

# NEW MEXICO REDISTRICTING EVALUATION REPORT

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SEPTEMBER 2022



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# Introduction

Every ten years following the Census, states undergo a redistricting process that updates district boundaries to reflect changes in population. This is one of the most important processes for states to undertake, as it directly impacts both election and policy outcomes for a full decade after those district lines are drawn.

This year, in New Mexico, the redistricting process included a Citizens Redistricting Committee (CRC) for the first time. This includes New Mexico in a larger national trend of independent commissions either playing an advisory role (New Mexico's model) or fully replacing the legislature in making maps that define political districts. New Mexico Senate Bill 304 created the CRC to develop plans for the states' voting districts of the state based on testimonies, documents, and other information received in publicly available meetings. Similar to Utah, New York, and Alaska this cycle, the Committee based its work on the guidelines set forth in the Redistricting Act as well as suggestions and maps that New Mexicans submitted for consideration; however, their decisions were not binding. At the end of the day, the state legislature could either utilize or ignore the suggestions of the CRC in the creation of its own maps.

This context provides the motivation for this evaluation report. In short, our goal with this evaluation is to analyze the outcomes and process associated with the recent redistricting cycle in New Mexico to determine if the presence of the CRC led to a better redistricting process than in 2010. We found that the CRC added tremendous value to the redistricting process in the state, despite significant weaknesses resulting from the language in the law that established it. In fact, several respondents to our qualitative interviews stated that this cycle was the best redistricting process they have experienced in their careers participating in or observing redistricting in New Mexico.

Through map analysis, we also find that the maps the legislature passed are similar to the alternative plans in terms of the number of Democratic seats they produce, but different in that they produce fewer competitive seats (this difference is quite significant in the Senate, but less so in the House). Moreover, in addition to producing fewer competitive seats, we find that the enacted plans pair fewer incumbents than most of the CRC plans and far fewer incumbents than the computer-drawn plans. Although the enacted maps may not have been drawn to advantage one party over the other, our findings suggest that they appear to have been drawn to keep incumbent parties in their districts and safe from partisan competition.

Furthermore, our evaluation suggests that the performance of the state legislature in this cycle was far weaker than the CRC through the full process. In fact, both the media experts and the electorate, reflected in a statewide survey of highly likely voters conducted as part of our evaluation, critiqued the legislature for lack of transparency and a failure to begin their map-making efforts with adequate consideration of the CRC's maps.

We conclude our report with a series of recommendations intended to prepare for the next redistricting cycle in 2030. This includes a strong recommendation to move toward a commission independent of the state legislature with the power to generate maps directly.

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## How New Mexico Compares to Other Relevant States this Cycle

Across the country, this cycle's redistricting process has been unique in many ways, with states operating in a challenging context that includes Supreme Court rulings,<sup>1</sup> pandemic-driven delays in the 2020 Census demographic numbers that drive the map-making process, and structural changes in how states generate their maps. New Mexico's decision to add an advisory committee is part of a larger national movement. Many states underwent changes in their process to give exclusive control of the redistricting process to an independent commission, while others implemented advisory committees similar to the CRC in New Mexico.

A comparative analysis of other states with advisory redistricting committees that lacked the power to independently create maps from the legislature suggests these states faced similar challenges to those experienced in New Mexico. The Utah redistricting committee spent much time addressing access concerns and also had a legislature that did not use commission-proposed maps. The legislature faced public outcry and criticism from the state's media for not using the public comments provided to the new commission.

Alaska's redistricting committee also lacks an exclusive say in the final maps. In fact, just like in New Mexico, many Alaska residents were unhappy that the legislature ignored the public testimony gathered during the commission's efforts when the state started its process. Furthermore, many who stressed that the legislature held secretive meetings behind closed doors voiced concerns about transparency. As we will discuss in greater detail later in this report, both of these concerns are similar to those voiced in New Mexico this cycle.

Finally, when New York's advisory committee was unable to reach a consensus, it sent two separate maps to the legislature - a "Democrat" map and a "Republican" map. The legislature voted to reject both maps and asked for second drafts, which the committee never submitted. Consequently, the legislature passed the maps that they drafted themselves which have been critiqued for gerrymandering.

<sup>1</sup> *Shelby County v. Holder, Rucho v. Common Cause*

The overall outcome of other states who relied on advisory redistricting committees, like New Mexico, have proven to be more vulnerable to legislative changes. This provides some context to the process that unfolded in New Mexico.

This cycle also saw a record number of states utilize truly independent redistricting commissions that could generate binding maps free from legislative input. This includes Arizona, a state that has had an independent redistricting commission since 2000. Although Democrats were not pleased with the outcome of the redistricting process, which created more Republican-leaning districts than Democrat ones, it is important to note that there have not been any legal challenges against the maps.

In Virginia, criticism of the redistricting process included the commission having relatively low levels of public engagement. Unlike in New Mexico, there was no available mapping software to allow community members and external experts to generate their own maps, and the meetings were primarily held in person, making the challenge of connecting community members with the process significantly more challenging during the pandemic. Like New Mexico, incumbent addresses can be considered and were a focal point of debate during the map making process. Due to ongoing partisan disagreements over the maps between Democrat and Republican committee members, the maps were not passed on time, leaving the duty to the state legislature. Virginia makes clear that even a truly independent commission can have challenges.

Michigan appeared to have strong participation at each meeting of their independent redistricting commission, which were held both in person and virtually. Like New Mexico, residents also had access to map making software, and the process of drafting the maps based on public ideas was conducted in-person. Michigan's redistricting process, though not free from controversy, was successful. Eleven of 13 commissioners approved the map that was eventually chosen, though there is some controversy about whether the Black population was adequately represented in the new district guidelines. The legal suit regarding this issue was thrown out after RPV analysis concluded that there was not sufficient evidence of racial gerrymandering.

We close this section of our report with Colorado, an adjacent state which interview respondents identified as a potential model for New Mexico to follow. Among other desirable attributes, Colorado has Voting Rights Act (VRA) protections built into its legislation, which provide some assurance that the state will abide by the VRA even if the law changes federally. Colorado also engaged celebrity surrogates, including former CA Governor Arnold Schwarzenegger, to get people engaged in the redistricting process and generate interest among the public.

In 2021, Colorado approved a redistricting plan that includes two independent redistricting commissions, one for congressional maps and one for state legislative redistricting. Both have four members of each political party and four unaffiliated members. Following the maps these independent commissions created, the courts gave final approval this cycle. The

Colorado Republican Committee and the State Republican House and Senate Caucuses said, “While the final plans are not perfect and are not the maps Colorado Republicans would have drawn, they are a result of a faithful application of the agreed-upon constitutional criteria for redistricting by the Commission and should therefore be approved.”<sup>2</sup>

The most salient critique of Colorado’s redistricting process was incumbency protection, which some said was a more powerful factor driving map creation than sufficient representation of communities of interest. This concern is similar to the concerns raised throughout our evaluation of New Mexico’s process. This similarity, coupled with the unique approach Colorado has taken with their independent commission, suggests there should be efforts made to connect with redistricting leadership in that state to learn more about what worked with their process and any insights they have for New Mexico to consider before the next cycle.

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## Research Design for Evaluation

Redistricting Partners conducted a comprehensive analysis of the most recent redistricting process in New Mexico on behalf of the Arnold Foundation. It conducted this research with the partnership of Dr. Gabriel Sanchez and Dr. David Cottrell, independent experts who led different aspects of the research for this report.<sup>3</sup> The research process began with an analysis of news and media reports following the redistricting process over the past two redistricting cycles, as well as other governmental documents which outlined the rules of procedure for the redistricting cycle.

Following the background research on media and state comparisons, researchers conducted a statewide survey in the state of New Mexico. The online survey allowed respondents to review key background information and media stories before answering questions. The research design included screens for voting behavior to determine which participants are highly likely to vote in future elections, ensuring that the overall sample is reflective of this population. In addition to the survey, interviews with experts who interacted closely with the redistricting process in New Mexico were conducted. The appendix of this report contains a full discussion of the methodological approaches taken and a list of all twenty respondents from our qualitative research.

<sup>2</sup>Colorado Newsline, "Colorado Supreme Court Hears Oral Arguments for New State Legislative Maps," Oct. 26, 2021. <https://coloradonewsline.com/2021/10/26/colorado-supreme-court-hears-oral-arguments-for-new-state-legislative-maps/>

<sup>3</sup> Dr. Sanchez and Dr. Cottrell worked on this report as independent contractors. This report was not conducted on behalf of either the University of New Mexico or the University of Georgia.

To analyze potential gerrymandering across the maps, we compare the enacted House and Senate redistricting plans to the CRC-proposed plans and an additional set of plans drawn by a nonpartisan computer algorithm. The computer-drawn plans are the same plans used to assess the partisan fairness of the CRC maps and provide a baseline set of possible expected outcomes if the plans were drawn using only partisan-neutral redistricting objectives.

This report also utilizes specific information regarding the Native American population in New Mexico. For this, we utilize data across a wide range of sources, including, but not limited to, survey data to identify trust in government and census data used to evaluate socio-economic inequalities in the state. Researchers derived all the data used for the socioeconomic analysis from the 2019 American Community Survey (ACS) 1-Year and 5-year estimates for the state of New Mexico.

Finally, our report includes an analysis intended to answer the question of whether the addition of the CRC to New Mexico's redistricting process reduced financial costs to the state due to fewer lawsuits challenging the maps generated this cycle. This part of our analysis includes the projected costs of lawsuits this cycle and the overall cost to implement the CRC relative to legal costs from 2010. In summary, we attempted to take a comprehensive approach in our evaluation of the redistricting process in New Mexico, and the results of our evaluation are intended to inform the redistricting process moving forward in the state of New Mexico.

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## Results of 2021 Survey of Highly Likely New Mexico Voters & Qualitative Interviews with Redistricting Experts

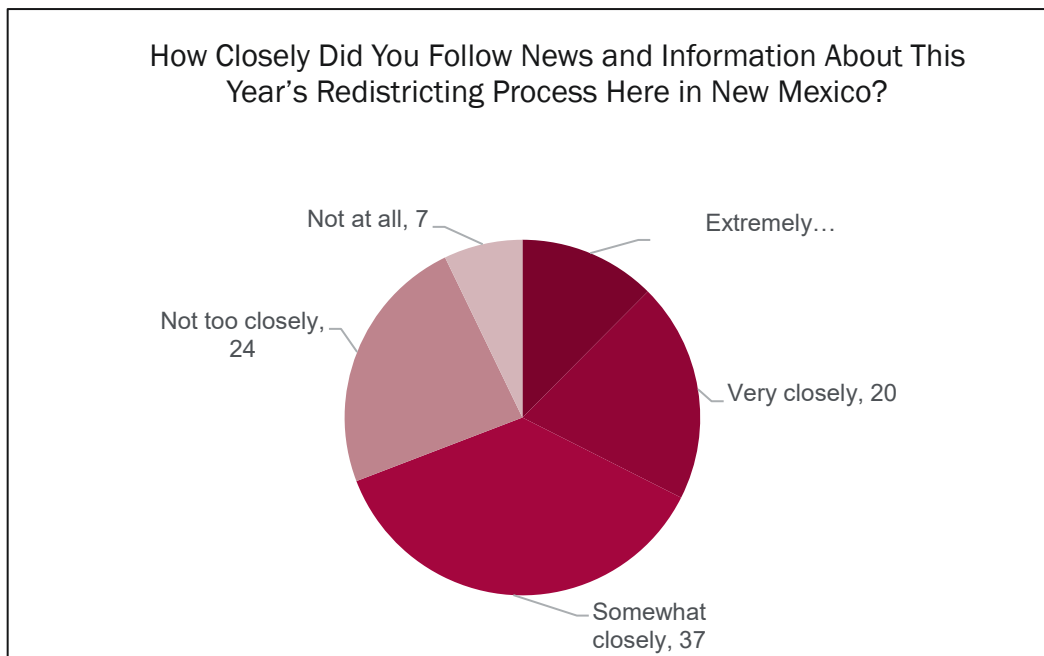
Redistricting Partners sub-contracted with BSP Research who conducted a survey of highly likely voters in New Mexico regarding the most recent redistricting process in New Mexico. They conducted the survey online and allowed respondents to review background information and media stories about the process at their own discretion prior to answering survey questions. The research design included a statewide sample of highly likely voters to better understand the redistricting process from the view of participatory residents. The survey was fielded from March 7, 2022, through March 17, 2022, had 500 respondents. The topline survey report, including participant demographics, can be found in the appendix of this report.

A series of interviews with experts who interacted closely with the redistricting process in New Mexico followed the survey. Overall, we heard from 17 respondents across the state,

including members of the Citizen Redistricting Committee (CRC). Dr. Gabriel Sanchez moderated and conducted all interviews virtually. In an effort to maintain a standard of honest and uncensored responses in the focus group and interviews, participants and their specific quotes will be kept anonymous. The appendix of this report contains a full discussion of the methodological approaches taken and a list of all respondents from our qualitative research. We discuss the findings from this aspect of our research design across major themes that emerged from the results, blending quantitative and qualitative findings across those themes.

## COMMUNITY ENGAGEMENT IN THE REDISTRICTING PROCESS

Our sample focused on highly likely voters - residents of the state who were more likely to follow news stories discussing the redistricting process in the state. With this context in mind, the survey showed that nearly 70% of respondents followed the process at least somewhat closely, with approximately 31% indicating that they had not followed the process very closely or at all.



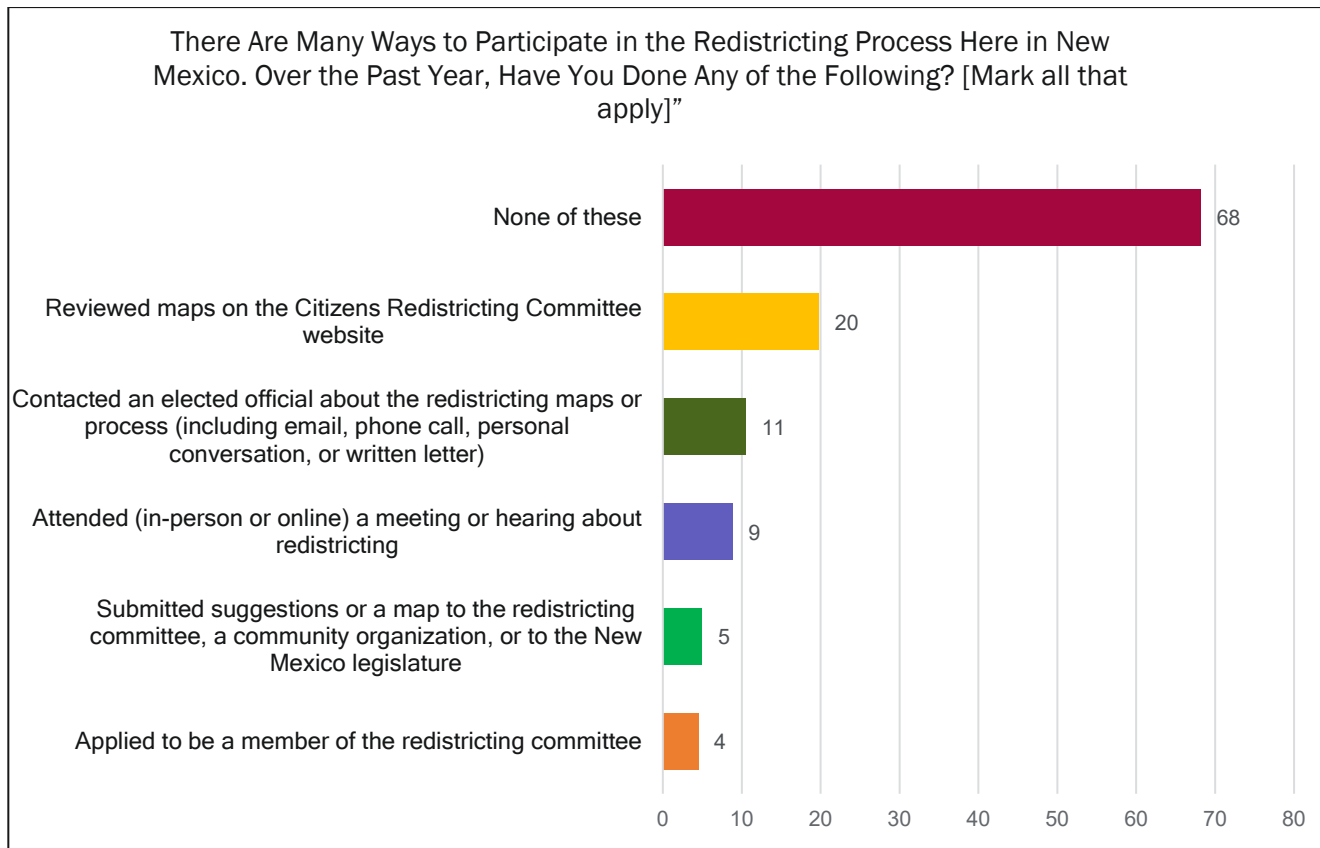
The survey also asked respondents about their participation in the redistricting process, including reviewing maps, contacting officials, and attending meetings. The survey suggests direct engagement was not very high in New Mexico, with 68% of respondents indicating that they had not participated in the process, as shown in the graph below. Among the 32% of those who participated, the most common mode of participation was “reviewing maps on the CRC website.” This indicates that the CRC website was accessible to the majority of those who participated in the process, especially when compared to the 9% of respondents who attended a meeting in-person.



Qualitative interviews reinforced this finding from the survey, as several respondents noted that the technological advancements that allowed community members to create and submit their own maps is a highlight of the session. We include some direct quotes from respondents on this point below that are reflective of what we heard from experts more broadly:

*“We could direct people to the map drawing software, which worked tremendously. Justice Chavez invested a lot of energy learning the software and working with community members himself. Unfortunately, not all of the CRC members ever learned how to use it. This might be a required training next cycle if we have more time before we launch the listening sessions.”*

*“We have seen more capacity in tribal communities with experience and knowledge of maps and the software used to make maps. This has been huge and helped us take advantage of the enhanced engagement through the CRC’s map tool which worked better than we expected.”*



## BARRIERS TO PARTICIPATION

The survey found that there were barriers to participation among respondents, providing an explanation for the discrepancy between those who were following the process versus those who were actually able to participate. Not surprisingly, the COVID-19 pandemic was a major factor impacting the ability to attend in-person meetings. More specifically, 35% of respondents reported that they were not able to attend in-person meetings due to COVID-19.<sup>4</sup>

This was a salient topic in our focus groups, with many respondents noting that the relatively high participation rates amongst the public this cycle was particularly impressive, given the challenges associated with the pandemic. As the quote below suggests, we heard from multiple respondents that the fear of spreading COVID-19 was particularly high among Native Americans.

