

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

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

Plaintiffs,

v.

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

MAGGIE TOULOUSE OLIVER as New
Mexico Secretary of State, MICHELLE
LUJAN GRISHAM as Governor of New
Mexico, HOWIE MORALES as New Mexico
Lieutenant Governor and President of the New
Mexico Senate, MIMI STEWART as
President Pro Tempore of the New Mexico
Senate, and BRIAN EGOLF as Speaker of the
House of Representatives,

Defendants.

**LEGISLATIVE DEFENDANTS' RESPONSE
TO MOTION FOR PRELIMINARY INJUNCTION**

Contrary to Plaintiffs' assertions in their complaint, there is no constitutional right to a safe Republican congressional district in southern New Mexico. Dissatisfied with the legitimate and constitutional process that culminated in a duly enacted congressional map passed by the Legislature and signed into law by the Governor, Plaintiffs ask this Court to usurp those two branches of government and impose upon New Mexicans a different map that reflects these Plaintiffs' political preferences. Plaintiffs' entire basis for seeking such extraordinary and unprecedented injunctive relief is a cause of action that does not even exist and has been determined by the United States Supreme Court to be a dead letter. "Partisan gerrymandering"

has never been recognized by a New Mexico court, has no basis in our state’s constitution or decisional law, and was specifically rejected by the United States Supreme Court because—after forty years of wrangling with the concept—the Court found there is no workable standard to adjudicate such claims.

After waiting almost *two months* after Senate Judiciary Committee Substitute for Senate Bill 1, 2021 Leg., 2nd Spec. Sess., 55th leg. (N.M. 2021) (hereinafter “SB 1”)¹ was signed into law,¹ Plaintiffs now insist that, beyond recognizing that “political gerrymandering” is an actionable claim under New Mexico’s constitution, the Court should use that novel claim to impose an injunction that will upend the statutory process for the 2022 election that is already underway. Candidates from both major political parties seeking the nominations for the three offices of U.S. Representative in the upcoming election relied on SB 1 to file their declarations of candidacy. *See* Exhibit A (list of qualified candidates for offices of United States Representative as identified on <https://candidateportal.servis.sos.state.nm.us/CandidateList.aspx?eid=2827&cty=99>). They collected the signatures state law requires them to collect from voters in the districts SB 1 establishes. The time for petition challenges has passed, and the candidates are pressing ahead toward spring primaries. There is no workable way to scrap that entire process and start over with new districts imposed by injunction. Plaintiffs blithely ignore the disruption and delay that would result if the Court were to now impose a different congressional map on New Mexico voters, candidates, potential candidates, and the state election officials charged with administering an election process that is already underway.

Plaintiffs’ request for injunctive relief fails on every possible ground. Plaintiffs have no likelihood of success on the merits because their request is based on a nonjusticiable claim New

¹ Codified at NMSA 1978, § 1-15-16 (2021) (hereinafter “SB 1”).

Mexico never has recognized. Because there has been no violation of Plaintiffs’ constitutional rights, they cannot show irreparable harm. The relief Plaintiffs seek flies in the face of New Mexico’s strong public interest in the separation of powers and the orderly and effective administration of our elections. Moreover, because Plaintiffs seek affirmative relief and not simply maintenance of the status quo, they have the burden to show that all four elements for injunctive relief “weigh heavily and compellingly in their favor.” *Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 22. Plaintiffs’ motion falls woefully short of the mark, and it should be denied.

I. Plaintiffs Must Show that Each of the Four Elements Required for Injunctive Relief “Weigh Heavily and Compellingly in Their Favor.”

Injunctions always are an extraordinary remedy, and here Plaintiffs are subject to a burden of proof that is further heightened because they seek an affirmative injunction which would effectively afford them all the relief they could obtain at a trial on the merits. “To obtain a preliminary injunction, a plaintiff must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public’s interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.” *LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314. However, as the New Mexico Supreme Court has made clear, where injunctive relief “is the ultimate relief sought, or where such relief is affirmative—not merely a maintenance of the status quo—the plaintiff ‘must satisfy a heightened burden’ of proof.” *Lujan Grisham*, 2021-NMSC-009, ¶ 20.

In *Lujan Grisham v. Romero*, the Court was asked to review the district court’s grant of an order restraining the Governor and Secretary of Health from enforcing a Public Health Order related to COVID-19. 2021-NMSC-009. Because the plaintiffs were seeking to enjoin enforcement of a statewide order that had already taken effect, thus seeking to alter the status quo, and because

the relief sought “‘would supply [them] with all the relief [they] could hope to win from a full trial,’” the Court concluded that the district court was required to “‘closely scrutinize’ the application ‘to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.’” *Lujan Grisham*, 2021-NMSC-009, ¶ 21 (alterations in original) (quoting *Legacy Church, Inc. v. Kunkel*, 472 F. Supp. 3d 926, 1023 (D.N.M. 2020)). Under this heightened standard, the parties moving for affirmative injunctive relief have the “burden to show that all four elements weigh heavily and compellingly in their favor.” *Id.* ¶ 22.

