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5th JUDICIAL DISTRICT COURT
Lea County
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NELDA CUELLAR
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STATE OF NEW MEXICO
LEA COUNTY
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO
DAVID GALLEGOS, TIMOTHY JENNINGS,
DINAH VARGAS, MANUAL GONZALES JR,
BOBBY AND DEE ANN KIMBRO,
And PEARL GONZALES

Plaintiffs,

D-506-CV-2022-00041

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 New Mexico
Senate, MIMI STEWART in her official capacity
as President Pro Tempore of the New Mexico
Senate, and BRIAN EGOLF in his official capacity
as Speaker of the New Mexico House of Representatives,

Defendants,

and

THE BOARD OF COUNTY COMMISSIONERS
OF LEA COUNTY,

Plaintiff Intervenor

MOTION TO INTERVENE
BY THE BOARD OF COUNTY COMMISSIONERS OF LEA COUNTY

1. The Board of County Commissioners of Lea County (“LEA COUNTY”) acting under its statutory authority (Section 4-38-1 NMSA 1978) files this Motion¹ to Intervene pursuant to Rule 1-024 NMRA and respectfully requests that the Court enter an Order authorizing LEA COUNTY to intervene as a plaintiff in this case.

INTRODUCTION

2. LEA COUNTY and its residents possess a directly justiciable interest in the present litigation because the Defendants’ proposed redistricting plan violates the New Mexico Constitution by, among other things, causing dilution of the voting rights of the citizens of this County. This and other constitutional violations affecting the County and its voters compels the addition of LEA COUNTY as an intervening plaintiff so that the legitimate rights and distinct interest of the County and its residents may be properly represented against such direct and profound threats to the County’s voters’ rights and as to the general interests of LEA COUNTY at stake in this dispute.

3. The Board of County Commissioners is charged by law to protect such interests and therefore, per Rule 1-024(A), LEA COUNTY must be allowed to intervene. *See* Sections 4-38-1, and 4-37-1 NMSA 1978 (granting the “powers necessary and proper to provide for ...[and]...promote the prosperity ... order ... and convenience of any county”), and Section 4-38-18 NMSA 1978(charging boards of commissioners with “management of the interest of the county in all cases, where no other provision is made by law”). The Board of County Commissioners is, indisputably, authorized – if not compelled-- to act for the County to protect it against unwarranted injuries or prejudice to its rights, which are likely to result from this litigation.

¹ In accordance with Rule 1-007(C) NMRA, consent to filing this Motion was requested by all parties. Plaintiffs does not oppose the Motion; however, counsel for Defendants did not consent.

4. In view of these facts and the applicable law cited above it is also clear that LEA COUNTY has a direct interest in the transaction, which is the subject of the underlying litigation, and any disposition of the original plaintiffs' claims against the original defendants may impair or impede LEA COUNTY's ability to protect its interest without the opportunity for the County to have a direct role in the suit. Thus, it is authorized to intervene on that additional basis. *See* Rule 1-024(A)(2).

5. Therefore, LEA COUNTY must be allowed to intervene in the present matter as a matter of right. *See* Rule 1-024 (A)(1) & (2) NMRA 1978 (parties "shall be permitted").

6. In the alternative, the facts and related authority governing intervention demonstrate a clear basis for the Court to exercise its discretion in permitting intervention pursuant to Rule 1-024(B) as the claims of LEA COUNTY have questions of both law and fact in common with those now at issue in the main action. The claims of the MOVANT and the Original Plaintiffs are, despite the necessary participation of the County as a directly affected party, largely congruent as to the issues of law and fact. Further, this Motion is being filed about seven weeks after the inception of the case, and only about three weeks since the filing of the Executive Defendants' Motion to Dismiss. Thus, LEA COUNTY's motion is timely, and is unlikely to prejudice any other party. Therefore, the intervention of LEA COUNTY should be permitted in this Court's discretion. *See* Rule 1-024(B)(2).

7. A copy of Movant's proposed Complaint in Intervention is attached to this Motion at Exhibit "A", per the requirement of Rule 1-024(C), for the court's reference.

