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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN LUIS OBISPO**
12 **PASO ROBLES BRANCH**

13 SLO COUNTY CITIZENS FOR GOOD
GOVERNMENT, INC.; PATRICIA GOMEZ;
14 DON MARUSKA; and ALLENE VILLA

15 Petitioners,

16 v.

17 COUNTY OF SAN LUIS OBISPO; BOARD
OF SUPERVISORS OF SAN LUIS OBISPO
18 COUNTY; and DOES 1-15

19 Respondents.

20
21 CLERK-RECORDER OF SAN LUIS
OBISPO COUNTY; and DOES 16-25,

22 Real Parties in Interest.
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ELECTRONICALLY
FILED
1/26/2022 9:34 AM

SAN LUIS OBISPO SUPERIOR COURT
BY 
Victoria J. Miller, Deputy Clerk

Case No. 22CVP-0007

**PETITIONERS' MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

CCP § 527; Cal. Rule of Court 3.1200 et seq.

Dept.: P-2
Judge: Hon. Hernaldo J. Baltodano
Hearing Date: February 8, 2022
Time: 8:30 a.m.

Complaint Filed: January 12, 2022

CCP § 1085; California Constitution (Art. II, Sec. 3); Elections Code § 21500 et seq.

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1 **Introduction**

2 It is “the core principle of republican government . . . ‘that the voters should choose their
3 representatives, not the other way around.’” (*Arizona State Legislature v Arizona Independent*
4 *Redistricting Com.* (2015) 576 U.S. 787, 824 (citations omitted).) In 2019 the California legislature
5 enshrined this principle with the adoption of the Fair Maps Act which set forth specific rules governing
6 the establishment of county board of supervisor districts. Central to this legislation are the requirement
7 that supervisorial districts be drawn based on mandatory, ranked criteria and a prohibition on adopting
8 district boundaries to confer partisan advantage. (Elections Code § 21500 (c), (d).)¹ Respondents’
9 adoption of the Richard Patten Map—a map prepared by a registered Republican, endorsed by the
10 County Republican Party, and supported only by the three Republican members of the Board—violates
11 the core requirements of the Fair Maps Act. Although County staff and its elections consultant clearly
12 indicated that no significant changes were required to update the County’s 2011 Map, the Patten Map
13 dramatically alters supervisorial districts that will govern elections for the next ten years.

14 Because deadlines, including those for declaring candidacy for the June 2022 election, are
15 imminent, a preliminary injunction enjoining implementation of the Patten Map is necessary to preserve
16 the status quo and avoid irreparable harm to Petitioners and the public.

17 Petitioners meet all the requirements for a preliminary injunction. First, Petitioners are likely to
18 succeed on the merits. The Board’s adoption of the Patten Map blatantly violated the Fair Maps Act and
19 the Free and Fair Elections Clause of the California Constitution. The Patten Map ignores the
20 requirement to prioritize maintaining communities of interest in the same voting district and does so to
21 the significant benefit of the Republican Party. The Board’s process reveals that the Board intended to
22 advantage the Republican Party, and the map itself reflects the intended effect.

23 Second, Petitioners and the public would suffer irreparable harm in the absence of a preliminary
24 injunction. If the June 2022 election proceeds on the basis of the Patten Map, some Petitioners and other
25 members of the public—primarily Democratic voters, who last voted for supervisor in 2018—will lose
26 their right to vote in 2022 altogether. Others will see their votes diluted as a result of being separated
27

28 ¹ All further references are to the Elections Code, unless otherwise indicated.

1 (“cracked”) from historic communities of interest and concentrated (“packed”) into districts where their
2 votes will have diminished effect.

3 While Petitioners and the public would suffer irreparable harm if the Patten Map governs the
4 June 2022 election, the County would not be harmed by enjoining the Map. The record demonstrates
5 that the preexisting 2011 Map is compliant with the Fair Maps Act and that the County had prepared a
6 map (“Map A”) that implemented the minor changes needed to update the 2011 Map after the 2020
7 Census. And the County is already holding one election—a special election for the District 3 seat—
8 under the 2011 Map. Accordingly, this Court should enjoin the Patten Map and order the County to
9 proceed based on the 2011 Map or Map A until the merits of this case are resolved.

10 **Factual Background**

11 Every ten years, counties update their supervisorial voting districts to reflect changes in
12 population reported by the last census. (§ 21500(a).) Since 1990, elections in the County have been
13 based on district maps whose boundaries have changed to reflect population growth, but are largely
14 consistent with each other. The 2011 Map, which would be replaced by the Patten Map, has governed
15 elections since 2011. In 2012, the Second Appellate District upheld this Court’s determination that the
16 map did not result in improper gerrymandering. (*Pelfrey v. San Luis Obispo County* (Cal. Ct. App., July
17 24, 2013, 2d Civil No. B241420) 2013 WL 3834331 (unpublished).)

