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STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity  
as New Mexico Secretary of State, MICHELLE LUJAN  
GRISHAM, in her official capacity as Governor of New  
Mexico, HOWIE MORALES, in his official capacity as  
New Mexico Lieutenant Governor and President of the  
New Mexico Senate, MIMI STEWART, in her official  
capacity as President Pro Tempore of the New Mexico  
Senate, and JAVIER MARTINEZ, in his official  
capacity as Speaker of the New Mexico House of  
Representatives,

Defendants.

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PLAINTIFFS' ANNOTATED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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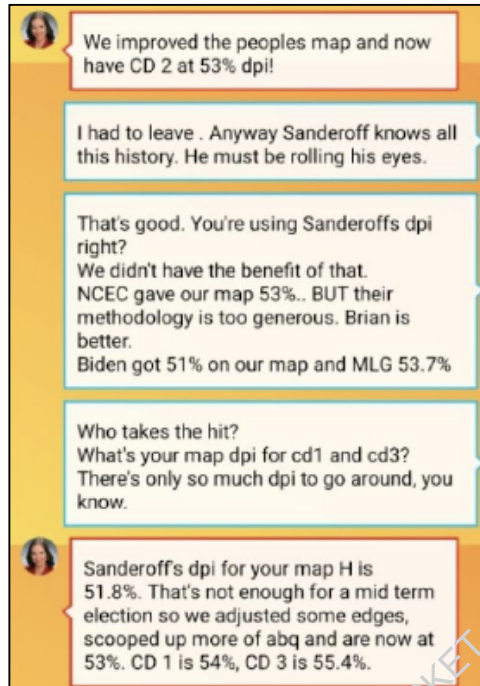
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## INTRODUCTION

1. Senate Bill 1 (“SB1”) is an egregious, near-perfect partisan gerrymander, in violation of the controlling precedent from Justice Kagan’s dissenting opinion in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). The Legislature enacted SB1 with the impermissible partisan purpose, diluting the votes of Republicans by surgically cracking as many Republicans as possible from the State’s District 2 to flip that district to their own party, while not jeopardizing their hold on District 1 and District 3. SB1 accomplished its purpose in 2022, with District 2 being only one of two districts in the Nation where a Republican incumbent lost in their seat, in that favorable year for Republicans.

2. That Democrats engaged in partisan gerrymandering to the maximum extent feasible in New Mexico is beyond serious dispute, as articulated by remarkably candid text messages from Defendant Senator Mimi Stewart, President Pro Tempore of the Senate. In these messages Senator Stewart explains precisely how and why the Legislature’s SB1 transformed the “Concept H” Map (the so-called “People’s Map”), an already-Democrat leaning map proposed by New Mexico’s Citizens Redistricting Committee, into a near-perfect Democratic gerrymander.



Pls.Ex.2, at 4.

3. Senator Stewart's text messages explain that "[w]e improved the peoples map [*i.e.*, the Concept H Map]" to create a 54% Democratic majority in District 1, a 53% Democratic majority in District 2, and a 55.4% Democratic majority in District 3. This way, the Legislature ensured that there was "enough" of a Democratic composition to flip District 2, without materially jeopardizing their hold on Districts 1 and 3, as "[t]here's only so much [Democratic-party voters] to go around." *Id.* Legislative Defendants' expert Brian Sanderoff, whom Senator Stewart mentions in her text messages above, then confirmed in his report here this 53% figure for District 2 in his deposition and expert report. Pls.Ex.5, at 6 (hereinafter "Sanderoff Rep."); Pls.Ex.25, at 43 (hereinafter "Sanderoff Dep."). Further, an additional expert from Legislative Defendants, Kimball W. Brace, as well as Plaintiffs' own expert, Sean P. Trende, confirm three numbers. Pls.Ex.4, at 74 (pdf page number)

(hereinafter “Brace Rep.”) (53.57% for District 1; 52.73% for District 2; 55.97% for District 3); Pls.Ex.3, at 42 (hereinafter “Trende Rep.”) (calculating similar partisan compositions for each district under SB1, using two different metrics).

4. A look at how the Legislature transformed the Concept H Map into SB1 is also instructive. To create SB1, the Legislature retained or swapped certain precincts among the three districts that the Concept H Map had created, following a partisan pattern. Specifically, the Legislature retained the precincts from the Concept H Map that created three districts that voted for President Biden with at least 52.5% of the vote—roughly his national vote share—thus establishing a Democratic majority in each district. Then, the Legislature made SB1’s District 2 more Democratic by swapping a collection of precincts from the Concept H Map’s District 1 that voted 55.1% for President Biden to SB1’s District 2, offsetting that swap in part by moving a collection of precincts from District 2 to District 1 that gave President Trump almost 60% of the vote. Finally, the Legislature shifted a group of precincts that gave President Biden just 34.1% of the vote in the Concept H Map’s District 2 into SB1’s District 3 and exchanged it for a group of voters that gave President Biden 50.7%—thus, again, making District 2 more Democratic.

5. One additional consideration makes this case an exceedingly easily one: the gerrymander and evidence here is more powerful than the evidence for the analogous gerrymander that Justice Kagan—joined by Justices Ginsburg, Breyer, and Sotomayor—considered to be an obvious case in *Rucho*. While *Rucho* more famously involved a challenge to North Carolina’s 13-district congressional map, *Rucho*, 139 S.

Ct. at 2491, it also involved a companion challenge in *Benisek v. Lamone*, 348 F. Supp. 3d 493, 497–507 (D. Md. 2018), *vacated and remanded sub nom. Rucho*, 139 S. Ct. 2484, to Maryland’s Sixth District in its 2011 congressional redistricting map, *Rucho*, 139 S. Ct. at 2493. Both in *Benisek* and here, the challengers alleged that the mapdrawers targeted a single district to flip it from Republican control to Democratic control. *Id.* at 2510–11 (Kagan, J., dissenting). Both in *Benisek* and here, the challengers presented candid statements from mapdrawers, revealing why they drew the map the way they did (although, notably, Plaintiffs were effectively denied discovery by Defendants and non-party Legislators, whereas the plaintiffs in *Benisek* received robust discovery, including depositions of the gerrymanders). *Id.* Both in *Benisek* and here, the challengers showed how the mapdrawers made substantial, partisan cracking and packing of voters not necessary to reach population equality. *Id.* And both in *Benisek* and here, there was an election under the challenged map where the Republican challenger lost by a narrow margin in a favorable Republican year. *See* Pls.Ex.30. But the evidence in this case is even more powerful because the *Benisek* plaintiffs relied only upon this evidence, whereas Plaintiffs here *have also* presented a sophisticated social-science analysis, comparing SB1 to one million simulated maps—the same of type of simulation evidence, from the same expert, which carried the day in *Harkenrider v. Hochul*, 197 N.E.3d 437, 453 (N.Y. 2022). So, if Maryland’s Sixth District is an unconstitutional partisan gerrymander, as Justice Kagan concluded was clear under her own test, the conclusion is even more obvious here as to SB1.

6. Plaintiffs have thus easily established that SB1 is an egregious, unconstitutional partisan gerrymander. First, the Legislature drew SB1 with the clear partisan intent to entrench Democrats in District 2 at the expense of Republicans. Second, SB1 has an egregious partisan effect, since it substantially dilutes Republican votes in District 2 with targeted cracking and packing. Finally, there could be no possible justification for what the Legislature obviously did with SB1 here—take the Concept H Map and turn it into a near-perfect Democratic gerrymander—thus Defendants cannot carry their burden to justify this map under the third prong of Justice Kagan’s test.

7. This Court should declare that SB1 is an impermissible partisan gerrymander, enjoin its use in all future elections, and promptly schedule remedial proceedings that will lead to adoption of a remedial map for the 2024 elections.

## **FINDINGS OF FACT**

### **A. New Mexico’s Congressional Maps**

8. New Mexico, like all States, redraws its congressional-district map every decade after the federal census to reapportion equally its districts’ populations. *See* U.S. Const. art. I, § 2; *Wesberry v. Sanders*, 376 U.S. 1, 7–9, 18 (1964).

9. For the last four decades, New Mexico’s lines for its three congressional districts “have been more-or-less stable” and have “typically” relied upon a “regional basis for the state’s districts.” *Trende Rep.*31. New Mexico’s redistricting maps since 1982 have largely retained discernible regions of the State within a single district, with limited splitting of such regions across districts. *See id.* at 27–31; *see generally id.* at 16–17. The Southeast region is the region most relevant here, and it comprises

Curry, Roosevelt, Lea, Eddy, Chaves, De Baca, Lincoln, and Otero Counties. *Id.* at 17. This region is a cohesive community with its own economy, culture, values, and identity distinct from the rest of the State. *See* Pls.Ex.7. The 1982 map placed the Southeast region in District 2, except for “only a single county” placed within District 1. *Trende* Rep.27–28. The 1992 map is similar, with the Southeast region largely falling within District 2, except for one county in District 3. *See id.* at 29. The 2002 map “largely paralleled the 1992 lines,” including as to the Southeast region. *Id.* at 30. And the 2012 map likewise saw “only modest changes.” *Id.* at 31.

10. The regions of New Mexico also have an “overall stability” in terms of their voting patterns. *Id.* at 25. Since 1984 to 2020, “[t]he Southeast region is consistently the most heavily Republican region of the state.” *Id.* With its rural and agricultural way of life, the region is distinctly conservative in terms of its culture, ideology, and values. *See* Pls.Ex.7. The “North Central [region],” which contains Santa Fe, “is the most heavily Democratic region.” *Trende* Rep.25. And the “Central region,” which contains Albuquerque, “has moved significantly toward the Democrats over this time period, and is the most populous region.” *Id.*

11. For the past two redistricting cycles, courts drew New Mexico’s congressional maps. In 2000, the State’s political branches failed to adopt a map. *See* S.B.33 (2001 1st Spec. Sess.);<sup>1</sup> Pls.Ex.9, at 12–13. Due to that impasse, the District Court adopted a congressional map for the State. Pls.Ex.9, at 13 & n.39 (citing *Jepsen v. Vigil-Giron*, No. D-101-CV-200102177 (1st Dist. Ct. Jan. 2, 2002)). A

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<sup>1</sup> Available at <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=33&year=01s> (all websites last visited Sept. 15, 2023).



similar result obtained in 2010, with the District Court adopting a court-drawn map for the State. *See Findings Of Fact & Conclusions Of Law 2–3, 15, Egolf v. Duran*, No. D-101-CV-2011-02942 (1st Dist. Ct. Dec. 29, 2011).<sup>2</sup>

12. In 2011, the New Mexico Legislative Council, *see* NMSA § 2-3-1, adopted redistricting guidelines “consistent with traditional districting principles” that require districts to be “contiguous” and “reasonably compact,” while allowing mapdrawers to “preserve the core of existing districts” and “consider the residence of incumbents,” Pls.Ex.10.