Plaintiffs attempt to avoid this heightened burden by claiming that they only seek to “preserve the status quo.” Motion at 5. Inexplicably, Plaintiffs define the “status quo” as the congressional districts that existed before the New Mexico Legislature passed SB 1 and the Governor signed it into law. *Id.* This argument defies logic for at least two reasons. First, the status quo is not the law as it previously existed, but rather the law *as it currently exists*—namely, the congressional districts that were enacted into law in SB 1 and have already been relied upon by individuals who have declared their candidacy for the offices of U.S. Representative. *See Montano v. Suffolk County Legislature*, 268 F.Supp.2d 243, 260 (E.D.N.Y. 2003) (injunction sought by plaintiffs “will alter the status quo” by declaring legislative body’s redistricting plan invalid and forcing the legislature to enact a new plan).

Second, Plaintiffs do not seek to restore the congressional map as it existed before SB 1 was enacted—nor could they. Those congressional districts were drawn a decade ago, based on 2010 Census data that is now out of date. Because congressional districts must adhere strictly to the “one person, one vote” principle by containing “as nearly as practicable” an equal population of persons in each district, *Karcher v. Daggett*, 462 U.S. 725, 730-39 (1983), the previous congressional districts would now be *per se* unconstitutional due to population growth and shifts

over the last decade. *See* Exhibit B (showing current population deviations for previous congressional districts as high as -1.6%, as compared to a deviation of 0.1384% which was deemed unconstitutional in *Karcher*, and deviations of 0.0% for all three districts in SB 1). *Cf. Maestas v. Hall*, 2012-NMSC-006, ¶ 2 (noting that the legislative districts enacted a decade prior had become unconstitutionally apportioned when no new redistricting law was passed based on then-current Census data). There is no basis for using outdated districts with unconstitutional population deviations as the “status quo.”

Moreover, the injunction Plaintiffs seek would require affirmative steps to be taken by not just the Secretary of State but the Legislature and the Governor as well. Plaintiffs ask the Court to “enjoin[] the Secretary of State from relying on the map in Senate Bill 1 for the 2022 congressional elections and directing the Secretary of State to use the Committee’s Concepts A or E maps” until the Legislature adopts a new map, which would presumably then go to the Governor. Motion at 15. Granting that relief would put the Court firmly in the position of invalidating substantial aspects of the 2022 election cycle that already have passed and having to create its own *ad hoc* procedures to replace statutory election deadlines that exist to ensure that every election is conducted in an orderly manner that avoids voter and candidate confusion. With the deadline for challenges to the thousands of petition signatures from voters in the SB 1 districts having already passed, candidates are now awaiting final verification that they are on the primary ballot. *See* NMSA 1978, § 1-8-35 (1993). Primaries quickly follow in June, after which every candidate will be pressing hard to the November election. The judiciary should not impose on the state what it decides would be a “better” congressional map the Legislature never has adopted and then try to manage a complete reset of the election process from the bench. The Court likewise should not impose an injunction that would require the Legislature to reconvene, consider and adopt a new

congressional redistricting plan, and then send that legislation to the governor for consideration. That would be a significant reach into a co-equal branch of government in any circumstance, and Plaintiffs are demanding that the Court do so based on an unrecognized and untested cause of action that federal courts already have determined is nonjusticiable. Finally, the requested relief would give the Plaintiffs “all the relief [they] could hope to win from a full trial,” which is a type of disfavored relief warranting heightened scrutiny. *See Lujan Grisham*, 2021-NMSC-009, ¶ 20 (alteration in original) (quotation marks omitted); *Schrier v. Univ. of Colorado*, 427 F.3d 1253, 1258-59 (10th Cir. 2005).

Plaintiffs bear the burden of showing that all four elements for injunctive relief “weigh heavily and compellingly in their favor” and they cannot meet this burden.

II. Plaintiffs Have No Likelihood of Success on the Merits Because their Claims are Non-Justiciable and Fail to State a Cause of Action.

Plaintiffs base their entire case on two basic legal propositions. First, that their claim of political gerrymandering, although nonjusticiable in federal courts, is justiciable in New Mexico courts. Plaintiffs’ Motion at 8-9. Second, that SB 1 actually violates Plaintiffs’ equal protection rights. Both assertions are incorrect.

