

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

LARRY MARKER,

Putative Intervenor-Plaintiff,

v.

No. D-506-CV-2022-00041

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.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Senate Bill 1 enacted a discriminatory political gerrymander in violation of the New Mexico Constitution. Because two maps proposed by New Mexico Citizen Redistricting Committee may be safely relied upon by this Court to temporarily ameliorate the constitutional injury while this case is pending, the court should grant a preliminary injunction setting aside Senate Bill 1 and adopting map Concept A or Concept E, as adopted by the Citizen Redistricting Committee for the 2022 election year. Doing so will minimize disruption to the electoral process and will allow time for the resolution of this litigation on the merits.

**FACTS MOST RELEVANT TO THE
REQUEST FOR PRELIMINARY INJUNCTION**

1. Plaintiffs in this case include the Republican Party of New Mexico and a bipartisan group of New Mexico voters injured by the New Mexico State Legislature’s (“State Legislature”) unlawful gerrymander of the state’s congressional map. *See* Verified Compl. for Violation of N.M. Constitution Article II, Section 18 (“Verified Compl.”) ¶¶ 1-7.

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

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

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

5. On November 2, 2021, the Committee submitted its report to the State Legislature proposing three congressional map concepts: Concepts A, E, and H. *Id.* ¶ 71. Concept A was

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

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

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

8. Researchers agree that Senate Bill 1 will result in a severe partisan swing. The Princeton Gerrymandering Project predicts that, under Senate Bill 1, Democrats will control all three congressional seats and rates none of the districts as “competitive.” *New Mexico Redistricting Report Card*, Princeton Gerrymandering Project (Dec. 13, 2021), <https://bit.ly/3u4EVKm>. This compares to states like Arkansas and Utah, which the Princeton Gerrymandering Project predicts Republicans will control all four congressional seats in each state, none of which are classified as competitive. *See Arkansas Redistricting Report Card*, Princeton Gerrymandering Project (Nov. 6, 2021), <https://bit.ly/3AF2QRX>; *Utah Redistricting*

Report Card, Princeton Gerrymandering Project (Nov. 10, 2021), <https://bit.ly/3rgjm89>. The Brennan Center, discussing “extreme partisan gerrymandering” in 2021, describes New Mexico as a state where Democrats “are pushing back, drawing maps favorable to their party.” Michael C. Li, et al., *Redistricting: A Mid-Cycle Assessment*, at 5, Brennan Center for Justice (Jan. 19, 2022), <https://bit.ly/3g5gGnm>. And the Cook Political Report has designated New Mexico’s congressional map as “one of the most aggressive Democratic gerrymanders yet . . . [.] dilut[ing] GOP votes in the southeastern portion of the state in a brazen bid to oust . . . the only remaining Republican office holder in the state.” David Wasserman, *New Map and 2022 Ratings: New Mexico*, The Cook Political Report (Dec. 21, 2021), <https://bit.ly/3o4AvQ4>.

9. The Cook Political Report’s observation about the political gerrymander of the southeastern corner of the state is supported by voter registration data. As of December 30, 2021, CD 2 (which prior to Senate Bill 1 covered a 17-county area) had 413,795 registered voters, 155,608 (or 38%) of whom were registered Republicans. N.M. Voter Registration Statistics by Congressional District, N.M. Sec’y of State (Dec. 30, 2021), <https://bit.ly/3Kjzf4Z>. The four-county area, including Chaves, Eddy, Lea, and Otero Counties, accounted for approximately 45% of the registered Republicans in CD 2 and represented 34% of the total registered voters in the entire district. *Compare id.*, with N.M. Voter Registration Statistics by County Precinct, N.M. Sec’y of State (Dec. 30, 2021), <https://bit.ly/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.

10. Senate Bill 1 cracked this Republican bloc, fracturing cities, counties, and a universally recognized community of interest to do so. While southeastern New Mexico has always been in one congressional district, under Senate Bill 1, it is split between **all three districts**. *See* Verified Compl. ¶ 91. The Cities of Hobbs and Roswell are split between two districts; Chaves, Eddy, Lea, and Otero Counties are split as well, with Chaves split three ways; and the greater-Albuquerque is treated as a hub, with its more-Democratic population disbursed among the three constituent parts of the wheel. *Id.* ¶¶ 92-94.