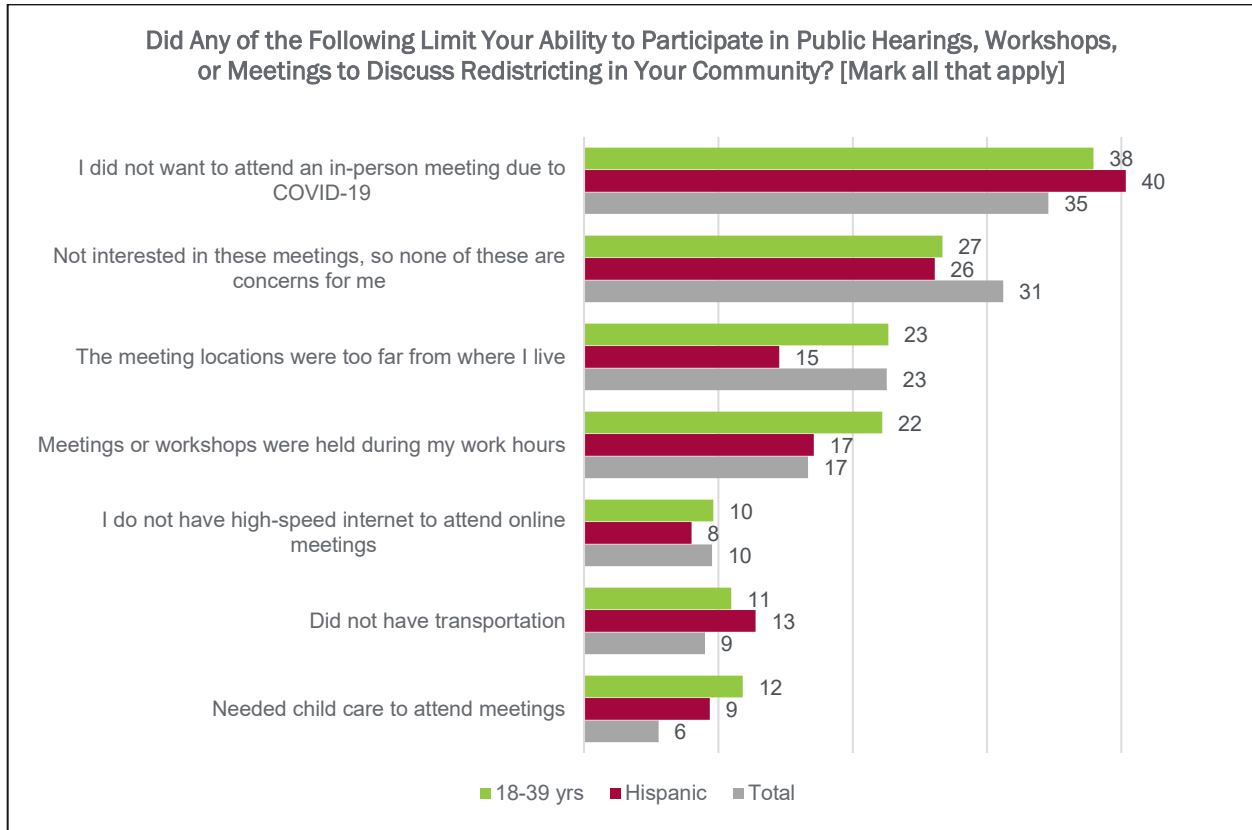
*“COVID was a major factor in public engagement. For tribal communities this was even more of a challenge, given that many Pueblos were still having to place restrictions on traveling off the tribal lands. We did see some utility with virtual participation which helped, but we would have seen even wider participation if we would have not had the pandemic to deal with.”*



FIGURE: "PRESIDENT NEZ SPEAKS IN SUPPORT OF NATIVE AMERICAN VOTING RIGHTS BEFORE THE NEW MEXICO CITIZEN REDISTRICTING COMMITTEE." <sup>5</sup>

<sup>4</sup> This finding was consistent across both rural and urban residents, with the biggest difference across demographic factors based on ideology, with self-defined liberal respondents being more likely to indicate that they did not want to attend in-person meetings due to COVID-19.

<sup>5</sup> <https://www.navajo-nsn.gov/News%20Releases/OPVP/2021/Sep/FOR%20IMMEDIATE%20RELEASE%20-%20President%20Nez%20speaks%20in%20support%20of%20Native%20American%20voting%20rights%20before%20the%20New%20Mexico%20Citizen%20Redistricting%20Committee.pdf>.

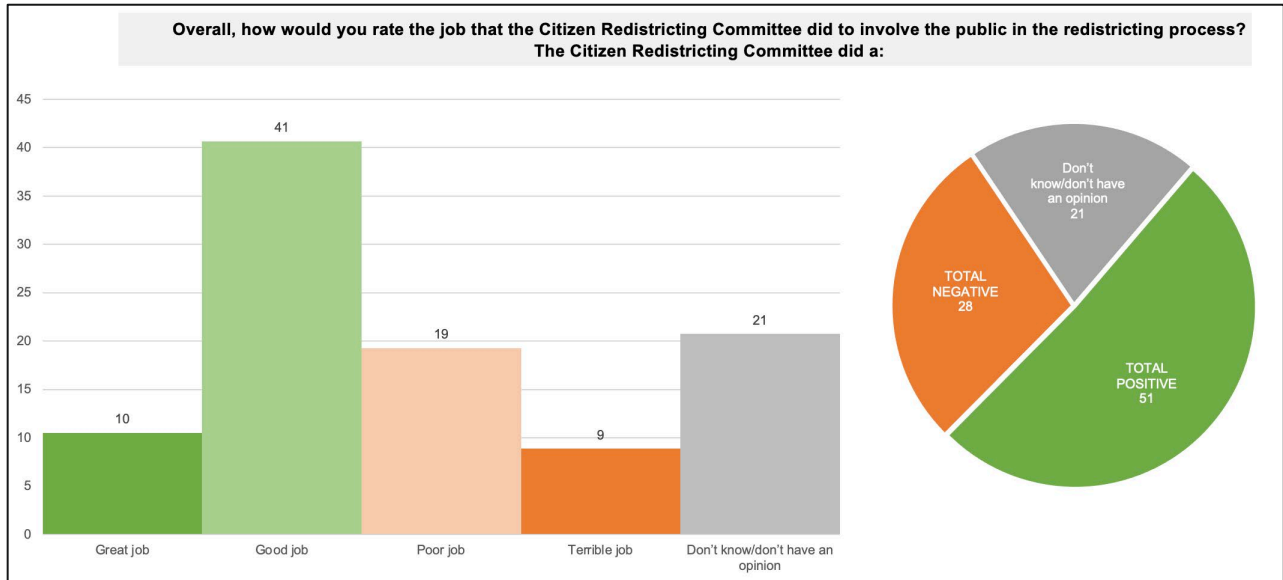


Despite the CRC's efforts to connect with state residents through an impressive series of in-person meetings across the state, another 23% reported that meeting locations were too far from their homes. Nearly a third (31%) of respondents reported that they were not interested in these meetings because redistricting does not concern them. Thus, we suggest the need to improve educational outreach next cycle well in advance of the start of the CRC process.

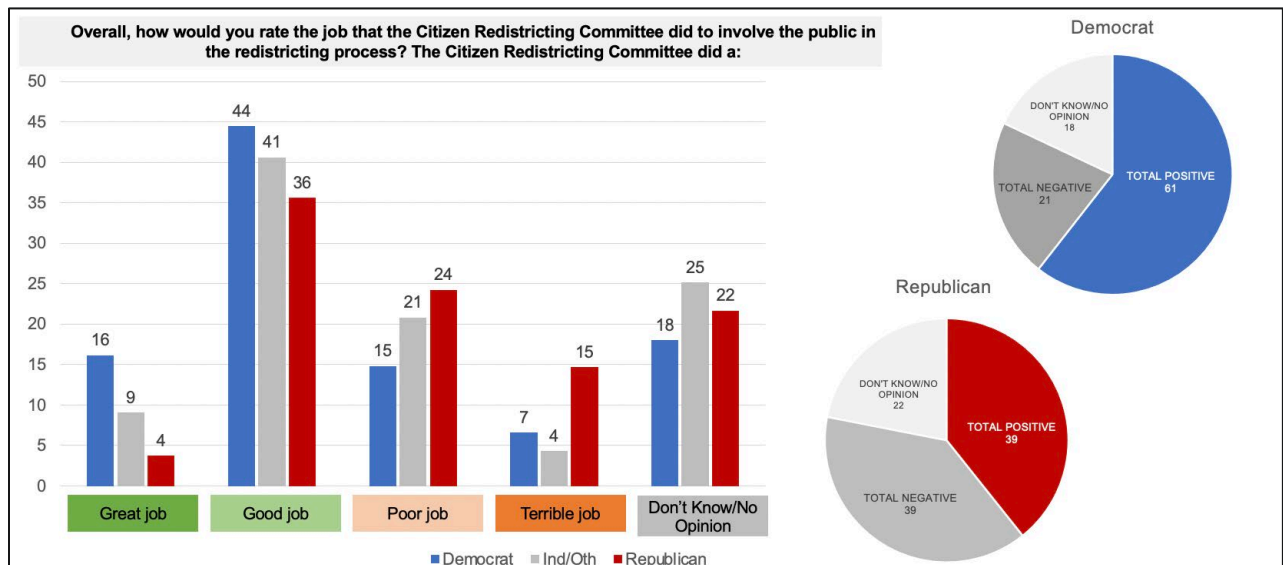
As reflected in the figure above, many of these challenges impacted the Latino community and young adults at higher rates than other demographic groups of New Mexicans. For example, in comparison to the 35% of all respondents, 40% of Latinos reported COVID-19 impacting their ability to attend meetings (+5%). Latinos in New Mexico have been more likely to test positive for COVID-19 than the overall population, making the fear of catching and spreading the virus more salient to them. Reflecting variation based on age, 22% of young adults had an issue with the meeting times taking place during their work hours, 5% more than the overall population. Latinos were more likely (+7%) to report that a lack of transportation prevented their participation than New Mexicans overall.

## PERCEIVED PERFORMANCE OF THE CRC AND STATE LEGISLATURE IN PUBLIC ENGAGEMENT AMONG THE ELECTORATE

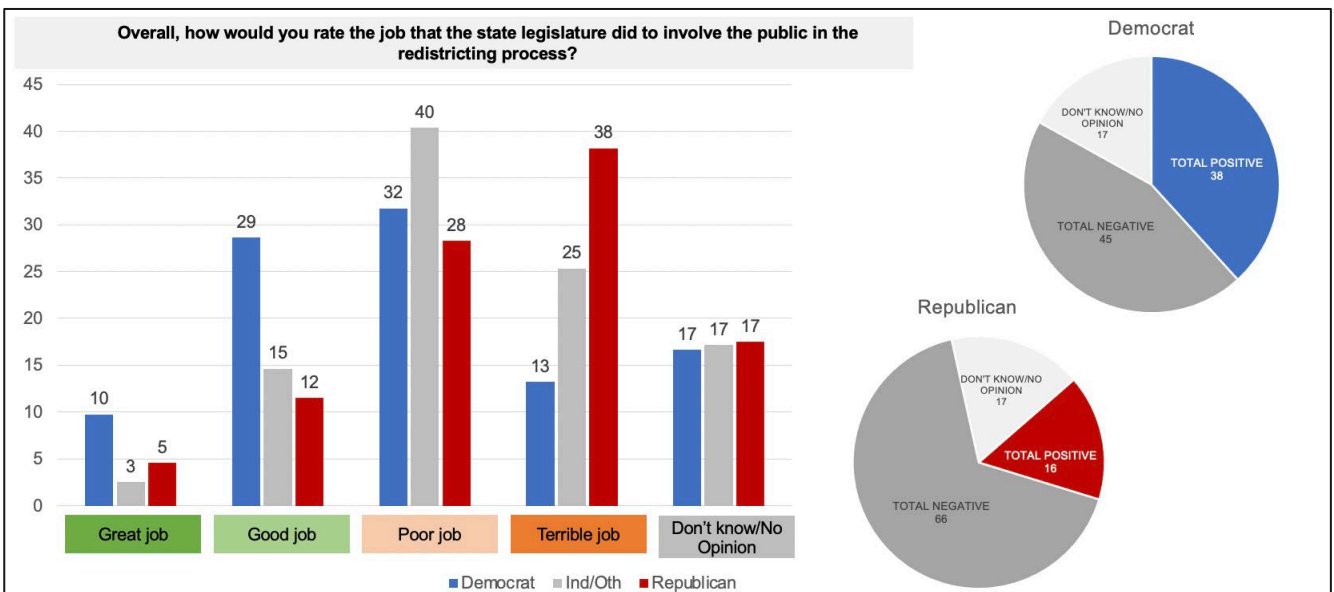
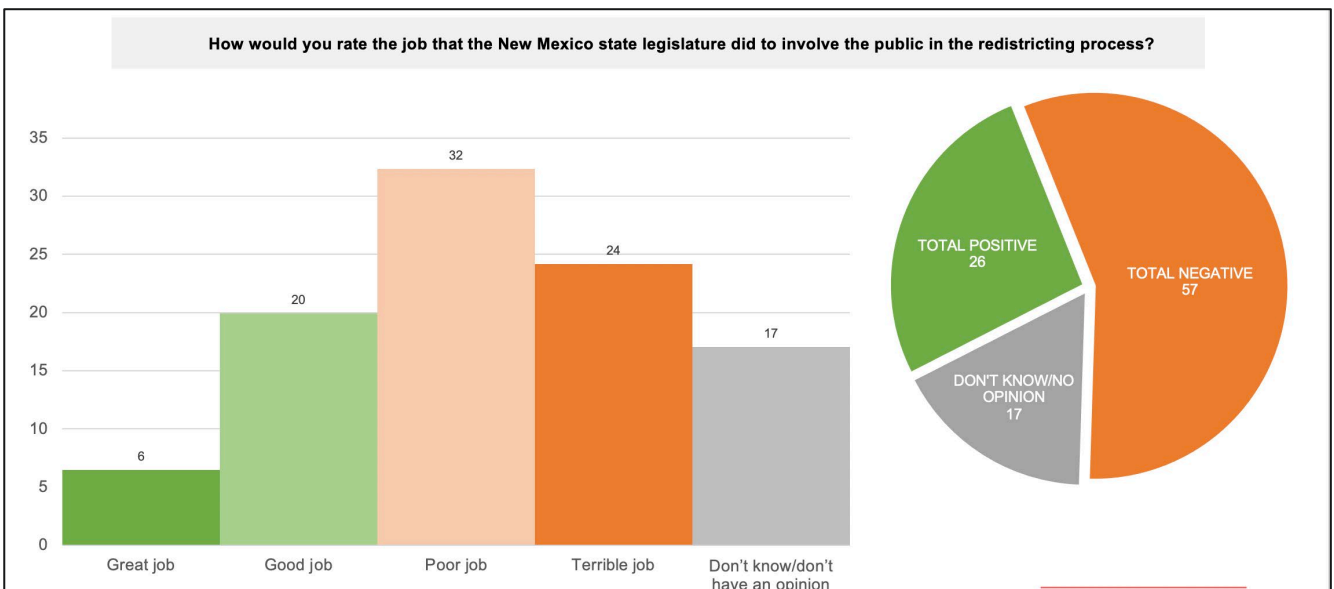
The survey asked respondents to rate the overall job the CRC did in involving the public in the redistricting process. A majority, 51% of respondents, had a positive rating for the CRC regarding public engagement, either responding that the committee did either a “great job” or a “good job,” while only 28% of respondents indicated that they had done a “poor” or “terrible” job.



When we break out responses to this question by party, we find that Democratic respondents were more favorable of the work done by the CRC to engage the public than Republicans, with 61% indicating that they had done a “great” or “good” job, while only 39% of Republican participants responded the same way.



Similarly, the survey asked the respondents about their perception of how well the state legislature did in involving the public in the redistricting process, and it identified notably different results. Only 26% of participants responded that the legislature either did a “great” or “good” job, with 57% indicating that they did a “poor” or “terrible” job. The remaining 17% were indifferent. The results indicate that respondents were much more favorable of the CRC than the state legislature during this process, as 74% were unfavorable or indifferent towards the legislature, 25% more than that of the CRC. Although ratings were more negative toward the legislature across both parties, Democratic participants were again more favorable towards the legislature than the Republican respondents, with 38% having a positive response versus only 16% of Republicans.



Results from our qualitative interviews reinforce the general trend from the survey that the CRC did a better job engaging the public in the redistricting process than the state legislature. In fact, many respondents pointed to the significant steps the CRC took in ensuring that state residents had an opportunity to provide their input in the process. Those steps include traveling across the state to meet residents where they are, rather than expecting community members to make the trip to Santa Fe to attend in-person meetings and using technology to allow respondents to participate virtually.

Many respondents who have participated in multiple redistricting processes stated that they felt this was the best cycle they have witnessed regarding community engagement. In fact, we consistently heard that there was wide participation from a diverse range of New Mexicans this cycle, and also that the depth of community engagement was much more impressive than usual. Statements from them include:

- “The public had never been engaged like this in map-making process. We saw the community being able to make connections between these maps and resources that impact their families. This was empowering to see, and the CRC provided the opportunity to take advantage of this window.”
- “[There was] more public involvement by far with the CRC. It was exciting to see this come into action, where we had the ability for direct democratic participation... this was not in place in 2010.”
- “[The] CRC definitely gave the public better access; more people were part of it than in 2010 for sure. Everywhere we went it was basically a packed house... The public engagement tools were very useful and having us go to them mattered. With the legislature, there is not dedicated time just on redistricting for 3-4 hours.
- “We had great accessibility with the CRC this cycle. We saw good participation from members of the African American community in Albuquerque, Roswell and other areas of the state.”

