STATE OF NEW MEXICO
COUNTY OF LEA,
FIFTH JUDICIAL DISTRICT COURT

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

Plaintiffs,

v. **No. D-506-CV-2022-00041**

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,

Defendants.

EXECUTIVE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Come now Defendants Governor Michelle Lujan Grisham and Lieutenant Governor Howie Morales (collectively, "Executive Defendants"), by and through their counsel of record in this matter, and hereby provides their response to Plaintiffs' Motion for Preliminary Injunction (the "Motion"). As grounds for their response, the Executive Defendants state as follows.

INTRODUCTION

In late 2021, the Legislature approved, and the Governor signed into law, a new Congressional district map which would ensure that each district contained both rural and urban

constituencies. Despite knowing the impending deadlines for the 2022 election, Plaintiffs waited over a month to file the instant action and two more weeks to serve Executive Defendants and file the instant Motion. Plaintiffs now seek the extraordinary and disfavored relief of replacing the current, duly enacted Congressional map after key candidate filing deadlines have passed and days before the Democratic and Republican pre-primary conventions are set to take place. Yet Plaintiffs fail to demonstrate that any of factors necessary to issue a preliminary injunction weigh in their favor. The Court should deny Plaintiffs' belated request.

BACKGROUND

I. The redistricting process

New Mexico, like all states, must regularly reapportion its Congressional districts to ensure compliance with the constitutional mandate of "equal representation for equal numbers of people." *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). To aid in the redistricting process, the Legislature enacted the Redistricting Act of 2021, NMSA 1978, §§ 1-3A-1 to -10 (2021). That Act created the Citizen Redistricting Committee, composed of seven members appointed by legislative leadership and the State Ethics Commission and chaired by a retired Justice of the New Mexico Supreme Court. Section 1-3A-3. In 2021, the Committee was required to adopt, and deliver to the Legislature, three district plans for New Mexico's congressional districts "no later than October 30, 2021, or as soon thereafter as practicable." Section 1-3A-5(A). Each plan was to be developed in accordance with an enumerated list of requirements and adopted following public input. Section 1-3A-7. However, the Committee's proposals are not binding on the Legislature, which chose to retain the ultimate authority to redistrict Congressional and state legislative districts. *See* § 1-3A-9.

Consistent with the Redistricting Act, the Committee submitted three proposed Congressional maps to the Legislature in early November 2021: (1) Congressional Concept A, which largely maintained the boundaries of the then-current Congressional districts, (2) Congressional Concept E, a map proposed by former Justice Edward Chavez, and (3) Congressional Concept H, a map based on feedback from a coalition of community-based organizations throughout the State.[1] Shortly thereafter, the Governor called the Legislature into a special session to adopt new Congressional and legislative maps.[2] The Legislature introduced several bills proposing different Congressional district maps—some of which were those recommended by the Committee. One such map was introduced by Senators Joseph Cervantes and Georgene Louis as Senate Bill 1 ("SB 1").[3] SB 1—based largely on Congressional Concept H—proposed three Congressional districts which combined both rural and urban voters in each district.[4] Senator Cervantes described his motivation for the map as follows:

> This congressional map is unique in that it includes both significant urban and rural populations within each of our three congressional districts. Having our entire

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[1] *CRC District Plans and Evaluations for New Mexico Congress, State Senate, State House of Representatives, & Public Education Commission: 2020 Redistricting Cycle*, 29-42, Citizen Redistricting Comm. (Nov. 2, 2021), https://www.nmredistricting.org/wp-content/uploads/2021/11/2021-11-2-CRC-Map-Evaluations-Report-Reissued-1.pdf [hereinafter "Committee Report"]; *Adopted Maps*, N.M. Citizen Redistricting Comm., https://www.nmredistricting.org/adopted-maps/ (last visited Feb. 8, 2022).

[2] *Gov. Lujan Grisham to formally call Legislature into special session on redistricting*, Office of Gov. Michelle Lujan Grisham (Dec. 2, 2021), https://www.governor.state.nm.us/2021/12/02/gov-lujan-grisham-to-formally-call-legislature-into-special-session-on-redistricting/.