11. The result is a politically gerrymandered congressional map. Under the previous congressional map, the community of interest in southeastern New Mexico had a real opportunity to elect a Republican member of Congress—and had done so in all but one term since 2012. *Id.* ¶ 91. Under Senate Bill 1, however, the registered Republicans in southeastern New Mexico are split between all three congressional districts thereby cracking their votes. *Id.*

12. Plaintiffs have been, and continue to be, injured by Senate Bill 1’s political gerrymander, including the dilution of Plaintiffs’ votes by severely cracking a community of interest in southeastern New Mexico based on the State Legislature’s political and regional preference. Senate Bill 1 accomplishes this cracking by shifting voters (including Plaintiffs Vargas and Garcia) from the greater-Albuquerque area to outlying districts.

13. Plaintiffs filed their Verified Complaint to redress these constitutional injuries. Plaintiffs now move for preliminary relief to enjoin the Secretary of State from relying on the congressional map adopted in Senate Bill 1.

STANDARD OF REVIEW

A preliminary injunction operates to preserve the status quo pending final resolution of the rights of the parties. *Insure N.M., LLC v. McGonigle*, 2000-NMCA-018, ¶ 9, 128 N.M. 611, 995 P.2d 1053. Here, the status quo existed before the State Legislature unconstitutionally redrew New Mexico’s three congressional districts in Senate Bill 1.

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

¹ Plaintiffs address the requirements out of order for analytical clarity.

ARGUMENT

I. Plaintiffs Have Suffered, and Will Continue to Suffer, Irreparable Injury to Rights Protected by the New Mexico Constitution Unless the Court Enjoins the Congressional Map Adopted in Senate Bill 1.

Senate Bill 1 violates Plaintiffs' rights under New Mexico's Equal Protection Clause by unconstitutionally gerrymandering the state's congressional map and diluting their votes. The rights at issue in this litigation, grounded in the Equal Protection Clause, are "[o]ne of the most precious personal rights" and are the "essence . . . of democracy." *See Maestas v. Hall*, 2012-NMSC-006, ¶ 1, 274 P.3d 66, 70 (citing U.S. Const. amend. XIV, § 1).

If shown, Plaintiffs' claimed constitutional violation establishes irreparable harm to Plaintiffs. *See, e.g., LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 12, 115 N.M. 314, 850 P.2d 1017 (collecting cases); *Elrod v. Burns*, 427 U.S. 347, 374 (1976) (the loss of constitutional rights "unquestionably constitutes irreparable injury"); 11A Fed. Prac. & Proc. Civ. (Wright & Miller) § 2948.1 (3d ed.) ("When an alleged deprivation of a constitutional right is involved . . . most courts hold that no further showing of irreparable injury is necessary." (footnotes omitted)). Indeed, when plaintiffs allege only constitutional harm, a determination of irreparable harm necessarily turns on plaintiffs' likelihood of success on the merits, *see, e.g., Dean v. Leake*, 550 F. Supp. 2d 594, 602 (E.D.N.C. 2008), which is addressed next.

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

Politically discriminatory gerrymanders are recognized injuries under the U.S. Constitution, particularly as violations of the Fourteenth Amendment's Equal Protection Clause. In 2019, the U.S. Supreme Court held that because of the difficulty of fashioning a one-size-fits-all federal constitutional remedy for these claims, the injury would no longer be justiciable in federal courts. Nevertheless, the Supreme Court offered that such claims would more profitably be brought in state courts where state-specific standards could aid their adjudication. Because New Mexico's constitution includes an equal protection clause co-extensive with the Fourteenth Amendment, and because New Mexico courts traditionally interpret state constitutional

protections consistent with or more broadly than their federal analogues, political gerrymanders like the one in this case present an injury under the New Mexico Constitution.

