

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT COURT

No. D-506-CV-2022-00041

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

Plaintiffs,

v.

MAGGIE TOULOUSE 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,

and

THE DEMOCRATIC PARTY OF NEW  
MEXICO,

[Proposed] Intervenor-Defendant.

**DEMOCRATIC PARTY OF NEW MEXICO'S**  
**EXPEDITED MOTION TO INTERVENE AS DEFENDANT**

## I. INTRODUCTION

Pursuant to Rule 1-024 of the New Mexico Rules of Civil Procedure, the Democratic Party of New Mexico (“DPNM”) moves to intervene as a Defendant in the above-captioned case. DPNM’s opposing political party counterpart, the Republican Party of New Mexico, along with a group of individual voters and elected officials (“Plaintiffs”), sued the Secretary of State, the Governor, and the leaders of both houses of the Legislature (“Government Defendants” or “Defendants”), alleging that the New Mexico Constitution required the Legislature to adopt an outlier congressional districting map to maximize Republicans’ chances of success in future Congressional elections. Compl. (Jan. 21, 2022). DPNM is entitled to intervene as of right under Rule 1-024(A)(2) to protect its own unique interests in this case and those of its members. *See State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 1, 487 P.3d 815, 818 (Supreme Court granted intervention of RPNM in election dispute).

Each of the criteria for intervention as of right is satisfied here: *First*, intervention is timely. DPNM files this motion just days after the New Mexico Supreme Court issued its writ of superintending control setting forth standards for resolving a case like this one, where Plaintiffs allege a partisan gerrymandering claim. This action has been stayed since August 2022, no discovery has yet been undertaken, and no party will be prejudiced by DPNM’s entry into the case at this juncture. *Second*, DPNM has unique, protectable interests at stake in this litigation in which its political counterpart seeks to use the courts to maximize its own electoral prospects. DPNM has independent interests in its own electoral prospects, the efficient use of its own resources, advancing its core mission of empowering voters, and protecting its members and constituents from vote dilution. And *third*, as government officials, the existing Defendants do not share, and therefore cannot adequately represent, DPNM’s unique private interests at stake in this case. Thus,

as a practical matter, disposition of this case in DPNM's absence will impair or impede its ability to protect its interests. *Cf.* Rule 1-024(A) NMRA.

Alternatively, the Court should grant DPNM permissive intervention under Rule 1-024(B). The motion is timely, DPNM has claims and defenses that share common questions of law and fact with those of the existing parties, and DPNM's entry into the case will not cause undue delay or prejudice any existing party. Courts in New Mexico, including the Supreme Court, have often permitted or even required the intervention and participation of opposing political parties in litigation that could impact the electoral framework under which the state's elections are held. *See infra* Argument Part I.B.

Counsel for DPNM conferred with counsel for Plaintiffs and Defendants regarding their position on this Motion as required by Rule 1-007.1 NMRA on July 14, 2023. The Executive Defendants and the Secretary of State do not oppose. The Legislative Defendants take no position. Plaintiffs have not yet provided their position. DPNM will inform the court promptly in the event the motion is unopposed.

## II. BACKGROUND

### I. **The Citizen Redistricting Committee proposed three congressional maps in non-binding recommendations for the Legislature's consideration in late 2021.**

Following years of pressure from advocacy groups including DPNM, the Redistricting Act of 2021, Laws 2021, Ch. 79, §§ 2-10 ("Redistricting Act"), created the non-partisan Citizen Redistricting Committee ("Committee"). The Committee is comprised of seven members appointed by legislative leaders or the State Ethics Commission. *See id.* § 4. Its recommendations do not have the force of law. *See id.* § 10(B). Rather, they are provided for the Legislature's "consideration." *Id.*

After holding public hearings throughout New Mexico during the summer of 2021, the Committee published initial “concepts” for congressional maps on September 16, 2021, and solicited public testimony. N.M. Citizen Redistricting Comm., *CRC District Plans & Evaluations* (Nov. 2, 2021), <https://www.nmredistricting.org/wp-content/uploads/2021/11/2021-11-2-CRC-Map-Evaluations-Report-Reissued-1.pdf> (“CRC Report”). During that time, “members of the public gave testimony regarding the initial map concepts, the location of communities of interest, and how district boundaries might be adjusted to better represent certain communities.” *Id.* at 10. Members of the public also submitted alternative map plans to the Committee through a public comment portal. *Id.*

DPNM leaders and voters participated actively in the public comment process. Democratic voters across the state expressed concerns about the feasibility of proposed maps as well as their effect on Native representation. DPNM Chairwoman Jessica Velasquez spoke at an October 8, 2021 public comment meeting to express her gratitude to the Committee for the hard work required to make redistricting “a fair and transparent process,” noting that “the Democratic Party recognizes the importance of creating balanced and impartial districts.”<sup>1</sup>

