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Lea County
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STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

REPUBLICAN PARTY OF NEW MEXICO, DAVID GALLEGOS, TIMOTHY JENNINGS, DINAH VARGAS, MANUEL GONZALES, JR., BOBBY AND DEE ANN KIMBRO, and PEARL GARCIA,

Plaintiffs,

v.

Cause No. D-506-CV-2022-00041

MAGGIE TOLOUSE OLIVER, in her official capacity as New Mexico Secretary of State, MICHELLE LUJAN GRISHAM, in her official capacity as Governor of New Mexico, HOWIE MORALES, in his official capacity as New Mexico Lieutenant Governor and President of the New Mexico Senate, MIMI STEWART, in her official capacity as President Pro Tempore of the New Mexico Senate, and JAVIER MARTINEZ, in his official capacity as Speaker of the New Mexico House of Representatives,

Defendants.

PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO INTERVENE OF DEMOCRATIC PARTY OF NEW MEXICO

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INTRODUCTION

This Court should deny the obviously untimely Motion To Intervene filed by the Proposed Intervenor the Democratic Party of New Mexico ("DPNM"). DPNM was aware of this lawsuit from its earliest days, given that DPNM worked closely to support Senate Bill 1 and that Legislative Defendants here are members of DPNM itself. Yet DPNM inexcusably failed to move to intervene until now. DPNM's participation here, at this late hour, would cause severe prejudice to the existing parties, including because the Supreme Court ordered this Court to complete expedited proceedings by October 1, 2023. If DPNM were added as a party now, it would likely burden the upcoming, truncated schedule with its own expert(s)—requiring the existing parties to conduct additional expert depositions and file additional expert rebuttals—along with its own fact discovery and additional depositions. And Legislative Defendants adequately represent DPNM's interests, as they will vigorously defend Senate Bill 1, as they have throughout this entire case.

STATEMENT

A. Plaintiffs File Their Verified Complaint, Alleging That Senate Bill 1 Is An Unconstitutional Partisan Gerrymander

On January 21, 2022, the Republican Party of New Mexico and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") filed their Verified Complaint, alleging that Senate Bill 1 is an unlawful partisan gerrymander in violation of Article II, Section 18 of the New Mexico Constitution.[1] V. Compl. ("Compl.") ¶¶ 1–7.

[1] The full text of Senate Bill 1 and maps of the congressional districts that it drew are available at https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s2 (all websites last visited Aug. 1, 2023).

Plaintiffs sued Governor Michelle Lujan Grisham, Lieutenant Governor and President of the New Mexico Senate Howie Morales, and Secretary of State Maggie Tolouse Oliver. *Id.* ¶¶ 8–10. Plaintiffs also sued the Legislative Defendants: President Pro Tempore of the New Mexico Senate Mimi Stewart and Speaker of the New Mexico House of Representatives Brian Egolf, Compl. ¶¶ 11–12—later substituted for Javier Martinez, *see* Order 1, *Grisham v. Van Soelen*, No.S-1SC-39481 (N.M. July 5, 2023) (hereinafter "Superintending Order").

Plaintiffs alleged that Senate Bill 1 is an egregious partisan gerrymander. The Democratic-controlled Legislature purposefully cracked a significant block of registered Republicans in southeastern New Mexico across the State's *three* redrawn congressional districts. Compl. ¶¶ 72–76, 91. The Legislature shattered this longstanding community of Republican voters to oust Republican Representative Yvette Herrell, with the goal of replacing her with a Democrat. *Id.* ¶¶ 72–76, 78, 86–95(b), 98. And the Legislature did *not* adopt any of the three proposed redistricting maps drawn by the independent, non-partisan New Mexico Citizen Redistricting Committee. *See id.* ¶ 72. Rather, it drafted Senate Bill 1 by taking the proposed map from the Committee that was most favorable to Democrats—the "Concept H Map"—and making it even more favorable for Democrats by cracking the southeastern Republican community. *See* Compl. ¶¶ 73–76.

