis*, 478 US at 127 (“[P]laintiffs were required to prove both intentional
8 discrimination against an identifiable political group and an actual discriminatory effect on that
9 group.”); *Whitford v. Gill*, 218 F Supp 3d 837, 884 (WD Wis 2016) (three-judge panel) (“*Gill I*”)
10 (“[T]he [United States Constitution] prohibit[s] a redistricting scheme which (1) is intended to
11 place a severe impediment on the effectiveness of the votes of individual citizens on the basis of
12 their political affiliation, (2) has that effect, and (3) cannot be justified on other, legitimate
13 legislative grounds.”), *vacated on other grounds*, ___ US ___, 138 S Ct 1916, 201 L Ed 2d 313
14 (2018) (“*Gill II*”); *Common Cause v. Lewis*, No 18 CVS 014001, 2019 WL 4569584, at *112 (NC
15 Super Ct Sept 3, 2019) (three-judge panel) (concluding that legislative redistricting plan was
16 unconstitutional partisan gerrymander where plaintiffs (1) “demonstrat[ed] that Legislative
17 Defendants, with the predominant intent to control and predetermine the outcome of legislative
18 elections for the purpose of retaining partisan power in the General Assembly, manipulated the
19 current district boundaries” and (2) “establish[ed] that the manipulation of district boundaries by
20 Legislative Defendants resulted in extreme partisan gerrymandering, subordinating traditional
21 redistricting criteria, so that the resulting maps cracked and packed voters to achieve these partisan
22 objectives”).

23 Notably, however, “the mere fact that a particular apportionment scheme makes it more
24 difficult for a particular group in a particular district to elect the representatives of its choice does
25 not render that scheme constitutionally infirm”; as the United States Supreme Court explained at
26 a time when it was still considering the merits of partisan gerrymandering claims under the United

1 States Constitution, “[o]ur cases . . . clearly foreclose any claim that the Constitution requires
2 proportional representation or that legislatures in reapportioning must draw district lines to come
3 as near as possible to allocating seats to the contending parties in proportion to what their
4 anticipated statewide vote will be.” *Davis*, 478 US at 129–31. Moreover, “some level of
5 partisanship is permissible, or at least inevitable, in redistricting legislation,” and as a result, some
6 “political classifications are ‘generally permissible.’” *Gill I*, 218 F Supp 3d at 885 (quoting *Vieth*
7 *v. Jubelirer*, 541 US 267, 307, 124 S Ct 1769, 158 L Ed 2d 546 (2004) (Kennedy, J., concurring));
8 *see also Perrin v. Kitzhaber*, No 0107-07021, slip op at 9–10 (Multnomah Cnty Cir Ct Oct 25,
9 2001) (observing that political considerations inevitably influence redistricting process).⁴ By
10 contrast, “unconstitutional discrimination occurs [] when the electoral system is arranged in a
11 manner that will consistently degrade a voter’s or a group of voters’ influence on the political
12 process as a whole.” *Davis*, 478 US at 132; *see also Gill I*, 218 F Supp 3d at 885–86 (“[I]t is safe
13 to say that this concept of abuse of power seems at the core of the Court’s approach to partisan
14 gerrymandering.”); *Common Cause*, 2019 WL 4569584, at *110 (defining “extreme partisan
15 gerrymandering” as “redistricting plans that entrench politicians in power, that evince a
16 fundamental distrust of voters by serving the self-interest of political parties over the public good,
17 and that dilute and devalue votes of some citizens compared to others”).

18 “Whatever gray may span the area between acceptable and excessive, an intent to entrench
19 a political party in power signals an excessive injection of politics into the redistricting process
20 that impinges on the representational rights of those associated with the party out of power.” *Gill*
21 *I*, 218 F Supp 3d at 887. In other words, to prevail on their claims, Petitioners would need to prove
22 that something more than mere garden-variety political considerations motivated the Legislative
23 Assembly’s congressional redistricting. *See, e.g., League of Women Voters of Pa. v.*
24 *Commonwealth*, 645 Pa 1, 122, 178 A3d 737, 817 (2018) (concluding that “[w]hen . . . it is

25 _____

26 ⁴ For the Panel’s convenience, the *Perrin* slip opinion is attached as Exhibit 3028 to the declaration
of Jeremy A. Carp, filed concurrently.

1 these previous congressional maps were created either through judicial intervention or legislative
2 compromise.

3 In 1991, the Legislative Assembly failed to timely enact a congressional redistricting plan
4 and then failed to adopt a proposal drafted by a special joint legislative committee. During the
5 subsequent judicial intervention, Judge James Redden, writing for a three-judge panel, ultimately
6 adopted the joint committee’s map, concluding that that plan “best represents the product of
7 legislative negotiation and activity and best fits the community of interest factors listed in” state
8 statute. *Berkman v. Roberts*, No 91-775-RE, slip op at 10 (D Or Dec 2, 1991) (three-judge panel).⁵

9 In 2001, then-Governor John Kitzhaber declined to sign the plan passed by Republican
10 majorities in the Legislative Assembly, and Oregon’s congressional map was again left to judicial
11 redistricting. Democrats and Republicans both filed petitions in Multnomah County Circuit Court
12 and offered competing maps for the court’s consideration. *See Perrin*, slip op at 2. While the
13 Republican map sought to pack much of Multnomah County and the City of Portland into the
14 Third Congressional District, Democrats advocated a map where three of the state’s five
15 congressional districts contained parts of Portland. Ex 3017-T; Ex 3017-U. Moreover, consistent
16 with the congressional map from the 1990s, the map offered by Democrats extended the Third
17 Congressional District into Clackamas County. Ex 3017-Q. Republicans objected to the
18 Democratic map in part because multiple districts shared portions of Portland. *Perrin*, slip op at
19 7–9. Democrats countered with evidence demonstrating that their map was consistent with
20 transportation links and did not divide important communities of common interest. *Id.* Considering
21 the evidence presented regarding these neutral criteria—including arguments about the importance
22 of drawing districts with both rural and urban elements—Judge Jean Maurer ultimately adopted
23 the Democratic map because it “minimize[d] disruption of the existing congressional districts and
24 better complie[d] with the statutory criteria of ORS 188.010.” *Id.* at 11.

25

26 ⁵ For the Panel’s convenience, the *Berkman* slip opinion is attached as Exhibit 3027 to the
declaration of Jeremy A. Carp, filed concurrently.

1 Although Democratic and Republican members introduced very different maps into the
2 Legislative Assembly in 2011, Ex 3017-S, the map that ultimately passed—carried in the House
3 by then-Representatives Shawn Lindsay and Chris Garrett and approved by near-unanimous
4 bipartisan votes in both chambers, Ex 3017-R—maintained many of the attributes of the
5 congressional map from 2001, including the inclusion of both rural and urban areas in the districts
6 containing parts of the Portland metropolitan area. The First Congressional District, for instance,
7 extended from the City of Portland to the North Coast—as it has since at least 1973. Ex. 3017-Q.
8 The Third Congressional District included portions of Multnomah County and rural areas of
9 Clackamas County along the Clackamas River and out toward Mount Hood. *Id.* The Fifth
10 Congressional District extended from the coast into the Willamette Valley and the Portland
11 metropolitan area along the I-5 corridor. *Id.*

12 It was this bipartisan map that the Legislative Assembly was required to redraw this cycle.
13 And, as Senator Taylor stated in her remarks summarizing the Enacted Map, “even though we are
14 adding a new congressional district to Oregon’s map, we designed the new map to ensure that our
15 new districts resemble existing districts.” Ex 3018-G at 8:14–18 (statement of Sen. Taylor). The
16 Special Master reached a similar conclusion, finding that “[e]ach district utilizes and builds upon
17 the historic boundaries of Oregon’s congressional districts.” FOF ¶ 36. As it has for several
18 decades, the First Congressional District stretches from the Portland metropolitan area out to
19 Oregon’s North Coast, including portions of Multnomah County. The Third Congressional
20 District, which began reaching into rural Clackamas County and toward Mount Hood during the
21 1990s, now includes Hood River County. When Oregon last added a new congressional district in
22 the 1980s, care was taken to craft that district from areas that had experienced the most growth in
23 the preceding decades, Ex 3004-A ¶ 4 (declaration of L. AuCoin); this time, the Legislative
24 Assembly similarly took the significant growth in Yamhill County into account when crafting
25 Oregon’s new Sixth Congressional District.

