

FILED

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SAN LUIS OBISPO SUPERIOR COURT
BY Frances O'Donnell
Frances O'Donnell, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO**

**SLO COUNTY CITIZENS FOR GOOD
GOVERNMENT, INC.; PATRICIA
GOMEZ; DON MARUSKA; AND
ALLENE VILLA,**

Petitioners,

v.

**COUNTY OF SAN LUIS OBISPO;
BOARD OF SUPERVISORS OF SAN
LUIS OBISPO COUNTY; AND DOES 1
- 15,**

Respondents.

**CLERK-RECORDER OF SAN LUIS
OBISPO COUNTY; AND DOES 16-25,**

Real Parties in Interest.

Case No.: 22CVP-0007

**ORDER DENYING PETITIONERS'
MOTION FOR PRELIMINARY
INJUNCTION**

Every ten years, voting districts are reevaluated pursuant to federally mandated census counts. For purposes of the 2022 election year, districts across California were examined for compliance with the results of the 2020 census and applicable law. In San Luis Obispo County, the role of adopting boundaries for supervisorial districts is within

1 the province of the County Board of Supervisors ("the Board"). In 2021, the Board
2 initiated the redistricting process, which involved applying a new statutory scheme that
3 required it to consider mandatory criteria in reaching its decision. Following extensive
4 public hearings, the Board adopted a supervisorial district boundary map (the "Adopted
5 Map").

6 Petitioners SLO County Citizens for Good Government, Inc., Patricia Gomez,
7 Don Maruska, and Allene Villa ("Petitioners") allege the Board's decision does not
8 comply with the laws governing the redistricting process. They seek a preliminary
9 injunction enjoining the use of the Adopted Map and directing the County to use an
10 alternative map for the upcoming June 7, 2022, supervisorial election and pending a
11 final resolution of this dispute.

12 The request for a preliminary injunction requires that the Court conduct a
13 preliminary assessment of the strength of the Petitioners' case, weighed against the
14 relative harm to Petitioners, Respondents (the Board and the County of San Luis Obispo
15 ("the County")), and the public, if the request is granted or denied.

16 Having conducted this analysis, the Court concludes that Petitioners have
17 demonstrated a probability of success on their claim that the Board did not proceed in
18 the manner required by law when it failed to consider evidence that the Adopted Map
19 favored or discriminated against a political party. On balancing the relative harm to the
20 Petitioners' right to vote, the time sensitive nature of the duties of the County's Clerk
21 Recorder, and considerations of comity and judicial restraint, the Court concludes there
22 is a substantial risk of harm to the County and the public as a whole which outweighs
23 the likelihood of Petitioners' success on the merits. Accordingly, for the reasons
24 illuminated more fully below, Petitioners' request for a preliminary injunction is denied.

25 I. BACKGROUND

26 A. The County's Redistricting Proceedings

27 "[F]ollowing each federal decennial census for a county whose board is already
28 elected using district-based elections, the board shall, by ordinance or resolution, adopt

1 boundaries for all of the supervisorial districts of the county so that the supervisorial
2 districts shall be substantially equal in population as required by the United States
3 Constitution.” (Elec. Code, § 21500, subd. (a).)¹

4 After the 2010 census, the County adopted the “2011 Map,” which has been in
5 use for County Supervisor elections conducted thereafter. (Folk Dec., Ex. I, pp. 110,
6 113.)² Following the 2020 census, as part of the decennial redistricting process, the
7 County created a redistricting webpage to encourage public participation. (Eriksson
8 Dec., ¶ 3; see § 21058.) In addition, the Board held multiple public meetings on the
9 issue. (Eriksson Dec., ¶ 4; Ramirez Dec., ¶ 4; see § 21507.1.)

10 During that process, the Board received several draft maps, including four
11 prepared by County staff in cooperation with the County’s consultant, Redistricting
12 Partners. (Tarpey Supp. Dec., Ex. A, pp. 6-7.) The Board also received proposed maps
13 submitted by members of the public, including map number “74786,” submitted by
14 Richard Patten, a county resident. (Eriksson Dec., ¶ 6.)

15 The draft maps were presented to the Board at its October 26, 2021, hearing.
16 (Eriksson Dec, Ex. A, p. 2.) At the following hearing on November 19, 2021, the Board
17 voted to advance two maps, one of which was Map No. 74786. (Tarpey Supp. Dec., Ex.
18 A, pp. 6-7.) On November 30, 2021, the Board selected Map No. 74786 as the Adopted
19 Map with some revisions. (Eriksson Dec., Ex. A, pp. 2, 10.) On December 14, 2021,
20 the Board issued Resolution No. 2021-311 and Ordinance No. 3467, adopting new
21 supervisorial district boundaries as delineated in the Adopted Map. (Eriksson Dec., Ex.
22 C.)

23 Resolution No. 2021-311 includes the following findings by the Board:
24

25 ¹ All further statutory references are to the Elections Code unless otherwise indicated.
26

27 ² The 2011 Map also was subject to a judicial challenge, which resulted in an order
28 upholding the validity of the ordinance adopting the map. (*Pelfrey v. San Luis Obispo*
County, Case No. B241420 (July 24, 2013) 2013 WL 3834331 [nonpub. opn.])

1 A significant public sentiment that served as a core underpinning of the
2 Preferred Map was a preference for minimizing the division of the City of
3 San Luis Obispo ("SLO") into several districts, as has occurred
4 previously under prior law. The population, density, and location of SLO
5 (in particular its role as host to California Polytechnic State University)
6 give it a distinct identity, which have [sic] previously been subject to
7 division into two or more districts. The "Preferred Map" redraws district
8 lines to better align with this important community of interest in SLO and
9 most other County municipalities. The Board of Supervisors received
10 some submissions from the public concerning political demographics and
11 effect of political parties, or incumbents, or political candidates, but did
12 not take such information into account or consider such data in its
13 decision on the Preferred Map. The Board of Supervisors did not use
14 political data to draw the map, nor did the Board of Supervisors look at
15 current locations of current supervisor residences.