18 Following the receipt of census data in September, 2021, the County’s elections consultant
19 determined that the County’s population had only increased by approximately 3.6% percent and
20 therefore no significant changes were required to the County’s 2011 Map. (Declaration of Ellison Folk
21 In Support Of Motion for Preliminary Injunction (“Folk Decl.”), Ex. I at 112.) The County’s consultant,
22 working with County staff, therefore presented the Board with four maps, two of which made no
23 substantial changes to the 2011 Map. (Folk Decl., Ex. J. at 142-57.) At that same October 26 hearing,
24 members of the public also submitted their own maps. These included a map prepared by the County
25 Chamber of Commerce and a map prepared by Richard Patten, a registered Republican. (Folk Decl., Ex.
26 L at 205; Ex. J at 136.) At its November 19, 2021 hearing, the Board voted to advance only the Chamber
27 2030 Map and the Patten Map for further consideration. (Tarpey Decl., ¶3; Folk Decl., Ex. K at 166,
28 172.)

1 On December 14, 2021, the Board adopted the ordinance to amend the supervisorial districts
2 pursuant to the Patten Map, which establishes the voting districts for their seats for the next ten years.
3 (Folk Decl., Ex. P at 409-10, 416-17.) The Patten Map represents a dramatic break with prior maps. For
4 example, the map would separate the north coast communities of Cambria, Cayucos, Morro Bay, and
5 Los Osos that have long been in the same district. (Folk Decl., Ex. O at 84:5-10; Ex. N at 334.) The map
6 will separate the community of Oceano from other communities of interest in District 4 and move it into
7 District 5, where it has never been located. (*Id.* at 382:21-24; Ex. N at 238.) The Patten Map results in
8 such dramatic changes to voting districts that nearly 100,000 County residents will be moved into
9 districts where votes will be accelerated or deferred in 2022. (Tarpey Decl., ¶6.) In other words, many
10 voters (primarily Republicans) will be able to vote in 2022 even though they just voted in 2020, while
11 many other voters (primarily Democrats) will not be able to vote until 2024, even though they last voted
12 for supervisor in 2018. (Folk Decl., Ex. H at 98).

13 Throughout the process leading to the adoption of the Patten Map, Petitioners and members of
14 the public submitted evidence demonstrating its negative partisan impact. Based on the results of the
15 2016 election, Democrats represent 54.4% of County voters, while Republicans represent 45.6%. (Folk
16 Decl., Ex. F at 83.) While the County has a strong majority of Democratic voters, the Patten Map would
17 create districts that give Republicans firm majority control over the Board of Supervisors. Specifically,
18 based on the voting patterns of County voters, the Patten Map would create districts with the following
19 partisan breakdown:

- 20 • District 1: 41.3% Democrats, 58.7% Republicans (Republican district)
- 21 • District 2: 48.7% Democrats, 51.3% Republicans (Republican district)
- 22 • District 3: 72.2% Democrats, 27.8% Republicans (Democratic district)
- 23 • District 4: 47.6% Democrats, 52.4% Republicans (Republican district)
- 24 • District 5: 63.3% Democrats, 36.7% Republicans (Democratic district)

25 (Folk Decl., Ex. F at 83.) An analysis by the San Luis Obispo County Tribune using 2020 voter
26 registration data from California's redistricting database confirms the Patten Map's partisan creation of
27 the same three Republican districts:

- 28 • District 1:

- 29% Democrats, 44% Republicans (not much change)
- District 2:
 - old district: 46% Democrats, 26% Republicans
 - new district: 34% Democrats, 39% Republicans
- District 3:
 - old district: 42% Democrats, 29% Republicans
 - new district: 49% Democrats, 21% Republicans
- District 4:
 - old district: 35% Democrats, 38% Republicans
 - new district: 33% Democrats, 40% Republicans
- District 5:
 - old district: 35% Democrats, 37% Republicans
 - new district: 43% Democrats, 28% Republicans

(Folk Decl., Ex. E at 64-69; Ex. R at 425-27; Ex. H at 101.)

Supervisors not only knew of the partisan effect of the Patten Map, they also knew it had been prepared by a registered Republican and endorsed by the Republican Party. (Folk Decl., Ex. P at 409-10; Ex. E at 62.) Every vote in favor of the Patten Map occurred on a strictly partisan basis, with only Republican members of the Board voting in its favor.² (Tarpey Decl., ¶¶ 3, 7, 9, 11.)