REQUEST FOR RELIEF

8. LEA COUNTY moves the Court to grant its Motion to Intervene, allowing the prompt filing of its proposed Complaint, and in support thereof would further show the Court as follows:

LAW REGARDING INTERVENTION IN NEW MEXICO

Intervention in a pending matter is an act whereby an applicant becomes a party to an action between others and the action thereafter proceeds with the original and intervening parties. *Ruybalid v. Segura*, 1988-NMCA-084, ¶ 13, 107 N.M. 660, 763 P.2d 369. Courts view intervention liberally, and traditionally “allow intervention where no one would be hurt and greater justice could be attained.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1250 (internal citations omitted).

Intervention is permissible in two, distinct situations, both of which apply to LEA COUNTY in this matter. First, intervention may be ordered as a matter of right under Rule 1-024(A).² Intervention as a matter of right is available when: 1) the application is timely; 2) the applicant maintains an interest in the property or transaction which is the subject of the pending action; 3) the disposition of the action may impair or impede the applicant’s ability to protect that interest; and 4) the applicant’s interests are not adequately represented by the existing parties. Rule 1-024(A)(2) NMRA. Rule 1-024(B) provides for permissive intervention “when an applicant’s claim or defense in the main action have a question of law or fact in common.” Rule 1-024(B) NMRA.

² New Mexico Rule 1-024(A) is nearly identical to Federal Rule 24(a) and accordingly, the Federal Rule and related interpretation provides this Court with persuasive authority on the requirements for intervention. *See Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 9, 142 N.M. 527, 168 P.3d 99.

As more fully explained below, LEA COUNTY meets each element for intervention as a matter of right and permissive intervention under Rule 1-024 and intervention by Lea County is properly granted in this matter. *See* Rule 1-024 NMRA.

ARGUMENT

I. The Board of County Commissioners for LEA COUNTY Is Entitled to Intervene as a Matter of Right Under Rule 1-024.

a. LEA COUNTY's Motion to Intervene is Timely.

Timeliness under Rule 1-024 is a fact-specific inquiry that focuses on the effort to intervene once the intervenor learns that intervention is necessary to protect its interests. *See In re Norwest Bank of New Mexico, N.A.*, 2003-NMCA-128, ¶17, 134 N.M. 516, 80 P.3d 98. LEA COUNTY moves to intervene in this matter less than two (2) months after the filing of Plaintiffs' Complaint, demonstrating the absence of any meaningful delay in seeking to protect the interests of the County. *See* Pls.' Compl., filed Jan. 21, 2022. Further, no party to this suit has filed an answer to the Complaint or conducted any discovery. It follows accordingly that LEA COUNTY's Motion to Intervene is timely, as this matter is in the early stages of litigation and there exists no prejudice to existing parties as a consequence of LEA COUNTY's intervention. *See e.g., Thriftway Marketing Corp. v. State*, 1990-NMCA-115, ¶ 4, 111 N.M. 763, 810 P.2d 349 (finding a motion to intervene timely, even after judgment had been issued, when intervenors moved to protect their interests without delay); *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1251 (10th Cir. 2001) (finding that a motion to intervene was timely where it was filed over two years after the case began "in view of the relatively early stage of litigation and the lack of prejudice to plaintiffs....").

b. LEA COUNTY Maintains Protectable Interests and Intervention as a Matter of Right is Warranted.

Under Rule 1-024(A)(2), a potential intervenor must demonstrate an interest in an action "that is significant, direct rather than contingent, and based on a right belonging to a proposed

intervenor rather than [to] an existing party to the suit.” *New Mexico Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 17, 126 N.M. 788, 975 P.2d 841. Plaintiffs’ Complaint challenges Senate Bill 1 as violating the New Mexico Constitution’s Equal Protection Clause by diluting the voting strength of one region and one political party. *See* Compl., ¶ 16. Specifically, Plaintiffs’ Complaint alleges that Senate Bill 1, through impermissible means, dilutes critical communities of interest and prevents the citizens of Lea County from “fully and effectively [participating] in the political process.” *See* Pls.’ Compl., ¶ 24 (internal citations omitted). In short, Plaintiffs’ Complaint alleges that Senate Bill 1 and the corresponding partisan gerrymander of congressional districts discriminates against certain regions and citizens at the expense of others. *Id.*, ¶ 78.

