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3
4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
5 **FOR THE COUNTY OF MARION**

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

9 Petitioners,

v.

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

12 Respondent,

13 **JEANNA ATKINS, SUSAN CHURCH,**
14 **NADIA DAHAB, JANE SQUIRES,**
15 **JENNIFER LYNCH, and DAVID**
16 **GUTTERMAN,**

Intervenors.

Case No. 21CV40180

Senior Judge Mary M. James, Presiding
Judge of Special Judicial Panel
Senior Judge Henry C. Breithaupt, Special
Master to Special Judicial Panel

PETITIONERS' PROPOSED FINDINGS OF
FACT

16 **PETITIONERS' PROPOSED FINDINGS OF FACT**

17 **I. PROPOSED FINDINGS FOR CLAIM UNDER ORS § 188.010(2)**

18 Because a claim under ORS § 188.010(2) requires that the Special Panel only find that the
19 Legislative Assembly drew districts “for the purpose of favoring any political party,” ORS
20 § 188.010(2); *see also Hartung v. Bradbury*, 332 Or. 570, 599, 33 P.3d 972 (2001), these findings
21 are directed at that legislative partisan intent requirement only.

22 **A. Democrats Who Control The General Assembly And Unilaterally Drafted And**
23 **Adopted SB 881-A Intended To Draw SB 881-A “For The Purpose Of Favoring” The**
24 **Democratic Party**

- 25 1. The House Redistricting Committee has the responsibility of drafting redistricting
26 maps for Oregon’s state legislative and congressional district boundaries, and then

1 proposing those draft maps to the full House for its vote. Ex. 1003, Declaration of
2 Representative Daniel Bonham (“Bonham Decl.”) ¶ 4.

3 2. On April 7, 2021, Oregon House Speaker Tina Kotek (D-Portland) promised
4 Republican legislative members to split evenly membership of the House
5 Redistricting Committee between Republicans and Democrats, to ensure that the
6 Committee recommended a neutral, non-gerrymandered map that was fair to all
7 Oregonians. Ex. 1003, Bonham Decl. ¶ 5.

8 3. Republican legislative members later became concerned that Democratic Party
9 Congressmen were pressuring Speaker Kotek to renege on her equal membership
10 promise such that she would change the composition of the Committee in order to
11 push through gerrymandered maps. Ex. 1003, Bonham Decl. ¶ 6.

12 4. In light of the redistricting data released by the Census Bureau, the Republican
13 Committee members focused on a proposed congressional map, planning to
14 negotiate the same with Democrat Committee members once it was released to the
15 public on September 3, 2021. Ex. 1003, Bonham Decl. ¶ 8.

16 5. On September 3, members of the House Interim Committee on Redistricting of the
17 Oregon House of Representatives introduced proposed congressional maps. Ex.
18 1003, Bonham Decl. ¶ 9.

19 6. Representative Andrea Salinas, on behalf of the Democrat Committee members,
20 proposed a new congressional map referred to as “Plan A,” and Representative
21 Shelly Boshart Davis, on behalf of the Republican Committee members, proposed
22 a new congressional map referred to as “Plan B.” Stipulation of Facts (“SOF”)
23 ¶ 20; Ex. 1003, Bonham Decl. ¶ 9.

24 7. The Democrat’s proposed congressional map—Plan A—was plainly a partisan
25 gerrymandered map that was designed to create a disproportionately Democratic
26

1 advantage. Ex. 1003, Bonham Decl. ¶ 10; Ex. 1006, Expert Report of Professor
2 Thomas L. Brunell (“Brunell Report”), at 4–5, 6–8.

3 8. Plan A unnecessarily broke up Portland and the Greater Portland Area, which are
4 traditionally Democratic strongholds, into four districts—First, Third, Fifth, and
5 Sixth—such that the Democratic Party would have an advantage in congressional
6 races. Ex. 1003, Bonham Decl. ¶ 11.

7 9. Republican Committee members sought and were willing to negotiate with the
8 Democrat Committee members to reach a compromise map. Ex. 1003, Bonham
9 Decl. ¶¶ 13–14.

10 10. After releasing Plan A, the Democrat Committee members never once attempted to
11 negotiate with the Republican Committee members on the congressional map. Ex.
12 1003, Bonham Decl. ¶¶ 13–15; Transcript of 10/27/21 Hearing, at 104–05, 106–07,
13 109–10, 115–16, 148, 149–50; Ex. 1027, Video Clip 2.

14 11. On or about September 26, 2021, the day before SB 881-A was voted on,
15 Representative Daniel Bonham, Deputy Minority Leader for the Oregon House
16 Republicans, attempted to negotiate with Senate President Peter Courtney about the
17 map. Transcript of 10/27/21 Hearing, at 149–50, 154.

18 12. Senator Courtney told Representative Bonham that the “maps were the maps,” and
19 that Democrats would be moving forward with them. Transcript of 10/27/21
20 Hearing, at 149–50.

21 13. The Democrat Redistricting Committee members only negotiated with respect to
22 the state legislative maps and made clear they would not accept any Republican
23 changes to Plan A. Ex. 1003, Bonham Decl. ¶¶ 15–16; Transcript of 10/27/21
24 Hearing, at 117–19.

25 14. On September 20, 2021, Senate President Peter Courtney introduced Plan A as
26 Senate Bill 881 (2021) (“SB 881”). SOF ¶ 21.

- 1 15. Plan A was then referred to the Senate Committee on Redistricting, which voted
2 the bill out of the committee and to the full Senate for a vote. Ex. 1003, Bonham
3 Decl. ¶ 17.
- 4 16. On September 20, 2021, the Oregon Senate passed SB 881 by a strict party-line
5 vote of 18 Democrats in favor to 11 Republicans opposed. SOF ¶ 22; Ex. 1003,
6 Bonham Decl. ¶ 18.
- 7 17. That same day after the Senate vote, Speaker Kotek reneged on her promise to
8 provide equal representation on the Committee when she replaced the House
9 Redistricting Committee with the House Committee on Congressional
10 Redistricting, which now consisted of two Democrats and only one Republican.
11 Transcript of 10/27/21 Hearing, at 96–99; Ex. 1003, Bonham Decl. ¶¶ 1, 19–20;
12 Ex. 1002, Declaration of Beverly Clarno (“Clarno Decl.”) ¶ 14; Ex. 1027, Video
13 Clip 2.*
- 14 18. SB 881 and Senate Bill 882 (2021), which provided for redistricting of Oregon’s
15 state legislative districts, were scheduled for a vote for September 25, 2021, in the
16 Oregon House of Representatives. SOF ¶ 23.
- 17 19. When the House convened on September 25, 2021, the House lacked the quorum
18 necessary to vote on SB 881, and the vote was delayed. SOF ¶ 24; Ex. 1003,
19 Bonham Decl. ¶ 26.
- 20 20. Later that day, Senate President Courtney and his staff shared with Republican
21 Committee members and leadership two different maps, which—just like SB 881—
22 split Portland and the Greater Portland area into four congressional districts. Ex.

26 * While Petitioners understand that the Special Panel does not find this fact legally relevant, they raise it here for preservation purposes. See 10/21/2021 Order on Non-Parties’ Motion to Quash; Protective Order pp. 3–4.

1 1003, Bonham Decl. ¶¶ 27–29, 32; Transcript of 10/27/21 Hearing, at 104–05, 109–
2 10, 146–47.