Unless enjoined, the Patten Map will govern the next supervisorial election on June 7, 2022. (Folk Decl., Ex. D at 51.) On February 14, 2022, candidates for supervisor may begin to pull papers declaring their candidacy. (Folk Decl., Ex. G at 93.) The deadline for candidates to file their declaration of intention to run for the Board is March 11, 2022. (§§ 8020, 8021; see also Folk Decl., Ex. G at 93.)³

Argument

The Court has the power to “preserve the status quo of the parties pending determination of the issues in the case.” (*Chrysler Credit Corp. v. Waegele* (1972) 29 Cal.App.3d 681, 688-89.) In reviewing a motion for preliminary injunctive relief—either in the form of a temporary restraining order (“TRO”) or preliminary injunction—the Court must consider: (1) the likelihood that the plaintiff will succeed on the merits at trial and (2) the relative balance of harms likely to result from granting or denying the

² Although Democratic Supervisor Gibson voted to advance both the Chamber Map and the Patten Map, he did so under protest because the motion included only one compliant map (the Chamber Map). (Tarpey Decl., ¶ 3.)

³ Pursuant to Elections Code section 8024 that deadline may be extended for non-incumbents to March 16, 2022.

1 interim relief. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70 (preliminary injunction);
2 *Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251 (TRO).) The two
3 factors are to be considered together: if the moving party shows greater support for one, less support for
4 the other is needed for an injunction. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678.)

5 **I. The Petitioners are likely to succeed on the merits of their petition because the Board**
6 **violated the Fair Maps Act when it approved the Patten Map.**

7 **A. A writ of mandate should issue under Code of Civil Procedure section 1085.**

8 The Court may issue a writ of mandate under Code of Civil Procedure section 1085 (“Section
9 1085”) to compel a public agency to perform a mandatory duty. (*Ellena v. Dept. of Ins.* (2014) 230
10 Cal.App.4th 198, 205.) Here, the Board failed to comply with a clear mandatory duty to adopt a
11 supervisorial district map that complies with the Fair Maps Act and State Constitution. “[W]here the
12 issue involves statutory or regulatory construction, such as whether the agency’s action was consistent
13 with applicable law,” the court undertakes de novo “independent review,” giving limited deference to
14 the agency’s view. (*California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th
15 1298, 1314; *as modified on denial of reh’g* (Aug. 24, 2010).)

16 **B. The Fair Maps Act and the California Constitution’s Free and Fair Elections Clause**
17 **prohibit the Board’s partisan redistricting.**

18 The California Legislature adopted the Fair And Inclusive Redistricting for Municipalities And
19 Political Subdivision Act (“Fair Maps Act” or the “Act”) (§§ 21500-21509) in 2019. The Act revised the
20 criteria and procedures by which counties adopt district boundaries for the purpose of electing members
21 of the board of supervisors after each federal decennial census. (Request for Judicial Notice (“RJN”),
22 Ex. 1 (Legis. Counsel’s Dig., Assem. Bill No. 849 (2019-2020 Reg. Sess.).)

23 Among other requirements, the Fair Maps Act establishes a set of mandatory, ranked criteria
24 requiring that, to the extent practicable, districts be geographically contiguous and respect the
25 geographic integrity of communities of interest. (§ 21500(c).) While counties may consider the
26 geographic integrity of cities, they cannot prioritize that factor over preserving communities of interest.
27 (*Id.*) These ranked criteria are designed to “minimize the possibility of gerrymandering and to ensure
28 that communities and neighborhoods are kept whole as much as possible.” (RJN, Ex. 2 at 8 (Assem.

1 Com. on Local Government, Rep. on Assem. Bill No. 849 (2019-2020 Reg. Sess.) as amended April 11
2 2019.)

3 The Act also prohibits adopting district boundaries “for the purpose of favoring or discriminating
4 against a political party.” (§ 21500(d).) By adopting this prohibition, the Act “bans partisan
5 gerrymandering at the local level,” which “better aligns with our State Constitution, which already
6 requires that local elections be officially nonpartisan.” (RJN, Ex. 2 at 8.) Specifically, the state
7 constitution provides that Assembly, Senate, Congressional, and Board of Equalization “[d]istricts shall
8 not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or
9 political party.” (Cal. Const., art. XXI, § 2(e).)

10 In addition to the requirements of the Fair Maps Act, the California Constitution requires “free
11 elections” (Cal. Const., art. II, §3), protected from partisan manipulation. (See *Stanson v. Mott* (1976) 17
12 Cal.3d 206, 227 [“the constitutional commitment to ‘free elections’ guarantees an electoral process free
13 of partisan intervention by the current holders of governmental authority or the current trustees of the
14 public treasury”].)