13. New Mexico enacted the Redistricting Act of 2021 for the most recent redistricting cycle, which created the New Mexico Citizen Redistricting Committee (“Citizen Redistricting Committee” or “Committee”) to propose redistricting maps for the Legislature’s consideration. 2021 N.M. Laws, ch. 79, §§ 2, 4 (codified at NMSA § 1-3A-1, et seq.). The Committee comprises seven members, with a total of four members appointed by the majority and minority leadership in both Houses of the Legislature and the remaining three appointed by the State Ethics Commission—including the Committee’s chairperson, who must be a retired New Mexico Supreme Court Justice or a retired New Mexico Court of Appeals judge. NMSA § 1-3A-3; *see generally id.* § 1-3A-4. The Committee must hold an initial round of at least six public hearings; then publish draft maps for the Committee’s further consideration; then hold an additional round of at least six hearings on those draft maps; and ultimately propose at least three maps for the Legislature’s consideration. *Id.* § 1-3A-5. The

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<sup>2</sup> Available at <https://redistricting.lls.edu/wp-content/uploads/NM-egolf-20111029-congressional-decision.pdf>.

Committee “shall not . . . use, rely upon or reference partisan data, such as voting history or party registration data” when drawing its maps, *id.* § 1-3A-7(C)(1), and it must evaluate each map it proposes to the Legislature for “partisan fairness,” *id.* § 1-3A-8.

### **B. The Committee Proposes Three Maps To The Legislature**

14. After the 2020 federal census, New Mexico’s three congressional districts were slightly malapportioned, *see* *Trende Rep.* 31–32, thus the State had to conduct the redistricting process under the U.S. Constitution, *see supra* p.5.

15. In June 2021, the Citizen Redistricting Committee—chaired by Justice Edward L. Chávez—set out to “develop[] maps” to propose to the Legislature “in accordance with the Redistricting Act.” *Pls.Ex.* 11, at 4–5 (hereinafter “Comm. Rep.”). After holding a series of hearings and receiving online comments, *id.* at 7–9, the Committee “adopted three district plans for . . . New Mexico’s congressional delegation” to submit to the Legislature, *id.* at 11. Those maps are identified as the “Congressional Concept A” Map, *id.* at 30–32; the “Congressional Concept E-Revised (Justice Chávez Map),” *id.* at 38–40; and the “Congressional Concept H” Map, *id.* at 34–36, or “the People’s Map.”

16. The Committee’s Concept A Map “[m]aintain[s] the status quo” by largely preserving the existing congressional districts drawn by the District Court in 2011. *See id.* at 32. With respect to the Southeast region, the Concept A Map kept this region largely within District 2 by placing Otero, Lincoln, Chaves, Eddy, Lea, and part of Roosevelt Counties in District 2, with only De Baca, Curry, and part of Roosevelt Counties in District 3. *See id.* at 30 (map of Concept A, with detailed map

at <https://districtr.org/plan/43318>). The Concept A map splits only four municipalities and four counties, while eliminating the division of McKinley County that was present in the 2012 map. *Id.* at 30–32 & app.1, at 57–58. The Concept A Map is generally the most favorable map for Republicans recommended by the Committee, as explained below. *Infra* p.10.

17. The Committee’s Concept E-Revised Map (Justice Chávez Map)—which Justice Chávez put forward, as the map’s name indicates—emphasized the compactness of District 1 while retaining the cores of Districts 2 and 3. *See* Comm. Rep.38–40. Thus, this map drew District 1 as an urban district centered on Albuquerque and its immediately adjacent urban and suburban areas. *Id.* at 38. As for the Southeast region, the Justice Chávez Map centers it in District 2, consistent with this district’s history, by placing Chaves, Eddy, Lea, and part of Otero and Roosevelt Counties in this district, with Lincoln, De Baca, Curry, and part of Otero and Roosevelt Counties in District 3. *See id.* at 38 (Justice Chaves Map, with detailed map at <https://districtr.org/plan/63307?portal>). The Justice Chávez Map splits six counties and five municipalities, *id.* app.1, at 57–58, and it earned six of the seven Committee members’ endorsements—the most of any of the three maps presented by the Committee, *see id.* at 31, 35, 39. Finally, the Justice Chávez Map is the most balanced map as between Democrats and Republicans. *Infra* p.10.

18. Finally, as for the Concept H Map—the so-called “People’s Map”—it is the product of “a coalition of community-based organizations,” Comm. Rep.36, including “the Center for Civic Policy,” *see* Pls.Ex.12. The Concept H Map significantly redrew

New Mexico's prior districts, especially as to the State's Southeast region. *See* Comm. Rep.34. The Concept H Map splits the Southeast region across the State's three districts—placing Lincoln, De Baca, and parts of Chaves and Otero Counties in District 1; Eddy and parts of Otero, Chaves, and Lea Counties in District 2; and Curry, Roosevelt, and part of Lea Counties in District 3. *See* Comm. Rep.34 (map of Concept H, with detailed map at <https://districtr.org/plan/66395>). This map also splits nine counties and seven municipalities—the most of the three plans adopted by the Committee. *Id.* app.1, at 57–58. And, as explained immediately below, the Concept H Map is the most favorable map to Democrats adopted by the Committee.

19. The Committee evaluated these three plans for “partisan fairness” by engaging Professor David Cottrell to compare each map “with a large ensemble [1,000] of random computer-generated maps” that he drafted “using the same criteria used . . . when drafting Committee plans.” *Id.* The Concept H Map makes all of New Mexico's three districts majority-Democratic districts, thus it is the most favorable map for Democrats recommended by the Committee. *See id.* at 27. The Concept A Map creates two majority-Democratic districts and one district with a Republican composition between 55.0% to 54.1%, which makes it the most favorable of the three maps for Republicans. *See id.* Finally, the Justice Chávez Map makes two majority-Democratic districts and one district with a Republican composition between 54.0% to 53.1%, thus it is the most balanced map. *See id.*

**C. The Legislature Creates SB1 By Taking The Committee’s Most Favorable Map For Democrats—The Concept H Map—And Modifying It Into A Near-Perfect Partisan Gerrymander**

20. After the Citizen Redistricting Committee submitted its three maps to the Democratic-controlled Legislature, the Legislature did not adopt any of them. *Compare* Pls.Ex.1, *with* Comm. Rep.30–40. Instead, Democrat legislative leadership took the Concept H Map—the map most favorable to Democrats—and adjusted it to be a near-perfect partisan gerrymander for their party. *See* Pls.Ex.2, at 4. That is, “the mapmakers took a map that was already favorably aligned toward Democrats,” the Concept H Map, “and made it even more so[.]” *Trende* Rep.67–68. Further, legislative leadership blocked Republican legislators from their map-drawing process in all material respects, perfunctorily meeting with Republicans about redistricting yet refusing to incorporate any Republican input into the map ultimately proposed. Pls.Ex.8, ¶¶ 7–11; Pls.Ex.32, ¶¶ 7–11. The Legislature ultimately introduced its gerrymandered map as SB1; the Legislature passed the map with only Democrats voting in support, while one Democratic Representative, an independent Senator, and all present and voting Republican legislators voted against the map, *id.* ¶ 9; and the Governor signed it into law, *see* Pls.Ex.13; *see generally* Pls.Ex.14.

21. In a text-message conversation between the Center for Civic Policy and Defendant Senator and President of the Senate Mimi Stewart—who, along with other members of legislative leadership, was responsible for the redistricting process—reveals the Legislature’s precise strategy. Pls.Ex.2, at 4. In this conversation, held during the drafting of SB1, Senator Stewart brags to a representative for Center for Civic Policy that “[w]e improved [the Concept H Map] and now have CD 2 at 53% dpi

[Democratic Performance Index]!” *Id.* The representative from Center for Civic Policy then asks Senator Stewart, “Who takes the hit? . . . There’s only so much dpi to go around, you know.” *Id.* To this, Senator Stewart states that “[Legislative Defendant’s expert] Sanderoff’s dpi for your map H is 51.8% [for District 2]. That’s not enough for a mid term election so we adjusted some edges, scooped up more of abq [Albuquerque] and are now at 53%. CD 1 is 54%, CD 3 is 55.4%.” *Id.*

22. Other candid statements from key Democratic legislators show SB1’s partisan design. The day after District 2 elected Representative Herrell in 2020, New Mexico House Speaker Egolf stated publicly: “So this is the last election for New Mexico’s 2nd Congressional District with a map that looks like it looks now;” “So next time it’ll be a different district and we’ll have to see what that means for Republican chances to hold it.” Pls.Ex.15, at 1. In a December 11, 2021 email that Senator Cervantes (a sponsor of SB1) sent to his political supporters (i.e., his “Friends”), he explained that, “[h]istorically, conservative and Republican performing areas of the state were ‘packed’ into the southern district boundaries [*i.e.*, District 2] to assure easier margins for [the Democratic candidates in] the two northern districts.” Pls.Ex.16, at 1. SB1 shifts some of the “very large [Democratic] advantages” in Districts 1 and 3 to District 2, such that New Mexico Democrats will no longer “sacrifice the southern district to ease electability [of Democrats] in the north.” *Id.* at 1–2. And in a tweet that Senator Stewart sent just a few months after the text-message conversation described above, she responded to a tweet about

Representative Herrell, that, “We are sorry we’ve sent her to DC. Our Redistricting session is offering a way out of her chaotic and divisive politics.” Pls.Ex.17, at 1.

