

**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 JAVIER MARTINEZ as Speaker
of the House of Representatives,

Defendants.

**MOTION TO DISMISS PLAINTIFFS JENNINGS, VARGAS AND GARCIA
FOR LACK OF STANDING**

COME NOW Defendants Mimi Stewart, President Pro-Tempore of the New Mexico Senate, and Javier Martinez, Speaker of the New Mexico House of Representatives (the “Legislative Defendants”) and respectfully move the Court to dismiss Plaintiffs Timothy Jennings, Dinah Vargas and Pearl Garcia for lack of standing.

I. INTRODUCTION

On December 17, 2021, New Mexico’s legislative redistricting process successfully established new boundaries for congressional elections. Under Senate Bill 1 (“SB-1”), each of New Mexico’s three congressional districts is more politically competitive than before and more

reflective of New Mexico's diverse range of urban, rural and economic interests. SB-1 also incorporates much of the public input that was provided to the Citizens Redistricting Committee through the testimony of hundreds of New Mexicans at public meetings throughout the state and reflects the redistricting priorities expressed by sovereign Native American pueblos and tribes.

Seven individual voters and the Republican Party of New Mexico filed this action, alleging that SB-1 is an unconstitutional partisan gerrymander in violation of New Mexico's Equal Protection clause. In its July 5, 2023 Order, the New Mexico Supreme Court expressly directed this Court "as a threshold matter" to "conduct a standing analysis for all parties." While the Legislative Defendants strongly dispute the claims asserted by *all* Plaintiffs in this matter, application of established standing law to the facts alleged in the Verified Complaint demonstrates that at least three (3) of the Plaintiffs lack standing to assert their claims as a matter of law. Specifically, Plaintiffs Timothy Jennings, Dinah Vargas and Pearl Garcia cannot demonstrate that they have suffered an injury in fact due to the enactment of SB-1. None of these three Plaintiffs allege—nor could they demonstrate—that their votes have been diluted under SB-1 or that the relief Plaintiffs seek would redress any alleged harm. Accordingly, they should be dismissed from this action.

Because it is Plaintiffs who bear the burden of establishing their standing to bring suit, the Legislative Defendants reserve the right to challenge the standing of the remaining Plaintiffs if the evidence developed in this case does not ultimately support their standing to sue.

II. THE LAW ON STANDING

"New Mexico state courts are not subject to the jurisdictional limitations imposed on federal courts by Article III, Section 2 of the United States Constitution." *New Mexico Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 12, 126 N.M. 788. However, "New Mexico's

standing jurisprudence indicates that our state courts have long been guided by the traditional federal standing analysis.” *ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, ¶ 10, 144 N.M. 471. Therefore, “at least as a matter of judicial policy if not of jurisdictional necessity, our courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke the court’s authority to decide the merits of a case.” *Id.* In other words, to have standing to sue, a litigant must show “(1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision.” *Id.* ¶ 1.

When the claims at issue are directed at government action, a plaintiff seeking relief must demonstrate that he or she has “a personal stake in the outcome,” distinct from a “generally available grievance about government.” *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018). To constitute injury in fact, the plaintiff must have “suffered the ‘invasion of a legally protected interest’ that is ‘concrete and particularized,’ i.e., which ‘affect[s] the plaintiff in a personal and individual way.’” *Id.* at 1929 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 and n.1 (1992)). Plaintiffs bear the burden of establishing standing: “Facts necessary to establish standing . . . must not only be alleged at the pleading stage, but also proved at trial.” *Gill*, 138 S. Ct. at 1931.

Until now, New Mexico courts have not had the opportunity to address standing in the context of a claim of partisan gerrymandering. However, federal courts provide helpful guidance on this topic. A general grievance alleging statewide harm to an interest in “collective representation in the legislature” or “in influencing the legislature’s overall ‘composition and policymaking’” will not create standing. *Id.* (quoting *Brief for Appellees* at 31, *Gill*, 138 S. Ct. 1916 (No. 16-1161.)). Rather, the right to vote is “individual and personal in nature.” *Reynolds v.*

Sims, 377 U.S. 533, 561 (1964). Voters “‘who allege facts showing disadvantage to themselves as individuals have standing to sue’ to remedy that disadvantage.” *Gill*, 138 S. Ct. at 1929 (quoting *Baker v. Carr*, 369 U.S. 186, 206 (1962)). “To the extent the plaintiffs’ alleged harm is the dilution of their votes, that injury is district specific.” *Id.* at 1930.

In *Gill*, the plaintiffs claimed a constitutional right “not to be placed in legislative districts deliberately designed to ‘waste’ their votes in elections where their chosen candidates will win in landslides (packing) or are destined to lose by closer margins (cracking).” *Id.* The United States Supreme Court observed that the alleged harm arose “from the particular composition of the voter’s own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district.” *Id.* at 1931. To demonstrate standing on a partisan gerrymandering claim, then, a plaintiff must show “a burden on the plaintiffs’ votes that is “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Id.* at 1932 (quoting *Lujan*, 504 U.S. at 560). In other words, a plaintiff’s general disagreement with a redistricting plan, or his wish to be placed in a different district—without an actual showing of dilution of his vote—is not enough to create standing.

When standing is challenged on a motion to dismiss, as opposed to at the summary judgment stage or at trial, “both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” *New Mexico Gamefowl Ass’n, Inc. v. State ex rel. King*, 2009-NMCA-088, ¶ 12, 146 N.M. 758 (quoting *Prot. & Advocacy Sys. v. City of Albuquerque*, 2008-NMCA-149, ¶ 17, 145 N.M. 156).

III. FACTS RELEVANT TO STANDING ANALYSIS

1. Nowhere in the Verified Complaint do Plaintiffs Jennings, Garcia or Vargas allege that their votes have been diluted under SB-1. *See generally*, Verified Complaint.

Plaintiff Pearl Garcia

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

3. Under the previous congressional districts as they existed before SB-1, Ms. Garcia resided in CD-1. *Id.*; *see also* Exhibit A (2011 Congressional District Map and detail showing the South Valley of Albuquerque).

4. Under SB-1, most of the South Valley of Albuquerque, including the area where Ms. Garcia resides, was moved from CD-1 into CD-2. Exhibit B (SB-1 map, including detail showing the South Valley of Albuquerque).

5. The partisan performance measure for Ms. Garcia's previous congressional district, CD-1, as of 2011 was 53.9% Democrat and 46.1% Republican. Ex. A at p. 4.

6. The partisan performance measure for CD-2 under SB-1 is 53.0% Democrat and 47.0% Republican. Ex. B at p. 3. Accordingly, under SB-1 Ms. Garcia, a Republican voter, was moved to a congressional district with a higher Republican performance measure than that of her previous district.