3 21. Senator Courtney’s staff member, Tom Powers, drew the maps without any
4 Republican input or negotiations. Transcript of 10/27/21 Hearing, at 106–07.

5 22. The latter of the two maps, which became known as SB 881-A, also moved Bend—
6 another area that traditionally votes for Democrat politicians, into the Fifth
7 Congressional District. Ex. 1003, Bonham Decl. ¶ 29.

8 23. On September 27, 2021, Legislative Assembly Republicans appeared on the House
9 floor to vote against SB 881-A and SB 882. Ex. 1003, Bonham Decl. ¶ 38.

10 24. Legislative Assembly Republicans would not have appeared on the House floor had
11 SB 881-A been the only map scheduled for a vote. Ex. 1003, Bonham Decl. ¶ 36.
12 Transcript of 10/27/21 Hearing, at 117–20.

13 25. However, because the state legislative map, SB 882, was also scheduled for a vote
14 on September 27, and because Legislative Assembly Republicans were fearful that
15 if a state legislative map was not passed, that task would fall to Secretary of State
16 Shemia Fagan—whom Legislative Assembly Republicans believed would draw a
17 map less favorable for Republicans than SB 882—there was an insufficient number
18 of Legislative Assembly Republicans who wanted to deny quorum. Ex. 1003,
19 Bonham Decl. ¶¶ 33–35, 37; Transcript of 10/27/21 Hearing, at 117–19; Ex. 1038,
20 Video Clip 13.

21 26. After the House Committee on Congressional Redistricting approved SB 881-A,
22 the Committee sent SB 881-A back to the full House for voting, which passed it on
23 a strict party-line vote of 33 Democrats in favor to 16 Republicans opposed, with
24 11 members excused. Ex. 1003, Bonham Decl. ¶ 40; SOF ¶ 25.

25 27. On September 27, 2021, the Oregon Senate passed SB 881-A by a vote of 18
26 Democrats in favor to 6 Republicans opposed, with 6 members excused. SOF ¶ 26.

- 1 28. On September 27, 2021, Governor Kate Brown signed SB 881-A—now referred to
2 post-passage as SB 881—into law. SOF ¶ 27.
- 3 29. The Democratic Legislators enacted SB 881-A with partisan intent: to provide a
4 more favorable Oregon congressional map for Democrats. *See generally* Ex. 1003,
5 Bonham Decl. ¶¶ 10, 28–30; Ex. 1040, Video Clip 15; Ex. 1042, Video Clip 17;
6 *see* Ex. 1045, Deposition of Melissa Unger (“Unger Dep.”) at 61, 63–66, 68–69,
7 76, 80–81; *see generally* Ex. 1006, Brunell Report, at 4–6; Ex. 1048, Supplemental
8 Declaration of Thomas L. Brunell (“Brunell Supp. Decl.”) ¶¶ 4–6; Ex. 1004, Clarno
9 Dep., 14:16–15:17; Ex. 1043, Statement of Senate Republican Leader at 1.
- 10 30. The Executive Director of Service Employees International Union (“SEIU”) Local
11 503, Melissa Unger, had ongoing conversations with two members of the
12 Democratic Leadership, Representative Salinas and Speaker Kotek, along with a
13 chief of staff for Speaker Kotek, Lindsey O’Brien, during the weekend before the
14 vote on SB 881-A. Ex. 1045, Unger Dep. at 33.
- 15 31. Democratic Party leaders were aware of and discussing the ratings of the various
16 proposed maps by FiveThirtyEight.com and other publicly available models and
17 discussing the overall meaning of those proposed maps and their grading under the
18 modeling tools. Ex. 1045, Unger Dep. at 61, 63–66, 68–69.
- 19 32. Democratic Party leaders frequently discussed perceptions of the various proposed
20 maps, including views on the likely Republican-Democrat district splits of those
21 maps. Ex. 1045, Unger Dep. at 85.
- 22 33. Melissa Unger discussed with members of the Oregon Legislature how Oregon
23 Public Broadcasting and The Oregonian were reporting on the proposed maps. Ex.
24 1045, Unger Dep. at 64.
- 25 34. Melissa Unger had conversations with Democratic legislators regarding the various
26 proposed maps and the impact of those maps, specifically as to the number of seats

1 that Democrats and Republicans were going to win under the maps. Ex. 1045,
2 Unger Dep. at 76, 80–81.

3 35. Democratic leadership intended the known consequences of the map they drew, as
4 measured by the most common method of measuring partisan unfairness, the
5 efficiency gap. See Transcript of 10/28/21 Hearing, at 42–43; Transcript of
6 10/28/21 Hearing, at 198–199.

7 36. The efficiency gap metric shows that SB 881-A is a partisan gerrymandered map.
8 Ex. 1006, Brunell Report, at 8; Ex. 1049, Supplemental Expert Report of Professor
9 Thomas Brunell (“Supp. Brunell Report”), at 21.

10 37. The efficiency gap metric measures the difference in “wasted” votes (votes that do
11 not contribute to an election win) between the two parties, with a positive efficiency
12 gap indicating that the votes of one party are more efficiently distributed across
13 districts than the votes of the other party. Ex. 1006, Brunell Report, at 2; Ex. 3001,
14 Declaration of Devin Caughey (“Caughey Decl.”), at 13–14.

15 38. It is the recent measure that has seen the most use in practice to measure a map’s
16 partisan bias. Ex. 2300, Expert Report of Professor Jonathan N. Katz (“Katz
17 Report”) at 4.

18 39. The State of Oregon has already endorsed the efficiency gap as sufficient to provide
19 evidence that a map favors a particular party. Ex. 1025, States’ Amici Brief at 15,
20 *Rucho v. Common Cause*, No.18-422 (U.S. Mar. 8, 2019) (“*Rucho* Amici Br.”).

21 40. Despite knowing this, Democratic leadership did not draw a map that was neutral,
22 but rather pushed forward with a map that they knew had a high, pro-Democratic
23 Party bias, as measured by the efficiency gap. Ex. 1049, Supp. Brunell Report at
24 21; See Ex. 1045, Unger Dep. at 61, 63–66, 68–69.

25 41. Under every measure of the efficiency gap offered the experts have offered here,
26 SB 881-A favors Democrats. Caughey Decl. at 14; Ex. 3002, Declaration of Paul

1 Gronke (“Gronke Decl.”) ¶ 25; Ex. 1006, Brunell Report at 8; Ex. 1049, Supp.
2 Brunell Report, at 21.

3 42. Public sources confirm that the efficiency gap of SB 881-A favors Democrats. Ex.
4 1022, FiveThirtyEight Congressional Map Assessment (“538”); Ex. 1023,
5 Princeton Gerrymander Project Congressional Map Grade (“Princeton”); Ex. 3002,
6 Gronke Report, fn. 4.; Ex. 2703 (PlanScore.Org – Oregon Congressional Plan SB
7 881A).

8 43. Democrat Leaders responsible for drafting the maps were aware of these publically
9 available sources, and those sources’ reports on SB 881-A. Ex. 1045, Unger Dep.
10 at 61, 63–66, 68–69.

11 44. Professor Jackson opined in the landmark Supreme Court case *Whitford v. Gill* that
12 an efficiency gap of 7% or higher shows partisan gerrymandering, a position that
13 Oregon supported. Transcript of 10/27/21 Hearing, at 257–58, 298–99, 301; Ex.
14 1025, Rucho Amici Br.

