JEFFREY V. DUNN, Bar No. 131926
jeffrey.dunn@bbklaw.com
DANIEL L. RICHARDS, Bar No. 315552
daniel.richards@bbklaw.com
BEST BEST & KRIEGER LLP
18101 Von Karman Avenue
Suite 1000
Irvine, California 92612
Telephone: (949) 263-2600
Facsimile: (949) 260-0972

Attorneys for Defendants
County of San Luis Obispo and Board of Supervisors of San Luis Obispo County

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO - PASO ROBLES BRANCH

SLO COUNTY CITIZENS FOR GOOD GOVERNMENT, INC.; PATRICIA GOMEZ; DON MARUSKA; 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
Judge: Hon. Rita Federman

DEFENDANTS COUNTY OF SAN LUIS OBISPO AND BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY'S OPPOSITION TO PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION

[Filed Concurrently with:
1. Declaration of Kristin Eriksson
2. Declaration of Paul Mitchell;
3. Declaration of Annette Ramirez;
4. Declaration of Daniel Richards;
5. Objections to Evidence;
6. Request for Judicial Notice; and
7. [Proposed] Order]

Date: February 10, 2022
Time: 8:30 a.m.
Dept: 2
Action Filed: January 12, 2022

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18101 VON KARMAN AVENUE, SUITE 1000
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I. INTRODUCTION

Following the decennial census, each California county undertakes the quintessential legislative prerogative of drawing voting districts, a legislative function which the United States Supreme Court has identified as "primarily a matter for legislative consideration and determination [because a] legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality." (*Reynolds v. Sims* (1964) 377 U.S. 533, 586.) Redistricting in California involves weighing community input on policy and fact-laden considerations such as "communities of interest," and overlaying those determinations on hard data relating to voting population and minority voter composition. It is an exercise of legislative discretion.

The gravamen of Petitioners' motion is that, instead of doing this, the elected representatives of the County of San Luis Obispo acted with the illicit and hidden purpose of violating California law by supplanting these determinations with prohibited partisan ones. Such an extraordinary charge requires extraordinary evidence, and Petitioners failed to meet that high burden. The record is replete with evidence that the Board of Supervisors considered and applied each of the mandatory criterion in Elections Code section 21500(c), and did not adopt the challenged map for "*for the purpose of* favoring or discriminating against a political party." (*Id.* at § 21500(d) [emphasis added].) Petitioners fail to show any probability of success on the merits or that the balance of harms weigh in their favor, and the motion should be denied.

II. FACTUAL BACKGROUND

Elections Code section 21500 *et seq*. requires that "[f]ollowing each federal decennial census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the supervisorial districts shall be substantially equal in population as required by the United States Constitution."[1] Each county board of supervisors must amend supervisorial districts no later than December 15, 2021.

Pursuant to the "FAIR MAPS Act,[2] the elections code now requires boards to adopt

[1] All further references to sections are to the Elections Code, unless otherwise specified.
[2] Fair And Inclusive Redistricting for Municipalities And Political Subdivision Act.

supervisor district boundaries that are substantially equal in population, follow the federal voting rights act, and then use a set of ranked criteria: (1) geographical contiguousness; (2) maintaining the geographic integrity of neighborhoods and communities of interest; (3) maintaining the geographic integrity of cities and census designated places; (4) creating easily understandable boundaries; and (5) encouraging geographic compactness. (Elec. Code § 21500(c).) Further, boards "shall not adopt supervisorial district boundaries *for the purpose of* favoring or discriminating against a political party." (*Id.* at § 21500(d) [emphasis added].)

More than a year ago, and despite census data being delayed due to COVID-10, San Luis Obispo County began the long and complicated redistricting process. (Declaration of Kristin Eriksson ["Eriksson Decl."] at ¶¶ 3–7; Declaration of Annette Ramirez ["Ramirez Decl."] at ¶¶ 2–8.) As an initial step, the non-partisan[3] Board of Supervisors (the "Board") adopted a comprehensive plan to involve the public in this redistricting process. This effort involved a dedicated webpage for redistricting with an overview of the process together with an explanation of the redistricting criteria. (Eriksson Decl. at ¶ 3.) It also included an invitation to submit public comments on those criteria, in particular on what they perceived as communities of interest. (*Id.* at ¶¶ 3, 7.) The County also maintained a public archive of all comments provided to date, and a tool for the members of the public to draw their own map proposal. (*Ibid.*; Ramirez Decl. at ¶ 5–6 & Ex. B.) Written and oral comments were received in writing and at Board meetings nearly continuously from July 14, 2022 through December 14, 2022. (Ramirez Decl. at ¶ 5–6 & Ex. B.)

