

**STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT**

REPUBLICAN PARTY OF NEW MEXICO, et al.,

Plaintiffs,

v.

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

**MAGGIE TOLOUSE OLIVER,
in her official capacity as
New Mexico Secretary of State,**

...,

**MIMI STEWART,
in her official capacity as President Pro
Tempore of the New Mexico Senate, and
JAVIER MARTINEZ,
in his official capacity as Speaker of the
New Mexico House of Representatives,**

Defendants.

**LEGISLATIVE DEFENDANTS' PROPOSED AND ANNOTATED
FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

COME NOW Mimi Stewart, in her official capacity as President Pro Tempore of the New Mexico Senate, and Javier Martinez, in his official capacity as Speaker of the New Mexico House of Representatives (the "Legislative Defendants"), and submit these Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

A. History of Congressional Redistricting in New Mexico

1. Under our system of government, the U.S. Constitution tasks the legislative bodies in each of the fifty (50) states every ten years with redistricting the congressional districts apportioned to them as a consequence of, and after the completion of, the decennial census conducted by the United States Census Bureau. U.S. Const. art. I, § 2, cl. 3; U.S. Const. Amend.

XIV, §2; 13 U.S.C. § 141.

2. Beginning in 1851, New Mexico was represented in the United States House of Representatives by one elected representative. *See* Organic Act of 1850, § 1862. After the 1940 census, New Mexico gained a second congressional seat and elected two representatives at-large until 1968. *See* 2 U.S.C. §§ 2a-2c (1929, amended 1941, 1967); NMSA 1941, § 56-719; *see also* Exhibit 1 Dept. of Commerce, 1940 Apportionment Results and Notes (Nov. 29, 1940), <https://www.census.gov/history/pdf/ApportionmentInformation-1940Census.pdf>.

3. Following *Reynolds v. Sims*, 377 U.S. 533 (1964), New Mexico in 1968 began electing congressional representatives in districts, creating CD-1 and CD-2. *See* 1969 Laws, Ch. 240, § 365, codified at NMSA 1953, § 3-15-16 (1969). At that time, CD-1 consisted of Albuquerque, Santa Fe, and North-central and Northeast New Mexico, with the remainder of the state in CD-2.

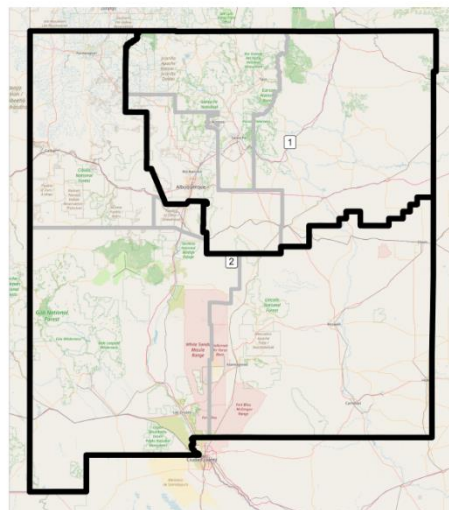


Figure 1 - 1972 New Mexico Congressional Districts

See Report of Sean P. Trende dated August 11, 2023 at 27 (Figure 9).

4. With the 1980 Census results, New Mexico gained a third congressional seat. *See* Exhibit 2, U.S. Census Bureau, *Historical Apportionment Data (1910-2020)*,

<https://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html>. In 1982, congressional redistricting legislation established Congressional District 3, which covered the Northwest and most of the Northeast quadrants of the state, excluding Union and Quay counties. *See* Laws 1982, 2nd Sp. Sess., Ch. 4, § 1, *codified at* NMSA 1978, § 1-15-16 (1982). CD-2 stretched diagonally from the Southwest to Northeast corners of the state, excepting Bernalillo, Torrance, Guadalupe, and DeBaca counties, which remained in CD-1.

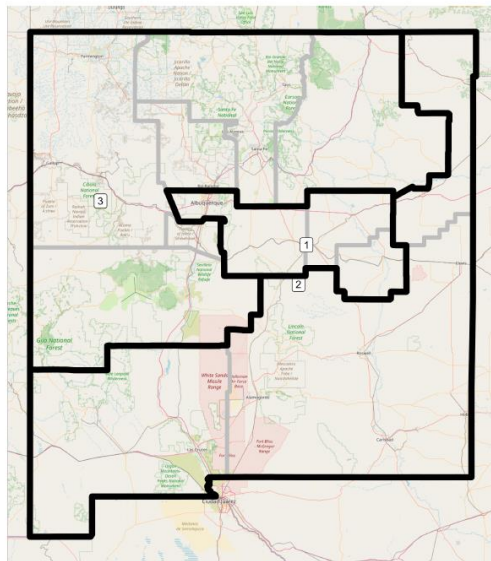


Figure 2 - 1982 New Mexico Congressional Districts

See Trende Report at 28 (Figure 10).

5. Since 1980, redistricting in New Mexico has required the intervention of federal or state courts in all instances other than the 1990 census, either as a consequence of Voting Rights Act issues or an impasse between the legislative and executive branches of government. *See* Exhibit 3, New Mexico Legislative Council Service *A Guide to State and Congressional Redistricting in New Mexico* at 7-13 (April 2011), <https://www.nmlegis.gov/Redistricting/>.

6. Following redistricting after the 1980 census, the United States District Court in *Sanchez v King*, 550 F. Supp. 13 (D.N.M. 1982) *aff'd*, 459 U.S. 801 (1982), first ordered redistricting of a number of state legislative seats, but that case did not involve congressional

districting.

7. The redrawn 1982 state legislative map was again challenged in federal court as violating Section 2 of the federal Voting Rights Act, and the court redrew 16 districts under a 1984 remedial plan. *See Sanchez v. King*, No. Civ. 82-0067-M (D.N.M. Aug. 8, 1984), *id. sub nom Sanchez v. Anaya*, No. Civ. 82-00067-M (filed Dec. 17, 1984). The 1984 order also appointed federal examiners in the affected counties and required pre-clearance for the next ten years pursuant to Section 5 of the Voting Rights Act. *Id.*

8. Following the 1990 census, and pursuant to the 1984 decision requiring preclearance, the United States Department of Justice objected to certain state senate districts in southeastern New Mexico as fragmenting minority voting strength, and the Legislature subsequently redrew certain boundaries during a second special session. *See Ex. 3, Guide* at 11.

9. After the 2000 census, Governor Gary Johnson vetoed the Legislature's redistricting plans. This resulted in malapportioned districts. Ensuing lawsuits, presided over by the Honorable Frank Allen, were styled *Jepsen v. Vigil-Giron*, Cause No. D-101-CV-2001-02177 (1st Jud. Dist. Ct. 2002).¹ Judge Allen's court-drawn congressional plan shifted just eight precincts to equalize population. *See Findings of Fact and Conclusions* in Cause No. D-101-CV-2001-02177 (N.M. 1st Jud. Dis. Jan 2, 2002) at ¶¶ 21 & 22 ("...the Court adopts the Vigil 'Least Change' VTD Level plan which maintains our present system until the Legislature choose to act" and "...shift[s] the minimum population necessary"); *id.* at ¶¶ 28 & 29 (moving 22,966 people between Congressional districts: 13,489 from CD-3 to CD-1, and 9,616 form CD-3 to CD-2).

10. In its attempt to avoid engaging in judicial policy-making regarding the apportionment of congressional districts, the *Jepsen* court adopted a "least change" approach reflecting, as much as possible, "the last, clear expression of state policy on this issue enunciated

¹ *See also Vigil v. Lujan*, No. Civ- 01-1077 (D.N.M. Mar. 15, 2002); *Padilla v. Johnson*, No. Civ.-01-1081 (D.N.M. Oct. 18, 2001); *Varoz v. Johnson*, No. Civ-02-0187 (D.N.M. Mar. 18, 2002).

in 1991 with the enactment of the [then] current districts.”² See also Exhibit 4, Sept. 11, 2023 Deposition of Brian Sanderoff 32:8-21 (testifying about the *Jepsen* case and the judge’s view “that 1991 was the last expression of legislative and governor intent, so he was not going to decide himself what a good plan was for Congress. He was just going to make the most minor of boundary adjustments.”).

11. After the 2010 census, the Legislature and the executive again reached an impasse on redistricting plans for the legislative and congressional districts. See *Maestas v. Hall*, 2012-NMSC-006, ¶ 2 n.1, 274 P.3d 66, 70. Numerous lawsuits challenged the resulting malapportionment. The Honorable James Hall presided over the redistricting litigation, which was consolidated under Cause No. D-101-CV-2011-02942, and led to the *Maestas* appeal.

12. With respect to New Mexico’s congressional map, Judge Hall employed the same approach as the *Jepsen* court a decade earlier by adopting a “least change” map which moved the smallest number of voters. See *Maestas*, Findings of Fact and Conclusions of Law at ¶17 (1st Jud. Dist. Ct. Dec 29, 2011) (adopting congressional plan which moved only 25,000 voters, compared to proposed plans which shifted 180,000 or 260,000 voters); see also *Maestas*, 2012-NMSC-006, ¶¶ 31, 41 & 45 (instructing trial court to draw politically neutral plan by adhering “as close to the status quo as practicable” or risk “rais[ing] serious questions regarding propriety in a court ordered plan...”).

13. In *Maestas* the New Mexico Supreme Court addressed state plans and advised that a court tasked with drawing districting maps should look to previous plans and policies to give effect to the will and voice of the people through their elected representatives. *Maestas*, 2012-NMSC-006, ¶¶ 31 & 32. The Court also endorsed the creation of more competitive districts whenever practicable as “healthy” for a representative democracy by allowing “voters to express changed political opinions and preferences.” *Maestas*, 2012-NMSC-006, ¶41.

² *Jepsen v. Vigil-Giron*, Findings, 2002 WL 35459960, ¶¶ 21-33, 34 (D.N.M. Jan. 4, 2002).

14. Congressional districts in New Mexico have remained virtually unchanged from 1990 through 2020. *See* Exhibit 5, Aug. 14, 2023 Deposition of Justice Edward L. Chavez (ret.) 35:6-25.

15. As a result, the last time prior to 2021 congressional districts in New Mexico reflected the policy choices of elected representatives—rather than constrained least change line-drawing by the judiciary in response to litigation—was in 1991.

B. Population Changes in New Mexico

16. In the 30-year period during which New Mexico’s congressional district boundaries remained fixed, the state experienced significant demographic and societal changes. For instance, the population of Dona Ana County in that period grew by 62% from a population of 135,410 in 1990 to a population of 219,561 in 2020. *See* Exhibit 6-1 New Mexico Counties Population Change: 1990 to 2000 and 2000 to 2010, <https://www.nmlegis.gov/Redistricting2011/>; *see also* Exhibit 6-2 New Mexico Counties Population Change 2000 to 2010 and 2010 to 2020, <https://www.nmlegis.gov/Redistricting2021/>.