Our discussions with experts made clear that the unprecedented level of civic engagement in redistricting this cycle was due to the hard work of several community organizations who helped mobilize the public, but the presence of the CRC this cycle amplified the success of this effort. Organizations, including, but not limited to the League of Women Voters, the Center for Civic Policy, Native American Voter Alliance, Common Cause, and Fair District New Mexico all worked to connect members of the public with the redistricting process. This included working with elected officials and local governments to help use their social media platforms and list-serves to get the word out about meetings and helping community groups learn to use the map-making software. Many non-profits also wrote op-eds to help increase interest and knowledge of the redistricting process through the media.

Despite the CRC's achievements in enhancing opportunities for public engagement in the redistricting process, our evaluation suggests that there is room for improvement. Although a slight majority of total respondents reacted positively to the CRC's work this cycle, 49% of survey respondents were either indifferent or thought negatively of their outreach performance. We also learned from the survey that many citizens of the state did not believe that the redistricting process was important to them, despite the hard work of many discussed in this section of the report.

Some limitations in the CRC's process led to unnecessary tensions during the process that can be remedied before the next redistricting cycle. This includes having clarity on whether organizations can provide stipends to community members to allow them to participate in meetings, and what steps should be taken to ensure that any community members who receive funding are not being compensated for actions that could be defined as lobbying.

We heard from several organizations that although it was common to provide compensation to community members to engage in the legislative process, lack of clarity regarding what constitutes lobbying led to speculation that some organizations were operating outside of those rules. We learned afterwards, with NM Ethics Watch, the concern posed that community members were being compensated to support a specific map being proposed to the CRC. We reviewed the complaint and a flyer that was included with the complaint, which did imply that community members may have been asked to support a specific map. Although we agreed with the perception of NM Ethics Watch that there was no intention from that organization to have members of the community serve in a lobbyist role, the concern that was raised is credible.

It was not entirely clear whether advocating for maps being proposed to the legislature fit this definition, so we requested input from the state's Ethics Commission for assistance. We learned that lobbyists are defined according to the Lobbyist Regulation Act (Section 2-11-2(E), as someone who;

- 1) Is paid to attempt to influence "a decision related to any matter to be considered or being considered by the legislative branch of state government". We believe that this would include specific maps before the Legislature and the CRC, though application to the CRC is not as clear;
- 2) Appears on behalf of another, including an organization.
- 3) The individual's efforts to attempt to influence the decision involves more than: "provid[ing] only oral or written public testimony in connection with a legislative committee" if the individual's "name and the interest on behalf of which he testifies have been clearly and publicly identified". Having members of the community learn how to properly identify themselves and the interests they may represent could help address this provision of the law.

Therefore, if an individual were paid to influence a map, attempted to do so on behalf of an organization, and did more than provide public testimony, without identifying themselves and the interest on whose behalf they represent, then that individual would technically be a lobbyist. Given how many members of the community could arguably fit this definition, we suggest that there may be a need to rectify this understanding in future redistricting legislation to avoid the need to have a large number of community members register as lobbyists and file expenditure reports, as is required by state law.

In addition to ensuring that the language in any future legislation is clear on this point, we heard from multiple experts that disagreements over rules related to community engagement could be avoided with better communication among organizations. This could include holding workshops for organizations and members of the community about the redistricting process and rules and regulations associated with advocacy and lobbying.

Furthermore, due to a finite number of in-person CRC meetings available, there was some competition for space on the agenda at some of the CRC events. Expanding the number of locations across the state that had CRC meetings may decrease any competition for limited access to the process next cycle.

It was also clear from our discussions that community organizations and non-profit groups served as a critical resource to fill gaps in the CRC and legislatures infrastructures to ensure adequate access for community members. At the beginning of the redistricting process, several organizations contributed to the pre-legislative work to help establish the CRC in the first place. A large coalition of more than 30 organizations from across the state built an informal coalition to establish a redistricting taskforce that proved to be consequential to the establishment of the CRC. The redistricting taskforce was created and overseen by NM First and aided in research for redistricting practices and offered possible recommendations.<sup>6</sup> If new legislation is considered to make changes to the redistricting process next cycle, convening a similar task force would be useful, as the task force served a vital role in this process.

A large number of organizations from across the state also helped connect community members to the redistricting process through not only outreach, but technical support. This included language translation, training community members on how to use Zoom for virtual engagement, how to use the map software, etc. Multiple respondents pointed out that without these organizations playing this important role, the process would not have been as successful. Ensuring that these resources are in place ahead of the next cycle will only build on what was, by all accounts, a positive session regarding community engagement.

<sup>6</sup> <https://3w15yc3wrztt1b6yrc3ckujc-wpengine.netdna-ssl.com/wp-content/uploads/sites/230/2021/03/Good-Governance-Redistricting-Taskforce-Recommendations-Report-2020.pdf>



The ability of the CRC to provide extended testimony time for community members and experts allowed for much deeper discussion and the education of CRC members about a good number of communities who are not often included in redistricting discussions. For organized a presentation from Dr. Charles Becknell Sr. to the CRC focused on the history and impact of Black/African-Americans in New Mexico as part of their overall presentation that provided evidence to support the inclusion of African-American communities in the state being defined as a community of interest. The importance of the decision to expand testimony time by the CRC is discussed in more detail later in the report, but is an important factor that helped lead to enhanced learning opportunities for CRC members, a positive outcome of the process that was mentioned by several CRC members we spoke with.

One lesson learned from our discussion with organizational leadership involved in the process was that many organizations that led campaigns focused on community engagement through the redistricting process were also directly involved in the census outreach efforts across the state of New Mexico. For these organizations connecting the public with redistricting was a natural continuation of the work they had done communicating to the public the importance of high participation in the census count in the state. Approaching the census and redistricting processes as one collective campaign next cycle may help community members understand how the census count directly folds into the redistricting process, hopefully increasing public awareness and participation in both stages of the process. The quote below reflects this connection to the census outreach campaign.

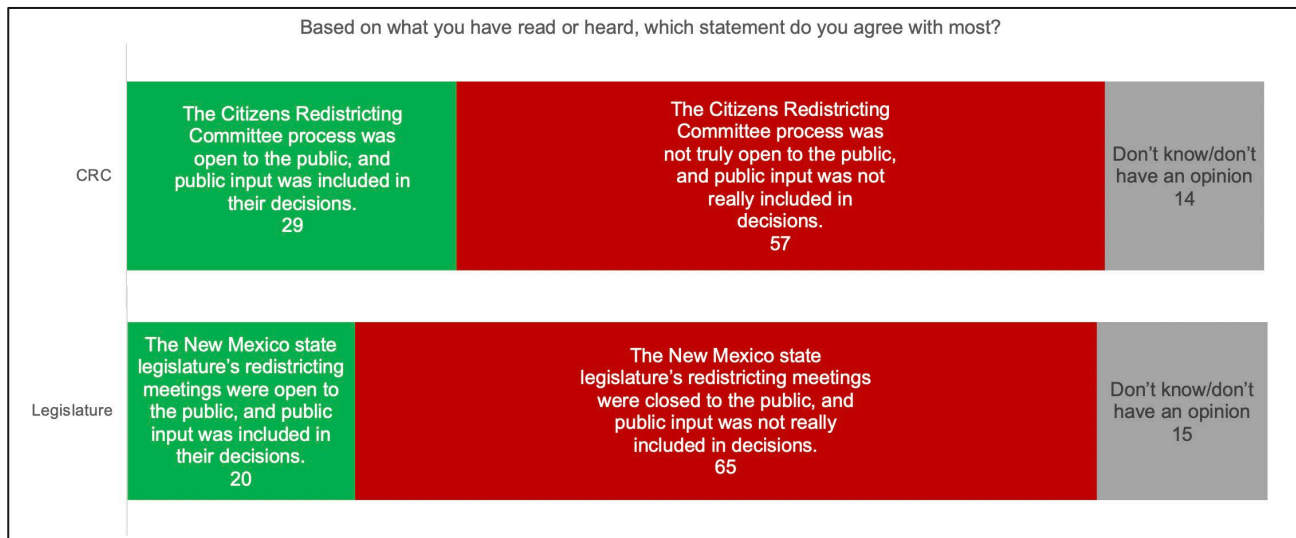
*“It was awesome that when we started our census work, we only had a few people who understood the value of the census, the data, and the districts. But when we got into the redistricting process it became much more clear the value of this work for our communities. It really became clear to our community members that redistricting was about bringing our communities together for something that will benefit everyone.”*

## **THE ELECTORATE PRIORITIZES TRANSPARENCY - MIXED PERFORMANCE THIS CYCLE**

The survey makes clear that the electorate in New Mexico places high importance on transparency in the redistricting process. More specifically, 66% of respondents indicated that it is “very important” and another 25% said that it is “somewhat important” that meetings be held publicly, with only 4% responding that it is either “not that important” or “not at all important.” Therefore, just over nine in ten highly likely voters in New Mexico believe it is important to hold meetings that discuss maps generated during the redistricting process publicly.

Consistent with the general trend across the survey that the CRC performed better than the state legislature this cycle, the CRC greatly outperformed the legislature specifically in transparency. Overall, 29% of participants agreed that “the CRC process was open to the

public, and public input was included in decisions,” versus only 20% who said the same for the New Mexico Senate. Despite greater concern among the public with the transparency of the legislatures process, it is important to note that the majority of New Mexican highly likely voters felt that neither process was truly open the public, which suggests there is significant room for improvement, but in regard to enhanced transparency, and communication about where community members can go to see information about the process.



One of the CRC’s main goals was to have a transparent process to improve the public’s trust in the process. To advance transparency, the CRC made meetings available in varying locations around central New Mexico both virtually and in-person, and posted all meeting recordings and notes online. The interviews with experts from across the state strongly suggest that the CRC accomplished its goal, as transparency was identified as an area that improved in New Mexico with the inclusion of the CRC this cycle.

Several experts noted that the ability of the CRC to post all of the information they generated, including notes and video recordings of meetings, significantly public trust in the process. Given that many of the steps taken to advance transparency by the CRC were not directed by statute, the CRC established a lot of credibility with organizations and community leaders from across the state as they began their process of meeting with community members. This credibility was amplified by these organizations and leaders who had a lot of optimism about the process being more transparent and open to the public. This was vital to the high participation of community members, as multiple organization leaders noted that there was a genuine feeling among their membership that community input would be valued and utilized to create maps.

Transparency was highly salient for the media and good government organizations who were tracking the redistricting process closely. In fact, several good government organizations in New Mexico issued press releases and reports this cycle that reinforced the findings from the qualitative data and the survey. For example, Melanie J. Majors, who is the Executive Director of the New Mexico Foundation for Open Government (NMFOG), also commented on

the openness of the CRC in a letter to Senate Majority Leader Peter Wirth, stating: “For months this summer, the Legislature-mandated Redistricting Committee held public meetings and gathered public comment to create fair, equitable maps...” The CRC’s commitment to providing this information seems indisputable among those who reviewed its performance, especially as committee members themselves went around the state to hear personal statements used Districtr to encourage people to draw their own maps and allowed residents to testify in-person or virtually.

The qualitative interview data produced a general finding that the CRC did a better job making decisions transparently relative to the state legislature. In fact, the interviews and focus groups with experts were highly critical of the New Mexico legislature for their lack of transparency throughout the entire process. Below are a handful of quotes that are consistent with the larger set of interviews we conducted as part of the evaluation that made clear that transparency did not appear to be a high priority for the legislature this cycle.

*“It was clear that there were many legislators who did not prefer the wider public eyes on the process.”*

*“The legislature appeared to simply throw out the maps and write their own in back rooms with no transparency.”*

The findings from the survey and expert interviews are consistent with statements from good government groups in New Mexico. For example, Fair Districts for New Mexico were displeased that the Senate did not produce the CRC maps for the public to respond to, and the map that the Senate and the House passed (and signed eventually by the governor) was written behind closed doors (SB1).<sup>7</sup>

Similarly, Melanie J. Major, in the same letter to Senate Majority Leader Peter Wirth referenced above, stated that “FOG believes the public's business should be conducted in full public view; the actions of the public bodies should be taken openly; and all deliberations be made open to the public, yet the Legislature has conducted their meetings about redistricting behind closed doors, in partisan enclaves, eliminating any public access to the proceedings - access that is an essential element of a properly functioning democracy.”<sup>8</sup> She also references that, by not acting with openness and transparency, the work from the CRC may be rendered useless. The leadership at Retake Our Democracy expressed a similar sentiment, pointing to backroom meetings, repeated rescheduling, and unclear voting agendas as areas contributing to the overall ambiguity from the legislature.

Although much of the critique regarding transparency in this cycle was focused on the senate within the legislature, it is important to add that there were serious concerns that the state’s house also generated maps without public input or with transparency. Multiple experts we

<sup>7</sup> [https://fairdistrictsnm.org/docs/FDNM\\_summary\\_2021s2.html](https://fairdistrictsnm.org/docs/FDNM_summary_2021s2.html)

<sup>8</sup> Letter to Senator Peter Wirth from Melanie Majors on behalf of the NMFOG: <https://nmfog.org/transparency-at-the-heart-of-fog-work/>

spoke with pointed out that there was widespread concern that house leadership was working behind the scenes on maps well before the CRC concluded its process. In fact, several noted that this lack of transparency was acknowledged by several members of the legislature themselves, who were themselves frustrated with the way the process developed, including on the house floor and in public meetings. The quote below reflects the wider point made by multiple experts about the unfortunate lack of transparency in the process they observed.

*“Democrats in the house started to meet a few months before the session, and they made their own maps independent from the work the CRC was doing and any input from the wider public. Their plan also protected all incumbents and they played ball with Republicans who were also protected in the maps being generated by the Senate.”*

The decision to not enforce an ex parte rule was one of the most important decisions made early in the CRC process, and greatly impacted perceived transparency. The ex parte rule proposed by Justice Edward Chavez early in the process would have prohibited committee members from engaging in private communication with someone outside the committee about a proposed district plan. If such a communication occurred, it would have to be reported to the chairman and disclosed at the next public meeting.

Regarding this proposal, Justice Chavez said, “it’s a matter of just being as open as possible with the communities”, a view consistent with the Justice’s overall goal of having a fully transparent process.<sup>9</sup> This proposal was criticized by both conservative activists and at least one prominent progressive organization. Ultimately, the ex parte rule was not adopted during this redistricting cycle, which allowed for some private conversations with committee members to take place.

Many attributed this decision to the importance of giving community members an opportunity to contribute to the process regardless of whether they were able to attend a formal public meeting. However, many good government organizations were highly critical of the decision, as it led to multiple parties having in-depth conversations with members of the CRC, none of which needed to be disclosed to the public.

Our discussions with redistricting experts generated decidedly mixed views on whether this rule should be put into play moving forward. While some experts were in favor of the ex parte rule, many others were worried that by requiring that all conversations be treated as formal and disclosed, some community members may be less likely to speak out. Some experts indicated that they expressed support for the ex parte rule but were concerned about how this rule would be tracked and enforced if it were to remain in place, an issue that will need to be thought through before consideration of further legislation prior to the next cycle.

Justice Chavez, however, was very clear that he felt that the ex parte rule was a good one and should have been left in place after reflecting on the process. He expressed that the

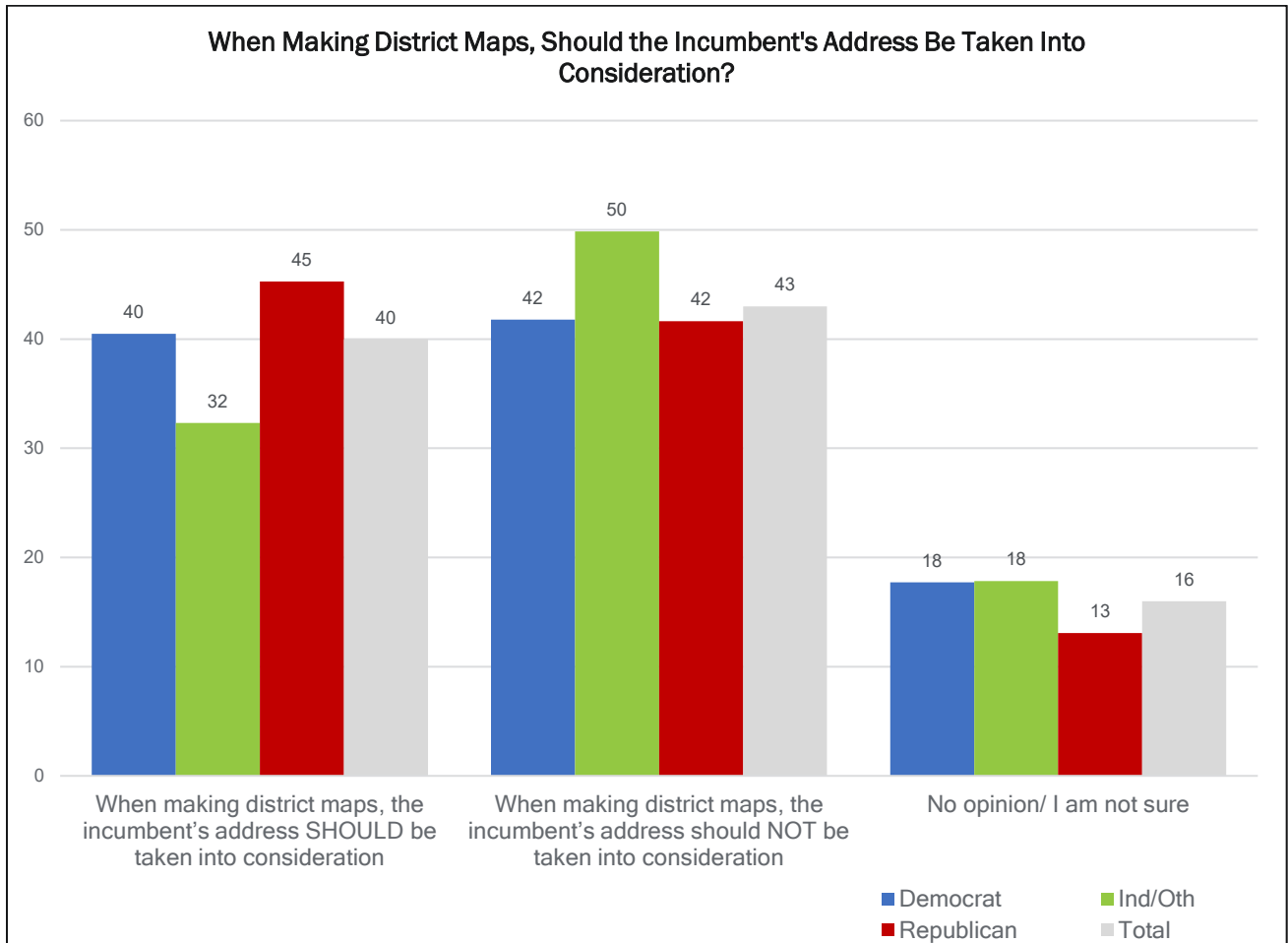
<sup>9</sup> *NM redistricting panel debates ex parte communications*. Dan McKay, Albuquerque Journal, N.M.

goals of the law need to be written more clearly and effectively moving forward to ensure everyone's understanding of the purpose of the rule. It is not intended to limit discussions with the CRC, but rather ensure transparency in the reporting of these meetings.