26

1 Ultimately, in reviewing the Legislative Assembly’s consideration and application of the
2 neutral criteria enumerated in ORS 188.010, the Panel should note the use of prior district lines—
3 which were adopted both by judicial bodies and through a bipartisan legislative vote—and the
4 evolution of the current map through recent redistricting cycles. The conclusion to be drawn is
5 that, far from constituting a partisan aberration, the Enacted Map simply represents the logical
6 evolution of Oregon’s previous congressional districts.

7 **II. Petitioners failed to establish that the Enacted Map was drawn with impermissible**
8 **partisan intent.**

9 Even if the Enacted Map did not reflect Oregon’s previous congressional districts, there is
10 no compelling evidence in the record that the Legislative Assembly undertook its redistricting
11 obligation based on anything other than conscientious application of neutral redistricting criteria.

12 **A. There is no evidence that the Legislative Assembly failed to apply neutral**
13 **redistricting criteria.**

14 The Special Master concluded that the Enacted Map satisfies the neutral redistricting
15 criteria enumerated in ORS 188.010. He found that “[e]ach of the six districts is contiguous.” FOF
16 ¶ 33. He found that “[e]ach district, as nearly as practicable, is of equal population.” *Id.* ¶ 34. He
17 found that “each district utilizes existing geographic or political boundaries,” including “county
18 lines, city lines, state borders, highways rivers, shorelines, and the boundaries of the Warm Springs
19 Reservation.” *Id.* ¶ 35. He found that each district “maintains the communities of common interest
20 described in the legislative record” and that “[m]aintaining these and other communities of
21 common interest is a reason for constituting the district in its current form.” *Id.* ¶¶ 68, 87, 107,
22 121, 140, 161. And he found that each district “is organized around critical transportation links”
23 and that “[m]aintaining these links is a reason for constituting the district in its current form.” *Id.*
24 ¶¶ 169, 173, 182, 189, 202, 210. The Special Master’s conclusion that the Legislative Assembly
25 considered and applied these neutral redistricting criteria in drawing the new congressional
26 districts is strong—and perhaps even dispositive—evidence that it did not enact an impermissible

1 partisan gerrymander. *See, e.g., League of Women Voters*, 645 Pa at 122, 178 A3d at 817
2 (concluding that “neutral criteria provide a ‘floor’ of protection for an individual against the
3 dilution of his or her vote in the creation of [] districts”); *Rucho v. Common Cause*, ___ US ___,
4 139 S Ct 2484, 2521, 204 L Ed 2d 931 (2019) (Kagan, J., dissenting) (“Everyone agrees that state
5 officials using non-partisan criteria (*e.g.*, must counties be kept together? should districts be
6 compact?) have wide latitude in districting. The problem arises only when legislators or
7 mapmakers substantially deviate from the baseline distribution by manipulating district lines for
8 partisan gain.”).

9 Petitioners do not credibly dispute any of these findings. In fact, while Intervenor-
10 Respondents provided extensive testimony from a dozen fact witnesses on the myriad ways the
11 new districts comport with these neutral criteria, Exs 3003–16, Petitioners failed to proffer *any*
12 evidence to the contrary. Instead, Petitioners (and other opponents of the Enacted Map) have
13 primarily criticized four specific features: (1) division of the greater Portland area among four
14 districts; (2) composition of the new Sixth Congressional District; (3) placement of Hood River
15 County in the Third Congressional District; and (4) placement of Bend, Redmond, and surrounding
16 areas in the Fifth Congressional District. These reasonable choices by the Legislative Assembly
17 reflected the same application of neutral criteria that guided the Enacted Map as a whole. Indeed,
18 far from showing that the Legislative Assembly made these choices for unlawful partisan
19 advantage, the evidentiary record in this case establishes that it had legitimate, politically neutral
20 reasons for each of these mapmaking decisions.

21 **1. The Legislative Assembly drew districts in the greater Portland area to**
22 **reflect historic configurations, key transportation links, and vital**
23 **communities of common interest.**

24 An organizing principle of the Enacted Map is that the greater Portland metropolitan area
25 comprises a large and growing swath of the state’s population, with interconnected and
26 codependent interests. Ex 3003 ¶ 5 (declaration of L. Peterson); Ex 3018-C at 8:1–3 (statement of
Rep. Salinas). Those interests are best shared among multiple communities that are bound together

1 by major transportation routes radiating out from the Portland city core. Ex 3003 ¶ 5 (declaration
2 of L. Peterson).

3 The most salient recent example of the greater Portland area’s interconnected interests is
4 the ongoing affordable housing crisis. *Id.* ¶ 5; Ex 3006 ¶ 10 (declaration of T. Markgraf). In the
5 urban core, the most visible consequence of the lack of affordable housing is rampant
6 houselessness. Ex 3003 ¶ 5 (declaration of L. Peterson). In the city’s suburbs and exurbs, as
7 housing has gotten more expensive, lower-income individuals have moved increasingly farther
8 outside of the city limits. *Id.* Thus, individuals who might have once lived in Beaverton now live
9 in Hillsboro; individuals who lived in Tigard now live in Newberg and McMinnville; individuals
10 who lived in Gladstone now live in Molalla; and individuals who lived in Gresham now live in
11 Sandy or Cascade Locks. *Id.*; Ex 3015 ¶ 8 (declaration of S. Sokol Blosser). Acknowledging these
12 areas as communities of common interest reflects not only where low-income communities and
13 communities of color have historically lived, but also where they have been and continue to be
14 displaced by the economic pressures associated with Portland’s growth. Ex 3003 ¶ 5 (declaration
15 of L. Peterson).

16 Organizing four congressional districts around the transportation routes that radiate out
17 from Portland is also consistent with the state’s population growth. *Id.* ¶ 6; Ex 3018-C at 7:2–8:5
18 (statement of Rep. Salinas). Over the past several decades, Multnomah, Washington, and
19 Clackamas counties have seen some of the highest rates and volumes of population growth in the
20 state, concentrated in and around the Portland metropolitan area. Ex 3003 ¶ 6 (declaration of L.
21 Peterson); Ex 3018-B at 14:5–10 (statement of Rep. Salinas). This growth has placed
22 unprecedented strains on the region’s primary and secondary transportation arteries, exposed gaps
23 and inequities in public transit systems, and led to complex problems around the affordability and
24 availability of housing. Ex 3003 ¶ 6 (declaration of L. Peterson).

25 In Oregon’s last round of litigation over congressional redistricting, Judge Maurer rightly
26 concluded that “the importance of city and county lines diminishes in large metropolitan areas

1 where regional concerns transcend those of individual cities and counties.” *Perrin*, slip op at 8.
2 That is as true today as it was 20 years ago. Interests do not adhere to political and geographic
3 boundaries in the Portland metropolitan area—they often follow transportation routes and
4 associated communities across these lines. Ex 3003 ¶ 7 (declaration of L. Peterson). To give one
5 example, OR-99W, which connects Newberg and Sherwood, runs through the boundary between
6 Washington and Yamhill counties, but both cities, along with others along OR-99W, face the same
7 challenges related to affordable housing and houselessness catalyzed by the population growth in
8 Portland. *Id.* Similarly, the city boundary of Portland and county boundary of Multnomah County
9 are of little significance when considering communities of common interest. Milwaukie has
10 become indistinguishable from Southeast Portland neighborhoods like Sellwood; close-in
11 Beaverton and unincorporated areas of Washington County like Cedar Mills and Garden Home
12 have become indistinguishable from Southwest Portland neighborhoods like Hayhurst and
13 Bridlemile. *Id.* ¶ 13; Ex 3017-L at 2–3 (testimony of T. Powers) (“[T]he county boundary is almost
14 meaningless in our area”).