The Committee ultimately proposed three congressional districting plans to the Legislature in October 2021: Concepts A, E, and H. CRC Report at 11. The Committee submitted these plans for evaluation by Dr. David Cottrell, an expert on partisan fairness. Dr. Cottrell concluded that

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<sup>1</sup> See Citizens Redistricting Comm’n, *Chronological Summary of Testimony Received During Second Round of Public Meetings*, at \*18 (Aug. 24, 2021), <https://www.nmredistricting.org/wp-content/uploads/2021/08/2021-08-24-Chronological-Testimony-First-Round-Public-Meetings-FINAL.pdf>; Citizens Redistricting Comm’n, *Chronological Summary of Testimony Received During Second Round of Public Meetings*, at \*8 (Oct. 2021), <https://www.nmredistricting.org/wp-content/uploads/2021/10/CHRONOLOGICAL-SUMMARY-OF-TESTIMONY-RECEIVED-DURING-SECOND-ROUND-OF-PUBLIC-MEETINGS.pdf>; Citizen Redistricting Comm. N.M., “CRC Meeting October 8, 2021 (Farmington),” YouTube, <https://www.youtube.com/watch?v=isHq0VqrxmI>.

each of the three concept maps was fair according to six different metrics. *Id.* at 26. He explained that “[n]one of the Concept maps for Congress produce scores that are unexpected. If anything is unusual, it is that plans E and A produce partisan symmetry scores that lean more Republican than the bulk of” simulated congressional plans that Dr. Cottrell had created. *Id.* at 41-42.

Concept H garnered the votes of five of the Committee’s seven members and was adopted by the Committee. Concept H had a 0.00% total population deviation, no contiguity issues, and compactness scores nearly identical to the congressional map approved by a state court in 2011. *Id.* at 35-36. The Report described several of the map’s objectives, including that, “[r]ecognizing common concerns and values,” Bernalillo County’s South Valley would become part of Congressional District 2. *Id.* at 36.

## **II. The Legislature enacted S.B. 1 based upon the Concept H congressional plan.**

Ultimately, the Legislature followed the recommendation of the Committee and adopted a modified version of Concept H, enacted as S.B. 1. *See* Compl. ¶¶ 72-76; N.M. Legis., 2021 2nd Special Session – SB1, *available at* <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=1&year=21s2> (last accessed July 12, 2023). Sponsored by DPNM members Senators Joseph Cervantes and Daniel A. Ivey-Soto, and then-Representative Georgene Louis, S.B. 1 was approved by the Senate on December 10 and by the House on December 11. *Id.* Governor Michelle Lujan Grisham signed the bill into law on December 17. *Id.*

## **III. Plaintiffs sued to block implementation of S.B. 1.**

Unsatisfied with the Legislature’s decision to base S.B. 1 on Concept H, the Republican Party of New Mexico (“RPNM”) along with a group of individual voters and elected officials sued the Secretary of State, the Governor, and the leaders of both houses of the Legislature (collectively, the “Government Defendants” or “Defendants”) on January 21, 2022. They then filed a motion for preliminary injunction on February 3.

Plaintiffs contend that the congressional districts established by S.B. 1 are a partisan gerrymander in violation of the Equal Protection Clause of the New Mexico Constitution. *See* Compl. ¶ 78; N.M. Const. art. II, § 18. They allege that Concept H—which was agreed to by five members of the bipartisan Committee and deemed fair by the Committee’s outside expert—“disregards [ ] traditional districting principles,” Compl. ¶ 70, and that S.B. 1, which adopted a slightly modified version of Concept H, “went even further.” *Id.* ¶ 74. Plaintiffs instead argue that the Legislature was constitutionally required to adopt a map consistent with Concept E—which Dr. Cottrell concluded produced an “unusual” partisan symmetry score that “leaned more Republican.” CRC Report at 41-42.

It is no surprise that the Plaintiffs prefer Concept E: Concept E’s version of Congressional District 2 is the most favorable to Republicans of any of the Committee’s proposed Concept maps. And bare preference for a more favorable map is in fact all Plaintiffs could muster to support their preliminary injunction motion or their blanket assertions about the Legislature’s enacted maps. They offered no expert testimony with their preliminary injunction motion or indeed any other actual evidence of partisan gerrymandering.

The Government Defendants opposed Plaintiffs’ preliminary injunction motion, and the Governor and Lieutenant Governor (“Executive Defendants”), along with the Legislative Defendants, moved to dismiss the Complaint. Exec. Defs.’ Mot. to Dismiss (Feb. 18, 2022); Leg. Defs.’ Mot. to Dismiss (Feb. 18, 2022). In moving to dismiss, the Executive and Legislative Defendants principally argued that partisan gerrymandering is a political question that is not justiciable in New Mexico courts.