The constitutional injury presented by discriminatory political gerrymandering is justiciable in New Mexico state courts because New Mexico—through both its judiciary and State Legislature—has adopted principles that govern redistricting in this state. In adopting Senate Bill 1, the State Legislature unequivocally failed to adhere to these principles and thereby diluted the votes of Republicans in southeastern New Mexico. It is substantially likely that Plaintiffs will prevail on this cognizable claim under New Mexico’s Equal Protection Clause.

A. Political Gerrymanders Violate the Fourteenth Amendment’s Equal Protection Clause.

While the practice of gerrymandering may be as old as the practice of drawing electoral districts, *see Veith v. Jubelirer*, 541 U.S. 267, 271 (2004) (discussing history of gerrymandering in the American Colonies), it was only in 1986 that the U.S. Supreme Court recognized that political gerrymandering presents a constitutional injury. In *Davis v. Bandemer*, the Court held that a gerrymander based on political discrimination violates the Equal Protection Clause. 478 U.S. 109, 116-117 (1986). The Court in *Bandemer*, however, split on the standard by which to determine the existence of such a gerrymander.² Justice O’Connor, perhaps prophetically, argued that even if political gerrymandering inflicts a constitutional injury, the federal Constitution simply “does not supply judicially manageable standards for resolving purely political gerrymandering claims” in every state. *Id.* at 147 (O’Connor, J., concurring in judgment).

Just over 33 years after *Bandemer*, a 5-4 majority of the Supreme Court agreed with Justice O’Connor. In *Rucho v. Common Cause*, the Supreme Court held that claims to vindicate the constitutional injury caused by a political gerrymander are nonjusticiable in federal court because the Court was unable to discern a federal constitutional standard that would reliably

² Four justices would have required proof of “intentional discrimination against an identifiable political group and an actual discriminatory effect on that group.” *Id.* at 127. Two justices would have focused on “whether the boundaries of the voting districts have been distorted deliberately and arbitrarily to achieve illegitimate ends.” *Id.* at 165 (Powell, J., concurring in part and dissenting in part).

allow the adjudication of these cases in all 50 states. 139 S. Ct. 2484, 2500 (2019) (“There are no legal standards discernible in the Constitution for making such judgments.”). The Supreme Court came to this conclusion after attempting to determine the proper standard in a long line of gerrymandering cases. *See id.* at 2597 (collecting cases).

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

B. Political Gerrymanders Necessarily Violate the New Mexico Constitution’s Equal Protection Clause.

The New Mexico Constitution includes an equal protection clause that mirrors (and is in some ways broader than) the U.S. Constitution’s Equal Protection Clause. New Mexico’s Equal Protection Clause guarantees that “[n]o person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.” N.M. Const. art. II, § 18. When interpreting the state constitution, New Mexico courts follow the “interstitial approach.” *State v. Gomez*, 1997-NMSC-006, ¶¶ 20-22, 33, 122 N.M. 777, 932 P.2d 1. Under the interstitial 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. Further, New Mexico courts also “provid[e] broader protection” under the state constitution when federal analysis is unpersuasive, either because this analysis is deemed “flawed,” “because of distinctive state characteristics,” or “because of undeveloped federal analogs.” *See id.* ¶ 20 (collecting cases); *see also State v. Wright*, 2022-NMSC-002, ¶ 21, 2022 WL 92114.

Here, given New Mexico’s Equal Protection Clause is co-extensive with its federal analogue, and federal courts recognize that political gerrymandering presents an injury under the

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

The only question therefore is whether New Mexico has adopted or otherwise developed the sort of statutory or constitutional standards for determining when illegitimate reasons for line drawing results in an unconstitutional political gerrymander.

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

New Mexico has developed standards that guide judicial review of a redistricting plan. Indeed, these standards were developed in response to the history of partisan redistricting fights in New Mexico and have been deemed constitutionally legitimate by the New Mexico Supreme Court. And—just months before its passage of Senate Bill 1—the State Legislature strengthened these standards, for the first time enshrining them in statute. The state judiciary is competent to interpret and apply these standards in this case.

