

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO, ET AL.,
Plaintiffs,

v.

MAGGIE TOULOUSE OLIVER, ET AL.,
Defendants.

No. D-506-CV-202200041

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER came before the Court on the 18th day of April, 2022 on the Plaintiffs' Motion for Preliminary Injunction filed February 3, 2022. The Court has reviewed the briefing, arguments of counsel, and evidence elicited at the hearing, and being sufficiently advised, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In April 2021, the State Legislature adopted the Redistricting Act of 2021 ("Redistricting Act"), NMSA 1978, § 1-3A-1 to -9 (2021), which created the New Mexico Citizen Redistricting Committee ("Committee").
2. The Committee's purpose is to adopt district plans for New Mexico's congressional districts, along with other districts, and submit those plans to the State Legislature. *See* § 1-3A-5.
3. The Committee is designed to be bipartisan, *see* § 1-3A-3, and not have as members anyone who may have a political interest in the outcome of the redistricting process, *see* § 1-3A-4.
4. Section 1-3A-7 requires the Committee to develop redistricting plans in accordance with

several standards.

5. Section 1-3A-7 also prohibits the Committee from relying upon or referencing partisan data, such as voting history or party registration data, with an exception based on compliance with federal law.
6. The redistricting plans adopted by the Committee and submitted to the State Legislature are to be treated in the same manner as legislation recommended by interim legislative committees. *See* § 1-3A-9(B).
7. The Committee submitted its congressional redistricting plans to the State Legislature on November 2, 2021.
8. The Committee submitted three plans:
 - A. Concept A: a “status quo map” that largely maintained the existing districts drawn by the courts in 2012;
 - B. Concept E: a map that emphasized compactness by creating a single urban district centered on the greater-Albuquerque and maintaining the cores of Congressional Districts 2 and 3. This map is referred to in the pleadings as “Justice Chavez’ map”; and
 - C. Concept H: a map proposed by a group of community organizations, which split much of southeastern New Mexico with the purported goal of creating a solid Hispanic-majority district in Congressional District 2.

9. The State Legislature met in special session, and approved new congressional districts in Senate Bill 1, 2021 N.M. Laws, 2nd Spec. Sess., (N.M. 2021) (“Senate Bill 1”), which was signed into law by the Governor on December 17, 2021.
10. The State Legislature did not adopt any of the concepts submitted by the Committee, although the plan adopted in Senate Bill 1 was closest to Concept H.
11. Senate Bill 1 significantly redrew all three congressional districts, particularly in southeastern New Mexico, where the named person Plaintiff’s live, with Chaves County now divided among all three (3) districts, and the city of Roswell, in Chaves County, split into two (2) districts. The city of Hobbs, in Lea County, is now practically split in half between two (2) districts. In addition to Chaves and Lea Counties, Eddy and Otero Counties are also now split between two (2) districts, where they had been part of one (1) district before.
12. In addition to splitting several political boundaries (counties and cities), the Plaintiff’s allege Senate Bill 1 splits communities of interest, and that the redistricting was done with the intent and effect of weakening the elective strength of Republican voters in the affected counties and cities.
13. After adoption of Senate Bill 1, Plaintiffs filed a Verified Complaint for Violation of New Mexico Constitution Article II, Section 18 (“Complaint”) on January 21, 2022.
14. Plaintiffs filed a Motion for Preliminary Injunction (“Motion”) on February 3, 2022.
15. After a very slow process of multiple recusals and excusals of judges of the Fifth Judicial

District, on March 30, 2022, the Supreme Court of New Mexico issued an Order designating Hon. Fred T. Van Soelen to preside over this case “as all judges in the Fifth Judicial Court have recused themselves or are otherwise unavailable to preside over the case.”

16. Testimony at a hearing on April 18, 2022 from Mandy Vigil, State Elections Director in the Office of the New Mexico Secretary of State (“SOS”) was that a delay or alteration in the primary election calendar at that stage would cause serious disruptions for state and county election administrators, candidates, and voters, as April 23, 2022 was the last date that ballots could be mailed to Uniform Military and Overseas Voters, as mandated by federal law to be no later than forty-five (45) days before the primary election date of June 7, 2022.
17. Federal congressional candidate filing day occurred on February 1, 2022, and multiple candidates filed their declaration of intent and were qualified as candidates.
18. Federal congressional candidates obtained nominating petition signatures from qualified electors in the districts they seek to represent, which were based on the congressional districts in Senate Bill 1.
19. Ballots had already been designed and proofed, programing the ballots into the voting machines, and conducting logic and accuracy testing to ensure no errors, and the ballot machines were locked.
20. Reprogramming districts, changing ballots, reassigning voters and reprogramming voting machines would take longer than the time left before ballots needed to be mailed to military

and overseas voters pursuant to federal law.