15 45. According to materials cited by Intervenors’ experts, there is at least an 8.5%
16 efficiency gap in favor of Democrats. Ex. 3001, Caughey Decl. ¶ 28; Ex. 3002,
17 Gronke Decl. ¶ 25; Ex. 1049; Ex. 2703, PlanScore.Org.

18 46. An efficiency gap of 8.5% shows “a strong and consistent efficiency gap that favors
19 Democrat congressional candidates.” Ex. 1048, Brunell Supp. Decl, ¶ 7.

20 47. Using the vote share in Oregon from the 2020, 2016, and 2012 presidential election,
21 which is a more reliable data set than the data set used by Intervenors’ experts, the
22 efficiency gap of SB 881-A is 19.85%. Ex. 1006, Brunell Report, at 8; Transcript
23 of 10/27/21 Hearing, at 303–304.

24 48. An efficiency gap of 19.85% is clear evidence that SB 881-A is a partisan
25 gerrymandered map. Transcript of 10/27/21 Hearing, at 301.
26

- 1 49. There is no evidence whatsoever that any of the Democratic leaders considered
2 partisan symmetry measures or anything similar in their map drawing. Transcript
3 of 10/28/21 Hearing, Vol. 2., at 44, 45–46.
- 4 50. Respondent’s expert, Dr. Katz, has no opinion about the partisan intent of the
5 Legislative Assembly in drafting SB 881-A. Transcript of 10/28/21, Vol. 2,
6 Hearing at 72–75.
- 7 51. Democrat Leaders who drafted SB 881-A knew that the map would result in a 5-1
8 congressional split under typical conditions. Ex. 1045, Unger Dep. at 61, 63–66,
9 68–69; Ex. 1003, Bonham Decl. ¶ 31.
- 10 52. The Democrat Legislators adopted SB 881-A on a strict party-line vote, and it also
11 proceeded out of committee in the House on a party-line vote. Ex. 1003, Bonham
12 Decl. ¶ 40; SOF ¶ 26.
- 13 53. Senate Republican Leader Fred Girod, noted that the map was drawn with the intent
14 of keeping Democrat voters together in an obvious example of gerrymandering.
15 Ex. 1043, Statement of Senate Republican Leader at 1.
- 16 54. The Oregon House Republican Caucus noted that the map was “clearly drawn for
17 partisan benefit” of the Democratic Party in Oregon.” Ex. 1044, Statement of
18 Oregon House Republican Caucus, at 1.
- 19 55. The Caucus further explained that Democratic leadership “dr[ew] congressional
20 lines to ensure 5 out of 6 seats” went to Democratic candidates. Ex. 1044,
21 Statement of Oregon House Republican Caucus, at 1.
- 22 56. Respondent’s and Intervenors’ experts, although contending that SB 881-A did not
23 have partisan effect on their own favor metrics, did not provide any testimony or
24 evidence on the partisan *intent* of the Democratic leaders. Transcript of 10/28/21
25 Hearing, Vol. 2., at 44, 45–46;
26

1 57. Previously adopted congressional redistricting maps did not divide Portland into
2 four districts, and neither does Petitioners’ remedial map. Ex. 1015, Petitioners’
3 Remedial Map Portland Area; Ex. 1016; Ex. 1016, Petitioners’ Remedial Map
4 Greater Portland Area; 2011 Map available at
5 [https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.](https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.pdf)
6 pdf (the Special Master may, as it did during the September 27, 2021, take judicial
7 notice of material publically available an Oregon State website. Transcript of
8 10/27/2021, at 135–36.)

9 58. Under SB 881-A, Portland was *unnecessarily* split into four congressional districts,
10 and by far the most logical reason for this split is Democratic legislators’ partisan
11 intent. Ex. 1009, SB 881-A Portland Map; Ex. 1010, SB 881-A Greater Portland
12 Area Map; Ex. 3017-B, Written Testimony by Alex Riedlinger at 1–2; Ex. 3017-B
13 Written Testimony by Kuko Mofor, at 56–57; Ex. 3017-E, Written Testimony by
14 Brian Ettling, at 4; Ex. 1004, Clarno Dep., 14:16–15:17; Transcript of 10/27/21
15 Hearing, at 120:21–121:9; Ex. 1028, Video Clip 3; Ex. 1029, Video Clip 4; Ex.
16 1031, Video Clip 6; Ex. 1039, Video Clip 14; Ex. 3018-S, 9/8/21 Hearing at 74:2–
17 4 ; Ex. 3018-K, 9/13/21 Hearing, at 31:11–18; Ex. 3018-K 9/13/21 Hearing at
18 50:13–20.

19 59. Previously adopted congressional redistricting maps did not cut across the Cascade
20 Mountain Range to include Bend, and neither does Petitioners’ remedial map. Ex.
21 1004, Clarno Dep., 12:21–13:20; Ex. 1015, Petitioners’ Remedial Map Portland
22 Area; Ex. 1016; Ex. 1016, Petitioners’ Remedial Map Greater Portland Area; 2011
23 Map available at
24 [https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.](https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.pdf)
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1 notice of material publically available an Oregon State website. Transcript of
2 10/27/2021, at 135–36.).

3 60. Under SB 881-A, the Fifth Congressional District *unnecessarily* cuts across the
4 Cascade Mountain Range to scoop the City of Bend into that district and by far the
5 most logical reason for feature of SB 881-A is Democratic legislators’ partisan
6 intent. Exhibit 3017-I, Written Testimony submitted by Cristal DeJarnac, at 1; Ex.
7 3017-I, Written Testimony submitted by Nancy Boever, at 3; Exhibit 3017-B,
8 Written Testimony by Joshua Berger, at 50–51; Exhibit 3017-B, Written Testimony
9 by Tia M. Hatton, at 95; Transcript of 10/27/21 Hearing, at 120:21–121:9, 149:10–
10 150:15, 160:14–161:17; Ex. 1030, Video Clip 5; Ex. 1036, Video Clip 11; Ex.
11 3018-J, 9/13/21 Hearing at 70:5–8; Ex. 3018-G, 9/20/21 Hearing at 15:25–16:4.

12 **B. SB 881-A Causes Injuries To Petitioners And Other Republicans**

13 61. Petitioner Beverly Clarno is a United States Citizen and resident of the State of
14 Oregon. SOF ¶ 35.

15 62. Petitioner Beverly Clarno resides in the Fifth Congressional District and is
16 registered to vote in the State of Oregon. SOF ¶ 36.

17 63. Petitioner Gary Wilhelms is a United States Citizen and resident of the State of
18 Oregon. SOF ¶ 37.

19 64. Petitioner Gary Wilhelms resides the First Congressional District and is registered
20 to vote in the State of Oregon. SOF ¶ 38.

21 65. Petitioner James L. Wilcox is a United States Citizen and resident of the State of
22 Oregon. SOF ¶ 39.

23 66. Petitioner James L. Wilcox resides in the Second Congressional District and is
24 registered to vote in the State of Oregon. SOF ¶ 40.

25 67. Petitioner Larry Campbell is a United States Citizen and resident of the State of
26 Oregon. SOF ¶ 41.