The redistricting process and the congressional maps created through Senate Bill 1 are an affront to traditional districting principles and create substantial harm to Lea County and its residents. Indeed, Senate Bill 1 divides the citizens of Lea County into two congressional districts when prior maps maintained the county and its citizens in one congressional district. In accordance with the powers granted through the state’s legislature, LEA COUNTY maintains an interest in maintaining a community of interest and ensuring fair representation of its over 70,000 citizens. *See* Section 4-37-1 NMSA. In fact, LEA COUNTY is granted all “powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants.” *Id.*

Based on these powers and responsibilities, LEA COUNTY maintains a significant interest in protecting and promoting the rights of its citizens, including equal representation and the ability to participate in the political process fully and effectively; demonstrating sufficient interests to support intervention as a matter of right. *See Coal. of Arizona/New Mexico Ctys. for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 842 (10th Cir. 1996) (finding that a commercial wildlife photographer maintained a direct interest to support intervention in a suit brought by the United

States Fish and Wildlife Service to protect an endangered species based on photographer's record of advocacy for protection).

c. LEA COUNTY's Interests Are Not Adequately Represented in Plaintiffs' Complaint and Intervention is Appropriate.

Plaintiffs in the current action represent a political party and individual citizens, both democrat and republican, of various counties in New Mexico. *See* Pls.' Compl., ¶¶ 1-6. The legislative authority to promote the prosperity, order, and convenience of the citizens of Lea County is power and responsibility that is not held by any of the Plaintiffs in the current action. *See* Section 4-37-1 NMSA; Section 4-38-1 NMSA ("The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners."). Stated another way, the Board of Commissioners maintain a unique responsibility to its citizenry to ensure equal protection under the law as it relates to the county and communities of interest. *See Matter of Marcia L.*, 1989-NMCA-110, ¶ 7, 109 N.M. 420, 785 P.2d 1039 ("[I]n order to establish an interest in the pending action a party seeking to intervene must show that it has an interest that is... based on a right belonging to the proposed intervenor rather than an existing party to the suit.").

It is undisputed that each duly elected county commissioner for LEA COUNTY maintains an exclusive and direct interest in Plaintiffs' Complaint that alleges violations of the Constitution of the State of New Mexico. *See* N.M. Const. art. XX, § 1. Intervention under Rule 1-024 is appropriate as to LEA COUNTY, as the county maintains the authority to promote the prosperity and convenience of its citizens and this interest is not represented by any of the existing parties claiming violations of the Equal Protection clause of the New Mexico Constitution.

d. LEA COUNTY's Interests Would Be Impaired if Intervention Were Denied.

In addition to the existence of an interest in an action, Rule 1-024 requires an impairment of that interest if intervention is not permitted. *Chino Mines Co. v. Del Curto*, 1992-NMCA-108,

¶ 7, 114 N.M. 521, 842 P.2d 738. To satisfy the final prong necessary for intervention, LEA COUNTY must only show that impairment of its interests is possible if intervention were denied. There exists no New Mexico authority that sufficiently describes the requirement or level of “impairment” necessary to meet this threshold requirement. A review of the related federal rule provides this Court the basis by which this requirement is met by LEA COUNTY.

When reviewing the requirement that an interest be impaired, the Tenth Circuit provides that Rule 24 refers to impairment as a “practical matter” and confirms that “would-be intervenors must show only that impairment of its substantial legal interest is possible if intervention is denied.” *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001). The court continued by clarifying that a finding of impairment is “not limited to consequences of a strictly legal nature” and instead, the burden of demonstrating impairment is “minimal.” *Id.*

As described in the statutory powers provided to the counties in New Mexico, permitting LEA COUNTY to intervene in this matter will ensure the Board of County Commissioners can meaningfully promote and protect the interests of its citizenry. Indeed, Plaintiffs’ Complaint makes clear that the alleged violations of the Equal Protection Clause of the New Mexico Constitution prevent the preservation of communities of interest. *See* Compl., ¶ 87. Without providing LEA COUNTY the ability to participate in the litigation of this matter as a plaintiff, the Board of County Commissioners for Lea County may be prevented from ensuring the interests of its citizens and community are fairly represented. This, of course, is a power and purpose of the Board of County Commissioners and intervention will ensure this responsibility is met. *See* Section 4-37-1 NMSA; Section 4-38-1 NMSA.