17. New Mexico now has four (4) standard metropolitan statistical areas (“MSAs”) centered on Farmington, Santa Fe, Albuquerque/Rio Rancho, and Las Cruces. The Census Bureau designates MSAs as meeting certain population characteristics: a core urbanized area containing a large population nucleus with adjacent communities that have a high degree of economic and social integration. *See, e.g.*, 55 Fed. Reg. 12,154 (Mar. 30, 1990), *see also* 86 Fed. Reg. 37,770 (July 16, 2021). Thus, MSAs include more urban areas of the state. Due to such growth, New Mexico gained Farmington and San Juan County as its fourth Census-recognized MSA in 2003. *See* Exhibit 7, *New Mexico: 2020 Core Based Statistical Areas and Counties* (census.gov May 11, 2021); *Cf.* United States Census Bureau, *Historical Delineation Files “Metropolitan Areas and Components”* (June 30, 1993), <https://www.census.gov/geographies/reference-files/time-series/demo/metro-micro/historical-delineation-files.html>; *id.* (June 2003).

18. Results from the 2020 Census show that while New Mexico’s statewide population

had grown 2.3% since the 2010 Census, greater growth was experienced in the Southeast part of the state, as compared to the population decline in the North-central part of the state. *See* Exhibit 8 Declaration and Report of Dr. Kimball Brace dated August 25, 2023 at 9 & Ex. D (CD-1 under populated by 11,264 people, CD-3 overpopulated by 3,082, and CD-2 overpopulated by 8,181, for 2.76% population deviation overall); *see generally* Exhibit 9, Sept. 13, 2023 Deposition of Mr. Kimball Brace; *see also* Ex. 5, Chavez Depo. 35:6-25 (“There were a lot of shifts in the population...you were going to have to dip into the south at some point to equalize the populations.”); Ex. 5, Chavez Depo. 42:2-9.

19. The 2020 Census data reported racial and ethnic origins of the population of New Mexico and where those populations are concentrated. Ex. 9, Brace Report at 6.

20. According to the 2020 Census, New Mexico’s statewide population was 2,117,522. With three congressional districts, the target district size is 705,841 persons. *See* Ex. 9, Brace Report at Ex. D.2.

21. When redistricting, the goal is to achieve 0% population deviation. *See* Ex. 9, Brace Report at 9; *see* COL, ¶¶ 3–5, *infra*.

22. Thus, the State of New Mexico was required to redraw its congressional district plan after the 2020 Census because the districts were no longer equally populated in compliance with the one-person, one-vote legal requirement. Ex. 9, Brace Report at 9.

C. Political Changes in New Mexico

23. The political composition of New Mexico’s electorate has also shifted during the past three decades.

24. During this 30-year period, CD-1 shifted from Republican-leaning, electing a Republican representative from 1988 to 2006, to Democratic-leaning, with a Democratic Representative elected from 2009 to 2022. The Democratic candidate won the congressional elections in CD-1 from 2012 to 2020 by an average margin of 21.0%. *See* Exhibit 10 *New Mexico Secretary of State Statewide Election Results*, <https://www.sos.nm.gov/voting-and->

[elections/election-results/](#); *see also* Exhibit 11 Declaration and Expert Report of Brian Sanderoff dated August 25, 2023 at 9 & 12 (“New Mexico is trending more Democratic over time”). While the Albuquerque area as a whole became more Democratic, areas such as the West Side and Rio Rancho tended to be more Republican. *See Maestas v. Hall*, 2012-NMSC-006, ¶ 41 (discussing proposed Republican Executive plan which created two new Republican state legislative districts as “correctly reflect[ing] the political affiliation of the population in the overpopulated areas on the West side of Albuquerque and in Rio Rancho”).

25. In CD-2 from 2012 to 2020, there were five general elections in which the Republican candidate won four times. Ex. 10. The average margin of victory was 16.4%. *See* Ex. 11, Sanderoff Report at 9.

26. The history of congressional election results in CD-2 over the past 20 years shows that while CD-2 most often elected the same Republican candidate, voters in CD-2 twice elected a Democratic candidate when there was not a popular, powerful Republican incumbent on the ticket. *See* Ex. 11, Sanderoff Report at 8.

27. Republican Steve Pearce was first elected to CD-2 in the 2002 General Election. He later stepped down from his congressional seat and ran unsuccessfully in the 2008 U.S. Senate race. He was then re-elected to his congressional seat in 2010. He later stepped down again from his congressional seat and ran unsuccessfully in the 2018 Governor’s race. *See* Ex. 11, Sanderoff Report at 7-8.

28. However, both times Steve Pearce stepped down to seek higher office, a less popular Republican candidate ran for the seat and a Democrat won the election in CD-2. *See* Ex. 11, Sanderoff Report at 8 (discussing the election of Democrat Harry Teague in 2008 and Democrat Xochitl Torres Small in 2018).

29. Therefore, based upon the partisan performance numbers and the congressional district election history in CD-2 from 2002-2020, the CD-2 district was a strong-leaning Republican congressional district, not a safe Republican district. *See* Ex. 11, Sanderoff Report at 8.

30. In summary, voters in CD-1 have shifted to favor Democratic candidates, while voters in CD-2—in the absence of a powerful Republican incumbent— supported a Democratic candidate in some instances. *See* Ex. 8, Brace Report at 9.

31. In New Mexico, voters are registered by party, although forms allow registrants to designate “NO PARTY.” Over the past decade, this category has grown from approximately one-fifth of the total registrations to one-fourth. For the last decade Republicans have comprised approximately 30-31% of the state’s registrants while Democrats have comprised 44% to 47% of the state’s registrants during the same period. *See* Ex. 8, Brace Report at 9-10.

32. Overall, New Mexico is a politically competitive state between the major parties in its three congressional districts. *See* Exhibit 12, Report of Sean P. Trende Report dated August 11, 2023 at 14 (concluding New Mexico voters elect Democrats by small margins but are willing to vote for Republicans).

D. Past New Mexico Redistricting Procedure and the Redistricting Act of 2021

33. In redistricting efforts prior to those undertaken in 2021 by the New Mexico Legislature, the process was normally to task an interim redistricting committee, made up of members of the Legislature, to hold public meetings in various communities around the state and solicit information from those communities to assist in the redistricting process. *See, e.g.*, Exhibit 13, *2011 Approved Work Plan and Meeting Schedule for the Redistricting Committee*, <https://www.nmlegis.gov/Redistricting2011/Committee> (six meetings scheduled around the state); HB 306, 45th Legislature, 1st Session, Laws 2001, Chapter 220, §§ 1 to 7 (April 3, 2001) (creating Joint Interim Legislative Redistricting Committee); Laws 2011, ch. 185, §§ 1 to 6 (June 17, 2011) (same).

34. This process involved developing redistricting plans for all of the political bodies that were having district lines redrawn, including the state’s congressional districts. As is normal and customary in the legislative process, the interim committee would submit reports to the Legislature at its redistricting session. *See, e.g.*, Exhibit 14, New Mexico Legislature Interim

Redistricting Committee, *Final Report of the Redistricting Committee* (April 2002); https://www.nmlegis.gov/Redistricting2011/2001_Redistricting_Archive; see also Laws 2001, ch. 220 & Laws 2011, ch. 185 (requiring report of interim committee for consideration by legislature); Exhibit 15, *Committee Handbook for the New Mexico Legislature* at 12 (rev. 2012), https://www.nmlegis.gov/publications/Legislative_Procedure/committee_handbook.pdf.

35. The legislation ultimately adopted need not have comported with any plans submitted or considered by the interim redistricting committee. *See, e.g.*, Ex. 14, *2002 Final Report* (interim committee proposed nine congressional plans, legislature sent one plan to governor which was vetoed).

36. In the April 2021 Legislative Session (First Regular Session, 55th Legislature), the Legislature enacted the Redistricting Act of 2021, which passed with bipartisan support: 31 votes in the Senate and 64 votes in the House. *See* SB 304, 2021 Session Laws, Ch. 79 (April 6, 2021, eff. July 1, 2021), codified at NMSA 1978, §1-3-A-1. The Act created the New Mexico Citizens Redistricting Committee (“CRC”), set forth the manner in which CRC members would be appointed, and established the CRC’s tasks for the upcoming redistricting cycle.

37. The Redistricting Act makes clear that the CRC is advisory in nature and would propose nonbinding plans “for consideration in the same manner as for legislation recommended by interim legislative committees.” *See* NMSA 1978, §1-3-A-9; *see also* Ex. 5, Chavez Dep. 8:5-24 (CRC independent but advisory).

38. The process and procedures set forth in the Redistricting Act apply solely to the CRC. The Redistricting Act does not bind the Legislature in its task of redistricting. *See* Ex. 5, Chavez Dep. 100:6-25.

39. The Redistricting Act does not require the Legislature to adopt any of the maps proposed by the CRC—nor could it, because districting and apportionment are tasks delegated by the New Mexico Constitution to the Legislature. *See* N.M. Const., art. IV, § 3(D).

40. The CRC is required to adopt at least three district plans for each of New Mexico’s congressional districts, and the other state offices which must be redistricted. NMSA 1978, § 1-

3A-5(A)(1). It is also charged with holding public meetings to allow for public participation in its process of developing and adopting district plans. *Id.* at §§ 1-3A-5(A)2 & (A)(3).

41. The CRC is comprised of seven members. Four members are appointed by the State Senate and State House leadership. The other three members are appointed by the State Ethics Commission, one of 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.

42. The CRC is structured to be bipartisan. *See* NMSA 1978, § 1-3A-3(C).

43. The CRC is precluded from having as members anyone who may have a political interest in the outcome of the redistricting process. *See* NMSA 1978, §1-3A-4.

44. Section 1-3A-7 of the Redistricting Act also prohibits the CRC from relying upon or referencing partisan data in developing district plans, such as voting history or party registration data, with an exception based on compliance with federal law. *See also* Ex. 5, Chavez Dep. 42:24-43:4.

45. The CRC is required to develop redistricting plans in accordance with several standards, including that congressional districts shall be as equal in population as practicable. NMSA 1978, § 1-3A-7(A)(1).

46. The redistricting plans adopted by the CRC were submitted to the State Legislature for consideration in the same manner as proposed legislation recommended by interim legislative committees. NMSA 1978, § 1-3A-9(B). *See also* FOF ¶¶ 33-34 & 37, *supra*.

E. The 2021 Citizen Redistricting Committee

47. The Citizen Redistricting Committee for the 2021 redistricting cycle began its work in July 2021. Ex. 5, Chavez Dep. 13:18-21.