On April 19, 2022, after a hearing, the Court denied the preliminary injunction motion on the ground that relief could not be implemented in time for the 2022 general election. Letter re:

Prelim. Inj. (Apr. 19, 2022). The Court also denied the two motions to dismiss, concluding that the Plaintiffs had stated a claim that S.B. 1 is an unconstitutional partisan gerrymander. *Id.* The Executive and Legislative Defendants sought review from the New Mexico Supreme Court, filing a petition for writ of superintending control and moved to stay these proceedings while the Supreme Court considered the petition. Mot. for Stay of Proceedings (Aug. 18, 2022). This Court granted the stay, and these proceedings have remained dormant for eleven months since.

On July 5, 2023, after several rounds of supplemental briefing, the Supreme Court issued an order providing guidance for evaluating Plaintiffs’ partisan gerrymandering claim and remanding the case for further consideration in this Court, with instructions to resolve the matter by October 1. The Supreme Court ruled that the partisan gerrymandering claim was justiciable under Article II, Section 18 of the New Mexico Constitution, and subject to the test laid out in Justice Kagan’s dissenting opinion in *Rucho v. Common Cause*, 139 S. Ct. 2484, 2516 (2019). In its order, the Court also clarified that the state constitution allows for some degree of partisan map-drawing “so long as the degree is not egregious in intent and effect.” Order at \*4, No. S-1-SC-39481 (N.M. July 5, 2023).

### **III. LEGAL STANDARD**

Under Rule 1-024(A) NMRA, “a proposed intervenor has a right to intervene where (1) it ‘claims an interest relating to the property or transaction which is the subject of the action,’ (2) it ‘is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest,’ and (3) its interest is not adequately represented by the existing parties to the litigation.” *Nellis v. Mid-Century Ins. Co.*, 2007-NMCA-090, ¶ 8, 142 N.M. 115, 163 P.3d 502 (quoting Rule 1-024(A)(2) NMRA). In addition, under Rule 1-024(B), courts have broad discretion to grant permissive intervention when (1) the motion is timely, and (2) the intervenors’

claim and the main action have a question of law or fact in common. *See* Rule 1-024(B) NMRA. The court must also “consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Rule 1-024(B) NMRA.

#### IV. ARGUMENT

##### I. DPNM is entitled to intervention as of right under Rule 1-024(A)(2).

DPNM satisfies each of the requirements for intervention as of right. The motion is timely, DPNM has significant and unique interests at stake in the action, the disposition of the case could impair those interests, and the existing parties to the action do not adequately represent them.

##### A. The motion is timely.

DPNM’s motion to intervene is timely. “Because there is no specific statutory provision fixing the time for intervention, ‘the timeliness is governed by equitable principles.’” *Nellis*, 2007-NMCA-090, ¶ 6 (quoting *Richins v. Mayfield*, 1973-NMSC-099, ¶ 6, 85 N.M. 578, 514 P.2d 852). Where, as here, “a right to intervene is shown,” “the timeliness requirement is applied less stringently.” *Id.* ¶ 8. “A key consideration in determining timeliness [of intervention] is whether the effort to intervene occurred shortly after the would-be intervenor *discovered such action was necessary* to protect its interest.” *Thriftway Mktg. Corp. v. State*, 1990-NMCA-115 ¶ 3, 111 N.M. 763, 810 P.2d 349 (emphasis added).

DPNM filed this motion to intervene as soon as practicable after “discover[ing] such action was necessary to protect its interest.” *Id.* Earlier stages of this litigation concerned only a narrow legal issue—the justiciability of partisan gerrymandering claims under the New Mexico Constitution—and did not actually implicate DPNM’s interests in defending the substantive fairness of the enacted map. But now that this litigation will proceed to the merits, DPNM cannot rely on the Government Defendants to defend the maps’ partisan fairness on its behalf. *See Cooper v. Albuquerque City Comm’n*, 1974-NMSC-006, ¶ 28, 85 N.M. 786, 58 P.2d 275 (holding

intervention was timely, even after final judgment, where “once defendants failed and the amicus curiae was no longer able to adequately represent and protect [the Intervenor’s] interests, he promptly filed his motion to intervene”).

No party will be prejudiced by DPNM’s entry into the litigation at this juncture. The Supreme Court issued its Order providing guidance on the justiciability of partisan gerrymandering claims in New Mexico just over one week ago. Although this litigation was filed in January 2022, the proceedings are still at a relatively early stage because the matter has been stayed since August 2022. Order Granting Request to Stay Proceedings (Aug. 25, 2022). No discovery has yet been conducted and the parties have only just begun to prepare for trial following the Supreme Court’s Order. A status/scheduling conference is set for July 17, 2023. DPNM is prepared to abide by all scheduling orders and deadlines set by the Court in this case.