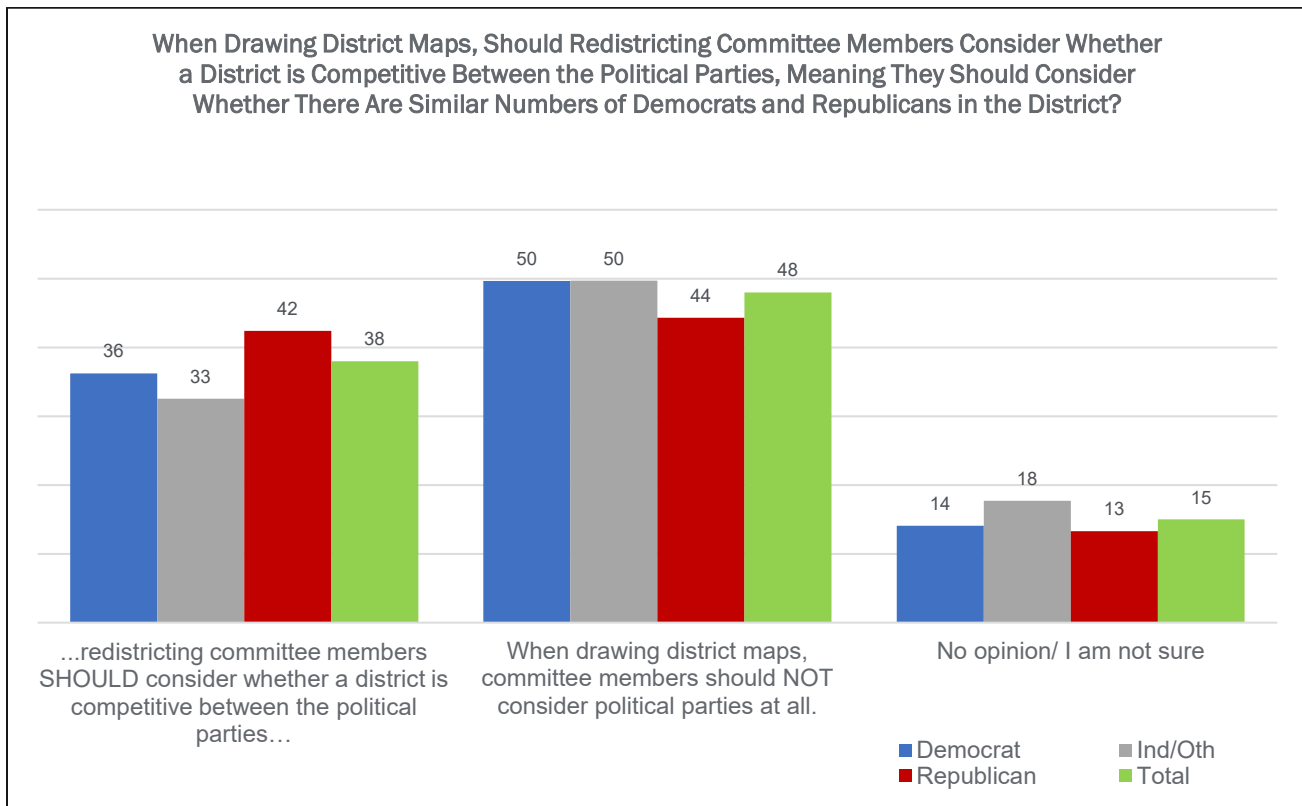
At the end of the day, the ex parte rule should be evaluated thoroughly, well in-advance of the next redistricting cycle so that communications about the implications of the decision can occur well in-advance of the work of the commission. These rules, along with how community members who promote a map will be defined in regard to lobbyist rules, must be communicated widely across the state in advance of the start of any community meetings.

### **SHOULD MAPS INCLUDE INCUMBENT ADDRESSES AND PARTISANSHIP?**

According to the New Mexico Redistricting guidelines, the New Mexico State Legislature is allowed to take incumbent addresses into consideration when deciding on new district maps. The survey asked respondents whether they agreed with that guideline. More of the electorate prefers to not advance incumbency in the generations of maps than those who do. More specifically, 43% indicated that incumbent addresses should not be used in the decision-making process, while 40% believe it should be considered. Furthermore, as displayed below, this opinion is relatively consistent among all political parties in New Mexico, though Republicans favor the use of incumbent addresses at a higher rate than Democrats and Independents.



The survey also asked participants whether political parties should be considered in New Mexico to ensure partisan balance across districts. Similar to the results about using incumbent addresses, there was relatively low support for utilizing political party in creating new districts. More specifically, only 38% of respondents indicated that political party of districts' populations should be considered when drawing district maps, while 48% directly opposed this proposition, and 15% were unsure. When observing the opinions of respondents by political party, these views were consistent among Democrats, Republicans, and Independents.



Respondents from the qualitative interviews were generally supportive of including partisanship performance data in the creation of maps, with strong consensus among everyone with whom we spoke that there must be consistency between the CRC and legislature in how partisanship is, or is not, used to generate maps. We learned after speaking with members of the NM First Redistricting Task Force the Mexican American Legal Defense Education Fund (MALDEF) made clear in a presentation to the group that partisanship must be included in map-making to comply with the VRA, so there must be a balanced approach in how it is integrated alongside other factors.

The Task Force had an interesting suggestion for how partisanship may be handled moving forward. The task force recommends that partisan data (voting history or party registration) not be used to draw districts, provided that voting history in nonpartisan elections (such as ballot questions and bond elections) can ensure compliance with the Voting Rights Act.<sup>10</sup> The group is amenable to the use of partisan data to evaluate already drawn redistricting plans to evaluate whether it favors any incumbent or political party, a sound approach we believe will incorporate partisan data into the process without allowing it to be the primary driver for map-making.

Somewhat surprising to our team given the salience of partisan gerrymandering nationally, incumbency was the number one mapping principle that qualitative interview respondents

<sup>10</sup> See full report here: <https://3w15yc3wrztt1b6yrc3ckujc-wpengine.netdna-ssl.com/wp-content/uploads/sites/230/2021/03/Good-Governance-Redistricting-Taskforce-Recommendations-Report-2020.pdf>

identified as the most important this cycle here in New Mexico. We heard from several experts that, while partisan gerrymandering did not appear to be a major problem in this cycle, incumbent gerrymandering ultimately became a significant challenge, particularly in maps the Senate generated. The quotes below are very reflective of the wide consensus across our interviews that the protection of incumbents was the greatest source of gerrymandering this session:

*“Incumbency was clearly the issue we need to iron out before next cycle. I have mixed views on whether we use party data in the process, but we must have this consistent across the CRC and the legislature moving forward.”*

*“The thing that bothered me the most about the CRC this cycle was that the CRC did not use partisanship in their maps. The best thing for our democracy is to have as many competitive districts as possible, and this requires having competitive districts as a core value. Not having this value on the table was a missed opportunity even though we know legislature did not want to see more competitiveness.”*

*“We never used partisan performance in all of our analysis and maps with the CRC. We drew heat from the legislature for this, and once we switched hats and started working for the legislature, we added all of the political data and integrated them into the maps. It was a really strange process to have distinct maps which were not directly comparable. We had to add performance data on short order to message election data because of precinct changes, so this was not an ideal way to do things.”*

They also noted that Senate District map SB2 was based on a CRC map. However, it only contained 68% of the CRC concept (CRC map C1). This map—SB2—also seemed to focus more on protecting incumbents than protecting minority voters, specifically Native Americans.<sup>11</sup>

The League of Women Voters agreed with this sentiment, calling the recent legislature processes “...an example of ‘buddymandering’ in which incumbents have been protected at the cost of fairness and equity.”<sup>12</sup> Moreover, Senate Bill 304 also outlines the necessity for the legislature to provide written reasoning every time a map is either rejected or changed, which was not provided to the public when lawmakers revised the C1 guidelines in SB2.<sup>13</sup>

## OVERALL PERFORMANCE RATING OF THE CRC AND THE STATE LEGISLATURE

The survey closed by asking respondents to provide an “overall” grade for the performance of both the CRC and the legislature in New Mexico this cycle. Consistent with comparisons across the survey, respondents were much more favorable of the Citizen Redistricting

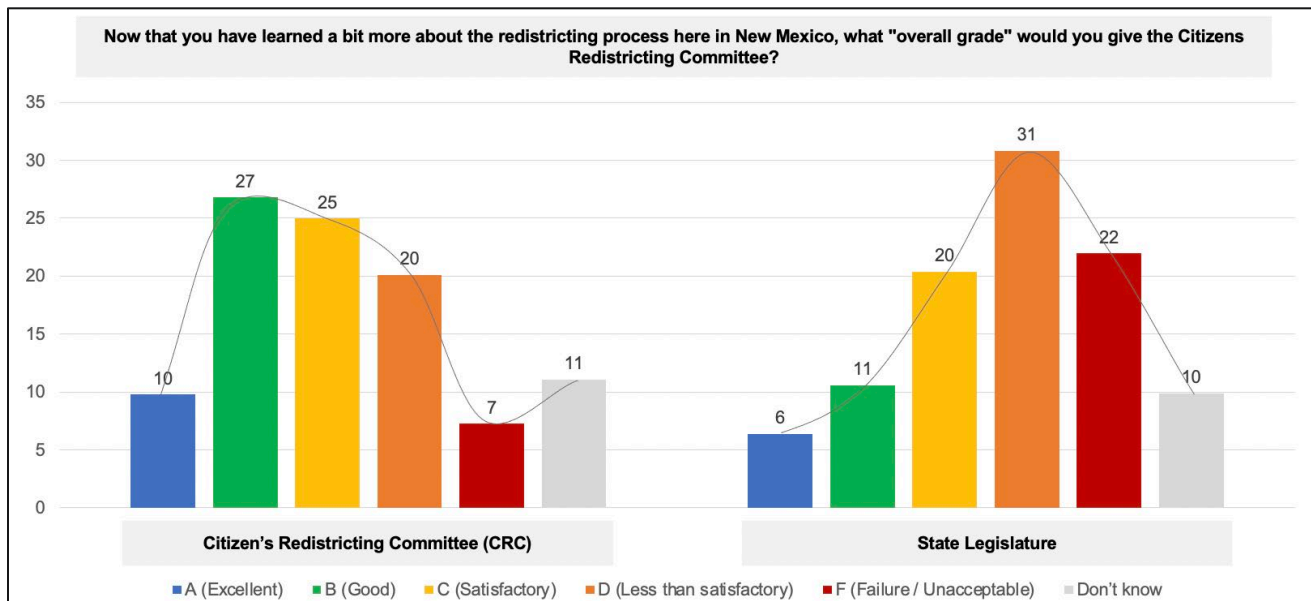
<sup>11</sup> [https://nmindepth.com/wp-content/uploads/2020/01/GD\\_NM-Redistricting-Paper-Final-02-1.pdf](https://nmindepth.com/wp-content/uploads/2020/01/GD_NM-Redistricting-Paper-Final-02-1.pdf)

<sup>12</sup> Statement by the League of Women Voters NM on the redistricting process: December 16, 2021. <https://www.lwvnm.org/news.html>

<sup>13</sup> The FDNM letter



Committee than the legislature during this cycle, indicating that many people found the work of the independent commission valuable. More specifically, 37% of respondents indicated that the CRC deserved either an A or B, and another 25% a satisfactory grade of C. Conversely, only 17% of respondents believed that the state legislature deserved an A or B, with a majority (56%) giving the legislature either a D or F.



Interview participants corroborated this perception of better performance by the CRC relative to the state legislature, all of whom communicated to our team that the CRC did a much better job than the legislature this cycle, which, as noted earlier, included outperforming the legislature regarding community engagement and transparency. The next section of the evaluation addresses the question of whether the maps that the legislature and the CRC generated were better across indicators of both partisan and incumbent gerrymandering.

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## Comparison of the CRC and Legislative Maps - Results of the Map Analysis Conducted as Part of the Evaluation

In addition to the discussion of the redistricting process in New Mexico this past cycle, our evaluation must account for an assessment of the CRC maps relative to those the state legislature generated. Dr. David Cottrell, an independent expert who evaluated the CRC's maps for partisan fairness, led this aspect of the report. Dr. Cottrell's report specific to the

CRC's maps is available here: [https://www.nmredistricting.org/wp-content/uploads/2021/10/New Mexico Evaluation of Fairness Revised.pdf](https://www.nmredistricting.org/wp-content/uploads/2021/10/New_Mexico_Evaluation_of_Fairness_Revised.pdf)

Dr. Cottrell utilized a similar methodology to evaluate the CRC and legislature generated maps. In short, he compared the enacted House and Senate redistricting plans to the CRC proposed and an additional set of non-partisan, computer algorithm-drawn plans. The computer-drawn plans are the same plans used to assess the partisan fairness of the CRC maps and provide a baseline set of possible expected outcomes if the plans were drawn using only partisan-neutral redistricting objectives.

## TESTING FOR PARTISAN GERRYMANDERING

In New Mexico, Democrats control the redistricting process. They hold strong majorities in both the House and the Senate and the office of the governor. As a result, Democrats were positioned to pass a redistricting plan without support from Republicans, creating the opportunity for a Democratic gerrymander. Given the opportunity, the inevitable question is whether Democrats gerrymandered the enacted redistricting plan.

We can attempt to answer this question using a simple test for partisan gerrymandering. In this test, we simply compare the expected outcomes of the enacted maps to those of a set of alternative maps that we know are nonpartisan. If the enacted maps produce more partisan favor than the nonpartisan alternatives, then the difference in expected outcomes is evidence of partisan gerrymandering.

The challenge of setting up this test is to find maps that are assuredly nonpartisan. For this analysis, Dr. Cottrell used two sets of nonpartisan maps. One set of nonpartisan maps are the maps proposed by New Mexico's Citizen Redistricting Committee (CRC). The CRC proposed three distinct maps for both the Senate and the House. Assuming the committee members designed them without partisan influence, these maps represent presumed nonpartisan alternatives to the enacted maps.<sup>14</sup>

Another set of nonpartisan maps used in the analysis are generated randomly by a computer. These are the same nonpartisan, computer-generated maps used to evaluate the CRC's proposals before they were sent to the legislature.<sup>15</sup> The computer-generated maps are

<sup>14</sup> Given that the CRC was prohibited from considering partisan data, and that membership on the CRC was tailored to achieve nonpartisan outcomes, the assumption is not far-fetched. Moreover, before the proposals went to the legislature, the CRC was well aware that an outside expert would evaluate the maps with respect to partisan fairness. Therefore, there were checks in place to remove partisanship from the process. However, it is important to acknowledge that, despite these checks, partisan influence in the process cannot be fully ruled out.

<sup>15</sup> In my role as the outside expert called to evaluate the CRC's map proposals, I instructed a computer to generate 1000 alternative redistricting maps for the House and the Senate. The maps were generated using a computer-automated redistricting algorithm that draws equally populated, compact and contiguous districts that attempt to maintain county boundaries and satisfy VRA requirements. These computer-generated maps were

designed using the same traditional redistricting principles that the legislature used in designing the enacted maps. They draw maps with equally-populated, compact and contiguous districts that attempt to maintain county boundaries and satisfy VRA requirements. However, unlike the enacted maps, the computer-generated maps are assuredly nonpartisan. The computer is never fed partisan information and, of course, has no political history, affiliation, or objective. It runs only on the minimum instructions necessary for designing legal districts. As a result, these computer-generated maps serve as an ideal nonpartisan alternative to the maps enacted by the legislature.

Given that the CRC's maps are presumed to be nonpartisan, and the computer-generated maps are assuredly nonpartisan, they both provide a good nonpartisan baseline against which the enacted maps can be compared. Any significant difference in expected outcome between the nonpartisan maps and the enacted maps is evidence of partisan gerrymandering.

## DID THE LEGISLATURE DRAW DISTRICTS TO ENHANCE DEMOCRATIC REPRESENTATION?

A difference one can expect from a partisan gerrymander involves the number of Democrats represented in the legislature. If Democrats engaged in partisan gerrymandering, the enacted maps would produce more Democratic representation than the nonpartisan alternatives

To determine the expected Democratic representation in each map, Dr. Cottrell computed the total number of votes cast for all Democrats running for statewide office across every election from 2012 to 2020 in each district. He repeated the same process for Republican votes. The expected number of Democratic seats is simply the number of districts where Democratic votes are greater than Republican votes.

In Figure 1, the expected number of Democratic seats in the Senate are plotted along the x-axis to the left and the expected number of Democratic seats in the House are plotted along the x-axis to the right. In each plot, the expected number of Democratic seats for the enacted maps (labeled "Enacted") can be compared to the expected number of Democratic seats for each of the three proposed CRC maps (labeled "Proposed").

