STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

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

Plaintiffs,

LARRY MARKER,

Putative Intervenor-Plaintiff,

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

MAGGIE TOULOUSE 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 BRIAN EGOLF in his official capacity as Speaker of the New Mexico House of Representatives,

Defendants.

PLAINTIFFS' COMBINED REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

Defendants' various Responses to Plaintiffs' Motion for Preliminary Injunction primarily turn on three arguments: that Plaintiffs must meet a higher standard to achieve a preliminary injunction; that Plaintiffs' constitutional claim is nonjusticiable and thus this Court has no place in the process; and that Plaintiffs' "delay" in bringing this challenge during an election year is self-defeating. Each is without merit. The general preliminary-injunction standard applies; Plaintiffs' equal-protection claim is cognizable and it is the duty of this Court to review the State Legislature's work to ensure compliance with the state constitution; and Plaintiffs were diligent

filing this lawsuit and seeking a preliminary injunction well before the primary election in June.

Because Senate Bill 1 enacted a discriminatory political gerrymander in violation of the New Mexico Constitution, and because two maps proposed by New Mexico Citizen Redistricting Committee may be safely relied upon by this Court to temporarily redress the constitutional injury while this case is pending, the Court should grant a preliminary injunction setting aside Senate Bill 1 and adopting map Concept A or Concept E.

REPLY IN SUPPORT

I. The Requested Injunction Is Not a Disfavored One.

Defendants first contend that Plaintiffs' request for a preliminary injunction falls within a disfavored category. *See* Exec. Defs. Resp. at 7-9; Secretary Resp. at 3-4; Legis. Defs. Resp. at 3-6. Defendants therefore argue that Plaintiffs must show that the preliminary-injunction factors "weigh heavily and compellingly in [their] favor before such an injunction may be issued[,]" Exec. Defs. Resp. at 7, and that Plaintiffs "must meet the extraordinary burden of establishing by clear and unequivocal evidence that they satisfy all four elements necessary for a preliminary injunction[,]" Secretary Resp. at 4. Not so.

True, courts sometimes "disfavor" preliminary injunctions in certain circumstances and thus require more of the parties who request them. *See Mrs. Fields Franchising, LLC v. MFGCP*, 941 F.3d 1221, 1223 (10th Cir. 2019) (citing *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258-59 (10th Cir. 2005)). "Disfavored preliminary injunctions don't merely preserve the parties' relative positions pending trial"; rather, they (1) mandate action (rather than prohibiting it), (2) change the status quo, or (3) grant all the relief that the moving party could expect from a trial win. *Id*. For this reason, "[t]o get a disfavored injunction, the moving party faces a heavier burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors." *Id*.

First, Plaintiffs do not request a "mandatory preliminary injunction[]." *See Schrier*, 427 F.3d at 1258. Courts determine whether a requested injunction is disfavored by looking at the relief it seeks. *See O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973,

1003 (10th Cir. 2004). The Tenth Circuit has "characterize[d] an injunction as mandatory if the requested relief 'affirmatively require[s] the nonmovant to act in a particular way, and as a result . . . place[s] the issuing court in a position where it may have to provide ongoing supervision to assure the nonmovant is abiding by the injunction.'" *Schrier*, 427 F.3d at 1261 (first alteration added) (quoting *O Centro*, 389 F.3d at 979). But here, the thrust of Plaintiffs' request is to prohibit the Secretary from relying on the Senate Bill 1 for the 2022 congressional election. *See* Mot. at 15. Although Plaintiffs request that the Court order the use of either the Concept A or Concept E maps, *see id.* at 2-3, 15, and while the Court may elect to set new congressional candidate qualification deadlines in conjunction with the use of either map, *see id.* at 15, this Court need not provide ongoing supervision to assure the Secretary abides by the injunction. *See Legacy Church, Inc. v. Kunkel*, 455 F. Supp. 3d 1100, 1145 (D.N.M. 2020) (Browning, J.) ("An injunction directing a party to act is not fundamentally different from an injunction prohibiting action—if everyone can agree on and understand exactly what the court is ordering and exactly what conduct would violate the injunction.").