By allowing only a political party and individual citizens to participate as plaintiffs in this matter, the interests stemming from the powers granted to LEA COUNTY may not be adequately advanced. Any ruling in this matter may work to separate communities of interest, an act that

would particularly impact LEA COUNTY, demonstrating impairment of LEA COUNTY to protect these interests. Further, any ruling in this matter will likely preclude LEA COUNTY from challenging Senate Bill 1 in the future, further demonstrating impairment of the interests of the county. *See Ute Distribution Corp. v. Norton*, 43 F. App'x 272, 279 (10th Cir. 2002) (“Litigation impairs a third party's interests when the resolution of the legal questions in the case effectively foreclose the rights of the proposed intervenor in later proceedings, whether through *res judicata*, collateral estoppel, or *stare decisis*.”).

Accordingly, LEA COUNTY meets all requirements for intervention as a matter of right under Rule 1-024. Indeed, this Motion is timely, LEA COUNTY's interests in this matter are unique and are not adequately represented by the parties to this case. LEA COUNTY's Motion is, therefore, proper and should be granted.

II. In the Alternative, the Board of County Commissioners for Lea County Is Entitled to Permissive Intervention Based on the Existence of Common Facts and Law.

Even when assuming *arguendo* that LEA COUNTY is unable to intervene as a matter of right under Rule 1-024(A), permissive intervention under Rule 1-024(B) is sufficient to permit LEA COUNTY to intervene in this matter. Unlike intervention under Rule 1-024(A), permissive intervention disposes of any requirement of a direct interest or the adequacy of representation by existing parties. Instead, Rule 1-024(B)(2) allows intervention “when an applicant's claim or defense and the main action have a question of law or fact in common.” Rule 1-024(B)(2) NMRA. This requirement is clearly met by the facts in this case.

As more fully explained in the corresponding Complaint in Intervention, LEA COUNTY challenges Senate Bill 1 and the related redistricting process as violative of the New Mexico Constitution's Equal Protection Clause. *See attached copy of* Complaint in Intervention. Ensuring the equal protection of the citizens of Lea County is a claim held by both LEA COUNTY and the

Plaintiffs in this matter, demonstrating that permissive intervention is appropriate. *See* Rule 1-024(B)(2). Further, demonstrating the existence and separation of Lea County requires insight and information from the communities identified in Plaintiffs' Complaint. This information is maintained and available by LEA COUNTY, further demonstrating the appropriateness of allowing intervention. *See, e.g., Nat. Res. Def. Council, Inc. v. Tennessee Val. Auth.*, 340 F. Supp. 400, 408–09 (S.D.N.Y. 1971), *rev'd*, 459 F.2d 255 (2d Cir. 1972) (granting permissive intervention where applicant had “a longstanding interest... [and] expertise that may be helpful in clarifying the facts and issues in this case.”). Based on these facts and related authority governing permissive intervention, LEA COUNTY may appropriately intervene in this matter under Rule 1-024(B). *See* Rule 1-024(B)(2) NMRA.

CONCLUSION

In summary, LEA COUNTY's Motion to Intervene presents sufficient facts and authority to demonstrate that intervention in this matter is appropriate. LEA COUNTY's Motion is timely and represents distinct interests in the main action that are not adequately represented by the existing parties. More importantly, LEA COUNTY maintains power granted by the legislature to protect and promote the interests of its community, a goal furthered by the county's participation in this matter. Providing LEA COUNTY the ability to meaningfully advocate and advance the interests of its community is appropriate under Rule 1-024 and this Court may appropriately grant the LEA COUNTY's Motion and allow LEA COUNTY to intervene in this matter.

Respectfully submitted,

RAY | PEÑA | MCCHRISTIAN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on, a true and correct copy of the foregoing pleading was submitted to the Court's electronic filing system for electronic filing and service upon all counsel of record.