7. Ms. Garcia complains that under SB-1, she is represented by the same congressperson who represents "constituents as far as the City of Lordsburg and the City of Hobbs." Verified Complaint at ¶ 7.

8. However, under the Concept E Map that Plaintiffs ask this Court to adopt as a replacement for SB-1, Ms. Garcia would still reside in CD-2, and that district would still include places as far away as Lordsburg and Hobbs. *See* Verified Complaint at p. 27 (Prayer for Relief); Exhibit C (Google Maps printout showing location of Ms. Garcia's residence); Exhibit D (Concept

E Map, including detail showing South Valley of Albuquerque located in CD-2, along with Lordsburg and Hobbs).

Plaintiff Dinah Vargas

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

10. Under the previous congressional districts as they existed before SB-1, Ms. Vargas resided in CD-1. *Id.*; see also Exhibit A (2011 Congressional District Map and detail showing the South Valley of Albuquerque).

11. Under SB-1, most of the South Valley of Albuquerque, including the area where Ms. Vargas resides, was moved from CD-1 into CD-2. Exhibit B (SB-1 map, including detail showing the South Valley of Albuquerque).

12. The partisan performance measure for Ms. Vargas' previous congressional district, CD-1, as of 2011 was 53.9% Democrat and 46.1% Republican. Exhibit A at p. 4.

13. The partisan performance measure for CD-2 under SB-1 is 53.0% Democrat and 47% Republican. Exhibit B at p. 3. Accordingly, under SB-1 Ms. Vargas, a Republican voter, was moved to a congressional district with a higher Republican performance measure than her previous district.

14. Ms. Vargas complains that under SB-1, she is represented by the same congressperson who represents "constituents as far as the City of Lordsburg and the City of Hobbs." Verified Complaint at ¶ 7.

15. However, under the Concept E Map that Plaintiffs ask this Court to adopt as a replacement for SB-1, Ms. Vargas would still reside in CD-2, which still includes places as far

away as Lordsburg and Hobbs. *See Id.* at p. 27 (Prayer for Relief); Exhibit E (Google Maps printout showing Ms. Vargas' residence location); Exhibit D (Concept E Map, including detail showing South Valley of Albuquerque located in CD-2, along with Lordsburg and Hobbs).

Plaintiff Timothy Jennings

16. Plaintiff Timothy Jennings avers that he is a registered Democrat voter and a supporter of Democratic candidates and policies who resides at 2716 North Pennsylvania Avenue in Roswell, New Mexico, 88201. Verified Complaint at ¶ 3.

17. Under the previous congressional districts that existed before SB-1, Plaintiff Jennings resided in CD-2. *Id.*

18. The partisan performance measure for Plaintiff Jennings' previous congressional district, CD-2, as of 2011 was 46.6% Democrat and 53.4% Republican. Exhibit A at p. 4.

19. Under SB-1, Plaintiff Jennings now resides in CD-3. The partisan performance measure for CD-3 under SB-1 is 56.0% Democrat and 44.0% Republican. Exhibit B at p. 3.

20. Under the previous congressional districts that existed before SB-1, CD-3 was a stronger Democratic district, with 57.5% Democratic performance. Ex. A at p. 4.

21. Accordingly, under SB-1 Plaintiff Jennings, a Democratic voter, was moved from a Republican-leaning district that most often elected a Republican representative to a Democratic-leaning district with a higher Democratic performance measure than his previous district.

22. If Plaintiffs were awarded the relief they seek—imposition of the Concept E Map by the Court—Plaintiff Jennings would be moved into a Republican-leaning CD-2, thereby reducing Plaintiff Jennings' chances of electing a Democratic candidate. *See* Exhibit D (Concept E map).

IV. ARGUMENT

Based on the facts alleged in their own Verified Complaint, Plaintiffs Jennings, Garcia and Vargas cannot demonstrate the requisite “injury in fact” element of standing. While these Plaintiffs may prefer to have been drawn into different congressional districts, and they take issue with the configuration of the districts in SB-1, they fail to show that their individual votes have been burdened, diluted, or wasted by SB-1 in any way. To the contrary, under SB-1 each of these Plaintiffs is now in a district in which they have a better opportunity to elect a candidate of their choice than they did before. Moreover, the relief Plaintiffs seek—Court imposition of the Concept E Map—would not remedy the alleged harm that these Plaintiffs claim to have suffered.

A. Plaintiffs Pearl Garcia and Dinah Vargas Have Not Been Injured by SB-1.

Plaintiffs Garcia and Vargas are both Republican voters who reside in the South Valley of Albuquerque. Facts Nos. 2, 9. They previously resided in CD-1, which was a Democratic leaning (53.9%) district. Facts Nos. 3, 5, 10, 12. Under SB-1, they now reside in CD-2, which is also Democratic leaning (53.0%) district, but with a slightly higher Republican performance measure (47.0%) than their previous district. Fact Nos. 4, 5, 6, 11, 12, 13. Accordingly, while these two voters now reside in a different congressional district than they did before, from a partisan standpoint they have not suffered any injury: if anything, their Republican votes will now carry more weight in CD-2 under SB-1 than they did in CD-1 under the previous map. Tellingly, neither Plaintiff Garcia nor Plaintiff Vargas allege in their Verified Complaint that their votes have been diluted—nor could they. Fact No. 1.

These two Plaintiffs also lack standing because they cannot demonstrate that their alleged injuries would be remedied by a favorable decision for Plaintiffs. Both Plaintiffs Garcia and Vargas complain that under SB-1, the congressional representative for CD-2 represents areas as

far away from the South Valley of Albuquerque as the City of Lordsburg and the City of Hobbs. Facts Nos. 7, 14. Yet under the Concept E Map that Plaintiffs would have this Court impose, both Plaintiffs would still reside in CD-2, and CD-2 would still encompass Lordsburg and Hobbs along with the South Valley of Albuquerque. Facts Nos. 8, 15. Therefore, even if their disagreement with the shape or configuration of their congressional district were a valid injury to give rise to standing (it is not), these Plaintiffs fail to satisfy the redressability element of the standing analysis because the relief they seek would not remedy any alleged harm. Accordingly, their claims should be dismissed.