Second, Plaintiffs' requested preliminary injunction does not alter the status quo. *See Schrier*, 427 F.3d at 1258 (quoting *O Centro*, 389 F.3d at 977). The status quo is "the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing." *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001). In this case, the last uncontested status between the parties that preceded the controversy was one in which the congressional map in effect did not unconstitutionally dilute the votes of Republicans in southeastern New Mexico. An injunction that enjoins the use of the Senate Bill 1 map and requires the use of a constitutionally compliant map—either the Concept A (status quo) map or the Concept E map—maintains the status quo until this case can be heard on its merits.

Third, a preliminary injunction will not afford Plaintiffs all the relief that they could recover at the conclusion of a full trial on the merits. *See Schrier*, 427 F.3d at 1258 (quoting *O*

Centro, 389 F.3d at 977). The Tenth Circuit has stated that this sort of preliminary injunction is "similar to the 'Sentence first – Verdict Afterwards' type of procedure parodied in Alice in Wonderland, which is an anathema to our system of jurisprudence." *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1099 (10th Cir. 1991). Here, the injunction sought by Plaintiffs would not supply them with all the relief they seek from a full trial on the merits, especially if the Concept A map is used for the 2022 congressional election. After a full trial, Plaintiffs request that this Court declare that Senate Bill 1 violates the New Mexico Constitution, and further, that a partisan-neutral map be adopted for the rest of the decade consistent with the Concept E map. *See* Verified Compl. at 27.

II. Plaintiffs Will Suffer Irreparable Harm if a Preliminary Injunction Is Not Granted.

Defendants next contend that Plaintiffs will suffer no irreparable injury. The Legislative Defendants (in a single paragraph) state Plaintiffs have not alleged a cognizable constitutional injury. *See* Legis. Defs. Resp. at 13. The Executive Defendants variously argue there is no entitlement to a presumption of irreparable harm since Plaintiffs have not established a likelihood of success on the merits and that Plaintiffs "fail to demonstrate any real irreparable harm that would occur in the absence of an immediate injunction" because "a new map could likely be implemented before the June primary elections." *See* Exec. Defs. Resp. at 13.

The irreparable-harm prong's overarching inquiry "compares (i) what would happen if the preliminary injunction were not granted; with (ii) what would happen if the preliminary injunction were granted; and then (iii) asks whether the difference between (i) and (ii) is irreparable." *Dine Citizens Against Ruining Our Env't v. Jewell*, 2015 WL 4997207, at *48 (D.N.M. 2015) (Browning, J.). Here, if a preliminary injunction is not granted, the 2022 congressional election in New Mexico will proceed based upon a politically gerrymandered map that violates the New Mexico State Constitution. Plaintiffs, along with voters in the critical communities of interest, will consequently have their votes unconstitutionally diluted. On the

other hand, if the preliminary injunction is granted and the 2022 congressional election proceeds using the Concept A or Concept E maps, the election will take place in the absence of partisan gerrymandering and pursuant to maps that otherwise satisfy equal protection under the New Mexico Constitution. In other words, failure to issue the requested preliminary injunction will result in the dilution of a large number of New Mexicans' votes in the upcoming 2022 congressional election. And the harm from this constitutional violation is irreparable. *See, e.g.*, *LaBalbo*, 1993-NMCA-010, ¶ 12 (collecting cases); *Elrod v. Burns*, 427 U.S. 347, 374 (1976) (loss of constitutional rights "unquestionably constitutes irreparable injury"); *Johnson v. Mortham*, 926 F. Supp. 1540, 1543 (N.D.Fla.1996) ("Deprivation of a fundamental right, such as limiting the right to vote in a manner that violates the Equal Protection Clause, constitutes irreparable harm.").[1]

The Secretary further argues that the timing of Plaintiffs' complaint and motion for preliminary injunction should preclude a finding of irreparable harm. *See* Secretary Resp. at 4-7. The Executive Defendants make a similar argument, citing *Dobson v. Balt. City*, 330 F. Supp. 1290, 1301-04 (D. Md. 1971), and *Wreal, Ltd. Liab. Co. v. Amazon.com*, 840 F.3d 1244 (11th Cir. 2016). *See* Exec. Defs. Resp. at 14-15. Both cases are inapposite.