23. Senator Stewart’s text messages and these other revealing statements from key legislators are entirely consistent with objective analyses about SB1’s lines. The Legislature partisan gerrymandered SB1 for the Democrats by cracking the State’s Southeastern region among the State’s three congressional districts. *Trende Rep.17*, 31–43, 67–68. SB1 pushes District 1 and District 3 further into Southeastern New Mexico, while shifting District 2 substantially into the Central region, which region is the most populous and strongly favors Democrats. *Id.* at 17, 32. That is, with SB1, the Legislature made politically targeted changes to the prior congressional map, concentrated in the Southeastern and Central regions, *id.* 34–35, to “transform[ ]” District 2 “from one where Republicans would generally be favored into one where Democrats tend to win”—*without* making District 1 and District 3 “so much less Democratic that they might seriously threaten their incumbent Democrats” in the process, *id.* at 42. Simple partisan-composition calculations for each of the State’s three districts under the 2011 Map and SB1—calculations prepared by one of Legislative Defendants’ own experts Kimball Brace, and which are generally consistent with the analysis of Plaintiffs’ expert, Mr. Trende—demonstrate the Legislature’s near-perfect gerrymander with SB1. As Mr. Brace calculates, under the *prior* map, District 1 was 57.70% Democratic; District 2 was 44.75% Democratic; and District 3 was 58.25% Democratic. *Brace Rep.52* (pdf page number). Then, under *SB1*, District 1 is 53.57% Democratic (a decrease of 4.13%); District 2 is 52.73%

Democratic (an increase of 7.98%); and District 3 is 55.97% Democratic (a decrease of 2.28%). *Id.* at 73 (pdf page number); *see also* Trende Rep.42 (calculating similar pattern); *accord* Sanderoff Rep.6 (calculating District 2 under SB1 as 53% Democratic, 47% Republican).

24. Specific, discernible changes that SB1 made to the prior map also reveal the Legislature's near-perfect gerrymander. While the 2020 census required only minor population adjustments to reapportion New Mexico's districts, "mapmakers substantially altered the map for the first time in decades," diluting Republican votes through cracking and packing. Trende Rep.26, 32, 50, 78.

25. SB1 shifted "more than twenty times the number of residents that had to be shifted to meet equal population requirements," *id.* at 33, from about 23,000 to 505,952, *id.* at 33, 36. District 1 shifted 166,485 residents to District 2, although District 1 was underpopulated. *Id.* at 33. District 3 gave 21,292 residents to District 2 and 122,222 residents to District 1, although it only had to give up 3,082 residents. *Id.* And while District 2 was only overpopulated by 8,181 residents, it lost over 195,000 residents, giving 55,518 residents to District 1 and 140,435 residents to District 3—although, again, District 3 had to lose population. *Id.*; *see also id.* at 34 (summarizing these changes in chart form). Unsurprisingly, the shifting of these residents was "not politically neutral." *Id.* at 35. The Legislature focused its cracking and packing in the Southeastern and Central regions—given that the former is highly Republican while the latter is highly Democratic—to pack a net "approximately 40,000 Democratic votes" into District 2 and flip District 2's partisan makeup. *Id.* at



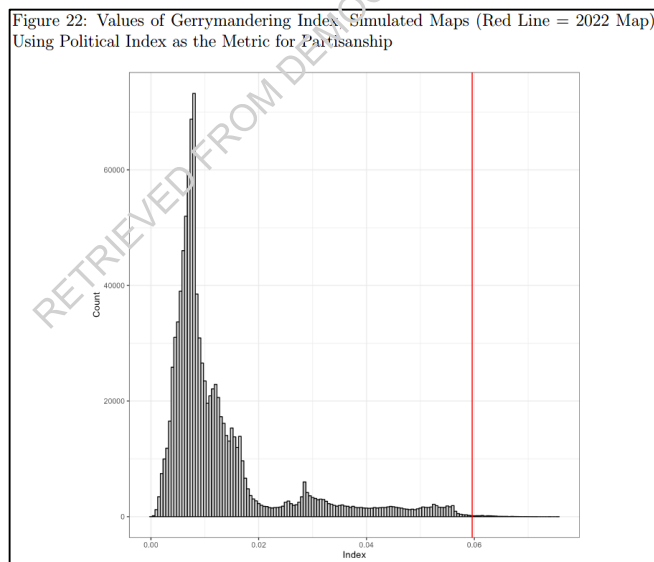
35–36 (relying on presidential-vote data); *see also id.* at 36–43 (reaching same conclusion after relying on an “index of [ten] elections,” “party registration data,” “actual vote results,” and the “ten statewide races included in [the] index individually”).

26. With respect to the Southeast region, SB1 deeply fractures it among the State’s three districts, “for the first time in the state’s history.” *Id.* at 35. Thus, District 1 contains De Baca, Lincoln, and part of Otero and Chaves Counties; District 2 contains part of Otero, Chaves, Eddy, and Lea Counties; and District 3 contains Curry, Roosevelt, and part of Chaves, Eddy, and Lea counties. *Compare* Trende Rep.17 (listing counties in this region), *with* Pls.Ex.1.

27. SB1 splits a record number of counties and is not compact, given New Mexico’s geography. Specifically, SB1 “splits nine” counties, which is “the most in New Mexico’s history.” Trende Rep.75–76. By “any metric” of compactness, “the districts produced [by SB1] are some of the least compact districts in New Mexico history.” *Id.* at 76–77 (considering the Reock, Polsby-Popper, and Convex Hull metrics); *see also* Pls.Ex.18, at 2–3 (explaining how SB1 cracked the agricultural industry and the oil and gas Industry, which industries are longstanding communities of interest); Pls.Ex.7.

28. A sophisticated social-science analysis of SB1 performed by Plaintiffs’ expert, Sean P. Trende, tells the same story. Mr. Trende randomly generated one million politically-neutral maps that adhere to New Mexico’s redistricting criteria, but do not take partisanship into account. Trende Rep.43–44. Then, Mr. Trende

calculated the “gerrymandering index” for these one million maps, which index shows the expected percentage of Democratic vote shares across the maps from the most heavily Democratic district to the least. *Id.* at 44. The one-million map ensemble had an average gerrymandering index of around 1.3%, while SB1 had a gerrymandering index of 6.4%—meaning that it fell over four standard deviations away from the mean gerrymandering index of the million-map ensemble. *Id.* at 46. SB1 was more favorable for Democrats than 99.89% of the one-million ensemble maps (or 998,897 maps). *Id.* Given that extreme disparity between SB1 and the million-map ensemble, Mr. Trende concluded that “it is implausible, if not impossible, that [SB1] was drawn without a heavy reliance upon political data and was likely drawn to favor or disfavor a political party.” *Id.* at 46--47.



*Id.* at 51 fig.19 (red line = SB1).

29. Mr. Trende’s sophisticated social-science analysis is in accord with the independent analyses of SB1 conducted by various public-interest groups and news outlets. The Princeton Gerrymandering Project condemned SB1 as strongly favoring

Democrats and lacking any degree of partisan fairness. Pls.Ex.19. Similarly, Dan Vicuña, the national redistricting manager for Common Cause, explained that SB1's 3-0 split in favor of Democrats was "a statistical outlier." Pls.Ex.20. Dave Wasserman, senior editor at the Cook Political Report, called SB1 "probably the most optimal Dem gerrymander yet." Pls.Ex.24.

30. The Democratic-controlled Legislature's near-perfect gerrymander of SB1 obtained the exact results that the Legislature intended. In New Mexico's November 8, 2022 General Election, the new, partisan-gerrymandered District 2 elected Representative Gabriel Vasquez, a Democrat, over incumbent Representative Yvette Herrell, a Republican. Pls.Ex.21; Trende Rep.43. That result obtained even though, "generally speaking," Republicans enjoyed "a favorable environment" nationwide for Election Day 2022. Trende Rep.43. Representative Herrell was one of only two Republican incumbents to lose races in their districts in the 2022 general election.<sup>3</sup> See Pls.Ex.23. So, as a result of SB1, Democrats now control all three of New Mexico's congressional seats, Pls.Ex.21, despite Republicans having won "44.9% of the statewide vote for Congress," Trende Rep.43.

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<sup>3</sup> Further, the other incumbent, Representative Steve Chabot, lost after redistricting shifted his district significantly in favor of the Democratic Party. See, e.g., Pls.Ex.33. Republican Representative Mayra Flores also lost in the 2022 election; however, she had won her seat in a special election and so was seeking her first full term in 2022. See Pls.Ex.22. Additionally, between her special election victory and her 2022 election loss, Texas completed a redistricting that resulted in Representative Flores running against incumbent Representative Vincente Gonzalez, whose residence had been moved into her district. *Id.*

**D. Plaintiffs Challenge SB1 As An Unconstitutional Partisan Gerrymander, And The Supreme Court Holds That Plaintiffs' Claim Is Justiciable Under Justice Kagan's Test From Her Dissenting Opinion In *Rucho v. Common Cause***

31. The Republican Party of New Mexico and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") filed their Verified Complaint on January 21, 2022, alleging that SB1 is an unlawful partisan gerrymander in violation of Article II, Section 18 of the New Mexico Constitution. V. Compl. ("Compl.") ¶¶ 1–7. After this Court denied Legislative Defendants' Motion To Dismiss this case based on justiciability grounds, see Findings Of Fact & Conclusions Of Law Den. Mot. To Dismiss (July 11, 2022), Legislative Defendants challenged this Court's order by petitioning the New Mexico Supreme Court for a writ of superintending control, see Order, *Grisham v. Van Soelen*, No.S-1-SC-39481 (N.M. July 5, 2023) ("Superintending Order"); Am. Order, *Grisham v. Van Soelen*, No.S-1-SC-39481 (N.M. Aug. 25, 2023) ("Am. Superintending Order").

32. The Supreme Court issued its Superintending Order on July 5, 2023, amended on August 25, 2023. As relevant here, the Supreme Court's orders hold that Plaintiffs' partisan-gerrymandering claim was justiciable under Article II, Section 18 of the New Mexico Constitution and "is subject to the three-part test articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*." Am. Superintending Order 3 (citing 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting)); see *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) ("(1) intent; (2) effects; and (3) causation"); Superintending Order 3. Further, the Court explained that, while "some degree of partisan gerrymandering is [constitutionally] permissible," partisan gerrymandering

that is “egregious in intent and effect” is not. Am. Superintending Order 2–3; Superintending Order 2–3. The Court also explained that “[i]ntermediate scrutiny is the proper level of scrutiny for adjudication of a partisan gerrymandering claim.” Am. Superintending Order 4 (citing *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶¶ 11–15, 30–32, 138 N.M. 331, 120 P.3d 413); Superintending Order 4. Remanding to this Court to adjudicate Plaintiffs’ claim under this controlling standard, the Supreme Court also instructed that, “[i]n evaluating the degree of partisan gerrymandering in this case, if any,” this Court must “assess whether individual plaintiffs’ party-affiliated votes were in fact substantially diluted by the challenged map by comparing objective district-specific data under that map against analogous evidence under the prior congressional map” and “shall also consider any other evidence relevant to the [ ] application of the [Justice Kagan] test.” Am. Superintending Order 4.