Maestas marked the first systematic articulation of the “legal principles that should govern redistricting litigation in New Mexico.” 2012-NMSC-006, ¶ 4. These principles were laid out by the supreme court in concern that “[d]istricts should be drawn to promote fair and effective representation for all, not to undercut electoral competition and protect incumbents.” *Id.* ¶ 31. The court noted that, in New Mexico, “[i]t is preferable to allow the voters to choose their representatives through the election process, as opposed to having their representative chosen for them through the art of drawing redistricting maps.” *Id.* Of course, the court in *Maestas* was not starting from a blank slate: since at least 1991 (the last time the State Legislature adopted a map

without litigation) a set of seven guidelines have been used to safeguard the electorate’s right to fair and constitutional district maps. *See id.* ¶ 34. Among these guidelines is the requirement that:

Districts shall be drawn consistent with traditional districting principles. Districts shall be composed of contiguous precincts, and shall be reasonably compact. To the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries. In addition, and to the extent feasible, the legislature may seek to preserve the core of existing districts, and may consider the residence of incumbents.

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

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

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

In this state, traditional districting principles provide a framework against which state courts can, when confronted with a claim that a redistricting plan effects a constitutional injury, measure whether the plan is presumptively based upon legitimate considerations or not. And this framework provides a basis for New Mexico state courts to accept the challenge left open to

them by the U.S. Supreme Court in *Rucho*: to use state statutes and constitutions to prevent “complaints about districting [from echoing] into a void.” 139 S. Ct. at 2507.

D. Senate Bill 1 Objectively Violates New Mexico’s Standards for Redistricting and Is Therefore Not Presumptively Based on Legitimate Considerations.

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

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

Senate Bill 1 disregards the cores of CD 1 and CD 2. CD 1 previously included Albuquerque and Bernalillo and Torrance Counties. Senate Bill 1’s version of CD 1, however, cuts off much of Bernalillo County (for placement into CD 2) and splits west Albuquerque from east Albuquerque (to allow west Albuquerque to be drawn into CD 2). Verified Compl. ¶ 95. To make up for this needless loss of these population centers, Senate Bill 1 draws into CD 1 parts of a new five-county area southeast of Torrance County. *Id.* Senate Bill 1 does even greater violence to the core of CD 2. Previously—and consistent with decades of congressional maps in the state—CD 2 kept most of southern New Mexico in-tact, including southeastern New Mexico. But under Senate Bill 1, the southeastern population centers in Chaves, Eddy, Lea, and Otero Counties are divided into all three districts. The northwestern portion of Otero County joins the northeastern portion of Chaves County in CD 1 (helping to make up for the population lost because of the break-up of the core of that district), the northwestern portion of Chaves County joins the northern portions of Eddy and Lea Counties in CD 3, and only the southern portions of Chaves, Eddy, Lea, and Otero Counties remain in CD 2.

2. Senate Bill 1 Disregards Political Boundaries.

Senate Bill 1’s manifests an utter disregard for political boundaries. It splits nine counties—nearly one third of New Mexico’s counties—between congressional districts. Indeed, the map actually includes a 10-county split because it splits Chaves County between **all three congressional districts**. It also splits cities and towns, including the major municipalities of Albuquerque, Roswell, and Hobbs. These divisions are concentrated in southeastern New Mexico: five of the 10-county-split affects Chaves, Eddy, Lea, and Otero Counties. The divisions are also unnecessary, as no map proposed by the Committee included a 10-county split, and no map proposed by the Committee split any county into all three congressional districts.

3. *Senate Bill 1 Does Not Preserve the Community of Interest in Southeastern New Mexico Even Though It Was Feasible To Do So.*

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

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

In *Maestas*, the state supreme court correctly found that “an equal protection challenge will lie” if the drafters of legislative or congressional maps “use[] illegitimate reasons for population disparities and create[] the deviations *solely* to benefit certain regions at the expense

of others.” *See id.* ¶ 25 (emphasis in original) (quoting *Legislative Redistricting Cases*, 629 A.2d 646, 657 (Md. 1993)). Here, while there are no population disparities—such disparities are not permitted in congressional map drawing—the activity forming the core of the court’s concern, namely, the use of illegitimate reasons to draw maps to benefit one group of people over another, is obvious. Indeed, it was only by disregarding legitimate reasons—traditional redistricting principles—that the State Legislature was able to achieve an illegitimate and unconstitutional dilution of Republican votes in southeastern New Mexico.