B. Plaintiff Timothy Jennings Has Not Been Injured by SB-1.

Plaintiff Jennings similarly cannot establish the injury in fact or the redressability elements of standing. Prior to the enactment of SB-1, Plaintiff Jennings, a Democratic voter, resided in CD-2, which was a Republican leaning district that often elected Republican candidates. Facts Nos. 16, 17, 18. Under SB-1, Plaintiff Jennings now resides in CD-3, which is a Democratic leaning district with partisan performance of 56.0% Democrat and 44.0% Republican. Facts No. 19. Accordingly, Plaintiff Jennings went from a district where he had a lower chance of electing a Democratic congressional candidate to a district where he has a significantly better chance of doing so. Nor was he placed in a district where Democrats are “packed” such that Plaintiff Jennings’ Democratic vote would arguably be wasted: under the previous (2011) map, CD-3 was a strong Democratic district with 57.5% Democratic performance, but under SB-1, CD-3 became a more competitive district with 56.0% Democratic performance. Facts Nos. 19, 20.

Nor can Plaintiff Jennings demonstrate that the relief requested (Court imposition of the Concept E Map) would remedy any alleged harm to him or his vote. Under the Concept E Map, Plaintiff Jennings would reside in a Republican majority CD-2, where he would have less of an

opportunity to elect a Democratic congressional candidate than he does under SB-1. Facts Nos. 22. Much like Plaintiffs Garcia and Vargas, Plaintiff Jennings does not (and cannot) allege that his vote was diluted, burdened or wasted under SB-1. For all these reasons, he lacks standing to bring his claims and should be dismissed from this action.

C. The Remaining Plaintiffs Have the Burden of Establishing Standing.

While the Legislative Defendants are not presently challenging the standing of the remaining Plaintiffs based on the allegations they make in the Verified Complaint, the law is clear that those Plaintiffs have the burden of producing evidence to support their standing to sue. “Since they are not mere pleading requirements but rather an indispensable part of the plaintiff’s case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561. Therefore, the Legislative Defendants do not waive their right to challenge any of the remaining Plaintiffs’ standing based on information developed in discovery or presented to the Court in the evidentiary record.

V. CONCLUSION

Based on the facts alleged in their Verified Complaint, Plaintiffs Timothy Jennings, Pearl Garcia and Dinah Vargas have failed to demonstrate that SB-1 caused them any injury in fact, nor that the relief sought by Plaintiffs would remedy any alleged harm to these Plaintiffs. Accordingly, the Legislative Defendants respectfully move the Court to dismiss Plaintiffs Timothy Jennings, Dinah Vargas and Pearl Garcia for lack of standing.

Respectfully submitted,

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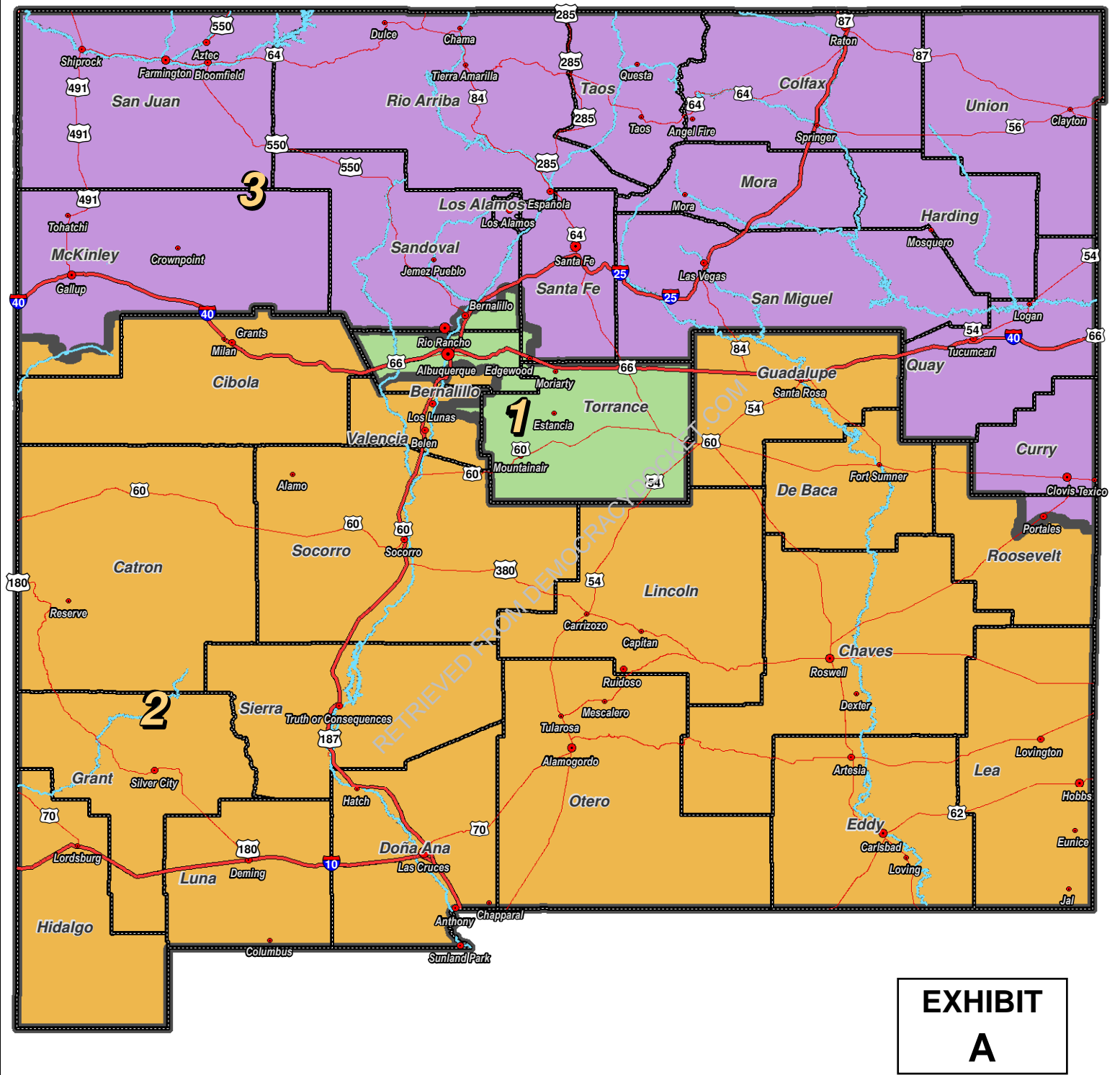
CERTIFICATE OF SERVICE