Senate Bill 1's egregious partisan gerrymander yielded the exact results that the Democratic-controlled Legislature intended. In the very first election under Senate Bill 1, the new, partisan-gerrymandered District 2 elected Representative

Vasquez, a Democrat, over Representative Herrell. N.M. Sec'y Of State, *Official Results 2022 General November 8, 2022* (last updated Nov. 29, 2022).[2] That made Representative Herrell one of only three Republican incumbents nationwide to lose on Election Day in 2022.[3] *See* David Cohen, *House Incumbents Who Have Lost This Year (So Far)*, Politico (Nov. 13, 2022).[4] Now, as a result of Senate Bill 1's partisan gerrymander, Democrats control the entirety of New Mexico's congressional delegation. N.M. Sec'y Of State, *Official Results*, *supra.*

B. Legislative Defendants Vigorously Oppose Plaintiffs' Verified Complaint And Defend Senate Bill 1, Including Before The New Mexico Supreme Court

Once Plaintiffs filed their Complaint, Legislative Defendants and Executive Defendants vigorously defended Senate Bill 1, including before the Supreme Court.

Legislative Defendants moved to dismiss the Complaint on multiple grounds—including the political-question doctrine, the doctrine of the separation of powers, an asserted failure to identify judicially manageable standards, and an asserted inability to overcome rational-basis review. Legislative Defs'. Mot. To Dismiss 14; *see also* Executive Defs'. Mot. To Dismiss 6–9. Legislative Defendants successfully opposed Plaintiffs' Motion For A Preliminary Injunction, thus permitting Senate Bill 1 to take

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[2] Available at https://electionresults.sos.state.nm.us/resultsSW.aspx?type=FED&map=CTY.

[3] Further, one of the other three Republican incumbents to lose reelection, Representative Mayra Flores, lost after Texas' redistricting resulted in her running against another incumbent Representative, whose residence had been moved into her district. *See* Suzanne Gamboa, *Democratic Rep. Vicente Gonzalez Wins In Texas' 34th Congressional District, Defeating Republican Rep. Mayra Flores*, NBC News (Nov. 8, 2022), https://www.nbcnews.com/news/latino/democratic-rep-vicente-gonzalez-wins-texas-34th-congressional-district-rcna55741.

[4] Available at https://www.politico.com/news/2022/11/13/house-incumbents-who-have-lost-this-year-so-far-00066625.

effect for the November 2022 election. *See* Legislative Defs'. Resp. To Mot. For Prelim. Inj.; Findings Of Fact & Conclusions Of Law Den. Prelim. Inj., July 11, 2022.

After this Court denied Legislative Defendants' Motion To Dismiss, *see* Findings Of Fact & Conclusions Of Law Den. Mot. To Dismiss, July 11, 2022, Legislative Defendants continued their defense of Senate Bill 1 by petitioning the New Mexico Supreme Court for a writ of superintending control, *see* Pet'rs' Br.-In-Chief (Nov. 3, 2022), *Grisham*, No. S-1-SC-39481 (filed jointly with Executive Defendants); Superintending Order 1. In those proceedings before the Supreme Court, Legislative Defendants reiterated their arguments presented to this Court in their Motion To Dismiss. Pet'rs' Br.-In-Chief, *supra*, at 10–21. Further, Legislative Defendants also argued that, under the facts of this case, "Plaintiffs have not raised a viable claim of discrimination," since, "[u]nder any standard, . . . SB-1 does not approach 'egregious' or 'extreme' levels of partisan dominance." Pet'rs' Resp. To Resp't's Suppl. Br.-In-Chief at 18–19 (Feb. 22, 2023), *Grisham*, No. S-1-SC-39481 (filed jointly with Executive Defendants).

C. Meanwhile, This Court Denied Two Intervention Motions Prior To Deciding Legislative Defendants' Motion To Dismiss

In earlier proceedings, this Court denied two intervention motions under Rule 1-024 of the New Mexico Rules of Civil Procedure for the District Courts.

First, this Court denied an individual voter's motion to intervene as a plaintiff as of right under Rule 1-024. *See* Order Den. Mot. To Intervene, Apr. 11, 2022 (Marker). This Court held that the proposed intervenor's requests "mirror[ed] Plaintiff's requests as to the ultimate goal of declaring the Congressional Map . . .

unconstitutional, albeit with slightly modified additional remedies." *Id.* Further, the proposed intervenor's "interests in this matter [were] adequately represented by the existing Plaintiffs." *Id.* So, the proposed-intervenor failed to satisfy Rule 1-024. *Id.*