Wreal is nothing like the circumstances of this case. There, the plaintiff filed a complaint, but, without explanation, did not file for a preliminary injunction for an additional **five months**. *Id*. at 1247-48. The court concluded that "[a] delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm." *Id*. at 1248. In *Dobson*, the plaintiffs challenged a redistricting plan and moved to enjoin some, but not all, of the primary elections that were set to take place. 330 F. Supp. at 1301. The plaintiffs' suit was filed only two months before the primary election, and by the time the suit was heard, "the form and arrangement of the ballots for the primary election ha[d] already been

[1] Even in the absence of a "presumption" of irreparable harm, this prong is met because Plaintiffs will suffer irreparable harm from the violation of their constitutional rights.

prepared by election officials and ha[d] already been made available for inspection by all candidates[,]" and "[a]bsentee ballots ha[d] been printed, many ha[d] been mailed out and one such ballot ha[d] even been returned." *Id*. at 1301-02. The court further faulted plaintiffs' counsel for unnecessarily delaying the prosecution of the suit. *Id*. at 1303. The court noted that immediately upon filing the complaint, the plaintiffs' lead counsel "promptly left for a 3-week vacation[,]" and during his absence, "little was done to advance the case." *Id*. The substitute attorney then informed the court that he would be leaving on his vacation before the lead counsel returned. *Id*. It was against this backdrop that the court found fault with the plaintiffs' delay.

Here, it can hardly be said that Plaintiffs have not pursued its preliminary-injunction motion with urgency. The complaint was filed on January 21, 2022, just over a month after Defendant Grisham signed Senate Bill 1 into law. *See* Exec. Defs. Resp. at 5. While the motion for preliminary injunction was not filed at the same time, it was filed thirteen days later. *See* Mot. at 1 (filed on February 3, 2022). A request for hearing was submitted that same day. Since then, one judge (Judge Sanchez) has been excused by the Legislative Defendants, *see* Peremptory Election to Excuse, filed on February 4, 2022, another judge (Judge Kirksey) has recused herself, *see* Order of Recusal, filed on February 23, 2022. And still, New Mexico is three months out from the primary election. Importantly, Plaintiffs have not moved to enjoin the primary election, only the use of the unconstitutional congressional map in Senate Bill 1.

Although Plaintiffs acknowledge that delay in seeking preliminary relief may "cut[] against finding irreparable injury[,]" *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1211 (10th Cir. 2009), it is equally clear that "delay is but one factor in the irreparable harm analysis." *Id*.; *see, e.g.*, *GTE Corp. v. Williams*, 731 F.2d 676, 678-79 (10th Cir. 1984); *Utah Gospel Mission v. Salt Lake City Corp.*, 316 F. Supp. 2d 1201, 1221-22 (D. Utah 2004), *aff'd on other grounds*, 425 F.3d 1249 (10th Cir. 2005). The alleged delay here is reasonable and does not offset the constitutional harm that will result absent a preliminary injunction. Indeed, when plaintiffs allege only constitutional harm, a determination of irreparable harm turns on plaintiffs' likelihood of

success on the merits, *see, e.g.*, *Dean v. Leake*, 550 F. Supp. 2d 594, 602 (E.D.N.C. 2008).

III. The Plaintiffs' Requested Injunctive Relief Is in the Public Interest and the Balance of Equities Tips in Plaintiffs' Favor.

Defendants also contend that the balance of the equities, including the public interest, tips in their favor. The Executive Defendants argue that the public has a significant interest in having the upcoming election proceed without delay or disruption. Exec. Defs. Resp. at 14-15. The Legislative Defendants argue that the issuance of a preliminary injunction would result in a "complete reset of the election process." Legis. Defs. Resp. at 5. And the Secretary argues that the granting of the preliminary injunction "would require moving election deadlines and redoing federal Congressional candidate qualification" and that the "[r]equested relief is not feasible before the primary election without significant cost, confusion, and hardship to the voters, qualified candidates, and election administrators." Secretary Resp. at 1-2.