[3] *2021 2nd Special Session – SB 1*, N.M. Legislature, https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s2 (last visited Feb. 9, 2022).

[4] *Senate Meeting*, N.M. Legislature (Dec. 10, 2021), https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20220208/-1/68211 at 3:38:00-42:00 (describing proposed map).

> congressional delegation represent both urban and rural constituencies and communities will assure advocacy on behalf of every New Mexican from our entire delegation. This is a great opportunity for us to focus on creating unified priorities rather than exacerbating our divisions and differences.[5]

SB 1 achieved this primarily by: (1) extending the northern 3rd Congressional district down into the southeastern part of the State, including parts of the cities of Hobbs, Artesia, and Roswell; extending the southern 2nd Congressional district into the northwestern part of the state, including parts of southwest/west Albuquerque, Los Lunas, and Belen; and (3) expanding the central Congressional district 1 to the southeast, including Santa Rosa and Ruidoso.[6] A majority of both chambers of the Legislature voted in favor of SB 1—sending it to the Governor's desk for signature or veto.[7]

While SB 1 deviated from the Committee's maps, it was the Legislature's prerogative to go its own way. The Governor still found it to be a good faith effort to comply with federal and New Mexico law. Additionally, vetoing SB 1 would have left the State with an indisputably unconstitutional map mere weeks before important election deadlines—assuredly subjecting the State to a whirlwind of expensive litigation. *See, e.g.*, NMSA 1978, § 1-8-26(A) (requiring declarations of candidacy by preprimary convention designation for United States representative

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[5] Carol A. Clark, *New Mexico Senate Passes CD Map Proposal*, Los Alamos Daily Post (Dec. 11, 2021), https://ladailypost.com/new-mexico-senate-passes-cd-map-proposal/.

[6] *See* Districttr, https://districtr.org/plan/66395 (select "Data Layers"; then select "US House") (showing current Congressional map shaded in different colors with previous Congressional districts indicated with black outlines) (last visited Feb 9, 2022).

[7] Technically, the Legislature passed Senate Judiciary Substitute for Senate Bill 1. *See Official Roll Call*, N.M. Legislature (Dec. 11, 2021), https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001HVOTE.pdf (House of Representatives); *Official Roll Call*, N.M. Legislature (Dec. 10, 2021), https://www.nmlegis.gov/Sessions/21%20Special2/votes/SB0001SVOTE.pdf (Senate). The Governor refers to this bill interchangeably with Senate Bill 1 for ease of reference.

to be filed on February 1, 2022); NMSA 1978, § 1-8-30 (2011) (requiring filing of nominating petitions); NMSA 1978, § 1-8-33(B) (requiring candidates to file petitions at the time of filing declarations of candidacy); *see generally Maestas v. Hall*, 2012-NMSC-006, 274 P.3d 66 (addressing litigation following the Legislature's failure to enact new maps over the Governor's veto). Thus, the Governor declined to exercise her discretionary veto power and signed the Legislature's chosen map into law on December 17, 2021.[8]

II. The instant action

Despite being well aware of the impending election deadlines, Plaintiffs—the Republican Party of New Mexico and several individuals residing in different parts of the State—waited over a month to challenge SB 1. *Compare id.*, *with* Verified Complaint for Violation of New Mexico Constitution Article II, Section 18 ("Complaint"), filed Jan 21, 2022. In addition to the Executive Defendants, the Complaint names President Pro Tempore Mimi Stewart and Speaker Brian Egolf (collectively, the "Legislative Defendants") and Secretary of State Maggie Toulouse Oliver. *Id.* at 1. Plaintiffs challenge SB 1 solely on the basis that it allegedly constitutes improper partisan gerrymandering, in violation of the State equal protection clause in Article II, Section 18 of the New Mexico Constitution. Complaint at ¶¶ 15-16, 24, 78, 96, 98. Specifically, Plaintiffs allege that SB 1 intentionally "cracked" Republican voters in southeastern New Mexico—including parts of Chaves, Eddy, Lea, and Otero counties—and "cracked" parts of Albuquerque to weaken that party's political strength in the 2nd Congressional district. *Id.* at ¶¶ 2-7. In so doing, the drafters of SB 1 allegedly relied on "illegitimate reasons" rather than traditional redistricting principles of