16 (Eriksson Dec., Ex. C, p. 2.)³

17 **B. Trial Court Proceedings**

18 On January 12, 2022, Petitioners filed a petition for writ of mandate challenging
19 the Board's adoption of Resolution No. 2021-311 and Ordinance No. 3467. Petitioners
20 allege the Board's actions "reflect[] a sophisticated and systematic partisan
21 gerrymandering of supervisorial districts." (Petition, ¶ 2.)⁴

22 ³ The Court has received numerous evidentiary objections from the parties. Evidence
23 that is not addressed in this order was deemed to be immaterial to the issues before the
24 Court on consideration of the motion for preliminary injunction. To the extent any
25 objections are not specifically addressed elsewhere in this order, the Court declines to
26 rule on them and deems them to be preserved. (*Reid v. Google, Inc.* (2010) 50 Cal.4th
27 512, 532.)

28 ⁴ "Partisan gerrymandering" has been defined as "the drawing of legislative district
lines to subordinate adherents of one political party and entrench a rival party in power."
(*Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)
576 U.S. 787, 791 [135 S.Ct. 2652, 192 L.Ed.2d 704]; see also *Rucho v. Common Cause*
(2019) ___ U.S. ___ [139 S.Ct. 2484, 2499, 204 L.Ed.2d 931].) Terms often used in
connection with partisan gerrymandering are "packing" and "cracking." "A 'cracked'
district is one in which a party's supporters are divided among multiple districts so that
they fall short of a majority in each; a 'packed' district is one in which a party's
supporters are highly concentrated, so they win that district by a large margin, 'wasting'

1 On January 23, 2022, the parties submitted a stipulation requesting that the Court
2 set a hearing for a motion for preliminary injunction to be filed by Petitioners.
3 Petitioners filed their motion on January 26, 2022. The County filed an opposition on
4 January 31, 2022, and Petitioners filed a reply on February 3, 2022. The Court
5 conducted a hearing on the motion on February 9, 2022.

6 **C. Response by the Real Party in Interest**

7 Elaina Cano, the Clerk-Recorder of San Luis Obispo County, the Real Party in
8 Interest ("the Clerk Recorder"), filed a declaration setting forth the duties of her office
9 with respect to the upcoming election. She explains that the nomination period for
10 candidates for District 2 and District 4 Supervisor will commence on February 14, 2022.
11 On February 15, 2022, her office is required to submit maps showing the boundaries of
12 each voting district and precinct to the Secretary of State. This task entails creating
13 precinct maps that will reflect the new boundaries for the federal Congressional districts,
14 the State Assembly and Senate Districts, and the County's supervisorial districts, all of
15 which have been changed in some measure as a result of the 2020 census. To meet the
16 deadlines, the Clerk Recorder anticipates completing the mapping by February 10, 2022,
17 and completing remaining tasks over the weekend in order to ensure the system is fully
18 operational by the morning of February 14, 2022.

19 **II. LEGAL STANDARDS**

20 **A. Constitutional Principles**

21 The separation of powers doctrine (Cal. Const., art. III, § 3) requires the judiciary
22 to respect the separate constitutional roles of the executive and legislative branches of
23 government. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464
24 (*O'Connell*).)

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26 ///

27
28 many votes that would improve their chances in others. [Citation.]” (*Rucho v. Common
Cause, supra*, 139 S.Ct. at p. 2492.)

1 Because reapportionment is so essentially a legislative function, certain
2 basic considerations relating to the fundamental doctrine of the separation
3 of powers between the judicial and the legislative branches of
4 government regulate and limit courts in the exercise of their power to
5 declare such enactments invalid.... Among the limitations upon the
6 court's power is the presumption the enactment is valid and that the
7 legislative body performed its duty and ascertained the existence of any
8 facts upon which its right to act depended. Courts will not declare such
9 enactments invalid unless it appears the action taken was arbitrary,
10 capricious or entirely lacking in evidentiary support. A court may not
11 substitute its judgment for that of the legislative body merely because it
12 doubts the wisdom of the action taken, and must sustain the legislative
13 enactment if there is any reasonable basis for it. [Citations.]

14 (*Griswold v. County of San Diego* (1973) 32 Cal.App.3d 56, 65-66 (*Griswold*); see also
15 *Reynolds v. Sims* (1964) 377 U.S. 533, 586.)

16 One of the limitations on the legislature's redistricting power is that it must be
17 carried out in accordance with this state's constitutional and statutory requirements.
18 (See *Griffin v. Board of Supervisors of Monterey County* (1964) 60 Cal.2d 318, 322
19 (*Griffin*) [holding the failure to follow section 21500 constituted an abuse of discretion];
20 see also *Arizona State Legislature v. Arizona Independent Redistricting Commission*
21 (2015) 576 U.S. 787, 788 [135 S.Ct. 2652, 192 L.Ed.2d 704].)

22 **B. Traditional Writ of Mandate Under Code of Civil Procedure Section 1085**

23 Actions undertaken by an agency in its legislative capacity are reviewed under
24 Code of Civil Procedure section 1085. (*Strumsky v. San Diego County Employees*
25 *Retirement Assn.* (1974) 11 Cal.3d 28, 35, fn. 2.) When, as here, "review is sought by
26 ordinary mandate (Code Civ. Proc., § 1085) 'judicial review is limited to an examination
27 of the proceedings before the (agency) to determine whether (its) action has been
28 arbitrary, capricious, or entirely lacking in evidentiary support, or whether (it) has failed
to follow the procedure and give the notices required by law.' [Citations.]" (*Ibid.*)

"Mandamus will lie to compel a public official to perform an official act required
by law. (Code Civ. Proc., § 1085.) Mandamus will not lie to control an exercise of
discretion, i.e., to compel an official to exercise discretion in a particular manner.

1 Mandamus may issue, however, to compel an official both to exercise his discretion (if
2 he is required by law to do so) and to exercise it under a proper interpretation of the
3 applicable law.” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.)

4 When “the issues involve[] statutory or regulatory construction, such as whether
5 [a public entity’s] action was consistent with applicable law,” the Court conducts a de
6 novo review. (*Cal. School Boards Assn. v. State Board of Educ.* (2010) 186 Cal.App.4th
7 1298, 1313-1314.)