15 **C. The Patten Map violates section 21500(d).**

16 As demonstrated below, the Board adopted the Patten Map with both the intent and the effect of
17 discriminating against the Democratic Party and benefiting the Republican Party in San Luis Obispo
18 County in the election of supervisors. The Board’s adoption of the Patten Map violates section
19 21500(d)’s prohibition on the adoption of boundaries “for the purpose of favoring or discriminating
20 against a political party.”

21 **1. The Patten Map clearly discriminates on a partisan basis.**

22 To establish that the Board violated section 21500(d), the Petitioners need only show that the
23 Patten Map will have a discriminatory effect, not that the Board had a discriminatory intent. In a case
24 interpreting nearly identical language in California Constitution, the California Supreme Court observed
25 that district maps are legally suspect where they are “*widely perceived* as specifically designed to protect
26 incumbent legislators.” (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 477 (emphasis added).) The
27 *Vandermost* court was tasked with determining which redistricting map to adopt in the event the 2011
28 state Senate map adopted by the Commission was stayed by a referendum. (*Id.* at 437.) The court

1 considered the previous 2001 map, but determined that it was “legally suspect” for violating the
2 prohibition on drawing districts “for the purpose of favoring or discriminating against an incumbent,
3 political candidate, or political party.” (*Id.* at 477 (quoting Cal. Const., art. XXI, § 2(e)).)

4 In reaching this conclusion, the court did not delve into the legislators’ *intentions* in creating the
5 2001 map, but instead cited articles and studies that described the *effects* of the 2001 redistricting map.
6 (*Id.*) For example, the court described evidence that the district lines favored the re-election of
7 incumbents, and that “[a]s a result, only one seat has changed parties. . . and only one incumbent has
8 lost” in the general election races in the decade since the map was adopted. (*Id.* (internal citation
9 omitted).) Based on this evidence, the court concluded that it would contravene the intent of the
10 redistricting regime established in article XXI to order the use of the 2001 map. (*Id.* at 478.)

11 In the related context of partisan gerrymandering alleged to violate a state’s Free and Fair
12 Elections Clause, courts also have not required petitioners to show intent to favor or discriminate against
13 a particular party. (See *League of Women Voters v. Commonwealth* (2018) 645 Pa. 1, 122.) In *League of*
14 *Women Voters*, petitioners challenged a 2011 redistricting plan under Pennsylvania’s Equal Protection
15 and Free and Equal Elections Clauses, alleging that the plan intentionally discriminated against them
16 and other Democratic voters.⁴ (*Id.* at 38.) In concluding that the plan indeed violated the State’s Free and
17 Equal Elections Clause, the court noted that the petitioners need not show that the plan authors
18 “intentionally subordinated” the traditional criteria used to draw districts—such as preserving
19 communities of interest. Instead, the court found, based on statistical evidence showing the map’s
20 “unfair partisan advantage to the Republican candidates,” that the map was discriminatory in effect and
21 therefore violated Pennsylvania’s Free and Fair Elections Clause. (*Id.* at 126.)

22 Similarly here, the record demonstrates the clear partisan advantage conferred by the Patten
23 Map. Based on an estimated average vote share derived from the Voting and Election Science Team and
24 estimates of the mean 2016 election results for the County, Democrats represent 54.4% of the County,
25 while Republicans represent 45.6%. (Folk Decl., Ex. F at 83.) Whereas the 2011 Map resulted in at least
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27 _____
28 ⁴ The Free and Fair Elections Clause in that case stated that ““Elections shall be free and equal; and no
power, civil or military, shall at any time interfere to prevent the free exercise of the right of
suffrage.” (*Id.* at 38 fn. 34 (citing Pa. Const. art. I, § 5).)

1 one competitive district (District 4, which Supervisor Compton won in 2018 by only 60 votes), the
2 Patten Map would create three safe Republican districts and two safe Democratic districts. (Folk Decl.,
3 Ex. F at 83; Ex. E at 62.)

4 The Patten Map also benefits Republican supervisors while disadvantaging Democratic
5 supervisors. For instance, Republican Supervisor Lynn Compton, who represents District 4, defeated her
6 opponent in 2018 by a mere 60 votes and has announced her intention to run for re-election in 2022
7 against the same opponent. (Folk Decl., Ex. E at 67.) The Patten Map will change the partisan makeup
8 of her district to her advantage in advance of the June 2022 election, including by moving a significant
9 number of Republican voters into her district while moving a number of Democratic voters out and into
10 District 5. (Folk Decl., Ex. E at 65-67; Ex. R at 427-29.) In contrast, the Patten Map works to the
11 disadvantage of Democratic Supervisor Gibson in District 2. He will run in 2022 in a district with a
12 significant number of new Republican voters moved from the current District 1, while many Democratic
13 voters in his district will be moved to Districts 3 or 5. (Folk Decl., Ex. E at 64-65; Ex. R at 425-28.)