These concerns, however, do not overcome the public interest in an election based on a **constitutional** congressional map. *See Legend Night Club v. Miller*, 637 F.3d 291, 303 (4th Cir. 2011) ("[U]pholding constitutional rights is in the public interest."); *Republican Party of N.C. v. Hunt*, 841 F. Supp. 722, 732 (E.D.N.C. 1994) ("[P]ublic interest requires the furtherance of the constitutional protections that attach to the franchise."); *see also Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 560-61 (E.D.V.A. 2016) (recognizing that "[t]he public has an interest in having congressional representatives elected in accordance with the Constitution").

Moreover, the public has a "profound and long-term interest in upholding an individual's constitutional rights," including the right to vote, which is one of the most sacred rights. *See Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012); *cf. Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) ("The associational and franchise-related rights . . . [are] without question in the public interest."). It would therefore "be the unusual case in which a court would be justified in not taking appropriate action to insure that . . . elections are conducted under [a valid map]." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

Defendants again put heavy emphasis on Plaintiffs' alleged "undue delay in bringing this complaint," theorizing it will result in irreparable harm to the state's ability to uniformly administer the primary election. *See* Secretary Resp. at 4-9. In support, Defendants invoke the "*Purcell* Principle" (based on *Purcell v. Gonzalez*, 549 U.S. 1 (2006)), contending the principle "heightens the showing necessary for a plaintiff to overcome the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election." Secretary Resp. at 5-6.

Plaintiffs filed this lawsuit within weeks of the adoption of Senate Bill 1, nearly five months before the 2022 mid-term primary election and nearly 11 months before the 2022 general election to minimize any potential disturbance to the electoral process. Likewise, Plaintiffs have indicated to the Court that they are prepared to litigate the case on an expeditated basis to further minimize inconvenience. *See* Mot. at 14. This is not an eleventh-hour motion for injunctive relief, nor is the request for an injunction being made on the eve of an election. *See Merrill v. Milligan*, 2022 WL 354467 (U.S. Feb. 7, 2022) (holding that "Alabama cannot here invoke the so-called *Purcell* principle, which disfavors changing election rules at the eleventh hour[,]" because "[t]he general election is around nine months away; the primary date is in late May, about four months from now"); *see also Hirschfeld v. Bd. of Elecs. in the City of New York*, 984 F.2d 35, 39 (2d Cir. 1993) (recognizing that under certain circumstances involving election cases, a court should not entertain a willfully delayed eleventh hour motion for preliminary injunctive relief); *Puerto Rican Legal Def. & Educ. Fund. Inc. v. City of New York*, 769 F. Supp. 74, 79 (E.D.N.Y. 1991) (recognizing that courts have generally not precluded injunctive relief unless the delay in moving for injunctive relief occurs on the eve of the elections).

While the U.S. Supreme Court has observed that lower courts may "permit elections to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements," proceeding with an election under an unconstitutional map must be unquestionably necessary. *See Upham v. Seamon*, 456 U.S. 37, 44 (1982). Here, necessity is not a factor. Rather, this Court can order Defendants to proceed with a

2022 primary and general election based on maps with no constitutional infirmity. At most, beyond enjoining the use of the Senate Bill 1 map, this will require the Court to order that a new congressional candidate qualifying period take place prior to the primary election.

Defendants' caselaw reveals the difference here. While the court in *McClafferty v. Portage Cnty. Bd. of Elections*, 661 F. Supp.2d 826, 839 (N.D. Ohio 2009), recognized that "extreme diligence and promptness are required" in election cases, there the plaintiff waited over **two years** to challenge ballot language and failed to take advantage of four previous opportunities to challenge the ballot language. *Id*. at 840. When the plaintiff did file suit, the election was already underway, voting machines had been programmed and "locked down," paper ballots for absentee voters had been printed, and printed ballots for absent members of the armed forces had been mailed. *Id*. at 841. In *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018), the Supreme Court stated, "[a] party requesting a preliminary injunction must generally show reasonable diligence." Yet, there the plaintiffs did not move for a preliminary injunction in the district court until **six years**, and three general elections, after the challenged map was adopted. *Id*. Clearly, the one-month span here is nowhere near the delays in *McClafferty* and *Benisek*.