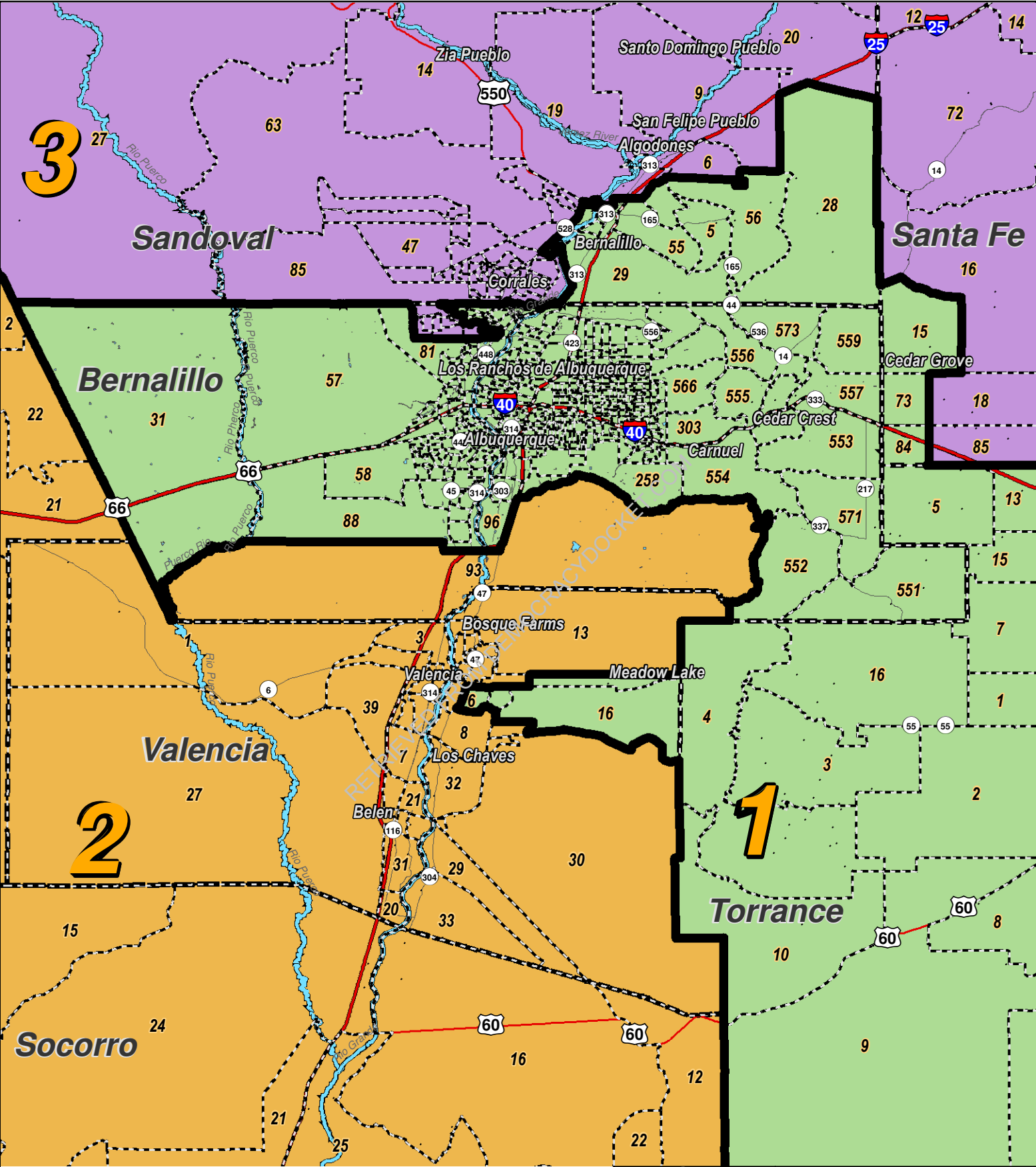
I hereby certify that on August 10, 2023 I caused the foregoing Motion, along with this Certificate of Service, to be served and filed electronically through the Tyler Technologies Odyssey File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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

By: /s/ Sara N. Sanchez
Sara N. Sanchez

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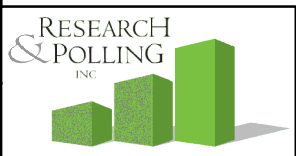
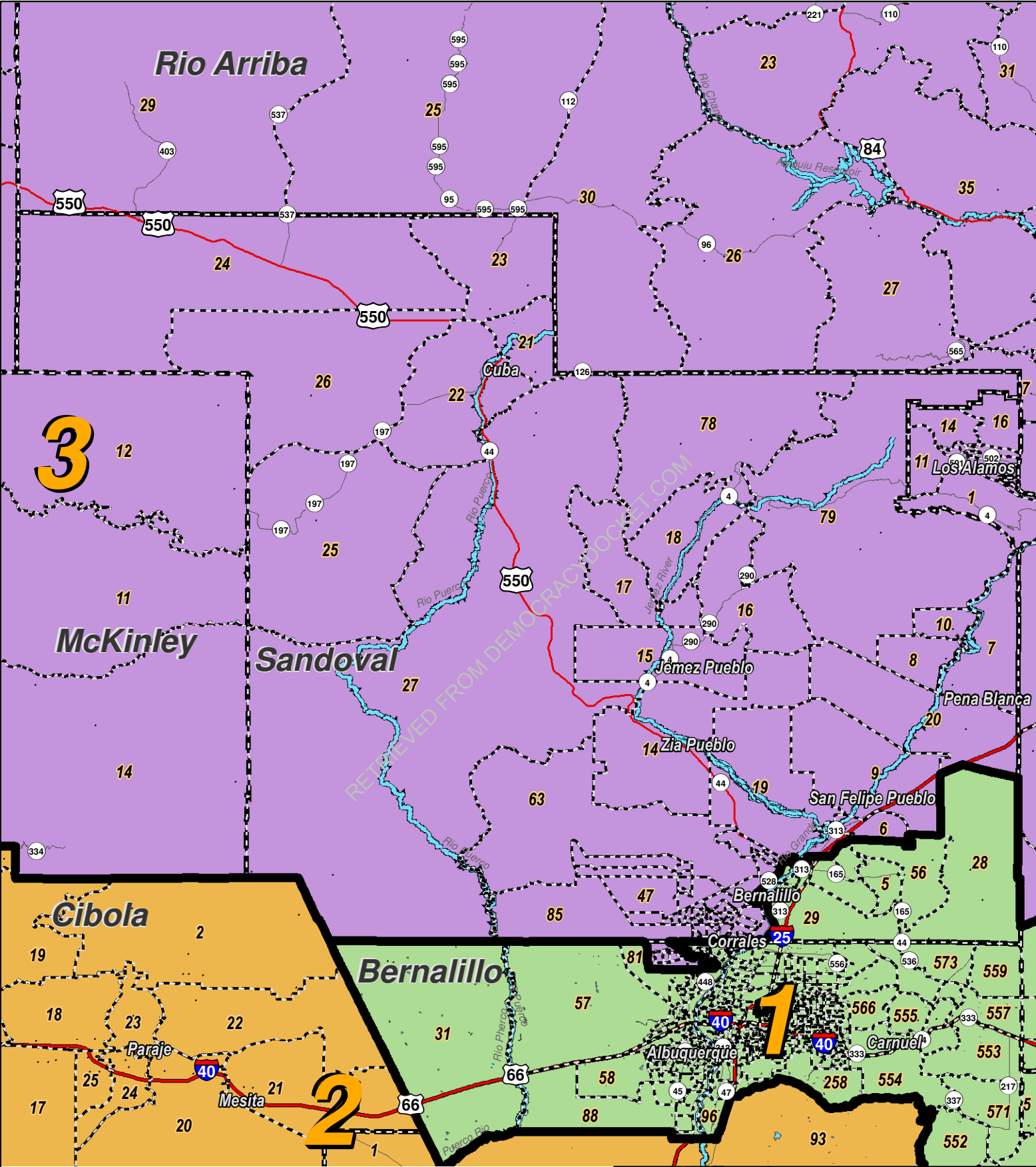
For the New Mexico
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LEGEND Created: December 17, 2011