48. Chief Justice Edward Chavez (ret.) chaired the CRC. Ex. 5, Chavez Dep. 9:16-10:1.

49. The CRC held sixteen public meetings where they heard testimony from over 350 New Mexicans and received hundreds of written comments submitted through the CRC's online portal. Ex. 5, Chavez Dep. 26:24-27:10 (describing that CRC had "eight and eight" public

meetings, more than the 12 meetings required by the Redistricting Act and rules).

50. Numerous members of the public appeared at the CRC meetings in-person and on Zoom to testify. Residents from all over New Mexico raised and supported a number of policy considerations in statements presented to the CRC. *See* Exhibit 16, CRC Meeting Public Testimony. These considerations included:

51. Certain Native American nations, namely the Zuni Pueblo and the Mescalero Apache Nation, desire to be split between two congressional districts to increase the amount and opportunity of available, responsive representation.

- *See* Public Statement of Arden Kucate, Zuni Councilman ([Aug. 14, 2021 CRC Meeting 2:29:58-2:31:10](#)) (explaining that Zuni Pueblo’s “goal today [2021] is the same as in 2011” and decision “to place Zuni precincts in multiple...congressional districts was based on connections to our ancestral lands and to ensure we had access to representation ...[and] districts that allow Native Americans to elect the candidate of our choice.”); Ex. 16 at 2.
- *See* Public Statement of Casey Douma, Laguna Pueblo ([Aug. 14, 2021 CRC Meeting 4:30:55-4:32:13](#)) (expressing desire among Pueblos “to make sure that we have access to representatives in the southern congressional district because we have lands in those districts that are impacted by the decision made concerning that congressional district...That if we go into a southern districting this could be the potential outcome and we could have a more decisive factor in the elections.”); Ex. 16 at 4.
- *See* Public Statement of Keegan King, Co-Chair of All Pueblo Redistricting Committee ([Oct 7, 2021 CRC Meeting 32:41-33:28](#)) (advocating for map that split Mescalero precinct between congressional districts “[and] the reason for that is that Mescalero is one of the most remote tracts in the state...being so far isolated, it’s important that Mescalero has representation by multiple congressional offices so that is what this map does.”); Ex. 16 at 6.

- *See* Public Statement of Arlen Quetawki, Zuni Pueblo Senior Councilman ([Oct. 7, 2021 CRC Meeting 1:06:06-1:06:40](#) & [1:10:15-41](#)) (advocating for Zuni Pueblo to be split among CD-2 and CD-3 based on location of tribal lands, specifically the Zuni Salt Lake in CD-2 and Mount Taylor, Chaco Canyon, and Fort Wingate in CD-3); *see also* CRC Report at 36 (“Mescalero has made it known that it wants to have influence in two congressional districts.”). Ex. 16 at 8 & 10.

52. South Valley and Southern New Mexico residents expressed the desire to combine communities in the Rio Grande Valley—from the South Valley of Albuquerque down to the border with the State of Texas—into a single district due to affinities, culture, lifestyle, immigration status, access to services, and other common concerns.

- *See* Public Statement of Andrea Serrano ([Aug. 7, 2021 CRC Meeting 2:46:52-2:49:24](#)) (advocating for map to split Bernalillo County and locate South Valley of Albuquerque in CD-2 as beneficial to South Valley’s more rural residents); Ex. 16 at 12.
- *see* Public statement of Aileen Castelan ([Aug. 7, 2021 CRC Meeting 3:46:38-3:47:53](#)) (describing how her South Valley experiences more closely resemble that of Texas-border towns like Anthony, New Mexico or rural Vado, New Mexico in Dona Ana County, New Mexico, distinguishable from Uptown or Old Town areas of Albuquerque), Ex. 16 at 14; *see* Public Statement of Fred Kennon ([Aug. 12, 2021 CRC Meeting 2:26-2:27:06](#)) (Dona Ana County resident identifying with Valencia County and South Valley, in the way his smaller community interacts with a large city like El Paso as a commonality between Rio Grande Valley communities), Ex. 16 at 16.
- *see* Public Statement of Julie Radosevich ([Aug. 14, 2021 CRC Meeting 5:13:51-5:14:37](#)) (asking Committee to move South Valley into CD-2 because “the South Valley has strong ties with southern New Mexico and the border,” the educational concerns among immigrant communities are similar between South Valley and CD-

2, and South Valley residents and communities south of Albuquerque are “joined together by heritage, culture, land, water, and language”), Ex. 16 at 18.

- *see* Public Statement of Andrea Serrano ([Oct. 1, 2021 CRC Meeting 36:10-36:56](#)) (raising concern that if South Valley included with Albuquerque in CD-1 the different needs of South Valley residents will continue to be ignored; advocating for inclusion of South Valley in CD-2 because “[t]he South Valley has more in common with rural areas in CD-2 than it does with the Heights in CD-1”); Ex. 16 at 20.
 - *see* Public Statement of Alicia Maldonado ([Oct. 1, 2021 CRC Meeting 59:54-1:00:31](#)) (explaining that infrastructure needs of South Valley lag that of Albuquerque and including South Valley in CD-2 will increase access and equity), Ex. 16 at 22; *see also* Public Statement of Robin Carreon ([Oct. 1, 2021 CRC Meeting 1:05:24-1:05:44](#)) (“I believe the South Valley shares a lot more in common with cities like Belen and Los Lunas [in CD-2] than it does with Albuquerque.”), Ex. 16 at 24.
- *see also* Ex. 5, Chavez Dep. 59:7-60:14 (recalling CRC meeting statement from South Valley residents as persuasive and that the voters had more in common with southern CD-2).

53. The CRC also established an online public comment portal for the public to submit maps and written comments regarding the CRC’s efforts to propose redistricting maps. A total of 457 written comments were received, generally raising the same policy considerations as the public testimony. *See generally* CRC Public Redistricting Portal, <https://www.nmredistricting.org/submit-a-public-comment-or-map/>; *see* Exhibit 17, *All Comments Submitted* (2021), <https://www.nmredistricting.org/wp-content/uploads/2022/01/All-Comments-Submitted.csv>; *see also* Ex. 4, Sanderoff Dep. 16:16-17:4 (discussing maps submitted through the CRC portal by members of the public).

54. The CRC issued its final report on November 2, 2021, followed by a reissuance on

November 8, 2021 to provide corrected data. *See* Exhibit 18 CRC District Plans & Evaluations, <https://www.nmredistricting.org/wp-content/uploads/2021/11/2021-11-2-CRC-Map-Evaluations-Report-Reissued-1.pdf> (hereinafter the “CRC Report”).

55. The CRC ultimately adopted three (3) congressional redistricting plans that were known as Concept A, Concept E, and Concept H. Ex. 18, CRC Report at 29-42; Ex. 5, Chavez Dep. 85:7-16 (explaining that Research & Polling, Inc. drafted Concept A and E, Justice Chavez modified Concept E, and that Concept H was drafted by the Center for Civic Policy); *see* Ex. 5, Chavez Dep. 73:15-74:12 (explaining CRC’s map drafting process as beginning with public input, “first we came up with concepts that were based on public testimony...after the first round of meetings.”); Ex. 5, Chavez Dep. 74:13-21 (three congressional maps adopted by CRC); *see also* NMSA 1978, § 1-3A-6(C) (proposed plans “shall be based, in part, on the testimony, documents and information received” during committee meetings).

56. Pursuant to its mandate from the Legislature, the CRC contracted with a consultant, Dr. David Cottrell of the University of Georgia, to conduct a partisan fairness analysis of the three proposed congressional concept plans. NMSA 1978, § 1-3A-8 (after adoption, report shall evaluate “measure of partisan fairness” of each district plan); Ex. 5, Chavez Dep. 76:17-77:4; 114:18-22; Ex. 18, CRC Report at 41-42.

57. Dr. Cottrell’s partisan fairness methodology considered maps that fall outside of the middle 95% of the ensemble to be “unexpectedly unfair” because those maps would correspond with less than 5% of the ensemble maps, *i.e.* an “outlier.” Ex. 18, CRC Report, Appx. 1, Cottrell Report at 11. Dr. Cottrell uses the middle 95% to represent “a range of outcomes that we can expect to occur under non-partisan redistricting.” Ex. 18, CRC Report, Ex. 18, CRC Report at Appendix 1, David Cottrell, *Evaluating the Partisan Fairness of the Concept Maps Proposed by New Mexico’s Citizen Redistricting Committee* 11 (Oct. 31, 2021).

58. As reflected in Dr. Cottrell’s evaluation, all three congressional concept plans (A, E, and H) fell within the ranges selected by Dr. Cottrell as indicating the maps were not unfair from a partisan standpoint. Dr. Cottrell used six (6) different metrics of partisan fairness applied

to a computer-generated ensemble of a thousand alternative plans to conduct his analysis, comparing the concept map scores against the ensemble range. Ex. 5, Chavez Dep. 101:6-15; Ex. 18, CRC Report. Appx 1, Cottrell Report.

59. Dr. Cottrell concluded that he found “little evidence to suggest that the maps are unexpectedly unfair.” Ex. 18, CRC Report, Appx. 1, Cottrell Report at 14.

F. Senate Bill 1 : 2021 Congressional Redistricting Legislation Procedural History

60. The Legislature generally discharges its obligation with respect to redistricting by meeting in a special session solely devoted to redistricting. N.M. Const., art. IV, § 6. The session after the 2020 Census took place between the dates of December 7 and December 11, 2021. *See* Exhibit 19 Governor’s Proclamation: Senate Executive Message Nos. 1 & 2 (Dec. 6, 2021) (calling Fifty-Fifth Legislature into Special Session for Senate to begin the redistricting process for the New Mexico Senate and the United States House of Representatives).

61. In the Second Special Session of the Fifty-Fifth Legislature, the Legislature passed and ultimately the Governor signed bills providing for the redistricting of the New Mexico State House of Representatives, the New Mexico State Senate, the New Mexico Public Education Commission, the New Mexico Public Regulation Commission, and for the congressional districts in New Mexico.

62. 2021 represents the first time in thirty years that New Mexico’s elected representatives had the opportunity to and successfully enacted a legislatively drawn congressional map that reflects expressions of state policy. *See* Ex. 5, Chavez Depo. 104:1-16; 12:3-6.

63. Senator Joseph Cervantes first introduced Senate Bill 1 (“SB-1”) on December 7, 2021 (Legislative Day 1). On December 8, 2021 (Legislative Day 2), after over two hours of public testimony and committee debate before the Senate Rules Committee, the Senate Rules Committee approved SB-1 as introduced, without amendment. *See* Exhibit 20, *Senate Rules Committee Report on Senate Bill 1* (Dec 8, 2021) [<https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s>]

2].