## CONCLUSIONS OF LAW

### **I. SB1 Is An Egregious Partisan Gerrymander, In Violation Of Article II, Section 18 of the New Mexico Constitution**

33. Under Justice Kagan’s controlling, three-part test from her *Rucho* dissent, a partisan-gerrymandering claim proceeds as follows: “First, the plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing a district’s lines was to entrench their party in power by diluting the votes of citizens favoring its rival.” *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (citation omitted; brackets omitted). “Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by substantially diluting their votes.” *Id.*

(citation omitted). “And third, if the plaintiffs make those showings, the State must come up with a legitimate, non-partisan justification to save its map.” *Id.*

34. The partisan-gerrymandering litigation over Maryland’s 2011 congressional redistricting map provides a useful analogue to the case here, including because Justice Kagan ruled on that map under her own test. *Benisek*, 348 F. Supp. 3d at 497–509; see *Rucho*, 139 S. Ct. at 2516–17, 2519, 2521–22 (Kagan, J., dissenting). In 2011, Maryland comprised eight congressional districts, with the State reliably electing six Democrats and two Republicans to its congressional delegation, including from its Sixth District. *Benisek*, 348 F. Supp. 3d at 497–98; *Rucho*, 139 S. Ct. at 2510, 2519 (Kagan, J., dissenting). After the 2010 census, Maryland needed to make only “modest adjustment[s]” in the populations of its districts to maintain its “two reliably Republican districts.” *Benisek*, 348 F. Supp. 3d at 497–98; *Rucho*, 139 S. Ct. at 2519, 2521–22 (Kagan, J., dissenting). In particular, the Sixth District required only the removal of about 10,000 people, out of the District’s more than 700,000 residents, to reach population equality. *Rucho*, 139 S. Ct. at 2519 (Kagan, J., dissenting). Yet, the Democratic officials overseeing the mapdrawing process in the State—including the “State Senate President”—determined to “press their advantage” and flip the Sixth District alone from a Republican-majority district to a Democratic-majority district, while still protecting existing Democratic majorities in adjoining districts. *Id.* at 2510–11. To achieve this desired partisan gerrymander, the “Democratic officials reconfigured the entire [Sixth] [D]istrict” by “mov[ing] 360,000 residents out and another 350,000 in, while

splitting some counties for the first time in almost two centuries.” *Id.* at 2519. As a result, the new Maryland Sixth District ended up “with 66,000 fewer Republican voters and 24,000 more Democratic ones,” leaving Republicans “little or no chance to elect their preferred candidate” “[i]n what was once a party stronghold.” *Id.* Further, despite this blatant gerrymander, there was one election under the new Sixth District map where the Republican challenger lost by a narrow margin in a favorable Republican year. *See* Pls.Ex.30 (49.7% to 48.2%, in the Democratic candidate’s favor).

35. Justice Kagan concluded that Maryland’s Sixth District map was an impermissible partisan gerrymander. As for the first element, Justice Kagan concluded that the Maryland mapmakers drew the Sixth District with the intent to entrench Democrats at the expense of Republicans. *Rucho*, 139 S. Ct. at 2517 (Kagan, J., dissenting); *see also id.* at 2510–11 (cataloging key statements from mapmakers). For the second element, Justice Kagan concluded that Sixth District had the intended entrenching effect, since the mapmakers “reconfigured the entire district” by cracking 66,000 Republicans out of the district and packing 24,000 Democrats into the district. *Id.* at 2518–19. Finally, for the third element, Justice Kagan “pass[ed] quickly over [it]” because Maryland did not “offer[ ] much of an alternative explanation for the evidence that the plaintiffs put forward.” *Id.* at 2516 n.2.

36. Plaintiffs satisfy Justice Kagan’s three-part test here. First, the Legislature drafted SB1 with the egregious partisan intent to entrench Democrats in District 2 at the expense of Republicans, just like mapdrawers in *Benisek*. *Infra* Part I.A. Second, SB1 has an egregious partisan effect, as it substantially dilutes

Republican votes in District 2 through packing and cracking, under both the qualitative- and sophisticated-social-science-analysis approaches described in Justice Kagan’s *Rucho* dissent—making the case here stronger than that in *Benisek*, given that *Benisek* relied upon only qualitative data and was not a near-perfect gerrymander because that map still allowed Republicans to keep one congressional seat, although it would have been possible for Democrats to eliminate that seat as well. *Infra* Part I.B. Finally, Defendants cannot possibly carry their burden under the third element to justify their gerrymander, just like the defendants in *Benisek*. *Infra* Part I.C.

**A. The Legislature Passed SB1 With Egregious Partisan Intent**

37. Courts consider several factors when determining whether a mapdrawer has acted with impermissible intent to entrench their favored party in power, weighing both direct and circumstantial evidence of the mapdrawer’s partisan intent for this element. *See Rucho*, 139 S. Ct. at 2520–21 (Kagan, J., dissenting); *see also*, e.g., *Benisek v. Lamone*, 241 F. Supp. 3d 566, 575 (D. Md. 2017) (“[D]irect evidence, as well as circumstantial evidence, may be used to prove the element of intent.”); *Harkenrider v. Hochul*, 197 N.E.3d 437, 452 (N.Y. 2022) (“Such invidious intent could be demonstrated directly or circumstantially[.]”). These factors include whether the “map-drawing process” itself was partisan, *see League of Women Voters of Ohio v. Ohio Redistricting Comm’n (LWV of Ohio)*, 192 N.E.3d 379, 410 (Ohio 2022), which may be demonstrated by, for example, “proof of a partisan process excluding participation by the minority party,” *Harkenrider*, 197 N.E.3d at 452, “correspondence” and “contemporaneous statements” from mapdrawers, the “specific



sequence of events leading up to the challenged decisions,” and the like, *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1096 (S.D. Ohio 2019) (citation omitted), *vacated and remanded sub nom. Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019); *see also Rucho*, 139 S. Ct. at 2510–11, 20–21 (Kagan, J., dissenting); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 379–86, 388–89, 392–93 (Fla. 2015); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861–64 (M.D.N.C. 2018), *vacated and remanded*, 139 S. Ct. 2484 (2019); *Whitford v. Gill*, 218 F. Supp. 3d 837, 887–98 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018). The relevant factors also include the overall partisan impact or effect of the map—that is, whether the map “diminish[es] or dilut[es]” a “voter’s voting power on the basis of his or her [political] views,” *e.g.*, *Harper v. Hall*, 867 S.E.2d 554, 557 (N.C. 2022), or produces “discriminatory results,” *Harkenrider*, 197 N.E.3d at 452. And the relevant factors include whether mapdrawers subordinated traditional redistricting criteria for partisan reasons. *Rucho*, 139 S. Ct. at 2521 (Kagan, J., dissenting) (“override . . . districting criteria”); *see also League of Women Voters of Pa. v. Commonwealth (LWV of Pa.)*, 178 A.3d 737, 816–21 (Pa. 2018); *LWV of Ohio*, 192 N.E.3d at 412; *Harper*, 867 S.E.2d at 558. The State of New Mexico itself has endorsed these or closely related factors when gauging partisan intent for partisan-gerrymandering purposes, in the amicus brief it joined before the U.S. Supreme Court in *Rucho*. *See* Pls.Ex.29 at 10–13.

38. Here, the Legislature drew SB1 with clear partisan intent to entrench the Democrats in power, as shown by the extremely partisan map-drawing process, the

partisan effect of SB1, and SB1's subordination of traditional-redistricting principles for partisan ends.

39. *First*, the map-drawing process was partisan, as the legislative leaders in charge of the redistricting process candidly admitted. *Accord Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting).

40. Senator Stewart's text-message conversation reveals the Legislature's map-drawing process was partisan. Senator Stewart bragged that, with SB1, the Legislature had "improved the peoples map [the Concept H Map] and now have CD 2 at 53% dpi [Democratic Performance Index]!" Pls.Ex.2 at 5; *Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting) (Maryland officials "openly admitted to a single driving purpose: flip [a single] District"). Further, in response to the question, "Who takes the hit? . . . There's only so much dpi to go around, you know," Senator Stewart explained how the Legislature had carefully drafted SB1 to provide safe Democratic-majorities in District 1 and District 3, while still flipping District 2 from a Republican-majority to a Democratic-majority district: "Sanderoff's dpi for your map H is 51.8% [for District 2]. That's not enough for a mid term election so we adjusted some edges, scooped up more of abq [Albuquerque] and are now at 53%. CD 1 is 54%, CD 3 is 55.4%." Pls.Ex.2 at 4 (emphasis added); *compare Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting) (Maryland officials desiring to "press their advantage" while still protecting existing Democratic majorities in other districts). A tweet from Senator Stewart, made just a few months later, only bolsters what is obvious from this text-message conversation—that the Legislature drew SB1 to flip District 2 from

Republican to Democratic, while retaining Democratic control in the other two districts. In response to a tweet about Representative Herrell, Senator Stewart stated in her tweet, “We are sorry we’ve sent her to DC. Our Redistricting session is offering a way out of her chaotic and divisive politics.” Pls.Ex.17 at 1; *compare Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting).

41. Other communications from key Democratic legislators are in accord. Just one day after Representative Herrell won election from District 2 in 2020, Speaker Egolf publicly announced, “So this is the last election for New Mexico’s 2nd Congressional District with a map that looks like it looks now.” Pls.Ex.15 at 1.; *compare Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting). Speaker Egolf continued: “So next time it’ll be a different district and we’ll have to see what that means for Republican chances to hold it.” Pls.Ex.15 at 1; *compare Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting). A December 11, 2021, political-mobilization email from Senator Cervantes (a sponsor of SB1) to his “Friends” explains the different districts that Speaker Egolf had envisioned. Pls.Ex.16 at 1–2. “Historically, conservative and Republican performing areas of the state were ‘packed’ into the southern district boundaries [*i.e.*, District 2] to assure easier margins for [the Democratic candidates in] the two northern districts.” *Id.* at 1. SB1 changes that, however, by shifting some of the “very large [Democratic] advantages” in Districts 1 and 3 to District 2—meaning that New Mexico Democrats no longer have to “sacrifice the southern district to ease electability [of Democrats] in the north.” *Id.* at 1–2; *compare Rucho*, 139 S. Ct. at 2510–11, 2517 (Kagan, J., dissenting).