8 **C. Preliminary Injunctions**

9 When ruling on a request for a preliminary injunction, the Court must consider
10 two interrelated factors: (1) the likelihood that the petitioner will prevail on the merits;
11 and (2) the relative balance of harms that is likely to result from the granting or denial of
12 the interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554 (*White*).) “The
13 trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-
14 harm factors; the greater the plaintiff’s showing on one, the less must be shown on the
15 other to support an injunction.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 678
16 (*Butt*).) This formulation also has been described as requiring an analysis “on a ‘sliding
17 scale,’ sometimes awarding relief based on a lower likelihood of harm when the
18 likelihood of success is very high. [Citation.]” (*People v. Uber Technologies, Inc.*
19 (2020) 56 Cal.App.5th 266, 272-273.)

20 While a trial court has broad discretion to grant or deny a request for a
21 preliminary injunction, “[i]t must exercise its discretion ‘in favor of the party most likely
22 to be injured.’ If the denial of an injunction would result in great harm to the plaintiff,
23 and the defendants would suffer little harm if it were granted, then it is an abuse of
24 discretion to fail to grant the preliminary injunction. [Citations.]” (*Robbins v. Superior*
25 *Court* (1985) 38 Cal.3d 199, 205-206 (*Robbins*); cf. *Butt, supra*, 4 Cal.4th at p. 678
26 [regardless of the balance of interim harm, there must be some possibility that the
27 plaintiff ultimately will prevail on the merits].)

28 When an injunction is sought against public officials, which would “restrain

1 them in performance of their duties, public policy considerations also come into play.
2 There is a general rule against enjoining public officers or agencies from performing
3 their duties.” (*Tahoe Keys Property Owners’ Assn. v. State Water Resources Control*
4 *Board* (1994) 23 Cal.App.4th 1459, 1471 (*Tahoe Keys*)). “[T]o support a request for
5 such relief the plaintiff must make a significant showing of irreparable injury.
6 [Citation.]” (*Ibid.*) The Court “must also bear in mind the extent to which the
7 separation of powers principles may affect the propriety of injunctive relief against state
8 officials.” (*O’Connell, supra*, 141 Cal.App.4th at p. 1464.)

9 “The ultimate goal of any test to be used in deciding whether a preliminary
10 injunction should issue is to minimize the harm which an erroneous interim decision
11 may cause. [Citation.]’ [Citation.]” (*O’Connell, supra*, 141 Cal.App.4th at p. 1464,
12 quoting *White, supra*, 30 Cal.4th at 554.)

13 III. DISCUSSION

14 A. Likelihood of Success on the Merits

15 The first question to address is whether there is “a reasonable probability” the
16 Petitioners will prevail on the merits. (*Robbins, supra*, 38 Cal.3d 199 at p. 206; see also
17 Code Civ. Proc., § 526(a)(1).)

18 At issue here, is the Board’s compliance with the Fair and Inclusive Redistricting
19 for Municipalities and Political Subdivision Act (the “Fair Maps Act”), adopted by the
20 California Legislature in 2019, amending sections 21500 to 21509 of the Elections
21 Code. In particular, section 21500 sets forth four requirements when adopting
22 boundaries for supervisorial districts. (§ 21500, subds. (a)-(d).)

23 Subdivision (a) of section 21500 requires that the supervisorial districts be
24 substantially equal in population. Subdivision (b) requires that “[t]he board shall adopt
25 supervisorial district boundaries that comply with the United States Constitution, the
26 California Constitution, and the federal Voting Rights Act of 1965.” Subdivision (c)
27 sets forth mandatory, ranked criteria to be considered when adopting supervisorial
28 districts. Subdivision (d) provides that “[t]he board shall not adopt supervisorial district

1 boundaries for the purpose of favoring or discriminating against a political party.”

2 Petitioners take issue with (1) the Board’s compliance with subdivision (d); and
3 (2) the Board’s application of the criteria set forth in subdivision (c).

4 **1. Section 21500, Subdivision (d): Prohibition on Partisan Gerrymandering**

5 Petitioners argue that although the Board was presented with evidence of
6 partisan impact and motivation in connection with the Adopted Map, the Board failed to
7 consider the evidence, amounting to a violation of section 21500, subdivision (d).

8 Petitioners assert that it is not possible to determine compliance with subdivision (d)
9 without considering the data and analysis that was proffered to the Board concerning the
10 impact of the Adopted Map on political parties. (Motion, pp. 14-15.)

11 In support of their argument, Petitioners cite to multiple requests for an analysis
12 of the Adopted Map’s partisan impacts. (Tarpey Supp. Dec., Ex. A, p. 7, minutes of
13 Board Meeting held on November 19, 2021 [failed motion to direct staff to analyze
14 acceleration/deferral implications of the Adopted Map]; Ex. A, p. 9, minutes of Board
15 Meeting held on November 30, 2021 [failed motion to direct Redistricting Partners to do
16 partisan analysis of the Adopted Map]; Folk Dec., Ex. O, pp. 384-386, 391-393
17 [transcription of statements and motion by Supervisor Dawn Ortiz-Legg at Board
18 Meeting held on December 7, 2021; failed motion to direct Redistricting Partners for a
19 non-partisan analysis of the Adopted Map].)

20 The County agrees that subdivision (d) precludes the Board from adopting a map
21 for an overriding partisan purpose. (Opposition, p. 12, l. 14.) The County distinguishes
22 two cases from other states construing similar legislative enactments, in which the courts
23 found overwhelming evidence of partisan gerrymandering. (*League of Women Voters of*
24 *Ohio v. Ohio Redistricting Commission* (2022) __ N.E.3d __ (Ohio Sup. Ct., January 12,
25 2022, Nos. 2021-1193, 2021-1198, and 2021-1210) 2022 WL 110261 (*League of*
26 *Women Voters of Ohio*); *League of Women Voters of Pennsylvania v. Commonwealth*
27 (2018) 645 Pa. 1, 178 A.3d 737 (*League of Women Voters of Pennsylvania*).) In
28 contrast, the County argues that Petitioners have not presented a similar degree of

1 analogous evidence. (Opposition, p. 16, ll. 15-18.) It maintains that the Board complied
2 with the partisan neutrality command of subdivision (d). (Opposition, p. 17, ll. 1-3.)⁵

3 In response, Petitioners argue that the Board could not have complied with
4 subdivision (d) because it did not consider the proffered evidence of partisan impacts.
5 (Reply, p. 7, ll. 3-7.)