64. On December 10, 2021 (Legislative Day 2), the Senate Judiciary Committee adopted a Committee Substitution that made minor adjustments to SB-1 but did not change the boundaries of CD-2 as originally proposed in SB-1. Prior to the vote, public comment was accepted by the committee in addition to committee discussion and debate. *See generally* New Mexico Legislature, 2021 2nd Special Session – SB 1, “Actions”, <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s> 2; *see also* Exhibit 21, *Senate Judiciary Committee Report on Senate Bill 1* (Dec. 10, 2021); Exhibit 22, *Senate Judiciary Committee Substitute for Senate Bill 1* (Dec. 10, 2021) (moving De Baca and Guadalupe County and parts of Chaves County from CD-3 into CD-1, and moving various Santa Fe precincts from CD-1 into CD-3).

65. On December 10 (Legislative Day 3), during senate floor debate, Senator Mark Moores proposed one amendment to substitute CRC Concept E Revised (map 221667.1) for the SB-1 map, which shrunk CD-1 and brought CD-3 south into Lincoln and Otero Counties. *See Senate Floor Substitute for Senate Judiciary Committee Substitute for Senate Bill 1* (Dec. 10, 2021), https://www.nmlegis.gov/Sessions/21%20Special2/Floor_Amendments/221667.1.pdf. The proposed senate floor substitute failed to pass.

66. Thereafter, the Senate Judiciary Committee Substitute for SB-1 passed in the Senate with a vote of 25 in favor and 15 opposed. *See* Exhibit 23, *Official Roll Call New Mexico State Senate, Fifty-Fifth Legislature Second Special Session 2021*, Senate Judiciary Committee Substitute for Senate Bill 1 (Dec. 10, 2021), <https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001SVOTE.pdf>.

67. On December 11 (Legislative Day 3), after further debate and public comment received both in person and remotely, the Senate Judiciary Committee Substitute for SB-1 was approved by the House State Government, Elections and Indian Affairs Committee (“HSEIC”) by a majority vote. *See* Exhibit 24, *Report of the HSEIC on Senate Judiciary Committee Substitute for Senate Bill 1* (Dec. 11, 2021)

[\[https://www.nmlegis.gov/Sessions/21%20Special2/bills/senate/SB0001SG1.pdf\]](https://www.nmlegis.gov/Sessions/21%20Special2/bills/senate/SB0001SG1.pdf)

68. The House of Representatives approved the Senate Judiciary Committee Substitute for SB-1 on December 11, 2021 with a vote of 44 in favor and 24 opposed. *See Exhibit 25, Official Roll Call, New Mexico House of Representatives Fifty-Fifth Legislature, 2021 Second Special Session*, “Senate Judiciary Committee Substitute for SB 1 FINAL PASSAGE” (Dec. 11, 2021) [\[https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001HVOTE.pdf\]](https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001HVOTE.pdf)

69. Governor Michelle Lujan Grisham then signed Senate Judiciary Committee Substitute for Senate Bill 1 (map 221711.1) into law on December 17, 2021. *See Laws 2021, 2nd Sp. Sess., Ch. 2, § 2 (eff. March 17, 2022), codified at NMSA 1978, § 1-15-16(A)-(C) (hereinafter “SB-1”); see also Exhibit 26, Governor’s Senate Executive Message No. 3 (Dec. 17, 2021)*

G. The Policy Basis of SB-1

70. The congressional district map proposed in Senate Bill 1, and the later approved Senate Judiciary Committee Substitute, *i.e.* SB-1, was not any of the Concept Maps submitted by the CRC. Ex. 5, Chavez Dep. 96:9-16. However, SB-1 as enacted bears an 86% resemblance to Concept Map H. Ex. 5, Chavez Dep. 101:1-5 (legislature started with Concept H); *see also* Statement of Senator Joseph Cervantes ([Senate Floor Debate, Dec. 10, 2021 3:37:15-3:41:44](#)) (“CRC map H, that map is 86% similar to the proposed map”), Exhibit 27 at 10.

71. SB-1 incorporates much of the public input that was provided to the CRC through the statements of hundreds of New Mexicans at public meetings throughout the state, and concept maps and comments submitted by members of the public through the portal. FOF ¶¶49–53, *supra*.

72. Unlike past Court-drawn boundaries reflecting a least-change approach approved by a reluctant judiciary to avoid being thrust into the political thicket,³ SB-1 is a clear expression of current State policies that answer the express concerns of New Mexicans. The policies behind

³ Research & Polling, Inc., *NM Congress 2010 Census Redistricting*, p.15, December 15, 2011, https://www.nmlegis.gov/Sessions/11Redistricting/187963/CD_187963_2_Packet.pdf (showing boundaries of last court-drawn redistricting plan).

SB-1 focus on fashioning a representative and accountable government in politically competitive congressional districts rather than protecting traditional incumbencies. *Cf.* Ex. 5, Chavez Dep. 38:22-39:7 (in drafting and adopting maps, as chair of CRC he did not consider incumbencies); *see* FOF ¶ 79 below, *infra*.

73. Many factors relating to state policies—decisions left to the legislature as the political branch of government—impact the manner and method in which districts are drawn. Any policy decision made may have some impact on the partisan composition of a district. *Allen v. Milligan*, 599 U.S. ----, 143 S.Ct. 1487, 1513 (2023) (“Districting involves myriad considerations—compactness, contiguity, political subdivisions, natural geographic boundaries, county lines, pairing of incumbents, communities of interest, and population equality. Yet quantifying, measuring, prioritizing, and reconciling these criteria requires map drawers to make difficult, contestable choices.”) (internal quotation and citation omitted). *See also* Ex. 4, Sanderoff Dep. 38:12-25 (“there are many, many factors that come into play in the drawing of a map and some of them have tension with each other... There’s no such thing as a perfect map. So the map-drawer has to decide which are their highest priorities compared to others and try to come up with a map that fits their particular objective.”); *See* Ex. 9, Brace Dep. 21:1-14 (noting that “anytime you draw districts, it will probably have a political impact”).

74. First, districts in SB-1 are evenly populated, with a population deviation of 0%. Statement of Senator Joseph Cervantes ([Dec. 8, 2021 Senate Rules Committee 9:36:00-50, 9:36:58-9:36:40 & 11:08:40-11:09:58](#)), Ex. 27 at 1-6; Statement of Senator Joseph Cervantes ([Dec. 10, 2021 Senate Judiciary Committee 9:54:55-9:56:19](#)), Ex. 27 at 8, & ([Dec. 11, 2021 Senate Floor Debate 3:37:15-3:41:44, 4:04:19-4:05:10](#)), Ex. 27 at 10 & 13; Statement of Representative Antonia Maestas ([Dec. 11, 2021 House Floor Debate 5:22:58-5:23:57 & 5:24:52-5:25:18](#)), Ex. 27 at 15.

75. SB-1 improved on the population deviation of Concept H, bringing total population difference between districts down to a single household: “one or five or seven people”. *See* Statement of Senator Joseph Cervantes ([Dec. 8, 2021 Senate Rules Committee 9:36:00-9:36:50](#)), Ex. 27 at 1-2.

76. The compactness scores for SB-1 are slightly lower than, but comparable to, the compactness scores for the 2011 court-drawn map. *Compare* Exhibit 28 SB-1 Summary Table (showing Reock of 0.40 and Polsby Popper of 0.29), *with* 2011 Congressional Districts Summary Table (Reock 0.42 and Polsby Popper 0.35) as reported in Ex. 18, CRC Report at p. 36.

77. A review of statements and debate during the redistricting session indicate a number of policy considerations which impacted the way in which the state's congressional districts under SB-1 were drawn. Some of the most significant and oft-articulated reasons are as follows:

78. The expressed desire to meld urban and rural constituencies in the various districts so that a blend of urban and rural interests would be represented by each member of the state's congressional delegation. *See* Statement of Senator Joseph Cervantes ([Dec. 8, 2021 Senate Rules Committee 9:38:42AM – 9:40:01](#)), Ex. 27 at 19; Statement of Senator Bill O'Neill ([Dec. 8, 2021 Senate Rules Committee 10:36:07AM – 10:36:58](#)), Ex. 27 at 10; Statement of Senator Gerald Ortiz y Pino ([Dec. 8, 2021 Senate Rules Committee 10:38:25AM – 10:39:15](#)), Ex. 27 at 23; Statement of Senator Daniel Ivey Soto ([Dec. 8, 2021 Senate Rules Committee 11:28:23AM – 11:30:52](#)), Ex. 27 at 25; Statement of Senator Joseph Cervantes ([Dec. 10, 2021 Senate Judiciary Committee 9:54:55AM – 9:56:19](#)), Ex. 27 at 8; Statement of Senator Joseph Cervantes ([Dec. 10, 2021 Senate Floor Debate 3:37:15 – 3:41:44](#) & [4:04:19 – 4:05:10](#)), Ex. 27 at 10 & 13; Statement of Senator Gerald Ortiz y Pino ([Dec. 10, 2021 Senate Floor Debate 4:15:41 – 4:17:35](#)), Ex. 27 at 27; Statement of Senator Jeff Steinborn ([Dec. 10, 2021 Senate Floor Debate 5:33:47 – 5:35:20](#)), Ex. 27 at 29; Statement of Representative Gail Chasey ([Dec. 11, 2021 HSEIC Committee 11:22:08 – 11:24:04](#)), Ex. 27 at 31; Statement of Representative Georgene Louis [[Dec. 11, 2021 HSEIC Debate 11:25:32-11:26:52](#)], Ex. 27 at 43; Statement of Representative Susan Herrera ([Dec. 11, 2021 House Floor Debate 5:50:05 – 5:50:29](#)), Ex. 27 at 33.

79. Combining urban and rural populations into each district to reduce polarization and make elected representatives more accountable to all constituents. *See* Statement of Senator Daniel Ivey-Soto ([Dec. 8, 2021 Senate Rules Committee 11:28:23AM – 11:30:52](#) & [11:34:32 – 11:35:39](#)) Ex. 27 at 25 & 35; Statement of Senator Joseph Cervantes ([Dec. 10, 2021 Senate Floor Debate](#)

[3:37:15–3:41:44](#), [5:40:11PM–5:41:11](#) & [5:42:47PM – 5:43:44PM](#)), Ex. 27 at 10, 13 & 39; Statement of Senator Daniel Ivey-Soto ([Dec. 10, 2021 Senate Floor Debate 5:18:18– 5:19:30](#)), Ex. 27 at 37; Statement of Representative Gail Chasey ([Dec. 11, 2021 HSEIC Committee 11:22:08AM – 11:24:04](#)), Ex. 27 at 31; Statement of Representative Georgene Louis ([Dec. 11, 2021 HSEIC Committee 11:25:32 – 11:26:52](#)), Ex. 27 at 43; Statement of Representative Christine Chandler ([Dec. 11, 2021 House Floor Debate 5:41:00 – 5:42:37](#)), Ex. 27 at 45; Statement of Representative Linda Serrato ([Dec. 11, 2021 House Floor Debate 5:45:23PM – 5:46:16](#)), Ex. 27 at 47; Statement of Representative Susan Herrera ([Dec. 11, 2021 House Floor Debate 5:50:05 – 5:50:29](#)), Ex. 27 at 33.