/s/ Jeffrey Thomas Lucky

EXHIBIT A

STATE OF NEW MEXICO
LEA COUNTY
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO
DAVID GALLEGOS, TIMOTHY JENNINGS,
DINAH VARGAS, MANUAL GONZALES JR,
BOBBY AND DEE ANN KIMBRO,
And PEARL GONZALES

Plaintiffs,

D-506-CV-2022-00041

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 New Mexico
Senate, MIMI STEWART in her official capacity
as President Pro Tempore of the New Mexico
Senate, and BRIAN EGOLF in his official capacity
as Speaker of the New Mexico House of Representatives,

Defendants;

and

THE BOARD OF COUNTY COMMISSIONERS
OF LEA COUNTY,

As Plaintiff Intervenor

COMPLAINT IN INTERVENTION
BY THE BOARD OF COUNTY COMMISSIONERS
OF LEA COUNTY NEW MEXICO

Comes now the Board of County Commissioners of Lea County, New Mexico
("LEA COUNTY") through its undersigned counsel and files its Complaint in Intervention against
the Original Defendants named above, and would show the Court as follows:

PARTIES

1. Plaintiff Intervenor LEA COUNTY is a political subdivision of the State of New
Mexico, and its Board of County Commissioners is duly authorized to bring this suit per applicable

provisions of the New Mexico Statutes Annotated 1978, as more specifically cited in LEA COUNTY's previously filed Motion to Intervene, the substance of which is incorporated by reference as if fully stated herein. For purposes of the present litigation, LEA COUNTY may be served through the offices of its undersigned counsel in accordance with the applicable rules of procedure.

2. Original Plaintiffs are the REPUBLICAN PARTY OF NEW MEXICO, DAVID GALLEGOS, TIMOTHY JENNINGS, DINAH VARGAS, MANUAL GONZALES JR., BOBBY AND DEE ANN KIMBRO, and PEARL GONZALES, each of whom has previously appeared in the above-referenced cause and who may be served through their respective counsel of record, according to the applicable rules of procedure.

3. The Original Defendants are 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 BRIAN EGOLF in his official capacity as Speaker of the New Mexico House of Representatives. Each of these Defendants has previously appeared in this cause and may be served through their respective counsel of record, according to the applicable rules of procedure.

JURISDICTION & VENUE

4. It is undisputed that this Court has subject matter jurisdiction over the present action in which the Original Plaintiffs, and Plaintiff Intervenor challenge Senate Bill 1 that redraws congressional election districts within New Mexico on the grounds that they violate legislatively established guidelines and because said redistricting plan ("the Disputed Plan") violates the equal

protection provisions of the New Mexico Constitution, Article II, Section 18 (*See generally* Pls.' Compl., ¶¶ 15-29).

5. All parties to the present suit have appeared without contesting personal jurisdiction or venue, which are proper because the underlying transactions in dispute include the re-drawing of congressional district lines that divide or "crack" Lea County by placing portions of it in two separate congressional districts. Venue and personal jurisdiction are also proper as per the allegations at paragraphs 13 and 14 of the Original Plaintiffs' Verified Complaint

INTERVENOR'S ALLEGATIONS

6. Intervenor Plaintiff LEA COUNTY would refer the Court to certain portions of the verified Original Complaint including paragraphs 2-7 detailing each individual voter's residency and the effect of redistricting under the Disputed Plan in various communities, including certain residents of Lea County listed at paragraphs 2 and 6 of that pleading¹. Intervenor incorporates those allegations as if stated fully herein.

7. Intervenor would generally allege that the Disputed Plan improperly divides or "cracks" Lea County so as to divide it unnecessarily and improperly between new congressional districts 2 and 3, whereas the entirety of Lea County was previously contained entirely within old congressional district 2. The Disputed Plan is so radical in its nature that it divides the City Of Hobbs (in Lea County) into two districts, one of which reaches all the way to Santa Fe—more than 300 miles and a five-hour drive away. Furthermore, the baldly partisan redistricting under Senate Bill 1 ignores alternate plans that maintained the contiguousness and integrity of Lea County

¹ Re the "cracking" of counties in Southeastern New Mexico (including Lea County) as a component of the Disputed Plan, see paragraphs 2- 7 of the Original Complaint, which identify various individual voter Plaintiffs and, in particular, three Lea County residents discussed at paragraphs 2 & 6; and see paragraphs 7, 69, 73-76, & 93 re the division of both Albuquerque and Hobbs and the effects thereof.