6 The record is clear that in arriving at its ultimate decision, the Board received but
7 did not consider such evidence.

8 In Resolution No. 2021-311, the Board confirmed that it had “received some
9 submissions from the public concerning political demographics and effect of political
10 parties, or incumbents, or political candidates, *but did not take such information into*
11 *account or consider such data in its decision on the Preferred Map.*” (Eriksson Dec.,
12 Ex. C, p. 2, italics added.) At the hearing before this Court, the County agreed that the
13 Board did not rely on or consider the information.

14 The question to be determined, then, is whether the Board’s decision to decline
15 to consider the proffered evidence of partisan effects is consistent with the prohibition in
16 subdivision (d) against adopting boundaries for the purpose of favoring or
17 discriminating against a party.

18 In answering this question, it is worth recalling that the amendment of section
19 21500, subdivision (d) by the Fair Maps Act went into effect on January 1, 2020. (Stats.
20 2019, ch. 557 (Assem. Bill No. 849, § 2).) The Fair Maps Act also barred adoption of
21

22 ⁵ The Court sustains Petitioners’ objections to the declaration of Paul Mitchell on the
23 ground that the declaration and the information contained therein constitutes extra-
24 record evidence that was not before the Board. To the extent the declaration seeks to
25 address Petitioners’ use of 2016 election data, the information is immaterial to the
26 Court’s analysis. To the extent the declaration includes information that “will ultimately
27 be reflected in the administrative record,” the Court may consider such information at a
28 later stage in the proceedings after the administrative record is prepared. The County
objects to the supplemental declaration of Michael Latner, which was submitted in
response to Mr. Mitchell’s declaration. Because the objection to Mr. Mitchell’s
declaration is sustained, Mr. Latner’s supplemental declaration is irrelevant to the
Court’s analysis.

1 district boundaries “for the purpose of favoring or discriminating against a political
2 party” in city council elections. (§ 21601, subd. (d); § 21621, subd. (d).) The same
3 prohibition applies to the Citizens Redistricting Commission when considering
4 redistricting for federal and state elections (Cal. Const., art. XXI, § 2, subd. (e)), and to
5 hybrid and independent redistricting commissions in local jurisdictions. (§ 23003, subd.
6 (k).)

7 The parties have not identified any California cases interpreting these statutory
8 provisions prohibiting discrimination against a political party. In this case of first
9 impression, the Court turns to the rules of statutory construction to interpret the language
10 of the statute. First, construing section 21500 as a whole (*Wilmot v. Contra Costa*
11 *County Employees’ Retirement Assn.* (2021) 60 Cal.App.5th 631, 651), the statute sets
12 forth four categories of requirements that govern the redistricting decision: population
13 equality (subdivision (a)); compliance with constitutional and statutory law (subdivision
14 (b)); ranked criteria to use when creating district boundaries (subdivision (c)); and the
15 prohibition on adopting a map for the purpose of favoring or discriminating against a
16 political party (subdivision (d)). All four restrictions are at issue when the Board
17 conducts its redistricting analysis.

18 The Court also considers the “plain meaning” of the language in the statute.
19 (*Smart Corner Owners Assn. v. CJUF Smart Corner LLC* (2021) 64 Cal.App.5th 439,
20 460.) Subdivision (d) prohibits the Board from adopting district boundaries “for the
21 purpose of favoring or discriminating against a political party.” Assigning the plain
22 meaning to the term “for the purpose of” leads to the conclusion that the Board cannot
23 adopt district boundaries to achieve or accomplish a particular result, or as suggested by
24 the County’s definition of “purpose,” to achieve “an ultimate end, goal, or objective.”
25 (Opposition, p. 13, l. 12.)⁶ In other words, the Board cannot adopt a district map to
26 achieve the goal of favoring or discriminating against a political party.

27
28 ⁶ The County’s requests for judicial notice are granted. (Evid. Code, § 451(e); *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 171.)

1 It is possible that in conducting the redistricting process, a county's board of
2 supervisors may not be presented with evidence that a particular boundary map
3 discriminates against a political party. In such a case, subdivision (d) does not require
4 that it undertake an independent analysis to determine if a proffered map discriminates.
5 However, once it is presented with evidence of the possibility of a discriminatory
6 impact, the board must receive the evidence and evaluate its weight, reliability, and
7 relevance in order to determine whether the map under consideration invokes the
8 prohibition set forth in subdivision (d). (See, e.g., *Hartung v. Bradbury* (2001) 332 Or.
9 570, 587 [holding that the court may void a reapportionment plan if the redistricting
10 authority "did not consider one or more criteria"].)⁷

11 The County argues that Petitioners are asking the Board to prioritize the
12 requirement of subdivision (d) over subdivision (c). The Court does not view the matter
13 as a question of prioritizing the requirements. Rather, the question is whether the Board
14 must consider evidence that is presented in support of any of the four requirements. As
15 outlined above, section 21500 sets forth four categories of requirements in connection
16 with the adoption of supervisorial districts. If, for example, the Board was presented
17 with evidence that the proposed supervisorial districts violated the federal or state
18 constitution as prohibited by subdivision (b) of section 21500, it could not decline to
19 review and consider the evidence. The purpose of the public hearings is to engage in an
20 open discussion of the issues and to provide transparency. (Petitioners' RJN, Exs. 1, 2;⁸
21 see also Gov. Code, § 54950 [setting forth the purpose of the Ralph M. Brown Act].)

22
23
24 ⁷ In *Hartung*, the Oregon Supreme Court reviewed a statute providing that "[n]o district
25 shall be drawn for the purpose of favoring any political party, incumbent legislator or
other person." (*Hartung v. Bradbury*, *supra*, 332 Or. at pp. 585-586.)