**B. DPNM has significant interests which may be impaired by the disposition of this action.**

DPNM also satisfies the intertwined second and third prongs of the standard for intervention as of right: (1) it has significant interests at stake, and (2) disposition of this action may, as a practical matter, impair or impede those interests. *See Nat. Res. Def. Council v. U.S. Nuclear Regul. Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978) (“[T]he question of impairment is not separate from the question of existence of an interest.”).<sup>2</sup>

Rule 1-024(A)(2) requires a party claiming a right of intervention to demonstrate an interest in the action “that is significant, direct rather than contingent, and based on a right belonging to the proposed intervenor rather than [to] an existing party to the suit. In this respect, the

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<sup>2</sup> Because Rule 1-024(A) is nearly identical to Federal Rule of Civil Procedure 24(a), New Mexico courts view federal case law interpreting Rule 24 as persuasive authority. *See Matter of Marcia L.*, 1989-NMCA-100, ¶ 6, 109 N.M. 420, 785 P.2d 1039; *Boles-Scott v. City of Albuquerque*, No. A-1-CA-38990, 2022 WL 2915483, at \*2 (N.M. Ct. App. July 25, 2022) (unpublished).

requirements for intervention as of right seem to accord with the general requirements for standing.” *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 17, 126 N.M. 788, 975 P.2d 841 (citation omitted).

As the largest political party in New Mexico, DPNM has a direct interest in the electoral map New Mexico will use for the next “five (5) elections, until the next redistricting process in approximately ten (10) years.” Letter re: Preliminary Injunction. New Mexico courts routinely recognize that major disputes over election administration implicate the interests of state political parties. For example, when county clerks brought an action seeking to compel the Secretary of State to mail absentee ballots directly to all registered voters during the COVID-19 pandemic, the Supreme Court “allowed the intervention of the Republican Party of New Mexico” and “requested responses from . . . the Democratic Party of New Mexico, and the Libertarian Party of New Mexico.” *Riddle*, 2021-NMSC-018, ¶ 2. *See also Crum v. Duran*, 2017-NMSC-013, 390 P.3d 971 ¶ 3 (“The district court ordered that the Democratic Party of New Mexico (DPNM) and the Republican Party of New Mexico (RPNM), New Mexico's two major political parties, should be joined as party defendants” in challenge to primary election eligibility rules); *Johnson v. Vigil-Giron*, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312 (DPNM intervened as defendant in challenge to 2006 general election ballot). Courts across the country similarly routinely grant state political parties intervention in redistricting disputes.<sup>3</sup>

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<sup>3</sup> *See, e.g., Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 632 (E.D. Wis. 1982) (Wisconsin Democratic Party and Wisconsin Republican Party); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1213 (C.D. Cal. 2002) (California Republican Party); *Desena v. Maine*, 793 F. Supp. 2d 456, 458 (D. Me. 2011) (Maine Democratic Party); *Larios v. Cox*, 314 F. Supp. 2d 1357, 1363 (N.D. Ga. 2004) (Democratic Party of Georgia, in partisan gerrymandering case); *NAACP v. Snyder*, 879 F. Supp. 2d 662, 665 (E.D. Mich. 2012) (Michigan Democratic Party and Michigan Republican Party); *Perrin v. Kitzhaber*, 191 Or. App. 439, 83 P.3d 368 (2004) (representatives of Oregon Democratic Party); *Perry v. Del Rio*, 66 S.W.3d 239, 247–48 (Tex. 2001) (representatives of Texas Republican Party).

This suit threatens four distinct interests that belong uniquely to DPNM, and to no other existing party in this suit.

*First*, a victory for Plaintiffs in this case would harm the electoral prospects of DPNM’s candidates. Plaintiffs—who include DPNM’s Republican counterpart—bring this lawsuit with the express objective of redrawing New Mexico’s congressional map to be more favorable to Republican candidates. *See* Compl. ¶ 91; Mot. for Prelim. Inj. at 13 (Feb. 2, 2022). The zero-sum nature of partisan competition means that RPNM’s prospective gain can come only at DPNM’s expense. Federal courts around the country have recognized that a political party may have “competitive standing” to challenge changes to election rules that threaten the party’s electoral prospects. *See Mecinas v. Hobbs*, 30 F.4th 890, 897-99 (9th Cir. 2022) (collecting cases). A political party’s interest in the success of its candidates “is not merely an ideological interest,” because “[p]olitical victory accedes power to the winning party, enabling it to better direct the machinery of government toward the party’s interests.” *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87 (5th Cir. 2006) (holding injury to Texas Democratic Party’s electoral prospects constituted injury in fact sufficient for standing); *see also N.C. Green Party v. N.C. State Bd. of Elections*, 619 F. Supp. 3d 547, 562 (E.D.N.C. 2022) (granting Democratic Party entities intervention as of right to protect their “interests in a competitive playing field for their candidates and conserving party resources”). A court order resulting in the creation of a new congressional map that favors Republicans would undoubtedly impair or impede DPNM’s electoral interests.

