

**FILED**  
San Diego Superior Court

JUN 13 2023

Clerk of the Superior Court  
By: H. Chavarin, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

CHALDEAN COALITION, a California non-  
profit corporation,

Petitioner,

v.

THE COUNTY OF SAN DIEGO  
INDEPENDENT REDISTRICTING  
COMMISSION, a governmental agency and  
department of the County of San Diego; THE  
COUNTY OF SAN DIEGO, a political  
subdivision of the State of California; and  
CYNTHIA PAES, in her official capacity as  
Registrar of Voters for the County of San  
Diego; and DOES 1 – 10, inclusive,

Respondents.

Case No. 37-2022-00008447-CU-WM-CTL  
*Unlimited Jurisdiction*

(Case assigned to Hon. Eddie C. Sturgeon,  
Department C-67)

**STATEMENT OF DECISION**

Complaint Filed: March 4, 2022  
Dept.: C-67

1 **STATEMENT OF DECISION**

2 On December 14, 2021, as part of the 2021 redistricting process, the Independent  
3 Redistricting Commission of San Diego County (IRC) adopted a map for the County's five  
4 supervisorial districts. Over two months later, Petitioner sued, arguing that the IRC illegally divided  
5 the Chaldean community between two districts. Petitioner alleges the final map amounts to racial  
6 gerrymandering, its population deviation violates the Equal Protection clause, and the IRC violated  
7 the Voting Rights Act (VRA) by placing some of the Chaldean community in the Central District  
8 D4. It also claims the map violates state law and is arbitrary.

9 As set forth below, the Court concludes Petitioner lacks standing to pursue its claims. And  
10 even if it had standing, it fails to carry its burden of proof on any of the causes of action. For these  
11 reasons, the writ is denied.

12 **I. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. IRC Formation And Pre-Mapping Public Hearings/Activities**

14 San Diego County must redraw the boundary lines for its five supervisorial districts every  
15 ten years. (Elec. Code, § 21550.) In anticipation of the 2020 Census, the Board of Supervisors  
16 formed the IRC the fall of 2020. (AR00001–2.) The 14 citizen-members came from diverse  
17 backgrounds, and no person objected to any of their qualifications during the 60-day public  
18 inspection period. (AR00037-38, AR07079.) The Commissioners were tasked with drawing  
19 districts using the following criteria “in order of priority”: that the districts (1) have “a reasonably  
20 equal population with other district[s],” (2) comply with the Voting Rights Act, (3) are  
21 geographically contiguous, (4) preserve, to the extent possible given other requirements, the  
22 geographic integrity of cities, local neighborhoods, and communities of interest, and (5) are  
23 compact. (Elec. Code § 21552, subd. (a).) Section 400.1 of the County's Charter also mandated that  
24 three districts contain unincorporated territory, with two of those having geographic areas  
25 predominantly outside incorporated cities. (San Diego County Charter, § 400.1.)

26 The IRC spent most of 2021 in extensive preparatory meetings, including: (1) developing  
27 and implementing its public outreach program which offered translation in eight languages of IRC  
28 agendas (including Arabic) and the general explanation of redistricting on its website and, upon

1 request, live interpretation at its meetings (AR00076–77, AR00116, AR00139, AR08719); (2)  
2 conducting five virtual educational meetings to explain the redistricting process, with one  
3 simultaneously interpreted in Spanish (AR08708); and, (3) conducting eight pre-mapping public  
4 hearings in a hybrid virtual/in-person format throughout the County, including one on September  
5 25 in Spring Valley, which permitted in-person and virtual participation by the public with no limit  
6 on the number of public commenters (AR08709, AR08718).

7 In total, the IRC held 49 public meetings, including 10 public hearings, eight before the IRC  
8 drew any maps, and two after. (AR07079.) Each meeting was video recorded, minutes were  
9 prepared, and all community of interest (“COI”) comments were tracked in a master tracking sheet.  
10 (See, e.g., AR01681, AR01832, AR01969.) Following the extensive outreach, the public submitted  
11 19 maps, which the IRC drew upon to develop 35 draft maps over the final two months.  
12 (AR07080.) To assist with mapping, the IRC retained an expert demographer (“FLO Analytics” or  
13 “FLO”), expert legal counsel to ensure compliance with the federal Voting Rights Act (“VRA”),  
14 and an expert team of three recognized statistical experts to analyze racially polarized voting  
15 (“RPV”) in the County. (Masuoka Decl., ¶ 4; AR08807-AR08978 [RPV Analysis]; AR07090-  
16 AR07091 [Final Report, pp. 14-15].)

17 The IRC began its mapping in the fall of 2021. Due to the COVID-19 pandemic, the Census  
18 data release was delayed until September 20, 2021, fewer than 90 days before the IRC’s December  
19 15, 2021 deadline. (Pet. Ex. 18.) Before the IRC drafted a map, FLO prepared four springboard  
20 scenarios based on the summarized COI input received to date. (AR08806; AR01044–AR01081)  
21 The administrative record reflects the IRC provided no input to FLO on preparing the springboard  
22 scenarios. (*Ibid.*; AR08806.) At the October 7, 2021 meeting, FLO presented a synopsis of the over  
23 500 comments received to date (AR01035–41) along with its four “springboard” scenarios.  
24 (AR01044–45, AR01053-54, AR01062–63; AR01071–72.) Within a week, the IRC received its  
25 first proposed maps from the public.

26 The IRC needed to wait one week after the Census data was released before it could post its  
27 own draft maps, but nothing prevented the public from submitting maps earlier. (Elec. Code, §§  
28 21552, subd. (d)(1) & 21508, subd. (d)(3).) One submitted map came from the nonprofit

1 Partnership for the Advancement of New Americans (PANA), which represents the interests of  
2 refugees and immigrants from “Arab, Middle Eastern, Muslim, South Asian, and Black”  
3 communities, and proposed locating El Cajon and Rancho San Diego in a Central District.  
4 (AR01283; AR01721.) The pre-mapping public hearing requirements ensured the public had ample  
5 opportunity to participate. For example, at the September 25, 2021 pre-mapping public hearing in  
6 Spring Valley, the IRC heard comments from Chaldean and other members of the public about their  
7 overlapping communities of interest. Vincent Kattoula, for one, Petitioner’s president, provided oral  
8 comments in which he linked Chaldeans and the refugee community together. (AR00928 [Sept. 25,  
9 2021 recorded meeting at 50’50” to 52’50”]: “The influx of refugees has created a demand for  
10 housing... while the desire for the individual Chaldean or refugee is a single-family home, many  
11 refugees are finding themselves low-income multi-family housing.”.)

12 Mr. Kattoula did not object to the commentators who immediately preceded his comment  
13 and who explicitly defined their community of interest from El Cajon to the western edge of the  
14 Central District as "BIPOC, Immigrant, and Refugee." (AR00928 [Sept. 25, 2021 meeting at  
15 46’20” to 50’50”].) In particular, these comments came from members of the Arab Community  
16 Center of San Diego who asked the IRC to keep the “San Diego refugee and immigrant  
17 communities together in a single supervisorial district... I see ourselves in community with EL  
18 Cajon, City Heights, ... Rancho San Diego.... and define our community of interest as BIPOC,  
19 immigrant and refugee.” (*Ibid.*)

## 20 **B. IRC Mapping Meetings**

21 The administrative record reflects that throughout the mapping process, the IRC focused on  
22 compliance with the federal and state Constitutions, the VRA, and Elections Code sections 21550,  
23 et. seq. (See, e.g., AR06490 [Com’n Bame’s comment that “the Ability to Elect Analysis of the  
24 final working draft map ... is key ... to ensure that all voters have the opportunity to elect  
25 candidates of their choice in the final supervisorial districts” under the VRA]; AR6534:20–21  
26 [Com’n Brown asserting that “the number one consideration we have to keep in mind for dividing  
27 those Districts is population balance”]; AR08390:21–23 [Com’n Inman observing that “we only  
28

1 split one municipality; that was San Diego ... because of its size. All other [] municipalities are  
2 whole.”].)

3 Although Petitioner cited Election Code section 21500, subd. (c)(2) to claim in its Corrected  
4 Second Amended Petition and its briefing that preserving the integrity of COIs took precedence  
5 over preserving the integrity of cities, that section does not apply to the IRC. Rather, Election Code  
6 Section 21552, subdivision (a)(4) applies expressly to the San Diego IRC and provides that the  
7 “geographic integrity of any city, local neighborhood, or local community of interest shall be  
8 respected in a manner that minimizes its division to the extent possible without violating” other  
9 statutory requirements. It also mandates: “Communities of interest shall not include relationships  
10 with political parties, incumbents, or political candidates.” (Elec. Code § 21552, subd. (a)(4).)

11 The evidence demonstrates the IRC expressly worked to maintain incorporated cities,  
12 community planning areas and COIs as whole when possible and without regard to political party  
13 or incumbents. (See, e.g., AR01248-AR01258 [Tab 114: Community Tabulations]; AR00179-  
14 AR00180.) For each draft map, FLO prepared an analysis of how many COIs were preserved in the  
15 minimum number of districts. (E.g., AR01297.) It also tracked how many districts included  
16 unincorporated territory to comply with the County Charter. (E.g., AR01296; see also Brasch Decl.,  
17 ¶ 9.)