A. Political Gerrymandering is not a Cognizable Equal Protection Claim Under New Mexico Law.

There can be no question that Plaintiffs are demanding that the Court grant an injunction based on a novel cause of action New Mexico never has recognized. The compelling reasons for the U.S. Supreme Court to declare such claims verboten in federal jurisprudence should also caution against any recognition of such a claim by this Court. *See* Legislative Defendants’ Motion to Dismiss at 14-15. As Defendants’ Motion explains, the U.S. Supreme Court’s holding that political gerrymandering claims are nonjusticiable in federal court is based on the court’s inability to measure degrees of partisan fairness and to articulate “clear manageable and politically

neutral” standards. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2497-500 (2019). While the *Rucho* Court did not foreclose such claims where states may have adopted more exacting and specific constitutional and/or statutory standards, the Court listed the kinds of standards that would be required, *see id.* at 2507-08, none of which can be found in the constitution or statutes of New Mexico. *See* Legislative Defendants’ Motion at 15. Thus, in the absence of such constitutional or statutory provisions, this Court would be wise to follow the federal law and preclude justiciability for such cases.²

As discussed in Defendants’ Motion to Dismiss, *Maestas v. Hall* does not support the application of “political gerrymandering” as a governing principle in this case. *Maestas* only dealt with the special obligation of the judiciary when the legislature fails to carry out its decennial reapportionment duties and no redistricting plan has been adopted. *See* 2012-NMSC-006, ¶ 2. It is only then that courts must “enter this political thicket” to perform the redistricting function. *Id.* ¶¶ 27-8 (quotation marks omitted). Faced with such a task, the *Maestas* Court drew upon past standards and focused on political balance and neutrality in order to avoid judicial interference with political judgments that must be left to the affirmative acts of the legislature. *See* Legislative Defendants’ Motion to Dismiss at 7-10. Here, when the political process has successfully culminated in the passage of a redistricting plan that is signed into law, the principles for court-drawn maps followed by the *Maestas* court simply do not apply.

² Plaintiffs overstate the U.S. Supreme Court’s treatment of partisan gerrymandering claims with their assertion that *Davis v. Bandemer*, 478 U.S. 109 (1986) “held that a gerrymander based on political discrimination violates the Equal Protection Clause.” Motion at 7. While the plurality in *Davis* “decline[d] to hold that such claims are never justiciable,” 478 U.S. at 124, there was no agreement among any majority of the Justices as to what would constitute partisan gerrymandering, and the Court reversed the trial court’s decision finding such a gerrymander.

B. Plaintiffs Could Not Establish an Equal Protection Violation Even if They Were Pursuing a Justiciable Claim.

Remarkably, Plaintiffs' legal theory depends on extending to *party affiliation* the kind of protections courts have provided racial and ethnic groups who historically have been deprived of the right to vote. That strategy is clear from Plaintiffs' effort to wrap their claims in equal protection verbiage—claiming that individual plaintiffs have been “cracked” out of the district³ and asserting that their “vote dilution” is “*much like* the injury in one-person-one vote decisions.”⁴ *See, e.g., Voinovich v. Quilter*, 507 U.S. 146, 154 (1993) (discussing the concepts of packing and cracking, noting “we have recognized that ‘[d]ilution of racial minority group voting strength may be caused’ either ‘by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority’”). Unsurprisingly, registering as a Democrat, Republican, or member of another political party never has been recognized as carrying with it the same protections afforded to disadvantaged minority groups under the Constitution and the Voting Rights Act of 1965. Plaintiffs never explain why this Court should find that membership in a major political party in New Mexico warrants protections imposed to remedy, for example, overtly discriminatory voting laws and poll taxes.

Plaintiffs fall back on an erroneous assertion that their equal protection claim is compelled by the redistricting principles historically established and applied in New Mexico. That too is not the case.

³ Plaintiffs' Complaint at ¶¶ 2-6.

⁴ *Id.* ¶ 24.

First, Plaintiffs' claim depends on only one of seven historical redistricting factors. One of those factors is specific to state districts, and Plaintiffs do not even challenge that SB 1 satisfies the other five relevant to congressional maps. Nor could they, as SB 1 indisputably: (1) establishes districts of equal population; (2) is based on the 2020 federal decennial Census data; (3) avoids splitting precincts; (4) complies with the Voting Rights Act of 1965 and federal constitutional standards; and (5) uses only single-member districts.⁵

⁵ The guidelines the Legislative Council adopted for past redistricting sessions were:

1. Congressional districts shall be as equal in population as practicable.
2. State districts shall be substantially equal in population; no plans will be considered that include any proposed legislative, state board of education, public regulation commission, or magistrate court districts subject to legislative redistricting with a total population that deviates more than plus or minus five percent from the ideal.
3. The legislature shall use 2000 federal decennial census data generated by the United States bureau of the census.
4. Since the precinct is the basic building block of a voting district in New Mexico, proposed redistricting plans to be considered by the legislature shall not be comprised of districts that split precincts.
5. Plans must comport with the provisions of the Voting Rights Act of 1965, as amended, and federal constitutional standards. Plans that dilute a protected minority's voting strength are unacceptable. Race may be considered in developing redistricting plans but shall not be the predominant consideration. Traditional race-neutral districting principles (as reflected in paragraph seven) must not be subordinated to racial considerations.
6. All redistricting plans shall use only single-member districts.
7. Districts shall be drawn consistent with traditional districting principles. Districts shall be composed of contiguous precincts, and shall be reasonably compact. To the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries. In addition, the legislature may seek to preserve the core of existing districts, and may consider the residence of incumbents.