- 1 68. Petitioner Larry Campbell resides in the Fourth Congressional District and is
2 registered to vote in the State of Oregon. SOF ¶ 42.
- 3 69. All Petitioners are registered members of the Republican Party, support and vote
4 for the Republican Party in both congressional and statewide races, and engage in
5 campaign activities on behalf of those candidates. SOF ¶ 43.
- 6 70. By diluting Republican votes, the enactment of SB 881-A targets and injures
7 Petitioners and other Oregonians who associate with the Republican Party and vote
8 for Republican candidates. Ex. 1004, Clarno Decl. ¶¶ 16–17.
- 9 71. SB 881-A punishes Petitioners and other Republican Oregonians for freely
10 exercising their beliefs and values by voting for members of the Republican Party.
11 Ex. 1004, Clarno Decl. ¶ 18.
- 12 72. SB 881-A discourages Petitioners and other Republican Oregonians from
13 campaigning for congressional candidates, since they know that the elections in
14 their districts will be decided by Oregonians in large cities. Ex. 1004, Clarno Decl.
15 ¶ 19; Ex. 1004, Deposition of Beverly Clarno (“Clarno Dep.”), at 6:16–23.
- 16 73. Because of SB 881-A, the voices of rural Oregon will not be heard because
17 congressional candidates, especially in the Fifth District, are likely be Democrats
18 from Portland who will not understand rural issues. Ex. 1004, Clarno Dep. at 6:16–
19 8:7.
- 20 74. SB 881-A also harms Petitioners and other Republican Oregonians by splitting up
21 Portland and the Greater Portland area into four districts—the First, Third, Fifth,
22 and Sixth—and by moving Bend into the Fifth Congressional District. Ex. 1004,
23 Clarno Decl. ¶ 20.
- 24 75. Petitioners and other Republican Oregonians, including those residing in rural
25 areas, do not believe that congressional districts dominated by big cities,
26 particularly Portland, represent their interests or share many of their core values on

1 issues, such as gun rights, transportation, water rights, funding and support for law
2 enforcement, and many other issues. Ex. 1004, Clarno Decl. ¶ 21.

3 **C. Petitioners’ Proposed Map Was Drawn Without “The Purpose Of Favoring Any**
4 **Political Party”**

5 76. Under an efficiency gap analysis of those same presidential election results applied
6 to Petitioners’ neutral map, the neutral map has an efficiency gap score of 5.3%,
7 well below the 19.85% of SB 881-A. Brunell Report, at 8.

8 77. Under an efficiency gap analysis using data from all statewide Oregon elections
9 from 2012 until 2020, Petitioners’ neutral map presents an average efficiency gap
10 of -1.03%, which is very close to neutral. Brunell Supp. Report, at 21.

11 78. Petitioners’ proposed neutral map splits only 7 counties (rather than SB 881-A’s 11
12 county splits) and 20 municipalities (less than SB 881-A’s 23). Ex. 1005, Brunell
13 Decl. 17.

14 79. There is no evidence in the record to suggest that Petitioners’ proposed neutral map
15 was drawn with any partisan intent.

16 80. If, for any reason, the Special Judicial Panel dislikes any features of Petitioners’
17 proposed neutral map, the Panel can simply remedy the partisan intent flaws in SB
18 881-A by drawing its own map with an efficiency gap as close to 0 as possible. *See*
19 Ex. 1005, Brunell Report, at 6–8; Ex. 1049, Brunell Supp. Report, at 21.

20 **II. PROPOSED FINDINGS OF FACT FOR CLAIMS UNDER THE OREGON**
21 **CONSTITUTION – ARTICLE I, SECTIONS 8, 20, AND 26, AND ARTICLE II,**
22 **SECTION 1.**

23 For Petitioners’ claims under the Oregon Constitution, *see* Or. Const., art. I, §§ 8, 20, 26;
24 *id.*, art. II, § 1, the Special Panel will ultimately need to find that the Oregon Legislative Assembly
25 drew maps with the intent to favor one political party over another, and that that the map it adopted
26 had impermissible partisan effect (as measured by the approach that this Special Judicial Panel

determines to be legally appropriate). Therefore, the findings of fact for these claims are organized around each of these salient aspects of the constitutional claims.

A. Democrats Who Control The General Assembly And Unilaterally Draft And Adopted SB 881-A Intended SB 881-A To Favor The Democratic Party

81. The House Redistricting Committee has the responsibility of drafting redistricting maps for Oregon’s state legislative and congressional district boundaries, and then proposing those draft maps to the full House for its vote. Ex. 1003, Declaration of Representative Daniel Bonham (“Bonham Decl.”) ¶ 4.

82. On April 7, 2021, Oregon House Speaker Tina Kotek (D-Portland) promised Republican legislative members to split evenly membership of the House Redistricting Committee between Republicans and Democrats, to ensure that the Committee recommended a neutral, non-gerrymandered map that was fair to all Oregonians. Ex. 1003, Bonham Decl. ¶ 5.

83. Republican legislative members later became concerned that Democratic Party Congressmen were pressuring Speaker Kotek to renege on her equal membership promise such that she would change the composition of the Committee in order to push through gerrymandered maps. Ex. 1003, Bonham Decl. ¶ 6.

84. In light of the redistricting data released by the Census Bureau, the Republican Committee members focused on a proposed congressional map, planning to negotiate the same with Democrat Committee members once it was released to the public on September 3, 2021. Ex. 1003, Bonham Decl. ¶ 8.

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86. Representative Andrea Salinas, on behalf of the Democrat Committee members, proposed a new congressional map referred to as “Plan A,” and Representative

1 Shelly Boshart Davis, on behalf of the Republican Committee members, proposed
2 a new congressional map referred to as “Plan B.” Stipulation of Facts (“SOF”)
3 ¶ 20; Ex. 1003, Bonham Decl. ¶ 9.

4 87. The Democrat’s proposed congressional map—Plan A—was plainly a partisan
5 gerrymandered map that was designed to create a disproportionately Democratic
6 advantage. Ex. 1003, Bonham Decl. ¶ 10; Ex. 1006, Expert Report of Professor
7 Thomas L. Brunell (“Brunell Report”), at 4–5, 6–8.

8 88. Plan A unnecessarily broke up Portland and the Greater Portland Area, which are
9 traditionally Democratic strongholds, into four districts—First, Third, Fifth, and
10 Sixth—such that the Democratic Party would have an advantage in congressional
11 races. Ex. 1003, Bonham Decl. ¶ 11.

12 89. Republican Committee members sought and were willing to negotiate with the
13 Democrat Committee members to reach a compromise map. Ex. 1003, Bonham
14 Decl. ¶¶ 13–14.