15 Moreover, drawing congressional districts to bind together urban, suburban, and rural areas
16 enhances representation of the state in the United States House of Representatives. Former
17 Congressman Les AuCoin explained that

18 [r]epresenting both rural and urban parts of the state made me a more effective
19 representative of these shared interests because of this interdependence. Although
20 loggers in the Coast Range may live in Clatsop, Tillamook, or Columbia County,
21 they sell their products in urban areas, and they ship their products from the ports
22 located in Portland. People building homes in Hillsboro use fir and alder harvested
23 from our coastal forests. As a member of Congress serving Oregonians, I could
effectively represent Oregonians in my district because I got the opportunity to sit
down with all of these people and learn about how our state’s economy really
functioned. And with this knowledge, I could set out to help solve problems and try
to create solutions.

24 Ex 3004-A ¶ 7 (declaration of L. AuCoin). Joan Mooney, who served as chief of staff to former
25 Congresswoman Darlene Hooley, agrees: “I always used to say that the Fifth District was a
26 ‘microcosm of the state.’ What I meant was that Congresswoman Hooley represented

1 interconnected urban, rural, and suburban communities. These communities have been well-served
2 by this organization.” Ex 3013 ¶ 3 (declaration of J. Mooney). The Legislative Assembly also
3 heard considerable testimony to the effect that maintaining the traditional blend of rural, suburban,
4 and urban areas within congressional districts resists the “false narrative” that communities are
5 polarized and not unified by commonality. One legislative witness explained, “While there are
6 certainly differences between our communities, we are one Oregon; and as our state continues to
7 grow it is crucial that we form collaborative partnerships between our state’s urban and rural
8 communities to ensure a prosperous and sustainable future for our children and grandchildren.”
9 Ex 3017-C at 9 (testimony of D. Dobbs). Representative Anna Williams of Hood River echoed
10 this sentiment on the House floor: “I’ve spoken frequently about my strong belief that the rural-
11 urban divide is a geographical fiction There is an assumption that pervades our politics that
12 rural and urban communities somehow have nothing in common. Yet in my experience and in the
13 testimony we heard on the record, that is simply not the case. To divide these regions would divide
14 communities of common interest.” Ex 3018-C at 34:22–35:8 (statement of Rep. Williams). As
15 former Congressman AuCoin explained, “At a time when society is hunkering into foxholes based
16 on geography, ethnicity, employment, economic rank, and the like, it is too easy for us to forget
17 that people living in these different communities have the same concerns, and that diverse
18 communities need each other to thrive.” Ex 3004-A ¶ 6 (declaration of L. AuCoin).

19 In short, the organization of the Portland metropolitan area in the Enacted Map—holding
20 together interconnected and codependent urban, rural, and suburban communities—does not
21 reflect impermissible partisan machinations, but rather the wisdom of how districts in the
22 northwest-central part of Oregon have been arranged for forty years.

23 **2. The Legislative Assembly drew the Sixth Congressional District based**
24 **on recent population growth and shared economic and agricultural**
interests.

25 The Sixth Congressional District also reflects central organizing principles of the Enacted
26 Map as a whole. The new district unites communities of common interest along major

1 transportation routes; principally, two of the most significant routes that run into and out of the
2 Portland area, OR-99W and I-5. The new district also contains one of the state’s areas of greatest
3 population growth: eastern Washington County.

4 I-5 is an important transportation link within the district, with freight and commuters
5 moving in both directions between the Portland area and Salem. Ex 3003 ¶ 14 (declaration of L.
6 Peterson); Ex 3015 ¶ 8 (declaration of S. Sokol Blosser); Ex 3016 ¶ 5 (declaration of K. Grainger);
7 Ex 3018-C at 19:6–23 (statement of Rep. Alonso León) (noting centrality of I-5); Ex 3018 at
8 101:7–15 (testimony of J. Lorenzen) (“It’s also my understanding that homes in northwest Salem
9 are often used as bedroom communities for travel to Wilsonville and Portland. So I think of the I-
10 5 corridor between Portland and Salem as deeply interconnected in terms of home life and work
11 life.”). I-5 runs the length of the Sixth Congressional District, beginning near its northernmost tip
12 and running to its southernmost tip. Ex 2001 at 1. The highway connects Washington, Clackamas,
13 and Marion counties in the district, as well as the cities of Tualatin, Wilsonville, Woodburn, and
14 Salem. *Id.*; Ex 3003 ¶ 14 (declaration of L. Peterson). OR-99W, which runs adjacent to I-5 and
15 then westward, connects Washington, Yamhill, and Polk counties in the district, as well as the
16 cities of Tigard, Sherwood, Newberg, Dundee, and McMinnville. Ex 3003 ¶ 14 (declaration of L.
17 Peterson). Where the district’s boundaries split Washington, Clackamas, and Marion counties, the
18 boundaries track OR-99W and I-5, both of which run across multiple county lines. Ex 2001 at 1.

19 OR-99W is likewise an important transportation link within the district, acting as a
20 commuting artery for Portland-based workers living in Tigard, Sherwood, Newberg, Dundee, and
21 McMinnville. Ex 3003 ¶ 14 (declaration of L. Peterson); Ex 3018-T at 23 (testimony of M. Palacio)
22 (“My office is located in Salem and I travel HWY99 and HWY217 to get to I-5. Both HWY99 and
23 217, however, are main transportation routes that run through the heart of Tigard and are easily
24 accessible to members of my community. They take us to and from areas with additional shopping
25 centers and resources like Sherwood and Beaverton”); Ex 3017-B at 16 (testimony of B.
26 Bixler) (“It is also important to note that highway 99 west is a huge transportation artery that

1 connects many towns in the community, but has a very strong tie between the 3 cities of Newberg,
2 Dundee, and McMinnville.”). OR-99W is also critical to the economies of Yamhill and Polk
3 counties. The highway carries hundreds of thousands of tourists between the Portland area and
4 wineries in Yamhill and Polk counties every year, and it brings wine and other crops grown in
5 these counties to market in Portland. Ex 3015 ¶ 3 (declaration of S. Sokol Blosser); Ex 3003 ¶ 14
6 (declaration of L. Peterson); Ex 3018-O at 22:19–20 (testimony of A. Gray) (“We are tourist
7 destinations. We have wineries and vineyards and key transit areas . . .”).