Contained in *A Guide to State and Congressional Redistricting in New Mexico, 2001* at 16, available at <https://nnlegis.gov/Redistricting/Documents/134250.pdf>.

That leaves Plaintiffs insisting that the Court should enter an injunction imposing an entirely new map based on what Plaintiffs insist is a violation of the last of seven historical redistricting principles. Namely, Plaintiffs insist SB 1 is inconsistent with the following:

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

Plaintiffs are wrong in claiming that this final redistricting principle alone could support finding an equal protection violation. A map's departure from traditional redistricting principles such as these do not give rise to a constitutional claim. Rather, such principles are concepts used in redistricting challenges to either justify permissible population deviations among districts or to rebut allegations of racial gerrymandering. *See, e.g., Shaw v. Reno*, 509 U.S. 630, 647 (1993) (traditional redistricting principles are not constitutionally required but rather are "objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines"); *Gaffney v. Cummings*, 412 U.S. 735, 752 n.18 (1973) (noting that "compactness or attractiveness [of districts] has never been held to constitute an independent federal constitutional requirement for state legislative districts"); *Larios v. Cox*, 300 F.Supp.2d 1320, 1351-2 (N.D. Ga. 2004) (discussing how consistent adherence to traditional redistricting principles may be used to justify population deviations, particularly for state legislative districts which are held to a more flexible standard). There is nothing in the state constitution or New Mexico decisional law to suggest that even a true violation of these concepts would be adequate to establish an equal protection violation based on party affiliation.

Second, the language of this one historical redistricting concept Plaintiffs rely on shows that it provides only general guideposts rather than mandates that limit the Legislature's discretion

in determining the electoral maps that best serve the people of this state. That includes specifying that “[t]o the extent feasible, districts shall be drawn in an attempt to preserve communities of interest and shall take into consideration political and geographic boundaries.” It also includes providing that “to the extent feasible, the legislature may seek to preserve the core of existing districts.”⁶ This language leaves flexibility to the Legislature, which has the ultimate authority over such matters. There is no rigid definition of “community of interest,” and there is no prohibition against dividing counties in the historic guidelines. Thus, even this last category of the historic guidelines was not violated by the legislature’s adoption of SB 1, and there is nothing in those guidelines that would give rise to an equal protection claim.

Third, Plaintiffs’ equal protection claim does not find support in their constant refrain that SB 1 fails “to preserve the core of CD 2.”⁷ As Plaintiffs themselves recognize, if their argument were correct, it would also invalidate CD 1,⁸ and any past, current, or future legislative plans to create districts different from a prior configuration. That further explains why the single suggested, but non-mandatory, factor in the historic articulation of the guidelines cannot preclude a legislature from its essential policy choice of creating new districts that depart from previous maps but fully comply with federal constitutional and statutory requirements.

C. The Redistricting Committee Properly Recommended Three Congressional Plans to the Legislature, Which Chose to Adapt One of Them to Further the Legislative Policy Judgments Concerning Competitiveness, Representation and Racial Balance.

The independent Citizen Redistricting Committee properly conducted itself consistent with the tasks assigned it by the legislature. Only after completing its task and sending three

⁶ The last element in the guideline—the ability to *consider the residence of incumbents*—is not at issue in this case.

⁷ *E.g.*, Plaintiffs’ Motion at 13.

⁸ *Id.* at 11.

congressional map proposals (Concepts A, E and H) to the legislature for consideration, the Committee then, pursuant to its statutory mandate, had each of the recommended plans reviewed for partisan fairness. All passed with glowing praise by independent reviewers.⁹ And, as the Redistricting Act makes clear, the Legislature is not bound to adopt any of the proposals submitted to it by the Redistricting Committee. *See* NMSA 1978, § 1-3A-9(B) (2021) (“The legislature shall receive the adopted district plans for consideration in the same manner as for legislation recommended by interim legislative committees.”). Here, the legislative committees responsible for adopting a congressional plan dealt with a number of policy choices, including the view proffered by Senator Cervantes, Chair of the Senate Judiciary Committee:

This congressional map is unique in that it includes both significant urban and rural populations within each of our three congressional districts. Having our entire congressional delegation represent both urban and rural constituencies and communities will assure advocacy on behalf of every New Mexican from our entire delegation. This is a great opportunity for us to focus on creating unified priorities rather than exacerbating our divisions and differences.¹⁰

Finally, as more fully explained in Defendants’ Motion to Dismiss, at 11-12, Plaintiffs do not allege facts to invoke intermediate or strict scrutiny, so any colorable equal protection challenge (if there were one) would be evaluated under rational basis review. *See Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 12, 137 N.M. 734. Since the essence of their claim is that SB 1 interferes only with their ability to “affiliate and associate” as registered Republicans—rather than being prevented from participating in the political process—under the rational basis standard they cannot establish that any classification “lacks a reasonable relationship to a legitimate

⁹ *See* CRC District Plans & Evaluations for New Mexico Congress, State Senate, State House of Representatives, & Public Education Commission: 2020 Redistricting Cycle, Oct. 30, 2021, at Appendix 1: Dr. Cottrell’s report on Partisan Fairness of CRC District Plans.

¹⁰ Carol A. Clark, *New Mexico Senate Passes CD Map Proposal*, Los Alamos Daily Post (Dec. 11, 2021), <https://ladailypost.com/new-mexico-senate-passes-cd-map-proposal/>.

governmental purpose.” *Marrujo v. New Mexico State Highway Transp. Dept.*, 1994-NMSC-116, ¶ 12, 118 N.M. 753. Therefore SB 1 must be upheld as a legitimate exercise of the legislative redistricting authority.¹¹

Because Plaintiffs cannot establish a likelihood of success on the merits, their request for a preliminary injunction must fail.

III. Plaintiffs Cannot Show Irreparable Harm.

Plaintiffs’ sole argument for showing irreparable harm is the purported violation of their equal protection rights under the New Mexico Constitution. Motion at 6. But as demonstrated above and in the Legislative Defendants’ Motion to Dismiss, Plaintiffs have not even alleged a cognizable constitutional injury, much less presented evidence of one. Contrary to Plaintiffs’ assertions, SB 1 does nothing to impede Plaintiffs’ constitutional right to associate, participate in elections or vote. Plaintiffs’ insistence on having a congressional district in the southeastern region of New Mexico that conforms to their political preferences finds no support in New Mexico’s Constitution or decisional law. Accordingly, Plaintiffs cannot satisfy the irreparable harm prong of the injunction analysis.

IV. The Balance of Harms and the Public Interest Strongly Favor Denial of the Injunction, which would Disrupt New Mexico’s Congressional Election and Cause Confusion, Chaos and Delay for New Mexican Voters, Candidates and Election Officials.

Given the extraordinary nature of the affirmative relief Plaintiffs seek and their inexplicable delay in filing their motion for injunctive relief, the Plaintiffs give remarkably short shrift to the disruptive effect an injunction would have on the congressional election process which

¹¹ In reviewing the constitutionality of legislation, courts will not “question the wisdom, policy, or justness of legislation enacted by our Legislature,” and will presume that the legislation is constitutional. *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 10, 122 N.M. 524.

is already underway. Motion at 14. Plaintiffs devote just one paragraph of their motion to a discussion of what they characterize as the “minimal inconvenience” that may result from the Court enjoining the Secretary of State from relying on the congressional map duly enacted into law and substituting a different map at this late stage of the game. *Id.* In doing so, Plaintiffs disregard “a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill v. Milligan*, 559 U.S. ___, 2022 WL 354467, *2 (Feb. 7, 2022) (Kavanaugh, J., concurring).

Plaintiffs concede that they waited to seek injunctive relief until the deadline for candidates for the offices of U.S. Representative to submit their paperwork had already passed. *See* NMSA 1978, § 1-8-26(A) (2019). But they fail to acknowledge the enormous disruption that would result by now changing the congressional map when the election process is underway and the Republican and Democratic pre-primary conventions are scheduled to take place within the next two weeks. Because the Secretary of State is charged with administering New Mexico’s elections, her office is most familiar with the timelines and procedures that would be disrupted, delayed and negatively impacted by the injunction Plaintiffs seek. Accordingly, the Legislative Defendants hereby incorporate by reference the portions of the Secretary of State’s response to the preliminary injunction motion that address the balance of the harms and the public interest.