Precincts	Rivers	Interstate
Counties	Lakes / Ponds	US Highway
		State Highway

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For the New Mexico
Legislative Council Service



LEGEND

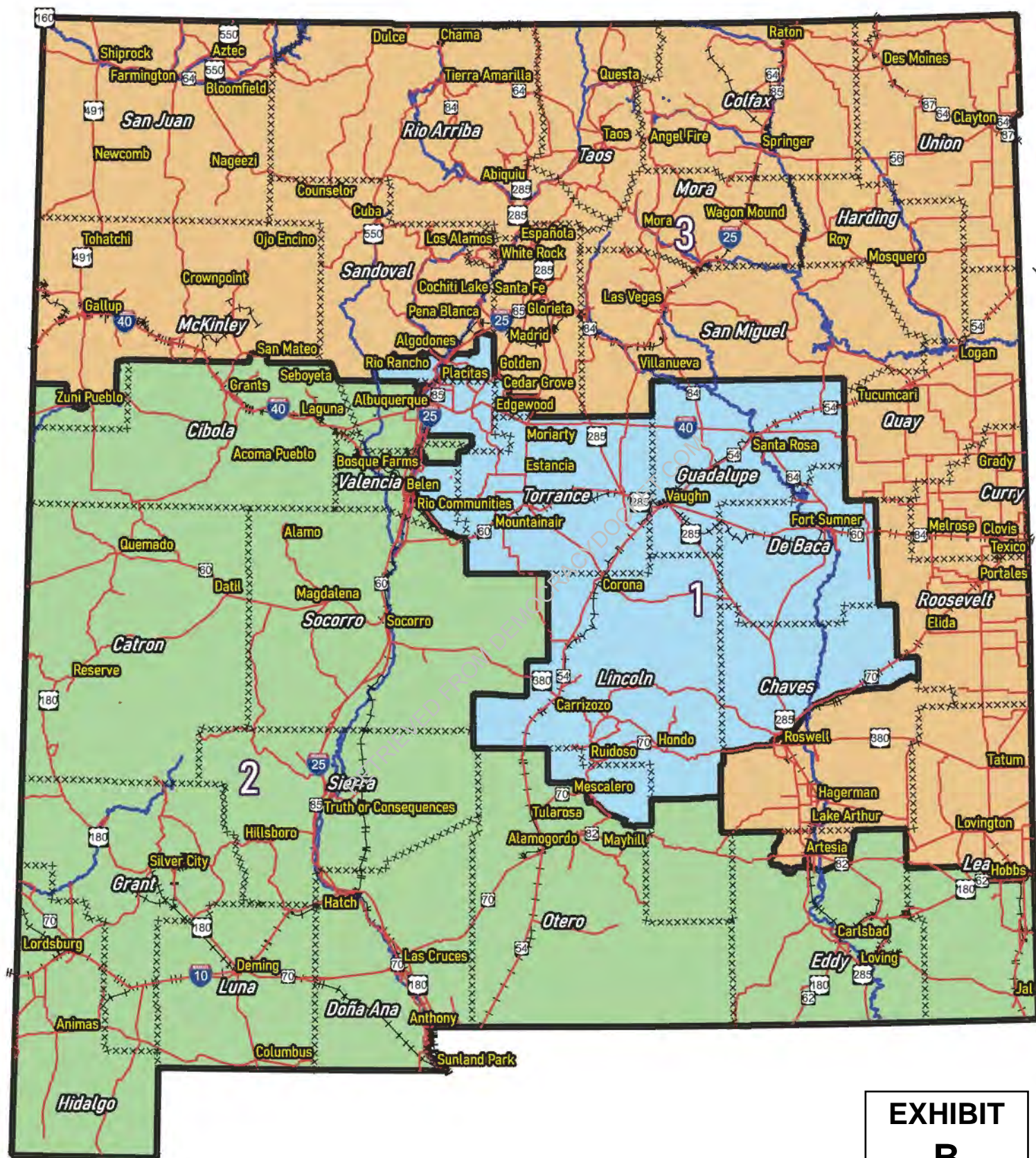
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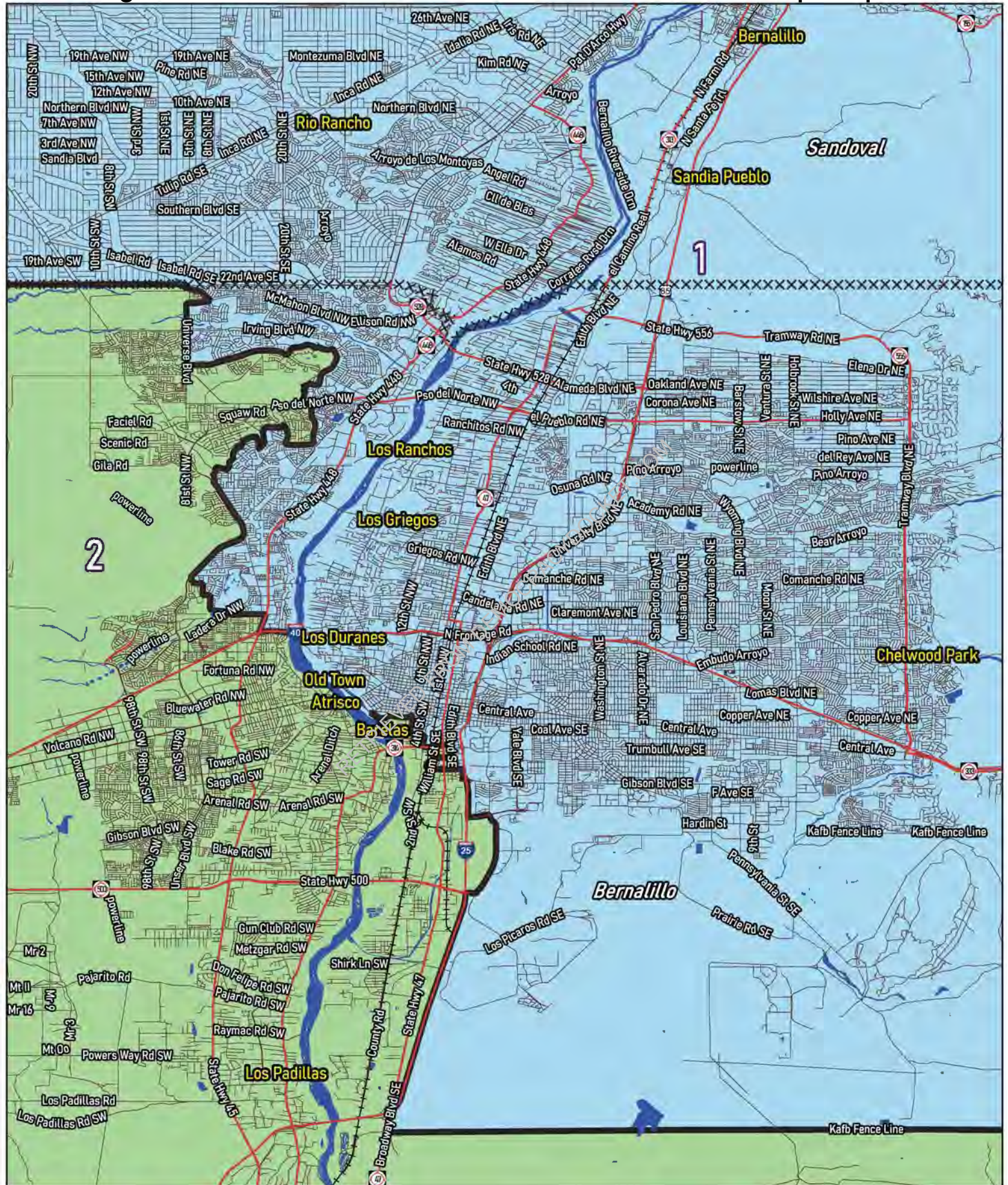
- Precincts
 - Counties
 - Rivers
 - Lakes / Ponds
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 - State Highway
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District Profile