8 The cities adjacent to both I-5 and OR-99W—including Tigard, Tualatin, Sherwood,
9 Wilsonville, Newburg, Woodburn, and McMinnville—have seen significant population growth
10 over the past several decades. Ex 3018-E at 10:17–11:6 (statement of Rep. Salinas) (“[The Sixth
11 Congressional District] includes some of the fastest-growing cities in Washington County, like
12 Beaverton, Tigard, Tualatin, and Sherwood. The fastest-growing city in Clackamas County,
13 Wilsonville. Salem and Woodburn in Marion County, and Newberg and McMinnville in Yamhill
14 County.”); Ex 3018-V at 30:13–18 (presentation to Redistricting Committees by GIS analyst with
15 Legislative Policy and Research Office). Much of this population growth is spillover from the
16 Portland area and a result of the lack of affordable housing in the city’s urban core. Ex 3003 ¶ 6
17 (declaration of L. Peterson); Ex 3015 ¶ 8 (declaration of S. Sokol Blosser); Ex 3018-C at 9:12–18
18 (statement of Rep. Salinas) (“Both the inner east side and downtown have . . . skyrocketing
19 housing prices . . .”); Ex 3018-T at 22:3–7 (testimony of M. Lynn) (“Tigard and Washington
20 County, in general, are becoming more diverse, and I see more and more affordable housing units
21 getting built and more families joining our community.”). As a result, many new residents of the
22 cities along I-5 and OR-99W are lower income, from traditionally marginalized communities, or
23 both, and many residents commute to jobs that are based in the Portland area and Marion County.
24 Ex 3003 ¶ 5 (declaration of L. Peterson); Ex 3015 ¶ 8 (declaration of S. Sokol Blosser); Ex 3017-
25 F at 93 (presentation to Redistricting Committees by Population Research Center at Portland State
26 University); Ex 3018-I at 136:12–14 (testimony of S. Hernandez) (“[A] BIPOC community of

1 interest [has] existed for about half a century and stretches from Woodburn down to east Salem
2 along I-5”).

3 Lawmakers heard testimony about the growth in these cities and the need to keep them
4 together as communities with common economic, social, and transportation interests, particularly
5 the cities of Salem and Woodburn. Ex 3017-E at 15 (testimony of J. Meissinger) (“In my opinion,
6 Sherwood needs to be together with McMinnville, Newberg, and Wilsonville. . . . One interest is
7 that these communities continue to see massive population increases. These towns are also seeing
8 more businesses set up shop.”); Ex 3017-B at 48–49 (testimony of J. Lechuga) (“[The district]
9 keeps agricultural communities together, from Willamette wine growers to the Latinx farmworkers
10 in Salem. . . . I also really appreciate that this new district would keep Salem and Woodburn
11 together, which are very important communities of interest.”); Ex 3018-T at 16:7–12 (testimony
12 of M. Palacios) (“I would be within Oregon’s new sixth Congressional District along with other
13 very residential communities such as Tualatin and Salem, who have also seen a lot of growth in
14 the past decade and whose residents have become increasingly diverse. It makes a great deal of
15 sense to me.”). This growth along OR-99W and I-5, and the communities anchored alongside these
16 transportation links, were a central consideration for lawmakers when adopting the boundaries of
17 the Sixth Congressional District. Ex 3018-E at 10:17–11:1 (statement of Rep. Salinas) (“We drew
18 CD6 in a way that honors some of the fastest growing areas in the last decade We heard
19 countless testimonies about the need to keep Woodburn and Salem together in a single district,
20 and CD6 accomplishes this throughout the Willamette Valley and with the agricultural region. It
21 also keeps the Grande Ronde Reservation whole.”). By following I-5 and OR-99W out of the
22 Portland area, the district’s boundaries keep intact the communities of common interest which
23 have developed along those routes, and they allow the counties through which these highways
24 run—Marion, Yamhill, Clackamas, and Washington counties—to collectively advocate for
25 solutions to the transportation, housing, and economic pressures created by this population growth.
26 Ex 3003 ¶ 6 (declaration of L. Peterson); Ex 3016 ¶ 9 (declaration of K. Grainger).

1 Moreover, Yamhill, Polk, and Marion counties are an established “tri-county area” that
2 share natural connections through existing civic and government organizations, such as the Mid-
3 Willamette Valley Area Commission on Transportation, the Mid-Willamette Valley Council of
4 Governments, the Willamette Education Service District, and Chemeketa Community College.
5 Ex 3016 ¶¶ 3–7 (declaration of K. Grainger). Yamhill, Polk, and western Marion counties also
6 share common interests in tourism, agriculture, and existing civic and political ties. Ex 3015 ¶ 3
7 (declaration of S. Sokol Blosser); Ex 3016 ¶¶ 3–7 (declaration of K. Grainger). The wine industry
8 and wine-related tourism are central to the economies of Yamhill, Polk, and western Marion
9 counties. Ex 3015 ¶¶ 3–4 (declaration of S. Sokol Blosser). The Willamette Valley is home to
10 more than 700 wineries—most of them in these three counties—and wine-related tourism
11 contributes more than \$400 million to the Willamette Valley economy each year. *Id.* ¶ 3. Portland
12 is a critical market for the wine produced in these counties, with both largescale and direct-to-
13 consumer sales in the city. *Id.* ¶ 7. And in recognition of the geographic and environmental links
14 between Yamhill, Polk, and western Marion counties, the Willamette Valley and its northern
15 subregions have been designated as American Viticulture Areas—grape-growing regions
16 recognized by the federal government for their unique combination of climate, soils, and other
17 geographical characteristics. *Id.* ¶ 4 & Ex 1. In short, the wine industry ties together Yamhill, Polk,
18 and western Marion counties as a community of common interest. *Id.*; Ex 3018-K at 40:5–12
19 (testimony of J. Rodriguez) (“[The Sixth Congressional District] comprises of all Oregon’s wine
20 industry, which gives winemaking and the field workers who harvest those grapes an opportunity
21 to be represented by someone who can balance the changing needs ever these growing
22 communities with the need to protect land that is used to create world-class wine that Oregon is
23 famous for.”).

24 The same geographic and ecological features that make Yamhill, Polk, and western Marion
25 counties such renowned producers of wine also support more than 100 other economically
26 important crops. Ex 3015 ¶ 5 (declaration of S. Sokol Blosser). Three of the most important non-

1 vineyard crops in these counties are berries, hazelnuts, and nursery products. *Id.* These crops
2 account for a significant share of the agricultural production in Yamhill, Polk, and western Marion
3 counties, and they tie together all three in yet another community of common interest. *Id.*

4 The importance of maintaining these unique communities of agricultural interest in the
5 region was repeatedly cited by lawmakers when considering the boundaries of the Sixth
6 Congressional District. Ex 3018-B at 13:16–21 (statement of Rep. Salinas) (“We also heard a lot
7 of testimony about the need to keep Woodburn and Salem together in a single district, which CD6
8 does. The district also respects the shared cultural and commercial communities of interest
9 throughout the Willamette Valley and agricultural regional.”); Ex 3018-C at 20:2–4 (statement of
10 Rep. Alonso León) (“I’m proud that this map acknowledges the links between Salem, Woodburn,
11 Polk County, Yamhill County and the rural parts of Washington County.”); Ex 3018-B at 14:5–10
12 (statement of Rep. Salinas) (noting that “the newly drawn sixth district . . . keep[s] rural
13 agricultural communities in Clackamas, Yamhill, Marion, and Linn Counties together.”).

14 The Sixth Congressional District thus reflects the Legislative Assembly’s consideration—
15 and ultimately application—of neutral redistricting criteria.

16 **3. The Legislative Assembly’s placement of Hood River County in the**
17 **Third Congressional District reflects historic trends and the deepening**
18 **ties between the Columbia River Gorge and Portland.**

19 With each successive redistricting cycle since 1991, the Third Congressional District has
20 extended farther east and south into Clackamas County, including more rural areas on and around
21 Mount Hood. Ex 3017-Q. The extension of the Enacted Map’s Third Congressional District
22 eastward to include Hood River County continues this trend. FOF ¶ 36.

23 Hood River and Portland have strong connections; what was once a small rural timber town
24 has grown into an economically diverse, bustling, urban community. *Id.* ¶ 103. Hood River is now
25 a tourism and recreational destination for Portland area residents. Ex 3010 ¶ 6 (declaration of K.
26 McBride); Ex 3008 ¶ 7 (declaration of P. Blackburn). And while tourism connects Portland to
27 Mount Hood and Hood River, it also creates challenges—especially the scarcity of affordable

1 housing. Ex 3018-C at 34:7–21 (statement of Rep. Williams). Noting this complex dynamic,
2 Representative Anna Williams of Hood River commented that it “speaks to the need for a
3 representative [in Congress] who understands the interconnected nature of our state’s rural and
4 urban communities.” *Id.* at 34:18–21.