*Second*, a decision in Plaintiffs’ favor would require DPNM to expend critical resources redesigning its electoral strategy for 2024 and beyond. Political parties begin planning for a general election well in advance through fundraising, candidate recruitment, and voter registration and education. As in any electoral off-year, DPNM has begun planning for the 2024 election cycle,

and has done so in reliance on the current congressional map. The significant changes to New Mexico’s congressional map sought by Plaintiffs would affect DPNM’s ordinary activities in wide-ranging ways. DPNM would have to alter its existing priorities to educate voters on their new districts; register voters, deploy staff, and recruit volunteers in different areas of the state based on a changed electoral landscape; and alter its fundraising, hiring, and expenditures accordingly.<sup>4</sup> DPNM’s diversion of resources that would be required by a ruling in Plaintiffs’ favor is itself sufficient for intervention as of right. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (granting intervention as of right to Republican Party entities that “expend resources regarding the recruitment, training, and appointment of poll watchers”); *see also Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181, 189 n.7 (2008) (finding Article III standing because “the new law injures the Democratic Party by compelling the party to devote resources to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote.”); *Tex. Democratic Party*, 459 F.3d at 586 (finding of financial injury was sufficient for standing because party “would need to raise and expend additional funds and resources to prepare a new and different campaign in a short time frame”).

*Third*, a decision in Plaintiffs’ favor would deprive DPNM of a congressional map which it has supported and which furthers its organizational mission. DPNM supported the maps enacted by the Legislature, including the challenged congressional map, because they “reflect and honor the diversity of [the] state,” “bridge the urban-rural divide,” and “include strong Hispanic and

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<sup>4</sup> Even DPNM’s organizational chart is structured by congressional district: it has two vice chairs per district, and membership on three of its four major committees—the Budget & Finance Committee, Affirmative Action Committee, and Judicial Council—is based on congressional district of residence. *See Our Committees & Caucuses*, NMDemocrats.org, <https://nmdemocrats.org/our-party/leadership/> (last accessed July 12, 2023).

Native voices.” Jessica Velasquez, *DPNM Statement on Redistricting in New Mexico*, NMDemocrats.org, <https://nmdemocrats.org/dpnm-statement-on-redistricting-in-new-mexico/> (last accessed July 12, 2023). Wholly apart from its electoral interest, DPNM’s core mission of protecting Hispanic and Native voting power and promoting mixed urban-rural districts informed its advocacy in favor of the enacted maps during the redistricting process and supports its intervention in this lawsuit. *See WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1200 (10th Cir. 2010) (finding organization that had supported enacted policy and stood to lose from its elimination had interest sufficient for intervention as of right). Federal courts have specifically found that impairment exists where a proposed intervenor “may lose the opportunity to ensure that one or more electoral campaigns . . . are conducted under legislatively approved terms that [the proposed intervenor] believes to be fair and constitutional.” *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997). Plaintiffs’ lawsuit threatens to undo DPNM’s advocacy for a fairer, more representative congressional map and impair DPNM’s organizational mission—meaning it poses a danger to DPNM’s most significant organizational interests.

*Finally*, Plaintiffs’ lawsuit threatens to dilute the voting power of DPNM’s voters and constituents. Courts routinely recognize that political parties represent and protect the interests of their members. *See, e.g., Crawford*, 472 F.3d at 951; *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573-74 (6th Cir. 2004); *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1254 (N.D. Fla. 2016); *Democratic Nat’l Comm. v. Bostelmann*, 451 F. Supp. 3d 952 (W.D. Wis. 2020). DPNM’s associational interest in protecting the rights of its voters and members is independently sufficient to satisfy the interest and impairment prongs of intervention as of right under Rule 1-024(A).

**C. DPNM’s interests are not adequately represented by the existing parties.**

None of the existing parties to this case adequately represents DPNM’s unique interests. “[T]he inadequate representation element of Rule 24(a)(2) . . . presents a minimal burden. The movant must show only the possibility that representation may be inadequate.” *WildEarth*, 604 F.3d at 1200. “The possibility that the interests of the applicant and the parties may diverge need not be great in order to satisfy this minimal burden.” *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1254 (10th Cir. 2001) (quotation marks omitted). The risk of inadequate representation is particularly acute where a private party must rely on governmental parties to represent its private interests. The Tenth Circuit has “repeatedly pointed out that in such a situation the government’s prospective task of protecting not only the interest of the public but also the private interest of the petitioners in intervention is on its face impossible and creates the kind of conflict that satisfies the minimal burden of showing inadequacy of representation.” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002) (quotation marks omitted); *cf. N.M. Right to Choose/NARAL*, 1999-NMSC-005, ¶ 19 (explaining that a “presumption of adequate representation exists” only where the *same* “interest the [movant] seeks to protect is represented by a governmental entity”).