18 On October 14, 2021, the RPV experts presented their analysis and concluded evidence of  
19 RPV existed in San Diego County between Latino voters and non-Hispanic white voters, and  
20 between Asian American voters and non-Hispanic white voters. (AR01168-AR01234 [Tab 111:  
21 RPV Report]; AR01141-AR01167 [Tab. 110: RPV PowerPoint]; AR01276 [Tab 116: Minutes].)  
22 This was significant, and at that same meeting, the IRC’s VRA expert noted that with evidence of  
23 RPV in the County, the IRC would need to consider such data to ensure any adopted map complied  
24 with the VRA throughout the County. (AR01235-AR01237 [Tab 112: Legal Expert PowerPoint];  
25 AR01276 [Tab 116: Minutes].)

26 Also at that meeting, for the first time the IRC gave direction to FLO regarding draft maps.  
27 (AR01277-AR01279 [Tab: 116 Minutes]; AR08796-AR08797 [Tab 275: App. 12-Draft Map  
28 Directive for Draft Maps 1-4]; AR08806 [Tab 275: App. 12-Draft Map Tree].) This was the first

1 step in what became an iterative process whereby the IRC would provide mapping direction to  
2 FLO, who would prepare the maps as directed, including the associated demographic and  
3 geographic analysis, rural-urban breakdown and the map's treatment of COIs. (E.g., AR01559–  
4 AR01560, AR01672–AR01715.) The Administrative Record reflects the general process would be  
5 as follows: Upon FLO's presentation of the resulting map and analysis, the IRC would provide  
6 further direction to FLO at each iteration to adjust the map(s), considering total population, COIs,  
7 compliance with the VRA, especially given the evidence of RPV and the experts' recommendation  
8 to ensure no Latino voter dilution, plus other constitutional requirements and public comments.  
9 (*Id.*) This continued until the final map was drawn. (AR08795–AR08806 [Tab 275: App. 12 to  
10 Final Report Diagram of Map Evolution and Directives]; AR6662:18-24, AR02861:12-24  
11 [considering balancing population and meeting the required urban-rural balance]; AR04930  
12 [considering prior COI comments and those offered at each mapping meeting, including those  
13 defined by geography alone—e.g., those along interstate corridors or coastal zones]; AR06720:22-  
14 28, AR06513-AR06514, AR06924:25-28 & AR06925:1-2 [focus on census-designated places];  
15 AR08390:21-28, AR08391:1, AR08386-AR08390, AR6927-AR06931 [focus on city boundaries];  
16 AR08413:13-21, AR08414-AR08417, AR08419:8-9, AR6534:13-28 & AR06535:1-4, AR6539:15-  
17 25, & AR06679: 8-16 [consideration of population numbers].)

18 At the October 14, 2021 meeting, the IRC directed FLO to create four maps. The first  
19 direction was, for illustrative purposes only, to create a horizontal concept map from north to south,  
20 to explore whether such a layout could be accomplished. (AR01284–AR01303 [Tabs 120–121:  
21 Draft Map 1]; AR08796 [Tab 275: App. 12 to Final Report Diagram of Map Evolution and  
22 Directives]. In addition, the IRC provided direction regarding four drafts. One developed four  
23 themes: a “border district” excluding Point Loma and Coronado; a coastal district along the coast to  
24 Carlsbad; a North County district including the cities along the I-78 corridor; and another district  
25 considering the refugee and immigrant communities in, among other areas, Spring Valley, Rancho  
26 San Diego, El Cajon and La Mesa. (AR01304–AR01313 [Tab 122: IRC Draft Map 2]; AR08797  
27 [Tab 275: App. 12 to Final Report Diagram of Map Evolution and Directives].) The IRC directed  
28 another draft version be prepared retaining elements of another map, but including the northern

1 border of the County in D5 and extending D5 south to include the I-78 corridor “according to  
2 population limits.” (AR01314–AR01323 [Tab 123: IRC Draft Map 3]; AR08797 [Tab 275: App. 12  
3 to Final Report Diagram of Map Evolution and Directives].) A fourth map was based on yet another  
4 iteration of Map 2. (AR01324–AR01333 [Tab 124: IRC Draft Map 4]; AR08797 [Tab 275: App. 12  
5 to Final Report Diagram of Map Evolution and Directives].)

6 On October 21, 2021, the IRC evaluated PANA’s proposal, as well as other proposals from  
7 the public and the IRC’s own first draft maps. (AR01283 [Tab 119: PANA proposal D4];  
8 AR01284–AR01327 [Tabs 121–124: IRC Maps 1–4]; AR01558–AR01561 [Tab 126: Minutes].) The  
9 IRC decided to abandon Map 4 and directed FLO to draft four new maps based on IRC Maps 1–3.  
10 For example, the directions included changing Map 3 to create a new Map 5 to move Escondido  
11 into D5 and to revise the coastal district to include communities associated with Solana Beach and  
12 Del Mar. (AR08797.) But always, the IRC considered balancing population and meeting the  
13 required urban-rural balance. (E.g., AR06662:18–24, AR02861:12–24.) It also considered prior COI  
14 comments and those offered at each mapping meeting, including those COIs defined by geography  
15 alone—e.g., those along interstate corridors or coastal zones. (E.g., AR01670, AR01681, AR01692,  
16 AR01703, AR01714, AR02191–2192, AR2202, AR02214, AR02226, AR02238, AR02250,  
17 AR02262, AR02983, AR02990, AR03001, AR03009, AR03033, AR04932–4940.) Finally, it also  
18 considered the effects each map had on COIs, as well as effects related to incorporated cities,  
19 Census Designated Places and the county’s defined Community Plan Areas. (*Ibid.*)

20 Throughout the mapping process, residents continued to provide public input. Some  
21 expressed support for uniting immigrant and refugee communities in El Cajon and Rancho San  
22 Diego with more western neighborhoods. (See, e.g., Nov. 1, 2021 meeting (AR01869:24–  
23 AR01870:9 [supporting keeping together “BIPOC, refugee and immigrant communities of interest”  
24 from City Heights to Rancho San Diego]; Nov. 13, 2021 meeting (AR02829:23–AR02830:16  
25 [voicing “support for map drafts that keep San Diego refugee and immigrant communities together  
26 in a single District ... [including] City Heights...El Cajon ... and Rancho San Diego.”].) Many  
27 referred to the “BIPOC refugee and immigrant community of interest” in the Central District, just  
28 as they did at the September 25, 2021 public hearing before any draft maps had been drawn. Some

1 Commissioners began to refer at times to the Central District by the shorthand “BIPOC” for the  
2 referenced refugee and immigrant communities, although Commissioners also referred at times to  
3 refugee and immigrant communities without mentioning BIPOC. (AR01865:12 [“BIPOC refugee  
4 and immigrant communities”]; AR01870:4 [“BIPOC refugee and immigrant communities of  
5 interest”]; AR01873 [“BIPOC refugee and immigrant communities”]; AR01911:1 [“BIPOC refugee  
6 and immigrant community of interest”]; AR01879 [“BIPOC refugee and immigrant communities”];  
7 AR01890:21-22 [“BIPOC immigrants and refugees”]; AR01894:4-5 [“BIPOC refugee and  
8 immigrant communities”]; AR01896:23 [“BIPOC refugee and immigrant communities”];  
9 AR01910:25 [“BIPOC refugee and immigrant communities”]; AR01937:5 [“BIPOC refugee  
10 communities”].)

11 At its November 19, 2021, the IRC was contemplating Draft Maps 13 and 14. The public  
12 submitted over 180 written comments at this meeting alone. (AR03049–AR03201 [Tab 175: Public  
13 Comment].) The Administrative Record evidences that one came from Marlon Mansour on behalf  
14 “Chaldean Christians,” who opposed the draft map’s “splitting these communities and/or having  
15 these communities share new districts....” (AR00684-85; AR03234:12-23; [Tab 177: Meeting  
16 Transcript].) The Administrative Record also reflects that other members of the public at this  
17 meeting continued to voice support for “a Central San Diego District that empowers immigrant,  
18 Chaldean, refugees, [and] Muslim communities...” (AR03244:21–22; see also, e.g., AR03217:18–  
19 AR03218:10 [supporting “a central San Diego District that empowers ... immigrant and □ refugee  
20 communities”]; AR03223:25–3224:27 [supporting keeping “refugee and immigrant communities”  
21 in a Central District]; AR03329:14-AR03330:10 [supporting “a Central San Diego District that  
22 empowers ... Muslim and immigrant and refugee □ communities proposed by PANA”].) The IRC  
23 continued to consider these and other public inputs alongside all the required factors, in their proper  
24 order of precedent, stated in the IRC’s mandate.