42. Democrats controlled the entire map-drawing process for SB1, affording Republicans with no meaningful input or role. Democratic legislative leadership alone took charge of drafting SB1 and, while accepting *pro forma* meetings with Republican legislators, did not incorporate *any* Republican input. Pls.Ex.8 ¶¶ 3–4, 7–11; Pls.Ex.32 ¶¶ 3–4; *see, e.g., Rucho*, 139 S. Ct. at 2510–11, 2520–21 (Kagan, J., dissenting); *Harkenrider*, 197 N.E.3d at 453 (“largely one-party process” (citation omitted)). Further, when the Legislature presented SB1 to the floor, only Democrats voted in support, with all present and voting Republicans (joined by a single Democratic holdout and an independent holdout) voting against it. *Supra* p.11; Pls.Ex.8 ¶¶ 6, 9; Pls.Ex.32 ¶¶ 6, 9. Then, the Democratic Governor signed SB1. *Supra* p.11. In all, SB1 was a single-party-drafted map, crafted to further that single party’s ends, supported only by that single party. *See, e.g., Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting) (“party-line vote”); *Harkenrider v. Hochul*, 167 N.Y.S.3d 659, 664 (N.Y. App. Div.), *aff’d as modified*, 197 N.E.3d 437 (N.Y. 2022); *Householder*, 373 F. Supp. 3d at 1093–96; *Common Cause*, 318 F. Supp. 3d at 861–64; *Whitford*, 218 F. Supp. 3d at 887–95; *LVW of Pa.*, 178 A.3d at 817–18; *Detzner*, 172 So. 3d at 390–93.

43. The Legislature’s decision to produce SB1 by turning the Citizen Redistricting Committee’s Concept H Map, *see* Pls.Ex.2 at 4—which already favored Democrats—into a near-perfect Democratic gerrymander, provides additional evidence of partisan intent, *see Householder*, 373 F. Supp. 3d at 1096. As explained above, to create SB1, legislative leadership began with the Concept H Map and then either “retained” or “swapped” certain precincts among the three districts that the

Concept H Map had created. Trende Rep.67–69; *supra* pp.3, 11. The choices to retain or swap these precincts follow a partisan pattern: retaining a sufficient number of Democratic precincts from the Concept H Map districts in each SB1 district; swapping Democratic-leaning precincts from the Concept H Map’s District 1 for Republican-leaning precincts in District 2, thus making the latter more Democratic; and swapping Democratic-leaning precincts from the Concept H Map’s District 3 for Republican-leaning precincts in District 2, again making the latter more Democratic. Trende Rep.67–69.

44. *Second*, SB1’s objective features further demonstrate that the Legislature acted with egregious partisan intent when enacting SB1. *E.g.*, *Rucho*, 139 S. Ct. at 2517–18 (Kagan, J., dissenting). The calculations from all three experts who did partisan-composition calculations in this case—experts from Plaintiffs and Legislative Defendants—demonstrate that SB1 is a near-perfect partisan gerrymander, given the partisan composition of each of the three districts that this map creates. *See supra* pp.13–14; *see also infra* Part I.B. Further, Mr. Trende conducted a statistical analysis of SB1 as compared to one million maps randomly generated by a computer without taking partisanship into account, and that analysis showed SB1 was more favorable for Democrats than 99.89% of the one-million ensemble maps (or 998,897 maps), meaning that “it is implausible, if not impossible, that [SB1] was drawn without a heavy reliance upon political data and was likely drawn to favor or disfavor a political party.” Trende Rep.43–47; *supra* pp.15–16; *infra* Part I.B.

45. *Finally*, the Legislature also subordinated traditional redistricting criteria for partisan reasons, providing still more evidence of its impermissible partisan intent. *E.g.*, *Rucho*, 139 S. Ct. at 2521 (Kagan, J., dissenting). Under SB1, “for the first time in the state’s history,” the Southeast region falls within *all three* of the State’s congressional districts, Trende Rep.35, despite both this region’s historical centering in District 2, *see id.* at 27–31, and New Mexico’s “typical[ ]” reliance on “a regional basis for the state’s districts,” *id.* at 31; *accord* Pls.Ex.18 at 2–3 (explaining that SB1 cracked the agricultural industry and the oil and gas industry—longstanding communities of interest in District 2—across all three districts); Pls.Ex.7. Further, in the course of shattering the Southeast region in this way, SB1 “splits nine” counties—“the most in New Mexico’s history”—while also creating districts that are “some of the least compact districts in New Mexico history.” Trende Rep.75–77. The Democratic-controlled Legislature trisected the Southeast region, notwithstanding traditional redistricting criteria, for an obviously partisan reason. “The Southeast region is consistently the most heavily Republican region of the state,” *id.* at 25, thus the Legislature had to crack this region significantly across all three districts to dilute Republican voting strength sufficiently to flip District 2, *id.* at 42.

46. In sum, the Legislature drew SB1 with the egregious partisan intent to entrench Democrats in District 2 at the expense of Republicans, just like mapdrawers in *Benisek* who drew Maryland’s Sixth District with the impermissible partisan intent to flip that district. *Rucho*, 139 S. Ct. at 2510–11, 2516 (Kagan, J., dissenting).

## B. SB1 Has An Egregious Partisan Effect

47. The second prong of Justice Kagan’s test considers the “effects” of the redistricting map alleged to be a partisan gerrymander, asking whether “the lines drawn in fact have the intended [partisan] effect by substantially diluting [the plaintiffs’] votes.” *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (citation omitted). Two methods of proof may independently establish this effects element. *Id.* at 2517–19.

48. First, plaintiffs can show that a map has impermissible partisan effects through just qualitative evidence, which evidence is “far simpler[, ]but no less powerful” than the sophisticated social-science analysis. *Id.* at 2518–19; *infra* pp.29–30 (describing the sophisticated-social-science-analysis approach). Such qualitative evidence includes mapdrawers making “substantial” shifts in a district’s “partisan composition” through cracking and packing that are unnecessary to reach population equality. *Rucho*, 139 S. Ct. at 2519, 2522 (Kagan, J., dissenting). And notably, the challengers to Maryland’s Sixth District in *Benisek* only presented this kind of qualitative evidence to demonstrate that map’s partisan effect, yet Justice Kagan still easily concluded that that map was an impermissible partisan gerrymander. *Id.* at 2518–19.

49. Second, plaintiffs can also establish a map’s impermissible partisan effects with a sophisticated social-science analysis. *Id.* at 2517–18. Such evidence includes the “extreme outlier approach,” which uses “advanced computing technology to randomly generate a large collection of districting plans that incorporate the State’s physical and political geography and meet its declared districting criteria, *except for*

partisan gain.” *Id.* at 2518 (considering this evidence as to the challenged North Carolina map). These simulated maps, “each with a partisan outcome attached to it,” can then be “line[d] up . . . on a continuum—the most favorable to Republicans on one end, the most favorable to Democrats on the other,” allowing the analyst to identify “the median outcome—that is, the outcome smack dab in the center—in a world with no partisan manipulation.” *Id.* Next, the map is measured against this continuum, revealing “where the State’s actual plan falls on the spectrum”—whether it is “at or near the median or way out on one of the tails.” *Id.* This comparison establishes the partisan effects of a gerrymandered map, as “[t]he further out on the tail” that a map falls, “the more extreme the partisan distortion and the more significant the vote dilution.” *Id.*; see also *Harkenrider*, 167 N.Y.S.3d at 664–67; *Adams v. DeWine*, 195 N.E.3d 74, 86–91 (Ohio 2022); *LVW of Pa.*, 178 A.3d at 770–75, 818–21.

50. SB1 has an egregious partisan effect since it substantially dilutes Republican votes in District 2 under both the qualitative- and sophisticated-social-science-analysis approaches described in Justice Kagan’s *Rucho* dissent.

51. *a. Qualitative Evidence.* The qualitative data about SB1 alone suffices to establish that map’s impermissible partisan effect, just as Justice Kagan concluded that this type of data was sufficient with respect to Maryland’s Sixth District in *Benisek*. *Rucho*, 139 S. Ct. at 2518–19 (Kagan, J., dissenting).

52. *First*, the Legislature’s balancing of the Democratic-party composition in each of the three districts created shows that it achieved a near-perfect gerrymander.



53. With SB1, the Legislature made specific alterations to the Concept H Map to achieve a partisan *composition* in District 2 that favored Democrats, without jeopardizing Democrats' already existing majorities in Districts 1 and 3. Ex.1 at 5. Thus, as Senator Stewart forthrightly stated in her text-message conversation, "We improved the peoples map [the Concept H Map]" and created a map with a "54%" Democratic-party composition for District 1, a "53%" Democratic-party composition for District 2, and a "55.4%" Democratic-party composition for District 3. Ex.1 at 5. The three experts to consider the party composition of SB1's three districts in this case all concur with Senator Stewart's calculations. Brace Rep.74 (pdf page number) (addressing all three Districts); Trende Rep.42 (addressing all three districts, using two different metrics); Sanderoff Rep. at 6 (addressing District 2 only); Sanderoff Dep.43 (same).