Additionally, the Board held public meetings on January 5, March 16, April 20, and June 22, 2021 to hear public testimony about the redistricting process and federal and state redistricting criteria, including the California Elections Code, the Voting Rights Act and the United States Constitution. (Ramirez Decl. at ¶¶ 4, 7 & Ex. A.) The Board also held formal, noticed public hearings on July 20, October 26, November 19, November 30, and December 14, 2021 to receive public testimony relating to redistricting criteria and to communities of interest and other Fair Map Act criteria, and directed staff and the County's demographic consultant to prepare draft

[3] Petitioners assume partisan affiliation of individual Supervisors. County Supervisor races are non-partisan, and partisan affiliation is not identified on ballots. (Cal. Const. art. 2, § 6.)

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district plans for consideration. (*Ibid.*)

The Board received presentations on several draft maps that had been prepared by County staff and reviewed by the County's demographic consultant for compliance with applicable laws and standards. (Ramirez Decl. at ¶ 8, Eriksson Decl. at ¶ 6; see also Eriksson Decl. Ex. A.) It also received and considered additional maps submitted by the public, including a map numbered "74786" and also referred to as the "Richard Patton Rev. 1 Map." (Eriksson Decl. at ¶ 6.)

The Board heard a substantial amount of testimony in support of this map and the communities it preserved,[4] and after deliberation, directed that this map be brought back for final consideration, with minor refinements. (See, e.g., Ramirez Decl. Ex. C at 303:7–363:25.)

In the publicity on mapping and in hearings, County staff or consultants reviewed and explained this Fair Map Act criteria. (Eriksson Decl. at ¶¶ 5–6.) Many citizens submitted testimony that they saw their community of interest as coinciding with their urban community. (See, e.g., Ramirez Decl. Ex. B.) On December 14, 2022, the Board fulfilled its statutory duty by adopting final maps (the "Adopted Map") for the County's supervisorial voting districts in Resolution No. 2021-311 and Ordinance No. 3467. (Eriksson Decl. Ex C.)

III. LEGAL ARGUMENT

A. Standard of Review

"A superior court must evaluate two interrelated factors when ruling on a request for a preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial, and (2) the interim harm that the plaintiff would be likely to sustain if the injunction were denied as compared to the harm the defendant would be likely to suffer if the preliminary injunction were issued." (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.)

When a preliminary injunction is sought against a public agency, the petitioner must make a "significant" showing of irreparable harm because "[t]here is a general rule against enjoining public officers or agencies from performing their duties." (*Tahoe Keys Prop. Owners' Assn. v.*

[4] See Ramirez Decl. Ex. B at pp. 1–411, Ex. C at 40:10–24; 44:3–19; 48:5–51:5; 55:21–64:17; 66:19–67:8; 82:3–87:8; 101:14–105:20; 108:13–109:3; 113:19–117:25; 121:5–122:11; 152:25–155:9; 160:11–25; 170:21–173:15; 182:3–184:23; 219:16–221:20; 224:16–226:7; 231:6–235:11; 242:4–25; 252:21–255:11; 258:9–260:10; 271:9–272:21; 276:12–277:18; 295:11–299:2, Ex. D at 10:5–32:22; 37:25–47:5; 49:22–54:13; 62:19–64:25.

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State Water Resources Control Bd. (1994) 23 Cal.App.4th 1459, 1471.) "[P]rinciples of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials" and "[a] court should always strive for the least disruptive remedy adequate to its legitimate task." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464.)