Finally, Plaintiffs’ unexplained and unjustified delay in seeking this injunction weighs heavily against granting it. “It is well established that in election-related matters, extreme diligence and promptness are required.” *McClafferty v. Portage Cty. Bd. of Elections*, 661 F. Supp.2d 826, 839 (N.D. Ohio 2009); *see also Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018)

“A party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere.” (Citation omitted)). SB 1 was signed into law by the Governor on December 17, 2021. *See* Exhibit C (reflecting Governor Lujan Grisham’s signature on SB 1). Yet Plaintiffs waited until February 3, 2022 to ask this Court to issue an injunction, after candidates had already relied on the districts set forth in SB 1 to declare their candidacy. The Court should not allow Plaintiffs to upset the election process at this point given such inexplicable delay. *Cf. Dobson v. Balt. City*, 330 F. Supp. 1290, 1301-04 (D. Md. 1971) (refusing to enjoin city council elections when suit was not filed until ten days after the candidates’ filing date and two months before the primary); *see generally Wreal, Ltd. Liab. Co. v Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016) (“A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.”).

CONCLUSION

Plaintiffs have not stated a justiciable or cognizable cause of action, nor can they come anywhere close to satisfying their burden to show that the four elements needed to justify injunctive relief weigh in their favor at all, much less “heavily and compellingly” so. Plaintiffs’ motion for a preliminary injunction should be denied.

Respectfully submitted,

PEIFER, HANSON, MULLINS & BAKER, P.A.

/s/ Sara N. Sanchez

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CERTIFICATE OF SERVICE

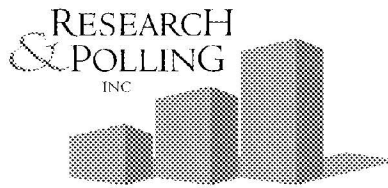
I hereby certify that on February 22, 2022, I caused the foregoing Response along with this Certificate of Service, to be served and filed electronically through the Tyler Technologies Odyssey File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Sara N. Sanchez

Contest	Filing County	Name	Party	Mailing Address	Email/Phone	Filing Date/Time	Ballot Order	Status
United States Representative DISTRICT 1		MELANIE ANN STANSBURY	DEM	PO Box 51493 Albuquerque NM 87181	melanie@melanieform.com (505) 366-7267	2/1/2022 10:38:25 AM	99	Qualified
United States Representative DISTRICT 1		JACQUELYN REEVE	REP	11600 ACADEMY RD NE APT 3311 ALBUQUERQUE NM 87111-7521	JREEVE@REEVEMEDICAL.COM (505) 241-9738	2/1/2022 11:46:26 AM	99	Qualified
United States Representative DISTRICT 1		MICHELLE GARCIA HOLMES	REP	484 Plaza Vinedos Bernalillo NM 87004	votemgh@gmail.com (505) 353-0618	2/1/2022 12:48:29 PM	99	Qualified
United States Representative DISTRICT 1		LOUIE SANCHEZ	REP	11609 PAGANICA WAY NE ALBUQUERQUE NM 87111-7509	louiejsan@comcast.net (505) 238-3047	2/1/2022 1:43:36 PM	99	Qualified
United States Representative DISTRICT 1		JOSHUA TAYLOR NEAL	REP	4320 SPANISH BROOM AVE NW ALBUQUERQUE NM 87120-2587	joshua.neal@joshuaforcongress.com (505) 948-6803	2/1/2022 3:06:53 PM	99	Disqualified
United States Representative DISTRICT 2		GABRIEL VASQUEZ	DEM	7010 RAASAF DR LAS CRUCES NM 88005-4621	gabe@gabeforcongress.com (575) 201-3275	2/1/2022 10:03:31 AM	99	Qualified
United States Representative DISTRICT 2		DARSHAN N PATEL	DEM	PO Box 72363 Albuquerque NM 87195	info@patelform.com (505) 596-0108	2/1/2022 3:43:39 PM	99	Qualified
United States Representative DISTRICT 2		YVETTE HERRELL	REP	PO Box 4338 Alamogordo NM 88311	yherrell@yahoo.com (575) 430-2113	2/1/2022 12:35:00 PM	99	Qualified
United States Representative DISTRICT 3		TERESA LEGER FERNANDEZ	DEM	PO Box 2675 Santa Fe NM 87501	teresa@teresaforall.com (505) 604-6751	2/1/2022 10:46:42 AM	99	Qualified
United States Representative DISTRICT 3		ALEXIS MARTINEZ JOHNSON	REP	5213 PASEO DEL RIO SANTA FE NM 87507-8013	alexis@electalex.com (505) 316-0636	2/1/2022 1:47:20 PM	99	Qualified
United States Representative DISTRICT 3		JERALD STEVE MCFALL	REP	PO Box 501 Angel Fire NM 87710	stevemcfall@forabettermewmexico.org (575) 643-5289	2/1/2022 3:24:07 PM	99	Qualified

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EXHIBIT
A



**Current New Mexico Congressional Districts (SB1)
2020 Census Population**

District	Total Population	Population Deviation	% Deviation
1	705,832	-9	0.0%
2	705,846	5	0.0%
3	705,844	3	0.0%
NM	2,117,522	Ideal: 705,841	