As explained above, DPNM has four independent protectable interests in the outcome of this litigation that are not shared by the Government Defendants. The Government Defendants do not, and cannot, adequately represent the interests of DPNM or any other partisan entity. *LUPE*, 29 F.4th at 309 (“Neither the State nor its officials can vindicate [partisan] interest[s] while acting in good faith.”). Their interests are in defending the legality of S.B. 1 and fairly administering elections. *See Meek v. Metro. Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993) (recognizing that while the proposed intervenors “sought to advance their own interests in achieving the greatest possible participation in the political process,” the governmental defendants “had to consider the

overall fairness of the election system to be employed in the future, the expense of litigation to defend the existing system, and the social and political divisiveness of the election issue”); *Democratic Party of Va. v. Brink*, No. 3:21-cv-756-HEH, 2022 WL 330183, at \*2 (E.D. Va. Feb. 3, 2022) (“[The State’s] interests are to defend [its] voting laws no matter the political repercussions while [the state Democratic party’s] interest is to defend the voting laws when doing so would benefit its candidates and voters.”). And while the existing Defendants may share the ultimate goal of defending the fairly drawn maps produced by the Legislature, that does not mean that they share DPNM’s interests in protecting its electoral prospects, protecting its resources, furthering its overall mission, and protecting Democratic voters from vote dilution. *See Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748 (7th Cir. 2020) (for adequacy of representation “it’s not enough that a defense-side intervenor ‘shares the same goal’ as the defendant in the brute sense that they both want the case dismissed”).<sup>5</sup>

Advancing its unique interests will require DPNM to advocate for the values DPNM supported during the legislative redistricting process by presenting its own arguments and expert testimony. The Court should not adjudicate the partisan fairness of New Mexico’s congressional map based on input from RPNM while excluding its Democratic counterpart. *See, e.g., Riddle*, 2021-NMSC-018, ¶ 2.

**II. Alternatively, the Court should grant DPNM permissive intervention under Rule 1-024(B).**

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<sup>5</sup> This fact distinguishes DPNM’s motion to intervene as a defendant from the two motions to intervene as *plaintiffs* that were previously denied in this litigation. *See* Order Denying Mot. to Intervene (April 11, 2022); Order Denying Lea County’s Mot. to Intervene (July 11, 2022). Unlike the proposed intervenor-plaintiffs who brought those motions, DPNM seeks to intervene as a defendant alongside a government entity that cannot adequately represent both the public interest and DPNM’s private interests. *See Utahns for Better Transp.*, 295 F.3d at 1117.

In the alternative, the Court should grant DPNM permissive intervention under Rule 1-024(B). DPNM satisfies each of the requirements for permissive intervention. *First*, the motion to intervene—which comes just days after the Supreme Court’s ruling on justiciability and well in advance of trial—is timely. *See supra* Section I.A. *Second*, DPNM’s defenses in this action share “common questions of law or fact” with the original claims, as reflected by the proposed Answer in intervention, attached as Exhibit A. *See Brink*, 2022 WL 330183, at \*2 (noting that “Courts often allow the permissive intervention of political parties in actions challenging voting laws” because they “bring[] a unique perspective on the election laws being challenged and how those laws affect [their] candidates and voters”). *Third*, no undue delay or prejudice will result if the motion is granted. *See League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 577-78 (6th Cir. 2018) (holding that undue delay or prejudice would not result from permissive intervention of congressmen in a partisan gerrymandering case); *Swenson v. Bostelmann*, No. 20-cv-459-wmc, 2020 WL 8872099, at \*2 (W.D. Wis. June 23, 2020) (concluding that Republican Party organizations’ intervention as defendants in an election dispute would not cause delay or prejudice because though they “may advance novel arguments” they were “not asserting any new or additional claims”). Additionally, DPNM has a strong interest in the timely and final resolution of the matters raised in this lawsuit and will agree to abide by all scheduling orders or other limitations imposed by the Court. For these reasons, if the Court does not find that DPNM is entitled to intervention as of right, the Court should exercise its discretion to allow permissive intervention.

## V. CONCLUSION

For the foregoing reasons, DPNM respectfully requests that the Court grant this motion to intervene as a matter of right under Rule 1-024(A)(2) or, in the alternative, permissively under Rule 1-024(B).

Dated: July 17, 2023

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***Counsel for Proposed Intervenor-Defendant  
Democratic Party of New Mexico***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing instrument will be served on all counsel via the e-filing system on this the 17th day of July, 2023.

*/s/ Justin R. Kaufman*  
Justin R. Kaufman

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# **EXHIBIT A**

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.

MAGGIE TOULOUSE 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,

and

THE DEMOCRATIC PARTY OF NEW  
MEXICO,

[Proposed] Intervenor-Defendant.