25 At its December 2–3 meeting, the IRC presented two draft maps: Draft Map 13a, versions of  
26 which put Rancho San Diego in the East County District and El Cajon in the Central District, and  
27 Draft Map 14, which kept El Cajon and Rancho San Diego together in the Central District.  
28 [AR03398-99; AR04895-96; AR03706]. Many members of the Chaldean community rejected



1 Draft Map 14 even though it kept El Cajon and Rancho San Diego together. They urged the IRC to  
2 place their community in the more conservative East County District. (See, e.g., AR04542:5-12  
3 [“it’s very important for our community of interest that we stay together ... with the rest of the East  
4 County....”]; AR04542:13-24 [“We have [] no interest [], we have nothing in mutual between us  
5 and City and Heights.”]; AR04559:3—5 [“I want to express my opinion on keeping Rancho San  
6 Diego ... and El Cajon in the same East County District.”].) The Administrative Record reflects  
7 other members of the public continued to voice support for keeping El Cajon and Rancho San  
8 Diego in the Central District. (See, e.g., AR04589–90 [“I come from a Catholic Arab family, most  
9 of whom live in El Cajon and Rancho San Diego. The Arab community and Arab Catholic  
10 community and El Cajon not only identifies religiously but most are refugees and immigrants as  
11 well. The priorities of my community are very similar to those of other refugee and immigrant  
12 communities across the County from City Heights to El Cajon [City Heights is in the western side  
13 of the Central District].”]; AR 4590:13-15 [asking for El Cajon to be included in the Central  
14 District “because they represent Black, Latinx and AAPI communities who have been pushed East  
15 due to housing costs”]; AR04604:15-27 [stating as a “research[er] on the refugee experiences in  
16 San Diego County as well as El Cajon ... there are not adequate resources to address the growing  
17 needs of community members in El Cajon.... City Heights, on the other hand, has many resources  
18 that have been developed to be able to address these instances. It is for this reason and many others,  
19 that I am in support of Draft Map 14. Protect the interests and the safety of our immigrant  
20 communities.”]; AR04604:28–4605:8 [supporting Draft Map 14: “the demographics of El Cajon  
21 have changed dramatically in the last ten years with the influx of a lot of Syrian refugees ... the  
22 refugee experiences that are in City Heights most closely reflect the realities that our Syrian  
23 refugees [] have today. And [] it just makes more logical sense to have all the refugee communities  
24 who share similar experiences clumped in one [] District”]; AR 04607:10-17 [supporting Draft Map  
25 14 as “an Iraqi refugee ... [who] works with Arab community who mainly live in El Cajon”];  
26 AR04609:2–9 [supporting Draft Map 14 to keep “Arabs and immigrant” communities together];  
27 AR4609:11–17 [asserting that “the broadest and most diverse coalitions are urging [] support [of]  
28 Map 14]; AR04618:24-4619:1 [asserting that as “an Iraqi Middle Eastern [] refugee in East

1 County, El Cajon ... Middle Easterners in East County should be considered as a community [] of  
2 interest because we are the same community: Iraqis, Chaldeans, Arabic, everything, even  
3 Syrian...”]; AR04622:2–4623:2 [As an “Arab Muslim [] immigrant” supporting Draft Map 14, “it’s  
4 critical that El Cajon is mapped with other refugee and immigrant communities in the County”].)

5 Out of that meeting emerged a single, final working draft map, in which El Cajon was in the  
6 Central District and Rancho San Diego was in the East County district. (AR04895–4906.) The IRC  
7 directed its RPV expert consultants to prepare an ability-to-elect analysis of the proposed map to  
8 ensure the map under consideration complied with the VRA. (AR04439.)

9 At the next meeting, on December 9, 2021, the IRC’s RPV experts presented their analysis.  
10 (AR04862–04884 [Tabs 216 and 217: PowerPoint and Written Report].) Multiple Chaldeans  
11 continued to object to placing El Cajon in the Central District, arguing El Cajon “is the heart and  
12 the soul of the Chaldean Community” and needed to be in the East County District. Other members  
13 of the public responded that “El Cajon is included in [the Central District] currently due to two  
14 months of COI testimony where you heard from low wage earners, renters and our newcomer  
15 communities, advocating to be together with other refugee and immigrant communities.”  
16 (AR06609:5–11.) Still others spoke in support of keeping the “Arab and Muslim refugees” in El  
17 Cajon with other immigrant communities in the Central District. (See, e.g., AR06609:25–6610:19  
18 [speaking on behalf of “Arab refugee communities [] that have been showing up to these hearings  
19 for the past six months”]; see AR06611:27–AR06612:8.)

20 At its meetings on December 9 and 11, 2021, the IRC considered four “draft scenarios”,  
21 including other revisions it made in consideration of other COIs. (AR08804–08806 [Tab 275, App.  
22 12-Map Evolution and Directives].) Scenario 1, building off previous drafts, proposed placing El  
23 Cajon and Rancho San Diego in the Central District. (AR4947–AR04958.) In response to public  
24 comments, Scenario 2 proposed moving El Cajon—with a population of 106,000 residents—from  
25 the Central District to the East County District. (AR06697–AR06698.) Scenario 3A also proposed  
26 placing El Cajon in the East County district but counterbalanced that move with returning the  
27 smaller neighborhood of Rancho San Diego—with a population a fifth the size of El Cajon—to the  
28

1 Central District. (*Id.*) To reduce the population deviation created by Scenario 3A, FLO assisted the  
2 IRC to create Scenario 3B which shifted other areas to balance out population. (*Id.*)

3 Out of these three remaining scenarios—Scenarios 1, 2 and 3b—Scenario 1 proposed a  
4 Central District (D4) with a larger African American and Latino total population than did either  
5 Scenario 2 or 3b for the Central District. (AR04947-4958 [Tab 225].) Scenario 2 proposed a  
6 Central District (D4) with the largest white total population, and smallest African American and  
7 Latino total population as compared to the Central Districts (D4) that were proposed in Scenarios 1  
8 and 3b. (AR04959-04970 [Tab 226].) The final adopted map fell in between. (AR09117.)

9 The Commissioners adopted Scenario 3b. Several commissioners expressly opined this  
10 version addressed the concerns of overlapping COIs. Other commissioners supported Scenario 2,  
11 noting that placing both El Cajon and Rancho San Diego in the Central District would both “unify[]  
12 the specific COI of the Chaldean community” as well as unite the “refugee immigrant corridor” in  
13 the Central District. (AR 6752:1–11.) But the IRC ultimately voted to keep Rancho San Diego in  
14 the Central District and move El Cajon to the East County District, adopting Scenario 3B as the  
15 final map. (AR07092.) As one commissioner aptly observed: [N]obody got a hundred percent, um,  
16 ‘cause we can’t. There’s just too many competing interest[s].” (AR06732:25–27.)

17 The final map’s total deviation from the ideal population is 8.1% (which is the difference  
18 between the most populated district and the least populated district). (AR09117.) The final map  
19 includes one Latino majority-minority opportunity district, i.e. the Southern District, in compliance  
20 with the VRA based on the RPV analysis, as well as a minority-majority coalition district, i.e. the  
21 Central District (AR09118; AR07122–AR07123 [Final Report].) The districts are contiguous and  
22 divide only one city, the City of San Diego, the population of which is too large for a single district.  
23 (AR09118.) The districts are compact and satisfy the requirements of the Charter of the County of  
24 San Diego. (AR09118.) And though not required, the IRC’s Final Report includes a table  
25 explaining the reason certain COIs were split across districts. (AR07097–7100, AR07103-7112,  
26 AR07115-7120, AR07123-7126, AR07129-7135.)

27 Before adopting the final map, the IRC received a second report from its RPV experts who  
28 analyzed the final map taking into consideration the changes made at the December 9, 2021

1 meeting. (AR07040-AR07063 [Tabs 248 and 249].) The report confirmed the map met the VRA  
2 requirements to create opportunity districts for statistically significant minorities where evidence of  
3 RPV voting existed. (AR07096, AR07122–7223.) The IRC also received a presentation from its  
4 VRA legal expert, who rendered his expert opinion that the map complied with the VRA.  
5 (AR07064–AR07074 [Tab 250: Adelson Legal Assessment].) On December 14, 2021, the IRC  
6 adopted the map (“2021 Map”).

### 7 **C. Petitioner Sues**

8 On March 4, 2022, Petitioner filed this Petition for Writ of Mandate asking the Court to  
9 order the IRC redraw the map to keep the Chaldean community of interest intact. (Corrected 2nd  
10 Am. Pet., ¶ 3.) Petitioner asserts the map’s population deviation violates equal protection and the  
11 IRC had engaged in racial gerrymandering when it placed Rancho San Diego in the Central District  
12 “for the purpose of protecting Arab-Muslim or African American communities.” (*Id.*, ¶¶ 117.c and  
13 118.) Petitioner further alleged the IRC violated the Voting Rights Act by “splitting up the East  
14 County Chaldean community... dilut[ing] the influence of an already small minority group ... and  
15 leaving them effectively unrepresented.” (*Id.*, ¶ 119.) Finally, the IRC violated the Elections Code  
16 by publishing its draft maps too early and dividing the Chaldean community of interest. (*Id.*, ¶¶ 115  
17 and 120.)

## 18 **II. EVIDENTIARY RULINGS**

19 The Court grants the County/Registrar’s unopposed motion to take judicial notice of  
20 portions of the San Diego County Charter. Respondent’s objection numbers 1-4, 9-17, 20-29, 32-37,  
21 39, 41-48, 52-54, 56-67, 69-71, 73-75, 77-82 to Petitioner’s evidence are sustained. (ROA 83.)  
22 Respondent’s objection numbers 1-12 to Petitioner’s rebuttal declarations are also sustained. (ROA  
23 99.) Petitioner’s objection numbers 1, 3-4, 8, 10-12 to Respondent’s evidence are sustained. (ROA  
24 94.) All other objections are overruled.