within one congressional district that were recommended by the New Mexico Citizen Redistricting Committee (“Citizen Redistricting Committee” or “Committee”), consistent with seven guidelines of the New Mexico Legislative Council. *See Maestas v. Hall*, 2012-NMSC-006, ¶ 4, 274 P.2d 66; *see* Pls.’ Complaint, ¶¶ 32-37, ¶¶ 85-86. As *Maestas* observed in its consideration of the applicable guidelines, the contiguousness and compactness of districts, as well as respect for political and geographic boundaries and minimizing the break-up of political subdivisions are all criteria important in assuring “fair representation.” *See Maestas v. Hall*, 2012-NMS-006, ¶4, ¶36-37; Pls.’ Complaint, ¶¶ 35-37. In stark contrast to these non-partisan judicial standards, the Defendants have split “seven cities....and nine counties” and “divided Chaves, Eddy, Lea, and Otero Counties” among three congressional districts. *See* Pls.’ Complaint, ¶¶ 69- 70; ¶¶ 92-93.

8. Furthermore, Intervenor urges the Court to consider and apply the Redistricting Act of 2021 found at Section1-3A-1, *et seq.* NMSA 1978 (2021), which created the Citizen’s Committee. *See* Pls.’ Compl., ¶¶ 39-49. Furthermore, this Court should consider the alternate redistricting plans (denominated “A” and “E”) proffered by the Committee in contrast to the now Disputed Plan. *See generally* Pls.’ Compl., ¶¶ 50-76.

9. In regard to the particular interest of LEA COUNTY as a party here, it must be noted that while the Defendants were rending asunder numerous communities and counties to accomplish their partisan gerrymander, they did not merely “crack” Lea County, they reached down from Santa Fe to divide the City of Hobbs between two congressional districts. *Id.* ¶ 93. Apart from the goal of achieving the nth degree of partisan advantage, this was most assuredly an unnecessary abuse of the redistricting process.

10. The radical and one-sided nature of this redistricting is sufficient proof, in itself, of the partisan nature of the Disputed Plan; however, at least one of the Defendants has explicitly

revealed the Defendants' highly partisan designs through his own public statements that make the motivations clear. *See e.g.*, "House Democratic Leader Blasts Independent Redistricting", *Albuquerque Journal* online of Feb 25, 2021²; and "New Mexico House Speaker Draws Bipartisan Ire Over Redistricting Stance", *Santa Fe New Mexican* online of Feb. 26, 2021³.

11. These Defendants have clearly succeeded, to date, in diluting voting strength of affected communities, including Lea County and the City of Hobbs, and thus violated the equal protection provisions of Article II, Section 18 of the New Mexico Constitution. *See generally* Pls.' Compl., ¶¶ 15- 29; ¶ 69. In doing so, one of these consummately partisan actors even spoken the quiet part out-loud, as cited above. Such a flagrant display of improper motives should not and cannot be ignored by any court of justice.

RELIEF REQUESTED

12. Intervenor asks that this Court enter an order declaring Senate Bill 1 unconstitutional, setting it aside and, in its place, ordering the adoption of a redistricting map already proposed by the New Mexico Citizen Redistricting Committee, which will preserve the voting rights of Lea County voters and restore the integrity and effectiveness of Lea County as a political sub-division based on its distinctiveness as a community of interest, and any other relief appropriate and necessary to do justice.

A. Lea County Represents Distinct Geographic and Governmental/Political Interests that Must be Considered in Any Court Action.

² <https://www.abqjournal.com/2363560/house-democratic-leader-blasts-independent-redistricting.html> ("Speaker Brian Egolf slammed the idea of establishing an independent commission to draw new legislative districts, contending it would undermine the pursuit of progressive priorities.")

³ https://www.santafenewmexican.com/news/legislature/new-mexico-house-speaker-draws-bipartisan-ire-over-redistricting-stance/article_04d3e458-7849-11eb-8aef-03dd0a4287df.html ("Dick Mason of the League of Women Voters of New Mexico said Egolf's comments are 'pitting progressive issues versus redistricting reform.'")