26 ⁸ Petitioners' initial requests for judicial notice are granted. (See *Save Lafayette Trees*
27 *v. East Bay Regional Park District* (2021) 66 Cal.App.5th 21, 29, fn. 2.) Petitioners'
28 second and third requests for judicial notice are denied. (*Mangini v. R.J. Reynolds*
Tobacco Co. (1994) 7 Cal.4th 1057, 1063 [only relevant material may be judicially
noticed], overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257,

1 In noting that it had received public comments concerning political
2 demographics and the effect of the Adopted Map on political parties, but affirming that
3 it did not “consider such data in its decision,” the Board failed to comply with the
4 procedure required by law. (See *Common Cause v. Board of Supervisors*, *supra*, 49
5 Cal.3d at p. 442 [mandamus will lie to compel public officials to exercise their
6 discretion if they are required by law to do so]; see also *Griswold*, *supra*, 32 Cal.App.3d
7 at p. 66 [while the trial court should apply a presumption that “the legislative body
8 performed its duty and ascertained the existence of any facts upon which its right to act
9 depended,” a court may conclude the enactment is invalid when it is “entirely lacking in
10 evidentiary support”].)

11 At this juncture, the Court does not presume to dictate how the Board should
12 evaluate any proffered evidence of discriminatory purpose. It is important to note that
13 subdivision (d) does not prohibit the Board from considering partisan interests in
14 creating the district boundaries. Rather, it prohibits the adoption of boundaries in order
15 to favor or discriminate against a political party. At the hearing on Petitioners’ motion,
16 the County conceded that the Board may consider evidence of a partisan effect. The
17 issue left unresolved is the degree to which any such evidence may violate subdivision
18 (d). Petitioners’ counsel argued that a “slight” or “incidental” impact on a political party
19 would not violate subdivision (d), which is consistent with the limited case law on this
20 issue.

21 The case law indicates that an improper discriminatory purpose may be shown
22 by both direct and circumstantial evidence. (See *Vandermost v. Bowen* (2012) 53
23 Cal.4th 421, 477 (*Vandermost*) [noting that a prior redistricting map had been “widely
24 perceived” as designed to protect incumbent legislators]; *League of Women Voters of*
25 *Ohio*, *supra*, 2022 WL 110261, at *24 [“direct or circumstantial evidence may establish

26
27 1276.) Based on this ruling, the Court has not considered the second declaration of Paul
28 Mitchell.

1 that a districting plan was drawn primarily to favor one political party over another.
2 [Citations.]”;⁹ *League of Women Voters of Florida v. Detzner* (2015) 172 So.3d 363,
3 375-376 [in determining whether a districting plan is drawn with the intent to favor or
4 disfavor a political party “the focus of the analysis must be on both direct and
5 circumstantial evidence of intent.” [Citation.]”]; see also *Hartung v. Bradbury, supra*,
6 332 Or. at p. 599 [a court may infer from the record that an agency acted with the
7 purpose of favoring one political party over another, but “the mere fact that a particular
8 reapportionment may result in a shift in political control of some legislative districts ...
9 falls short of demonstrating such a purpose”].) Indeed, as previously discussed, two
10 courts that have considered the issue have found the evidence presented did meet the
11 standard of favoring or discriminating against a political party. (*League of Women*
12 *Voters of Ohio, supra*, 2022 WL 110261; *League of Women Voters of Pennsylvania,*
13 *supra*, 645 Pa. 1.)

14 Petitioners would have the Court consider the evidence that they attempted to
15 present to the Board to determine whether the Board adopted boundaries for the purpose
16 of favoring or discriminating against a political party. Principles of comity, separation
17 of powers, and judicial restraint dictate that the Court must leave that determination to
18 the Board in the first instance. (See *Vandermost, supra*, 53 Cal.4th at p. 486 (J. Liu,
19 concurring) [“[j]udicial restraint is especially important in the context of legislative
20 redistricting”]; *Griswold, supra*, 32 Cal.App.3d at pp. 65-66 [“[i]n passing upon the
21 validity of a legislative enactment, courts ‘exercise an extraordinary power over a
22 coordinate branch of government and perform a correspondingly narrow function’ ”].)

23 Based on the evidence presented, the Court concludes that Petitioners have
24 established a reasonable probability of prevailing on their claim under subdivision (d).

25
26
27 ⁹ The Ohio Supreme Court reviewed art. XI, § 6(B) of the Ohio Constitution, which
28 provides that “[n]o general assembly district plan shall be drawn primarily to favor or
disfavor a political party.” (*League of Women Voters of Ohio, supra*, 2022 WL 110261,
at *2.)

1 **2. Section 21500, Subdivision (c): Compliance with Mandatory, Ranked**
2 **Criteria**

3 Subdivision (c) of section 21500 sets forth the following mandatory, ranked
4 criteria by which the supervisorial districts are to be drawn: (1) geographic contiguity;
5 (2) maintaining geographic integrity of any local neighborhoods or local community of
6 interest; (3) maintaining geographic integrity of a city or census designated place to
7 minimize its division; (4) easily identifiable boundaries (considering natural and
8 artificial barriers); and (5) where it does not conflict with the prior criteria, encouraging
9 geographical compactness.

10 Petitioners argue that the Board failed to follow the ranked criteria set forth in
11 subdivision (c) when it prioritized the geographical unity of the City of San Luis Obispo
12 over local communities of interest. (Motion, p. 15.) The communities of interest to
13 which Petitioners refer are the north coast communities of Cambria, Cayucos, Morro
14 Bay, and Los Osos, which the Adopted Map separates into three separate districts, and
15 the community of Oceano, which the Adopted Map moves from District 4 into District
16 5. (Eriksson Dec., Ex. A, p. 14.)¹⁰

17 Section 21500's definition of "community of interest" is limited, stating only that
18 it "is a population that shares common social or economic interests that should be
19 included within a single supervisorial district for purposes of its effective and fair
20

21 ¹⁰ Prior to the October 26, 2021, Board meeting, the County's consultant identified the
22 public comment themes received before the submission of proposed maps as: "(1)
23 [k]eep the town of Oceano in the same district as Arroyo Grande and Nipomo as a
24 [community of interest] / maintain District 4 as it is; (2) [k]eep Cal Poly [community of
25 interest] within one district / [k]eep Cal Poly and City of San Luis Obispo out of 'North
26 County' [community of interest]; (3) [k]eep the 'north coast' towns [community of
27 interest] within one district; (4) [k]eep the City of San Luis Obispo in multiple districts."
28 (Folk Dec., Ex. J, p. 127 & Ex. L, p. 188 [consultant's reports summarizing public
comments].) Following the presentation of proposed maps, the consultant identified the
"top theme" as "(1) [l]eave Districts substantially the same ... [e]mphasis on north
coastal cities / towns [as communities of interest]." (Folk Dec., Ex. L, p. 191.) "Other
themes" included "[c]onflicting comment to keep City of SLO / Cal Poly in one district
v. [m]aintaining City of SLO in multiple districts." (*Ibid.*)

1 representation. Communities of interest do not include relationships with political
2 parties, incumbents, or political candidates.” (§ 21500, subd. (c)(2).)