## 25 **III. STANDARD OF REVIEW**

26 Courts give deferential review to redistricting decisions: “Because reapportionment is so  
27 essentially a legislative function, certain basic considerations relating to the fundamental doctrine of  
28 the separation of powers between the judicial and the legislative branches of government regulate

1 and limit courts in the exercise of their power to declare such enactments invalid.” (E.g., *Griswold*  
2 *v. County of San Diego* (1973) 32 Cal.App.3d 56, 65–66 (*Griswold*); *Griffin v. Board of Sup’rs of*  
3 *Monterey County* (1963) 60 Cal.2d 318, 319–322 [reviewing redistricting plan under arbitrary and  
4 capricious standard].) “Among the limitations upon the court’s power is the presumption the  
5 enactment is valid and that the legislative body performed its duty and ascertained the existence of  
6 any facts upon which its right to act depended.” (*Griswold, supra*, 32 Cal.App.3d at p. 66.)

7 Thus, this Court presumes the validity of the 2021 Map, and determines whether the IRC’s  
8 actions were “arbitrary, capricious or entirely lacking in evidentiary support.” (*Griswold, supra*, 32  
9 Cal.App.3d at p. 66.) The Court “may not substitute [our] judgment for that of the legislative body  
10 merely because [the court] doubt[s] the wisdom of the action taken” but “must sustain the  
11 legislative enactment if there is any reasonable basis for it.” (*Ibid.*) Under this standard, the Court  
12 must uphold the legislative action “if there is any reasonable basis for it.” (*Griswold*, p. 66.) If there  
13 is evidence in the record to support the action, even if reasonable minds could differ, the decision  
14 must stand. (*Ibid.*)

15 Should a plaintiff make a showing that race was the predominant factor motivating the  
16 redistricting body’s drawing of a district, strict scrutiny applies to a claim of racial gerrymandering.  
17 (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 668 [“a finding that race was the  
18 ‘predominant’ factor in creating a district—to which other factors were ‘subordinated’—is what  
19 triggers strict scrutiny”].) The court finds that race was not a predominant factor motivating the  
20 redistricting body’s drawing of District 4. Accordingly, strict scrutiny does not apply.

#### 21 **IV. PETITIONER LACKS STANDING**

22 The petitioner organization is made up of two officers, both residents of the East County  
23 district. (Whatley Decl., ¶ 3, Exh. E, p. 4 [Sp.Rog. No. 1] & Exh. I [Kattoula Depo., [p. 20:24-21:3,  
24 21:5-22:4, 55:11-12].) Petitioner asserts it has representative standing based on its membership.  
25 But the organization’s bylaws state that it has no members. (See Ex. 2 to Kattoula Decl., Art. 3, §  
26 3.1.) In the alternative, Petitioner asserts that this Court should exercise its discretion to grant  
27 Petitioner public interest standing. There is no precedent recognizing public interest standing when  
28 an organization seeks to enforce individuals’ right to equal protection of fundamental voting rights.

1 Here, Petitioner organization seeks to protect an East County District community but bases its  
2 petition on violations to the voting rights of residents in the neighboring Central District. Under  
3 these circumstances, Petitioner has not shown that it will adequately represent the interest of the  
4 residents on whose behalf it is suing.

5 **A. Beneficial Interest Standing And Associational Standing**

6 Generally, a party has standing to seek a writ of mandate if it is “beneficially interested” in  
7 the result, meaning it has “some special interest to be served or some particular right to be  
8 preserved or protected over and above the interest held in common with the public at large.”  
9 (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796; *Weatherford v. City of San*  
10 *Rafael* (2017) 2 Cal.5th 1241, 1247–1249.) However, under the “public interest” exception to this  
11 requirement, a petitioner need not show a special interest “where the question is one of public right  
12 and the object of the mandamus is to procure the enforcement of a public duty[.]” (*Save the Plastic*  
13 *Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166 (*Save the Plastic Bag*).)

14 Petitioner argues that under *Save the Plastic Bag Coalition* (2011) 52 Cal.4th 155, 166, it  
15 has a beneficial interest based on its membership. But Petitioner’s evidence refutes its assertion it  
16 has members. Rather, Petitioner’s bylaws expressly state: “There shall be no Members.” (See Ex. 2  
17 to Kattoula Decl., Art. 3, § 3.1.) And a person is not a “member” within Corporations Code section  
18 5056 by virtue of their status as a director. (Corp. Code, § 5056, subd. (d)(3).) Thus, Petitioner’s  
19 two directors are not “members.” Plaintiff complains that this interpretation is overly formalistic  
20 and points to case law suggesting that non-traditional members may sometimes rise to the level of  
21 membership necessary to support standing. (See *Flyers Rights Educ. Fund, Inc. v. U.S. Department*  
22 *of Transportation* (D.C. Cir. 2020) 957 F.3d 1359, 1361-1363; *Oregon Advocacy Center v. Mink*  
23 (9th Cir. 2003) 322 F.3d 1101, 1109-1113.) But in each of these cases there was evidence that  
24 individuals who were not formally “members” still fulfilled the role of members by serving on  
25 boards of directors, running telephone hotlines, responding to polls on policy questions, providing  
26 “direct input . . . [that] guides the organization’s activity,” and providing monetary support, that  
27 when taken together “indicate that there is a sufficient amount of interaction to influence the  
28 organization’s activities.” (*Flyers Rights Educ. Fund, Inc., supra*, 957 F.3d at 1362; see also *ibid.*

1 ["Other circuits have also concluded that if an 'organization is sufficiently identified with and  
2 subject to the influence of those it seeks to represent,' it may assert associational standing."];  
3 *Oregon Advocacy Center, supra*, 322 F.3d at 1112 [constituents that also served on boards and  
4 advisory council qualified as members].) Here, Petitioner has not provided evidence that  
5 individuals it claims as members have any influence over its aims or leadership and listing various  
6 members or informal census data collected on Chaldeans does not cure that defect (e.g., ROA 68,  
7 Kattoula Decl., ¶¶ 26-29.)

8 While Petitioner has argued the Court should consider individuals who filled out an online  
9 form as its "members," those who filled out a website form to participate in Petitioner's informal  
10 survey were not informed they were joining Petitioner as members. Instead, the online survey asked  
11 participants to "let us know you exist" and "provide their information" for the "Chaldean census."  
12 (Kattoula Decl., ¶ 25, Exh. 3, p. 4.) Filling out an online form after Petitioner filed this lawsuit,  
13 does not demonstrate individuals had any influence on Petitioner's activity, especially given  
14 individual Chaldeans' public input to the IRC that supported uniting Chaldeans with other refugees  
15 and immigrant communities in the Central District.

16 Even if this Court were to ignore the bylaws and Corporation Code section 5056's  
17 limitations and consider Petitioner's directors as "members," out of Petitioner's two remaining  
18 officers, Vincent Kattoula and Ayad Mansour, neither resides in the Central District as required to  
19 show an injury for a racial gerrymandering or a population deviation claim. (Whatley Decl., ¶ 3,  
20 Exh. E, p. 4 [Sp. Rog. No. 1]; see, e.g., *U.S. v. Hayes* (1995) 515 U.S. 737, 743-745 [A racial  
21 gerrymandering claim plaintiff must generally reside in the gerrymandered district absent some  
22 other showing of injury]; see *Evenwel v. Abbott* (2015) 578 U.S. 54, 73 [in a population deviation  
23 claim, an individual's right to vote is unconstitutionally diluted when they reside in the  
24 overpopulated district].)

25 In the absence of identifying any members and considering its undisputed bylaws declaring  
26 it has no members, the Court finds that Petitioner has neither beneficial standing nor associational  
27 standing based on its alleged "membership."  
28

1 In the alternative, Petitioner argues that it has beneficial standing merely as an organization  
2 formed to support the Chaldean community. But the cases Petitioner cites for this point are  
3 inapposite. In *Save the Plastic Bag*, the plaintiff organization had a beneficial interest because its  
4 members would suffer “a severe and immediate effect on their businesses” due to the challenged  
5 ordinance. (See *Save the Plastic Bag, supra*, 52 Cal.4th at p. 169.) In *Common Cause of Cal. v.*  
6 *Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432, again, the plaintiff organization was  
7 found to have standing because of its members. The court found that the plaintiff’s individual  
8 members conferred standing because “the question in this case involves a public right to voter  
9 outreach programs, and plaintiffs have standing *as citizens* to seek its vindication.” (*Id.* at p. 439  
10 (emphasis added).)

11 Petitioner cites no authority where an organization without members established a beneficial  
12 interest in enforcing a third party’s voting rights. California’s beneficial interest over-and-above test  
13 is the same as the federal “injury in fact” test, and the U.S. Supreme Court has made clear a  
14 plaintiff must reside in the affected district to show standing as an equal protection plaintiff.  
15 (*Associated Builders & Contractors, Inc. v. San Francisco Airports Comm’n* (1999) 21 Cal.4th 352,  
16 361-362; see *U.S. v. Hayes* (1995) 515 U.S. 737, 743–745; *Evenwel v. Abbott* (2015) 578 U.S. 54,  
17 73.) Thus, the Court concludes Petitioner has not met its burden of showing it has beneficial interest  
18 or associational standing.