District	Total Population	Deviation	Total Adult Native American	Adult Hispanic	Adult Non-Hispanic			Performance Measure		Registered Voters				
					White	American	Black	Dem	Rep	Total	% Dem	% Rep	% DTS	% Other
1	686,393	0 0.0%	5.2%	43.5%	46.9%	3.5%	2.4%	53.9%	46.1%	412,594	47.3%	32.3%	16.8%	3.6%
2	686,393	0 0.0%	5.8%	46.9%	45.3%	4.3%	1.6%	46.6%	53.4%	350,612	46.0%	35.7%	15.9%	2.4%
3	686,393	0 0.0%	18.1%	36.4%	43.7%	16.1%	1.3%	57.5%	42.5%	396,009	54.3%	28.2%	15.0%	2.5%
NM	2,059,179	Ideal: 686,393	9.6%	42.3%	45.3%	7.9%	1.8%	53.0%	47.0%	1,159,215	49.3%	31.9%	15.9%	2.9%

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NM Congressional Districts
CD 221711.1 SJC/SB 1

District Profile

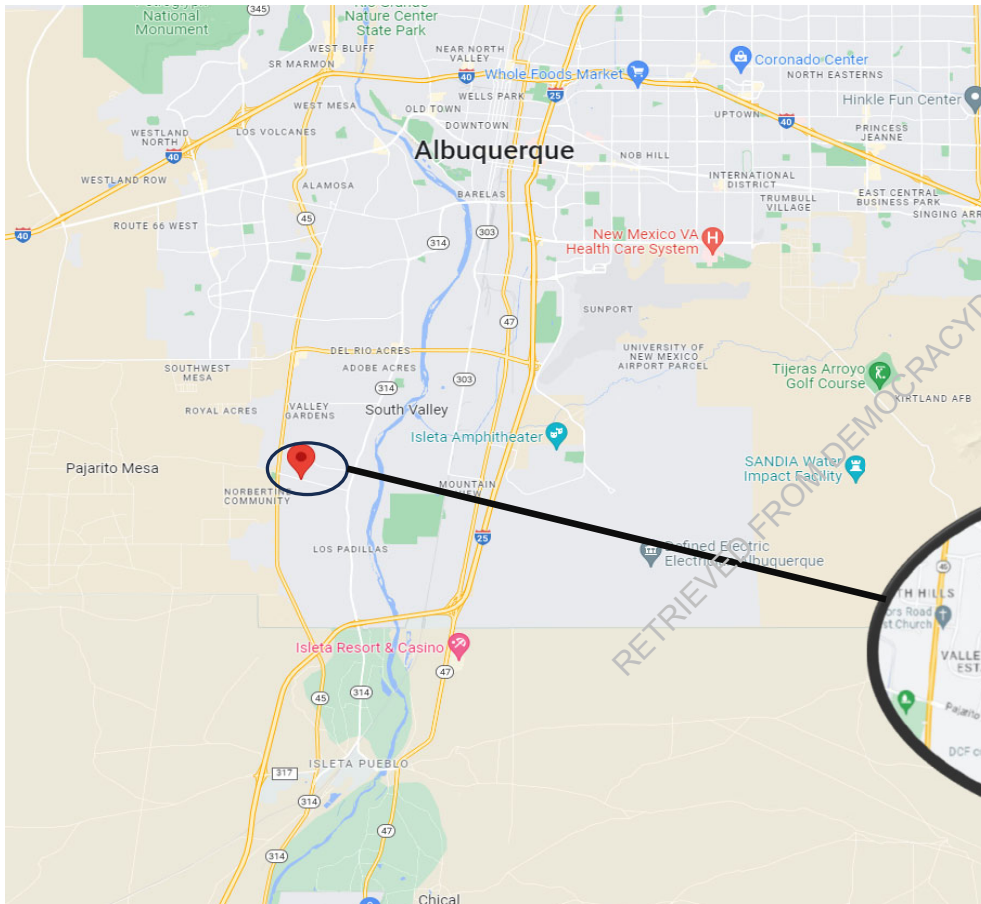
				Adult Non-Hispanic				Performance		Registration			
Dist.	Total Pop.	Deviation		Adult Hisp.	White	Native Amer.	Black	Asian	Dem	Rep	Dem	Rep	Other
1	705,832	-9	0.0%	37.6%	49.4%	3.9%	2.4%	2.8%	53.5%	46.5%	43.2%	32.1%	24.7%
2	705,846	5	0.0%	56.1%	33.3%	4.9%	1.9%	1.2%	53.0%	47.0%	43.8%	30.5%	25.7%
3	705,844	3	0.0%	39.7%	38.4%	16.5%	1.3%	1.2%	56.0%	44.0%	47.6%	30.1%	22.3%
NM	2,117,522	Ideal:	705,841	44.3%	40.5%	8.4%	1.9%	1.8%	54.2%	45.8%	44.9%	30.9%	24.2%