3 Article XXI, section 2, subdivision (d)(4) of the California Constitution includes
4 similar language, stating that “[a] community of interest is a contiguous population
5 which shares common social and economic interests that should be included within a
6 single district for purposes of its effective and fair representation. Examples of such
7 shared interests are those common to an urban area, a rural area, an industrial area, or an
8 agricultural area, and those common to areas in which the people share similar living
9 standards, use the same transportation facilities, have similar work opportunities, or have
10 access to the same media of communication relevant to the election process.
11 Communities of interest do not include relationships with political parties, incumbents,
12 or political candidates.”

13 The County responds that an “urban area” such as the City of San Luis Obispo
14 qualifies as a community of interest, citing *Griffin, supra*, 60 Cal.2d 751. In *Griffin*, the
15 California Supreme Court addressed former Government Code section 25001.¹¹ It held
16 that the Monterey County Board of Supervisors was justifying in deviating from the
17 requirement of population equality between districts when it took matters such as
18 “topography, geography, cohesiveness, and community of interests” into consideration.
19 (*Id.* at p. 755.) One of those considerations was “evidence that the City of Monterey
20 does not want to be divided and that the Monterey Peninsula has a community of interest
21 and desires to be continued as a single entity.” (*Id.* at p. 754.)

22 Here, the County points to significant public comment in support of keeping the
23 City of San Luis Obispo within the same district as the California Polytechnic State
24

25 ¹¹ Former Government Code section 25001 provided: “By a two-thirds vote of the
26 members, the board may change the boundaries of any or all of the supervisorial districts
27 of a county. The districts shall be as nearly equal in population as may be, except that in
28 establishing the boundaries of the districts the board may give consideration to the
following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity,
and compactness of territory, and (d) community of interests of the districts.” (*Griffin*,
supra, 60 Cal.2d at p. 752, fn. 1.)

1 University San Luis Obispo ("Cal Poly"). (Opposition, p. 11, fn. 6, citing Ramirez Dec.
2 Exs. C & D [transcriptions of comments presented at the November 30, 2021, and
3 December 7, 2021, Board meetings].) In determining that the City of San Luis Obispo
4 constituted a community of interest, the Board noted the city's urban setting and its "role
5 as host to" Cal Poly gives the city "a distinct identity." (Eriksson Dec., Ex. C, p. 2.)
6 The Board found that the Adopted Map "better align[s] with this important community
7 of interest." (*Ibid.*)

8 Petitioners respond that section 21500, subdivision (c) "expressly ranks the
9 criteria in order of priority, stating explicitly that a lower-ranked criterion is to be
10 followed only when doing so does not conflict with a higher-ranked criterion or
11 criteria." (*Vandermost, supra*, 53 Cal.4th at p. 448 [addressing Cal. Const., art. XXI, §
12 2, subd. (d)]). Petitioners argue that the Board's approach would render the distinction
13 between subdivision (c)(2)'s criterion of "communities of interest" and subdivision
14 (c)(3)'s criterion of "geographical integrity of a city" irrelevant.

15 The Court disagrees. Both subdivisions (c)(2) and (c)(3) use the phrase
16 "geographic integrity." While the former focuses on neighborhoods and communities of
17 interest, the latter specifically concerns cities. Both criteria include geography as a
18 relevant consideration. Nothing in the language of section 21500, subdivision (c)
19 prohibits a city from constituting a "community of interest."

20 The Court is not persuaded that the Board misapplied the legal requirements of
21 subdivision (c). Moreover, the Board received ample evidence addressing the criteria in
22 subdivision (c), and nothing in the record suggests that it acted arbitrarily or capriciously
23 in weighing the evidence and arriving at its conclusions concerning these criteria. (See
24 *Griffin, supra*, 32 Cal.App.3d at pp. 66-67 [concluding the San Diego County Board of
25 Supervisors did not act arbitrarily or capriciously in evaluating the redistricting criteria
26 set forth in former Government Code section 25001].)

27 The Court concludes that Petitioners have not shown a probability of success on
28 the merits with respect to the alleged violation of subdivision (c).

1 **B. Relative Balance of the Harms**

2 In balancing the relative harm to the parties, the Court must weigh the interim
3 harm to the Petitioners if a preliminary injunction is denied against the interim harm to
4 the County if the injunction is granted. (*Cohen v. Board of Supervisors* (1985) 40
5 Cal.3d 277, 287 (*Cohen*)). In doing so, the respective equities of the parties must be
6 balanced to determine whether, pending a trial on the merits, the County should be
7 enjoined from taking any further action to implement the Adopted Map. (*Ibid.*) As
8 discussed, *ante*, in order to obtain an order enjoining the County in the performance of
9 its duties, Petitioners “must make a significant showing of irreparable injury.” (*Tahoe*
10 *Keys, supra*, 23 Cal.App.4th at p. 1471; accord *Midway Venture LLC v. County of San*
11 *Diego* (2021) 60 Cal.App.5th 58, 77.)

12 Petitioners assert that they as individuals, along with other County voters, will
13 lose their right to vote in 2022 due to the new district boundaries that the Adopted Map
14 creates. Whereas these voters had a right to vote in 2022 pursuant to the district
15 boundaries in effect under the 2011 Map, the Adopted Map places them in districts that
16 will not vote for a new supervisor until 2024. Petitioners further assert that other voters
17 will experience a dilution of their vote as a result of being separated from their historic
18 communities of interest and reassigned to a district where their votes will have
19 diminished effect.