54. The Legislature's meticulous allocation of Democratic-party voters in each of SB1's three districts makes SB1 a near-perfect gerrymander. New Mexico is "a small, competitive state," and this "limits what a would-be gerrymanderer may accomplish" here. Trende Rep.13–16, 41–42. Because "[t]here's only so much dpi to go around," Ex.2 at 4, a gerrymandering Legislature bent on winning all three seats must be careful not to "make District 2 even more Democratic" than SB1 does, as that would automatically make District 3 or District 1 more Republican, threatening the Democratic control there, Trende Rep.41–42. Rather, "the best-case scenario for a gerrymanderer" in New Mexico who wants to sweep the congressional races "would be drawing three districts" with a Democratic-party composition of "54.29%." *Id.* at

14 (using 2020 presidential election vote data). As Mr. Sanderoff, one of Legislative Defendants' own experts, stated in his deposition, he could not think of a race in New Mexico history where a Republican won in a "54 percent Democratic district." Sanderoff Dep.47. Yet, SB1 obtains nearly that result, meaning that it is a near perfect gerrymander that entrenches Democrats in power. In other words, when New Mexico achieves an "extreme gerrymander" like SB1, its districts' partisan-composition margins "appear much closer" than those of a more populous State with many districts, *Trende Rep.*13–16, 42, even as those margins "remain[ ] an outlier with respect to [New Mexico's] partisanship," *id* at 16.

55. *Second*, analysis of the particular and "substantial" shifts in the "partisan composition" of the district—cracking and packing that was unnecessary to achieve population equality, *Rucho*, 139 S. Ct. at 2519, 2522 (Kagan, J., dissenting)—yield the same conclusion: SB1 flips District 2 to favor Democratic candidates while still keeping District 1 and 3 as reliable Democratic districts.

56. The Legislature made substantial shifts to alter the political composition of District 2 in the new map through cracking and packing. *Trende Rep.*31–35. After the 2020 census, each of New Mexico's districts was less than two percentage points away from the ideal population and thus required only minimal changes to remedy malapportionment—with District 1 only needing to gain 11,264 residents, District 2 only needing to lose 8,181 residents, and District 3 only needing to lose 3,082. *Id.* at 32. But instead of making minimal changes to achieve population equality, the SB1 mapdrawers "substantially altered the map for the first time in decades." *Id.*; *see*

*Rucho*, 139 S. Ct. at 2519, 2522 (Kagan, J., dissenting). Overall, they shifted 505,952 residents between districts—more than 20 times what was needed to meet equal-population requirements—moving 166,485 residents into District 2 from District 1, 21,292 residents to District 2 and 122,222 residents to District 1 from the only slightly overpopulated District 3, and 55,518 residents to District 1 and 140,435 to District 3 from District 2. *Trende Rep.*33.

57. “[T]hese shifts were not politically neutral.” *Id.* at 35–41. Rather, the Legislature focused its cracking and packing to dilute Republican votes in just two parts of the State—the Southeastern region in District 2, which is the most heavily Republican region of the State, and Central region in District 1 and District 2, which is significantly Democratic—specifically to flip the partisan composition of District 2. *Id.* at 34–35. Thus, from the Central region, “16,216 votes for President Biden were transferred out of the First District” and packed into the Second District, “while 805 were shifted from the Third District” and packed into the Second District, “for a gain of 17,021 Biden votes.” *Id.* at 35. Then, “a net of 6,640 Trump votes” were cracked from the Southeast region in “the Second District to the First [District], while 23,976 Trump votes” in the Southeast region were cracked “from the Second District to the Third [District].” *Id.* at 35–36. “[T]he Second District netted approximately 40,000 Democratic votes” from SB1’s population shifts—enough to flip that District’s party composition. *Id.* at 36. And while these shifts made Districts 1 and 3 less Democratic, the change was not enough to “seriously threaten the[ ] incumbent Democrats” there. *Id.* at 42–43.

58. SB1's egregious partisan effects were seen in the very first election under the new map. *See Rucho*, 139 S. Ct. at 2519 (Kagan, J., dissenting). In District 2, Democratic challenger Gabe Vasquez prevailed over Republican incumbent Congresswoman Yvette Herrell, in a year that favored Republicans nationally. *See* Trende Rep.43. New Mexico's partisan gerrymandered congressional map gave Democrats full control of the state's delegation for only the third time since New Mexico began electing members of Congress through district-wide elections. *Id.* Before Congresswoman Herrell's loss in 2022, New Mexico Democrats had only won control of all three districts in election years that were exceptionally favorable for Democrats. *Id.* (2008 and 2018 elections). Yet, 2022 was not such a year: Republicans won 44.9% of the statewide votes for Congress in 2022, but they nevertheless failed to elect a single representative. *Id.*; *see* Pls.Ex.21.

59. The comparison between this evidence of partisan effect and the evidence that Justice Kagan found overwhelming as to Maryland's 2011 map in *Benisek* is telling. *See Rucho*, 139 S. Ct. at 2518–19 (Kagan, J., dissenting). Like New Mexico, Maryland is a smaller State with relatively few congressional districts. *Id.* at 2519, 2521–22. Similar to New Mexico's districts after the 2020 census, which districts required only minor adjustments to reach population equality, Maryland's Sixth District required only small changes—the removal of 10,000 people—to comply with the one person, one vote principle. *Id.* at 2519. Nevertheless, like New Mexico's Legislature—who moved “more than twenty times the number of residents” necessary in SB1 than the law required, Trende Rep.31–43—the Democratic

mapdrawers of Maryland’s Sixth District “reconfigured the entire district” by “mov[ing] 360,000 residents out and another 350,000 in, while splitting some counties for the first time in almost two centuries,” *Rucho*, 139 S. Ct. at 2519 (Kagan, J., dissenting). For both New Mexico and Maryland, the end result was the same: the flipping of a Republican district—District 2 for the former, and the Sixth District for the latter—to a Democratic district, without substantially jeopardizing incumbent Democrats in the State. *Id.*; *Trende Rep.* 34–36, 42–43. And in both New Mexico and Maryland, a Republican (who, in New Mexico, was an *incumbent*) lost by a narrow margin in a favorable Republican year under the challenged map, despite the Democratic gerrymanders. *See* Pls.Ex.30. Indeed, the gerrymander here is even *worse* than Maryland’s 2011 gerrymander in *Benisek* by any objective measure: here, the Legislature attempted a near-perfect gerrymander with SB1, while even the 2011 Maryland mapmakers did not attempt to achieve such total results, *see Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting) (citing testimony from Maryland Governor that “flipping” the only other Republican-majority district in Maryland “was geographically next-to-impossible”); *Benisek*, 348 F. Supp. 3d at 502. And while the 2021 Maryland mapmakers did make such an attempt with their 2021 congressional map, a Maryland court struck down that map as an impermissible partisan gerrymander under the Maryland Constitution. *Szeliga v. Lamone*, No. C-02-CV-21-001816, 2022 WL 2132194, at \*1, \*46 (Anne Arundel Cnty. Md. Cir. Ct. Mar. 25, 2022).

60. *b. Sophisticated Social-Science Analysis.* Sophisticated social-science analysis confirms that SB1 is an extreme partisan gerrymander, independently establishing SB1's impermissible partisan effects. *See* Trende Rep.43–75.

61. In his expert report, Mr. Trende used sophisticated social-science analyses to evaluate SB1. *Id.* at 17–22. This approach applies a state-of-the-art simulation methodology, which is both more current and more sophisticated than the earlier methodology that Justice Kagan had endorsed in her *Rucho* dissent. *See id.*; *Rucho*, 139 S. Ct. at 2517–18 (Kagan, J., dissenting). Mr. Trende randomly generated one million maps that “incorporate the State’s physical and political geography and meet its declared districting criteria, except for partisan gain.” *Rucho*, 139 S. Ct. at 2518 (Kagan, J., dissenting) (emphasis omitted); *see* Trende Rep.43–44. Mr. Trende then used the simulations to calculate the “gerrymandering index,” showing the expected percentage of Democratic vote shares across the maps from the most heavily Democratic district to the least. Trende Rep.44. The ensemble of one million simulated maps has an average Gerrymandering Index of around 1.3%. *Id.* at 46. When Mr. Trende placed SB1 on this continuum, it fell on the far end of the distribution’s tail, with a gerrymandering index of 6.4%—over four standard deviations from the mean. *Id.* Thus, it “was an out-out-out-outlier.” *Rucho*, 139 S. Ct. at 2518 (Kagan, J., dissenting). SB1 is thus more favorable for Democrats than 99.89% of the one-million ensemble maps (or 998,897 maps). Trende Rep.46,

62. Further, because “New Mexico has a history of relatively small changes to its districts,” Mr. Trende then performed “a second set of analyses,” generating an

additional million simulated maps that only moved the precincts that the SB1 mapmakers also swapped between districts, while keeping the remaining precincts locked in place. *Id.* at 54–60. This, in essence, concedes “90% of the map . . . to the mapmaker.” *Id.* at 54. This additional ensemble of simulations has an average Gerrymandering Index of 0.62%, while SB1 “is not on the tails, it is beyond them,” with a Gerrymandering Index of at 2.95%—over seven standard deviations from the mean. *Id.* Mr. Trende’s additional simulations only confirm that SB1 is “an extreme partisan gerrymander.” *Id.* at 61–75.

63. None of Defendants’ three experts offer any persuasive evidence to the contrary. *See* Brace Rep.; Sanderoff Rep.; Pls.Ex.6 (hereinafter “Chen Rep.”).

64. Mr. Brace’s report largely supports the qualitative analysis discussed above. As relevant here, Mr. Brace calculated a “State Composite Score” for each district under the prior map, the three maps proposed by the Citizen Redistricting Committee, and SB1, using data from statewide nonjudicial races. Brace Rep.6–9. Mr. Brace’s statewide composite score for District 2 under the *prior* map is 44.75% Democratic versus 55.25% Republican. *Id.* at 51 (pdf page number). Then, his statewide composite score for District 2 under *SB1* is 52.73% Democratic versus 47.27% Republican. *Id.* at 73 (pdf page number). Although Mr. Brace concludes from this data that SB1’s shift of composite scores in the Democrats’ favor is “not overwhelming[ ],” such that SB1 is “not . . . an egregious gerrymander,” *id.* at 6, he fails to grapple with just how different the shift from 44.75% Democratic (District 2 under the prior map) to 52.73% Democratic (District 2 under SB1) is in a State like

New Mexico. The perfect gerrymander for Democrats in New Mexico is a composite score of 54.13% Democratic in each district—as Mr. Brace’s own data shows, *see id.* at 16 (pdf page number 73) (calculating statewide composite score as 54.13% under SB1), and as Mr. Trende’s comparable calculations demonstrate as well, *see* Trende Rep.14 (calculating “the best-case scenario for a gerrymanderer [in New Mexico]” based on the 2020 presidential election data). Indeed, Mr. Sanderoff, another expert for Legislative Defendants, stated that he could not think of any race in New Mexico where a Republican won in a “54 percent Democratic district.” Sanderoff Dep.47. Thus SB1’s composite score of 53.57% Democratic for District 1; 52.73% Democratic for District 2; and 55.97% Democratic for District 3 is a near perfect gerrymander.