5 Relatedly, Hood River also functions as the capital of the Columbia River Gorge—a
6 continuous area that starts just east of Portland and extends to Hood River County, connected by
7 transportation services like buses and bike routes. Ex 3008 ¶ 6 (declaration of P. Blackburn);
8 Ex 3010 ¶ 4 (declaration of K. McBride). The pandemic has caused some people who would
9 vacation at second homes in the Hood River area to relocate to Hood River fulltime. There are also
10 workers who make daily commutes between the two cities, in both directions. Ex 3008 ¶ 7
11 (declaration of P. Blackburn); Ex 3010 ¶ 4 (declaration of K. McBride). Hood River County’s
12 farming and agricultural businesses, which employ the county’s residents, also supply food to the
13 Portland area. Ex 3018-C at 33:17–23 (statement of Rep. Williams).

14 Lawmakers learned from written testimony that this area of the state has undergone
15 significant changes since congressional districts were last drawn in 2011. Ex 3017-E at 17
16 (testimony of L. Gilham-Luginbill) (“[Plan] B, for the most part, maintained Congressional
17 District 3’s status quo despite the fact that this part of our state has grown immensely over the last
18 decade.”); Ex 3017-E at 22 (testimony of M. Morales) (“I found that [Plan] A’s CD 3 connects
19 places I visit. I often drive to the Gorge, and Mt. Hood, on I-84. These places feel like part of the
20 great SE Portland available locations for travel, and exploration.”). This testimony emphasized the
21 cultural differences between the Columbia Gorge region and the Second Congressional District.
22 FOF ¶¶ 72–73, 78, 80 (“Hood River has become a bedroom community for many Portlanders, and
23 the character of that town has become the antithesis to our own.” (quoting Ex 2102)); Ex 3017-B
24 at 114 (testimony of B. Flake) (“One of the big reasons why I support [Plan] A is because it takes
25 parts of our state’s enormous 2nd Congressional District that have transformed immensely over
26 the last decade and unifies them into a 3rd Congressional District. How can a single elected official

1 possibly represent communities from 18 different [] counties?"); Ex 3017-B at 118 (testimony of
2 B. Danko) ("It makes much more sense to have the Hood River and The Dalles areas be part of a
3 Congressional District that stretches down the gorge toward Portland and south to Bend rather than
4 to have us continue to be part of the sprawling Eastern and Southern Oregon district. Bend and the
5 communities in the Gorge including Hood River have much more in common [with each other]
6 than the district they currently reside in. Both areas having growing populations that have a tourism
7 focus.").

8 Lawmakers also received public testimony about the recreation, tourism, and
9 environmental ties between Portland, the Columbia River Gorge, Mount Hood, and Bend.
10 Ex 3017-C at 7 (testimony of C. Saldivar) ("This includes the Gorge, the Mountain, and Bend,
11 which have begun to face many of the concerns that come with a rapidly growing, increasingly
12 interconnected and suburban area. Though some may argue that it doesn't make sense to connect
13 Portland to these communities, the reality is that the communities in HD52 are a short drive from
14 Portland and that they are all connected by major roads such as I-84 and HWY-26. These
15 communities are also connected to Bend via roads such as HWY-35, and HWY-197."). Mount
16 Hood in particular is a major source of employment in the area and serves as an economic driver
17 for communities in its vicinity. The flow of people to the mountain from Portland benefits the
18 Hood River economy. Ex 3008 ¶ 7 (declaration of P. Blackburn).

19 In short, what Petitioners view as a partisan maneuver was actually a thoughtful decision
20 based on public input and consideration of neutral redistricting criteria.

21 **4. The Legislative Assembly's inclusion of Bend, Redmond, and**
22 **surrounding areas in the Fifth Congressional District was motivated by**
23 **these communities' economic and demographic shifts.**

24 A final feature of the Enacted Map emphasized by Petitioners is the placement of Bend,
25 Redmond, and surrounding communities of Deschutes County in the Fifth Congressional District,
26 which crosses the Cascades and reaches northward into Clackamas County and part of Southeast
Portland. During the Legislative Assembly's debate, several Republican legislators asked what

1 Bend has in common with the Portland area. Ex 3018-C at 38:1–2 (statement of Rep. Cate) (“Why
2 should Bend be in the same district as any part of Multnomah County?”); Ex 3018-C at 42:6–7
3 (statement of Rep. Scharf) (“How in the heck does Bend have anything to do with Lake Oswego
4 and West Linn?”). Answers to these queries were readily provided by their fellow legislators and
5 other Oregonians.

6 Representative Jason Kropf of Bend spoke on the House floor of his home community’s
7 connections, affinities, and commonalities with the Willamette Valley and greater Portland area.
8 He highlighted Bend’s explosive “growth and change as new industries, attitudes and communities
9 of interest have emerged that are distinct from our neighbors in eastern Oregon.” Ex 3018-C at
10 39:5–8 (statement of Rep. Kropf). He noted that Bend’s urban character and diverse economy is
11 “more similar to that of Oregon City, Milwaukie, Redmond and the other cities of proposed
12 Congressional District 5” than the timber- and ranching-based economies of other communities in
13 Eastern Oregon. *Id.* at 39:9–22. He offered that Bend and Willamette Valley communities in
14 Marion, Linn, and Clackamas counties “share many policy concerns, chief among them fire
15 mitigation and preparedness.” *Id.* at 40:4–6. Finally, Representative Kropf noted the critical
16 transportation links that unite Deschutes County with the Willamette Valley, including OR-22 and
17 US-20. *Id.* at 39:23-40:2.

18 The record bears out the points made by Representative Kropf. Bend has had the highest
19 rate of population growth in the state over the past decade. Ex 3003 ¶ 12 (declaration of L.
20 Peterson); Ex 3014 ¶ 6 (declaration of A. Broadman); Ex 3018-V at 31:1–4 (presentation to
21 Redistricting Committees by GIS analyst with Legislative Policy and Research Office). Bend is
22 now Oregon’s sixth largest city, and it is more populous than the urban centers of Beaverton,
23 Medford, Springfield, and Corvallis. Ex 3003 ¶ 12 (declaration of L. Peterson); Ex 3018-V at 31:1–
24 4 (presentation to Redistricting Committees by GIS analyst with Legislative Policy and Research
25 Office).

26

1 Bend is also home to one of the state’s fastest growing economies. Ex 3014 ¶¶ 6–7
2 (declaration of A. Broadman); Ex 3012 ¶ 3 (declaration of J. Lynch). Once a timber town, Bend
3 has worked to diversify its economy, which now includes growing technology, brewing, and
4 healthcare sectors, in addition to its tourism industry. Ex 3014 ¶ 7 (declaration of A. Broadman).
5 The city now has one of the nation’s fastest growing startup markets. *Id.* ¶ 7; Ex 3012 ¶ 3
6 (declaration of J. Lynch). As a result of this population and economic growth, Bend is an
7 increasingly urban city, with robust economic and cultural ties to the Willamette Valley and
8 Portland. Ex 3003 ¶ 12 (declaration of L. Peterson); Ex 3012 ¶ 5 (declaration of J. Lynch); Ex 3014
9 ¶ 5 (declaration of A. Broadman); Ex 3017-B at 21 (testimony of B. Humphreys) (“Bend [is] now
10 a very urban city.”); Ex 3018-N at 63:5–9 (testimony of D. Paulson) (“[Bend’s] economy is
11 supported by the people of Portland and the tourism that comes from there. Our transportation
12 links to Portland through 97 and over Mount Hood and to Santiam make us part of the Portland
13 commercial area.”). A growing number of Portland-based workers are also relocating or
14 purchasing second homes in Bend, with many telecommuting to work in Portland; in fact, more
15 residents of Deschutes County are employed in each of Multnomah, Washington, Lane, Marion,
16 and Clackamas counties than any county east of the Cascades. Ex 3003 ¶ 12 (declaration of L.
17 Peterson); Ex 3012 ¶ 2 (declaration of J. Lynch); Ex 3017-G at 9 (presentation to Redistricting
18 Committees by Population Research Center at Portland State University); Ex 3018-I at 81:22–82:2
19 (testimony of E. Fernandez) (“Most Bendites moved here in the last 20 years and moved here from
20 places like Portland or other urban areas not from Eastern Oregon or more rural areas and that
21 includes myself. I was a longtime Portlander for 20 years before moving to Bend.”); Ex 3018-S at
22 445:12–16 (testimony of C. DeJarnac) (“Since the last census, we have had a huge number of
23 remote workers moving to Bend.”).