Whether a party seeking a preliminary injunction is likely to prevail on the merits necessarily turns on the underlying claim. Here, Petitioners seek a "writ of mandate under Code of Civil Procedure section 1085" (Mot. at 9:8–9) challenging the County legislature's enactment of Resolution No. 2021-311 and Ordinance No. 3467. A court's review of actions undertaken in a legislative capacity is limited to a determination whether the legislature's actions were arbitrary, capricious, or entirely lacking in evidentiary support or whether it failed to follow the procedure required by law. (Code Civ. Proc., § 1085; *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 35, fn. 2.) "Because reapportionment is so essentially a legislative function, certain basic considerations relating to the fundamental doctrine of the separation of powers between the judicial and the legislative branches of government regulate and limit courts in the exercise of their power to declare such enactments invalid." (*Griswold v. County of San Diego* (1973) 32 Cal.App.3d 56, 65–66.) "Among the limitations upon the court's power is the presumption the enactment is valid and that the legislative body performed its duty and ascertained the existence of any facts upon which its right to act depended." (*Id.* at p. 66.) A court "may not substitute [its] judgment for that of the legislative body merely because [it] doubt[s] the wisdom of the action taken" and "must sustain the legislative enactment if there is any reasonable basis for it." (*Ibid*; see also *Legislature v. Reinecke* (1972) 6 Cal.3d 595, 598 ["[R]eapportionment is primarily a matter for the legislative branch of the government to resolve."]; *Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 676 ["It is neither wise nor just to place the burden of reapportionment, a basically political responsibility, on the courts of a state. . . This court has repeatedly noted its reluctance to enter into the complex arena of legislative reapportionment."];

This deference is more appropriate still here, in that the legislature, recognizing the

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difficulties in actually implementing the criteria laid out in the Fair Maps Act as against highly varied and competing constituency interests and ideals, delegated to the County the legislative responsibility of weighing and applying five criteria "to the extent practicable." This included such fact and policy intensive determinations as hearing and weighing extensive public testimony as to what constitutes a "community of interest" in the public eye and legislatively determining how best to respect these communities of interest and other factors.

B. Petitioners do not Seek to Maintain the Status Quo

Contrary to Petitioners' argument, they do not seek to "preserve the status quo," they seek mandatory injunctive relief.[5] The status quo is that the County of San Luis Obispo passed Resolution No. 2021-311 and enacted Ordinance No. 3467 in the normal legislative course, and adopted the challenged map. If the enforcement of this resolution and ordinance were enjoined, this prohibitory injunction would not provide Petitioners the relief they seek, in that the 2011 Map would not "spring back" into effect. Recognizing this, Petitioners ask this Court to mandate that the County utilize one of two maps that Petitioners prefer: the "2011 Map" or "Map A." This does not require the County to merely refrain from taking some action or enforcing some law, it requires affirmative conduct that would change the relative positions of the parties.

"[T]he general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties . . . . The substance of the injunction, not the form, determines whether it is mandatory or prohibitory. (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446–47.) If the injunction is mandatory, the right must "be clearly established and that irreparable injury will flow from its refusal." (*Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 296; see also *Shoemaker v. Cty. of Los Angeles* (1995) 37 Cal.App.4th 618, 625 ["The granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established."].). Plaintiff fails to make the requisite showing.

C. Petitioners are not Likely to Succeed on the Merits

[5] Notably, Petitioners have chosen to invoke the power of the judiciary to challenge a legislative act, and through the disfavored route of seeking a mandatory injunction, rather than relying on democratic processes and pursuing a county-wide referendum.

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1. The Map Complies with Election Code § 21500(c)

Petitioners' argument that the Adopted Map violates Section 21500(c) is without merit, and invites this Court to step into the shoes of the legislative branch in violation of clear separation of powers. The section requires the County to adopt supervisorial district boundaries using the following criteria in the following order of priority:

> (1) To the extent practicable, supervisorial districts shall be geographically contiguous. . .
>
> (2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single supervisorial district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
>
> (3) To the extent practicable, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division.
>
> (4) Supervisorial district boundaries should be easily identifiable and understandable by residents. . . .
>
> (5) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness. . . .