Defendants also invoke laches, which they assert "dovetails" with the *Purcell* Principle. As support, Defendants cite *Detroit Unity Fund v. Whitmer*, 819 F. App'x 421, 422 (6th Cir. 2020), and *King v. Whitmer*, No. 20-CV-13134, 2020 WL 7134198, at *6-8 (E.D. Mich. Dec. 7, 2020). These cases are distinguishable. In *Detroit Unity Fund*, stating that "a full written opinion . . . would serve no useful purpose," the Sixth Circuit issued a three-paragraph decision in which it devoted one sentence to laches. *Id*. at 422. The court upheld the district court's finding that the plaintiff's claims were barred by laches because the motion to enjoin the filing deadline was filed less than two hours before the deadline. *Id*. As in *Purcell*, the court in *Detroit Unity Fund* was clearly concerned with eleventh-hour requests for injunctive relief.

In *King*, the court noted that the plaintiffs offered no reasonable explanation for waiting until more than 21 days after the 2020 general election to file their action, even though the suit

could have been filed "well before" the general election, and where they instead "sat back and did nothing." *Id*. at *7. Further, the court found that the delay prejudiced the defendants because "the claims for relief **are not merely last-minute—they are after the fact**." *Id*. at *7 (emphasis added). It also cannot go unspoken that in *King*, the court focused on the fact that the plaintiffs brought forth claims of widespread voter irregularities and fraud; they sought "relief that is stunning in its scope and breathtaking in its reach[;]" and that "if granted, would disenfranchise the votes of the more than 5.5 million Michigan citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election." *Id*. at *1. Here, Plaintiffs brought their complaint within weeks of the approval of the congressional map and nearly five months before the 2022 primary election, which is neither last minute nor after the fact.

Lastly, Defendants contend that Plaintiffs' "[r]equested relief is not feasible before the primary election without significant cost, confusion, and hardship to the voters, qualified candidates, and election administrators." Secretary Resp. at 1-2. The Secretary supports this statement with a declaration from Mandy Flores, the state's Election Director. Defendants also cite *Kostick v. Nago*, 878 F. Supp. 2d 1124, 1147 (D. Haw. 2012), which found that any effort to implement an alternative plan approximately three months before the primary elections would result in delay and confusion. In that case, however, the plaintiff "acknowledged there [was] no realistic or effective remedy that could be accomplished before the primary election." *Id*. at 1128. And while the plaintiff did not explicitly ask to postpone the primary election, the court found that "postponement is the practical result of [the plaintiff's] proposed remedies." *Id*. at 1147. That's not the case here. Plaintiffs have not requested that the primary election be postponed. To the contrary: there is a ready-made set of maps—either Concept A or Concept E—that can be implemented immediately.[2] *See Diaz v. Silver*, 932 F. Supp. 462, 466 (E.D.N.Y.

[2] In fact, the Executive Defendants are confident that a new map could be implemented before the 2022 primary election. *See* Exec. Defs. Resp. at 13 ("In the unlikely scenario that the court finds this dispute justiciable and ultimately resolves the matter in favor of Plaintiffs, a new map could likely be implemented before the June primary elections.").

1996) (recognizing that "while the burden on election officials and candidates are certainly considerations, it would be difficult to accept them as controlling if there were in fact an effective and immediately available remedy to a constitutional violation").

While the Court may elect to permit new candidate qualification in a truncated fashion, additional candidate qualification is not necessary—the Court may simply order that candidates who have already qualified remain so qualified. But even if the Court permits additional candidate qualification, it would affect only a small subset of candidates. The basic major-party nomination process for congressional candidates—the only candidates involved here—in New Mexico involves the two-step process of: **(1)** getting a number of in-district, in-party nominating-petition signatures "equal to at least two percent of the total vote of the candidate's party in the state or congressional district," NMSA 1978, § 1-8-33(B), on the first Tuesday in February, § 1-8-26(A); and **(2)** either **(a)** getting at least 20% of the vote at the party's convention, *see* § 1-8-21.1(C), which must be held on or before the second Sunday in March, § 1-8-21.1(B); or, if the candidate fails to get the required convention vote, **(b)** collecting another 2% (totaling 4%) signatures, *see* § 1-8-33(D), by the second Tuesday in March, *see id.* §§ 1-8-26(B) & -33(D). The primary election itself is not until June 7, and ballots do not need to be prepared until 60 days before then (April 8), *see* § 1-10-4, a deadline which can itself be easily pushed back as a practical matter, given that absentee ballots cannot by law be mailed out until 28 days before the election (May 10), *see id.* § 1-6-5(F), and need not be made available to federal qualified electors (the earliest class of ballot recipients, and in practice a small one) until 45 days before the election (April 23), *see id.* § 1-10-5. The process for independent candidates does not even begin until after the primary election. *See* § 1-8-51 & -52.