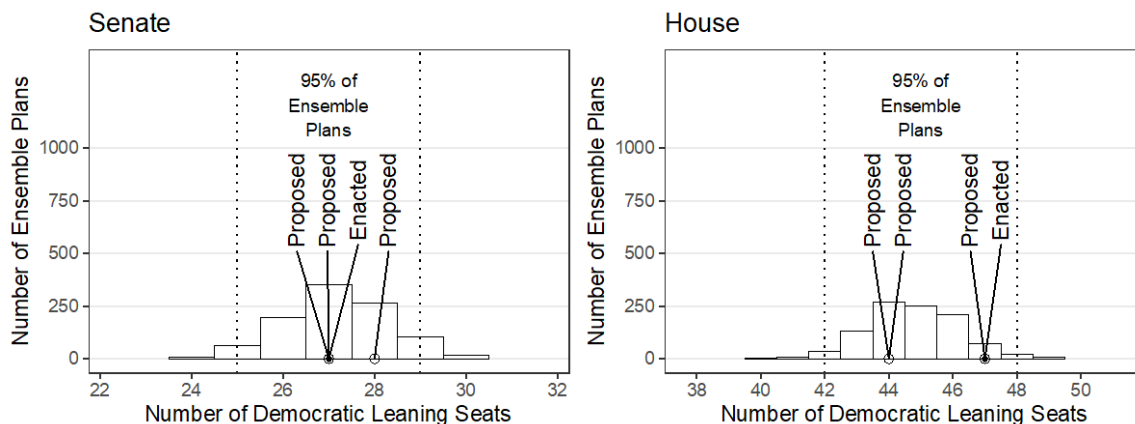
Moreover, the enacted and proposed maps can be compared to the ensemble of computer-generated maps. The expected number of Democratic seats for each of the 1000 computer-generated maps are plotted as a histogram in the background. The length of the bars of the histogram gives the frequency of computer-generated maps that produce each outcome. The range of outcomes between the dotted lines, highlighted in white, represent an interval that

compared to the CRC's maps in order to detect partisan bias. More information about them can be found at <https://www.nmredistricting.org/wp-content/uploads/2021/11/1-Dr.-Cottrells-Corrected-Partisan-Fairness-Report.pdf>

contain the middle 95% of computer ensemble-generated outcomes. Any outcome outside of that interval represents extreme occurrences that are unlikely to be generated by the nonpartisan computer. Instead, outcomes outside of this interval are likely a result of political intent.

Of the 42 seats in the Senate, the enacted map is expected to produce 27 Democratic seats. This is consistent with two of the maps proposed by the CRC, with the 3rd map producing 28 Democratic seats. Moreover, 27-28 Democratic seats are a common outcome among the ensemble of computer-generated maps, and it falls well within the interval of likely outcomes. Therefore, there is no evidence to indicate that partisan gerrymandering enhanced Democratic representation in the Senate.

Of the 70 seats in the House, the enacted map is expected to produce 47 Democratic seats. This is consistent with one of the CRC proposed maps, with the other two maps producing 44 Democratic seats. While the enacted map produces more Democratic seats than most of the computer-generated maps, it still falls within the interval of likely outcomes. Although the enacted map is more Democratic than most of the computer-generated maps, it is not completely unexpected. Therefore, there is not enough evidence to indicate that partisan gerrymandering enhanced Democratic representation in the House.



*FIGURE: COMPARING THE EXPECTED NUMBER OF DEMOCRATIC SEATS BETWEEN THE ENACTED DISTRICTING PLANS, THE CRC PROPOSALS, AND AN ENSEMBLE OF 1000 COMPUTER-GENERATED ALTERNATIVES.*

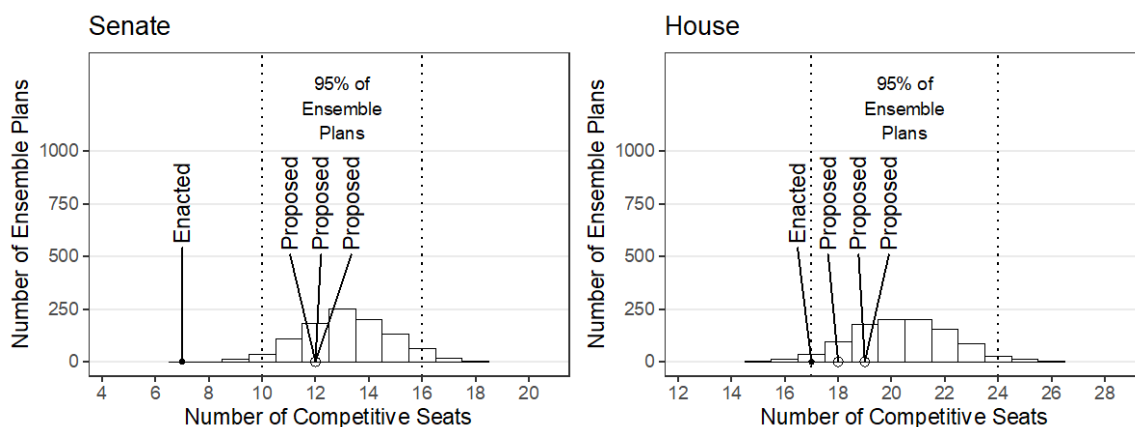
## DID THE LEGISLATURE DRAW DISTRICTS TO REDUCE THE NUMBER OF COMPETITIVE SEATS?

Reducing competition among incumbent legislators is another way in which parties use gerrymandering to affect redistricting maps. To test this, Dr. Cottrell counted the number of competitive districts expected from each of the plans. Competitive districts are those where

Democrats and Republicans have a similar number of voters and could potentially swing in favor of either party. Specifically, the analysis defined a competitive district as one where Democrats are expected to win between 45% and 55% of the two-party vote.

The enacted map for the Senate produces only seven competitive districts, whereas each of the CRC proposals produce 12 competitive districts, and 95% of the computer-generated maps produce between 10 and 16 competitive districts. None of the computer-generated maps produce as few as seven competitive districts. Therefore, such an outcome is unlikely to be the result of a nonpartisan process. Instead, it is almost certainly a result of gerrymandering.

The enacted map for the House produces only 17 competitive districts, which is only one to two fewer competitive districts than the CRC map produces and just within the interval for the middle 95% of the computer-generated maps. Still, it is rare to see nonpartisan maps producing 17 competitive districts or fewer. Maps producing so few competitive seats in the House are not entirely unexpected but certainly unlikely.



*FIGURE: COMPARING THE EXPECTED NUMBER OF COMPETITIVE SEATS BETWEEN THE ENACTED DISTRICTING PLANS, THE CRC PROPOSALS, AND AN ENSEMBLE OF 1000 COMPUTER-GENERATED ALTERNATIVES.*

## DID THE LEGISLATURE DRAW DISTRICTS TO AVOID PAIRING INCUMBENTS?

Incumbents are typically hard to unseat in any election. However, they can be effectively unseated as a result of redistricting if they are paired within the same district as another incumbent. Incumbents that reside within the same district are then forced to compete for the same seat, where only one can be elected.<sup>16</sup> Therefore, mapmakers could potentially use

<sup>16</sup> This assumes that the incumbents do not move their residence to another district.

redistricting to unseat an incumbent legislator by drawing one incumbent's district to include another incumbent's residence. And parties can use this type of gerrymandering to eliminate incumbents from the other party. For example, Democrats could intentionally pair two Republicans in the same district and effectively eliminate one of the two Republican from taking office in that district .

To combat this type of gerrymandering, the rules of redistricting in New Mexico allow mapmakers to consider incumbent residential addresses to avoid pairing them. However, the problem with such a rule is that it inadvertently eliminates natural competition between incumbents. If mapmakers drew maps without respect to incumbent addresses, many incumbents would naturally be paired in the same district.

The computer-generated maps paired far more incumbents than the enacted maps and the CRC maps, which is evidence that state mapmakers intentionally avoided pairing incumbents in the design of their districts. The enacted maps paired two incumbents in the Senate while all three CRC maps paired six incumbents. In comparison, the computer-generated maps, which did not consider incumbent residences, paired 22 incumbents on average, which is over half of the Senate. Moreover, the computer-generated maps produced as many as 32 paired incumbents.

In the House, the enacted maps paired eight incumbents while the three CRC maps paired 8, 12, and 14 incumbents. In comparison, the computer-generated maps paired 40 incumbents on average, which is over half of the Senate. Moreover, the computer-generated maps produced as many as 51 paired incumbents.

In summary, the enacted maps produced fewer incumbent pairings than the CRC maps. And the CRC maps produced far fewer pairings than the computer-generated maps, The results suggest that both the enacted maps and the CRC maps were designed to avoid pairing incumbent legislators.<sup>17</sup>

<sup>17</sup> Another potential explanation for why the computer-generated maps produced more paired incumbents is that the computer did not try to maintain cores of the previous districts. It is possible that the mapmakers unintentionally minimized incumbent pairings as a consequence of maintaining district cores rather than intentionally reducing competition.

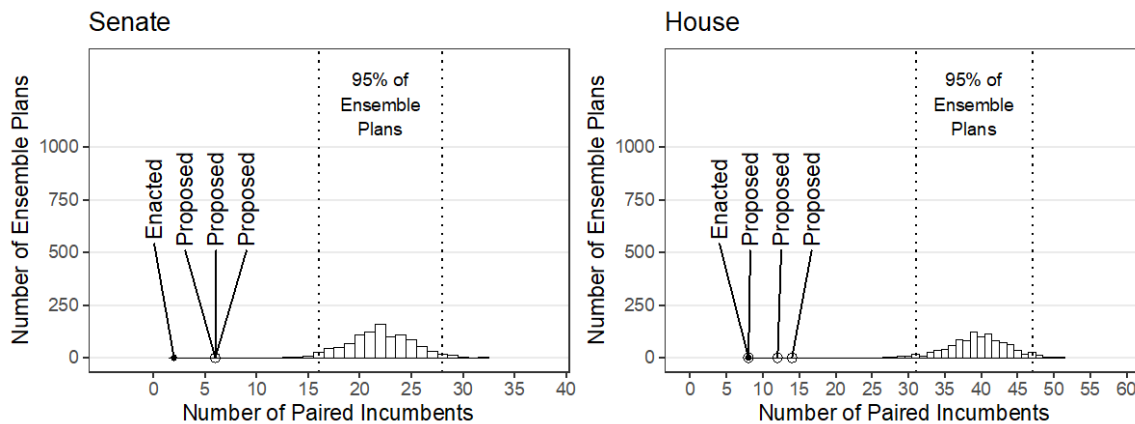


FIGURE: COMPARING THE NUMBER OF PAIRED INCUMBENTS BETWEEN THE ENACTED DISTRICTING PLANS, THE CRC PROPOSALS, AND AN ENSEMBLE OF 1000 COMPUTER-GENERATED ALTERNATIVES.

## SUMMARY OF MAP-MAKING ANALYSIS

In comparing the enacted maps to the CRC maps and an ensemble of the computer-generated maps, there was no evidence suggesting that Democrats gerrymandered the House and Senate districts to enhance their party's representation. It is, therefore, fair to say that the redistricting process in New Mexico this cycle resulted in maps that were not gerrymandered to advance one party's interests over the other. This is an important finding, given that there was an apparent opportunity for the Democratic Party to push their interests further with control of the legislature and the governorship. While we cannot directly attribute this to the presence of the CRC, the Republicans with whom we spoke were complimentary of the balanced maps that resulted from the process. The quote below reflects the overall theme that emerged in our qualitative interviews:

*"It could have been much worse for Republicans this year given Democrats control of the legislature. Yes, I do think the CRC helped us get pretty balanced maps on partisanship. You need something to force both sides to be reasonable in how they draw their maps. If we do not have balanced government to force this to happen, you need an entity like a CRC."*

However, the map analysis found evidence suggesting that the legislature gerrymandered the districts to reduce party competition. This was more pronounced in the Senate. Moreover, since the enacted districts avoided pairing incumbents, it is mostly likely that districts were designed to maintain the status quo and keep incumbent parties safe from electoral competition. This information suggests that any gerrymandering in New Mexico this cycle was based on protecting incumbents.

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## The Role of the Native American Population in the 2020 Redistricting Cycle

Whether the redistricting process was responsive to the Native American community was an important backdrop to the redistricting process in this cycle and, therefore, this question warrants significant attention in our report. Data referenced in this section of the evaluation include interviews with lawyers, experts, organization leaders, and advocates from New Mexico's Native American community. We also leverage census and survey data for analysis of social inequalities facing Native Americans in the state to demonstrate the importance of redistricting to tribes. We want to make clear that although we believe this aspect of the report is very informative, this is not intended to be a comprehensive analysis which would include perspectives from all tribes and pueblo communities in the state.

Although our evaluation strongly suggests that this was a very successful redistricting process for tribes across the state, it is important to note that the CRC had a bad start with tribes, as it was heavily criticized for not having any Native American membership. This lack of formal representation was met with heavy criticism. In fact, the leadership of the Navajo Nation issued a formal statement criticizing the lack of Native American representation and how this lack of representation would hurt Navajo Nation voters in the state's elections.<sup>18</sup> Several respondents to our interviews identified the lack of tribal representation as a major flaw in the early work of the CRC as well. As we note in our recommendation section, improving representation of tribes and other communities of interest on future committees is critical moving forward.

Despite this unfortunate flaw with the initial phase of implementation, most indicators suggest that Native American interests were better served with the CRC in place. Many respondents stressed the value of not having strict time limits on discussions with the CRC, which allowed for more rich and meaningful discussions to take place. The decision to avoid time limits for meetings with tribal leaders and experts was key, as it provided an opportunity for tribal leaders to educate CRC members on the significance of redistricting to tribes and the important context of how political representation for Native Americans must be considered from a historical perspective.

The extended time limit provided to Native American leaders was incredibly valuable, and should therefore be formally included as requirements (along with a requirement to hold public meetings in several tribal communities) in any future redistricting legislation dictating the process. We learned in our conversation with Native American experts in redistricting that expanded time for deeper discussions was not part of the CRC statute, but was a result of

<sup>18</sup> <https://www.opvp.navajonsn.gov/Portals/0/Files/PRESS%20RELEASES/2021/Jun/Navajo%20Nation%20disappointed%20in%20lack%20of%20Native%20Americans%20selected%20for%20New%20Mexico%20Citizen%20Redistricting%20Committee.pdf>



decisions made by Justice Chavez during the process. Ensuring that this is formally included in the next cycle will help ensure that this important step is taken next cycle, regardless of who is in the leadership of the CRC. We were able to speak with two redistricting experts who worked on redistricting efforts in both New Mexico and Arizona who emphasized how important this part of the process is for tribes.

*“When it came to comparison between New Mexico and Arizona, we saw tribal leaders only get two minutes to comment during Arizona redistricting events just like any other citizen. This was a night and day in difference from what New Mexico did for tribes with the CRC. This helped build trust and should be written into statute to make sure that things do not revert back to how they are usually done.”*

These factors not only allowed tribes to educate members of the CRC on the value of redistricting for tribes in the state but also sent a message to tribes that the CRC respected their interests and values. We heard from experts that this was key to overcoming the concerns many tribes had about the value of the CRC following the mis-step of not having any Native American representation on the CRC. The quotes below reflect what we heard in our conversations with Native Americans leaders and experts:

*“The CRC provided tribal leaders the space to share long historical context to educate them on the context of communities of interest. Typically, that context is not included in the discussion. Tribal leaders felt their voice was heard and they were able to educate the CRC leadership. Communities of interest is key for tribes so being able to express how a shared lived experience makes the tribes a community of interest similar to towns etc.”*

*“The CRC provided tribal leaders the space to share long historical context to educate them on the context of communities of interest. Typically, that context is not included in the discussion.”*

Consistent with the overall finding that community engagement was higher this cycle than in years past, we heard from nearly all interview respondents that the participation of Native Americans in the redistricting process was much higher than in years past. Despite the significant obstacle that the pandemic presented for tribal engagement in the process, the quotes below reflect an overall impression that Native Americans utilized the CRC-provided opportunities to participate in redistricting, and these measures improved the overall process this cycle:

*“The CRC definitely could have been improved with Native American representation, but it did allow for a lot more engagement from the public. We saw more tribes directly engage in the process than we have in the past with the CRC.”*

*“Tribal leaders felt their voice was heard and they were able to educate the CRC leadership. Communities of interest is key for tribes so being able to express how a shared lived experience makes the tribes a community of interest similar to towns etc.”*

One of the lawyers who worked with tribes to build a consensus among Native Americans in the state stated that tribes were able to take advantage of the CRC's expanded access because there was more redistricting expertise across tribal communities this cycle and that tribes began their work well before the formation of the CRC. With more members of the Native American community with legal experience specific to redistricting and the ability to use map-making software, the CRC came at an ideal time for tribes to capitalize on this opportunity for enhanced access. Tribes also initiated their work on redistricting well in advance of the formation of the CRC which proved to be vital to the ability to build consensus prior to the legislative process. As a result, maps emerged from the CRC process that were reflective of Native Americans' interests.

The Navajo Nation, for example, began their internal work well ahead of the formal start to the redistricting process which allowed them to begin discussions with other tribes prior to the formation of the CRC. This sentiment was echoed by the leadership of the Native American Voter Alliance, who stressed that the work done in advance of the formal start to the redistricting process was vital to the ultimate success of tribes in this cycle. Below is a quote from that interview that reflects this overall finding from our discussions:

*“Had we not been ahead of this with our work on the census we would have lost out on representation for a full ten years. We have been marginalized in so many forums, so making sure that this did not happen with redistricting was key to taking down some of the cards stacked against us. The work we did to ensure we had capacity to take advantage of the opportunities provided by the CRC in the process was huge”*

There were highs and lows for Native Americans when the process moved to the legislature. Everyone we spoke with felt good about their work with the House early in the process. In fact, we heard that tribal leaders and lawyers representing tribes had an opportunity to meet with the House to discuss maps and their priorities and that these discussions were very positive and respectful.