(Elec. Code § 21500(c).) The term "community of interest" is not defined by Section 21500 beyond the language above, but California Constitution article XXI, section 2 provides that "[a] community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. **Examples of such shared interests are those common to an urban area**, a rural area, an industrial area, or an agricultural area." Courts have similarly recognized that residents of an "urban area" may share a community of interest, and that keeping such communities intact is an appropriate legislative aim. (See, e.g., *Griffin v. Bd. of Suprs. of Monterey Cty*. (1964) 60 Cal.2d 751, 754 ["[T]he board was also justified in giving consideration to evidence that the City of Monterey does not want to be divided and that the Monterey Peninsula has a community of interest and desires to be continued as a single entity."]; *Reinecke supra*, 10 Cal.3d at p. 412 ["Examples of such interests . . . are those common to an urban area."].)

Petitioners' argument that the County's attempt to keep San Luis Obispo intact violated Section 21500(c) by ignoring the "community of interest" factor is contrary to our Constitution's

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definition of community of interest, court decisions, common sense, and belied by the evidence. The County legislature, the Board of Supervisors, found that the Adopted Map would maintain communities of interest:

> A significant public testimony that served as a core underpinning of the Preferred Map was a preference for minimizing the division of the City of San Luis Obispo ("SLO") into several districts, as has occurred previously under prior law. The population, density, and location of SLO (in particular its role as host to California Polytechnic State University give[s] it a distinct identify, which ha[s] previously been subject to division into two or more districts. The "Preferred Map" redraws district lines to better align with this important community of interest in SLO and most other County municipalities.

(Eriksson Decl. Ex. C; see also Ramirez Decl. Ex. B). The findings supporting Resolution No. 2021-311 reflect that the County *also* considered the tertiary criterion of maintaining the geographic integrity of other cities and census designated places: "Beyond SLO, the Preferred Maps also respects in large part jurisdictional boundaries of the County's other cities . . . ." (Eriksson Decl. Ex. C; see also Mitchell Decl. at ¶¶ 22–27.)

Further, the record is replete with testimony of the citizenry describing the communities of interest that they believed were important, and particularly the importance of maintaining the communities of interest present in the City of San Luis Obispo. (See, e.g., Ramirez Decl. Ex. B.)[6] The entirety of Plaintiffs' evidence that County failed to comply with this statutory mandate is a single sentence made by Supervisor Ortiz-Legg. (Mot. at 15:26–28). Petitioners provides no data supporting this statement, no testimony of residents describing communities of interest that were fractured, and no articulation of what these "communicates that have been associated with each other for decades" are. This is far from sufficient to carry Petitioners' burden to establish that the legislature's exercise of its discretion to weigh communities of interest was so arbitrary, capricious, or lacking in evidentiary support to show abuse of discretion as a matter of law.

2. The Adopted Map Complies with Elections Code 21500(d)

Section 21500 subsection (d) provides that "The board shall not adopt supervisorial

[6] See also Ramirez Decl. Ex. C at pp. 40:10–24; 44:3–19; 48:5–51:5; 55:21–64:17; 66:19–67:8; 82:3–87:8; 101:14–105:20; 108:13–109:3; 113:19–117:25; 121:5–122:11; 152:25–155:9; 160:11–25; 170:21–173:15; 182:3–184:23; 219:16–221:20; 224:16–226:7; 231:6–235:11; 242:4–25; 252:21–255:11; 258:9–260:10; 271:9–272:21; 276:12–277:18; 295:11–299:2, Ex. D at 10:5–32:22; 37:25–47:5; 49:22–54:13; 62:19–64:25.

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district boundaries for the purpose of favoring or discriminating against a political party." Petitioners' argument that the Adopted Map violates this subsection is meritless.

a. **Petitioners Must Prove Partisan Purpose and Fail to do so.**

Petitioners propose a test that is not supported by the Elections Code. Petitioners contend that "[t]o establish that the Board violated section 21500(d), the Petitioners need only show that the [Adopted] Map will have a discriminatory effect." (Mot. at p. 10:22–23.) This purported "test" is not supported by the language of the statute, or any of the case law Petitioners rely upon.

"Partisan equality" or "equal distribution of politically affiliated individuals" or some similar factor is not among the five factors a board must consider in adopting supervisor districts. (Section 21500(c)(1)–(5).) Rather, there is a separate requirement in a separate subsection, requiring only that lines not be drawn for *the purpose* of conferring an advantage or disadvantage to political parties. This section provides only that a board must not adopt boundaries "*for the purpose* of favoring or discriminating against a political party." (§ 21500(d) [emphasis added].) This section precludes a board from adopting a map for an overriding partisan purpose.