24 The record also supports the view that Bend and surrounding areas are now culturally and
25 economically distinct from other parts of Central and Eastern Oregon. Ex 3012 ¶ 5 (declaration of
26 J. Lynch); Ex 3014 ¶ 4 (declaration of A. Broadman); Ex 3018-N at 51:6–17 (testimony of K.

1 Condit-Chad) (“Bend needs lines drawn that recognize we’ve grown from being a small town to a
2 full metro area, as shown by the census data.”); Ex 3018-I at 16:11–14 (testimony of A. Sabbadini)
3 (“Bend is culturally and economically distinct from the towns to the east and the people in Eastern
4 Oregon do not want my city to be part of their district.”); Ex 3017-B at 21 (testimony of B.
5 Humphreys) (“The citizens of Bend have little or no shared interests with many of the other
6 communities in the current CD2.”). The differences between Bend and Redmond on the one hand,
7 and rural Eastern Oregon communities on the other, is widely acknowledged on both sides of the
8 divide. Prineville resident Rodney Tomberson testified, “It’s said that they want to include
9 Prineville or parts of it in with parts of Bend and Redmond. And, as I see it, it violates the rules of
10 redistricting because the people of Crook County and Prineville are just not the same as the people
11 of Bend. There really two different subcultures within the state.” FOF ¶ 71 (quoting Ex. 3018-S);
12 *see also id.* ¶ 73 (“Please do not group The Dalles with Hood River, Portland and Bend; we do not
13 have anything in common with those counties.” (quoting Ex 2096)); *id.* ¶ 86 (“Bend is not that
14 similar to Eastern Oregon. Bend Residents share much more in common with places like Hood
15 River and Portland than with places like Ontario and Burns.” (quoting Ex 2086)). Several
16 legislative witnesses even noted that the “Greater Idaho” movement, which proposes to draw
17 Eastern and Southern Oregon into Idaho, leaves Bend behind in Oregon—again, recognizing that
18 Bend has more in common with the Willamette Valley and Portland than with its rural neighbors.
19 FOF ¶ 126; *see also* Ex 3018-J at 46:21–47:1 (testimony of C. Peterson) (“We have very little in
20 common with eastern Oregonians who want to become part of the State of Idaho.”); Ex 3014 ¶ 5
21 & Ex 1 (declaration of A Broadman) (map of “Greater Idaho” proposal).

22 Finally, as the Special Master recognized, US-20 and OR-22 are critical transportation
23 links between the Willamette Valley and the cities of Bend, Sisters, and Redmond. FOF ¶¶ 191–
24 95. Both highways are open and maintained throughout the year, with only occasional closures
25 during winter storms, and they see high volumes of commercial, recreational, and tourist traffic
26

1 year-round. Ex 3012 ¶ 6 (declaration of J. Lynch); Ex 3014 ¶ 10 (declaration of A. Broadman);
2 Ex 3017-W at 115–16 (ODOT 2018 Transportation Volume Tables).

3 * * *

4 Ultimately, these four mapmaking decisions demonstrate that the Legislative Assembly
5 considered—and drew a congressional map that reflected—neutral redistricting criteria. As the
6 Special Master noted, Petitioners did not submit a *shred* of countervailing evidence that these and
7 other line-drawing decisions were motivated by partisan concerns as opposed to traditional
8 redistricting principles. FOF 4–5.

9 **B. There is no evidence that the Legislative Assembly sought to gerrymander
10 Oregon’s congressional districts.**

11 In contrast to the voluminous evidence that the Legislative Assembly applied neutral
12 redistricting criteria, Petitioners failed to provide *any* evidence that legislators were motivated by
13 unlawful partisan considerations.

14 The closest Petitioners came to adducing evidence of partisan intent was the testimony of
15 Melissa Unger, the executive director of Service Employees International Union (“SEIU”) Local
16 503. FOF ¶ 217. Ms. Unger testified that she

17 had ongoing conversations with two members of Democratic Leadership,
18 Representative Salinas and Speaker Kotek, along with a chief of staff for Speaker
19 Kotek, Lindsey O’Brien, during the weekend before the vote on SB 881-A that
20 were focused on whether the map could pass through the representative legislative
21 process, with a particular focus on drawing a map that Republicans would show up
22 to vote on (as opposed to denying a quorum), which was SEIU’s primary interest.

23 *Id.* ¶ 218. She also noted that “[m]embers of Democratic Leadership were also aware of and
24 discussing the ratings of the various proposed maps by FiveThirtyEight.com and other publicly
25 available models and discussing the overall meaning of those proposed maps and their grading
26 under the modeling tools.” *Id.* ¶ 220.

These, however, are precisely the sort of garden-variety political questions that arise among
legislators during every redistricting cycle. That members of the Legislative Assembly read media
reports and were generally cognizant of the political effects of their proposed maps—*after* those

1 maps were drawn—does not mean that “neutral criteria [were] subordinated, in whole or in part,
2 to extraneous considerations such as gerrymandering for unfair partisan political advantage.”
3 *League of Women Voters*, 645 Pa at 122, 178 A3d at 817. Petitioners’ only relevant evidence thus
4 falls far short of establishing the sort of abuse of power and aggressive entrenchment that
5 constitutes an unlawful partisan gerrymander.⁶

6 **III. Petitioners failed to establish that the Enacted Map is a partisan gerrymander.**

7 Testimony provided by three expert political scientists—Dr. Paul Gronke, Dr. Devin
8 Caughey, and Dr. Jonathan Katz—confirmed that the Enacted Map does not unlawfully favor the
9 Democratic Party or anyone else. The Special Master found that each of these experts employed
10 reliable methods and provided credible testimony. *See* FOF ¶¶ 228–29 (Dr. Katz); *id.* ¶ 258
11 (Dr. Gronke); *id.* ¶ 273 (Dr. Caughey). And each of these experts determined that the Enacted Map
12 does not indicate significant bias in favor of any political party. *See id.* ¶¶ 255, 269, 287.⁷

13 The three experts agreed that identifying a simple disparity between a party’s vote share
14 and seat share is not sufficient to demonstrate a gerrymander because, in a system of single-
15 member, winner-take-all districts, the majority party typically receives a disproportionate

16 ⁶ The only other evidence on which Petitioners rely to prove the Legislative Assembly’s partisan
17 intent is Speaker Kotek’s decision to reconstitute the House committee charged with congressional
18 redistricting. But the Presiding Judge has already ruled that that decision is not relevant to
19 Petitioners’ claims and disallowed discovery on this basis. *See* Order on Non-Parties’ Motion to
20 Quash at 3–4 (Oct 21, 2021). Even if the evidence were admissible, it would not be probative of
21 partisan intent. It is not disputed that Speaker Kotek was well within her prerogative to reconstitute
the committee. Ex 3017-N at 12 (special session rules of 81st Legislative Assembly indicating that
“members of all committees . . . shall be appointed by the Speaker”). And there is no evidence
whatsoever that her motivation in doing so was to provide electoral advantage to Democrats.