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

Put directly, the effect of this dilution is to take the only congressional district in New Mexico that has historically been competitive for Republicans and to make it a third uncompetitive Democratic seat. The public statements of Defendant Speaker of the House Brian Egolf make plain that this dilution of Republican votes was the primary goal in adopting Senate Bill 1. After Republican Yvette Herrell defeated then-incumbent Democrat Xochitl Torres Small in CD 2 in 2020, 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.’” *Gov.’s Legacy Just Got More Partisan With Redistricting Maps*, Albuquerque Journal (Dec. 28, 2021), <https://bit.ly/3rnxiR>. Such naked and discriminatory partisanship is the sort of “illegitimate reason” the New Mexico

Supreme Court has rightly said supports an equal-protection challenge.

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

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

Maintaining the status quo as it existed prior to the adoption of Senate Bill 1 will impose minimal burden on Defendants. Plaintiffs filed this lawsuit within weeks of the adoption of Senate Bill 1 and nearly 11 months before the 2022 mid-term election to minimize any potential disturbance to the electoral process. Likewise, Plaintiffs are prepared to litigate the case on an expedited basis to further minimize inconvenience.

Arguably, the only factor that may weigh against granting a preliminary injunction is the *possible* disruptions to deadlines for declaring candidacy for U.S. Representative. Those declaring their candidacy for U.S. Representative were required to file the appropriate paperwork with the Secretary of State earlier this week (the first Tuesday of February). *See* NMSA 1978, § 1-8-26(A). Candidates also submitted nominating petitions at this time. § 1-8-30(B). To minimize disruption to this process, Plaintiffs are not asking the Court to enjoin this process. Rather, the Court should allow the process to continue as set forth in statute and rule. If the Court, however, finds that Plaintiffs are entitled to an injunction of Senate Bill 1 because it is an unconstitutional political gerrymander, it should set new deadlines for declaring candidacy based on the new districts. Such an approach would minimize disruption to the electoral process, while ensuring candidates for U.S. Representative have normal access to the primary ballot.³

In sum, the threatened and real constitutional injury to Plaintiffs significantly outweighs

³ If the Court decides to set new deadlines, it should, if possible, do so before the state political parties' pre-primary conventions on February 26, 2022 (Republicans) and March 5, 2022 (Democrats), respectively, to minimize the disruption.

the potential burden imposed on Defendants by a preliminary injunction.

IV. A Preliminary Injunction Will Further Public Interest, Not Harm It.

The public has a “profound and long-term interest in upholding an individual’s constitutional rights,” including the right to vote, which is one of the most sacred rights. *See Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012). Plaintiffs’ constitutional claim centers on equal treatment in exercising the fundamental right to vote, particularly New Mexicans’ right to not have their votes diluted through unconstitutional means. Thus, if Plaintiffs are right on their constitutional claim, the public harm is obvious and inflicted on every voter in the unconstitutional districts. Without question “[t]he public has an interest in having congressional representatives elected in accordance with the Constitution.” *Common Cause v. Rucho*, 284 F. Supp. 3d 780, 787 (M.D.N.C. 2018); *cf. Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (“The associational and franchise-related rights . . . [are] without question in the public interest.”). It would therefore “be the unusual case in which a court would be justified in not taking appropriate action to insure that . . . elections are conducted under [an invalid map].” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter a Preliminary Injunction enjoining the Secretary of State from relying on the map in Senate Bill 1 for the 2022 congressional elections and directing the Secretary of State to use the Committee’s Concepts A or E maps until the State Legislature adopts a new (constitutional) congressional map.

Dated: February 3, 2022.

Respectfully submitted,

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Attorneys for Plaintiffs

I HEREBY CERTIFY that on February 3, 2022, a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** was filed electronically through Odyssey File & Serve system, which caused all counsel of record to be served by electronic means. The Motion will also be personally served on Defendants Michelle Lujan Grisham, Howie Morales, and Maggie Toulouse Oliver, and emailed to Putative Intervenor-Plaintiff Larry Marker.

/s/ Eric R. Burris

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