Second, this Court denied the Board of County Commissioners of Lea County's motion to intervene as a plaintiff, as of right and permissively, under Rule 1-024. Order Den. Mot. To Intervene, July 11, 2022 (Lea County). The Court held that Lea County had "not shown that its status as a political entity gives it a unique position to protect its purported interest in the outcome of this case," vis-à-vis the private Plaintiffs here. *Id.* Additionally, Lea County did "not allege any different grounds for a cause of action that are not being presently pursued by the existing Plaintiffs," the "position" of Lea County "mirror[ed] Plaintiffs' requests in the ultimate goal of declaring the Congressional Map . . . unconstitutional," and the "interests" of Lea County "in this matter [were] adequately represented by the existing Plaintiffs." *Id.* Thus, Lea County also failed to meet Rule 1-024's requirements. *Id.*

D. The New Mexico Supreme Court Holds That Plaintiffs' Partisan-Gerrymandering Claim Is Justiciable And Orders Expedited Remand Proceedings Before This Court

On July 5, 2023, the New Mexico Supreme Court issued its Superintending Order, holding that Plaintiffs' partisan-gerrymandering claim was justiciable under Article II, Section 18 of the New Mexico Constitution and "is subject to the three-part test articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*." Superintending Order 3 (citing 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting)); *see Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) ("(1) intent; (2) effects; and (3) causation"). The Supreme Court then remanded to this Court to adjudicate

Plaintiffs' claim under this standard, on an expedited timeline. "In evaluating the degree of partisan gerrymandering in this case, if any," this Court "shall consider and address evidence comparing the relevant congressional district's voter registration percentage/data, regarding the individual plaintiffs' party affiliation under the challenged congressional maps, as well as the same source of data under the prior maps." Superintending Order 4. The Supreme Court also ordered this Court to "consider any other evidence relevant to" the "application of the test." *Id.* The Supreme Court set an expedited deadline: this Court "shall take all actions necessary to resolve this matter **no later than October 1, 2023**." *Id.* at 3.

Consistent with the Supreme Court's expedition order, on July 24, 2023, this Court set an "extraordinarily truncated" schedule. Scheduling Order 3. Plaintiffs must identify lay and expert witnesses by August 1, with expert reports due August 11; Defendants must identify lay and expert witnesses by August 10, with expert reports due August 25; discovery closes September 13; and competing Findings Of Fact and Conclusions Of Law are due September 15 and September 20. *Id.* at 1–2.

E. DPNM Now Moves To Intervene In The Expedited Remand Proceedings

On July 17, 2023, after the Supreme Court issued its Superintending Order, DPNM filed its Motion To Intervene under Rule 1-024. DPNM seeks intervention both as of right and permissively. DPNM's Expedited Mot. To Intervene As Def. 7–14, 15 ("Mot."). Plaintiffs now file this Opposition to DPNM's Motion.

ARGUMENT

I. DPNM Is Not Entitled To Intervention As Of Right

To establish intervention as of right under Rule l-024(A), a proposed intervenor must satisfy four essential elements. First, it must file a "timely application." Rule l-024(A). Second, it must "claim[ ] an interest relating to the property or transaction which is the subject of the action." Rule l-024(A)(2). Third, it must be "so situated that the disposition of the action may as a practical matter impair or impede the [proposed intervenor's] ability to protect that interest." *Id.* Finally, it must have an interest that is not "adequately represented by existing parties" to the litigation. *Id.*; *see, e.g.*, *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶¶ 19–21, 126 N.M. 788, 975 P.2d 841. Here, DPNM fails to establish at least the timeliness element, *infra* Part I.A, or the adequacy-of-representation element, *infra* Part I.B, and this Court should deny DPNM's request to intervene as of right.

A. DPNM's Motion Is Obviously Untimely

1. The "[t]imeliness" element for intervention as of right "is a threshold requirement," and a movant's satisfaction of this element "depends upon the circumstances of each case," *Apodaca v. Town of Tome Land Grant*, 1974-NMSC-026, ¶ 6, 86 N.M. 132, 520 P.2d 552, and "equitable principles," *Nellis v. Mid-Century Ins. Co.*, 2007-NMCA-090, ¶ 6, 142 N.M. 115, 163 P.3d 502. In assessing timeliness, one "crucial" factor is "whether the intervenor knew of its interest and could have sought to intervene earlier in the proceedings." *Nellis*, 2007-NMCA-090, ¶ 6 (citations omitted); *see also Thriftway Mktg. Corp. v. State*, 1990-NMCA-115, ¶ 3, 111 N.M. 763, 810 P.2d 349. "Another factor" is "prejudice to the existing parties." *Nellis*, 2007-

NMCA-090, ¶ 10. Finally, "[t]he determination of timeliness is a matter peculiarly within the discretion of the trial court." *Apodaca*, 1974-NMSC-026, ¶ 6.