### 19 **B. Public Interest Standing**

20 Petitioner argues it qualifies for the “public interest” exception to the beneficial interest test.  
21 Petitioner argues the Court should extend the state law principle of public interest standing to  
22 federal voting rights cases. However, even if this Court were inclined to such an extension,  
23 Petitioner fails to show it meets the test for public interest standing. (See *Save the Plastic Bag*  
24 *Coalition, supra*, 52 Cal.4th at p. 170, fn. 5 [public interest standing is discretionary].) As an initial  
25 matter, even an organization’s public interest standing is derivative of its members’ standing.  
26 (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1177.) As  
27 explained above, the court determines that Petitioner does not have members for the purposes of  
28



1 standing. But even assuming that the court were to find that Petitioner's officers are members,  
2 public interest standing would still not be proper.

3 The purpose of a standing requirement is to ensure plaintiffs have a sufficient interest in the  
4 outcome and to safeguard against the risk that plaintiffs with an insufficient stake will not  
5 adequately represent the interests of those on whose behalf they profess to be acting. (*Save the*  
6 *Plastic Bag Coal.*, *supra* 52 Cal. 4th at p. 169.) Here, Petitioner's two officers are residents of the  
7 East County District. On the one hand, Petitioner claims to represent "the Chaldeans of East County  
8 San Diego, while also asserting that "nearly all" Chaldeans live in the East County District. (Op.  
9 Br. p. 25:22.) Petitioner seeks to address an alleged injury to East County District residents:  
10 Petitioner objects to the IRC's "dismantling of the conservative East County" by placing a portion  
11 of their community in the Central District, and asserts the IRC has "diminished their influence" in  
12 the East County District. (Reply Concl., p. 15:21; Op. Br. p. 24:22.)

13 On the other hand, Petitioner bases its claims on a purported injury to Central District  
14 residents: It is the Central District that Petitioner claims is racially gerrymandered, overpopulated,  
15 and whose Chaldean voters are "effectively unrepresented" because they are not represented by the  
16 Supervisor of their choice. In short, Petitioner comes before the Court as a representative of the  
17 East County District but relies on legal arguments based on injury to residents in the Central  
18 District.

19 Petitioner has not shown that it adequately represents the interests of residents in the Central  
20 District. Specifically, Petitioner has not shown that it has a sufficient interest in the drawing of the  
21 Central District to challenge it in Court such that Petitioner qualifies to represent the interests of  
22 Central District residents on whose behalf Petitioner professes to be acting. (See *Save the Plastic*  
23 *Bag*, *supra*, 52 Cal.4th 155, 169, quoting *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d  
24 432, 439 [" 'The purpose of a standing requirement is to ensure that the courts will decide only  
25 actual controversies between parties with a sufficient interest in the subject matter of the dispute to  
26 press their case with vigor.' "].)

27 Even if the Court assumed that the public interest exception could properly be extended to  
28 provide standing in this context, application of the doctrine is discretionary. (*Save the Plastic Bag*

1 *Coalition, supra*, 52 Cal.4th at p. 170, fn. 5.) As Petitioner has not met its burden of showing it  
2 adequately represents the interests of Central District residents, the Court exercises its discretion  
3 and declines to extent public interest standing here.

4 Petitioner may have been able to avoid this result by including individual members in its  
5 bylaws, allocating decisional or leadership roles to the non-traditional members it polled on its  
6 website, or by obtaining declarations of individuals evidencing their participation as members in  
7 substance if not in name. Petitioner did none of this and therefore the inquiry could end there. But  
8 the court also finds that Petitioner's claims fail on their merits.

9 **V. RACE WAS NOT THE PREDOMINANT FACTOR IN DRAWING THE CENTRAL**  
10 **DISTRICT**

11 At oral argument, Plaintiff's counsel acknowledged redistricting bodies are required to  
12 consider race. "[R]edistricting differs from other kinds of state decision-making in that the  
13 legislature always is aware of race when it draws district lines, just as it is aware of ... a variety of  
14 other demographic factors." (*Shaw v. Reno* (1993) 509 U.S. 630, 646.) Where there is evidence of  
15 racially polarized voting in areas with minority populations of sufficient size, as there was here for  
16 Latinos, the redistricting body must consider race in drawing a map. (*Thornburg v. Gingles* (1986)  
17 478 U.S. 30 (*Gingles*).)

18 To prevail on a racial gerrymandering claim, a plaintiff must show that race was "the  
19 *predominant factor* motivating the legislature's decision to place a significant number of voters  
20 within or without a particular district." (*Miller v. Johnson* (1995) 515 U.S. 900, 916 (emphasis  
21 added).) "To make this showing, a plaintiff must prove that the legislature *subordinated* traditional  
22 race-neutral districting principles, including but not limited to compactness, contiguity, and respect  
23 for political subdivisions or communities defined by actual shared interests, to racial  
24 considerations." (*Ibid.* (emphasis added.)) A "finding that race was the 'predominant' factor in  
25 creating a district—to which other factors were 'subordinated'— is what triggers strict scrutiny.  
26 [Citation.]" (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 668.)

27 Here, Petitioner argues that "the specific decision at issue was whether to place Rancho San  
28 Diego in the East County District 2 or the Central District 4." (Op. Br., p. 11:15-16.) In placing

1 Rancho San Diego in the Central District, Petitioner claims the IRC “erroneously defined BIPOC  
2 people (or People of Color) as a community of interest, and then elevated a desire to keep BIPOC  
3 individuals together over other interests, thereby subordinating legitimate and traditional  
4 redistricting criteria such as (1) population equality, (2) compactness, and (3) protection of  
5 communities of interest.” (Op. Br, p. 13:6-10.)

6 The Court concludes Petitioner fails to meet its burden to prove race predominated for three  
7 reasons. First, Rancho San Diego, with its population of 21,000 or only three percent of the entire  
8 Central District, cannot form the basis for a claim the IRC allowed race to predominate when it  
9 drew the entire district. In a racial predominance claim, “the court should not confine its analysis to  
10 the conflicting portions of the lines. That is because the basic unit of analysis for racial  
11 gerrymandering claims in general, and for the racial predominance inquiry in particular, is the  
12 district.” (*Bethune-Hill v. Virginia State Bd. of Elections* (2017) 580 U.S. 178, 191.) “Concentrating  
13 on particular portions in isolation may obscure the significance of relevant districtwide evidence ... .  
14 A holistic analysis is necessary to give that kind of evidence its proper weight.” (*Id.* at p. 192.)  
15 Despite the required holistic analysis, Petitioner focused only on the decision regarding Rancho San  
16 Diego and ignored the IRC’s consideration of other factors in drawing the Central District. (See,  
17 e.g., AR03273-AR03275 [discussing balancing population and ensuring contiguity for draft  
18 adjustments to the Central District]; AR03299-AR03300 [discussing need to balance population if  
19 El Cajon moved from the Central District to East County District]; AR03306 [discussing East  
20 County as a rural community and whether to combine with an urban center]; AR03312 [discussing  
21 addressing population numbers in the “central portion” of San Diego, including but not limited to  
22 Rancho San Diego]; AR03313 [discussing total populations of incorporated cities and Census  
23 Designated Places].)

24 Second, Petitioner’s argument that the IRC’s referral to the Central District at times as the  
25 “BIPOC district” fails to meet its burden (Op. Br., p. 14:4-5.) The Administrative Record reflects  
26 that in discussions regarding the Central District, the “BIPOC” term more often than not referred to  
27 the immigrant and refugee community, a community based on characteristics other than simply  
28 race. (AR03281:3–7 [“Map 14 ... responds to the *BIPOC* [] community by keeping intact the map

1 submitted by *PANA*”]; AR 1932:13-23 [“the *PANA* map ... focuses on the BIPOC group”];  
2 AR04706:8-18 [noting “the BIPOC community submitted map” did not speak for the whole  
3 “immigrant and refugee [] community” because some Chaldeans do not identify as part of that  
4 group]; AR06752:1-11 [summarizing the Commission’s objective as uniting the “BIPOC refugee  
5 immigrant communities” in the final map of the Central District].) And as Petitioner’s demographer  
6 expert admits, a COI may include race as a component provided other shared characteristics are  
7 included. (Valdez Decl., ¶ 24.) Status as an immigrant and refugee meets such criteria. As a  
8 relatively new term, BIPOC may mean many things to many people and the court is not convinced  
9 that all of the term’s users would agree on its scope. But here it was primarily used to refer to  
10 immigrant and refugee COIs. The occasional lack of clarity regarding the term should not be  
11 weaponized to support a claim of racial gerrymandering.