20 In support of this argument, Petitioners cite to evidence that the Adopted Map’s
21 new district boundaries would affect the voting rights of nearly 100,000 County
22 residents. (Tarpey Dec., ¶ 6; Tarpey Second Supp. Dec., Ex. B, p. 124:4-10.)¹² They
23

24 ¹² The County’s objections to the Second Supplemental Declaration of Lauren Tarpey
25 are overruled. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1307-
26 1308 [the trial court has the discretion to accept new evidence with the reply papers].)
27 Furthermore, the exhibits attached to the declaration are derived from the County’s
28 public records and concern matters that were presented to the Board for its
consideration. Any irregularities in the content of the exhibits are immaterial to the
issues presented in this motion and will be cured by the preparation of the administrative
record.

1 also cite to the competitive nature of the race for the District 4 supervisor in the 2018
2 election and the potential effect on the election for that seat in 2022 due to the adoption
3 of the new district boundaries.

4 It appears beyond dispute that certain voters will be harmed by the Adopted
5 Map, in that they will not be eligible to vote for a county supervisor in the 2022 election.
6 (See *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 799 ["[t]he right to vote
7 is fundamental"].) That, however, does not mean that their right to vote has been
8 abrogated. In assessing the harm to the Petitioners, the Court is mindful that the
9 Petitioners' right to vote may be delayed, but it will not be eliminated. (See *O'Connell*,
10 *supra*, 141 Cal.App.4th at p. 1468 [the trial court should have weighed the evidence that
11 the harm to the plaintiffs would result in delay in their receipt of a high school diploma,
12 rather than a permanent denial of a diploma].) Accordingly, Petitioners do not establish
13 a significant showing of irreparable injury.

14 The holding in *Jauregui v. City of Palmdale*, *supra*, 226 Cal.App.4th 781, is
15 inapposite. *Jauregui* concerned the dilution of the voting rights of protected classes of
16 minority voters. (*Id.* at pp. 788-789, 793, 800-801.) The court's order for injunctive
17 relief was premised on a statute that specifically addressed remedies for violation of the
18 voting rights of protected classes. (*Id.* at pp. 805-808.) There are no protected class
19 interests at issue in the present case. (See *Griswold*, *supra*, 32 Cal.App.3d at pp. 65-66
20 ["[n]o court has yet held the Equal Protection Clause inhibits redistricting which merely
21 postpones the right to vote"].)

22 The Court next considers the relative harm to the County. Petitioners seek an
23 order enjoining the County from using the Adopted Map for purposes of the 2022
24 election, and requiring it to use either the 2011 Map or an alternative map. Such an
25 order would direct the Board to set aside a map adopted after numerous public hearings
26 and the receipt of voluminous materials, in favor of a map designating district
27 boundaries based on the Court's interim assessment of the map that best represents
28 consideration of all the factors set forth in section 21500. The propriety of such an order

1 at this stage of the proceedings would tread heavily on the Board's lawful duty to carry
2 out a core legislative function. (See *O'Connell, supra*, 141 Cal.App.4th at 1464 ["we
3 must also bear in mind the extent to which separation of powers principles may affect
4 the propriety of injunctive relief against state officials. In that context, our Supreme
5 Court has emphasized that 'principles of comity and separation of powers place
6 significant restraints on courts' authority to order or ratify acts normally committed to
7 the discretion of other branches or officials. [Citations.] In particular, the separation of
8 powers doctrine (Cal. Const., art. III, § 3) obligates the judiciary to respect the separate
9 constitutional roles of the Executive and the Legislature.' (*Butt, supra*, 4 Cal.4th at p.
10 695)"].)

11 It is not enough, as Petitioners suggest, to find that the 2011 Map presents an
12 appropriate remedy based on the fact that it passed muster on appellate review in *Pelfrey*
13 *v. San Luis Obispo County, supra*, Case No. B241420. The 2011 Map was adopted
14 when consideration of the factors set forth in the current version of section 21500,
15 subdivision (c) were discretionary, rather than mandatory. Furthermore, the previous
16 factors were not set forth with the degree of specificity that is present in the current
17 version of the statute; nor did the statute delineate a specific order of prioritized
18 criteria.¹³ Thus, the *Pelfrey* court did not have occasion to view the 2011 map through
19 the lens to be applied today. Reliance on the 2011 Map would create the "substantial
20 problem" addressed by our Supreme Court in *Vandermost*, when it rejected a proposal to
21 use a district map that was adopted prior to the enactment of the constitutional provision
22
23

24 ¹³ In 2011, section 21500 provided as follows: "Following each decennial federal
25 census, and using that census as a basis, the board shall adjust the boundaries of any or
26 all of the supervisorial districts of the county so that the districts shall be as nearly equal
27 in population as may be and shall comply with the applicable provisions of Section 1973
28 of Title 42 of the United States Code, as amended. In establishing the boundaries of the
districts the board may give consideration to the following factors: (a) topography, (b)
geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d)
community of interests of the districts."

1 mandating application of ranked criteria. (*Vandermost, supra*, 53 Cal.4th at pp. 476-
2 477.)

3 Nor can the 2011 Map be said to represent the status quo. (See *Daly v. San*
4 *Bernardino County Board of Supervisors* (2021) 11 Cal.5th 1030, 1045-1046 (*Daly*)
5 [discussing the baseline for measuring the “status quo,” which, depending on the
6 circumstances, can be either the existing conditions at the time the order is entered, or
7 the “last actual peaceable, uncontested status which preceded the pending
8 controversy”].) The 2011 Map is not the existing map at the present time. Nor does it
9 represent the “uncontested status” that preceded the current controversy, as it did not
10 take into account the current mandatory factors that apply to redistricting decisions
11 today. In the Court’s view, the “status quo” is represented by the adoption of
12 Resolution No. 2021-311 and Ordinance No. 3467, the last presumptively lawful action
13 by the Board. (See *Daly, supra*, 11 Cal.5th at pp. 1050-1051; *Griswold, supra*, 32
14 Cal.App.3d at p. 66.)