2. Here, DPNM's Motion is untimely for two independently fatal reasons.

First, DPNM "knew of its interest" in this lawsuit long before it filed its Motion on July 17, 2023, and it "could have sought to intervene earlier in the[se] proceedings" than now. *Nellis*, 2007-NMCA-090, ¶ 6 (citations omitted). DPNM must have been aware of this lawsuit from its inception in January 2022, given DPNM's intimate involvement in drafting and ratifying Senate Bill 1. Indeed, as DPNM's own Motion states, "DPNM leaders and voters"—such as Legislative Defendants—"participated actively in the public comment process" while the Citizen Redistricting Committee drew its proposed maps, Mot.3; "DPNM members" in the Legislature "[s]ponsored" Senate Bill 1, which replaced the Citizen Redistricting Committee's proposed maps, Mot.4; and DPNM publicly celebrated Senate Bill 1 upon its enactment by the Democratic-controlled Legislature, *see* Mot.11. So, given that DPNM doubtlessly had knowledge of this challenge to Senate Bill 1, DPNM must have known from the earliest days of this litigation that it threatened DPNM's interests in Senate Bill 1, since Plaintiffs seek an order both declaring that Senate Bill 1 is unconstitutional and replacing it with a new map. Compl. at 27. And since DPNM is "the largest political party in New Mexico," Mot.9, there is no reason why it "could [not] have sought to intervene earlier," *Nellis*, 2007-NMCA-090, ¶ 6 (citations omitted).

Second, granting DPNM intervention now would cause undue "prejudice to the existing parties." *Id.* ¶ 10. The Supreme Court has ordered this Court to resolve this

case on an expedited schedule—issuing final judgment "**no later than October 1, 2023**." Superintending Order 3. Accordingly, this Court has ordered an "extraordinarily truncated" litigation schedule to meet that immovable deadline. Scheduling Order 3. For example, the parties must file their expert reports by August 11 (Plaintiffs) and August 25 (Defendants); must complete *all* discovery, including expert-witness discovery, by September 13; and must draft and file competing annotated Findings Of Fact and Conclusions Of Law by September 15 and 20. *Id.* at 1–2. This truncated schedule imposes a significant burden on all the litigants and the Court, including because this case will likely turn on complex statistical evidence from experts to "evaluat[e] the degree of partisan gerrymandering in this case, if any." Superintending Order 4. Allowing DPNM to intervene and participate in this already truncated schedule would only further burden the existing parties (and the Court), to their unfair "prejudice." *Nellis*, 2007-NMCA-090, ¶ 10.

Consider only *some* of the added burdens to the truncated schedule from DPNM's participation: If granted intervention, DPNM will almost certainly wish to add its own expert(s) to the accelerated schedule. That will require the existing parties to depose these new expert(s), while also engaging their experts to address DPNM's experts' methodology. Further, if granted intervention, DPNM may serve its own discovery on fact witnesses and will surely desire to participate in all depositions, in addition to perhaps calling for additional depositions of its own. Those added burdens, at this late hour, are simply too prejudicial to the existing parties, in light of the truncated schedule and DPNM's untimely filing.

3. DPNM's counterarguments on the timeliness element are unpersuasive.

DPNM claims that it did not know that its interests in Senate Bill 1 were at issue in the "[e]arlier stages of this litigation" because those stages "concerned only a narrow legal issue" of the "justiciability of partisan gerrymandering claims under the New Mexico Constitution," while its interest is in "defending the substantive fairness" of Senate Bill 1. Mot.7–8. Yet, as DPNM's Motion makes clear, DPNM's chief interest is in New Mexico using Senate Bill 1 for the next decade, since that map increases "the electoral prospects of DPNM's candidates." Mot.10; *see* Mot.11–12. So, from the very beginning, Plaintiff's lawsuit *directly* threatened DPNM's core interest in Senate Bill 1. *See* Compl. at 27. Further, on February 3, 2022, Plaintiffs moved for a preliminary injunction seeking to set aside Senate Bill 1 for the then-upcoming November 2022 election on the grounds that it was an unfair and unconstitutional political gerrymander, and that requested relief obviously threatened even the narrowest understanding of DPNM's interests here. *See* Pls.' Mot. For Prelim. Inj. 1. Thus, DPNM has no excuse for failing to move to intervene earlier. *Nellis*, 2007-NMCA-090, ¶ 6; *see also Thriftway Mktg. Corp.*, 1990-NMCA-115, ¶ 3.