12 Further, Petitioner ignores the many instances in the Administrative Record when  
13 Commissioners considered factors other than race in drawing the Central District, including in its  
14 directions to the IRC demographer throughout the process and in numerous motions and votes,  
15 including at the December 9 and 11, 2021 meetings. (E.g., AR6662:18-24, AR02861:12-24  
16 [considering balancing population and meeting the required urban-rural balance]; AR04930  
17 [considering prior COI comments and those offered at each mapping meeting, including those  
18 defined by geography alone—e.g., those along interstate corridors or coastal zones]; AR06720:22-  
19 28, AR06513-AR06514, AR06924:25-28 & AR06925:1-2 [focus on census-designated places];  
20 AR08390: 21-28, AR08391:1, AR08386-AR08390, AR6927- AR06931 [focus on city boundaries];  
21 AR08413: 13-21, AR08414-AR08417, AR08419:8-9, AR6534:13-28 & AR06535:1-4 , AR6539:15-25, &  
22 AR06679: 8-16 [consideration of population numbers].)

23 Additionally, in its Reply, Petitioner focuses on the African-American community in the  
24 Central District, arguing the final map approved on December 14, 2021 “was motivated primarily  
25 by the desire to place the African-American community in the Central District 4,” and “the question  
26 boiled down to whether the Commission was going to place Rancho San Diego in the Central  
27 District to protect the African-American community, or in the east County District to protect the  
28 Chaldean community.” (Reply, p. 10:15-23.)

1           The evidence in the Administrative Record refutes this assertion. The IRC considered three  
2 versions of the final map: “Scenario 1” which placed Rancho San Diego and El Cajon in the Central  
3 District (AR04952); “Scenario 2” which placed both those neighborhoods in the East County  
4 district (AR04964); and “Scenario 3b” which placed El Cajon in the East County District and  
5 Rancho San Diego in the Central District (AR04987). If, as Petitioner claims, the IRC subordinated  
6 all redistricting principles to its alleged objective of placing African-American voters in the Central  
7 District, then the IRC necessarily would have adopted the map with the highest number of African-  
8 American voters in the Central District (Scenario 1). But this is not what the IRC did.

9           The final map the IRC adopted has 10.2% African-American citizen voting- age population  
10 (CVAP) in the Central District (D4). (AR09118.) Had the IRC’s objective been “primarily... to  
11 place the African-American community in the Central District” as Petitioner claims, the IRC would  
12 have adopted Scenario 1, in which the Central District has 10.9% African-American CVAP  
13 (AR4954.) The same is true for the Latino population: Scenario 1 had a greater Latino CVAP  
14 (26.1% Latino) in contrast to the final map (25.3% Latino). (AR04954; AR09118.) In fact, the final  
15 map had a greater white CVAP in the Central District (48.6%) compared with Scenario 1, which  
16 the IRC rejected (48.5%). (AR04954; AR09118.) That the IRC declined to adopt the map with the  
17 highest number of African-American (or BIPOC) voters in the Central District evidences the IRC  
18 did not allow race to predominate its decisions.

19           At oral argument, Petitioner argued for the first time that it does not matter that the IRC did  
20 not successfully maximize the African-American population in the Central District, that the IRC  
21 intended to do so was enough. Petitioner provided no legal authority to support its claim that intent,  
22 without also accomplishing racial gerrymandering, is actionable. The Court is not persuaded such a  
23 claim exists. What would the remedy be for a map that is not racially gerrymandered *despite*  
24 alleged efforts to do so? There is none. Moreover, Petitioner cannot show race was the predominant  
25 factor when the record establishes the Commissioners were aware of and considered the numbers of  
26 African-American voters in each version of the map, and the Commissioners then chose to adopt  
27 the map that did *not* maximize African-American voters in the Central District.

28

1           Lastly, Petitioner failed to carry its burden of proof that the IRC subordinated other  
2     redistricting principles to race. Petitioner first argues the IRC’s final map vote proves it  
3     “subordinate[d] population equality to grouping people on the basis of race” because it placed  
4     Rancho San Diego in the Central District instead of East County. But Petitioner focuses too  
5     narrowly on Rancho San Diego in isolation, a luxury in which the IRC could not engage. The  
6     Administrative Record shows that placing Rancho San Diego in the Central District was  
7     counterbalanced by placing El Cajon in the East County, as well as by several other adjustments to  
8     the borders of these districts. (AR06751:1-9, AR06696-6698.) That the final districts’ population  
9     deviated from the mathematical ideal— the Central District by 2.3 percent and East County district  
10    by 3.7 percent—does not prove that the IRC subordinated population equality to other factors. That  
11    those deviations might be less if the IRC had adopted a different map does not show race  
12    predominated.

13           A redistricting authority must balance a complex list of factors, and the law permits  
14    reasonable deviation from population equality to provide the flexibility needed to balance those  
15    interests. (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 472 [“minor deviations” within 10% of the  
16    ideal are presumed to comply with equal protection]; *Harris v. Arizona Independent Redist. Com’n*  
17    (2016) 578 U.S. 253, 259 (*Harris*) [“Given the inherent difficulty of measuring and comparing  
18    factors that may legitimately account for small deviations from strict mathematical equality, we  
19    believe that attacks on deviations under 10% will succeed only rarely, in unusual cases.”]; *Griswold*  
20    *v. County of San Diego* (1973) 32 Cal.App.3d 56, 66 [reasonable minds could differ whether 3.6%  
21    and 6.3% deviations were “small” and court would not substitute its judgment].)

22           Petitioner argues that “the final map itself” in which Rancho San Diego “serves as the tip of  
23    the spear of the Central District 4, jutting into the East County District 2” proves that compactness  
24    fell second to race. (Op. Brief, p. 15:3-4.) Stated otherwise, because Rancho San Diego—which  
25    constitutes three percent of the Central District’s population and a similar fraction of its border—  
26    extends into the East County District, the IRC “subordinated the interest of compactness to its racial  
27    redistricting.” (Op. Brief, p. 15:2.) But a minor adjustment to the entire district border does not  
28    evidence the IRC allowed that calculation to “predominate.”

1        *Miller v. Johnson, supra*, 515 U.S. at p. 917 provides important guidance. *Miller* found race  
2 was the predominant factor in districting when “the drawing of narrow land bridges to incorporate  
3 within the district outlying appendages containing nearly 80% of the district’s total black  
4 population was a deliberate attempt to bring black populations into the district.” Here, no “narrow  
5 land bridges” or other physical oddities are evident in the border between the Central and East  
6 County districts. A look at case law where racial gerrymandering was found shows that the IRC’s  
7 map, in which a Central District has no “narrow land bridges” snaking out to “incorporate  
8 appendages,” bears no approximation to those maps found to violate the compactness principle.  
9 (See *Shaw v. Reno, supra*, 509 U.S. 630; *Cooper v. Harris* (2017) 581 U.S. 285; *Bush v. Vera*  
10 (1996) 517 U.S. 952.)

11        Finally, Petitioner asserts that placing Rancho San Diego in the Central District  
12 “subordinates protection for a community of interest in favor of racial redistricting” by acting to  
13 preserve “BIPOC” communities in one district instead of drawing the map solely in favor of  
14 keeping the entire Chaldean community in their preferred district. (Op. Brief, p. 15:5-6.) But  
15 isolating the decision where to place Rancho San Diego from the larger picture of drawing the  
16 Central District as a whole fails to show race predominated in the IRC’s calculus. Petitioner cannot  
17 carry its burden by highlighting the Chaldean community’s interests to the exclusion of the myriad  
18 other COIs the IRC was required to consider as well as the non-COI factors.

19        Because of the complexity of redistricting factors and interests at stake, “States must have  
20 discretion to exercise the political judgment necessary to balance competing interests.” (*Miller v.*  
21 *Johnson, supra*, 515 U.S. at p. 915.) The evidence establishes the IRC did not allow race to  
22 predominate as it balanced the competing interests. Rather the IRC commendably performed a  
23 difficult and complex task in weighing the multitude of factors that go into establishing a fair  
24 redistricting.

## 25    **VI.    THE MINIMAL POPULATION DEVIATIONS ARE CONSTITUTIONAL**

26        For local redistricting, the U.S. Supreme Court has established a presumption that districting  
27 plans with “minor deviations” of under 10 percent are valid. (*Vandermost v. Bowen, supra*, 53  
28 Cal.4th at p. 472 citing *Brown v. Thompson* (1983) 462 U.S. 835, 842–843.) Here, Petitioner argues

1 that “every deviation from pure equality must be justified,” including the Central District’s  
2 deviation from the population ideal of 2.3% and the East County District’s deviation 3.7%. (Reply,  
3 p. 14:8.) But the Supreme Court instructs that “[w]here the maximum population deviation between  
4 the largest and smallest district is less than 10%, a state or local legislative map presumptively  
5 complies with the one-person, one-vote rule. [Citation.]” (*Evenwel v. Abbott* (2015) 578 U.S. 54,  
6 60.)

7 California standards are no different. Petitioner’s claim that *Vandermost*, *supra*, 53 Cal.4th  
8 446 “noted approvingly” of districts with “no more than a 2.0 [percent] total deviation” is  
9 unpersuasive. (Op. Brief, p. 21:17-21.) *Vandermost* recognized the 10 percent presumption  
10 established by the U.S. Supreme Court. (*Id.* at p. 472.) And in its lengthy discussion of which map  
11 to use if a voter referendum gained enough signatures to challenge the adopted map, the Court there  
12 analyzed many maps with far greater deviations than 1-2 percent without once suggesting that  
13 California law mandates the low threshold Petitioner argues. It does not.