At present, New Mexico is at step 2(b), but none of this work needs to be redone with the 'new' districts being requested in this action. The Election Code does not even require that nominating-petition signatures be collected from within the 'new' legislatively determined districts in redistricting years. (In contrast, there are other contexts—those that occur later in the

process, like when a party is able to replace a post-primary ballot vacancy—where the statute **does** make clear that, "at a minimum, the committee shall include those members residing within the boundaries of the area **to be represented** by the public office." § 1-8-8(C) (emphasis added). But that is not the case with nomination by petition.) In fact, since the election proclamation (the date at which candidate party affiliations and residencies are 'frozen' for the rest of the cycle[3]) is not filed until "the last Monday in January" (this year January 31, § 1-8-12(C)), and the redistricting bill itself does not actually become law until March 17, *see* N.M. Const. art. IV, § 23 ("Laws shall go into effect ninety days after the adjournment of the legislature enacting them," with some exceptions not applicable here.), it is questionable whether the congressional districts being challenged should be used for the signature-collection process at all. The truth, of course, is that it is irrelevant as a practical matter: it would only come up if someone collected a sufficient number of signatures when judged by the 'old' districts but fell below the statutory threshold when counting only those signatures of voters residing within the "new" districts—and were that contingency to arise, the challenged candidate would have the better end of the argument given the Election Code's text. But the unlikeliness of the contingency—we are now well past the deadline for nominating-petition challenges, *see*§ 1-8-35(A), and no such challenges were even attempted—illustrates that Secretary is not genuinely concerned about a preliminary injunction's interference with the process; rather, she is pointing to a hypothetical issue to claim that the phantom problem renders the Plaintiffs' constitutionally mandated relief impracticable.

Consequently, the balance of equities, including the public interest, weigh in favor of Plaintiffs' request for a preliminary injunction.

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[3] "No person shall become a candidate for nomination by a political party or have the person's name printed on the primary election ballot unless the person's record of voter registration shows: (1) affiliation with that political party **on the date of the secretary of state's general election proclamation**; and (2) residence in the district of the office for which the person is a candidate **on the date of the secretary of state's general election proclamatio*n*** or in the case of a person seeking the office of United States senator or United States representative, residence within New Mexico **on the date of the secretary of state's general election proclamation**." NMSA 1978, § 1-8-18(A) (emphasis added).

IV. Plaintiffs Are Likely to Succeed on the Merits.

For the reasons more fully laid out in the complaint, Plaintiffs' motion for preliminary injunction, and Plaintiffs' response to Defendants' motions to dismiss, Plaintiffs are likely to succeed on the merits. Contrary to Defendants' arguments, discriminatory political gerrymandering is a cognizable claim under the New Mexico Constitution and is justiciable. Nor does the Legislative Defendants' claim that Plaintiffs filed to "present[] evidence" of a constitutional injury stack up. *See* Legis. Defs. Resp. at 13. As outlined in Plaintiffs' response to Defendants' motions to dismiss, the evidence continues to mount:

@Sen_MimiStewart, Twitter (Feb. 19, 2022).

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter a Preliminary Injunction enjoining the Secretary of State from relying on the map in Senate Bill 1 for the 2022 congressional elections and directing the Secretary of State to use the Committee's Concepts A or E maps until the State Legislature adopts a new (constitutional) congressional map.

Dated: March 10, 2022.

Respectfully submitted,

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By */s/ Eric R. Burris*

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I HEREBY CERTIFY that on March 10, 2022, a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION** was filed electronically through Odyssey File & Serve system, which caused all counsel of record to be served by electronic means. The Motion will also be emailed to Putative Intervenor-Plaintiff Larry Marker.

/s/ *Eric R. Burris*
Eric R. Burris