**Previous New Mexico Congressional Districts
2020 Census Population**

District	Total Population	Population Deviation	% Deviation
1	694,577	-11,264	-1.6%
2	714,022	8,181	1.2%
3	708,923	3,082	0.4%
NM	2,117,522	Ideal: 705,841	

<p>EXHIBIT B</p>



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SECRETARY OF STATE

State of New Mexico

Michelle Lujan Grisham
Governor

December 17, 2021

SENATE EXECUTIVE MESSAGE NO. 3

The Honorable Mimi Stewart, President Pro Tempore
and Members of the New Mexico State Senate
State Capitol Building
Santa Fe, New Mexico 87501

Dear President Pro Tempore Stewart and Members of the Senate:

I have this day SIGNED:

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SENATE BILL 1

enacted by the Fifty-Fifth Legislature, Second Special Session, 2021.

Respectfully yours,

Michelle Lujan Grisham
Michelle Lujan Grisham
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

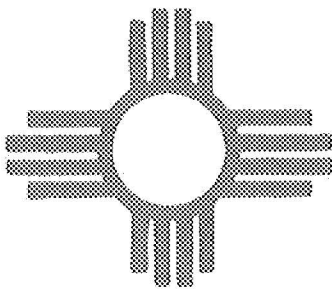
Time: 8:44 a.m. p.m.
Date: December 17th 2021

By *Janice Hutchinson*
Secretary of State of New Mexico

Time: _____ a.m. p.m.
Date: _____ 2021

By _____
Chief Clerk of the Senate

EXHIBIT
C



The Legislature
of the
State of New Mexico

55th Legislature, 2nd Special Session

LAWS 2021

CHAPTER 2

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 1

Introduced by



CHAPTER

AN ACT



1
2 RELATING TO CONGRESSIONAL REDISTRICTING; ESTABLISHING
3 CONGRESSIONAL DISTRICTS FOR THE ELECTION OF REPRESENTATIVES
4 TO THE UNITED STATES CONGRESS; CHANGING PROVISIONS OF THE
5 ELECTION CODE RELATING TO PRECINCTS; AMENDING, REPEALING AND
6 ENACTING SECTIONS OF THE NMSA 1978.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 1-15-15 NMSA 1978 (being Laws 1969,
10 Chapter 240, Section 365, as amended) is repealed and a new
11 Section 1-15-15 NMSA 1978 is enacted to read:

12 "1-15-15. UNITED STATES REPRESENTATIVE--CONGRESSIONAL
13 DISTRICTS ESTABLISHED.--New Mexico is divided into three
14 congressional districts to be known and designated as
15 congressional district one, congressional district two and
16 congressional district three."

17 SECTION 2. Section 1-15-16 NMSA 1978 (being Laws 1991
18 (1st S.S.), Chapter 7, Section 1) is repealed and a new
19 Section 1-15-16 NMSA 1978 is enacted to read:

20 "1-15-16. UNITED STATES REPRESENTATIVE--CONGRESSIONAL
21 DISTRICTS.--

22 A. Congressional district one is composed of
23 Bernalillo county precincts 2 through 23, 25 through 28, 30,
24 39, 68, 69, 78 through 80, 83, 84, 86, 87, 89, 100 through
25 103, 105, 107, 108, 110, 111, 113, 114, 116, 121 through 126,

1 128, 129, 131 through 133, 150 through 155, 161 through 189,
2 191 through 197, 200, 202, 204, 207 through 226, 230, 232,
3 235, 238, 241 through 246, 248, 249, 251 through 259, 261,
4 263, 266, 271 through 287, 289 through 339, 341 through 366,
5 368 through 393, 395 through 398, 400 through 598, 601
6 through 603, 605, 608, 610, 613 through 616, 623 through 625,
7 627, 634, 637, 640 through 651 and 656 through 686; Chaves
8 county precincts 1, 2, 10, 12, 44 and 46; De Baca county;
9 Guadalupe county; Lincoln county; Otero county precinct 56;
10 Sandoval county precincts 1 through 5, 11 through 13, 28
11 through 50, 52 through 76, 80 through 90, 92 through 94, 96
12 through 117, 119 through 148, 150, 151 and 153 through 157;
13 Santa Fe county precincts 15, 18, 73, 84, 85, 115, 125, 148,
14 156 and 157; Torrance county; and Valencia county precincts 4
15 through 6, 8 through 11, 14 through 16, 18, 22, 24, 28, 30,
16 32, 36, 38, 45, 49, 50, 56 through 58 and 60 through 63.