80. Honoring the expressed desire of two Native American nations, to be split between two congressional districts to enhance the amount of representation they had available to them. *See* Statement of Senator Ortiz y Pino ([Dec. 8, 2021 Senate Rules Committee 10:39:44 – 10:40:15](#)) Ex. 27 at 49; Statement of Senator Joseph Cervantes ([Dec. 10, 2021 Senate Floor Debate 4:22:00 – 4:22:51](#)), Ex. 27 at 51; Statement of Representative Gail Chasey ([Dec. 11, 2021 HSEIC Committee 11:20:41 – 11:21:09](#)), Ex. 27 at 31; Statement of Representative Georgene Louis ([Dec. 11, 2021 House Floor Debate 3:59:47 – 4:00:03](#)), Ex. 27 at 53; *see also* FOF ¶ 51 & Ex. 16, *supra*.

81. A desire to combine communities in the Rio Grande Valley from the South Valley of Albuquerque to the border with the state of Texas in a district due to affinities in lifestyle, culture, immigration status and concerns, and other similar interests. *See* Statement of Senator Joseph Cervantes ([Dec. 8, 2021 Senate Rules Committee 9:40:30 – 9:41:24](#), [11:14:12 – 11:16:12](#) & [3:45:10 – 3:46:18](#)), Ex. 27 at 55, 62-65; *and* ([Dec. 10, 2021 Senate Floor Debate 4:04:19 – 4:05:10](#)), Ex. 27 at 13; Statement of Senator Jeff Steinborn ([Dec. 10, 2021 Senate Floor Debate 5:33:47 – 5:35:20](#)), Ex. 27 at 29; *see* Ex. 5, Chavez Depo. 59:3-60:14; *see also* FOF ¶ 52 & Ex. 16, *supra*;

82. Increasing the number of congressional representatives with a direct constituent interest and concerns relating to the extractive industries located in southeast New Mexico which are a significant driver of the economy and contributor to tax revenue statewide. *See* Statement of

Senator Joseph Cervantes ([Dec. 8, 2021 Senate Rules Committee 9:40:01– 9:40:30](#)), Ex. 27 at 55; Statement of Senator Daniel Ivey-Soto ([Dec. 8, 2021 Senate Rules Committee 11:28:23– 11:30:52](#)), Ex. 27 at 25; Statement of Senator Joseph Cervantes ([Dec. 10, 2021 Senate Floor Debate 3:37:15– 3:41:44](#)), Ex. 27 at 10; Statement Representative Gail Chasey ([Dec. 11, 2021 HSEIC Committee 11:22:08–11:24:04](#)), Ex. 27 at 31; Statement of Representative Antonio Maestas ([Dec. 11, 2021 House Floor Debate 5:28:16–5:29:17](#)), Ex. 27 at 15; Statement of Representative Nathan Small ([Dec. 11, 2021 House Floor Debate 6:08:29–6:09:41](#)) Ex. 27 at 59; *see also* Ex. 5, Chavez Depo. 66:15-68-5 (discussing testimony collected by CRC from Senator Jennings and Representative Ezzell that led to conclusion of need for representation given economic divide among constituencies).

83. SB-1 is the product of population changes in New Mexico. In the past ten years the State’s population grew 2.8% to 2,117,522, but that growth was hardly uniform across the state. *See* Ex. 8, Brace Report at 9. New Mexico’s northwestern population declined by 3.1% and the north-central, central, and southwest experienced modest growth between 2.2%-3.3%. Exhibit 29, Research & Polling, Inc., *New Mexico Regions Percent Population Change: 2010 to 2020*, (Aug. 12, 2021), https://www.nmlegis.gov/Redistricting2021/Documents/NM_Regions_2020_Official_map_pct.pdf. In contrast, the Southeastern population grew significantly in terms of percentage: Eddy County by 15.8% and Lea County by 15.0%. *Id.*

84. The city of Rio Rancho experienced substantial growth over the last 20 years, such that it is now a major part of the Albuquerque Metropolitan area. *See* FOF ¶¶ 16-18, *supra*. In recognition of that change, SB-1 moved Rio Rancho from CD-3 into CD-1 where it joins the majority of Albuquerque and the East Mountain communities. *See* Exhibit 30, *NM Congressional: 221711.1 SJC/SB 1 Atlas* at 6-7 (Dec. 10, 2021), https://www.nmlegis.gov/Redistricting2021/221711.1/CD_221711_atlas.pdf.

85. As a result, CD-3 (which already contains communities as politically and demographically diverse as Santa Fe and Farmington, Taos and Aztec) had to pick up additional population in the southeastern area of the state, while honoring the Native American consensus

plan on the west side of the state, which sought to split Zuni Pueblo between CD-2 and CD-3 to give Zuni a voice in two congressional districts. *See* Ex. 8, Brace Report at 6 & 10; FOF ¶ 80; *see generally* Ex. 30.

86. Despite these population changes, SB-1 kept over 70% of the state’s population in the same congressional district as in the last decade. *See* Ex. 8, Brace Report at 5.

87. SB-1’s boundaries for electing congressional representatives are clear expressions of State policy articulated by its Legislature and Governor through the political process. *See Findings of Fact and Conclusions in Jepsen v. Vigil-Giron*, Cause No. D-101-CV-2001-02177 (N.M. 1st Jud. Dis. Jan 2, 2002) at ¶ 34.

88. SB-1 reflects the Legislature’s policy decisions while adhering to the constitutional requirements of one person, one vote; respecting the rights of minorities in compliance with the Voting Rights Act; and honoring the consensus of the sovereign indigenous nations located within New Mexico’s boundaries.

H. The Political Performance Aspects of Senate Bill-1

89. Political consultants generally consider a district to be competitive if the gap between the average Democratic and Republican performance falls within a 54% to 46% range. Ex. 11, Sanderoff Report at 6.

90. By 2020, the judicially-imposed congressional apportionment in *Maestas* strongly favored Republicans in Congressional District 2 (CD-2) while favoring Democrats in Congressional District 3 (CD-3), with disproportionate performance levels:

District	Population	Democrats		Republicans	
		Voters	Performance	Voters	Performance
1	694,482	46.8%	57.6%	28.0%	42.4%
2	714,034	37.7%	45.1%	37.6%	54.9%
3	709,906	49.3%	58.3%	28.0%	41.7%
	2,117,522	44.9%	54.2%	30.9%	45.8%

91. In contrast, SB-1’s distribution of registered voters by party more closely reflects the state’s overall party registrations and creates more competitive races in each district.⁴

District	Population	Democrats		Republicans	
		Voters	Performance	Voters	Performance
1	705,832	43.2%	53.5%	32.1%	46.5%
2	705,846	43.8%	53.0%	30.5%	47.0%
3	705,844	47.6%	56.0%	30.1%	44.0%
	2,117,522	44.9%	54.2%	30.9%	45.8%

92. Under SB-1, CD-2 is now a competitive district. The partisan performance measure for CD-2 under SB-1 is 53.0% Democrat and 47.0% Republican. This is narrower than the 54% to 46% range political consultants use to consider if a district is competitive. Ex. 11, Sanderoff Report at 6.

93. In fact, SB-1 makes each congressional district more politically competitive than it was previously, increasing Republican performance in CD-1 and CD-3, and Democratic performance in CD-2. And it is far from certain that SB-1 will result in the election of a Democratic congressional representative in CD-2. Ex. 11, Sanderoff Report at 6-7.

94. Brian Sanderoff is the principal of Research and Polling Inc., a well-recognized and long-established research and polling organization in New Mexico. Ex. 11. Mr. Sanderoff has been involved in legislative and congressional redistricting efforts in the State of New Mexico under contract with the New Mexico Legislative Council Service since 1991. Ex. 11, Sanderoff Report at 2.

95. Mr. Kimball Brace is a political consultant with Election Data Services or EDS, Inc., who specializes in providing software, database development services, and consulting services for the creation of districting plans and the analysis of many aspects of the redistricting

⁴ Ex. 28, Research & Polling, Inc., *NM Congressional Districts CD 221711.1 SJC/SB-1*, December 10, 2021, https://www.nmlegis.gov/Redistricting2021/221711.1/CD_221711_summary_table.pdf (last visited October 20, 2022).

process. Ex. 8, Brace Report at 2-4.

96. Dr. Jowei Chen is an Associate Professor in the Department of Political Science at the University of Michigan and a Research Associate Professor and Research Associate for the University of Michigan and Stanford University. *See* Exhibit 31, Declaration and Report of Dr. Jowei Chen dated August 25, 2023, at 2. Dr. Chen has published many peer-reviewed academic papers on the use of computer simulations in legislative districting and testified as an expert in redistricting litigation on several occasions since 2012. Ex. 31, Chen Report at 2-3, *see also* Jowei Chen Curriculum Vitae, Ex. 31, Chen Report at 32-36; *see generally* Exhibit 35, Sep. 10, 2023 Deposition of Dr. Jowei Chen.

97. Dr. Chen programmed a computer algorithm to create 1,000 independent simulations meeting all eight non-partisan criteria (non-partisan districting criteria incorporated population equality, district contiguity, precinct preservation, municipal boundary considerations, Indian (Native American) reservation considerations, avoiding county splits, oil industry considerations, and district compactness). Ex. 31, Chen Report at 6. The criteria included in Dr. Chen's algorithm approximate the policy choices testified to and made by the Legislature in drafting SB-1.

98. Using the Republican Performance Index (measured using election results from over 26 actual, competitive statewide elections), Ex. 31, Chen Report at 13-14, CD-2 in SB-1 performs better for Republicans than 33% of the 1,000 simulated maps. Ex. 31, Chen Report at 19. "Hence, CD-2 is squarely within the normal partisan distribution when compared to the most-Republican districts created by the 1,000 computer-simulated plans. It is clearly not a statistical outlier in terms of its partisanship." Ex. 31, Chen Report at 19.

99. Using the Republican Share of Registered Voters, "the Republican share of registered voters in CD-2 is higher than 79.5% of the simulated districts' second-most-Republican districts." Ex. 31, Chen Report at 23. While CD-2 is more favorable to Republicans than most of the simulated plans, "CD-2 is still within the normal partisan distribution of these simulated districts. Hence, it is clear that CD-2 is not a statistical outlier in terms of its partisanship when

measured using party registration.” Ex. 31, Chen Report at 23.

100. Overall, Dr. Chen found that “the partisan characteristics of the SB 1 plan are well within the normal range of these computer-generated districting plans drawn with the partisan-blind algorithm. Thus, the SB 1 plan is neither extreme nor a statistical outlier in terms of its partisanship.” Ex. 31, Chen Report at 4.