65. As for Mr. Sanderoff’s report, it does not provide an expert opinion on whether SB1 is a partisan gerrymander, as Mr. Sanderoff admitted in his deposition, Sanderoff Dep.36–37. Further, Mr. Sanderoff also admitted that the statewide DPI was 54.2%, Sanderoff Dep.45— which means that a perfect Democratic gerrymander here would have a 54% Democratic-party composition in each of the three districts. Yet, SB1 nearly obtains that exact result, as Mr. Trende’s analysis, *supra* pp.13–14, Mr. Brace’s analysis, *supra* pp.13–14, and Senator Stewart’s text-message conversation show, *supra* pp.11–12.

66. Mr. Sanderoff’s report claims that District 2 is a competitive district based on “[t]he partisan performance measure” for this district, which he calculates to be 53% Democrat and 47% Republican. Sanderoff Rep.6–7. But Mr. Sanderoff does not cite any supporting literature or any study showing that this metric is a valid



measure of competitiveness, including as to New Mexico's political landscape. In any event, given New Mexico's political composition, a district with a Democratic-party composition of approximately 54% is a *perfect* gerrymander. *Supra* pp.31–32. So, the Legislature drawing District 2 in SB1 to have a partisan performance score of 53% is nearly a perfect gerrymander. Further proving this point, Mr. Sanderoff stated in his deposition that he could not think of a race in New Mexico where a Republican won in a “54 percent Democratic district.” Sanderoff Dep.47.

67. Mr. Sanderoff also asserts that the close nature of the 2022 congressional race for District 2 demonstrates that the district could be won by either party, Sanderoff Rep.9–11—and, therefore, is not gerrymandered. But one of the elections for Maryland's Sixth District was a close race, despite the extreme partisan gerrymander of that district, yet that did not prevent Justice Kagan from concluding that the Sixth District was an easy case of unconstitutional partisan gerrymandering. *Compare* Pls.Ex.30 (49.7% to 48.2%, in the Democratic *incumbent* candidate's favor), *with Rucho*, 139 S. Ct. at 2517–19 (Kagan, J., dissenting). In any event, Mr. Sanderoff ignores the crucial context provided by Mr. Trende in his report. Specifically, the 2022 election cycle favored Republicans across the country, and Representative Herrell was the District 2 incumbent. Trende Rep.43. Further, while New Mexico has a significant contingent of Republican voters, given that Republicans received 44.9% of the statewide vote for Congress in the 2022 election, Republicans won *none* of the State's three congressional seats. *Id.* Indeed, prior to SB1, Democrats had only won all three districts in New Mexico in 2008 and 2018, when

the “environment” was “exceptionally good” for them. *Id.* Now, as a result of SB1, Democrats can win District 2 even under very difficult circumstances. *See id.*

68. Dr. Chen also does not provide an expert opinion on whether SB1 is a partisan gerrymander either, as he too admitted in his deposition. Pls.Ex.26, at 11 (hereinafter “Chen Dep.”). Rather, Dr. Chen’s report focused on producing his own set of 1,000 simulated maps.

69. Unfortunately, Legislative Defendants’ counsel provided unprecedented and, frankly, entirely inappropriate (to put it mildly) instructions to Dr. Chen, which destroy the usefulness of his simulations for this Court. For a simulated-maps analysis to reliably show the presence or absence of impermissible partisan effect, the simulated maps must adhere only to partisan-neutral redistricting “criteria.” *Rucho*, 139 S. Ct. at 2518 (Kagan, J., dissenting); *Trende Rep.*17–22. That is, the simulated maps must only “incorporate the State’s physical and political geography and meet [the State’s] declared districting criteria, except for partisan gain.” *Rucho*, 139 S. Ct. at 2518 (Kagan, J., dissenting); *Trende Rep.*17–22.

70. As Dr. Chen’s report expressly states—in a frankly shocking admission—“Defendant’s counsel instructed [Dr. Chen]” to incorporate “Oil Industry Considerations” into his simulations: specifically, “to require that no single congressional district in any computer-simulated plan contains more than 60% of the state’s active oil wells,” *Chen Rep.* 8; *see also id.* at 4; *Chen Dep.*53. This criterion has no basis in New Mexico law and was plainly reverse-engineered by Defendants’ counsel to bake a partisan gerrymander into Dr. Chen’s simulations. New Mexico’s

redistricting guidelines make no mention of any oil-industry considerations, *see* Pls.Ex.10, and Mr. Sanderoff stated at his deposition that he “d[id] not recall” whether *anyone* at the public hearings on SB1 asked to split up the oil wells among the State’s districts, Sanderoff Dep.19, and he had *never* “heard of people talk[ing] about spreading oils wells in redistricting,” Sanderoff Dep.64. Further, the “Oil Industry Considerations” necessary require a map to split the Southeast region into at least two districts, given that the overwhelming majority of New Mexico’s oil wells are located in the Southeast region of the State, as the data that Dr. Chen used in his report itself show. *See* Pls.Ex.27; *see also* Pls.Ex.28 (“95% of the [State’s] oil is produced from the Permian Basin,” which is located in “Lea, Eddy, Chaves, and Roosevelt Counties in southeastern New Mexico[.]”).

71. Again, what plainly occurred is that Defendants’ counsel reversed engineered the “Oil Industry Considerations” to force Dr. Chen to create partisan-gerrymandered simulations, precisely because they knew that if Dr. Chen drew partisan-neutral simulated maps, that would only further highlight that SB1 is a partisan gerrymander. Defendants’ counsel made up a partisan redistricting criterion that necessarily cracks the Southeast region—the region with the highest concentration of Republicans in the State—and instructed Dr. Chen to draw only simulated maps that adhere to that criterion. Therefore, Dr. Chen’s simulations are not politically neutral, by Defendants’ counsel’s design, meaning that they are useless for the Court’s consideration. *See Rucho*, 139 S. Ct. at 2518 (Kagan, J., dissenting); *Trende* Rep.17–22.

72. Additionally, Dr. Chen failed to add a redistricting criteria that New Mexico does actually follow—core retention—which additionally limits the usefulness of his simulations (although not as egregiously as the counsel-imposed, oil-well constraint). *See Rucho*, 139 S. Ct. at 2518 (Kagan, J., dissenting); Trende Rep.17–22. As the Legislative Council redistricting guidelines state, New Mexico follows traditional redistricting criteria, which may include “preserv[ing] the core of existing districts.” *See* Pls.Ex.10; Trende Rep.44. Further, as Mr. Brace observes, the Legislature did consider core retention in SB1, as that map kept 70% of the State’s population in the same districts as in the prior map. Brace Rep.5. Yet, unlike Mr. Trende, Trende Rep.54–60, Dr. Chen omitted core retention from his simulated maps, *see* Chen Rep.5–9.

### **C. Defendants Could Not Possibly Justify SB1**

73. The third element of Justice Kagan’s controlling test considers whether the state defenders of a prima facie partisan-gerrymandered map can “come up with a legitimate, non-partisan justification to save [the] map.” *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting); *see also, e.g., Common Cause*, 318 F. Supp. 3d at 896–99; *Householder*, 373 F. Supp. 3d at 1135–50. That is, under this third element, the State must show that the “districts’ discriminatory partisan effects are justified by a legitimate state districting interest or neutral explanation.” *Common Cause*, 318 F. Supp. 3d at 867; *accord Davis v. Bandemer*, 478 U.S. 109, 141 (1986), *abrogated by Rucho*, 139 S. Ct. 2484 (“If there were a discriminatory effect and a discriminatory intent, then the legislation would be examined for valid underpinnings.”). Further, per the Supreme Court’s Amended Superintending Order here, Defendants may only

satisfy their burden to establish this third element if they clear “[i]ntermediate scrutiny,” Amended Superintending Order 4 (citing *Breen*, 2005-NMSC-028, ¶¶ 11–15, 30–32)—meaning both that their proffered justification for SB1 is “an important government interest” and that SB1 is “substantially related to” that interest, *Breen*, 2005-NMSC-028, ¶ 13 (citation omitted).

74. Given that Defendants bear the burden on this third element of Justice Kagan’s partisan-gerrymandering test, *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting), Plaintiffs will respond to any arguments that Defendants present on this element in their “rebuttal briefs and responses to [Defendants’] Findings and Conclusions” due to the Court on September 20, 2023, *see* Scheduling Order at 2.

75. That said, this Court will be able to “pass quickly over this part of the test,” *Rucho*, 139 S. Ct. at 2516 & n.2 (Kagan, J., dissenting), since there could be no possible justification for what the Legislature obviously did with SB1 here: take the Concept H Map and turn it into a near-perfect Democratic gerrymander, *e.g. supra* pp.11–12, 26–27, as Senator Stewart straightforwardly admitted, Pls.Ex.2, at 4. Indeed, as Mr. Trende explained in his report, “many of [the Legislature’s] purported justifications” must necessarily “fall short,” given that his simulation analysis shows that it is readily possible to draw “compact districts drawn without respect to anything besides traditional redistricting criteria.” Trende Rep.9. And while the Legislature’s primary, stated justification for Senate Bill 1 appears to be the “inclu[sion] [of] both significant urban and rural populations within each of [the State’s] three congressional districts,” Pls.Ex.31 (quoting press statement from

Senator Cervantes), that is simply not credible and, in any event, does not satisfy intermediate scrutiny, *see Davis v. Mann*, 377 U.S. 678, 692 (1964); *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1142 & n.20 (E.D. Cal. 2018); *Hellar v. Cenarrusa*, 682 P.2d 539, 544 (Idaho 1984).

## **II. This Court Should Promptly Order Briefing On Appropriate Remedy**

76. Should this Court side with Plaintiffs on the merits by declaring that SB1 is an impermissible partisan gerrymander and enjoining its use, *supra* Part I, the Court would then need to consider how to replace SB1 with a map free of unconstitutional partisan intent and effects, *see, e.g., Harkenrider*, 197 N.E.3d at 454. In their Complaint, Plaintiffs had requested that this Court adopt the Justice Chávez Map as a remedial map. Compl. at 27. At the same time, Plaintiffs understand that Defendants, as well as interested members of the public, may want to submit different remedial maps for this Court's consideration, or suggest different remedial approaches. Plaintiffs are painfully aware that they were unable to secure a remedy from SB1's unconstitutional gerrymander before the 2022 election, and they ask this Court to act with the fastest possible dispatch to ensure that the People are not subjected to another election under an egregiously gerrymandered map in 2024.