22 ⁷ The Special Master appropriately found that the conclusions offered by Petitioners’ expert,
23 Dr. Thomas Brunell, lacked credibility and are therefore unreliable. FOF ¶ 289. Indeed, many of
24 Dr. Brunell’s conclusions lacked “even a minimum of academic or methodological rigor.” *Id.*
25 ¶ 290. Dr. Brunell was unprepared to testify about several components of his submissions, *id.*
26 ¶¶ 290–92; his report and testimony were weakened by apparent inconsistencies, *id.* ¶¶ 293–97;
and, among other shortcomings, he failed to cite peer-reviewed sources, declined to share
limitations of his conclusions, and filed a supplemental report that undermined his original
conclusions, *id.* ¶¶ 298–301. Accordingly, Dr. Brunell’s testimony cannot support Petitioners’
claims.

1 “winner’s bonus” of seats relative to its share of statewide votes. *Id.* ¶¶ 232, 250, 260. Specifically,
2 a 1 percent increase in votes for a party typically leads to a 2–3 percent increase in seats, and this
3 effect is even larger in states like Oregon with fewer than seven congressional seats. *Id.* ¶¶ 233–
4 34.

5 Instead, the most commonly accepted methodology to evaluate a redistricting map’s
6 partisan fairness is to analyze whether the map exhibits “partisan symmetry”—that is, whether
7 different political parties enjoy equal opportunities to benefit from any given distribution of votes.
8 *Id.* ¶¶ 231, 274. A principled measure of a plan’s “partisan bias” is to examine how many seats
9 each party might be expected to win in an election where the party wins 50 percent of the statewide
10 vote. *Id.* ¶ 278. Dr. Caughey modeled the results of a 50%-50% election by applying commonly
11 accepted modeling methods to the 2020 presidential results in Oregon, and reported that an even
12 split of Oregon’s statewide vote would result in Democrats winning only two seats under the
13 Enacted Map—and Republicans winning four seats. *Id.* This two-seat difference indicates a
14 partisan bias of 17 percent in favor of *Republicans*. *Id.* A more sophisticated statistical analysis
15 incorporating election data from the past decade shows that the Enacted Map has an approximately
16 0.6 percent pro-Republican bias in elections where the statewide vote is evenly split between
17 Democrats and Republicans, and that the Republican Party has a 68 percent chance of winning
18 half or more of Oregon’s congressional seats in such a scenario. *Id.* ¶ 280. These findings are
19 inconsistent with a Democratic gerrymander.

20 Similarly, Dr. Katz employed a reliable and generally accepted regression methodology to
21 calculate the seats-votes curve (the number of seats a party can expect to win under a specified
22 share of the statewide vote) under the Enacted Map. *Id.* ¶ 244. He estimated bias ranges from 0.03
23 seats in favor of Democrats when one party wins 55–60 percent of the two-party vote to 0.12 seats
24 in favor of Republicans when each party wins 49–51 percent of the two-party vote. *Id.* ¶¶ 244,
25 249. These estimates further demonstrate that the Enacted Map does not provide a statistically
26 significant advantage to either political party. *Id.* ¶ 249.

1 Neither do alternative measures of partisan advantage—including the “mean-median
2 difference,” the “declination,” and the “efficiency gap”—evidence a strong bias in favor of either
3 party. *Id.* ¶ 281. The “mean-median difference,” which measures the difference between the
4 Democratic vote share in the median district and the average Democratic vote share across
5 districts, indicates a small pro-Republican bias in the Enacted Map. *Id.* ¶¶ 268, 282. In turn, the
6 “efficiency gap,” which measures the difference in “wasted” votes between the two parties, and
7 the “declination,” which identifies the difference between the lopsidedness of Democratic and
8 Republican districts, reveal only modest advantages for the Democratic Party with little certainty
9 about the Enacted Map’s partisan direction over the ensuing decade. *Id.* ¶¶ 266, 283–84.

10 In a state with only six congressional districts, a small indication of bias from any given
11 measure does not supply credible evidence of a partisan gerrymander because each measure is
12 subject to substantial statistical uncertainty and focuses on a different aspect or consequence of
13 gerrymandering. *Id.* ¶¶ 239, 281. Here, two of the measures—including the most direct and
14 theoretically grounded estimate of partisan bias—indicate that the Enacted Map favors
15 Republicans, and two measures suggest the map favors Democrats. *Id.* ¶ 286. Given these
16 inconsistencies between methodologies—and the fact that each methodology assigns substantial
17 probabilities to both pro-Democratic *and* pro-Republican biases—there is “little compelling
18 evidence that the [Enacted Map] substantially favors the Democratic Party.” *Id.* ¶ 287 (quoting Ex
19 3001 ¶ 15 (declaration of Dr. Caughey)).

20 Closer scrutiny of the metrics purporting to show a Democratic advantage further confirm
21 this conclusion. The efficiency gap is highly sensitive to the statewide vote, and any Democratic
22 advantage is expected to shrink the closer the major parties come to even competition in Oregon.
23 *Id.* ¶ 285. A prospective analysis suggests that more competitive statewide elections is a plausible
24 assumption in Oregon, given that (1) both parties have won a majority of the statewide vote in
25 recent elections, and (2) the usual fluctuation of the major parties’ fortunes renders it unlikely that
26 Democrats will maintain their recent successes for another decade. *Id.* ¶ 279.

1 A historical analysis also demonstrates that the efficiency gap and declination estimates
2 under the Enacted Map do not support allegations of a Democratic gerrymander. Dr. Gronke
3 compared these Enacted Map estimates to similar measures for all Oregon congressional plans
4 adopted since 1970. *Id.* ¶ 263. While the Enacted Map was produced by political branches
5 controlled by Democrats, each of the maps from the preceding five decades was adopted in
6 situations that made partisan gamesmanship all but impossible: three were adopted by the judiciary
7 (1971, 1991, 2001); one was adopted by a Democratic legislature and Republican governor (1981);
8 and one was adopted by a politically divided legislature and Democratic governor (2011). Ex 3002
9 ¶¶ 19–20, 23 (declaration of Dr. Gronke). Dr. Gronke’s historical comparison confirmed that the
10 Enacted Map’s estimated efficiency gap “falls well within the range of plans that have been used
11 in the state for the past fifty years.” FOF ¶ 265 (quoting Ex 3002 ¶ 25 (declaration of Dr. Gronke)).
12 Similarly, the estimated declination “is a significant improvement over plans that have been in
13 place since 1990, and the estimated value falls well within the range of plans that have been in
14 place for a half-century.” *Id.* ¶ 267 (quoting Ex 3002 ¶ 27 (declaration of Dr. Gronke)). This
15 analysis indicates that any perceived partisan advantage under the Enacted Map is more likely
16 reflective of Oregon’s political geography and demographic changes, not partisan intent. *Id.* ¶ 264.

17 In sum, each of the three credible experts scrutinized the Enacted Map for evidence of
18 significant and durable partisan advantage that could unfairly entrench Democrats in power or
19 otherwise serve as indicia of partisan intent, and all three were persuaded that the weight of the
20 evidence is to the contrary. This expert testimony, and findings that the Special Master drew from
21 that testimony, conclusively refute Petitioners’ allegations that the Enacted Map unlawfully favors
22 the Democratic Party.⁸

23

24 ⁸ As the Special Master recognized, “[b]ecause of the court’s rulings on legislative privilege, no
25 expert can support a conclusion of [partisan] intent directly, i.e., by interviewing those who drew
26 the plan about their intent. Rather, as in most often the case in litigation, subjective intent of one
or more persons must be based on permissible inferences from the objective facts available.” FOF
15.