101. Thus, in Dr. Chen’s opinion, “the partisan characteristics of the SB 1 plan could reasonably have emerged from a partisan-neutral map drawing process adhering to all of the aforementioned districting criteria.” Ex. 31, Chen Report at 4, *see also id.* (non-partisan districting criteria incorporated population equality, district contiguity, precinct preservation, municipal boundary considerations, Indian (Native American) reservation considerations, avoiding county splits, oil industry considerations, and district compactness).

102. In the current environment of growing political polarization and extremism, and with an expanding urban/rural divide across our nation, the Legislature drew SB-1 to mitigate and soften those potentially toxic trends so that each congressional district is more politically competitive than it was before, and each of New Mexico’s representatives in Congress will represent—and will have to answer to—a more diverse mix of urban and rural interests.

I. The 2022 Congressional Election in New Mexico

103. The 2022 congressional election in New Mexico was conducted under the new district boundaries enacted by SB-1. NMSA 1978, § 1-15-16 (2021).

104. In that election, the Democratic candidate won in CD-1 by 11.5%. This is a significantly narrower margin of victory as compared to the average margin of 21.0% for elections between 2012 and 2020. Ex. 11, Sanderoff Report at 9 & Appx. 1.

105. In CD-2, the Democratic candidate won by 1,350 votes out of 192,673 votes cast. This is a margin of only 0.7%. This significantly narrowed the gap between the winning and losing candidate as compared to the congressional races in CD-2 between 2012 and 2020, when the Republican candidate won four out of five times with an average margin of victory across all races

(including one in which the Democrat won) of 16.4%. Ex. 11, Sanderoff Report at 6, 9 & Appx. 2.

106. The Democratic candidate won in CD-3 by 16.4%. This is also a significantly narrower margin of victory as compared to the average margin of 24.7% for CD-3 races between 2012 and 2020. Ex. 11, Sanderoff Report at 9 & Appx 3.

107. Thus, for all three congressional districts, when one compares the average margin of victory from the old district boundaries (2012 to 2020 elections) to the new district boundaries of SB-1 (2022 election), the margin of victory narrows. Ex. 11, Sanderoff Report at 9-10.

108. Any time the margin of victory in an election falls within one percentage point, that race is considered a “toss up.” In a toss-up election, the winner is extremely vulnerable to being challenged and possibly defeated in the next general election cycle. Ex. 11, Sanderoff Report at 6-7.

109. Given the extremely narrow margin of victory in CD-2 of only 0.7%, the congressional race in 2022 for that district was a toss-up, and the Democrat incumbent, U.S. Representative Gabe Vasquez, is likely vulnerable in the next election.

110. The 2022 general election demonstrates CD-2 remains the most Republican in the state. In two instances Republican candidates carried CD-2: (1) the 2022 Governor’s contest where Republican candidate Ronchetti received 50.16% of the vote; and (2) the 2022 Treasurer’s contest where Republican candidate H. Montoya received 50.12% of the vote. Ex. 8, Brace Report at 10.

111. Although 1,350 votes determined the CD-2 2022 election, more than 350,000 eligible voters did not participate in that election. While statewide voter turnout in the 2022 Election fell to 52.31%, as compared to 68.67% in 2020 and 55.61% in 2018, CD-2 registration and turnout consistently lags:

	<u>2018</u>		<u>2020</u>		<u>2022</u>	
	Registration	Turnout	Registration	Turnout	Registration	Turnout
CD-1	62.34%	57.27%	65.51%	69.49%	70.61%	56.22%
CD-2	<u>55.36%</u>	<u>51.57%</u>	<u>59.11%</u>	<u>63.50%</u>	<u>58.66%</u>	<u>46.48%</u>
CD-3	63.67%	55.11%	66.66%	67.47%	63.69%	51.26%

Voter data from New Mexico Secretary of State General Election Results, <https://electionresults.sos.state.nm.us/>.

112. While the Democratic performance of CD-2 increased under SB-1, CD-2 is by no means a “safe” Democratic district. By drawing CD-2 as a competitive, toss-up district that could be won by a candidate of either party, the Legislature did not entrench the Democratic party in power in CD-2. Ex. 11, Sanderoff Report at 7; *see also* Exhibit 32, Sept. 6, 2023 Deposition of Sean P. Trende 94:7-19 (testifying that it would be difficult, but possible, for a Republican to win back the seat in CD-2); Ex. 9, Brace Dep., 33:22-34:1 (“District 2 is a very competitive seat. It’s not as Republican as it was before, but it’s not Democratic from that side. It’s a very politically neutral district...”).

J. The 2022 Redistricting Lawsuit

113. Redistricting tends to be a partisan process. That is its nature. There has been, since the founding of our country, jockeying for political position and power that extends to decisions made in the redistricting process. Ex. 5, Chavez Depo. 110:8-14 (“There will be partisanship, and people will acknowledge that. In fact, I think the Supreme Court said that.”).

114. Historically, these issues, being delegated to the political branches of our government (the executive and legislative) were not considered to be proper subjects of judicial overview or scrutiny. *See generally* *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019); *Maestas v. Hall*, 2012-NMSC-006, *Riviera v. Schwab*, 315 Kan. 877, 512 P.3d 168 (2021); *Harper v. Hall*, 384 N.C. 292, 886 S.E.2d 393 (2023).

115. In this case, the New Mexico Supreme Court has cited the equal protection clause of the New Mexico Constitution, Article II Section 18 as providing a basis for Courts to review legislative enactments dealing with redistricting to determine whether there has been extreme partisan gerrymandering. *See Amended Order of the Supreme Court of New Mexico*, dated August 25, 2023.

116. The Supreme Court’s Order on July 5, 2023, amended August 25, 2023, directed the parties to proceed to trial under the test announced by Justice Kagan in her dissent in *Rucho v. Common Cause*, 139 S. Ct. 2484, 2516 (2019). See *Amended Order of the Supreme Court of New Mexico*, dated August 25, 2023.

117. Although *Rucho* dispensed with partisan redistricting claims in federal court under the Fourteenth Amendment as nonjusticiable, in her dissent, Justice Kagan set forth the following three-part test to determine whether there was an unconstitutional partisan gerrymander: (1) the plaintiffs must prove that the “predominant purpose” in drawing a district’s lines was to entrench the party in power by diluting the votes of citizens favoring its rival; (2) the plaintiffs must establish that the lines drawn do in fact substantially dilute the votes of those citizens; and (3) if the plaintiffs make those showings, the State must come up with a legitimate, non-partisan justification for the way the lines were drawn. *Rucho*, 139 S. Ct. at 2516 (internal quotations and citations omitted).

118. The New Mexico Supreme Court has asserted that some degree of partisan gerrymandering is permissible “so long as the degree is not egregious in intent and effect.” See *Amended Order of the Supreme Court of New Mexico*, dated August 25, 2023.

119. The Court directed the district court to determine whether individual plaintiffs’ party-affiliated votes were in fact substantially diluted by “comparing objective district-specific data under that map against analogous evidence under the prior congressional map” as well as “any other evidence relevant to the district court’s application of [Justice Kagan’s] test....” See *Amended Order of the Supreme Court of New Mexico*, dated August 25, 2023.

120. The Supreme Court also held that the standard of review for a partisan gerrymandering claim is “intermediate scrutiny.” Under intermediate scrutiny, legislation will be upheld if “the classification or discrimination caused by the legislation is ‘substantially related to an important government interest.’” See *Amended Order of the Supreme Court of New Mexico*, dated August 25, 2023; *Breen v. Carlsbad Mun. Schools*, 2005-NMSC-028, ¶ 13, 138 N.M. 331, 120 P.3d 413 (citations omitted).

K. The 2022 Redistricting Litigation Plaintiffs

121. Plaintiff Dinah Vargas avers that she is a registered Republican voter and a supporter of Republican candidates and policies who resides at 4707 Coors Boulevard, SW, Albuquerque, New Mexico 87121. Verified Complaint at ¶ 4.

122. Plaintiff Pearl Garcia avers that she is a registered Republican voter and a supporter of Republican candidates and policies who resides at 2601 Pajarito Road, SW, Albuquerque, New Mexico, 87105. *Id.*, ¶ 7.

123. Under the previous congressional districts as they existed before SB-1, both Ms. Vargas and Ms. Garcia resided in CD-1. *Id.* The partisan performance measure for CD-1 as of 2011 was 53.9% Democrat and 46.1% Republican. *See Exhibit 33, NM Congress CD_187963.2_Egolf_Executive 2010 Census Redistricting (Dec. 15, 2011), https://www.nmlegis.gov/Redistricting2011/Maps_And_Data?id=187963.2.*

124. Under SB-1, most of the South Valley of Albuquerque, including the areas where Ms. Vargas and Ms. Garcia reside, was moved from CD-1 into CD-2. The partisan performance measure for CD-2 under SB-1 is 53.0% Democrat and 47% Republican. *See Ex. 28.* Accordingly, under SB-1 Ms. Vargas and Ms. Garcia, both Republican voters, were moved to a congressional district with a higher Republican performance measure than her previous district.

125. Plaintiff Timothy Jennings avers that he is a registered Democrat voter and a supporter of Democratic candidates and policies who resided in CD-2 prior to SB-1's enactment. Verified Complaint at ¶ 3. The partisan performance measure for Plaintiff Jennings' previous congressional district, CD-2, as of 2011 was 46.6% Democrat and 53.4% Republican. *See Ex. 33.*

126. Under SB-1, Plaintiff Jennings now resides in CD-3. The partisan performance measure for CD-3 under SB-1 is 56.0% Democrat and 44.0% Republican. *See Ex. 28.*

127. Accordingly, under SB-1, Plaintiff Jennings, a Democratic voter, was moved from a Republican district that most often elected a Republican representative to a district with a higher Democratic performance measure than his previous district, giving him a better opportunity to elect a candidate of his party.

128. Plaintiff David Gallegos avers that he is a registered Republican voter who supports Republican candidates and policies. State Senator Gallegos remains in CD-2 under SB-1, but alleges his vote has been diluted by the “cracking” of Southeastern New Mexico Republican voters, which reduces Republican voting strength in CD-2. Ver. Compl. ¶¶ 2 & 90.

129. Plaintiff Manuel Gonzales avers that he is a registered Republican voter who supports Republican candidates and policies and who lives in Alamogordo. Mr. Gonzales alleges that SB-1 keeps him in CD-2, but contends that his vote has been “diluted” by alleged “cracking” of Southeastern New Mexico Republican voters which reduces Republican voting strength in CD-2. Ver. Compl. ¶5.

130. For Republican voters in CD-2 like Plaintiffs Gallegos and Gonzales, given the competitiveness of the last election where Republican voters were able to perform at 49.6% with a 46% voter turnout overall, *see* FOF, ¶¶ 103-112, the importance of each Republican vote is enhanced—not diluted. In a very tight swing district like CD-2 under SB-1, each vote, regardless of party affiliation, makes a critical difference in the outcome of the election.