14 The map's new supervisorial district boundaries also result in the dilution, deferral, suppression,
15 and/or acceleration of voting rights for nearly 100,000 County residents for Republican advantage.
16 (Tarpey Decl., ¶6.) An analysis presented at the Board's November 30 meeting showed that 46.9% of
17 deferred voters would be Democrats, whereas only 24.7% are Republicans. (Folk Decl., Ex. H at 100.)
18 Conversely, 41.4% of accelerated voters will be Republicans, and only 31.8% would be Democrats. (*Id.*)
19 These partisan impacts plainly violate section 21500(d) of the Fair Maps Act, which was adopted
20 precisely to avoid these types of partisan impacts. (RJN, Ex. 2 at 9 [the bill would, "for the first time,
21 ban[] partisan gerrymandering at the local level," which "is crucial to the integrity of our local
22 democracy and better aligns with our State Constitution, which already requires that local elections be
23 official nonpartisan."]; see also Tarpey Decl., ¶5 [County Counsel noting that deferral/acceleration
24 numbers would be relevant to show whether they reveal a pretext].)

25 **2. The Republican Board majority adopted the Patten Map with the intent to**
26 **confer a partisan advantage on the Republican Party.**

27 Even if this Court were to find that partisan intent is required to show a violation of section
28 21500(d), the record demonstrates not only that the Patten Map is partisan in effect, but also that the

1 Board *intended* to discriminate against the Democratic Party. “[C]ircumstantial evidence may establish
2 that a districting plan was drawn primarily to favor one political party over another.” (*League of Women*
3 *Voters of Ohio v. Ohio Redistricting Com.* (Ohio Sup. Ct., Jan. 12, 2022, Nos. 2021-1193, 2021-1198,
4 and 2021-1210) 2022 WL 110261, *24 (“*Ohio LOWV*”) (emphasis added) (citing *League of Women*
5 *Voters of Florida v. Detzner* (Fla. 2015) 172 So.3d 363, 375-76 (“*Florida LOWV*”).) Relevant
6 circumstantial evidence is admissible in California. (See *Hasson v. Ford Motor Co.* (1977) 19 Cal.3d
7 530, 548, overruled on other grounds by *Soule v. GM Corp.* (1994) 8 Cal.4th 548 [“the fact that
8 evidence is ‘circumstantial’ does not mean that it cannot be ‘substantial’”] (citing Evid. Code § 351).)

9 In cases where plaintiffs must show that a redistricting plan was created with the intent to favor a
10 political party or incumbent, “there is no acceptable level of improper intent”; plaintiffs need not show
11 “malevolent or evil purpose.” (*Florida LOWV*, 172 So.3d at 375.) Further, the *Ohio LOWV* case
12 illustrates that “[w]hen a single party exclusively controls the redistricting process, ‘it should not be
13 difficult to prove that the likely political consequences of the reapportionment were intended.’” (*Ohio*
14 *LOWV* at *25 (citations omitted).) In *Ohio LOWV*, the Ohio Supreme Court found sufficient
15 circumstantial evidence that the Redistricting Commission intended to discriminate against the
16 Democratic Party in contravention the Ohio Constitution which, like section 21500(d), prohibited
17 drawing a district “primarily to favor or disfavor a political party.” (*Id.* at *24-27.) The court noted that
18 the “map-drawing process may support an inference of predominant partisan intent.” (*Id.* at *24.) There,
19 the Commission failed to draft the plan or to hire its own staff, but “[i]nstead the legislative caucuses of
20 the two major political parties—i.e., the groups with the most self-interest in protecting their own
21 members—drew maps for the commission to consider.” (*Id.* at *25.) The map drawers also testified that
22 Maptitude, the program used to draft their plan, displayed the partisan leanings of the potential districts
23 they drew. (*Id.* at *7, *24.) Finally, the *Ohio LOWV* court cited Michael Latner’s evidence supporting
24 the conclusion that the plan’s partisan skew could not be explained solely by nondiscriminatory factors,
25 because the plan substantially favored Republican voters through targeted cracking and packing of
26 Democratic voters that “did not occur by chance or accident.” (*Id.* at *25.)