No. D-506-CV-202200041

**DEMOCRATIC PARTY OF NEW MEXICO'S [PROPOSED] ANSWER IN  
INTERVENTION**

Proposed Intervenor-Defendant the New Mexico Democratic Party (“DPNM”) answers Plaintiffs’ Complaint for Violation of New Mexico Constitution Article II, Section 18 as follows:

1. Admitted.

2. DPNM admits that Plaintiff David Gallegos is a New Mexico State Senator from Senate District 41. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 2 of the Complaint concerning Mr. Gallegos’s residence, congressional district, or political affiliation, and therefore denies them. Paragraph 2 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 2.

3. DPNM admits that Plaintiff Timothy Jennings is a former New Mexico State Senator from Senate District 32. DPNM admits that Senator Jennings served as the Senate President Pro-Tempore from 2008-2012. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 3 of the Complaint concerning Mr. Jennings’s residence, congressional district, or current political affiliation, and therefore denies them. Paragraph 3 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 3.

4. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 of the Complaint concerning Ms. Vargas’s past candidacy, residence, congressional district, or political affiliation, and therefore denies them. Paragraph 4 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 4.

5. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 of the Complaint concerning Plaintiff Manuel Gonzales, Jr.'s former positions within Republican Party organizations, residence, congressional district, or political affiliation, and therefore denies them. Paragraph 5 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 5.

6. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 of the Complaint concerning Plaintiffs Bobby and Dee Ann Kimbro's residence, congressional district, or political affiliation, and therefore denies them. Paragraph 6 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 6.

7. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 7 of the Complaint concerning Plaintiff Pearl Garcia's prior occupation, residence, congressional district, or political affiliation, and therefore denies them. Paragraph 7 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 7.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. DPNM admits that, at the time this action was filed, Brian Egolf was the Speaker of the New Mexico House of Representatives. DPNM further states that Javier Martinez has since become Speaker of the New Mexico House of Representatives and has been substituted for former Speaker Egolf in this action.

13. Paragraph 13 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 13.

14. Paragraph 14 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 14.

15. Denied.

16. Denied.

17. Paragraph 17 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 17.

18. Paragraph 18 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 18.

19. Paragraph 19 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 19.

20. Paragraph 20 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 20.

21. Paragraph 21 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 21.

22. Paragraph 22 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 22.

23. Paragraph 23 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 23.

24. Paragraph 24 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 24.

25. Paragraph 25 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 25.

26. Paragraph 26 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 26.

27. Paragraph 27 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 27.

28. Paragraph 28 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 28.

29. Paragraph 29 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 29.

30. Paragraph 30 of the Complaint states contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 30.

31. Admitted.

32. DPNM admits that the New Mexico Supreme Court decided *Maestas v. Hall* in 2011. The remainder of Paragraph 32 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 32.

33. Paragraph 33 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 33.

34. DPNM admits that the quoted language appears in the Guidelines cited in Paragraph 34 of the Complaint. DPNM states that the Guidelines speak for themselves.

35. Paragraph 35 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 35.

36. Paragraph 36 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 36.

37. Paragraph 37 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 37.

38. Paragraph 38 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 38.

39. DPNM admits that in April 2021, the New Mexico Legislature adopted the Redistricting Act of 2021, Laws 2021, ch. 79, § 2. DPNM admits that this legislation is codified at NMSA 1978 § 1-3A-1, *et seq.* (2021). Paragraph 39 of the Complaint otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 39.

40. With respect to the allegations in Paragraph 40 of the Complaint, DPNM states the Redistricting Act speaks for itself.

41. With respect to the allegations in Paragraph 41 of the Complaint, DPNM states the Redistricting Act speaks for itself.

42. With respect to the allegations in Paragraph 42 of the Complaint, DPNM states the Redistricting Act speaks for itself.

43. With respect to the allegations in Paragraph 43 of the Complaint, DPNM states the Redistricting Act speaks for itself.

44. With respect to the allegations in Paragraph 44 of the Complaint, DPNM states the Redistricting Act speaks for itself.

45. With respect to the allegations in Paragraph 45 of the Complaint, DPNM states the Redistricting Act speaks for itself.

46. With respect to the allegations in Paragraph 46 of the Complaint, DPNM states the Redistricting Act speaks for itself.

47. Paragraph 47 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 47.

48. Paragraph 48 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 48.

49. Paragraph 49 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 49. DPNM further states that the Redistricting Act speaks for itself.

50. Admitted.

51. Admitted.

52. Admitted.

53. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 53 of the Complaint and therefore denies them.

54. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 54 of the Compliant and therefore denies them.

55. Admitted.

56. Admitted.

57. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 57 of the Complaint and therefore denies them.

58. Admitted.

59. Paragraph 59 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 59.

60. DPNM states that the Citizen Redistricting Committee Report on District Plans speaks for itself in its description of Concept A. To the extent the allegations in Paragraph 60 state Plaintiffs' subjective characterizations of Concept A, DPNM denies them.