131. Plaintiffs Bobby and Dee Ann Kimbro aver that they are registered Republican voters who support Republican candidates and policies, and who live in Lovington, New Mexico. Mr. and Mrs. Kimbro allege that under SB-1, they were moved from CD-2 to CD-3, due to alleged “cracking” of Southeastern New Mexico Republican voters, which they contend diluted their votes and put them in a district with northern New Mexico. Ver. Compl. ¶6.

132. But no voter or political party has the right to assume how a “decline-to-state/other” registered voter will actually cast his or her ballot. Even the most sophisticated districting maps cannot reliably account for some of the reasons voters prefer one candidate over another, or why their preferences may change. “Voters elect individual candidates in individual districts, and their selections depend on the issues that matter to them, the quality of the candidates, the tone of the candidates’ campaigns, the performance of an incumbent, national events or local issues that drive voter turnout, and other considerations. Many voters split their tickets. Others never register with a political party, and vote for candidates from both major parties at different points during their

lifetimes.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2503 (2019)

133. For Republican voters like Mr. and Mrs. Kimbro who moved from CD-2 into CD-3, their vote continues to carry equal weight with that of Democratic voters and Decline-to-State voters in CD-2 and CD-3, because of SB-1’s zero percent population deviation. FOF ¶¶ 74 & 75, *supra*.

134. With regard to Mr. and Mrs. Kimbro, while CD-3 certainly performs as a Democratic-leaning district, the total percentage of registered Republican voters and “Other” voters is 52.4%, while the total percentage of Democratic voter registration in CD-3 is only 47.6%. Ex. 28. Additionally, in the 2022 election with voter turnout of just 51% (230,782), Republican voters underperformed while Democratic voters exceeded anticipated performance levels. Ex. 10, New Mexico Secretary of State 2022 Election Results; *see also* Exhibit 34, *New Mexico Secretary of State Voter Registration* (Nov. 30, 2022), https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/ee3072ab0d43456cb15a51f7d82c77a2/2a08e4e4-04e2-443d-be29-f4233531210d/Congressional_11-30-2022.pdf. Accordingly, the Kimbros’ Republican votes have not been “substantially diluted” under SB-1.

CONCLUSIONS OF LAW

I. CONCLUSIONS OF LAW

Having made the foregoing Findings of Fact, this Court concludes as follows:

A. The Congressional District Map as Adopted by Senate Bill-1 Meets All Constitutional Requirements.

1. Article IV, Section 3 of the New Mexico Constitution grants the legislature power to statutorily reapportion districts following publication of the official federal census data for each decennial census.

2. All legislation is presumed constitutional. *See Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 10, 122 N.M. 524, 928 P.2d 250 (citing *Espanola Hous. Auth. v. Atencio*, 1977-NMSC-074, ¶ 3, 90 N.M. 787, 568 P.2d 1233 (“It is well settled that there is a presumption of the validity and regularity of legislative enactments.”)). Thus, as Senate Bill-1 (“SB-1”) was passed by the New Mexico Legislature and signed into law by the Governor, it is presumed constitutional.

3. Political equality demands one person, one vote. *Reynolds v. Sims*, 377 U.S. 533, 558 (1964).

4. To this end, Article I, Section 2 of the U.S. Constitution requires “absolute population equality” in the case of congressional districts, meaning a 0% population deviation. *See Karcher v. Daggett*, 462 U.S. 725, 732-33 (1983) (“We thus reaffirm that there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.”).

5. SB-1 meets the 0% population deviation requirement with a maximum deviation among the three congressional districts of only 14 people.

B. The Congressional District Map as Adopted by Senate Bill-1 Meets All Statutory Requirements.

6. The Redistricting Act of 2021 created a Citizen Redistricting Committee (“CRC”) to gather public comment and adopt three concept plans each for New Mexico’s congressional

districts, the state house of representatives, the state senate, and other state offices. *See* NMSA 1978, § 1-3A-5 (2021).

7. The purpose of the CRC was to take the place of an interim legislative committee, solicit and receive public input and adopt and submit proposed districting plans to the Legislature. The Legislature is only required to receive the adopted district plans in the same manner as for legislation recommended by interim legislative committees. *See* NMSA 1978, § 1-3A-9(B) (2021).

8. The CRC can only make recommendations, and until its recommendations are adopted by the legislative body, the recommendations have no force. *See* Ex. 15, *Committee Handbook* at 12; *see also* *Rivera v. Schwab*, 512 P.3d 168, 186-87 (Kan. 2022) (rejecting use of guidelines because neither rule nor law which could provide “binding authority that can give rise to a legal challenge that courts can adjudicate”).

9. Therefore, the Legislature was not required to adopt any of the district plans proposed by the Committee. *See* NMSA 1978, § 1-3A-9(B) (2021); Ex. 15, *Committee Handbook* at 12.

C. The Congressional District Map as Adopted by Senate Bill-1 Is Not an Egregious Partisan Gerrymander.

10. Article II, Section 18 of the New Mexico Constitution, the Equal Protection Clause, provides protection against redistricting efforts that produce partisan gerrymanders that are egregious in intent and effect. *See Amended Order of the Supreme Court of New Mexico* in Cause No. S-1-SC-39481, dated August 25, 2023.

11. Given the inherent political nature of redistricting, some partisan gerrymandering is permissible. The question is whether it is egregious in intent and effect. *See Amended Order* at ¶ 3; *accord Rucho v. Common Cause*, 139 S.Ct. 2484, 2497 (2019) (“The ‘central problem’ is not determining whether a jurisdiction has engaged in partisan gerrymandering. It is ‘determining when political gerrymandering has gone too far.’”)(citations omitted).

12. Plaintiffs in this case challenge the new boundaries of the second congressional district (“CD-2”) in SB-1 as an unconstitutional partisan gerrymander.

1. The Predominant Purpose Behind Drawing CD-2's District Lines Was Not to Entrench the Democratic Party.

13. The first, critical factor addressed in the test articulated by Justice Kagan in her dissenting opinion in *Rucho* is whether the alleged gerrymander was drawn with an invidious, predominant purpose and intent to “entrench” one party in power by diluting the votes of citizens favoring its rival. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting). A showing of a potential to “entrench” would tend to indicate that intent was a predominant purpose in drawing a district’s line. *Id.*

14. When reviewing legislation, the Court’s “guiding principle is to determine and give effect to legislative intent.” *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regul. Comm’n*, 2010-NMSC-013, ¶ 52, 148 N.M. 21, 229 P.3d 494.

15. “In New Mexico, legislative intent must be determined primarily by the *legislation itself*.” *U.S. Brewers Ass’n, Inc. v. Dir. of the New Mexico Dept. of Alcoholic Beverage Control*, 1983-NMSC-059, ¶ 10, 100 N.M. 216, 219, 668 P.2d 1093, 1096 (emphasis in original); *Badilla v. Wal-Mart Stores E. Inc.*, 2015-NMSC-029, ¶ 12, 357 P.3d 936 (“To discern the Legislature’s intent, the Court looks first to the plain language of the statute.”).

16. To prove a constitutional violation for discriminatory intent, Plaintiffs must show that that the predominant, invidious partisan intent rises to the level of “mak[ing] the political system systematically unresponsive to a particular segment of the voters based on their political preference.” *Whitford v. Gill*, 218 F. Supp. 3d 837, 909 (W.D. Wis. 2016), *vacated and remanded*, *Gill v. Whitford*, 138 S. Ct. 1916, 201 L. Ed. 2d 313 (2018).

17. Statements of legislators after the passage of legislation are inadmissible to determine the intent of the legislative body at the time of enactment. *Whitely v. New Mexico State Pers. Bd.*, 1993-NMSC-019, ¶ 16, 115 N.M. 308, 313, 850 P.2d 1011, 1016. “[T]he views of individual legislators are not controlling...because the sovereign authority of the legislature is instilled in the representative body, not its individual members.” *Whitely v. New Mexico State Pers. Bd.*, 1993-NMSC-019, ¶ 17, 115 N.M. 308, 313, 850 P.2d 1011, 1016.

18. The Legislature speaks and demonstrates its intent as a body through its vote. *See U.S. Brewers Ass’n, Inc. v. Dir. of the New Mexico Dept. of Alcoholic Beverage Control*, 1983-NMSC-059, ¶¶8 & 9, 100 N.M. 216, 218, 668 P.2d 1093, 1095 (viewing testimony of individual legislators as “incompetent” evidence of intent of the legislative body because “that body speaks solely through its concerted action as shown by its vote.”) (quoting *Haynes v. Caporal*, 571 P.2d 430, 434 (Okla.1977)); *cf. Fann v. Kemp in & for Cnty. of Maricopa*, 253 Ariz. 537, 547, 515 P.3d 1275, 1285 (2022) (in review of legislation, court looks to action and effect of the legislation as a whole, not to legislator’s individual motive).

19. “The sponsoring legislator’s motives or communications with staff are not probed - or even considered relevant; after all, it is the body, not the individual legislator, that ultimately adopts legislation.” *Matter of 2022 Legislative Districting of State*, 481 Md. 507, 590, 282 A.3d 147, 197 (2022); *see also id.* at 196–97 (describing past redistricting decisions which “analyzed the plan in question in the same manner that this Court typically analyzes other pieces of legislation - looking to the actual terms of the plan and at the effect of the plan and any alternative plans offered by challengers, without inquiry into the specific motives of any individual drafter.”).

20. Therefore, looking first to the text of the legislation, there is no express language showing partisan intent within the session law establishing SB-1 as the enacted plan.

21. Moreover, the congressional districts drawn by SB-1 do not reflect an intent to entrench any party in power. Rather, they draw a very competitive district in CD-2, a district that in all likelihood, especially as indicated by the close vote in the 2022 election, will be a swing district. *Cf. Whitford v. Gill*, 218 F. Supp. 3d 837, 909 (W.D. Wis. 2016), *vacated and remanded*, *Gill v. Whitford*, 138 S. Ct. 1916, 201 L. Ed. 2d 313 (2018) (“It would be difficult to establish that drafters who designed a map with many competitive districts had the requisite partisan intent to show a constitutional violation.”).

22. Additionally, SB-1 made both CD-1 and CD-3 more competitive by reducing Democratic performance in those districts.

23. Competitive districts are vital to the health of a representative democracy, keeping

elected officials responsive and accountable to their constituents. *Maestas v. Hall*, 2012-NMSC-006, ¶ 41; Ex. 5, Chavez Dep. 102:5-103:1.

24. Indeed, competitiveness is effectively the antithesis of entrenchment. The entrenchment that Justice Kagan warns against “amounts to ‘rigging elections’...[b]y drawing districts to maximize the power of some voters and minimize the power of others, a party in office at the right time can entrench itself there for a decade or more, no matter what the voters would prefer.” *Rucho* (J. Kagan, dissenting), 139 S. Ct. at 2512.