15 90. After releasing Plan A, the Democrat Committee members never once attempted to
16 negotiate with the Republican Committee members on the congressional map. Ex.
17 1003, Bonham Decl. ¶¶ 13–15; Transcript of 10/27/21 Hearing, at 104–05, 106–07,
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19 91. On or about September 26, 2021, the day before SB 881-A was voted on,
20 Representative Daniel Bonham, Deputy Minority Leader for the Oregon House
21 Republicans, attempted to negotiate with Senate President Peter Courtney about the
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23 92. Senator Courtney told Representative Bonham that the “maps were the maps,” and
24 that Democrats would be moving forward with them. Transcript of 10/27/21
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- 1 93. The Democrat Redistricting Committee members only negotiated with respect to
2 the state legislative maps and made clear they would not accept any Republican
3 changes to Plan A. Ex. 1003, Bonham Decl. ¶¶ 15–16; Transcript of 10/27/21
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- 7 95. Plan A was then referred to the Senate Committee on Redistricting, which voted
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- 10 96. On September 20, 2021, the Oregon Senate passed SB 881 by a strict party-line
11 vote of 18 Democrats in favor to 11 Republicans opposed. SOF ¶ 22; Ex. 1003,
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- 13 97. That same day after the Senate vote, Speaker Kotek reneged on her promise to
14 provide equal representation on the Committee when she replaced the House
15 Redistricting Committee with the House Committee on Congressional
16 Redistricting, which now consisted of two Democrats and only one Republican.
17 Transcript of 10/27/21 Hearing, at 96–99; Ex. 1003, Bonham Decl. ¶¶ 1, 19–20;
18 Ex. 1002, Declaration of Beverly Clarno (“Clarno Decl.”) ¶ 14; Ex. 1027, Video
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- 20 98. SB 881 and Senate Bill 882 (2021), which provided for redistricting of Oregon’s
21 state legislative districts, were scheduled for a vote for September 25, 2021, in the
22 Oregon House of Representatives. SOF ¶ 23.
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- 24
- 25

26 * While Petitioners understand that the Special Panel does not find this fact legally relevant, they raise it here for preservation purposes. See 10/21/2021 Order on Non-Parties’ Motion to Quash; Protective Order pp. 3–4.

- 1 99. When the House convened on September 25, 2021, the House lacked the quorum
2 necessary to vote on SB 881, and the vote was delayed. SOF ¶ 24; Ex. 1003,
3 Bonham Decl. ¶ 26.
- 4 100. Later that day, Senate President Courtney and his staff shared with Republican
5 Committee members and leadership two different maps, which—just like SB 881—
6 split Portland and the Greater Portland area into four congressional districts. Ex.
7 1003, Bonham Decl. ¶¶ 27–29, 32; Transcript of 10/27/21 Hearing, at 104–05, 109–
8 10, 146–47.
- 9 101. Senator Courtney’s staff member, Tom Powers, drew the maps without any
10 Republican input or negotiations. Transcript of 10/27/21 Hearing, at 106–07.
- 11 102. The latter of the two maps, which became known as SB 881-A, also moved Bend—
12 another area that traditionally votes for Democrat politicians, into the Fifth
13 Congressional District. Ex. 1003, Bonham Decl. ¶ 29.
- 14 103. On September 27, 2021, Legislative Assembly Republicans appeared on the House
15 floor to vote against SB 881-A and SB 882. Ex. 1003, Bonham Decl. ¶ 38.
- 16 104. Legislative Assembly Republicans would not have appeared on the House floor had
17 SB 881-A been the only map scheduled for a vote. Ex. 1003, Bonham Decl. ¶ 36.
18 Transcript of 10/27/21 Hearing, at 117–20.
- 19 105. However, because the state legislative map, SB 882, was also scheduled for a vote
20 on September 27, and because Legislative Assembly Republicans were fearful that
21 if a state legislative map was not passed, that task would fall to Secretary of State
22 Shemia Fagan—whom Legislative Assembly Republicans believed would draw a
23 map less favorable for Republicans than SB 882—there was an insufficient number
24 of Legislative Assembly Republicans who wanted to deny quorum. Ex. 1003,
25 Bonham Decl. ¶¶ 33–35, 37; Transcript of 10/27/21 Hearing, at 117–19; Ex. 1038,
26 Video Clip 13.

- 1 106. After the House Committee on Congressional Redistricting approved SB 881-A,
2 the Committee sent SB 881-A back to the full House for voting, which passed it on
3 a strict party-line vote of 33 Democrats in favor to 16 Republicans opposed, with
4 11 members excused. Ex. 1003, Bonham Decl. ¶ 40; SOF ¶ 25.
- 5 107. On September 27, 2021, the Oregon Senate passed SB 881-A by a vote of 18
6 Democrats in favor to 6 Republicans opposed, with 6 members excused. SOF ¶ 26.
- 7 108. On September 27, 2021, Governor Kate Brown signed SB 881-A—now referred to
8 post-passage as SB 881—into law. SOF ¶ 27.
- 9 109. The Democratic Legislators enacted SB 881-A with partisan intent: to provide a
10 more favorable Oregon congressional map for Democrats. *See generally* Ex. 1003,
11 Bonham Decl. ¶¶ 10, 28–30; Ex. 1040, Video Clip 15; Ex. 1042, Video Clip 17;
12 *see* Ex. 1045, Deposition of Melissa Unger (“Unger Dep.”) at 61, 63–66, 68–69,
13 76, 80–81; *see generally* Ex. 1006, Brunell Report, at 4–6; Ex. 1048, Supplemental
14 Declaration of Thomas L. Brunell (“Brunell Supp. Decl.”) ¶¶ 4–6; Ex. 1004, Clarno
15 Dep., 14:16–15:17; Ex. 1043, Statement of Senate Republican Leader at 1.
- 16 110. The Executive Director of Service Employees International Union (“SEIU”) Local
17 503, Melissa Unger, had ongoing conversations with two members of the
18 Democratic Leadership, Representative Salinas and Speaker Kotek, along with a
19 chief of staff for Speaker Kotek, Lindsey O’Brien, during the weekend before the
20 vote on SB 881-A. Ex. 1045, Deposition of Melissa Unger (“Unger Dep.”) at 33.
- 21 111. Democratic Party leaders were aware of and discussing the ratings of the various
22 proposed maps by FiveThirtyEight.com and other publicly available models and
23 discussing the overall meaning of those proposed maps and their grading under the
24 modeling tools. Ex. 1045, Unger Dep. at 61, 63–66, 68–69.
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- 1 112. Democratic Party leaders frequently discussed perceptions of the various proposed
2 maps, including views on the likely Republican-Democrat district splits of those
3 maps. Ex. 1045, Unger Dep. at 85.
- 4 113. Melissa Unger discussed with members of the Oregon Legislature how Oregon
5 Public Broadcasting and The Oregonian were reporting on the proposed maps. Ex.
6 1045, Unger Dep. at 64.
- 7 114. Melissa Unger had conversations with Democratic legislators regarding the various
8 proposed maps and the impact of those maps, specifically as to the number of seats
9 that Democrats and Republicans were going to win under the maps. Ex. 1045,
10 Unger Dep. at 76, 80–81.
- 11 115. Democratic leadership intended the known consequences of the map they drew, as
12 measured by the most common method of measuring partisan unfairness, the
13 efficiency gap. *See* Transcript of 10/28/21 Hearing, at 42–43; Transcript of
14 10/28/21 Hearing, at 198–199.
- 15 116. The efficiency gap metric shows that SB 881-A is a partisan gerrymandered map.
16 Ex. 1006, Brunell Report, at 8; Ex. 1049, Supplemental Expert Report of Professor
17 Thomas Brunell (“Supp. Brunell Report”), at 21.
- 18 117. The efficiency gap metric measures the difference in “wasted” votes (votes that do
19 not contribute to an election win) between the two parties, with a positive efficiency
20 gap indicating that the votes of one party are more efficiently distributed across
21 districts than the votes of the other party. Ex. 1006, Brunell Report, at 2; Ex. 3001,
22 Declaration of Devin Caughey (“Caughey Decl.”), at 13–14.
- 23 118. It is the recent measure that has seen the most use in practice to measure a map’s
24 partisan bias. Ex. 2300, Expert Report of Professor Jonathan N. Katz (“Katz
25 Report”) at 4.
- 26