15 Furthermore, the Court must consider the potential harm to the public interest if a
16 preliminary injunction is granted. (*Tahoe Keys, supra*, 23 Cal.App.4th at pp. 1472-
17 1473; see also *O’Connell, supra*, 141 Cal.App.4th at p. 1471 [the trial court failed to
18 take into account the public interest in enforcing a high school diploma requirement that
19 was an integral part of the statutory scheme adopted by the Legislature].) The County
20 contends that any alteration of the supervisorial districts so close in time to the start of
21 the electoral process would create confusion among the electorate and impose undue
22 burdens on the Clerk Recorder. It is apparent that significant disruption would occur if
23 the Court were to order the County to use a different map due to the impending
24 deadlines faced by the Clerk Recorder for the June 2022 primary election. (See
25 *Legislature v. Reinecke* (1972) 6 Cal.3d 595, 601 (*Reinecke*) [acknowledging the
26 “extremely urgent” need to settle district boundaries so that election officials would
27 know the district boundaries for an upcoming election].) Allowing the election to move
28 forward based on the Adopted Map, even though the County’s decision is placed at issue

1 in this matter, is the option that is the “least disruptive of the electoral process” in view
2 of the time constraints and lack of realistic alternative options for adoption of a map that
3 complies with section 21500. (*Vandermost, supra*, 53 Cal.4th at p. 471, quoting
4 *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 655–656.)¹⁴

5 Given the Court’s preliminary conclusion that the Board did not comply with
6 subdivision (d), the decision to allow the election to proceed on the basis of the Adopted
7 Map is an imperfect outcome. Nonetheless, due to the impending time constraints, the
8 Court concludes that this option is “the least undesirable.” (*Reinecke, supra*, 6 Cal.3d at
9 pp. 598, 602 [concluding there was no practical alternative available but to order into
10 effect readily available apportionment plans for an impending election].)

11 Finally, the Court is mindful that “ ‘[a] preliminary injunction is a provisional
12 remedy,’ issued prior to a full trial on the merits, and thus does not amount to a final
13 determination on the merits [Citation.]” (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1466;
14 see *Cohen, supra*, 40 Cal.3d at p. 286.) While this Court has determined that Petitioners
15 have shown a probability of success on the merits, that preliminary assessment does not
16 amount to an ultimate determination of the matter. “[A] principal objective of a
17 preliminary injunction ‘is to minimize the harm which an erroneous interim decision
18 may cause’ and thus a court faced with the question whether to grant a preliminary
19 injunction cannot ignore the possibility that its initial assessment of the merits, prior to a
20 full adjudication, may turn out to be in error. [Citation.]” (*White, supra*, 30 Cal.4th at p.
21 561.) Thus, this Court’s approach is guided by “our Supreme Court’s directive in *Butt*
22 that equitable relief against other branches of government must be restrained by
23 ‘principles of comity and separation of powers,’ and that ‘[a] court should always strive
24 for the least disruptive remedy adequate to its legitimate task.’ ” (*O’Connell, supra*, 141
25 Cal.App.4th at p. 1476, quoting *Butt, supra*, 4 Cal.4th at pp. 695, 696.)

26
27 ¹⁴ While it does not factor into the Court’s decision, it appears that if the Court were to
28 grant a preliminary injunction, there is a possibility it would engender further confusion
and disruption in the event the County appealed the order, requiring an automatic stay of
the preliminary injunction. (See *Daly, supra*, 11 Cal.5th at p. 1050.)

1 In this case, if the County is provisionally restrained but ultimately prevails on
2 the merits, the Court will have prevented the 2022 election from proceeding on a map
3 that it subsequently determines was duly adopted. Such an outcome would be
4 detrimental to the democratic process and contrary to the principles of judicial restraint
5 articulated by the case law.

6 Petitioners argue that sections 21500.1 and 21509 envision "that courts play a
7 role in ensuring that counties adopt supervisorial maps that comply with the Act's
8 requirements." (Reply, p. 2, ll. 24-26.) As a general matter, this concept is not in
9 dispute. However, section 21509 does not apply because it provides for a judicial
10 remedy should the Board fail to timely adopt supervisorial districts. Section 21500.1,
11 subdivision (b) merely states that the Fair Maps Act "shall not be interpreted to limit the
12 discretionary remedial authority of any federal or state court." The Court agrees it
13 retains discretionary remedial authority, but has determined that it is not proper to
14 exercise its authority at this time.

15 On balance, although Petitioner and others will be harmed by the inability to vote
16 in the 2022 supervisorial election, that harm is not irreparable, and there is a greater risk
17 of harm to the County if preliminary relief is granted.

18 IV. CONCLUSION

19 While the Court is persuaded of the potential merit of Petitioners' claim
20 concerning section 21500, subdivision (d), this interim conclusion calls into question
21 only the correctness of the procedure followed by the Board in its deliberations. It does
22 not lead to the ineluctable conclusion that the Board's decision to adopt the Adopted
23 Map was erroneous. Accordingly, the Petitioners' likelihood of success on the merits is
24 outweighed by the substantial risk of harm to the County and the public if the County is
25 enjoined from relying on the Adopted Map in the upcoming election.

26 The import of the Court's ruling is as follows. The 2022 election of the District
27 2 and District 4 County Supervisors may proceed on the basis of the district boundaries
28 set forth in the Adopted Map. The Court will conduct further proceedings in this matter

1 once an administrative record has been prepared and further briefing is submitted. In the
2 event the Court reaches a final determination that requires the Board to conduct a further
3 assessment of the evidence relevant to subdivision (d) of section 21500, the parties will
4 be permitted to propose remedies to redress any injury that is established by the record.

5 **ORDER**

6 Petitioners' motion for the issuance of a preliminary injunction is DENIED.

7
8 DATED: February 9, 2022

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10 _____
11 Hon. RITA FEDERMAN
12 Judge of the Superior Court
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**STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
CERTIFICATE OF MAILING**

SLO County Citizens for Good Government, Inc. vs. County of San Luis Obispo	22CVP-0007
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I, Frances O'Donnell, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **02/09/2022** I e-mailed a copy of the attached **Ruling on Motion for Preliminary Injunction**. The foregoing document was addressed to each of the above parties.

☒ Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 2/9/2022

Michael Powell, Clerk of the Court

By: /s/ Frances O'Donnell, Deputy Clerk
Frances O'Donnell