While there are no California decisions construing this precise language, a number of state courts have construed analogous provisions. In *In re Senate Joint Resol. of Legislative Apportionment 1176* (2012) 83 So.3d 597, the Florida Supreme Court concluded that similar language in its own constitution[7] "prohibits intent, not effect. . . . With respect to intent to favor or disfavor an incumbent, the inquiry focuses on whether the plan or district was drawn with this purpose in mind." (*Id.* at pp. 617–618.) The court also held "mere access to political data cannot presumptively demonstrate prohibited intent" (*Id.* at p. 619.) As the court noted, "any redrawing of lines, regardless of intent, will inevitably have an effect on the political composition of a district and likely whether a political party or incumbent is advantaged or disadvantaged." (*Ibid*.)

In *Hartung v. Bradbury* (2001) 332 Or. 570, the Oregon Supreme Court considered a challenge brought under Oregon Revised Statute 188.010(2), which prohibited "drawing districts with the purpose of favoring a particular political party." (*Id.* at p. 599.) The court concluded that

[7] Florida Const. Article III, section 21(a) ["No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent."].)

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this language required proof of *purpose*, not mere effect: "[T]he mere fact that a particular reapportionment may result in a shift in political control of some legislative districts (assuming that every registered voter votes along party lines)—and that is all that petitioners point to on this record—falls short of demonstrating such a purpose. Petitioners have not met their burden of demonstrating that the Secretary of State had an improper purpose." (*Id.* at p. 599.)

Discussing analogous language in its own constitution, the Supreme Court of Ohio held: "This language does not prohibit a district plan from favoring or disfavoring a political party. It prohibits a plan *from being drawn primarily to favor or disfavor a political party*. The language, by necessity, requires this court to discern the map drawers' intent." *League of Women Voters of Ohio v. Ohio Redistricting Com.* (Ohio S. Ct., Jan. 12, 2022, Nos. 2021-1193, 2021-1198, and 2021-1210) 2022 WL 110261 at *24 [emphasis in original] ("*Ohio LOWV*").)

Numerous dictionaries define "purpose" to mean an ultimate end, goal, or objective. (Request for Judicial Notice Exs. 1–6.) Whatever precise test is applied, the language "the purpose" unmistakably evinces an intent to preclude only district boundaries that are *consciously intended* to disadvantage or advantage some political party. (See also Mitchell Decl. at ¶¶ 31–67.)

The cases relied upon by Petitioners in support of some less strict, amorphous standard are inapposite. First, Petitioners' reliance on *Vandermost v. Bowen* (2012) 53 Cal. 4th 421, 472 ("*Vandermost*") is misplaced. In *Vandermost*, our Supreme Court was faced with a unique question – if a referendum challenging a statewide certified map qualified for the ballot (thus staying the map), what map would be used for the next election? (*Id.* at pp. 435–436.)

The court was not asked to pass upon the ultimate legality of any proposed alternative map, but rather engaged in an essentially ad-hoc inquiry, "reviewing the pros and cons of each of the redistricting maps that have been proposed for use on an interim basis." (*Id.* at p. 471.) The first map considered by the court was the "old map" adopted by the Legislature more than a decade prior. (*Id.* at p. 471.) The court determined that the "cons" of this map dramatically outweighed the "pros." As the court noted, "the most obvious problem with the 2001 map concerns the principle of 'one person, one vote.'" In light of the fact that "19 out of 20 of the odd-numbered Senate districts deviate by more than 16.4 [percent]" in the old map, and one district

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deviated by "30.5 percent," *id.* at p. 473, the court concluded that use of the old maps "would raise serious constitutional questions in light of the court's obligation, in adopting an alternative interim map, to avoid any but de minimis deviations." (*Id* at p. 474.) The court further noted that there was no evidence that the "old map" "respects the [six] constitutionally specified criteria." (*Id.* at p. 477.) Finally, the court noted that there was evidence that the "old map" had been drawn for the purpose of favoring or discriminating against a political party" including the fact that "only one seat has changed parties due to competition, and only one incumbent has lost in the 459 legislative and Congressional general election races held this decade." (*Id* at p. 477.) The court did not determine that the "old map" was constitutionally infirm on the basis of partisan impact, or imply that articles describing partisan impacts would have been sufficient to strike down the maps. The court's decision did not establish a test under Section 21500, much less a test under which the suspicion of partisan impact is sufficient to find a violation of this section (especially in the context of an expedition application for an injunction asking the Court to invalidate a legislative action). Petitioners' reliance on the out of state decisions *Ohio LOWV* and *League of Women Voters v. Commonwealth* (2018) 645 Pa. 1 ("*Pennsylvania LOWV*") is also misplaced.