13. The interests of Lea County in this matter are legally and politically material to this Court's consideration of the Disputed Plan. As other courts have noted, the particular demographic, economic and other characteristics of a given county may so vary from another county so as to justify substantially different voting district alignments from county to county. *Cf.*, *Pierce v King*, 373 F. Supp. 1120, 1135-36 (D.N.M. 1974) (considering the legality of at-large elections versus single-member districts⁴ in the context of individual voter suit based on federal equal protection arguments).

14. The Original Plaintiffs' Complaint challenges Senate Bill 1 for violating the New Mexico Constitution's Equal Protection Clause by diluting the voting strength of one region and one political party. *See* Pls.' Compl., ¶ 16. That Complaint includes the allegation that Senate Bill 1, through impermissible means, dilutes critical communities of interest and prevents the citizens of various counties or communities from "fully and effectively [participating] in the political process." *See* Pls.' Compl., ¶ 24 (internal citations omitted). Such a violation has particularized application for Lea County in that the Disputed Plan moves the once-unified County into parts of two different Congressional Districts. In short, the baldly partisan gerrymander of New Mexico's congressional districts effected across various counties and communities (as described in the original Plaintiffs' Complaint) discriminates with specific effect on LEA COUNTY by needlessly dividing the County across two separate congressional districts, splitting the City of Hobbs into two districts in that process. Such action divides and dilutes the influence and effect of Lea County voters and is prejudicial to their individual and collective political rights for no discernible reason

⁴ The *Pierce* court found "classification between the more heavily populated counties with a greater variety of needs of the populace, both social and economical, ... where the needs of the general populace are likely to be similar provides a valid classification, a natural and genuine one, having a substantial and reasonable relation to the subject matter involved. The subject matter herein was to assure that the diverse economical and social interest of the electorate found in a metropolitan type area, as opposed to a rural one." 373 F. Supp. at 1135-36.

except improper partisan purposes of the those who have forced these artificial divisions on New Mexico communities and voters. *Id.*, ¶ 78.

15. The redistricting process and the congressional maps at issue here violate the equal protection rights of LEA COUNTY and its voters through county-specific changes and effects of the Disputed Plan. These unnecessary machinations of the Defendants are an affront to traditional districting principles and create substantial harm, including dilution of voting rights for Lea County voters with a resulting loss of cohesive political integrity to LEA COUNTY as a political/geographic entity whose general population and broadly common economic interests are materially distinguishable from more urban regions that will inevitably erode the legitimate political voice and needs of the once-unified county and region. Such interests of any county, where its populace and economic interest are clearly different from other more urban and non-energy producing areas, require legal protection and redress. *Cf.*, *Pierce v King*, 373 F.Supp. 1130, 1135-36 (D.N.M. 1974)(noting the legal propriety of considering counties' differing geographic, economic, and other factors in a case where individual voter made federal equal protection challenge to creation of single-member districts for county commissioners); and *see Maestas v. Hall*, 2012-NMS-006, ¶4, ¶36-37, 274 P.2d 66, 78 (“[C]onsidering political and geographic boundaries furthers our representative government. Minimizing fragmentation of political subdivisions, counties, towns, villages, wards, precincts, and neighborhoods allows constituencies to organize effectively and decreases the likelihood of voter confusion...”).

16. Here, it is factually indisputable that the current gerrymandered plan dilutes the effect of the County's voters for nakedly partisan purposes and, in so doing, is intended to destroy or substantially limit the ordinary political strength of a distinctive and largely rural, energy-producing county political unit. Such action adversely affects not only individual voter rights but

derogates the geographic contiguity and political integrity of LEA COUNTY, which has operated as a distinctive political sub-division in New Mexico since it was established by the legislature in 1917. In disregarding the history, economics, cultural and social distinctives of this long-established entity, Senate Bill 1 plan erodes local voters' ability to influence the selection of Congressional candidates, or to even command the attention of their own elected representative. This division or "cracking" of the County polity, and of the primary city within it, is neither proper nor necessary according to applicable redistricting standards and law. This is readily seen by comparing the Disputed Plan with prior district maps or with competing plans "A" and "E" promulgated by the Citizens' Committee for the current redistricting period, which retain the contiguousness and integrity of LEA COUNTY as a distinctive governmental sub-division within one congressional district.