21. Annie Hogland, Curry County Clerk, testified that her office could turn around ballot changes if required under a new congressional district map in “four to five days”.
22. Curry County’s congressional district in Senate Bill 1 and in Concept E is the same, and would not change if a new districting map was imposed by the Court.
23. Plaintiffs request the Court find that Senate Bill 1 violates New Mexico’s Equal Protection Clause, and to block implementation of Senate Bill 1, and instead adopt Concept E approved by the Committee, until a new congressional districting map is passed by the State Legislature.

CONCLUSIONS OF LAW

1. To obtain a preliminary injunction, a movant must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted, (2) the threatened injury outweighs any damage the injunction might cause the defendant, (3) issuance of the injunction will not be adverse to the public’s interest, and (4) there is a substantial likelihood of success on the merits. *LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314. “The [second] and [third] factors ‘merge’ when, like here, the government is the opposing party.” *Aposhian v. Barr*, 958 F.3d 969, 978 (10th Cir. 2020).
2. Plaintiffs have shown that if the Court finds Senate Bill 1 to be in violation of New Mexico’s Equal Protection Clause, they have suffered the requisite injury. *Elrod v. Burns*, 427 U.S.

347, 374 (1976) (the loss of constitutional rights “unquestionably constitutes irreparable injury”).

3. However, Plaintiffs request does not preserve the status quo, which would be an old congressional districting plan that no longer comports with federal legal requirements, but requests one (1) specific new plan from the Committee, even though there are two (2) Committee plans that would generally do what Plaintiff’s requests regarding the communities of interest, political boundaries, etc.. It is not clear that the Court has the authority to adopt a new map that has not been passed by the Legislature and signed into law by the Governor, as courts usually don’t get into the business of drawing districting maps unless the Legislature and Governor cannot work together as outlined in the New Mexico Constitution. *See Maestas v. Hall*, 2012-NMSC-006, 274 P.3d 66 (discussing litigation following the Legislature’s failure to enact new maps over the Governor’s veto). It’s possible that even if the Court were to find Senate Bill 1 to be in violation of the Equal Protection Clause, the remedy is to return the process to the State Legislature and the Governor, not to adopt a Committee map or otherwise draw its own map.
4. Where the movant also seeks a disfavored preliminary injunction – (1) injunctions that alter the status quo, (2) mandatory injunctions that compel, rather than prohibit, activity on the enjoined party’s part, or (3) injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits – the movant must not only demonstrate

that the four factors “weigh heavily and compelling” in movant’s favor but also must make a strong showing that the balance of harms tips in the movant’s favor and the preliminary injunction is not adverse to the public interest. *Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 20.

5. Where an impending election is imminent and a State’s election machinery is already in progress, equitable considerations may justify denial of immediately effective relief because a court hearing redistricting or apportionment challenges should consider the proximity, mechanics, and complexities of impending elections. *Reynolds v. Sims*, 377 U.S. 533, 585, 84 S.Ct. 1362, 1393–94 (1964).
6. Judicial intervention late in the electoral process risks practical concerns including disruption, confusion, or other unforeseen deleterious effects. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5, 127 S. Ct. 5, 7 (2006).
7. “State and local election officials need substantial time to plan for elections. Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (U.S. Feb. 7, 2022).
8. The effect of an injunction at this late stage of the election process would bring a level of chaos and confusion for the Secretary of State, county clerks across the state, and importantly, for candidates, and for the voters themselves.

9. Plaintiffs have not demonstrated a strong likelihood of success on the merits of their complaint. While well-pleaded, and while making a strong case that the State Legislature and Governor engaged in political gerrymandering in adopting Senate Bill 1, and that the new districts violate traditional redistricting principles found in case law and in the Redistricting Act standards, whether this amounts to a violation of New Mexico's Equal Protection Clause is not clear, and doesn't meet the test of likelihood of success necessary for an injunction needs to be granted.

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Preliminary Injunction is DENIED.


HON. FRED VAN SOELEN
DISTRICT JUDGE, DIVISION III