In *Pennsylvania LOWV,* the court first undertook an exhaustive analysis of Pennsylvania's constitutional history and case law, and concluded that it's free and fair election clause should be given "the broadest interpretation," *id* at pp. 99–117, and adopted a test whereby district lines must be drawn while respecting traditional redistricting criteria, and that "when, however, it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution." (*Id.* at p. 122.) Based on overwhelming evidence of gerrymandering, the court concluded that "it is clear, plain, and palpable that the 2011 Plan subordinates the traditional redistricting criteria in the service of partisan advantage, and thereby deprives Petitioners of their state constitutional right to free and equal elections." (*Id.* at 123.)

The evidence before the *Pennsylvania LOWV* court was extraordinary, and included expert testimony utilizing sophisticated statistical software and modelling programs which

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demonstrated that neutrally drawn maps taking into account traditional redistricting criteria would effectively never create maps similar to the ones before the court. (*Id.* at pp. 124–125.) The court also concluded that even a lay examination of the maps revealed:

> [T]ortuously drawn districts that cause plainly unnecessary political-subdivision splits. In terms of compactness, a rudimentary review reveals a map comprised of oddly shaped, sprawling districts which wander seemingly arbitrarily across Pennsylvania . . . . as Dr. Kennedy explained below, the 7th Congressional District, pictured above, has been referred to as resembling "Goofy kicking Donald Duck," and is perhaps chief among a number of rivals in this regard . . . Indeed, it is difficult to imagine how a district as Rorschachian and sprawling, which is contiguous in two locations only by virtue of a medical facility and a seafood/steakhouse, respectively, might plausibly be referred to as "compact." . . . . As pictured above, and as discussed below, many of the 2011 Plan's congressional districts similarly sprawl through Pennsylvania's landscape, often contain "isthmuses" and "tentacles," and almost entirely ignore the integrity of political subdivisions in their trajectories.

(*Id.* at pp. 125–126; compare *id.* at pp. 14–31 [pictures of districts] with Pet. for Writ of Mandate at Ex. B p. 7 [color picture of adopted map].) In considering this and a substantial amount of additional evidence, the court concluded that:

> the evidence detailed above and the remaining evidence of the record as a whole demonstrates that Petitioners have established that the 2011 Plan subordinates the traditional redistricting criteria in service of achieving unfair partisan advantage . . . . An election corrupted by extensive, sophisticated gerrymandering and partisan dilution of votes is not "free and equal."

(*Ibid.*) Petitioners have no evidence comparable to that before the *Pennsylvania LOWV* Court.

Petitioners reliance on *Ohio LOWV* is similarly misplaced. Article XI, Section 6 of the Ohio Constitution required in relevant part that maps meet the following standard: "(A) No general assembly district plan shall be drawn primarily to favor or disfavor a political party. . . (B) The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio." (*Ohio LOWV*, 2022 WL 110261 at *2.) This provision *required* an attempt at partisan balancing, such that the overall state elections results would roughly correspond to the overall political leanings of the state.

In that case, evidence of failure to comply with this direct constitutional command was overwhelming. The Ohio Supreme Court concluded that "Petitioners have shown *beyond a*

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reasonable doubt that the commission did not attempt to draw a district plan that meets the standard articulated in Article XI, Section 6(B)." (*Id.* at *21 [emphasis added].)