The leadership of Speaker Egoff was referenced across multiple interviews, with his role in the convening all of the tribes being useful in the effort to reach consensus. The decision to stop the legislature's work for the day to allow for this mediation to occur with the Speaker was rather impressive. In fact, we heard that this example of state tribal collaboration may not be replicated anywhere else but in New Mexico.

The ability for the tribes to eventually reach consensus on a set of maps to push forward through the state was truly remarkable given the tremendous diversity across the many tribes and pueblos in the state who have their own set of priorities and interests. It was clear that the Navajo Nation's primary goals from redistricting were to increase the Native American CVAP across districts, and to leverage the ability to use a sliding deviation in percentage of Native Americans to define influence districts to increase CVAP. They appeared to stick to these principles throughout the process. Pueblo communities appeared to have a more nuanced set of priorities, with some having an interest to support incumbent legislators who were either

from their community or were perceived to be responsive to the interest of the community. Given this diversity it is not surprising that there was a difference in opinion regarding the final stages in the redistricting process.

The Senate's initial map did not reflect the Tribal Consensus Plan, a consensus set of districts that had taken months of work to develop with the approval of tribal and pueblo leaders across the state.<sup>19</sup> The Senate's lack of inclusion of the tribal consensus maps added to the criticism of those maps appearing to focus more on protecting incumbents than protecting minority voters.<sup>20</sup> The media reported that some Native American leaders walked out of the committee room during final deliberations of the senate maps in protest of the process. Two Native American redistricting experts directly involved with the Tribal Consensus Plan provided context to the situation. The quotes below reflect the frustration of some tribes during this part of the process.

*"To have consensus across all tribal nations is a major accomplishment and to not have those maps considered by the State Senate was very telling."*

*"The Senate did not respect tribes. We had to put a lot of pressure on the Senate to come to a consensus with us on a set of maps that were not harmful to our political representation."*

*"There were a lot of people who you could tell felt like they did not have to abide by CRC or tribal maps... Senate appeared to use maneuvers to slow down the process to minimize the ability for tribes to make their case for the tribal maps."*

The intensity of this frustration we heard from multiple Native American experts and advocates with the Senate was largely a result of the efforts made by many to build a consensus map in advance of discussions with the Senate. We heard in our interviews that the ability to build consensus across a large and diverse group of tribes was monumental, so not having the Senate respect that hard work generated the strong reactions we heard in our interviews.

It is important to note that not all tribes felt strongly about the senate's approach to handling the process. For example, in the discussions we had with leaders from the Navajo Nation the overall outcome of the process was the primary focus. Leonard Gorman, a redistricting expert from the Navajo Nation and member of the NM First Redistricting Taskforce, noted that the Navajo Nation was able to ensure that maps it pushed this cycle made their way to adoption and reached the 65% Native American Voting Age Population threshold in all of the majority Native American legislative districts. Mr. Gorman noted that the maps ultimately signed into law were very positive and advanced the collective interests of the Navajo Nation.

<sup>19</sup> [https://www.santafenewmexican.com/news/local\\_news/new-mexico-senate-cancels-floor-session-on-proposed-redistricting-map/article\\_6438d812-5c29-11ec-b74c-475b16b5ad42.html](https://www.santafenewmexican.com/news/local_news/new-mexico-senate-cancels-floor-session-on-proposed-redistricting-map/article_6438d812-5c29-11ec-b74c-475b16b5ad42.html)

<sup>20</sup> [https://nmindepth.com/wp-content/uploads/2020/01/GD\\_NM-Redistricting-Paper-Final-02-1.pdf](https://nmindepth.com/wp-content/uploads/2020/01/GD_NM-Redistricting-Paper-Final-02-1.pdf)

Tribes were ultimately able to negotiate with the Senate, resulting in a set of maps responsive to the principles of the tribe-created consensus maps. The negotiation with the Senate was a major victory for tribes, and, in fact, many respondents to our qualitative interviews noted that the biggest accomplishment of the CRC this cycle may have been the advancement of tribal interests through creating maps more responsive to tribes than in years past. The quote below is representative of our discussions with Native American redistricting experts and reflects the overall success for tribes in the redistricting maps:

*“The thing I was most proud about through this process is how it allowed the Native American community to make their voice heard which ultimately resulted in maps that I believe were more responsive to those interests than we have seen in New Mexico in the past.”*



**FIGURE: “FORMER COCHITI PUEBLO GOVERNOR REGIS PECOS, RIGHT, REP. DERRICK LENTE, D-SANDIA PUEBLO, CENTER, AND OTHER NATIVE AMERICAN LEADER HUG AFTER A BILL TO REDISTRICT THE STATE SENATE WAS PASSED ON THE SENATE FLOOR DURING THE SPECIAL SESSION THURSDAY, DECEMBER 15, 2021.” <sup>21</sup>**

One of the most common recommendations we heard from redistricting experts who worked with or on behalf of tribes this cycle included a suggestion that redistricting principles should formally include self-determination for tribes in statute when the next committee is created. The quote below reflects this overall theme which had general consensus across the experts we spoke with.

*“The hills we had to climb this cycle were essentially all based on our push to have self-determination respected from the process.” Our goal is that tribes should have the say on how their communities were constructed in districts even if it lowers VAP or other principles considered in redistricting.”*

<sup>21</sup> Image by Eddie Moore/Albuquerque Journal <https://www.abqjournal.com/2454973/senate-breaks-impasse-passes-redistricting-map.html>

## WHY THE REDISTRICTING PROCESS IS OF PARTICULAR IMPORTANCE TO TRIBES IN NEW MEXICO

While not intended to be comprehensive, this report summarizes the importance of redistricting to New Mexico's tribes through a brief discussion of the socio-economic inequalities that New Mexico's Native American community faces as well as the experiences of Native Americans which strongly suggests the need for greater political representation. The current legal challenge from the Navajo Nation of the maps for San Juan County best exemplifies the importance of redistricting to New Mexico's tribes. This section concludes with a summary of the main focus of that lawsuit and how, in many ways, the lawsuit reflects the need to build on the work of the CRC to engage tribes in their process in the years ahead.

An indicator of the need for increased Native American political representation often is trust in government. Trust in government is a measure that political scientists often utilize to predict civic engagement. The figure below was generated from two UNM conducted studies. The 2016 state-wide survey identifies that Native Americans are more likely than New Mexicans from other racial groups to believe that the state government can "NEVER be trusted to do what is right." Native Americans, therefore, have the lowest levels of trust in the New Mexico state government of the three largest racial groups in the state.

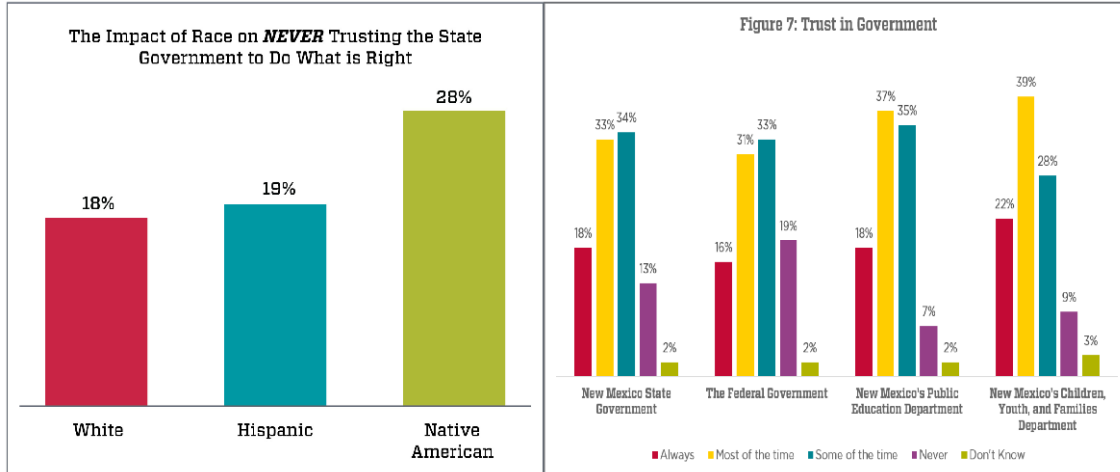
The second figure is generated from a survey of parents with young children across the state of New Mexico focused on early childhood education.<sup>22</sup> The figure provides the responses of Native Americans in the sample and identifies that 47% of Native American parents with young children do not believe that they can trust New Mexico's state government either never or only some of the time. These low levels of trust in government have significant implications for the political participation of Native Americans across the state. Political scientists find that an increase in the descriptive representation, the percentage of a racial or ethnic group's population in elected offices relative to their percentage in the jurisdiction, of racial and ethnic minorities, including Native Americans can improve trust in government.<sup>23</sup> This speaks to the importance of having maps generated from the redistricting process which allow Native Americans to elect leaders from their own communities.

<sup>22</sup> Survey results and methodology provided in the following report:

<https://nabpi.unm.edu/assets/documents/early-childhood-development-nabpi-report.pdf>

<sup>23</sup> Schroedel, J. R., & A. Aslanian, (2017). A case study of descriptive representation: the experience of native American elected officials in South Dakota. *American Indian Quarterly*, 41(3), 250-286.

## Trust in Government Among Native Americans in New Mexico



Source: 2016 UNM RWJF Center for Health Policy Survey (N=1,700)

Numbers reflect % who report they Never trust the state government to do what is right.

Source: 2018 NM Young Parents Survey (n=350)

6

## EXTREME INEQUALITIES IN SOCIO-ECONOMIC STATUS

Compared to other racial and ethnic groups, American Indian/Alaskan Native households face extreme disparities in New Mexico across essentially all economic well-being indicators. For example, the state-wide median income for AIAN is \$39,019, compared to \$61,429 for non-Hispanic white households, resulting in a \$22,410 inequality between the two racial groups across the state.<sup>24</sup>

Poverty rates are another strong indicator of economic wellbeing. In the state of New Mexico, poverty is also an area of inequality for the Native American population. Nearly a third (30.1%) of all AIANs in the state live below the poverty level, compared to approximately 11.5% of the non-Hispanic white population.

According to the 2019 ACS data, there are similar discrepancies between AIANs and non-Hispanic whites regarding educational attainment. For example, while 41.19% of non-Hispanic whites across the state have a bachelor's degree, only 11.78% of Native Americans in New Mexico have a bachelor's degree, reflecting a robust disparity of 29.41%.<sup>25</sup> The gap in educational attainment between the two racial groups is particularly stark when we look at the percentage of each group with a graduate or professional degree. Over 19% of non-Hispanic whites in New Mexico have an advanced degree compared to 3.84% of Native Americans. These gaping inequalities are the product of generations of neglect from a policy-making process that has failed tribal communities in the state. These inequalities, coupled with the

<sup>24</sup> 2019 Census ACS 1-year Estimates; Special Table S1903

<sup>25</sup> 2019 Census ACS 1-year Estimates

low levels of trust in government among Native Americans, speak to the importance of redistricting to tribes.<sup>26</sup>

## SAN JUAN COUNTY REDISTRICTING LAWSUIT

The question of whether Native Americans' interests were adequately addressed from this year's redistricting cycle remains unanswered at the writing of this report. One of the only pending lawsuits regarding redistricting in New Mexico is between the Navajo Nation and San Juan County. The Navajo Nation claim that the county commission packed the Native American voters into one district. This would be in violation of the Voting Rights Act, as it results in the Native American population being unable to elect a candidate of choice despite accounting for such a large portion of the total New Mexico population.

In other words, the major focus of the lawsuit is that despite a large Native American population, San Juan County lacks sufficient majority-Native voting districts to allow its Native community to advance their political interests. Native Americans comprise 41.1% of San Juan County yet are inadequately represented in San Juan County government.<sup>27</sup>

Descriptive representation is one of the indicators political scientists use to evaluate a group's political influence. Currently, only one of the five San Juan County Commissioners is Native American, and in this case a Dine/Navajo.<sup>28</sup> At only 20% of the County Commission, the Native American population is significantly under-represented, given that their population is twice as large as their representation ratio. Native Americans are severely underrepresented in the county overall, with no Native Americans across the county offices of treasurer, clerk, assessor, sheriff, or probate judge. There is a similar pattern in the border city of Farmington, where Native Americans are absent from the city council, as well as other major positions in city government: mayor, city attorney, city clerk, or city manager.

The goal of the lawsuit is to block the currently approved map in favor of one that the Navajo Human Rights Commission presented to the CRC that would increase the number of districts with large enough Native American populations to allow those communities to have greater influence on who represents those districts. If the Navajo Nation is either able to work out a deal with San Juan County to revise their existing maps or win this lawsuit, the CRC will have proven to be yet again useful in advancing the collective interest of tribes this cycle.

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<sup>26</sup> See Appendix B and C

<sup>27</sup> *2020 Census State Redistricting (P.L. 94-171) Summary File.*

<sup>28</sup> *San Juan County Commissioners*, SAN JUAN COUNTY GOVERNMENT (2021), <https://www.sjcounty.net/elected-officials/commissioners>

## Potential Financial Savings and Costs Associated with Citizens Redistricting Commission

The final aspect of our report attempts to evaluate whether the inclusion of the Citizen Redistricting Committee generated any cost savings for the state of New Mexico. This is an important issue salient to the analysis of media coverage from prior cycles. For example, following the previous cycles, Judge James Hall stated the importance of these litigation fees in the following quote: “When the legislative and executive branches fail to comply with their legal obligation, all taxpayers bear the financial consequences.”<sup>29</sup>

Another report cited in our landscape analysis mentions, “In New Mexico, state legislators are relatively unencumbered by rules concerning redistricting, and because of, or in spite of, that liberty, the state has rarely accomplished the task without struggle, chaos, litigation and great cost to taxpayers.”<sup>30</sup> Given that these costs can be framed to voters as an unnecessary financial burden to taxpayers, litigation can be a political weapon for both parties. The potential for litigation may be an avenue for the minority party in the legislature to correct the maps they feel harm their electoral interests.<sup>31</sup>

Jon Boller, Senior Staff Attorney for the Legislative Council Service (LCS), was very helpful in providing actual costs associated with lawsuits for both 2010 and 2020, and the costs associated with the CRC. However, it is important to note that the LCS’s leadership made clear to our team that making any meaningful causal connections between the CRC process and litigation costs would be a challenge because the governor and the legislature enacting new districts that met the important one-person/one-vote standard, which was different than the last two redistricting cycles. The result was there being no free pass for plaintiffs’ attorneys this year, a key motivating factor for legal challenges. Therefore, the following estimates come with an appropriate disclaimer that they should not be used as direct evidence of cost savings attributable to the presence of the CRC.

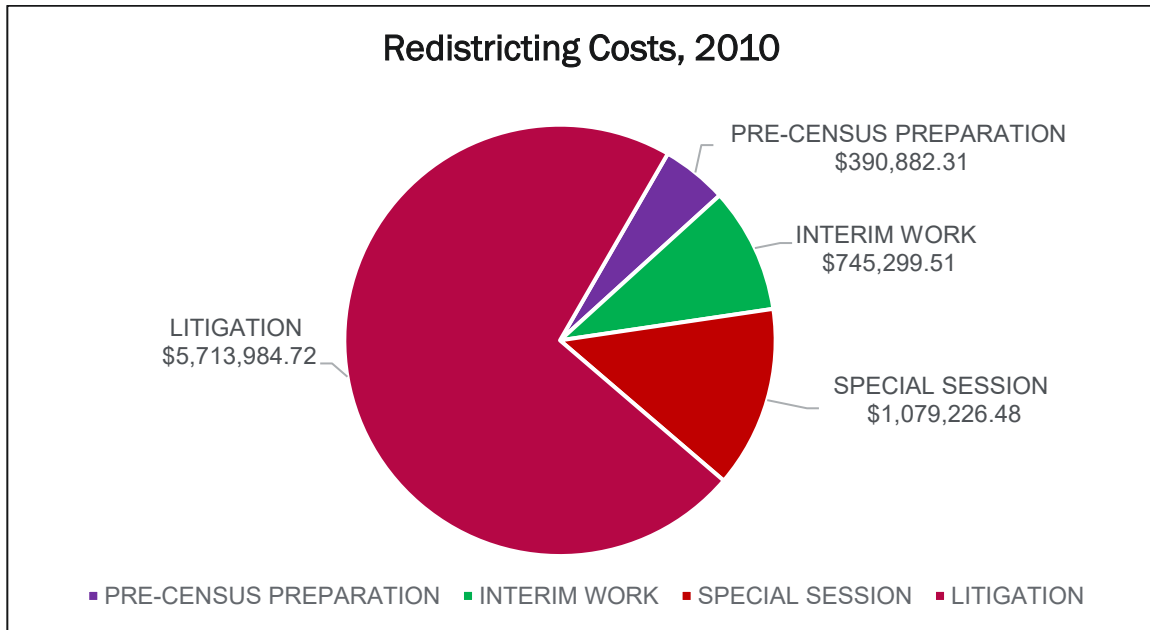
As reflected in the figure below, litigation fees following the redistricting process in the last 2010 redistricting cycle totaled approximately \$5.7 million, equating to nearly three-fourths of the total cost of the redistricting process to the state. The cost to the state for the 2010 special session to create and debate legislature-generated maps was just over a million dollars.