27 The map-drawing process in this case leads to the same conclusion the court reached in *Ohio*
28 *LOWV*. Every vote in favor of the Patten Map occurred on a strictly partisan basis, with only Republican

1 members of the Board voting in its favor. (Tarpey Decl., ¶¶3, 7, 9, 11.) As in Ohio, the Patten Map was
2 drawn by a registered Republican who also used the Maptitude program that can shows the partisan
3 leanings of districts. (See Folk Decl., Ex. P at 410; Tarpey Decl., ¶12.) The County Republican Party not
4 only endorsed the Patten Map, but also circulated “Redistricting Training” messages instructing “What
5 to Write” and “What to Say” in support of the map. (See Folk Decl., Ex. M.) Additionally, just as in
6 *Ohio LOWV*, Professor Latner presented evidence that the Map would confer a partisan advantage that
7 cannot be explained by other factors. (Folk Decl., Ex. F at 79, ¶8, 85, ¶20.)

8 Other evidence of the Board’s partisan intent includes the fact that it selected the Patten Map
9 over two maps created by the County’s own consultant and one created by the Chamber of Commerce
10 (the “Chamber Map”). These three alternatives would have largely preserved the previous supervisorial
11 district map, whereas the Patten Map created dramatic changes in favor of the Republican Party. (Folk
12 Decl., Ex J at 132-40.) As the County’s redistricting consultants made clear, the County’s increase in
13 population did not mandate significant changes to the 2011 map; that map conformed to the population
14 deviation standards in the Fair Maps Act, and required only a few minor changes to conform districts to
15 revised census tracts. (Folk Decl., Ex. I at 112.) Accordingly, the dramatic changes implemented by the
16 Patten Map cannot be explained by the need to update the map to reflect changes in population.

17 The Board’s response to this clear evidence of partisan impact and motivation was to pretend it
18 did not exist. (Folk Decl., Ex. E at 70.) County Counsel informed the Board that it was not prohibited
19 from considering data and analysis that would allow it to evaluate whether the maps under consideration
20 “possibly reflected an improper purpose” in violation of section 21500(d). (Folk Decl., Ex. F at 80-81).
21 The County’s consultant also stated it could provide data analyzing the partisan impact of the Patten
22 Map and Chamber Map. (Folk Decl., Ex. F at 80-81.) Nonetheless, the Board repeatedly rejected
23 motions to evaluate data about how the Patten Map and the Chamber Map would accelerate or defer
24 votes, or result in partisan impacts on voting rights. (Folk Decl., Ex. F at 81; Ex. O at 385-86, 393-94;
25 Tarpey Decl., ¶¶4, 8, 10.)

26 The refusal to analyze the Patten Map’s partisan effects does not insulate the Board from
27 knowledge of its impacts. (See Folk Decl., Ex. F at 80 [“[T]here is simply no way that compliance with
28 Section 21500(d) can be determined without gathering and considering data and analysis relating to

1 political parties.”].) As Supervisor Gibson pointed out, the Board was presented with data in the record
2 showing that the Patten Map favors the Republican Party, along with the December 12 Tribune article
3 confirming the map’s partisan impacts. (Folk Decl., Ex. P at 409.) Supervisor Gibson also noted that the
4 three Republican supervisors are experienced politicians all well aware of where Republican and
5 Democratic voters live. (*Id.* at 411-12.) Supervisor Peschong is a professional Republican political
6 consultant who has run campaigns for Republicans in the County. (*Id.* at 411.) And, given their prior
7 election losses in Democratic-tending precincts, Supervisors Arnold and Compton are both well aware
8 of where Republicans and Democrats in their districts live. (*Id.* at 411-412.) As Supervisor Gibson
9 testified, the Republican majority’s claim of ignorance in the face of this evidence strains credulity.

10 The record is thus replete with evidence that the Board adopted the Patten Map with the intent to
11 benefit the Republican Party, and that the Patten Map indeed had the partisan effects the Board intended.
12 Accordingly, Petitioners are likely to succeed on their claims that the Board violated the Fair Maps Act
13 and the California Constitution’s Free and Fair Elections Clause.

14 **D. The Board improperly prioritized the geographic unity of the City of San Luis**
15 **Obispo over established communities of interest.**

16 The Board also violated the requirement in the Fair Maps Act that district boundaries respect the
17 geographic integrity of communities of interest before considering how the districts can also respect the
18 geographic integrity of cities to the extent practicable. (§ 21500(c)(2), (3).) The resolution supporting
19 the Patten Map’s adoption demonstrates that the Board violated these ranked criteria when it prioritized
20 the “wholeness” of the City of San Luis Obispo over maintaining the integrity of local communities of
21 interest. The resolution admits that “a core underpinning of the [Patten] Map was a preference for
22 minimizing the division of the City of San Luis Obispo (“SLO”) into several districts, as has occurred
23 previously.” (Folk Decl., Ex. B at 40.) The Patten Map does this by creating a new District 3 that
24 includes much of the City of San Luis Obispo (although not the entirety of the City), such that the City
25 would be represented by two supervisors, rather than three, as before. (See Folk Decl., Ex. E at 64-66.)
26 In so doing, the Patten Map severed communities that have been associated with each other for decades
27 in violation of the priorities established by the Fair Maps Act. (Folk Decl., Ex. P at 400:18-20 [“The
28 Patten Map has bludgeoned neighborhoods that have been together for hundreds of years.”].)