The court also concluded that the State had made no attempt to comply with Article XI(6)(a), which the court concluded meant as follows: "This language does not prohibit a district plan from favoring or disfavoring a political party. It prohibits a plan from being drawn primarily to favor or disfavor a political party." (*Id.* at *24 [emphasis added].) The court considered a *substantial* amount of evidence leading to the conclusion that the maps were consciously drawn for the purpose of favoring a party, including the following:

> Senate President Huffman and House Speaker Cupp controlled the process of drawing the maps that the commission ultimately adopted . . . Senate President Huffman and House Speaker Cupp do not view Section 6 as mandatory . . . [M]any district boundaries in the plan conform to partisan precincts in a precise manner, which supports the conclusion that the drawers of the plan relied on the partisan makeup of the districts and attempted to draw districts to favor one political party over the other. . . . Using Article XI's map-drawing criteria, Dr. Imai generated 5,000 possible district plans. Of those simulated plans, none was as favorable to Republicans as the adopted plan . . . . Petitioners have shown beyond a reasonable doubt that the commission did not attempt to draw a districting plan that meets the standard articulated in Section 6(A).

(*Id.* at *25–27.) Petitioners have presented no evidence the Board did not consider section 21500(d) mandatory, no simulations demonstrating the statistical impossibility of the Adopted Map, and no other evidence remotely analogous to the evidence before the Ohio Supreme Court.

b. **The Adopted Map was Established for Politically Neutral Purposes Based on Public Testimony**

The evidence establishes that the Adopted Map was chosen because it complied with the requirement of Section 21500(c), most notably because it kept the communities of interest identified by communities members (e.g., the City of San Luis Obispo) intact. (See, e.g., Ramirez Decl. Ex. D at pp. 2–3.) Petitioners can point to no evidence that the map was adopted for the purpose of favoring a political party. The gravamen of Petitioners' argument, besides unsupported speculation as to ill motives, is that the County *should* have considered the source of the map, or that partisan individuals were advocating for the map, and prioritized those facts over the factors mandated by Section 21500(c). (See Mot. at pp. 14:1–7.) If the County had done as Petitioners wish, the County would been giving the same partisan considerations Section 21500(d)

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

disapproves of, and ignoring the mandate of section 21500(c). The County's *compliance* with the partisan neutrality command of Section 21500(d) is not evidence that the County violated Elections Code section 21500(d) – it is the opposite.

Petitioners' argument that the changes in district boundaries are evidence of partisan bias, and that the County should have left the districts largely as they were, also ignores the import of the 2019 amendments to the Election Code ushered in the by the Fair Maps Act.

Prior to this redistricting cycle, there was no mandate for counties to consider the criteria in Section 21500(c). (*Miller v. Bd. of Super. of Santa Clara Cnty*. (1965) 63 Cal. 2d 343, 345 n.1 (listing *discretionary* criteria.) In 2019, however, the Legislature enacted the Fair Maps Act, requiring counties to create districts that are contiguous, maintain communities of interest, avoid dividing cities, use boundaries that are easily identifiable and understandable by residents, and are compact. (Elec. Code, § 21500(a)-(c).) The Fair Maps Act further requires a robust outreach and education campaign to encourage public participation and solicit testimony about communities of interest in the County. (*Id.* §§ 21507, 21507.1, 21508(a), (g).)

Notably, preserving existing supervisorial lines has *never* been listed as a discretionary factor in state law. (See *Miller*, *supra*, 63 Cal.2d at p. 345 n.1 [listing prior discretionary criteria which did not include preserving existing districts].) Neither does the Fair Maps Act list this criterion as one of the ranked, mandatory factors. (Elec. Code, § 21500(c).) Notably, in *Vandermost*, the court declined to direct the usage of a "status quo" earlier map, in part because there was no evidence that it had been drafted with the new statewide redistricting criteria. (*Vandermost*, *supra*, 53 Cal.4th at p. 476 ["The Legislature, when crafting the prior maps in 2001, was not required to apply the criteria pursuant to the rank ordering that controls today."].)

In adopting the Fair Maps Act and making traditional redistricting criteria mandatory, the Legislature took the position that counties may not simply tweak lines every ten years to address malapportionment. Instead, line drawers must conduct a thorough process that, based on community constituency input, results in a map that keeps communities of interest together. Because in prior redistricting cycles the Board was not required to consider now mandatory criteria, the Elections Code does not allow the County to give any deference to existing district

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

lines as those lines were not drawn with the now mandatory criteria in mind.