<sup>29</sup> <https://www.abqjournal.com/121696/redistricting-attorney-fees-remain-shocking.html>

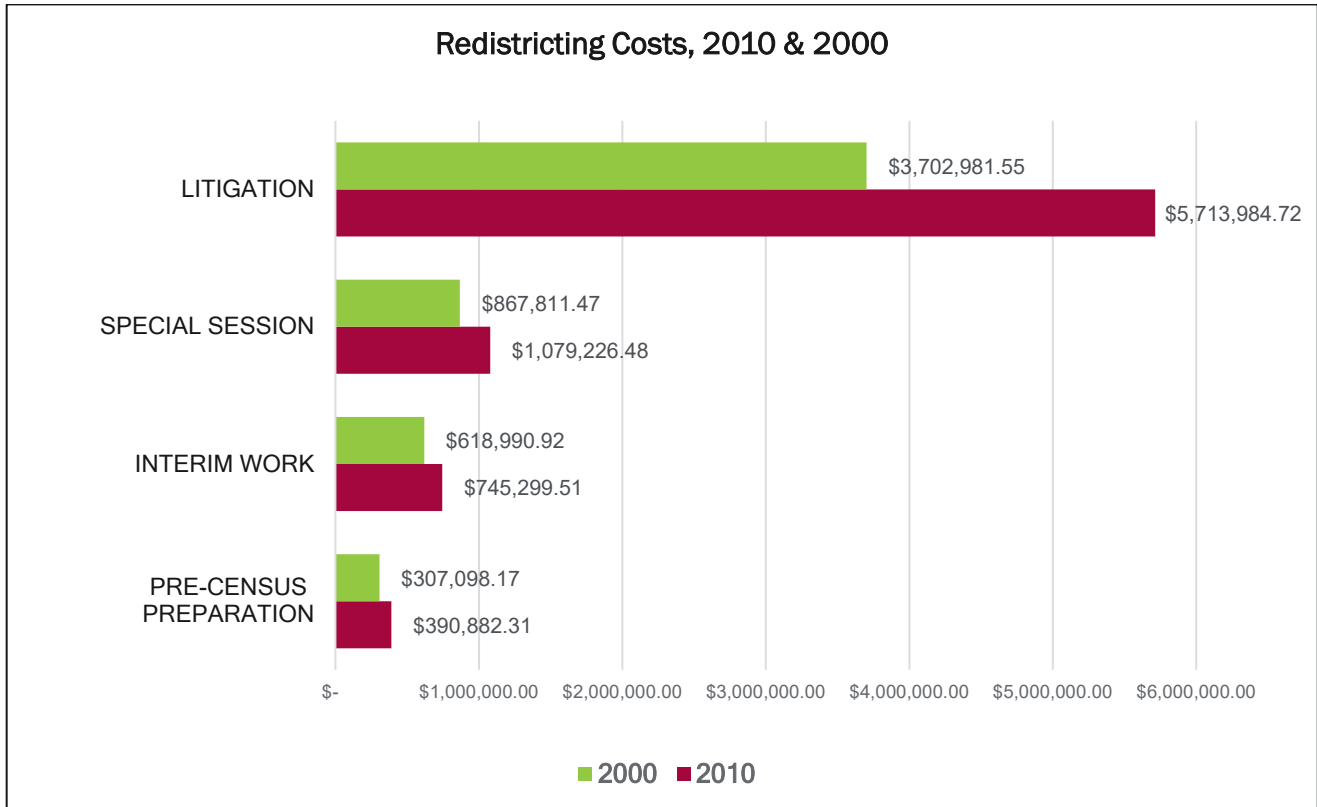
<sup>30</sup> <https://nmindepth.com/2019/struggle-chaos-litigation-great-cost-nm-redistricting/>

<sup>31</sup> [https://www.santafenewmexican.com/news/local\\_news/lawyers-hit-the-jackpot-in-political-redistricting/article\\_384004a2-4bcf-11ec-8b06-df197d8d161a.html](https://www.santafenewmexican.com/news/local_news/lawyers-hit-the-jackpot-in-political-redistricting/article_384004a2-4bcf-11ec-8b06-df197d8d161a.html)





Though the 2000 redistricting cycle produced slightly less in litigation fees, litigation still more than tripled the next highest spending category. As displayed in the chart below, there is a trend of litigation fees being extensive in the redistricting cycles over the last 20 years in New Mexico.



So far, following the 2020 cycle, the legislature's attorney fees for January and February total only \$45,881, which suggests a sizable benefit for the state due, at least in part, to the presence of the CRC. This number does not, however, include the current legal challenge which has yet to go to trial at the completion of this report.

One of the things learned from the LCS's legal team is that it is much more difficult to challenge a map plan that has been enacted into law, as is the case this year, than to prevail on a challenge when no plan was formally enacted, as was the case in both 2011 and 2001. In those years, the governor vetoed most of the redistricting plans, which meant that the state was left with electoral districts that were, on their face, unconstitutional under the equal population standard. This is critical, as it meant that the plaintiffs in redistricting challenges were entitled to recover their attorney fees from the state. Plaintiff attorney fees comprise a sizable segment of the state's total litigation costs, making them an important point of context when considering any cost savings associated with the CRC.

Given this context, if there is evidence that the presence of the CRC in the process of this cycle led to maps ultimately approved by the governor, then it becomes easier to attribute savings in legal fees to that change in the redistricting process. When the State does not have a divided government - i.e., the legislative majorities and the governor are from the same party - it is likely that the governor will sign the maps that the legislature presents. In that circumstance, the cost savings of litigation might be that the work of the advisory agency improves the defendants' opportunities of successfully defending the challenged map(s) to the extent the advisory agency's maps influenced the ones that are ultimately adopted. In other words, CRC's work and influence produces maps that are more defensible and, thus, more difficult to challenge, reducing the likelihood of a costly and protracted lawsuit (and a successful challenge).

To the extent the advisory agency influences the governor's signature of the maps, the state having a divided government would produce cost savings along the lines previously discussed: producing a map that does not suffer immediate one-person-one-vote challenges where the plaintiffs are much more likely to win and to recover costs and fees from the state.

We turn to our qualitative interviews for leverage on this question. As reflected in the quotes below, many respondents said that having maps that had been vetted by the public helped the state accomplish its goal of having maps approved by the legislature and the governor:

*"We saw the importance of the CRC reflected in how the legislature attempted to connect their maps to those produced by the CRC, with several legislators saying that their map was similar to the "people's map" produced by the CRC. Having a set of maps that had the credibility of the CRC that the House could start their process with definitely helped ensure that maps were signed into law this cycle. Obviously, things did not work as well with the Senate, but even there, the CRC's process helped tribes gain the consensus they needed to push the senate as hard as they did to generate maps that the governor could sign into law without major fear of litigation from tribes."*

The CRC also, of course, had costs associated with its process that should be included in any evaluation of cost savings. The table below shows the costs of meetings, legal aid, professional consultants, and research and polling. This totaled to \$710,047, which is ultimately much less than the multi-millions spent on litigation in previous cycles if there are indeed fewer legal costs this cycle. These costs are also very similar to the amount spent on interim work in the 2010 cycle.

*2021 REDISTRICTING--PRELIMINARY FIGURES FOR CRC EXPENSES  
(JULY 1, 2021, THROUGH NOVEMBER 30, 2021)*

Meetings/Administration	184,141
Legal	90,412
Professional Consultant	25,400
Research & Polling	410,094
<b>TOTAL</b>	<b>710,047</b>

Although we are careful to not directly attribute any financial savings for the state to the CRC, it is accurate to say that the presence of the CRC led to a comprehensive plan for redistricting that was enacted into law this cycle. This redistricting plan significantly decreased the likelihood that plaintiffs will be reimbursed for legal fees from the state, which is an outcome that likely reduced the likelihood of litigation and its overall costs in New Mexico this cycle. Finally, we believe that the court would take any CRC-recommended plans very seriously, particularly over and above any plans submitted by the parties to litigation. The outcome may not result in cost savings but, perhaps, better maps at the conclusion of any legal challenges.

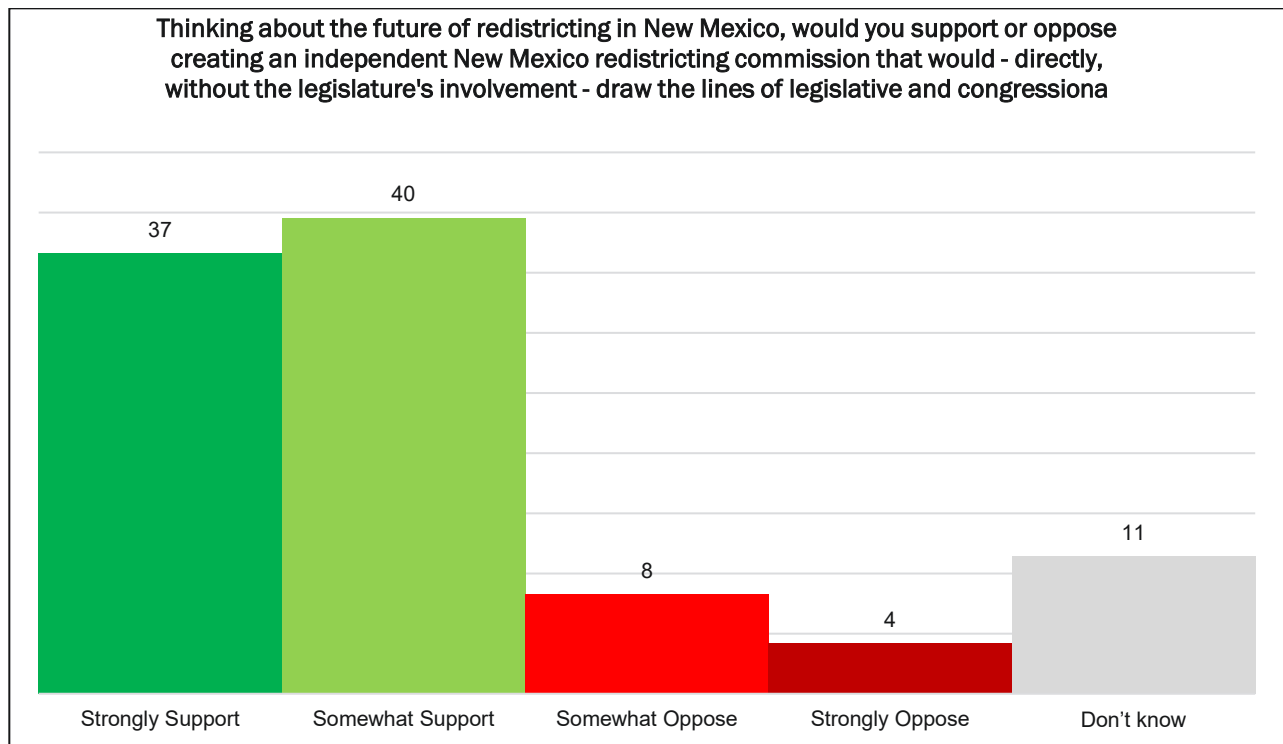
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## Conclusion & Recommendations

### SHOULD NEW MEXICO MOVE TO A TRULY INDEPENDENT COMMISSION?

This final section of our report begins with arguably the most important question facing the state of New Mexico: should the state move to have political district maps created by a truly independent commission whose maps would be binding and independent from the legislature? To provide some leverage on this question, we turn to the survey of highly likely voters. According to the survey's findings, 77% of respondents support "creating an independent New Mexico redistricting commission that would directly, without the legislature's involvement, draw the lines of legislative and congressional maps." Conversely, only 12% of

respondents oppose this reform to the redistricting process in the state of New Mexico, with another 11% reporting that they did not know at the time of the interview.



Support for moving to an independent commission to draw district lines directly is high across all sub-groups of New Mexico's electorate, with a majority of New Mexican voters supporting this revision to the redistricting process, regardless of demographic or political identity. Below are some of these descriptive findings that emphasize consensus among the high likely voter population in New Mexico.

- 82% support among Democrats, 76% among Independents, and 69% among Republicans.
- 88% among self-identified liberals, 75% among moderates, and 69% among conservatives.
- There was no statistical difference between Hispanic or white highly likely voters, nor a statistical difference based on age.
- Finally, over 70% of New Mexico's electorate supports moving toward an independent commission regardless of their household income level or personal educational level.

These findings were consistent with what the interview participants conveyed. The clear consensus among the experts with whom we spoke was that although the CRC did a great job this session, it is necessary to move toward a truly independent commission with binding decisions on district maps. The comments below were consistent with the views of most experts with whom we spoke:

*“I am 100% behind an independent commission who can make the maps directly. The CRC was a really positive step in the right direction, but it was not far enough. We did the hard work of hearing from members of the community across the state in a transparent way, but at the end of the day some of that work was not reflected in the maps the leg created. It would be a cop out to do the same thing we did this cycle in 2030.”*

*“Unless there is a way to change the mind set of legislators to care more about collective interest rather than their own personal or parties’ interests than we have to consider taking them out of the process. I have been doing this for a long time and I have never seen that happen, so I think self-interest is always going to be an obstacle.”*

*“The CRC was a great step forward, but as you know, none of the CRC maps were adopted by the legislature, which is why we feel it would be a waste of time to continue with an advisory redistricting commission.”*

Although support for an independent commission was the overall consensus in interviews, multiple Republicans with whom we spoke had a nuanced view on this question, consistently noting that balance in powers in a divided government (like in 2010) can produce great outcomes even with the legislature controlling the process. Absent of divided government, however, all Republicans with whom we spoke also supported moving toward a commission with binding decisions, as expressed in the following quote:

*“Divided government in 2011 helped lead to a different perspective because pushing the limits would not be effective. In 2011 the courts played an important role; everyone knew the process might go to the courts and that was a strong motivating factors to generate reasonable maps. Both sides seemed to come up with maps which were more reasonable than you get with unified government. It was a messy process with dog eat dog in 2011, but divided government led to a forced compromise in some sense. The only other way to temper self-interest is to take power away from the politicians through an independent commission”*

## **MOVING TOWARD AN INDEPENDENT REDISTRICTING RAISED SOME CONCERNS WORTH NOTING**

Although there was nearly unanimous support to have a commission make maps independent of the legislature, there were several concerns raised worth noting. These concerns included a need to improve member selection, CRC membership being too closely connected to the parties, and the lack of racial and ethnic, partisanship (independents) and geographical diversity. The lack of representation caused some of the experts with whom we spoke to question whether the committee should be called a “citizen” commission in the first place? The quotes below help make clear how important revising the process to identify who will serve on a future commission to maximize representation will be for next cycle:

*“To me the quality of the alternative to legislative maps is dependent on who is on the committee. We learned that from the CRC process. Two former state senators, one chair of a party, a high-powered partisan lawyer who has run for office. Are these representative citizens? These folks were appointed for a reason, and many felt that they were surrogates for the elected officials.”*

*“There are no guarantees that the people who are appointed to this new committee will do an honorable job?”*

*“The biggest concern I have about the commission approach is how it is appointed. It must be addressed by the legislature in statute, but the reality is that the only way this passed this time was that legislature knew that they controlled four of seven seats on the CRC. Let’s remember that this was passed on that last hour of the process and barely passed. Can we make the process less reliant on four of seven members being partisan appointment and still get it passed?”*

*“Please consider a redistricting commission made up of three Democrats, three Republicans, and three Independents. The overall political system in New Mexico underrepresents Independents, who are a third of the electorate and growing. Let’s get it right with the redistricting process.”*

*“Having complete and final say with a commission that looks like what the CRC does that would be a problem for us. Having the legislature in place has some accountability to voters. The committee may not have any accountability to the public, and if the committee is not representative of the larger community, this would be a problem for our group.”*

We also heard the importance of having members on the committee who have expertise or skills useful to the committees’ goals. It was noted that Robert Rhatigan’s knowledge of map-making and census numbers helped him connect with community members. As reflected in the quote below, one of the community experts we spoke with suggested that in order to ensure we have representation from diverse communities who also have valuable skills, we may need to consider compensating committee members.

*“Having complete and final say with a commission that looks like what the CRC does that would be a problem for us. Having the legislature in place has some accountability to voters. The committee may not have any accountability to the public, and if the committee is not representative of the larger community, this would be a problem for our group.”*

*“There must be professionals with skillsets we need on the committee. Ideally we recruit people from diverse communities with these skills. Can we find a path to pay members to make sure we get representativeness on the new committee to help make that happen? We could create a set of priorities for skills and background factors to use when vetting happens to staff the committee to help improve transparency in the process.”*

In regard to ensuring that there is adequate Native American representation on any future CRC or truly independent commission, one interesting idea generated from our qualitative interviews was to have a sub-committee to the larger commission that is comprised of only

tribal leaders and experts. This sub-committee could help build consensus across tribes on map priorities and ensure that all tribes have access to the process. This would be in addition to the full committee or commission that should definitely have ideally multiple Native American representatives, with no less than one member from the Navajo Nation and one member representing pueblo communities.

There were concerns raised about the use of the word “citizen,” which implies participation is restricted to documented state residents. Given the large number of immigrants participating in the redistricting process, including undocumented members of our community, the name conveyed a perception that they might not be welcome to contribute to the process.

While far from a consensus view, there were also some concerns that removing the legislature from this process would deprive the state of the benefit of their collective knowledge of their districts.

## RECOMMENDATIONS FOR IMPROVING NEW MEXICO’S REDISTRICTING PROCESS REGARDLESS OF WHAT APPROACH IS TAKEN NEXT CYCLE

Regardless of whether the CRC becomes independent from the legislature, or if New Mexico decides to continue the advisory format in play this cycle, there are valuable ideas for future improvements to New Mexico’s redistricting process. Each of our interviews with experts included a question about what they think should be changed about the redistricting process moving forward. The suggestions below summarize what we heard in those interviews:

- **Have a clear set of rules that govern community participation in the redistricting process.** The two issues that were salient in this regard were the ex parte rule and clarity regarding whether community members can be reimbursed for travel without having to abide by rules associated with lobbyists. We learned from our interviews with the experts who drafted the legislation creating the CRC that these two issues should be revised through legislation prior to the next cycle. It became clear from our qualitative interviews that there needs to be greater clarity on the rules defining the CRC process so all parties know well in-advance how to ensure that their work does not violate any laws or policies. Given the tension that emerged around this issue this cycle, it is important to ensure that this is resolved prior to the next redistricting session and that the rules are clear and communicated widely prior to the start of the community engagement process.
- **Future research should investigate and document the sources of funding that support redistricting efforts in New Mexico, including research and mobilization of community members.** Although this was beyond the scope of this evaluation, we agree with suggestions made by the redistricting taskforce that future work should be focused on

this issue to enhance transparency in New Mexico's redistricting process, as it could help identify any potential conflicts of interest.