This Plan	
Total Deviation	0.0%
Largest Positive Deviation	0.0%
Largest Negative Deviation	0.0%
Mean Deviation +/-	0.0%
Median Deviation	0.0%
Democrat (>=55.0%)	1
Lean Democrat (50.1% - 54.9%)	2
Lean Republican (50.1% - 54.9%)	0
Republican (>=55.0%)	0
Measure of Compactness	Mean
Reock	0.40
Polsby-Popper	0.29

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Plaintiff Pearl Garcia

2601 Pajarito Road, SW, Albuquerque, New Mexico 87105



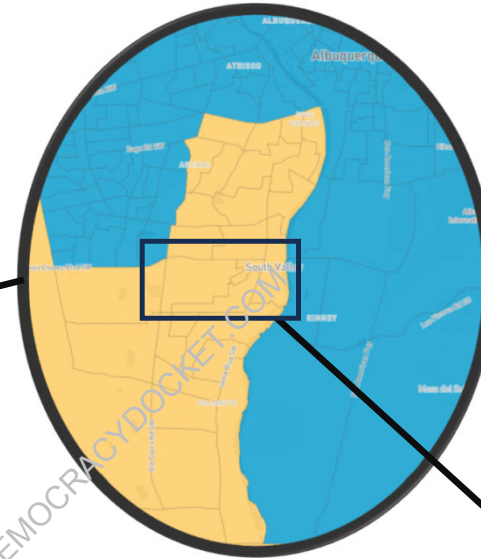
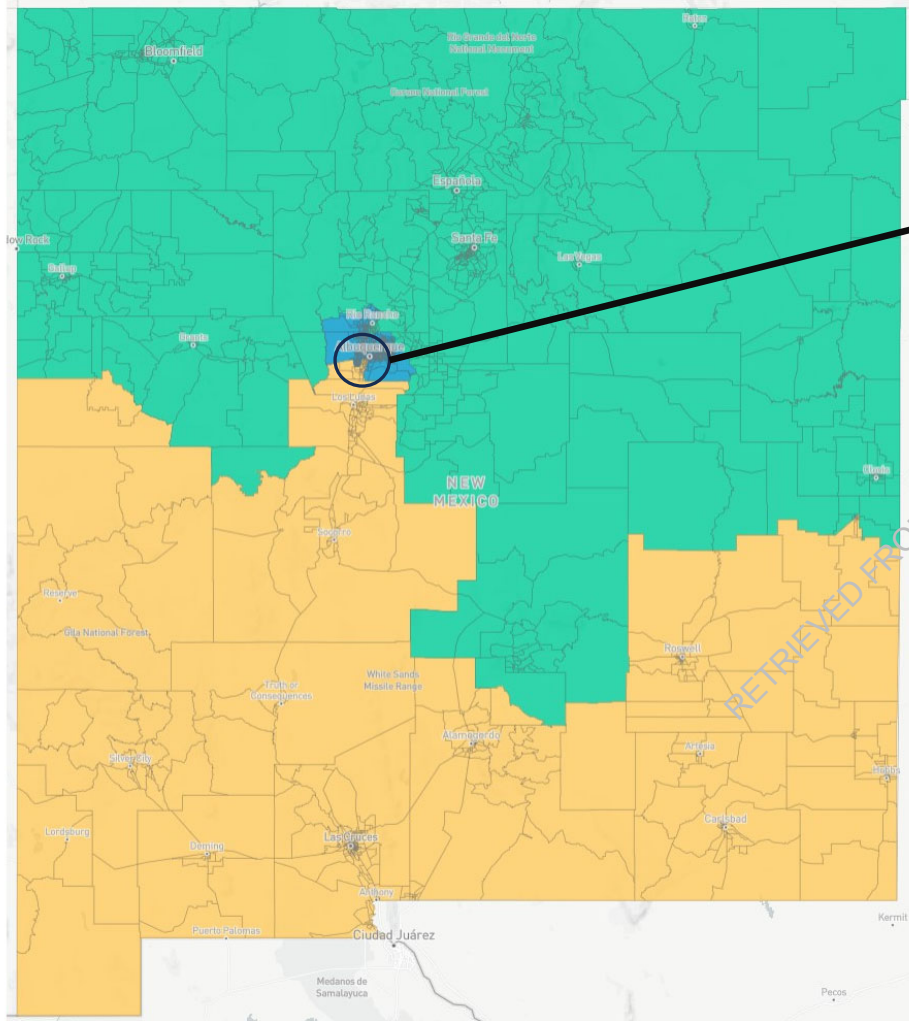
Close up view of 2601 Pajarito Rd, SW:



EXHIBIT
C

Concept E Map -- Overview and detail

Congressional Concept E-Revised (Justice Chávez's map):



Concept E Map – South Valley of Albuquerque:

Concept E Map – Close-up detail of South Valley of Albuquerque:



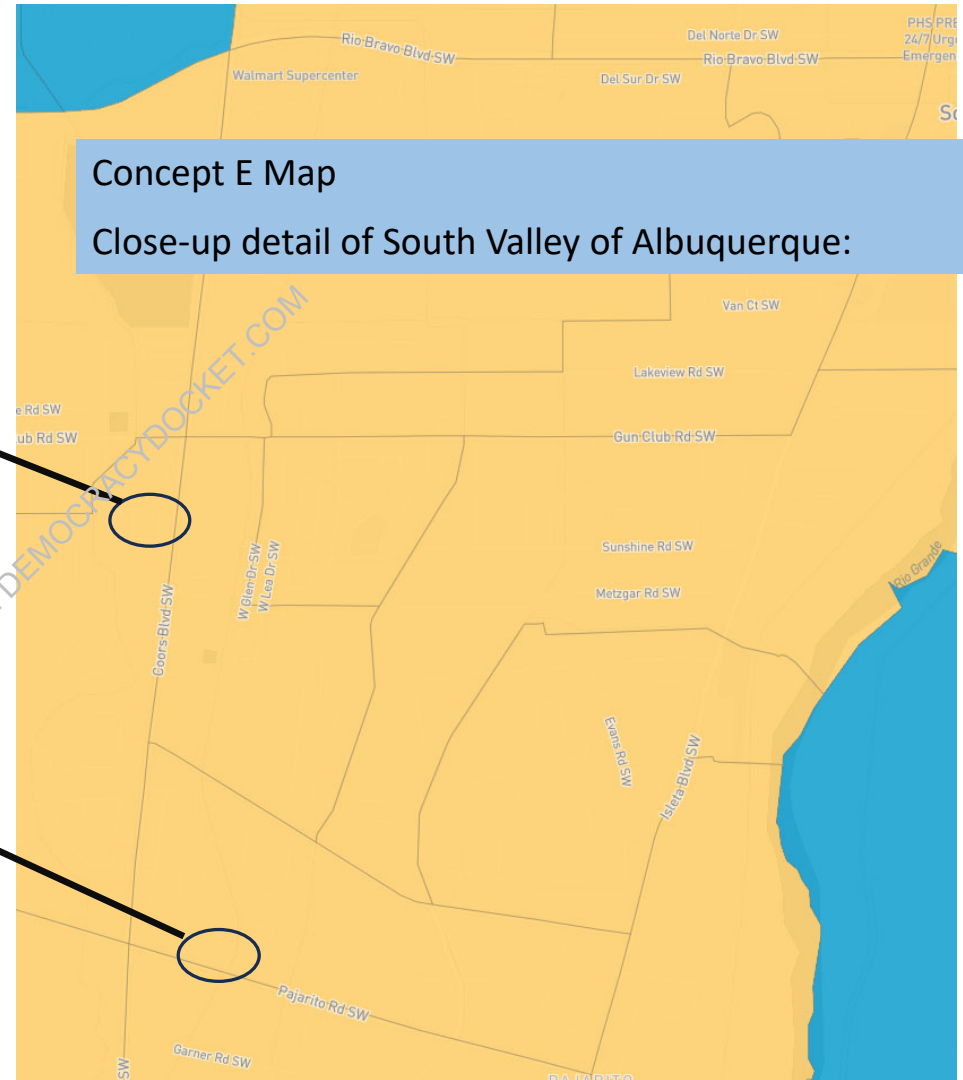
**EXHIBIT
D**

Plaintiff Dinah Vargas
4707 Coors Boulevard, SW,
Albuquerque, New Mexico
87121

Plaintiff Pearl Garcia
2601 Pajarito Road, SW,
Albuquerque, NM 87105

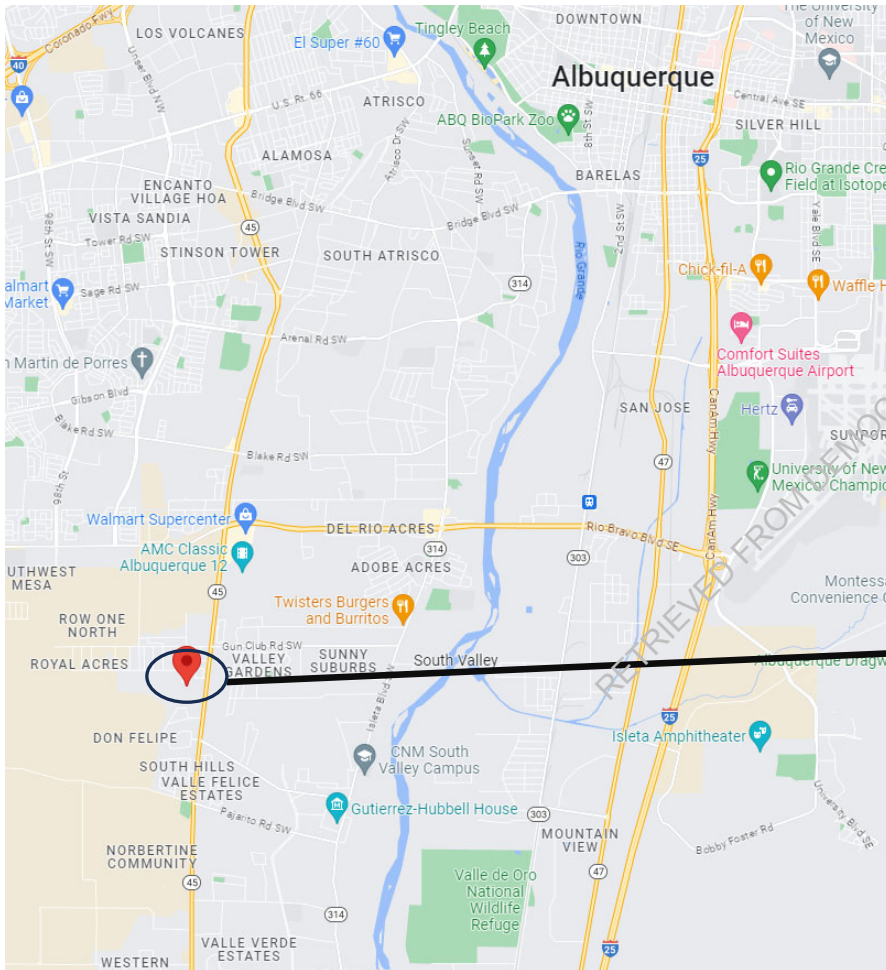
Concept E Map

Close-up detail of South Valley of Albuquerque:

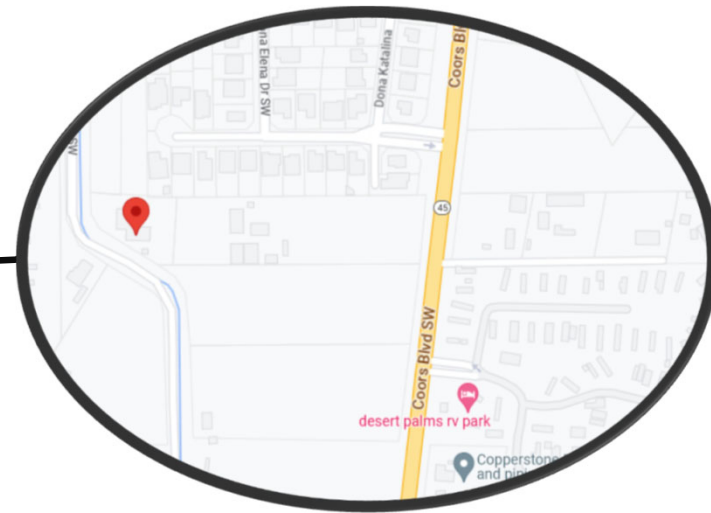


Plaintiff Dinah Vargas

4707 Coors Boulevard, SW, Albuquerque, New Mexico 87121



Close up view of 4707 Coors Boulevard



**EXHIBIT
E**