14 Petitioner fails to rebut the presumption that the final map’s deviation of 8.1 percent is  
15 justified. To rebut the presumption, a plaintiff “must show that it is more probable than not that the  
16 deviation reflects the predominance of illegitimate reapportionment factors rather than ‘legitimate  
17 considerations.’ [Citation.]” (*Harris*, p. 259 [“we have refused to require States to justify deviations  
18 of 9. 9%, [citation], and 8% [citation].”]; see also *Fund for Accurate and Informed Representation*,  
19 *Inc. v. Weprin* (1992) 506 U.S. 1017, [summarily affirming no prima facie case where the  
20 maximum population deviation was 9.43%].)

21 Petitioner failed to meet this burden. It argues that the Central and East County districts’  
22 population deviation is not justified by legitimate reapportionment factors because Rancho San  
23 Diego’s placement was based on “unconstitutional race-based determinations and [] a faulty  
24 understanding of the location of various minority groups.” (Op. Brief, p. 23:10-12.) As set forth  
25 above, the IRC did not allow race to predominate in the drawing of the final map.

26 Moreover, the Court cannot accept Petitioner’s argument that the population variance  
27 between the Central and East County districts constitutes a fatal equal protection violation, but the  
28 Court may nevertheless ignore the population deviation of the remaining three districts. Total



1 deviation requires looking at the other districts. Even assuming the Court ordered the move  
2 Petitioner seeks, the map's total deviation would remain at 8.1 percent. (Brasch Decl., ¶ 14.) If the  
3 Court accepted Petitioner's argument about the population deviation for the Central District, it must  
4 apply the same standard to the whole map, which would require the IRC to redraw all five districts.  
5 But Petitioners fail to provide evidence to support such a finding.

6 Unlike in the *Cox* case on which Petitioner relies, the Administrative Record contains no  
7 evidence of systemic under- or over-population of any district. Instead, Petitioner cites only the  
8 placement of Rancho San Diego. Highlighting only one neighborhood without examining the entire  
9 Central and East County districts or the map as a whole does not prove these districts lacked a  
10 neutral justification.

11 Finally, Petitioner's argument that tighter population equality between the Central and East  
12 County districts was possible under other scenarios is not the relevant inquiry. Prioritizing equality  
13 of population does not mean the IRC was required to adopt the Chaldeans' request to move one  
14 neighborhood without examining how that would impact "the complex interplay of forces that  
15 enter into [ ] redistricting calculus." (*Abbott v. Perez* (2018) 138 S.Ct. 2305, 2324.) The question is  
16 whether the maximum deviation between the largest and smallest districts was less than 10 percent,  
17 and if so, whether Petitioner met its burden of showing it is more probable than not the deviation  
18 reflects the predominance of illegitimate factors. The Court thus concludes Petitioner failed to meet  
19 its burden.

## 20 **VII. PETITIONER FAILS TO ESTABLISH A VOTING RIGHTS ACT VIOLATION**

21 Petitioner provides no evidence the voting power of the Chaldean community has been  
22 diminished in violation of the federal Voting Rights Act (VRA). Section 2 of the VRA prohibits the  
23 adoption of any election practice, including the drawing of district lines, that "results in a denial or  
24 abridgement of the right of any citizen of the United States to vote on account of race or color." (42  
25 U.S.C § 1973.) To prevail on a vote dilution claim under the VRA, Petitioner must satisfy three  
26 threshold conditions: (1) a geographically compact minority group capable of constituting a  
27 majority in a single-member district; (2) the racial group is "politically cohesive"; and (3) the  
28 majority "vot[es] sufficiently as a bloc to enable it ... usually to defeat the minority's preferred

1 candidate.” (*Gingles, supra*, 478 U.S. at p. 51.) If all three requirements are met, courts next  
2 “consider the ‘totality of circumstances’ to determine whether members of a racial group have less  
3 opportunity than do other members of the electorate.” (*League of United Latin Am. Citizens v.*  
4 *Perry* (2006) 548 U.S. 399, 425–426.)

5 For the first prong, a minority group must first “demonstrate that it is sufficiently large and  
6 geographically compact to constitute a majority in a single-member district.” (*Gingles, supra*, 478  
7 U.S. at 50.) Absent meeting this threshold requirement, no dilution claim can stand. This is because  
8 without it, a Petitioner could never establish the relevant community’s voting strength is lessened as  
9 a result of the map instead of other, non-redistricting factors.

10 Here, the most recent American Community Survey reflects an estimated 11,062 of  
11 Chaldeans county-wide. (See Jonna Decl. ISO Op. Brief, p. 209.) Even setting aside that this figure  
12 in favor for Petitioner’s own informal census which estimated 50,000 Chaldeans within the County,  
13 this is far from the number required to constitute a majority within a single district. For San Diego  
14 County, the number would need to be over approximately 330,226, which is one half of the ideal  
15 district population of 660,452. Even assuming the 50,000 county-wide population figure Petitioner  
16 asserts this is insufficient to constitute a majority in a single district. Petitioner thus fails to satisfy  
17 the first *Gingles* factor and defeats its VRA claim.

18 The Court is not persuaded that Petitioner need only show that the minority group is  
19 “sufficiently large to influence elections” even if the group does not constitute a majority in a  
20 district. *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327, 1343 stated the U.S. Supreme  
21 Court had “express[ed] no opinion on whether a Voting Rights Act claim may be based on  
22 impairment of the ability to influence elections.” And nothing in *Wilson v. Eu* (1992) 1 Cal.4th 707  
23 requires the creation of “minority influence districts.” (See, e.g., *Romero v. City of Pomona* (9th  
24 Cir. 1989) 883 F.2d 1418, 1424, fn. 7 [“We are aware of no successful [VRA] section 2 voting  
25 rights claim ever made without a showing that the minority group was capable of a majority vote in  
26 a designated single district.”].)

27 Even if Petitioner need not satisfy the first *Gingles* precondition, it fails to establish a VRA  
28 claim. Petitioner cannot prove the 2021 Map “inevitably poses a total and fatal conflict with

1 applicable constitutional provisions”—the standard imposed by the authority on which Petitioner  
2 relies. (*Nadler, supra*, 137 Cal.App.4th at p. 1327.) Petitioner provides no proof the 2021 Map  
3 impairs the Chaldean community’s ability to influence the election as to their candidate of choice.  
4 The evidence and allegations show the contrary. According to Petitioner, “both [East County]  
5 District 2 and [central] District 4 have racially polarized voting [the third *Gingles* precondition],  
6 where the White majority always obtains their candidate of choice.” (Op. Brief, p. 25:1-2.)

7 But that misstates the standard. Racially polarized voting is present when the white majority  
8 usually votes as a bloc to defeat the minority population’s candidate of choice. (*Gingles, supra*, 478  
9 U.S. pp. 49–54.) Importantly, Petitioner admits that in the East County, the Chaldean community  
10 votes with the white majority. (See Kattoula Decl., ¶ 32; 2nd Am. Pet., ¶ 27.) And historically, for  
11 example, Petitioner admits the Chaldean community elected their candidate of choice in 2012 and  
12 2016 in East County. (Whatley Decl., Exh. F [Resp. to RFA Nos. 10-11].) Furthermore, in 2020,  
13 “significant portions of the Chaldean community supported [the two] candidates” in the general  
14 election so although the community did not vote cohesively in that election, each of the only two  
15 candidates in the general election had significant Chaldean support. (Whatley Decl., Exh. G [Resp.  
16 to Form Rog. No. 17.1(12)].) These facts establish the Chaldeans’ preferred candidate usually wins  
17 in East County and is not usually defeated by the white majority. And Petitioner presents no  
18 evidence this will not continue under the 2021 Map.

19 As to the Central District, Petitioner erroneously claims this District has “racially polarized  
20 voting where the White majority always obtains their candidate of choice,” without any support.  
21 (Op. Brief, p. 25:1-2.) Again, the standard is not whether the white majority elects their candidate  
22 of choice. It is whether the white majority usually votes as a bloc to defeat the minority group’s  
23 candidate of choice. But there is no white majority in the Central District. (AR09118; AR07122-  
24 7123.) And for those Chaldeans who lived in the Central District before the 2021 redistricting, there  
25 is no change. For those Chaldeans placed in the Central District in the 2021 Map: “[T]he individual  
26 voter in the district with a nonwhite majority has no constitutional complaint merely because his  
27 candidate has lost out at the polls and his district is represented by a person for whom he did not  
28 vote. Some candidate, along with his supports, always loses.” (*United Jewish Org. of*

1 *Williamsburgh, Inc. v. Carey* (1977) 430 U.S. 144, 166.) And to the extent the Chaldeans identify  
2 as white, “[T]he effect of the reapportionment on whites in districts where nonwhite majorities have  
3 been increased is thus mitigated by the preservation of white majority districts in the rest of [the  
4 jurisdiction].” (*Id.*, fn. 24, at p. 166.)