1 **IV. Petitioners’ proposed map is unsupported in the record.**

2 Finally, the Panel should reject out of hand Petitioners’ so-called “neutral map,” Exs 1014–
3 16, which is without support in the record and was the subject of no legislative process.

4 At the outset, Petitioners’ map is of uncertain purpose and provenance. It is unclear whether
5 the map was intended to prove liability or provide a remedy the Panel could adopt. This uncertainty
6 was compounded by the fact that Petitioners’ expert witness—to whose report the map was
7 attached—“knew little about the map” and “could not explain basic features of the map, such as
8 the relevance of white lines that were drawn across it” and “whether the map complied with
9 statutory redistricting criteria.” FOF ¶ 292.

10 Even if the purpose of the map were clear, it cannot withstand even the most cursory
11 scrutiny. Under SB 259, any alternative map adopted by the Panel must “comply with all
12 applicable statutes and the United States and Oregon Constitutions.” SB 259 § (1)(8)(a). This
13 means that Petitioners’ map is subject to the same standards as those applied by the Panel in its
14 review of the Enacted Map. The record must therefore contain evidence that the congressional
15 districts in Petitioners’ map reflect, “as nearly as practicable,” the neutral districting criteria
16 described in ORS 188.010, including that each district use “existing geographic or political
17 boundaries,” maintain “communities of common interest,” and contain “transportation links.”
18 ORS 188.010(1). The record must also be devoid of evidence that any district in Petitioners’ map
19 was “drawn for the purpose of favoring any political party” or “for the purpose of diluting the
20 voting strength of any language or ethnic minority group.” ORS 188.010(2)–(3). And Petitioners’
21 map must satisfy any constitutional prohibition on partisan gerrymandering.

22 Petitioners’ map cannot satisfy these requirements. As the Special Master found, there is
23 “almost no evidence” in the record showing that the “proposed plan complies with the ORS
24 188.010(1) criteria.” FOF ¶ 307. Although each district in Petitioners’ map “appears” to be
25 contiguous, of nearly equal population, and “utilize existing geographic and political boundaries,”
26 Petitioners failed to submit “any evidence” that their districts are “connected by transportation

1 links” or “that their plan does not unnecessarily divide communities of common interest.” *Id.*
2 ¶ 308. In fact, even a cursory review of Petitioners’ map reveals that it bisects several major cities,
3 including Salem, Eugene, Medford, and Gresham, without any countervailing rationale offered for
4 doing so. Ex 1014. Many of the communities identified as sharing common interests are also
5 haphazardly divided by Petitioners’ map. *Compare id., with* FOF ¶¶ 57–161, Ex 3003 (declaration
6 of L. Peterson), Ex 3004 (declaration of L. AuCoin), Ex 3005 (declaration of K. Leahy), Ex 3006
7 (declaration of T. Markgraf), Ex 3008 (declaration of P. Blackburn), Ex 3009 (declaration of M.
8 Carter), Ex 3010 (declaration of K. McBride), Ex 3011 (declaration of A. Roblan), Ex 3012
9 (declaration of J. Lynch), Ex 3013 (declaration of J. Mooney), Ex 3014 (declaration of A.
10 Broadman), Ex 3015 (declaration of S. Sokol Blosser), *and* Ex 3016 (declaration of K. Grainger).

11 For example, the record reflects that Portland’s Black community, with its historic center
12 in North and Northeast Portland, has been pushed toward the city’s “outer eastside” and areas of
13 eastern Multnomah County like Gresham. *See* Ex 3009 ¶ 4 (declaration of M. Carter); Ex 3003
14 ¶ 11 (declaration of L. Peterson). As the Special Master recognized, these geographically disparate
15 segments of Portland’s Black community form a single community of common interest. *See* FOF
16 ¶¶ 90–96, 107. Petitioners’ map divides this community. Similarly, the record reflects that the
17 cities along OR-99W, like Tigard, Sherwood, Newburg, Dundee, and McMinnville, face many of
18 the same opportunities and challenges associated with the exponential growth in their populations
19 over the past several decades. Ex 3015 ¶¶ 3–8 (declaration of S. Sokol Blosser); Ex 3003 ¶¶ 5–7,
20 14 (declaration of L. Peterson). These include the benefits of booming agricultural economies and
21 the challenges of overburdened transportation infrastructure. Ex 3015 ¶¶ 3–8 (declaration of S.
22 Sokol Blosser); Ex 3003 ¶¶ 6–7, 14 (declaration of L. Peterson). As the Special Master recognized,
23 these cities form a community of common interest. FOF ¶¶ 147, 152, 161. But Petitioners’ map
24 divides this community as well. And although the Special Master also found that Woodburn and
25 Salem form a community of common interest, FOF ¶¶ 143, 145–46, 148–52, 161, Petitioners’ map
26 likewise divides this community.

1 More fundamentally, and unlike the Enacted Map, Petitioners’ map was never the subject
2 of any legislative process. Although a legislatively enacted map is by no means subject to absolute
3 deference by the judicial branch, *see, e.g., Rucho*, 139 S Ct at 2495–96, both state and federal
4 courts in Oregon that have heard redistricting challenges have expressed a strong preference for
5 approving maps that have been the subject of at least *some* legislative process. *See Berkman*, slip
6 op at 8–9 (“[O]ne overriding principle that we should consider in selecting a plan is that of
7 deference to the legislative process.”); *McCall*, 291 Or at 685 (“When the Legislative Assembly is
8 able to achieve agreement in this difficult decennial assignment, that achievement is entitled to be
9 respected if possible.”).

10 Because Petitioners’ map was never the subject of any legislative process or public
11 consideration, and because Petitioners have wholly failed to justify it under the Oregon
12 Constitution and state law, it should not inform the Panel’s review of the Enacted Map. And if
13 Petitioners intended their map to be adopted by the Panel as a remedial alternative, it should be
14 disregarded for a further reason as well—as these proceedings have readily demonstrated, there is
15 nothing to remedy.

16 CONCLUSION

17 There is no such thing as a perfect congressional map. Redistricting is an inherently
18 complex, fact-intensive undertaking, requiring careful balancing of competing—and at times
19 conflicting—considerations. Rather than mandate an unachievable ideal, what the Oregon
20 Constitution and state statute instead require is that the Legislative Assembly draw districts on the
21 basis of traditional, neutral criteria, not improper partisan impulses.

22 That is precisely what happened here. The expansive evidentiary record in this case
23 indisputably demonstrates that, as the Special Master found, the Enacted Map was the product of
24 careful consideration and application of the neutral criteria enumerated in ORS 188.010. The
25 resulting congressional districts maintain communities of common interest and reflect the state’s
26

1 geography and demographics, and will ensure that all Oregonians will be fairly and effectively
2 represented in Congress for the next decade.

3 After a fair and thorough adjudicative process, Petitioners have failed to produce even a
4 shred of compelling evidence suggesting that the Legislative Assembly was motivated by unlawful
5 partisan intent or that the new congressional plan is tainted by impermissible partisan bias. They
6 have failed, in short, to call the integrity and neutrality of the Enacted Map into question. Under
7 any applicable standard, their claims necessarily fail. The Panel should therefore affirm the
8 Enacted Map.

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1 DATED: November 10, 2021

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **INTERVENOR-RESPONDENTS'**

3 **MEMORANDUM IN OPPOSITION TO PETITION** on the following:

4 Addressees

5 to be sent by the following indicated method or methods, on the date set forth below:

6

by **sending via the court's electronic filing system**

7

by **email**

8

by **mail**

9

by **hand delivery**

10
11 DATED: November 10, 2021

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