61. DPNM states that the Citizen Redistricting Committee Report on District Plans speaks for itself in its description of Concept E. To the extent the allegations in Paragraph 61 state Plaintiffs' subjective characterizations of Concept E, DPNM denies them.

62. DPNM states that the Citizen Redistricting Committee Report on District Plans speaks for itself in its description of Concept E. To the extent the allegations in Paragraph 62 state Plaintiffs' subjective characterizations of Concept E, DPNM denies them.

63. DPNM states that the Citizen Redistricting Committee Report on District Plans speaks for itself in its description of Concept E. To the extent the allegations in Paragraph 63 state Plaintiffs' subjective characterizations of Concept E, DPNM denies them.

64. Admitted.

65. Admitted.

66. DPNM states that the Citizen Redistricting Committee Report on District Plans speaks for itself in its description of Concept H. To the extent the allegations in Paragraph 66 state Plaintiffs' subjective characterizations of Concept H or the organizations that submitted the map on which it was based, DPNM denies them.

67. DPNM states that the Citizen Redistricting Committee Report and public comments received speak for themselves. DPNM is otherwise without knowledge or information sufficient to form a belief as to the allegations in Paragraph 67 and therefore denies them.

68. DPNM lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 68 of the Complaint and therefore denies them.

69. DPNM states that the Citizen Redistricting Committee Report and public comments received speak for themselves. DPNM is otherwise without knowledge or information sufficient to form a belief as to the allegations in Paragraph 69 and therefore denies them.

70. DPNM states that the Committee Report's description of Concept H speaks for itself. The remainder of Paragraph 70 of the Complaint states subjective characterizations and legal conclusions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 70.

71. Admitted.

72. Admitted

73. Admitted

74. DPNM states that Senate Bill 1 speaks for itself. The remainder of Paragraph 74 states subjective characterizations and legal conclusions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 74.

75. Paragraph 75 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 75.

76. Paragraph 76 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 76.

77. DPNM incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

78. Paragraph 78 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 78.

79. Paragraph 79 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 79.

80. Paragraph 80 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 80. DPNM further states that the Redistricting Act speaks for itself.

81. Paragraph 81 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 81.

82. Paragraph 82 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 82.

83. Paragraph 83 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 83.

84. DPNM admits that the judiciary has drawn congressional maps in New Mexico for the last two redistricting cycles. Paragraph 84 of the Complaint otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 84.

85. Paragraph 85 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 85, and therefore denies them.

86. Paragraph 86 of the Complaint contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 86.

87. DPNM admits that under the prior congressional map, Chaves, Eddy, Lea, and Otero Counties were wholly encompassed within Congressional District 2. The remainder of Paragraph 87 contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 87.

88. DPNM admits that the image embedded in Paragraph 88 of the Complaint reflects Congressional District 2 as drawn under S.B.1. The remainder of Paragraph 88 contains mere

characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 88.

89. Denied.

90. DPNM is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 90 and therefore denies them.

91. DPNM admits that a Republican has held CD2 for all but one term since 2012. Paragraph 91 of the Complaint otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 91.

92. DPNM states that the map enacted by S.B. 1 speaks for itself. Paragraph 92 of the Complaint otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 92.

93. DPNM states that the map enacted by S.B. 1 speaks for itself. Paragraph 93 of the Complaint otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the allegations in Paragraph 93.

94. DPNM admits that the cited Albuquerque Journal editorial contains the quoted language but denies any factual allegations contained therein. DPNM otherwise denies the allegations in Paragraph 94 of the Complaint.

95. DPNM states that the map enacted by S.B. 1 speaks for itself. DPNM admits that the cited Albuquerque Journal editorial contains the quoted language, but is without knowledge or information sufficient to form a belief as to any factual allegations contained therein, and therefore

denies the same. DPNM admits that the core of CD3 is mostly preserved by S.B. 1. Paragraph 95 of the Complaint otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 95.

96. Denied.

97. DPNM admits that the cited Albuquerque Journal editorial contains the quoted language but denies any factual allegations contained therein. Paragraph 97 otherwise contains mere characterizations, legal conclusions, and opinions to which no response is required. To the extent a response is required, DPNM denies the remaining allegations in Paragraph 97.

98. Denied.

99. DPNM denies that Plaintiffs are entitled to any of the relief sought in their prayer for relief in Paragraph 99 of the Complaint.

100. DPNM denies all allegations in the Complaint that have not been expressly admitted herein.

### **AFFIRMATIVE DEFENSES**

**First Affirmative Defense:** Plaintiffs' complaint fails to state a claim upon which relief may be granted.

**Second Affirmative Defense:** Plaintiffs' claims are barred by the equitable doctrine of laches.

**Third Affirmative Defense:** Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

Dated: July 17, 2023

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*\*Pro Hac Vice Pending*

Respectfully submitted,

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