17. In accordance with the powers granted through the state's legislature, LEA COUNTY possesses a justiciable interest in maintaining a community of interest and ensuring fair representation for its more than 70,000 citizens. *See* Section 4-37-1 NMSA. In fact, LEA COUNTY is granted all "powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants." *Id.* This clear grant of governing power by the legislature explicitly recognizes the need for county political entities to be protected against nakedly partisan gerrymandering and otherwise unjustifiable political dismemberment. Such a legislative mandate explicitly recognizes the unique interest of LEA COUNTY in seeking this Court's protection from the unjustified divisions imposed by the Disputed Plan, which will impair LEA COUNTY and its governing officials in protecting and promoting the rights of its citizens, including equal representation and the ability to participate in the political process fully and effectively. *Compare,*

Maestas v. Hall, 2012-NMS-006, at ¶ 36, 274 P.2d at 78; and *Pierce v King* 373 F.Supp. at 1135-36.

C. *The Rights of LEA COUNTY Present a Distinct Justiciable Interest for the Court to Consider.*

18. It is undisputed that each duly elected county commissioner for LEA COUNTY maintains an exclusive and direct interest in Plaintiffs' Complaint that alleges violations of the Constitution of the State of New Mexico. *See* N.M. Const. art. XX, § 1. The legislative grant of power to any board of county commissioners "to promote the prosperity... and convenience" of "any county or its inhabitants" is made explicit at Section 4-37-1 NMSA 1978. It is clear from the text and its reasonable implications⁵, that the political and governmental purposes for county subdivisions create a justiciable interest in preserving rights of that county's voters and political integrity of the governmental unit, which must not be casually or needlessly cast aside--- especially where such action threatens the fundamental protections afforded to citizens by the Equal Protection clause of the New Mexico Constitution.

D. *LEA COUNTY'S Interests Will Be Unjustifiably Impaired if Senate Bill 1 is Implemented.*

19. As detailed in portions of the Plaintiffs' Original Complaint, implementation of the Senate Bill 1 redistricting plan adversely affects the interests of multiple counties and communities that are unnecessarily divided among two or three congressional districts to such an extent that the plan violates the Equal Protection Clause of the New Mexico Constitution. Lea County itself is unnecessarily divided by the plan, forcing portions of the County into congressional districts 2 and 3, irrespective of adverse effects on the County and its voters, and unjustifiably in light of

⁵ *See, e.g., El Dorado at Santa Fe, Inc. v. The Board of Commissioners of Santa Fe County*, 1976-NMSC-029, 89 N.M. 313, 317, 551 P.2d 1360. (state's express grant of power to political subdivision includes other powers necessarily implied to implement the express powers.)

competing plans approved by the Citizens' Committee, which avoid such problems with plans that adhere to existing law and the Constitution.

20. Thus, the Disputed Plan wantonly disregards the important communities of interest that have long existed within Lea County, and otherwise violates applicable rules or guidelines for redistricting that must be considered in order to protect the basic rights of individual voters and the legitimate interests of the County as a duly created political sub-division. *See* Pls.' Compl., ¶ 87. Implementation of the Disputed Plan will undoubtedly impair the Board of County Commissioners of Lea County from preserving the voting rights of its residents, and the more general interests of the County in having a fair chance at effective congressional representation consistent with the area's common political, social, and economic concerns. *See Maestas*, and *Pierce*, as cited above.

21. The Disputed Plan unnecessarily disrupts and severs political connections among long-standing communities of interest, which are important and distinctive economic, commercial, and demographic factors that set Lea County apart for purposes of redistricting assessment under both legislative factors and constitutional standards. *See* authorities cited above.

WHEREFORE, INTERVENOR PRAYS that this Honorable Court enter an Order granting all relief to LEA COUNTY as requested above and including a final judgment against the Defendants, and a declaration that Senate Bill 1 violates the New Mexico Constitution and adopting a partisan-neutral congressional map consistent with the Concept "E" map of the Citizen's Committee, awarding LEA COUNTY its attorney's fees and cost, and all further relief to which Intervenor may be entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on, a true and correct copy of the foregoing pleading was submitted to the Court's electronic filing system for electronic filing and service upon all counsel of record.

/s/.....

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