- **Increase the time for the CRC to do their work with communities effectively.** We heard from Justice Chavez and other members of the CRC that the structural challenges that delayed the start of the process did not leave the CRC with enough time to adequately engage communities across the state. The delay in the 2020 Census numbers compounded this challenge, as the staff of Albuquerque Polling Inc. had to generate initial maps without the fresh census data, which was obviously not ideal given that everyone knew that any maps generated during those initial meetings would not be considered.
- **Find paths to better engage New Mexico's African American and Asian American communities into the redistricting process.** New Mexico has an unfortunate tendency to focus political and policy discussions on the three largest racial and ethnic minority populations, overlooking the Asian American and African American populations. Although both communities are too small to in population to generate majority districts exclusive to their community, there should be efforts made to maximize their political influence through the redistricting process. The New Mexico Black Leadership Council created a Black Community Redistricting Task Force who worked with community members to create a map that focused on leveraging New Mexico's two largest concentrations of Black residents, Albuquerque's International District and Clovis. This map was formally presented to the CRC and eventually included in the people's map so a great effort that can be replicated and enhanced next cycle to look for other pockets of the state where the African American and Asian American communities represent communities of interest that should be protected during the map-making process.
- **Need for an improved system to track data generated from community members and ensure that data is made available to the state and the CRC.** There was a clear consensus that there was a lot of rich qualitative data generated from the public during this session. However, there were several respondents who noted that the vast amount of the comments from community members made ensuring that this data was useful to either the CRC or the legislature difficult. Establishing a more deliberate strategy to better collect and analyze this data before the next cycle would be wise, including looking into any useful software that may improve this process. The NM First Redistricting Task Force suggested in their report that a trusted, independent entity should aggregate and summarize public comments and eventually release them to the public. We agree that making these comments available to the public following the session is wise, as it helps build confidence that the data was taken seriously by the public. It was also noted that having a research entity, such as NM Polling Inc. who were in place during this legislative session, was important. We learned that Albuquerque Research & Polling Inc. would review maps generated from the public



and move forward those which were constitutional and included all jurisdictions, ensuring that the CRC only looked at maps that were useful for their purposes. This in-house research staff capacity is vital to having a successful redistricting process and should be continued.

- **The expectations for full participation in the CRC should be made clear to those who are interested in applying, and the CRC should be required to make the challenging decisions.** We learned through our interviews that not all members of the CRC participated equally in the meetings with community members and that few learned how to utilize the map-making software available to the public to generate maps. We also heard from several CRC members that, while not having to come to a consensus led to a more collegial process, it limited the CRC's influence on the legislature. One member of the CRC suggested work sessions should be carried out every two weeks with Research and Polling to crunch data and make tough decisions on generating maps using community input.
- **Approaches should be explored to increase the likelihood that the state legislature will take the CRC maps into serious consideration if the state utilizes the same advisory committee approach next cycle.** One of the more interesting suggestions we heard was to consider adding a new line in the bill that says the legislative maps must have a high correlation (90% or another percentage) with the CRC maps. We like this idea but heard from other experts that this might not be as strong as a safeguard as it might appear, given that big shifts in overall district balance can be generated by implementing just a 3% change. Finally, we heard from multiple experts that the CRC may be able to create two maps for each jurisdiction and allow the legislature to choose from those options without allowing the legislature to amend them in any way. This gives the legislature an important role in the process while limiting how far they can move things away from what the CRC generates.

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## About the Authors

**PAUL MITCHELL** is the Director of Redistricting Partners. Mitchell has conducted the redistricting for more than 75 states, cities, school boards and community college districts, including the State of New York Independent Redistricting Commission, the Los Angeles City Council Redistricting Commission, the Long Beach Independent Redistricting Commission,

commissions in Oakland, Berkeley, and Mesa, Arizona. His firm's work on racially polarized voting analysis and demographics has aided dozens of agencies as they navigate the California and Federal Voting Rights Acts. Mitchell also works with nonprofit organizations, such as the Irvine Foundation, American Civil Liberties Union, the Advancement Project, Common Cause and others in building community engagement and working throughout California and Nationally on elections and voting issues, including advising in the State of New Mexico's inaugural redistricting commission, working with the State Ethics Committee on guidelines for commissioners and evaluating the final maps. In total, Mitchell and his firm has worked in more than 15 states around the country advising on statewide redistricting. Mitchell has been regularly cited in the media as an expert on elections and redistricting, including as the subject of a CNN Presents special on the decennial redistricting process, an interviewee on the PBS News Hour's election coverage in 2020, participant in the 538 Podcast series on redistricting reform, and as a regular analyst on California-based network TV election coverage.

**DR. GABRIEL SANCHEZ** is a Professor of Political Science, and the Founding Robert Wood Johnson Foundation Endowed Chair in Health Policy at the University of New Mexico. Dr. Sanchez is also the Director of the [\*UNM Center for Social Policy\*](#) and a founding member of the [\*UNM Native American Budget and Policy Institute\*](#). Sanchez is also the Vice President of Research for [\*BSP Research\*](#) and a non-Resident Senior Fellow in Governance Studies at the Brookings Institution. A leading expert on Latino and New Mexico politics and policy, Sanchez regularly provides political commentary to several state, national, and international media outlets including the New York Times, CNN, Los Angeles Times, and The Economist. Professor Sanchez is a nationally recognized expert in survey research and the utilization of rigorous research to inform public policy decisions at federal, state, and local levels. Sanchez has been on the faculty at UNM since 2005, a native New Mexican, and a graduate of St. Pius X High School in Albuquerque. Dr. Sanchez has directed numerous surveys in New Mexico for a host of clients, including the State of New Mexico's Department of Workforce Solutions, Indian Affairs Department, and Early Childhood Education and Care Department. Sanchez has also conducted state-wide surveys for the ACLU of New Mexico, WKKF Foundation and for and with a wide number of non-profit organizations across the state. Dr. Sanchez is currently leading evaluation projects on the New Mexico State Tribal Collaboration Act and the State of New Mexico's redistricting process. He has also led several training programs similar to that which is proposed, allowing him to also participate in curriculum development and delivery in several roles. These roles include serving as the Director of the American Economic Association's Summer Diversity training program, the NIH-funded BUILDing Scholars Research Enrichment training program, and oversight of UNM's Center for Social Policy PhD Fellowship Program.

**DAVID COTTRELL** is an Assistant Professor in the Department of Political Science. He earned his B.A. in Political Science from the University of California at Davis and his Ph.D. in Political Science from the University of Michigan. Before joining the faculty at the University of Georgia he completed a postdoctoral fellowship in the Program in Quantitative Social Science at Dartmouth College, where he subsequently served as a lecturer in quantitative methods for

the Department of Government. His research uses empirical and computational methods to explore how rules and procedures distort representation in the United States. Dr. Cottrell provided analysis on behalf of the Citizen Redistricting Commission of their maps generated this cycle in New Mexico.

**JORDIN TAFOYA** is a Research Analyst at BSP Research who helped oversee the survey completed as part of this evaluation project. Jordin has aided in survey analysis focused on Latino COVID-19 responses, economic wellbeing, and legal representation for BSP Research. She has helped conduct research for various other topics, including sanctuary cities and redistricting in New Mexico and their impact on the Latino community. Jordin is a recent graduate of the University of New Mexico and will begin a joint PhD/JD program at Arizona State University in the Fall of 2022.

# Appendix A

## FOCUS GROUP/INTERVIEW PARTICIPANTS

<i>Name</i>	<i>Title/Organization</i>
<i>Brian Sanderoff</i>	President Albuquerque Polling Inc.
<i>Cassey Duoma</i>	Chairman of the Board of Directors New Mexico Center on Law and Poverty
<i>Keegan King</i>	CEO Atsaya Inc.
<i>Preston Sanchez</i>	Indigenous Justice Attorney NM ACLU
<i>Robert Rhatigan</i>	Committee Member Citizen's Redistricting Committee
<i>Scott Darnell</i>	Senior Advisor for Policy, Planning, and Operations Greater Albuquerque Chamber of Commerce
<i>Ryan Cangliosi</i>	Committee Member Citizen's Redistricting Commission
<i>Fred Nathan</i>	Executive Director Think New Mexico
<i>Kristina Fisher</i>	Associate Director Think New Mexico
<i>Jeremy Farris</i>	Executive Director NM Ethics Commission
<i>Justice Edward Sanchez</i>	Chair of the Committee Citizen's Redistricting Commission
<i>Orianna Sandoval</i>	Executive Director Center for Civic Policy
<i>Melanie Aranda</i>	Chief Operating Officer Center for Civic Policy
<i>Elizabeth Cuna</i>	Co-Founder / Field & Organizing Specialist Semilla Strategies
<i>Regis Pecos</i>	Former Director of Legislative Affairs New Mexico Legislature
<i>Dick Mason</i>	Action Chair League of Women Voters
<i>Kathleen Burke</i>	Project Coordinator Fair Districts New Mexico
<i>Mario O. Jimenez III</i>	Campaign Director Common Cause New Mexico
<i>Ahtza Dawn Chavez</i>	Executive Director NAVA Education Project
<i>Austin Weahkee</i>	Political Director NAVA Education Project

## Appendix B

### DEMOGRAPHIC ANALYSIS OF NATIVE AMERICAN POPULATION IN SAN JUAN COUNTY AND THE STATE OF NEW MEXICO<sup>32</sup>

	Statewide		San Juan County		State Disparity	County Disparity
	Native	NH White	Native	NH White		
Poverty Status	30.10%	11.50%	34.00%	10.70%	18.60%	23.30%
Median Income	\$39,019	\$61,429	\$35,576	\$51,759	(\$22,410)	(\$16,183)
Unemployment Rate	8.40%	4.70%	9.60%	3.50%	3.70%	6.10%
Percent of Population - Only Speak English	47.10%	93.40%	43.10%	94.30%	-46.30%	-51.20%
Travel to work by car alone	79.80%	79.60%	91.30%	86.60%	2%	4.70%
Percent without Health Insurance	21.00%	5.60%	20.60%	6.70%		
Less Than 9Th Grade	4.31%	1.63%	3.02%	2.61%	2.69%	0.41%
9Th to 12Th Grade, No Diploma	13.90%	13.90%	4.01%	6.89%	9.89%	9.55%
Regular High School Diploma	28.98%	16.43%	30.50%	20.65%	12.55%	9.85%
Ged Or Alternative Credential	4.90%	4.16%	4.42%	5.78%	0.74%	-1.36%
Some College, No Degree	26.84%	22.56%	27.19%	24.14%	4.28%	3.05%
Associate's degree	9.29%	10.03%	11.51%	18.05%	-0.74%	-6.55%
Bachelor's Degree	7.84%	21.82%	5.08%	11.48%	-13.98%	-6.40%
Graduate Or Professional Degree	3.94%	19.36%	1.85%	10.39%	-15.43%	-8.55%

<sup>32</sup> 2019 Census ACS 1-year Estimates

## Appendix C

### DEMOGRAPHIC ANALYSIS OF NATIVE AMERICAN POPULATION IN SAN JUAN COUNTY AND THE STATE OF NEW MEXICO<sup>33</sup> WITH MARGIN OF ERROR

	Statewide				San Juan County			
	Native		NH White		Native		NH White	
	Mean	MOE	Mean	MOE	Mean	MOE	Mean	MOE
Poverty Status	30.10%	3.40%	11.50%	0.80%	34.00%	8.10%	10.70%	3.20%
Median Income	\$39,019	\$4,329	\$61,429	\$1,345	\$35,576	\$7,535	\$51,759	\$3,083
Unemployment Rate	8.40%	1.50%	4.70%	0.60%	9.60%	2.80%	3.50%	1.70%
Percent without Health Insurance	21.00%	2.20%	5.60%	0.60%	20.60%	3.80%	6.70%	2.90%

<sup>33</sup> 2019 Census ACS 1-ye

## Appendix D

### NEW MEXICO STATEWIDE REDISTRICTING SURVEY TOPLINE RESULTS

March 7-17, 2022 N=500 (+/-4.4%)

**Q1. How closely did you follow news and information about this year's redistricting process here in New Mexico?**

Extremely closely	12%
Very closely	20%
Somewhat closely	37%
Not too closely	24%
Not at all	7%

**Q2. Based on what you have heard, which of the following best reflects your view on the Citizens Redistricting Committee?**

The Citizens Redistricting Committee was a great resource that led to more public involvement in the process. But they were only able to provide recommendations that the New Mexico legislature was not required to accept. We need a truly independent commission that makes redistricting maps for the state of New Mexico, not the state legislature.

43%

The Citizens Redistricting Committee's worked well as advisors to the legislature. New Mexico's new district maps are better because of their input. While the process was not perfect, we do not need major reform to our redistricting process as long as the Citizens Redistricting Committee remains in place.

23%

The Citizen Redistricting Committee was not a good addition to the redistricting process. We do not need a committee to get the public involved in redistricting. We should leave the redistricting process to the legislature.

10%

Don't know enough about it to say.

24%

**Q3. How important is it to you that all redistricting meetings be held in public?**

Very important	66%
Somewhat important	25%
Not that important	3%

Not at all important	1%
Don't know/ no opinion	4%
<b>TOTAL IMPORTANT</b>	<b>91%</b>
<b>TOTAL NOT IMPORTANT</b>	<b>4%</b>

**Q4. Based on what you have read or heard, which statement do you agree with most?**

The Citizens Redistricting Committee process was open to the public, and public input was included in their decisions. 29%

The Citizens Redistricting Committee process was not truly open to the public, and public input was not really included in decisions. 57%

Don't know/no opinion 14%

**Q5. Based on what you have read or heard, which statement do you agree with most?**

The New Mexico state legislature's redistricting meetings were open to the public, and public input was included in their decisions. 20%

The New Mexico state legislature's redistricting meetings were closed to the public, and public input was not really included in decisions. 65%

Don't know/no opinion 15%

**Q6. What do you think is a better approach: being able to consider current elected officials when making maps, or leaving current elected officials addresses out of the process?**

When making district maps, the incumbent's address SHOULD be taken into consideration. 40%

When making district maps, the incumbent's address should NOT be taken into consideration. 43%

No opinion/ Not sure 16%

**Q7. Which statement do you agree with most?**



When drawing district maps, redistricting committee members SHOULD consider whether a district is competitive between the political parties, meaning they should consider whether there are similar numbers of Democrats and Republicans in the district.

38%

When drawing district maps, committee members should NOT consider political parties at all.

48%

No opinion/ I am not sure

15%

**Q8. There are many ways to participate in the redistricting process here in New Mexico. Over the past year, have you done any of the following? [Select all that apply]**

Attended (in-person or online) a meeting or hearing about redistricting 9%

Submitted suggestions or a map to the redistricting committee, a community organization, or to the New Mexico legislature 5%

Reviewed maps on the Citizens Redistricting Committee website 20%

Contacted an elected official about the redistricting maps or process (including email, phone call, personal conversation, or written letter) 11%

Applied to be a member of the redistricting committee 4%

None of these 68%

**Q9. Did any of the following limit your ability to participate in public hearings, workshops, or meetings to discuss redistricting in your community? [Select all that apply]**

Needed child care to attend meetings 6%

Did not have transportation 9%

Meetings or workshops were held during my work hours 17%

The meeting locations were too far from where I live 23%

[If Hispanic] There were no Spanish meetings 0%

I do not have high-speed internet to attend online meetings 10%

I did not want to attend an in-person meeting due to COVID-19	35%
Not interested in these meetings, none of these are concerns for me	31%

**Q10. Overall, how would you rate the job that the Citizen Redistricting Committee did to involve the public in the redistricting process? The Citizen Redistricting Committee did a:**

Great job	10%
Good job	41%
Poor job	19%
Terrible job	9%
Don't know/no opinion	21%
TOTAL POSITIVE	51%
TOTAL NEGATIVE	28%

**Q11. How would you rate the job that the New Mexico state legislature did to involve the public in the redistricting process? On redistricting, the New Mexico legislature did a:**

Great job	6%
Good job	20%
Poor job	32%
Terrible job	24%
Don't know/no opinion	17%
TOTAL POSITIVE	26%
TOTAL NEGATIVE	57%

**Q12. Now that you have learned a bit more about the redistricting process here in New Mexico, what "overall grade" would you give the Citizens Redistricting Committee?**

A (Excellent)	10%
B (Good)	27%
C (Satisfactory)	25%
D (Less than satisfactory)	20%
F (Failure / Unacceptable)	7%
Don't know	11%

**Q13. When it comes specifically to redistricting, what "overall grade" would you give the New Mexico state legislature?**

A (Excellent)	6%
B (Good)	11%
C (Satisfactory)	20%
D (Less than satisfactory)	31%
F (Failure / Unacceptable)	22%
Don't know	10%

**Q14. Thinking about the future of redistricting in New Mexico, would you support or oppose creating an independent New Mexico redistricting commission that would - directly, without the legislature's involvement - draw the lines of legislative and congressional districts.**

Strongly Support	37%
Somewhat Support	40%
Somewhat Oppose	8%
Strongly Oppose	4%
Don't know	11%
<b>TOTAL SUPPORT</b>	<b>76%</b>
<b>TOTAL OPPOSE</b>	<b>12%</b>

## **PARTICIPANT DEMOGRAPHICS**

### **AGE**

18 to 29	11%
30 to 39	17%
40 to 49	17%
50 to 59	18%
60 to 69	20%
70 or above	17%

### **GENDER**

Male/Man	50%
Female/Woman	50%

### **RACE/ETHNICITY**

White, non-Hispanic	61%
Hispanic or Latino	35%
Native American or American Indian	5%
Black or African American	2%
Asian or Pacific Islander	2%

Other	1%
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### EDUCATIONAL ATTAINMENT

Grades 1 to 11, did not finish high school	1%
High school graduate or GED	21%
Some college no degree, or current student	25%
2-year degree or technical certification	18%
Bachelor's Degree	22%
Graduate degree	13%

### PARTY IDENTIFICATION

Republican	34%
Democrat	45%
Independent	18%
Other party	1%
Don't Know	1%

### NATIVITY

Native born U.S. citizen	97%
Naturalized U. S. citizen	3%

### HOUSEHOLD INCOME

Less than \$40,000	38%
\$40,001 to \$59,999	17%
\$60,000 to \$79,999	16%
\$80,000 or more	25%
Prefer not to say	4%

### IDEOLOGY

Very liberal	19%
Somewhat liberal	15%
Moderate	29%
Somewhat conservative	19%
Very conservative	15%
Don't know	3%