## **CONCLUSION**

77. This Court should declare that SB1 is an egregious partisan gerrymander in violation of Article II, Section 18 of the New Mexico Constitution and, accordingly, enjoin Defendants from enforcing SB1. This Court should then promptly schedule remedial proceedings that will lead to a prompt adoption of a remedial map.

Dated: September 15, 2023

Respectfully Submitted,

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## LIST OF PLAINTIFFS' EXHIBITS

- PLAINTIFFS' EXHIBIT 1** Senate Bill 1 (2021 2d Special Session) and its associated redistricting maps, publicly available at <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s2> (all websites last accessed Sept. 15, 2023).
- PLAINTIFFS' EXHIBIT 2** Response of Center for Civic Policy to subpoena sent by Plaintiffs in this matter, disclosing, among other things: (1) email communication between representative from the Center for Civic Policy and Senator Peter Wirth (among others), and (2) text-message communications between representative from the Center for Civic Policy and Senator Mimi Stewart.
- PLAINTIFFS' EXHIBIT 3** Expert Report of Sean P. Trende (Aug. 11, 2023), filed on the Court's docket, with high-resolution version circulated to the parties and the Court.
- PLAINTIFFS' EXHIBIT 4** Expert Report of Kimball W. Brace (Aug. 25, 2023), filed on the Court's docket.
- PLAINTIFFS' EXHIBIT 5** Expert Report of Brian Sanderoff (Aug. 25, 2023), filed on the Court's docket.
- PLAINTIFFS' EXHIBIT 6** Expert Report of Jowei Chen (Aug. 25, 2023), filed on the Court's docket.
- PLAINTIFFS' EXHIBIT 7** Declaration of Former Congressman Steve Pearce (Sept. 15, 2023).
- PLAINTIFFS' EXHIBIT 8** Declaration Of Senate Minority Floor Leader Greg Baca (Sept. 15, 2023).
- PLAINTIFFS' EXHIBIT 9** N.M. Legis. Council Serv., *A Guide To State And Congressional Redistricting In New Mexico* (Apr. 2011), publicly available at <https://www.nmlegis.gov/Redistricting/Documents/187014.pdf>.
- PLAINTIFFS' EXHIBIT 10** N.M. Legis. Council, Guidelines for the Development of State & Congressional Redistricting Plans (Jan. 17, 2011), publicly available at <https://www.nmlegis.gov/Redistricting/Documents/Approved%20Redistricting%20Guidelines.pdf>.



- PLAINTIFFS’  
EXHIBIT 11** Citizen Redistricting Committee, *CRC District Plans & Evaluations* (Nov. 8, 2021 (Reissued)), publicly available at <https://www.nmredistricting.org/wp-content/uploads/2021/11/2021-11-2-CRC-M-ap-Evaluations-Report-Reissued-1.pdf>.
- PLAINTIFFS’  
EXHIBIT 12** N.M. Redistricting Public Comment Portal, *CCP - Peoples Map / El mapa de la gente* (Oct. 1, 2021) (Comment of Melanie Aranda), publicly available at <https://portal.newmexico-mapping.org/submission/p5025>.
- PLAINTIFFS’  
EXHIBIT 13** S.B.1, New Mexico House Of Representatives Official Roll Call For Senate Bill 1 (Dec. 11, 2021), publicly available at <https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001HVOTE.pdf>.
- New Mexico State Senate Official Roll Call For Senate Bill 1 (Dec. 10, 2021), publicly available at <https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001SVOTE.pdf>.
- PLAINTIFFS’  
EXHIBIT 14** New Mexico Legislature, *Find My Legislator* (search portal for all legislators, including party affiliation), publicly available at [https://www.nmlegis.gov/Members/Find\\_My\\_Legislator](https://www.nmlegis.gov/Members/Find_My_Legislator).
- PLAINTIFFS’  
EXHIBIT 15** Susan Montoya Bryan, *Top Democrat Says District Will Be Redrawn After GOP Win*, Associated Press (Nov. 5, 2020), publicly available at <https://apnews.com/article/legislature-redistricting-steve-pearce-elections-house-elections-86a3113b29a38a622ac3b5216e818a06>.
- PLAINTIFFS’  
EXHIBIT 16** An email from Senator Joseph Cervantes sent on December 11, 2021, at 9:26:12 AM MST, with the subject line “Congressional redistricting.”
- PLAINTIFFS’  
EXHIBIT 17** A tweet from Senator Mimi Stewart, @Sen\_MimiStewart, X (formerly Twitter) (Feb. 19, 2022, 6:31 PM), publicly available at [https://twitter.com/Sen\\_MimiStewart/status/1495194463097950208](https://twitter.com/Sen_MimiStewart/status/1495194463097950208).
- PLAINTIFFS’  
EXHIBIT 18** Declaration Of Plaintiff Timothy Jennings, dated August 16, 2023, as filed with this Court with Plaintiffs’ Opposition To Legislative Defendants’ Motion To Dismiss Plaintiffs Jennings, Vargas, And Garcia For Lack Of Standing.

- PLAINTIFFS’  
EXHIBIT 19** *Redistricting Report Card: New Mexico 2021 Final Legislative Congressional Plan 221711.1*, Princeton Gerrymandering Proj. (last modified Mar. 10, 2022), publicly available at <https://gerrymander.princeton.edu/redistricting-report-card/?planId=recUGCKKJjWk2iyic>.
- PLAINTIFFS’  
EXHIBIT 20** Nash Jones, *Non-Partisan Groups Offer Mixed Evidence to Judge Deciding Fairness of NM Congressional Map*, Source N.M. (Aug. 17, 2023), publicly available at <https://sourcenm.com/2023/08/17/non-partisan-groups-offer-mixed-evidence-to-judge-deciding-fairness-of-nm-congressional-map/>.
- PLAINTIFFS’  
EXHIBIT 21** The official New Mexico congressional election results, N.M. Sec’y Of State, *Official Results 2022 General November 8, 2022* (last updated Nov. 29, 2022), publicly available at <https://electionresults.sos.state.nm.us/resultsSW.aspx?type=FED&map=CTY>.
- PLAINTIFFS’  
EXHIBIT 22** Suzanne Gamboa, *Democratic Rep. Vicente Gonzalez Wins in Texas’ 34th Congressional District, Defeating Republican Rep. Mayra Flores*, NBC News (Nov. 8, 2022), publicly available at <https://www.nbcnews.com/news/latino/democratic-rep-vicente-gonzalez-wins-texas-34th-congressional-district-rcna55741>.
- PLAINTIFFS’  
EXHIBIT 23** Ballotpedia, *United States House of Representatives elections, 2022*, publicly available at [https://ballotpedia.org/United\\_States\\_House\\_of\\_Representatives\\_elections\\_2022](https://ballotpedia.org/United_States_House_of_Representatives_elections_2022) (“Incumbents defeated” header).
- PLAINTIFFS’  
EXHIBIT 24** A tweet from Dave Wasserman, @Redistrict, X (formerly Twitter) (Dec. 17, 2021, 10:31 AM), publicly available at <https://twitter.com/Redistrict/status/1471880710097096710>.
- PLAINTIFFS’  
EXHIBIT 25** Tr. of Dep. Of Brian Sanderoff (Sept. 11, 2023).
- PLAINTIFFS’  
EXHIBIT 26** Tr. of Dep. of Dr. Jowei Chen (Sept. 10, 2023).
- PLAINTIFFS’  
EXHIBIT 27** N.M. Energy, Mins. & Nat. Res. Dep’t, *Oil Conservation Division (OCD) Geospatial Applications*, publicly available at <https://ocd-hub-nm-emnrd.hub.arcgis.com/>.

- PLAINTIFFS’  
EXHIBIT 28** N.M. Bureau of Geology & Min. Res., *Frequently Asked Questions About Oil & Gas* (rev. May 4, 2022), publicly available at <https://geoinfo.nmt.edu/faq/energy/petroleum/home.html#:~:text=and%20gas%20fields.,Where%20are%20oil%20and%20gas%20produced%20in%20New%20Mexico%3F,Counties%20in%20northwestern%20New%20Mexico>.
- PLAINTIFFS’  
EXHIBIT 29** Brief for the States of Oregon *et al.* as *Amici Curiae*, *Rucho v. Common Cause*, No.18-422 (U.S. Mar. 8, 2019), publicly available at [https://www.supremecourt.gov/DocketPDF/18/18-422/91410/20190308171933052\\_Common%20Cause%20Final.pdf](https://www.supremecourt.gov/DocketPDF/18/18-422/91410/20190308171933052_Common%20Cause%20Final.pdf).
- PLAINTIFFS’  
EXHIBIT 30** Maryland State Bd. Of Elections, *Official 2014 Gubernatorial General Election results for Representative in Congress*, publicly available at [https://elections.maryland.gov/elections/2014/results/General/gen\\_results\\_2014\\_2\\_008X.html](https://elections.maryland.gov/elections/2014/results/General/gen_results_2014_2_008X.html).
- PLAINTIFFS’  
EXHIBIT 31** Carol A. Clark, *New Mexico Senate Passes CD Map Proposal*, Los Alamos Daily Post (Dec. 11, 2021), publicly available at <https://ladailypost.com/new-mexico-senate-passes-cd-map-proposal/>.
- PLAINTIFFS’  
EXHIBIT 32** Declaration of Former House of Representatives Minority Floor Leader Jim Townsend (Sept. 15, 2023).
- PLAINTIFFS’  
EXHIBIT 33** Sabrina Eaton, *Ohio’s Longest-Serving U.S. House of Representatives Members Face Election Headwinds After Redistricting*, Cleveland.com (Sept. 19, 2022), publicly available at <https://www.cleveland.com/news/2022/09/ohios-longest-serving-us-house-of-representatives-members-face-election-headwinds-after-redistricting.html>.

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing will be served on all counsel via the e-filing system.

Dated: September 15, 2023

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