D. Petitioners Do Not Show Their Preferred Maps Comply with Section 21500

As is discussed above, Petitioners seek a mandatory injunction requiring the County to utilize either the "2011 Map" or "Map A." Petitioners do not carry their burden of establishing an entitlement to mandatory injunctive relief, and Petitioners' request should be denied for an additional reason. Contrary to Petitioners' argument that the County could "lawfully rely" on these maps, there is no evidence these maps comply with Section 21500.

As is discussed above, Section 21500 *requires* that supervisorial districts be drawn utilizing five ranked criteria. Petitioners argue that the 2011 Map and Map A largely comply with the population deviation requirements, but make no argument and provide no evidence that those maps comply with the other requirements in Section 21500(c). There is no evidence supporting any conclusion that either map was drawn with the now requisite consideration of the factors in Section 21500(c), and certainly no evidence that any legislature body legislatively determined that these maps respect the criteria in Section 21500(c). Indeed, the Board of Supervisors, as the County's duly elected legislative body, implicitly found that those maps do *not* comply with Section 21500, in that the prior map did not maintain the integrity of the community of interest in San Luis Obispo: "A significant public sentiment that served as a core underpinning of the Preferred Map was a preference for minimizing the City of San Luis Obispo ("SLO") into several districts, as has occurred previously under prior law.) (Ramirez Decl. Ex. D at p. 2.) Further, the prior maps were not the result of the robust outreach, educational efforts, and public participation now required by the Elections Code. (Elections Code §§ 21507, 21507.1, 21508(a), (g).)

Just as in *Vandermost*, Petitioners have provided "no basis upon which [this Court] can conclude [the 2011 Map or Map A] respects the [statutorily] specified criteria" articulated in Section 21500. (*Vandermost, supra,* 53 Cal.4th at pp. 476–477.)

E. The Relative Harms Weight against an Injunction

Petitioners fail to show irreparable harm that could support the imposition of the mandatory injunction, and fail to recognize the harm such relief would inflict upon the public, the county, and real party in interest County Clerk-Recorder Elaina Cano.

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

Contrary to Petitioners' argument, neither they nor any other person will be deprived of the right to vote in the event the County is not ordered to use Petitioner's favored map. As a result of district boundaries that were drawn under the strictures of Section 21500(c), some individuals will vote earlier, and some will vote later, but no one will lose the opportunity to participate in the electoral process. That some individuals are moved from one district to another is an inevitable consequence of compliance with Section 21500's command that the County draw boundaries that best reflect Section 21500's ranked criteria, with the "status quo" not being among these criteria.

Petitioners' argument that they will suffer harm in the form of diluted voting power or separation from communities of interest presupposes that the Adopted Map in fact was drawn for the purpose of helping or harming a political party and failed to respect communities of interest. As is described more fully above, Petitioners fails to show that these allegations are true; the Adopted Map maintains communities of interest, and was not drawn to provide an advantage or disadvantage to any political party. Moreover, as described in the Declaration of Paul Mitchell, there may be as many as *four* democratic leaning supervisorial districts based on the most recent election data. (Mitchell Decl. at ¶ 64.)

As was described in the declaration of County Clerk-Recorder Elaina Cano, a mandatory injunction would impose a substantial burden (depending in part upon the precise relief ordered and when it is ordered) on the Clerk-Recorder's office. (Cano Decl. at ¶¶ 11–14.)

Further, any alterations to elections procedures on the eve of would create confusion and difficulties for the electorate and candidates. (See, e.g., Cano Decl. at ¶¶ 7, 8, 15.)

Petitioners fail to show that the balance of harms weighs in favor of injunctive relief.

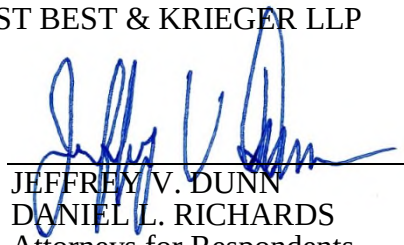
IV. CONCLUSION

For all of the aforementioned reasons, the Motion should be denied.

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

Dated: January 31, 2022

BEST BEST & KRIEGER LLP

By: 

JEFFREY V. DUNN
DANIEL L. RICHARDS
Attorneys for Respondents
County of San Luis Obispo and Board of Supervisors of San Luis Obispo County

61835.00101\34779763.2

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612