5 Finally, even if Petitioner satisfied the three *Gingles* preconditions—or, under a presumed  
6 theory that they need not establish any—they still “must demonstrate that, under the totality of the  
7 circumstances, the [redistricting] result[ed] in unequal access to the electoral process.” (*Gingles*,  
8 *supra*, 478 U.S. at p. 46.) Relevant factors include the history of voting-related discrimination,  
9 evidence of racially polarized voting, or voting practices that tend to subjugate the minority group,  
10 and the extent to which minority group members bear the effects of past discrimination that hinders  
11 their ability to participate in the political process. (*Id.* at pp. 44–45.) Petitioner provides no such  
12 evidence. Petitioner submitted no expert testimony on the topic of racially polarized voting. While  
13 Petitioner submitted declarations by Chaldeans Father Bazzi and Noori Barka who assert expertise  
14 in other fields, these individuals are not statisticians and have no formal education or experience  
15 that would qualify them as experts to opining on voting patterns. (See *Duran v. U.S. Bank National*  
16 *Assn.* (2014) 59 Cal.4th 1, 49 [the trial court erred in adopted a statistical method unvetted by the  
17 expert witnesses at trial].)

18 Petitioner similarly fails to provide other evidence of discrimination or lack of access to the  
19 electoral process. Although they allege past discrimination in Iraq, they provide no competent  
20 evidence showing the same in San Diego County. Petitioner’s officer admitted the only persecution  
21 allegedly suffered is the 2021 Map. (Whatley Decl., ¶ 7.) And their own evidence establishes to the  
22 contrary where, for example, their group’s political endorsements are highly sought-after. (Kattoula  
23 Decl., ¶ 33.) That Petitioner was able to obtain a declaration from a former Supervisor, on its own,  
24 demonstrates access to the electoral process. (*Id.*, Exh. 5.) As to the lone incident they cite—losing  
25 on a unanimous vote of the Supervisors to impose a fee on stores that sell tobacco products after  
26 lobbying for a different result—this is not proof that, under the totality of the circumstances, the  
27 2021 Map creates unequal access to the electoral process.

28

1 In the absence of the three *Gingles* factors and evidence regarding the totality of the  
2 circumstances, there is no VRA violation. And the IRC was not obligated to maximize the  
3 Chaldeans ability to influence elections. (See *Castorena v. City of Los Angeles* (1973) 34  
4 Cal.App.3d 901, 916-917 [ The “petitioners’ real complaint is not that the City Council minimized  
5 their voting strength, but that it did not avail itself of an opportunity to maximize it. That objective,  
6 even if permissible, is not constitutionally required.”].)

#### 7 **VIII. THE 2021 MAP IS NOT ARBITRARY OR CAPRICIOUS**

8 “Because reapportionment is so essentially a legislative function, certain basic  
9 considerations relating to the fundamental doctrine of the separation of powers between the judicial  
10 and the legislative branches of government regulate and limit courts in the exercise of their power  
11 to declare such enactments invalid.” (E.g., *Griswold v. County of San Diego* (1973) 32 Cal.App.3d  
12 56, 65–66.) Here, Petitioner argues the IRC arbitrarily and capriciously adopted the 2021 Map on  
13 three grounds, each of which takes aim at specific, discrete decisions that occurred over the months-  
14 long redistricting process during which the IRC considered dozens of plans concerning hundreds of  
15 communities of interest County-wide. Each argument fails to show there was “no reasonable basis”  
16 for the IRC’s action. (*Id.* at p. 67.)

17 First, the IRC did not publish its first draft map too early. Elections Code section 21508,  
18 subdivision (d)(3)(B) required the IRC to wait one week after the State published its Census data  
19 before “releas[ing] draft maps of supervisorial districts.” The Statewide Database published the  
20 database on September 20, 2021. (Pet. Exh. 18, filed Mar. 9, 2022.) The IRC waited until after  
21 September 27, 2021 before releasing its first map. The “springboard” maps FLO prepared—not the  
22 Commissioners— were not “draft maps” within the meaning of Section 21508. And, regardless, the  
23 “springboards” were published over a week after “the redistricting database [was] made publicly  
24 available” on September 20, 2021. (Elec. Code, § 21508, subd. (d)(3)(B).) And, even if Petitioner’s  
25 position regarding timing was accepted, it waited over five months to raise the issue and is barred  
26 by laches. It would be inequitable to disallow the adopted map at this late date based on their  
27 release allegedly one week early in September 2021. Doing so would seriously prejudice the IRC’s  
28

1 months' long mapping efforts and the hundreds of members of the public who participated in the  
2 process after September 2021.

3 Second, use of the term "BIPOC" during the mapping process does not evidence the IRC  
4 defined COIs "based on their political views." (Op. Brief, p. 17:8-10.) Petitioner does not explain  
5 their theory on this. And portions of Petitioner's brief contend the use of "BIPOC" was a reference  
6 to race, not political views, which belies its claims here.

7 Third, the Administrative Record does not show the IRC elevated the principle of  
8 "compactness" over minimizing division of COIs. (See § 21552, subd. (a).) Petitioner cites two  
9 transcript excerpts: Commissioner Inman's comment that moving Rancho San Diego to the East  
10 County would "make[] a weird shape" (AR06730:13-18) and legal counsel's observation that this  
11 move was intended to "unite[] communities of interest" (AR 6927:25-28). These two comments  
12 isolated out of a lengthy transcript does not show the entire IRC's decision to keep Rancho San  
13 Diego in the Central District was the result of prioritizing compactness over the integrity of COIs.  
14 The full discussion shows many commissioners believed the placement of Rancho San Diego  
15 would unite refugee and immigrant communities.

16 And Petitioner's argument "African-American, Arab-Muslim, or other BIPOC  
17 communities" were not benefitted by placing Rancho San Diego in the Central District is  
18 inconsistent with the evidence in the Administrative Record. Petitioner relies on its demographer's  
19 statement that a combined 13.8% of Rancho San Diego's registered voters identify as Arab, Middle  
20 Eastern, or African-American. (Valdez Decl., ¶ 68.) The demographer further states there are more  
21 Chaldeans in Rancho San Diego than members of these other groups but at the same time claims  
22 that 55.8% of Rancho San Diego voters identify as "European White" and 16.1% identify as  
23 Hispanic or Asian, which leaves only 14.3% of Rancho San Diego voters unidentified. (*Id.*, ¶¶ 68-  
24 69.) The demographer presumably assumes this remaining 14.3% are all Chaldean. Even ignoring  
25 this questionable numerical support, Petitioner's claim that purportedly more Chaldeans than  
26 Middle Eastern and African refugees and immigrants live in Rancho San Diego does not show that  
27 these other communities did not benefit from this neighborhood's placement in the Central District.

28

1 It appears Petitioner's stated goal is to be placed in the supervisorial district where the  
2 Chaldean community aligns with the majority of voters—the East County District which has long  
3 been represented by a conservative supervisor. In this vein, Petitioner asks this Court to order the  
4 IRC to draw a map that places the Chaldean community in the East County District. But  
5 Election Code section 21552, subd. (a)(4) mandates "Communities of interest shall not include  
6 relationships with political parties, incumbents or political candidates." By dictating in which  
7 supervisorial district the community must be placed, Petitioner seeks exactly that. Petitioner's  
8 briefing and evidence, plus the Administrative Record, demonstrate their goal is to remain in a  
9 district that historically elects Republican supervisors. (See 2nd Am. Pet., p. 7:1-5, p. 29:12-15  
10 ["the newly drawn Central District 4—based around PANA's political map designed to create a  
11 solidly Democrat district [] will ... frustrat[e] the Chaldean minority's ability to elect their  
12 Republican candidate of choice."];) Neither the Elections Code nor the VRA nor the Equal  
13 Protection clause permits Petitioner to dictate that the Chaldean community be placed in a district  
14 with a Republican majority. And state law expressly prohibits redistricting on this basis.

15 The IRC issued a statutorily-required report that described the map and detailed how the  
16 map complied with all applicable federal and state constitutional and statutory requirements. The  
17 report and its accompanying appendices outline in detail the rational and reasonable basis for the  
18 map. And Petitioner's evidence is insufficient to establish the IRC acted arbitrarily or capriciously.

19 **IX. CONCLUSION**

20 For the foregoing reasons, the Court denies the Petition for Writ of Mandate. The IRC is  
21 entitled to recover its costs.

22  
23 Dated: JUN 13 2023

**Eddie C. Sturgeon, Judge**

24 EDDIE C. STURGEON  
25 Judge of the Superior Court  
26  
27  
28

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> NORTH COUNTY DIVISION, JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		<b>FOR COURT USE ONLY</b>  <div style="text-align: center;"> <b>F I L E D</b>  San Diego Superior Court  <b>JUN 13 2023</b> </div> Clerk of the Superior Court By: H. Chavarin, Deputy
PLAINTIFF(S)/PETITIONER(S) <b>CHALDEAN COALITION</b>		JUDGE: Eddie C. Sturgeon DEPT: 67
DEFENDANT(S)/RESPONDENT(S) <b>THE COUNTY OF SAN DIEGO INDEPENDENT REDISTRICTING COMMISSION</b>		CASE NUMBER 37-2022-00008447-CU-WM-CTL
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b>		

I certify that I am not a party to the above-entitled cause, that I placed a copy of the following document(s):  
**STATEMENT OF DECISION**

in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at  
☐ Chula Vista ☐ El Cajon ☒ San Diego ☐ Vista, California.

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