DPNM then claims that none of the existing parties "will be prejudiced by DPNM's entry into the litigation at this juncture," Mot.8, but it fails to grapple with the fact that the Supreme Court ordered this Court to resolve this case on an expedited basis and "**no later than October 1, 2023**," Superintending Order 3 (emphasis added). So, while DPNM is correct that "[n]o discovery has yet been conducted and the parties have only just begun to prepare for trial," Mot.8, that is a

powerful reason to *deny* intervention, since adding DPNM as a party would overwhelm the already "truncated" schedule for this case, Scheduling Order 2. For example, as noted above, adding DPNM would almost certainly add more expert(s), whom the existing parties would have to depose and respond to via their own experts, along with adding more fact discovery and depositions—all within a truncated schedule that cannot be extended.

B. Legislative Defendants Adequately Represent DPNM's Interests, Consistent With This Court's Previous Orders Denying Intervention In This Case

1. To intervene as of right, a proposed intervenor must also show that its interest in the lawsuit is not "adequately represented by existing parties" to the litigation. Rule l-024(A)(2). This is because "[n]o one has a right to intervene unless he has some right to protect which is not being adequately protected by the existing parties." *Burge v. Mid-Continent Cas. Co.*, 1997-NMSC-009, ¶ 16, 123 N.M. 1, 933 P.2d 210 (citations omitted; ellipses omitted; emphasis omitted). Importantly here, "[w]here the state . . . is named as a party to an action and the interest the [proposed intervenor] seeks to protect is represented by a governmental entity, a presumption of adequate representation exists." *Chino Mines Co. v. Del Curto*, 1992-NMCA-108, ¶ 11, 114 N.M. 521, 842 P.2d 738; *see also N.M. Right to Choose*, 1999-NMSC-005, ¶ 19. "In such cases, the applicant must make a concrete showing of why the representation is inadequate." *Chino Mines Co.*, 1992-NMCA-108, ¶ 11.

2. Here, Legislative Defendants—who are themselves members of DPNM—adequately represent DPNM's interests in Senate Bill 1, thus DPNM is not entitled to intervention as of right, even if its Motion were timely. *Supra* Part I.A.

As an initial matter, the "presumption of adequate representation" applies to Legislative Defendants here, but DPNM does not even attempt to rebut that presumption with "a concrete showing," thus DPNM fails to establish the adequacy element for this reason alone. *Chino Mines Co.*, 1992-NMCA-108, ¶ 11; *N.M. Right to Choose*, 1999-NMSC-005, ¶¶ 19–20. Legislative Defendants appear as Defendants here in their official capacities only, thus this is a suit "[w]here the state . . . is named as a party to an action[.]" *Chino Mines Co.*, 1992-NMCA-108, ¶ 11; *N.M. Right to Choose*, 1999-NMSC-005, ¶ 19; *see generally Ford v. N.M. Dep't of Pub. Safety*, 1994-NMCA-154, ¶ 16, 119 N.M. 405, 891 P.2d 546 (discussing official-capacity suits). Further, Legislative Defendants are protecting the same interest that DPNM seeks to protect here, *Chino Mines Co.*, 1992-NMCA-108, ¶ 11; *N.M. Right to Choose*, 1999-NMSC-005, ¶ 19; namely, the interest in New Mexico using Senate Bill 1 for the next decade, *compare* Mot.9–12. Nevertheless, nowhere in its Motion does DPNM even try to make a "concrete showing" that Legislative Defendants' representation is inadequate to protect this interest. *Chino Mines Co.*, 1992-NMCA-108, ¶ 11; *N.M. Right to Choose*, 1999-NMSC-005, ¶¶ 19–20.

Even without the presumption of adequacy, DPNM could not show that Legislative Defendants are inadequate representatives of its interests in the validity of Senate Bill 1. *Burge*, 1997-NMSC-009, ¶ 16. As explained above, Legislative Defendants have vigorously defended Senate Bill 1 throughout this litigation. For example, Legislative Defendants filed a substantial Motion To Dismiss with multiple independent arguments, successfully defeated Plaintiffs' Preliminary Injunction

Motion, and brought this case before the Supreme Court on a petition for a writ of superintending control. *Supra* pp.3–4. And among their other arguments, Legislative Defendants argued to the Supreme Court that, "[u]nder any standard, . . . SB-1 does not approach 'egregious' or 'extreme' levels of partisan dominance." Pet'rs' Resp. To Resp't's Suppl. Br.-In-Chief, *supra*, at 18–19.