- 1 119. The State of Oregon has already endorsed the efficiency gap as sufficient to provide
2 evidence that a map favors a particular party. Ex. 1025, States’ Amici Brief at 15,
3 *Rucho v. Common Cause*, No.18-422 (U.S. Mar. 8, 2019) (“*Rucho Amici Br.*”).
- 4 120. Despite knowing this, Democratic leadership did not draw a map that was neutral,
5 but rather pushed forward with a map that they knew had a high, pro-Democratic
6 Party bias, as measured by the efficiency gap. Ex. 1049, Supp. Brunell Report at
7 21; See Ex. 1045, Unger Dep. at 61, 63–66, 68–69.
- 8 121. Under every measure of the efficiency gap offered the experts have offered here,
9 SB 881-A favors Democrats. Caughey Decl. at 14; Ex. 3002, Declaration of Paul
10 Gronke (“Gronke Decl.”) ¶ 25; Ex. 1006, Brunell Report at 8; Ex. 1049, Supp.
11 Brunell Report, at 21.
- 12 122. Public sources confirm that the efficiency gap of SB 881-A favors Democrats. Ex.
13 1022, FiveThirtyEight Congressional Map Assessment (“538”); Ex. 1023,
14 Princeton Gerrymander Project Congressional Map Grade (“Princeton”); Ex. 3002,
15 Gronke Report, fn. 4.; Ex. 2703 (PlanScore.Org – Oregon Congressional Plan SB
16 881A).
- 17 123. Democrat Leaders responsible for drafting the maps were aware of these publically
18 available sources, and those sources’ reports on SB 881-A. Ex. 1045, Unger Dep.
19 at 61, 63–66, 68–69.
- 20 124. Professor Jackson opined in the landmark Supreme Court case *Whitford v. Gill* that
21 an efficiency gap of 7% or higher shows partisan gerrymandering, a position that
22 Oregon supported. Transcript of 10/27/21 Hearing, at 257–58, 298–99, 301; Ex.
23 1025, *Rucho Amici Br.*
- 24 125. According to materials cited by Intervenors’ experts, there is at least an 8.5%
25 efficiency gap in favor of Democrats. Ex. 3001, Caughey Decl. ¶ 28; Ex. 3002,
26 Gronke Decl. ¶ 25; Ex. 1049; Ex. 2703, PlanScore.Org.

- 1 126. An efficiency gap of 8.5% shows “a strong and consistent efficiency gap that favors
2 Democrat congressional candidates.” Ex. 1048, Brunell Supp. Decl., ¶ 7.
- 3 127. Using the vote share in Oregon from the 2020, 2016, and 2012 presidential election,
4 which is a more reliable data set than the data set used by Intervenors’ experts, the
5 efficiency gap of SB 881-A is 19.85%. Ex. 1006, Brunell Report, at 8; Transcript
6 of 10/27/21 Hearing, at 303–304.
- 7 128. An efficiency gap of 19.85% is clear evidence that SB 881-A is a partisan
8 gerrymandered map. Transcript of 10/27/21 Hearing, at 301.
- 9 129. Respondent’s expert, Dr. Katz, has no opinion about the partisan intent of the
10 Legislative Assembly in drafting SB 881-A. Transcript of 10/28/21, Vol. 2,
11 Hearing at 72–75.
- 12 130. Democrat Leaders who drafted SB 881-A knew that the map would result in a 5-1
13 congressional split under typical conditions. Ex. 1045, Unger Dep. at 61, 63–66,
14 68–69; Ex. 1003, Bonham Decl. ¶ 31.
- 15 131. The Democrat Legislators adopted SB 881-A on a strict party-line vote, and it also
16 proceeded out of committee in the House on a party-line vote. Ex. 1003, Bonham
17 Decl. ¶ 40; SOF ¶ 26.
- 18 132. Senate Republican Leader Fred Girod, noted that the map was drawn with the intent
19 of keeping Democrat voters together in an obvious example of gerrymandering.
20 Ex. 1043, Statement of Senate Republican Leader at 1.
- 21 133. The Oregon House Republican Caucus noted that the map was “clearly drawn for
22 partisan benefit” of the Democratic Party in Oregon.” Ex. 1044, Statement of
23 Oregon House Republican Caucus, at 1.
- 24 134. The Caucus further explained that Democratic leadership “dr[ew] congressional
25 lines to ensure 5 out of 6 seats” went to Democratic candidates. Ex. 1044,
26 Statement of Oregon House Republican Caucus, at 1.

- 1 135. Respondent’s and Intervenors’ experts, although contending that SB 881-A did not
2 have partisan effect on their own favor metrics, did not provide any testimony or
3 evidence on the partisan *intent* of the Democratic leaders. Transcript of 10/28/21
4 Hearing, Vol. 2., at 44, 45–46;
- 5 136. Previously adopted congressional redistricting maps did not divide Portland into
6 four districts, and neither does Petitioners’ remedial map. Ex. 1015, Petitioners’
7 Remedial Map Portland Area; Ex. 1016; Ex. 1016, Petitioners’ Remedial Map
8 Greater Portland Area; 2011 Map available at
9 [https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.](https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.pdf)
10 pdf (the Special Master may, as it did during the September 27, 2021, take judicial
11 notice of material publically available an Oregon State website. Transcript of
12 10/27/2021, at 135–36.)
- 13 137. Under SB 881-A, Portland was *unnecessarily* split into four congressional districts,
14 and by far the most logical reason for this split is Democratic legislators’ partisan
15 intent. Ex. 1009, SB 881-A Portland Map; Ex. 1010, SB 881-A Greater Portland
16 Area Map; Ex. 3017-B, Written Testimony by Alex Riedlinger at 1–2; Ex. 3017-B
17 Written Testimony by Kuko Mofor, at 56–57; Ex. 3017-E, Written Testimony by
18 Brian Ettling, at 4; Ex. 1004, Clarno Dep., 14:16–15:17; Transcript of 10/27/21
19 Hearing, at 120:21–121:9; Ex. 1028, Video Clip 3; Ex. 1029, Video Clip 4; Ex.
20 1031, Video Clip 6; Ex. 1039, Video Clip 14; Ex. 3018-S, 9/8/21 Hearing at 74:2–
21 4 ; Ex. 3018-K, 9/13/21 Hearing, at 31:11–18; Ex. 3018-K 9/13/21 Hearing at
22 50:13–20.
- 23 138. Previously adopted congressional redistricting maps did not cut across the Cascade
24 Mountain Range to include Bend, and neither does Petitioners’ remedial map. Ex.
25 1004, Clarno Dep., 12:21–13:20; Ex. 1015, Petitioners’ Remedial Map Portland
26 Area; Ex. 1016; Ex. 1016, Petitioners’ Remedial Map Greater Portland Area; 2011

1 Map available at
2 https://www.oregonlegislature.gov/la/2011_Redistricting/SB_990_Congressional.
3 pdf (the Special Master may, as it did during the September 27, 2021, take judicial
4 notice of material publically available an Oregon State website. Transcript of
5 10/27/2021, at 135–36.).