17 B. Congressional district two is composed of
18 Bernalillo county precincts 1, 24, 29, 31 through 38, 40
19 through 67, 70 through 77, 81, 82, 85, 88, 90 through 99,
20 104, 106, 109, 112, 115, 117 through 120, 127, 130, 134
21 through 149, 156 through 160, 190, 198, 199, 201, 203, 205,
22 206, 227 through 229, 231, 233, 234, 236, 237, 239, 240, 247,
23 250, 260, 262, 264, 265, 267 through 270, 288, 340, 367, 394,
24 399, 599, 600, 604, 606, 607, 609, 611, 612, 617 through 622,
25 626, 628 through 633, 635, 636, 638, 639, 652 through 655 and

1 687; Catron county; Chaves county precinct 104; Cibola
2 county; Dona Ana county; Eddy county precincts 9 through 21,
3 23 through 30, 32 through 40, 42, 44, 45, 47 through 52 and
4 54; Grant county; Hidalgo county; Lea county precincts 36,
5 41, 43, 50, 53 through 55, 58, 59, 62 and 71 through 74; Luna
6 county; McKinley county precincts 26, 27, 29, 30, 64 and 66;
7 Otero county precincts 1 through 55 and 57 through 66; Sierra
8 county; Socorro county; and Valencia county precincts 1
9 through 3, 7, 12, 13, 17, 19 through 21, 23, 25 through 27,
10 29, 31, 33 through 35, 37, 39 through 44, 46 through 48, 51
11 through 55, 59 and 64 through 66.

12 C. Congressional district three is composed of
13 Chaves county precincts 3 through 9, 11, 13 through 18, 20
14 through 25, 31 through 36, 40 through 43, 45, 47, 51, 52, 61
15 through 64, 71 through 74, 81 through 85, 90 through 95, 101
16 through 103, 105 and 106; Colfax county; Curry county; Eddy
17 county precincts 1 through 8, 22, 31, 41, 43, 46 and 53;
18 Harding county; Lea county precincts 2, 3, 8 through 35, 37
19 through 40, 42, 44, 51, 52, 56, 57 and 61; Los Alamos county;
20 McKinley county precincts 1 through 25, 28, 31 through 63, 65
21 and 67 through 71; Mora county; Quay county; Rio Arriba
22 county; Roosevelt county; Sandoval county precincts 6 through
23 10, 14 through 27, 51, 77 through 79, 91, 95, 118, 149 and
24 152; San Juan county; San Miguel county; Santa Fe county
25 precincts 1 through 14, 16, 17, 19 through 72, 74 through 83,

1 86 through 114, 116 through 124, 126 through 147, 149 through
2 155 and 158 through 179; Taos county; and Union county."

3 SECTION 3. Section 1-15-16.1 NMSA 1978 (being Laws 1991
4 (1st S.S.), Chapter 7, Section 2) is amended to read:

5 "1-15-16.1. PRECINCTS.--

6 A. Precinct designations and boundaries used in
7 the 2021 congressional redistricting are those precinct
8 designations and boundaries established pursuant to the
9 Precinct Boundary Adjustment Act and revised and approved
10 pursuant to that act by the secretary of state as of November
11 30, 2021.

12 B. A board of county commissioners shall not
13 create any precinct, combine precincts or adjust the
14 boundaries of any precinct in such manner that a precinct
15 lies in more than one congressional district. A county
16 precinct map determined not to be in compliance with this
17 subsection shall be rejected by the secretary of state and
18 returned to the appropriate county clerk with a written
19 statement setting forth those instances in which the county
20 precinct boundaries do not comply."

21 SECTION 4. Section 1-15-17 NMSA 1978 (being Laws 1969,
22 Chapter 240, Section 367, as amended) is amended to read:

23 "1-15-17. UNITED STATES REPRESENTATIVE--NOMINATION AND
24 ELECTION.--One representative in congress shall be nominated
25 and elected from each congressional district for voting

1 purposes. Ballots for representatives in congress shall
2 designate the office as congressional district one,
3 congressional district two and congressional district three.
4 Only voters of each district shall be eligible to vote for
5 the respective candidates of the district."

6 SECTION 5. TEMPORARY PROVISION--COMPILATION
7 INSTRUCTIONS.--The compiler shall remove from the NMSA 1978
8 the provisions of Section 1-15-15.2 NMSA 1978 (copy of
9 congressional districts established by Judgment and Final
10 Order in *Egolf v. Duran*, D-101-CV-2011-02942 (1st Dist. Ct.,
11 filed January 25, 2012)).

SJC/SB 1
Page 5

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Howie C. Morales

Howie C. Morales, President
Senate

Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

Brian Egolf
Brian Egolf, Speaker
House of Representatives

Lisa M. Ortiz McCutcheon
Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

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Approved by me this 17th day of December, 2021

Michelle Lujan Grisham
Governor Michelle Lujan Grisham
State of New Mexico