Finally, this Court's previous denials of intervention on adequacy grounds (among others) are on point. Most notably, this Court denied intervention to Lea County on adequacy grounds—*although it was a public entity seeking to intervene in support of private parties*—because Lea County asserted a "position [that] mirror[ed] Plaintiffs' requests in the ultimate goal of declaring the Congressional Map . . . unconstitutional," and its "interests in this matter [were] adequately represented by the existing Plaintiffs." Order Den. Mot. To Intervene, July 11, 2022, (Lea County); *see also* Order Den. Mot. To Intervene, Apr. 11, 2022 (Marker). Here, DPNM's "position mirrors [Legislative Defendants'] requests in the ultimate goal of declaring the Congressional Map . . . [ ] constitutional," and DPNM is "adequately represented by" Legislative Defendants—although DPNM is a private entity seeking to intervene on behalf of public parties. Order Den. Mot. To Intervene, July 11, 2022 (Lea County). So, as with Lea County's motion, this Court should deny DPNM's motion on adequacy grounds.

3. DPNM's adequacy-of-representation arguments all fail.

First, DPNM cites a series of out-of-state cases that take a different approach to the adequacy element than does New Mexico, particularly with respect to the

presumption of adequate representation by government entities. *See* Mot.13–14. None of those cases help DPNM, however, given the contrary, binding precedent from the State's Supreme Court and Court of Appeals. *Supra* p.12.

Second, DPNM claims that its interests are not the same as Legislative Defendants' interests. Mot.13–14. But even a cursory review of the four supposedly unique interests that DPNM lists shows what DPNM's fundamental interest is here: ensuring that Senate Bill 1 governs elections in New Mexico for the next decade. *See* Mot.8–12, 13–14. That is the same goal as Legislative Defendants', who steadfastly believe that Senate Bill 1 is lawful "[u]nder any standard," since it "does not approach 'egregious' or 'extreme' levels of partisan dominance." Pet'rs' Resp. To Resp't's Suppl. Br.-In-Chief, *supra*, at 18–19.

Finally, in a footnote, DPNM attempts to distinguish this Court's prior orders denying intervention because they addressed proposed-intervenor *plaintiffs*, not defendants. Mot.14 n.5. Under the circumstances here, however, that is a distinction without a difference, since DPNM and Legislative Defendants do share the same "ultimate goal," Order Den. Mot. To Intervene, July 11, 2022 (Lea County), to the same degree that the other proposed intervenors and Plaintiffs did.

II. For Similar Reasons, This Court Should Also Deny DPNM's Request For Permissive Intervention

This Court should also deny DPNM's alternative request for permissive intervention, for similar reasons as DPNM's claim for intervention as of right.

Under Rule 1-024(B), this Court may permit a party to intervene where the party "timely" moves and has a "claim or defense" that has "a question of law or fact

in common" with "the main action." Rule 1-024(B)(2). This Court has "broad discretion" to grant or deny a movant's request for permissive intervention. *Chino Mines Co.*, 1992-NMCA-108, ¶ 17. However, "[i]n exercising its discretion . . . the court *shall* consider whether the intervention will unduly delay or prejudice . . . the original parties." Rule 1-024(B) (emphasis added).

This Court should deny DPNM's request for permissive intervention. First, and as explained fully above, DPNM's request is not "timely" under the circumstances, including because DPNM's late involvement in the extremely truncated proceedings here would cause undue prejudice to all existing parties. *See supra* Part I.A. Second, and relatedly, there is no practical benefit to allowing DPNM to disrupt these truncated proceedings through its participation as a party. As explained, Legislative Defendants share the same goal as DPNM in this case—*i.e.*, upholding Senate Bill 1 against Plaintiffs' partisan-gerrymandering claim. *See supra* Part I.B. Thus, DPNM's arguments and positions will already be presented to the Court by Legislative Defendants, without the additional disruption from adding a new party.

CONCLUSION

This Court should deny Proposed Intervenor's Motion To Intervene.

Dated: August 1, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing will be served on all counsel via the e-filing system.

Dated: August 1, 2023

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