- 6 139. Under SB 881-A, the Fifth Congressional District *unnecessarily* cuts across the
7 Cascade Mountain Range to scoop the City of Bend into that district and by far the
8 most logical reason for feature of SB 881-A is Democratic legislators’ partisan
9 intent. Exhibit 3017-I, Written Testimony submitted by Cristal DeJarnac, at 1; Ex.
10 3017-I, Written Testimony submitted by Nancy Boever, at 3; Exhibit 3017-B,
11 Written Testimony by Joshua Berger, at 50–51; Exhibit 3017-B, Written Testimony
12 by Tia M. Hatton, at 95; Transcript of 10/27/21 Hearing, at 120:21–121:9, 149:10–
13 150:15, 160:14–161:17; Ex. 1030, Video Clip 5; Ex. 1036, Video Clip 11; Ex.
14 3018-J, 9/13/21 Hearing at 70:5–8; Ex. 3018-G, 9/20/21 Hearing at 15:25–16:4.

15 **B. SB 881-A Has Partisan Effect In Favor Of Democratic Party Candidates For Congress**

- 16 140. SB 881-A pulls Democrat voters from Portland and the Greater Portland Area in
17 District 3, which is heavily Democrat, and adds them into District 5 and District 6,
18 which encompass areas that are not as Democrat as District 3. Ex. 1003, Bonham
19 Decl. ¶ 11; Ex. 1002, Clarno Decl. ¶ 20.
- 20 141. SB 881-A cuts across the Cascade Range to move Bend—a rapidly growing and
21 Democrat-leaning area—from District 2 to District 5, adding Democrat voters from
22 District 2, which generally votes Republican, to District 5 to help the Democratic
23 Party. Transcript of 10/27/21 at 120–21, 150, 161; Ex. 1003, Bonham Decl. ¶ 11.
- 24 142. As Professor Brunell noted, the enacted map “is biased towards Democrat
25 congressional candidates,” and shows “a strong and consistent efficiency gap that
26 favors Democrat congressional candidates,” under both proportionality measures

1 and efficiency gap measures. Ex. 1005, Brunell Decl., ¶¶ 14–15; Ex. 1006, Brunell
2 Report, at 4, 8.

3 143. The State of Oregon has already endorsed the efficiency gap. Ex. 1025, States’
4 Amici Brief at 15, *Rucho v. Common Cause*, No.18-422 (U.S. Mar. 8, 2019)
5 (“*Rucho Amici Br.*”).

6 144. Under an efficiency gap analysis, SB 881-A has an impermissible partisan effect in
7 favor of Democrats. Ex. 1006, Brunell Report at 6–8; Ex. 1005, Brunell Decl. ¶ 15.

8 145. Again analyzing the last three presidential elections in Oregon and averaging their
9 efficiency gap scores in the enacted SB 881-A map, Professor Brunell noted that
10 the average efficiency gap score for SB 881-A across that period is 19.85%, which
11 strongly favors. Ex. 1006, Brunell Report at 8; Ex. 1005, Brunell Decl. ¶ 15.

12 146. Similarly, when FiveThirtyEight measured the efficiency gap of SB 881-A, it
13 measured it as 17.2% in Democrats’ favor. Ex. 1022, FiveThirtyEight
14 Congressional Map Assessment, at 2.

15 147. As Professor Caughey concluded in his report, measured by the most-recent
16 statewide voting data, SB 881-A provides and 8.5% pro-Democratic bias under the
17 efficiency gap model. Ex. 3001, Caughey Decl. ¶ 28.

18 148. By Professor Caughey’s assessment, then, the map is predicted to favor Democrats
19 roughly 75% of the time under this measure. Ex. 3001, Caughey Decl. ¶ 28.

20 149. In his supplemental declaration and report, Professor Brunell was asked to re-
21 analyze the efficiency gap using all statewide elections in Oregon between 2012
22 and 2020. Ex. 1048, Brunell Supp. Decl. ¶ 3.

23 150. In doing so, he concluded that SB 881-A averaged a 7.76% efficiency gap score
24 under this method, evincing a significant bias in favor of Democrats. Ex. 1049,
25 Brunell Supp. Report at 21.
26

- 1 151. In independent evaluation of the enacted SB 881-A map, the Princeton
2 Gerrymandering Project graded Oregon’s congressional map as a “F” on partisan
3 fairness for giving a “[s]ignificant Democratic advantage” Ex. 1023, Princeton
4 Gerrymandering Project Oregon Congressional Map Grade, at 1.
- 5 152. The congressional vote share ranges that Dr. Katz used to analyze partisan bias
6 were not based on actual election results in Oregon. Transcript of 10/28/21, Vol.
7 2, Hearing at 96–97; Ex. 2300, Katz Report, at 17.
- 8 153. Dr. Katz’s analysis of partisan bias is based on hypothetical statewide vote share
9 outcomes, not whether the Democratic or Republican party is likely to receive those
10 vote share outcomes in real elections. Transcript of 10/28/21, Vol. 2, Hearing at
11 96–97; Ex. 2300, Katz Report, at 17.
- 12 154. Professor Caughey’s analysis is not based on actual data of Oregon’s electorate, but
13 on a comparison of the most recent data, from the most recent presidential election,
14 and hypothetical situations in which Oregon’s electorate voted in radically different
15 percentages than in the most recent past based on a hypothetical partisan sway.
16 Transcript of 10/28/21, Vol. 3, at 21–23, 39–40.
- 17 155. Professor Caughey admitted that there is not data to suggest that his hypothetical in
18 which Republicans win 58 percent of the votes in Oregon, which is necessary to
19 the conclusion of his analysis, is likely to, or can even possibly, occur, and is not
20 based on any explicit understanding of shifts in the expected voting majority in
21 reality. Transcript of 10/28/21, Vol. 3, at 24, 42–43.
- 22 156. Professor Caughey further admitted that his hypothetical in which Republicans win
23 50% of the votes in Oregon, which, again, is necessary to the conclusion of his
24 analysis, is not based on any explicit understanding of shifts in the expected voting
25 majority in reality. Transcript of 10/28/21, Vol. 3., at 24–25, 42–43.
26

1 157. Respondent’s expert, Dr. Gronke’s analysis is not based on the results of past
2 gubernatorial or presidential elections, but on hypothetical situations in which
3 Oregon’s electorate voted in radically different percentages than in the most recent
4 past for which he did not additional research leading to any expectation regarding
5 the likelihood of those hypothetical situations occurring. Transcript of 10/28/21,
6 Vol. 2, at 38–39, 46.

7 158. Dr. Gronke admitted that an analysis based on a hypothetical that Republicans
8 would win 50 percent of a statewide vote in Oregon does not measure partisan
9 effect. Transcript of 10/28/21, Vol. 2., at 45.

10 **C. SB 881-A Causes Injuries To Petitioners And Other Republicans**

11 160. Petitioner Beverly Clarno is a United States Citizen and resident of the State of
12 Oregon. SOF ¶ 35.

13 161. Petitioner Beverly Clarno resides in the Fifth Congressional District and is
14 registered to vote in the State of Oregon. SOF ¶ 36.

15 162. Petitioner Gary Wilhelms is a United States Citizen and resident of the State of
16 Oregon. SOF ¶ 37.

17 163. Petitioner Gary Wilhelms resides the First Congressional District and is registered
18 to vote in the State of Oregon. SOF ¶ 38.

19 164. Petitioner James L. Wilcox is a United States Citizen and resident of the State of
20 Oregon. SOF ¶ 39.

21 165. Petitioner James L. Wilcox resides in the Second Congressional District and is
22 registered to vote in the State of Oregon. SOF ¶ 40.

23 166. Petitioner Larry Campbell is a United States Citizen and resident of the State of
24 Oregon. SOF ¶ 41.