1 **II. An injunction enjoining implementation of the Patten Map is necessary to avoid**
2 **irreparable harm to Petitioners and voters in the County.**

3 As established above, the Patten Map violates California’s Fair Maps Act and the Free and Fair
4 Elections Clause by depriving the individual Petitioners and other County voters of the right to vote in
5 the June 2022 elections and by diluting the effectiveness of their votes. By contrast, the County will not
6 be harmed by using the 2011 Map (or Map A) for the June 2022 election. That map complies with the
7 Fair Maps Act and the County is already planning to rely on it for the special election in District 3.

8 **A. The Patten Map’s impacts on the right to vote constitute irreparable harm.**

9 Two radically redrawn districts, Districts 2 and 4, are up for election on June 7, 2022. (Folk
10 Decl., Ex. E at 67.) Unless interim relief is granted, the Patten Map will have direct, adverse impacts on
11 voters in this next election that cannot be remedied after the election occurs.

12 *First*, the Patten Map will deprive some voters—primarily Democrats—of the right to vote at all
13 in the 2022 election. (Folk Decl., Ex. H at 98.) Petitioners Villa and Maruska, who last voted for
14 supervisor in 2018, are among the voters who will lose their right to vote in the 2022 election. The
15 Patten Map will move Petitioner Villa out of District 4, where she would have voted in 2022, and
16 relocate her to District 5, where she cannot vote until 2024. (Verified Petition for Writ of Mandate, ¶9.)
17 The Patten Map will move Petitioner Maruska from District 2, where he would have voted in 2022, and
18 move him to District 5, where he cannot vote until 2024. (*Id.*, ¶10.) Like Petitioners Villa and Maruska,
19 voters in Oceano and Los Osos will also lose their right to vote in 2022 because they were moved from
20 either District 2 or 4 to District 5. (*Id.*, ¶¶9-10; Folk Decl., Ex. P at 401:20-402:2.)

21 The right to vote is fundamental. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th, 781,
22 (citing *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 913).) Loss of that
23 right constitutes irreparable harm. For example, in *Imperial v. Castruita* (2006) 418 F.Supp.2d 1174,
24 1176, the court enjoined a municipal recall election because the recall petition’s failure to include
25 required multilingual provisions precluded the limited-English speaking petitioner from participating in
26 the electoral process—a harm that “would be almost impossible to remedy.” (*Id.* at 1182.) Similarly
27 here, depriving Petitioners and voters of their fundamental right to vote also constitutes an irreparable
28 harm. If the Patten Map goes into effect, neither Petitioners Villa nor Maruska, nor other voters from

1 Los Osos or Oceano, will be able to recover their lost votes.

2 *Second*, the Patten Map will cause irreparable harm by diluting the effect of votes cast by
3 Petitioners Villa, Gomez, and Maruska and other voters in the County by removing them from
4 competitive districts and separating them from long-established communities of interest. In *Jauregui*, the
5 court granted a preliminary injunction and enjoined the city from completing an at-large election
6 because it found that plaintiffs would be irreparably harmed by the dilution of minority voting power.
7 (*Juaregui*, 226 Cal.App.4th at 791; § 14027.) Although *Jauregui* concerned the harm associated with
8 dilution of minority voting power under the California Voting Rights Act (226 Cal.App.4th at 788-89),
9 the Fair Maps Act also prohibits voter dilution on a partisan basis (§ 21500(d)).

10 Moving voters in the Oceano community from District 4 to District 5 will dilute the effectiveness
11 of those votes. Supervisor Compton’s 2018 race in District 4 was very competitive—she won only by 60
12 votes and fared poorly in the Oceano community, where voters would have had the opportunity to
13 influence the results of the 2022 election. (Folk Decl., Ex. E at 65-67; Ex. R at 427-29; Ex. N at 243; Ex.
14 Q at 421.) However, the Patten Map moves Oceano voters to a new District 5, where they will be
15 concentrated with other Democratic voters who will constitute 63.3% of that District. (Folk Decl., Ex. F
16 at 83.) This concentration of Democratic voters from Oceano deprives them of the ability to influence
17 the results of an election in what was a competitive District 4.