25. Unconstitutional predominant partisan intent is “not simply an intent to act for political purposes, but an intent to make the political system systematically unresponsive to a particular segment of the voters based on their political preference.” *Whitford v. Gill*, 218 F. Supp. 3d 837, 887 (W.D. Wis. 2016), *vacated and remanded*, *Gill v. Whitford*, 138 S. Ct. 1916, 201 L. Ed. 2d 313 (2018) (internal quotation omitted).

26. Plaintiffs have not met their burden of showing that the predominant purpose of the congressional districts drawn in SB-1 was to entrench the Democratic party in power. The first element of Justice Kagan’s three part conjunctive test has not been satisfied.

2. CD-2’s District Lines Do Not Substantially Dilute Plaintiffs’ Votes.

27. The second prong of the test articulated by Justice Kagan is that “the lines drawn in fact have the intended effect by ‘substantially’ diluting” the votes of Plaintiffs. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

28. Vote dilution is typically accomplished by “packing” or “cracking”: “When a voter resides in a packed district, her preferred candidate will win no matter what; when a voter lives in a cracked district, her chosen candidate stands no chance of prevailing. But either way, such a citizen’s vote carries less weight—has less consequence—than it would under a neutrally drawn map.” *Gill v. Whitford*, 585 U.S. ---, 138 S. Ct. 1916, 1936 (2018).

29. The harm in vote dilution “arises from the particular composition of the voter’s own district, which causes his vote...to carry less weight than it would carry in another, hypothetical

district.” *Gill v. Whitford*, 138 S. Ct. 1916, 1930–31, 201 L. Ed. 2d 313 (2018).

30. Because electoral predictions are notoriously difficult, election results provide the best direct and reliable evidence of vote dilution, as opposed to simulations or predictions of plausible future elections. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2503 (2019) (“Experience proves that accurately predicting electoral outcomes is not so simple, either because the plans are based on flawed assumptions about voter preferences and behavior or because demographics and priorities change over time. In our two leading partisan gerrymandering cases themselves, the predictions of durability proved to be dramatically wrong.”).

31. In the first election under the newly drawn CD-2, because the voters elected a Democratic candidate by a mere 1,350 votes or 0.7%, elections conducted under the enacted plan do not demonstrate or provide direct evidence of a partisan effect that could be attributed as a result of SB-1.

32. Defendants presented testimony from Brian Sanderoff, the principal of Research and Polling Inc., a well-recognized and long-established research and polling organization in New Mexico. Mr. Sanderoff has been involved in legislative and congressional redistricting efforts in the State of New Mexico under contract with the New Mexico Legislative Council Service since 1991. Ex. 11, Sanderoff Report at 2.

33. Mr. Sanderoff testified regarding the partisan performance measures of the three congressional districts both as they existed prior to the adoption of SB-1 and after as reconfigured by SB-1 in the 2022 election. From that testimony and based upon the actual observed metrics of the 2022 election, CD-2 is a very competitive district in which candidates from either of the major parties can effectively compete. The competitiveness of potential Republican Party candidates in CD-1 and CD-3 were also enhanced by the passage of SB-1. Ex. 11, Sanderoff Report at 9-10.

34. Mr. Brace testified concerning matters relating to compactness of the districts and the number of counties that are split by SB-1. His testimony indicates that utilizing those factors, SB-1 compares favorably to past congressional districting done either in the legislative process or by the Courts. Ex. 8, Brace Report at 10-11; Ex. 8 Brace Dep. 13:2-15:7.

35. The evidence submitted establishes that the Plaintiffs’ individual votes are not, in fact, “substantially diluted” under SB-1. In contrast, given the narrow margins in the 2022 election, under SB-1 districts Plaintiffs have a proportionally increased opportunity to impact the outcome of elections whether they reside in the newly drawn CD-3 or CD-2.

36. CD-2 remains a competitive district as evidenced by the political performance data compiled by Brian Sanderoff and as demonstrated by recent election results. CD-3 is made more competitive with the potential opportunity to combine votes from the Farmington MSA, surrounding northwest counties, and eastern part of the state to elect a Republican legislator. The total percentage of registered Republican voters and “other” voters in CD-3 exceeds the total percentage of registered Democrats in that district. *See* FOF ¶¶ 130 & 134, *supra*.

37. At bottom, none of the Plaintiffs reside in a packed or cracked district where the election outcome for a congressional candidate of a given party is certain or foregone. *Gill v. Whitford*, 138 S. Ct. at 1936.

38. Defendants presented testimony from Dr. Jowei Chen that SB-1 is not a statistical, partisan outlier. Ex. 31, Chen Report at 4 & 19. Accounting for non-partisan considerations, CD-2 is more Republican performing than 33% of the 1,000 simulated maps. Ex. 31, Chen Report at 19. Using registered voters, Dr. Chen concluded that CD-2’s “Republican share of registered voters in CD-2 is higher than 79.5% of the simulated districts’ second-most-Republican districts” and thus more favorable to Republicans than most of the simulated plans. Ex. 31, Chen Report at 23.

39. Thus, Plaintiffs have not met their burden of showing that the congressional district map as drawn by SB-1 substantially diluted their votes. This second element of Justice Kagan’s three-part test to determine an egregious partisan gerrymander has not been met.

3. There Are Legitimate, Non-Partisan Reasons Behind CD-2’s District Lines.

40. Lastly, the third prong of the test articulated by Justice Kagan is that even if Plaintiffs had been able to prove the intent and effect of the map was party entrenchment through vote dilution, the current district would survive if the Defendants establish legitimate, non-partisan

reasons for the way the district lines were drawn. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

41. Under the intermediate scrutiny test required by the Supreme Court, the congressional districts drawn by SB-1 shall be upheld if “the classification or discrimination caused by the legislation is ‘substantially related to an important government interest.’” *Breen v. Carlsbad Mun. Schools*, 2005-NMSC-028, ¶ 13, 138 N.M. 331, 120 P.3d 413.

42. There are numerous appropriate policy reasons that were articulated both at the Citizen Redistricting Committee and during legislative committee deliberations and floor debate—unrelated to partisan affiliation—that demonstrate that the district lines in SB-1 are substantially related to important government interests, both in policy and purposes vital to the functioning of a representative democracy.

43. The *Maestas* Court endorsed the creation of more competitive districts whenever practicable as “healthy” for representative democracy by allowing “voters to express changed political opinions and preferences.” *Maestas*, 2012-NMSC-0006, ¶41

44. As chair of the Committee, Justice Chavez was moved by the degree of public participation because “to witness people actively participate in the democracy is a beautiful thing.” Ex. 5, Chavez Dep. 110:19-111:8; *see also* Ex. 5, Chavez Dep. 61:9-62:11.

45. The underlying policies supported by New Mexico citizens in their testimony included: incorporation of urban and rural constituencies in all of the state’s congressional districts; the unique issues that remain critical for all three New Mexico congresspersons relating to proximity of the U.S./Mexico border; enhancement of the representation and understanding of the oil and gas industries across multiple congressional districts; a desire by two Native American nations, the Zuni Pueblo and the Mescalero Apache Nation, to be split between two congressional districts; and a desire to combine communities in the Rio Grande Valley from the South Valley of Albuquerque to the Texas border due to similarities in interests and concerns.

46. Utilizing the policy considerations expressed in public comment and debate, SB-1 was crafted to address and reflect those policy considerations. SB-1 was very similar to Concept Map H which was recommended by the Citizen Redistricting Committee and determined by its

political scientist contractor, Dr. Cottrell, to be within an acceptable range of anticipated outcomes based upon a completely nonpartisan generation of potential districting plans. *See* Ex. 18, CRC Report at Appendix 1.

47. Thus, SB-1's boundaries for electing congressional representatives are clear expressions of State policy articulated by its Legislature and Governor through the political process. *See Findings of Fact and Conclusions in Jepsen v. Vigil-Giron*, Cause No. D-101-CV-2001-02177 (N.M. 1st Jud. Dis. Jan 2, 2002) at ¶ 34.

48. Further, SB-1 reflects these policy decisions while adhering to the constitutional requirements of one person, one vote; respecting the rights of minorities in compliance with the Voting Rights Act; and honoring the consensus of the sovereign indigenous nations located within New Mexico's boundaries.

49. The Legislative Defendants submitted testimony from Dr. Jowei Chen, a political scientist who is a professor at the University of Michigan with a significant background in the analysis of redistricting legislation utilizing computer generated algorithms. Utilizing many of the same non-partisan policy considerations expressed at the CRC meetings and on the legislative record—including population equity, district contiguity, precinct preservation, municipal boundary considerations, Native American reservation considerations, avoiding county splits, oil industry considerations, and district compactness--Dr. Chen concluded that SB-1 did not constitute an outlier given the policy goals articulated in connection with SB-1. Utilizing those goals, SB-1 did not appear to be an extreme partisan gerrymander. Ex. 31, Chen Report at 30.

50. The Legislative Defendants also presented testimony from Kimball Brace. Mr. Brace is a political consultant with Election Data Services or EDS, Inc., who specializes in providing software, database development services, and consulting services for the creation of districting plans and the analysis of many aspects of the redistricting process. Mr. Brace testified as to the various policy considerations that were articulated as being of importance in crafting SB-1. He noted the importance of the oil and gas industry to the state of New Mexico and its concentration in southeast New Mexico. By way of contrast, he also cited the configurations of

districts drawn by legislatures in other jurisdictions with an obvious and apparent intent to engage in excessive partisan gerrymandering. Suffice it to say that the districts as drawn by SB-1 do not begin to compare with districts that have been determined to be excessive partisan gerrymandered districts in other jurisdictions. Ex. 8, Brace Report at 6.

51. Through the many policy considerations detailed both at the Citizen Redistricting Committee and during legislative committee deliberations and floor debate, Defendants have shown that the manner in which the congressional districts have been drawn is substantially related to important government interests. Thus, Defendants have met their burden as set forth in the intermediate scrutiny test. *See Breen v. Carlsbad Mun. Schools*, 2005-NMSC-028, ¶ 13, 138 N.M. 331, 120 P.3d 413.

52. In sum, Plaintiffs have not met their burden under the Kagan test because of the substantial evidence of record here establishes that SB-1 did not entrench the Democratic party in power by diluting Plaintiffs' votes, did not result in an egregious Partisan gerrymander, and that the lines drawn did not substantially dilute the votes of Republican voters in the district.

53. Furthermore, the evidence of record establishes that Defendants have met the burden of intermediate scrutiny and proven legitimate, non-partisan policy reasons support SB-1.

WHEREFORE, the Legislative Defendants urge this Court to rule that SB-1 does not violate the equal protection clause of N.M. Const. Art. II, § 18, and dismiss Plaintiffs' complaint.

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CERTIFICATE OF SERVICE

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

HINKLE SHANOR LLP

/s/ Lucas M. Williams