25 167. Petitioner Larry Campbell resides in the Fourth Congressional District and is
26 registered to vote in the State of Oregon. SOF ¶ 42.

- 1 168. All Petitioners are registered members of the Republican Party, support and vote
2 for the Republican Party in both congressional and statewide races, and engage in
3 campaign activities on behalf of those candidates. SOF ¶ 43.
- 4 169. By diluting Republican votes, the enactment of SB 881-A targets and injures
5 Petitioners and other Oregonians who associate with the Republican Party and vote
6 for Republican candidates. Ex. 1004, Clarno Decl. ¶¶ 16–17.
- 7 170. SB 881-A punishes Petitioners and other Republican Oregonians for freely
8 exercising their beliefs and values by voting for members of the Republican Party.
9 Ex. 1004, Clarno Decl. ¶ 18.
- 10 171. SB 881-A discourages Petitioners and other Republican Oregonians from
11 campaigning for congressional candidates, since they know that the elections in
12 their districts will be decided by Oregonians in large cities. Ex. 1004, Clarno Decl.
13 ¶ 19; Ex. 1004, Deposition of Beverly Clarno (“Clarno Dep.”), at 6:16–23.
- 14 172. Because of SB 881-A, the voices of rural Oregon will not be heard because
15 congressional candidates, especially in the Fifth District, are likely be Democrats
16 from Portland who will not understand rural issues. Ex. 1004, Clarno Dep. at 6:16–
17 8:7.
- 18 173. SB 881-A also harms Petitioners and other Republican Oregonians by splitting up
19 Portland and the Greater Portland area into four districts—the First, Third, Fifth,
20 and Sixth—and by moving Bend into the Fifth Congressional District. Ex. 1004,
21 Clarno Decl. ¶ 20.
- 22 174. Petitioners and other Republican Oregonians, including those residing in rural
23 areas, do not believe that congressional districts dominated by big cities,
24 particularly Portland, represent their interests or share many of their core values on
25 issues, such as gun rights, transportation, water rights, funding and support for law
26 enforcement, and many other issues. Ex. 1004, Clarno Decl. ¶ 21.

1 **D. Petitioners’ Proposed Map Was Drawn Without Any Partisan Intent, And Does Not**
2 **Result In A Partisan Effect**

3 175. Petitioners have proposed a map that exhibits greater partisan fairness, as measured
4 by the efficiency gap. Ex. 1014, Proposed Neutral Map; Ex. 1015, Proposed
5 Neutral Map of Portland; Ex. 1015, Proposed Neutral Map of Greater Portland
6 Area.

7 176. Using presidential election data from 2012, 2016, and 2020, the efficiency gap of
8 the Proposed Neutral Map is 5.3%, while the efficiency gaps of SB 881-A and the
9 Plan A maps are 19.85% and 15.44%, respectfully. Exhibit 1005, Brunell Decl. ¶
10 14.

11 177. Using data from all statewide elections from 2012 to 2020, the efficiency gap of
12 the Proposed Neutral Map is -1.03%, which is very close to neutral, while the
13 efficiency gaps of SB 881-A and the Plan A maps are 7.76% and 11.82%,
14 respectively. Exhibit 1049, Brunell Supp. Report, at 21

15 178. Under an efficiency gap analysis using data from all statewide Oregon elections
16 from 2012 until 2020, Petitioners’ neutral map presents an average efficiency gap
17 of -1.03% meaning it is almost completely neutral, compared to a 7.76% efficiency
18 gap for SB 881-A. Ex. 1049, Brunell Supp. Report, at 21.

19 179. Moreover, Petitioners’ proposed neutral map splits only 7 counties (rather than SB
20 881-A’s 11 counties split) and only 20 municipalities (less than SB 881-A’s 23).
21 Ex. 1006, Brunell Report, at 9.

22 180. There is no evidence in the record to suggest that Petitioners’ proposed neutral map
23 was drawn with any partisan intent.

24 181. If, for any reason, the Special Judicial Panel dislikes any features of Petitioners’
25 proposed neutral map, the Panel can simply remedy the partisan intent flaws in SB
26 881-A by drawing its own map with an efficiency gap as close to 0 as possible, by

1 using either of Professor Brunell’s approaches. See Ex. 1006, Brunell Report, at
2 6–8; Ex. 1049, Brunell Supp. Report, at 21.

3 DATED: October 29, 2021.

4 **TROUTMAN PEPPER HAMILTON**
5 **SANDERS LLP**

6 Misha Tseytlin*
7 Sean T.H. Dutton*
8 227 W. Monroe Street, Ste. 3900
9 Chicago, IL 60606
10 (608) 999-1240
11 (312) 759-1939 (fax)
12 misha.tseytlin@troutman.com
13 *Attorneys for Petitioners*
14 **admitted pro hac vice*

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HARRIS BERNE CHRISTENSEN LLP

By: s/Shawn M. Lindsay
Shawn M. Lindsay, OSB #020695
15350 SW Sequoia Parkway, Suite 250
Portland, OR 97224
(503) 968-1475
(503) 968-2003
shawn@hbclawyers.com
Attorneys for Petitioners

Trial Attorney:
Shawn M. Lindsay, OSB #020695

1 **CERTIFICATE OF SERVICE**

2 I certify that I served a true and complete copy of the foregoing **PETITIONERS'**

3 **PROPOSED FINDINGS OF FACT** on the date below as follows:

4 Brian Simmonds Marshall
Brian.S.Marshall@doj.state.or.us
5 Sadie Forzley
Sadie.Forzley@doj.state.or.us
6 Alexander C. Jones
Alex.Jones@doj.state.or.us
7 Department of Justice
100 SW Market Street
8 Portland, OR 97201
Attorneys for Respondent

- Oregon’s Electronic Court Service
- Email
- Facsimile
- First-class mail, postage prepaid
- Overnight courier, delivery prepaid
- Hand-delivery

9 Thomas R. Johnson,
10 TRJohnson@perkinscoie.com
Misha Isaak
11 MIsaak@perkinscoie.com
Jeremy A. Carp
12 JCarp@perkinscoie.com
Garmai Gorlorwulu,
13 GGorlorwulu@perkinscoie.com
Perkins Coie LLP
14 1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
15 *Attorneys for Intervenor/Respondents*

- Oregon’s Electronic Court Service
- Email
- Facsimile
- First-class mail, postage prepaid
- Overnight courier, delivery prepaid
- Hand-delivery

16 Abha Khanna
AKhanna@elias.law
17 Jonathan P. Hawley
JHawley@elias.law
18 Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
19 Seattle, WA 98101
Attorneys for Intervenor/ Respondents

- Oregon’s Electronic Court Service
- Email
- Facsimile
- First-class mail, postage prepaid
- Overnight courier, delivery prepaid
- Hand-delivery

20 Aria C. Branch
21 Jacob D. Shelly
Elias Law Group LLP
22 10 G Street NE, Suite 600
Washington, D.C. 20002
23 *Attorneys for Intervenor/ Respondents*

- Oregon’s Electronic Court Service
- Email
- Facsimile
- First-class mail, postage prepaid
- Overnight courier, delivery prepaid
- Hand-delivery

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Certificate of Service

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DATED this 29th day of October 2021.

HARRIS BERNE CHRISTENSEN LLP

By: s/Shawn M. Lindsay
Shawn M. Lindsay, OSB #020695
Of Attorneys for Petitioners

Certificate of Service