18 The Patten Map also dilutes the effect of votes by improperly separating Petitioners and other
19 voters from longstanding communities of interest. For example, the map would separate Petitioner
20 Gomez and other City of San Luis Obispo residents from communities of interest historically aligned
21 with the City of San Luis Obispo including Avila Beach, Pismo Beach, and Grover Beach, among
22 others. (Verified Petition for Writ of Mandate, ¶8; Folk Decl., Ex. N at 284-85, 334.) Likewise, the
23 Patten Map separates Petitioner Maruska and other Los Osos residents from communities of interest
24 historically associated with Los Osos including Morro Bay, Cayucos, and Cambria, as well as a portion
25 of the City of San Luis Obispo, for the purpose of favoring the Republican party. (Verified Petition for
26 Writ of Mandate, ¶10; Folk Decl., Ex. P at 400-01; Ex. N at 334.) The Fair Maps Act recognizes that
27 this fracturing of communities across multiple districts “dilute[s]” the voters’ power and “results in local
28 officials who are less representative and accountable.” (RJN, Ex. 2 at 8-9.) For this reason, the Act

1 requires jurisdictions to prioritize keeping communities intact and gives that criterion precedence over
2 other criteria, such as legal boundaries of a city. (§ 21500(c)(2).)

3 **B. While interim relief is necessary to ensure that voters are not deprived of their**
4 **rights in the June 2022 election, it will not impair the County’s interests.**

5 While Petitioners and voters will be irreparably harmed by implementation of the Patten Map,
6 the County will not be harmed by preserving the status quo pending resolution of the merits. Courts have
7 the power to determine, on an interim basis, which map should govern an election. For example, in
8 *Legislature v. Reinecke* (1972) 6 Cal.3d 595, the governor vetoed a redistricting map adopted by the
9 state legislature in response to the 1970 census, leaving the state without a map that reflected population
10 growth since 1960. When the petition was filed, there was not sufficient time to adopt a new map prior
11 to the next election. The court granted interim relief rejecting the new map as the basis for the next
12 election and requiring elections to be held based on the earlier 1960 map. As noted by the court, “it will
13 be far less destructive of the integrity of the electoral process to allow the existing legislative districts,
14 imperfect as they may be to survive for an additional two years than for this court to accept, even
15 temporarily, plans that are at best truncated products of the legislative process.” (*Id.* at 602.) In *Assembly*
16 *v. Deukmejian* (1982) 30 Cal.3d 638, the court reached the opposite conclusion, allowing a new map to
17 go into effect even though it was subject to a referendum that might overturn the map altogether. In that
18 case, however, all parties agreed that, because substantial population growth created significant
19 population differences between districts, allowing the old map to remain in effect would violate the one
20 person, one vote mandate of the state and federal constitutions. (*Id.* at 657.)

21 Here, the record demonstrates that the County could lawfully rely on the 2011 Map for the June
22 2022 election because the County’s increase in population did not require any modification to the 2011
23 Map other than a few minor changes to conform districts to revised census tracts. (Folk Decl., Ex. J at
24 126 [showing that difference in population between districts was below the 10 percent standard that
25 governs population distribution between districts].) Alternatively, the County could rely on Map A,
26 which largely reflects the boundaries of the 2011 Map but implements those minor changes. (Folk Decl.,
27 Ex. J at 145; Ex. L at 213.) *Vandermost* recognized that a court might order an agency to rely on the pre-
28 existing redistricting map where the “old districts remain substantially compliant” with any requirements

1 that districts be drawn to avoid significant deviations in population. (53 Cal.4th at 485-86.)

2 Finally, the County is already relying on the 2011 Map for the District 3 special election that will
3 be held in June. Supervisor Ortiz-Legg, who was appointed after the death of Adam Hill, will be running
4 in a special election for supervisor of District 3. The California Attorney General has opined that this
5 election shall occur using the 2011 map boundaries for District 3. (___ Ops.Cal.Atty.Gen. ___
6 (December 16, 2021) 2021 WL 6101640 at 1 (Cal.AG. No. 21-1103.) Therefore, the 2011 map will
7 already serve as the map for at least one supervisorial district election in June 2022.

8 **Conclusion**

9 Because Petitioners are very likely to succeed on the merits of their claim and because allowing
10 enforcement of the ordinance would do irreparable harm to Petitioners' and the public's interest that far
11 outweighs any harm to the County, this Court should grant Petitioners' motion for a preliminary
12 injunction.

13 DATED: January 25, 2022

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14
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