[8] Gov. Michelle Lujan Grisham, *Senate Executive Message No. 3* (Dec. 17, 2021), https://www.governor.state.nm.us/wp-content/uploads/2021/12/Senate-Executive-Message-No.-3-1.pdf.

preserving communities of interest, considering political and geographic boundaries, and preserving the core of existing districts. *Id.* at ¶ 77-98. Plaintiffs ultimately seek to have SB 1 declared unconstitutional and replaced with another map. *Id.* at 27.

Plaintiffs waited two more weeks to serve Executive Defendants with a copy of the Complaint. They also waited two weeks to file the instant Motion seeking a preliminary injunction. *See generally* Motion. During that period, the Congressional candidates filed their declarations of candidacy and nominating petitions based on the districts drawn in SB 1. *See* §§ 1-8-26(A), -30, -33(B). Plaintiffs now ask this Court to direct the Secretary of State to restart the process using an alternative maps that were never adopted by the Legislature mere days before the Democratic and Republican parties' pre-primary conventions.[9] *See* Motion at 14-15. As explained more fully below, that belated request must be denied.

DISCUSSION

I. Standard of review

"Injunctions are harsh and drastic remedies that should issue only in extreme cases of pressing necessity and only where there is no adequate remedy at law." *Insure N.M., LLC v. McGonigle*, 2000-NMCA-018, ¶ 7, 128 N.M. 611, 995 P.2d 1053 (alterations, internal quotation marks, and citation omitted). To obtain a preliminary injunction, a plaintiff must demonstrate: "(1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will

[9] *Chair Velasquez's Call for the Pre-Primary Convention*, Democratic Party of N.M. (Dec. 30, 2021), https://nmdemocrats.org/party-resources/2022-pre-primary-convention/call/ (calling Democratic pre-primary convention for March 3, 2022); *State Pre-Primary Convention Call*, Republican Party of N.M., https://newmexico.gop/preprimary/ (calling Republican pre-primary convention for February 26, 2022) (last visited Feb. 14, 2022).

prevail on the merits." *Labalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314, 850 P.2d 1017 (citing *Tri-State v. Shoshone River Power, Inc.*, 805 F.2d 351 (10th Cir. 1986)). "The [second] and [third] factors 'merge' when, like here, the government is the opposing party." *Aposhian v. Barr*, 958 F.3d 969, 978 (10th Cir. 2020).

"Because the limited purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held," courts especially disfavor "(1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits." *Schrier v. Univ. of Colorado*, 427 F.3d 1252, 1258-59 (10th Cir. 2005) (alterations, internal quotation marks, and citation omitted); *see also Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 20, 483 P.3d 545 ("Moreover, where injunctive relief is the ultimate relief sought, or where such relief is affirmative—not merely a maintenance of the status quo—the plaintiff 'must satisfy a heightened burden' of proof." (quoting *O Centro Espirita Beneficente Uniao do Vegetal ("O Centro") v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004))). Therefore, "any preliminary injunction fitting within one of the disfavored categories must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course." *O Centro*, 389 F.3d at 975. The plaintiff requesting such relief must show "that the four . . . factors . . . weigh heavily and compellingly in [their] favor before such an injunction may be issued." *Lujan Grisham*, 2021-NMSC-009, ¶ 20 (quoting *O Centro*, 389 F.3d at 975).

Plaintiffs' requested preliminary injunction falls into each disfavored category. First, Plaintiffs seek to have this Court require the Secretary of State to prepare for the upcoming election according to a map that was never adopted by the Legislature. Motion at 15. This is clearly a

mandatory injunction, as it would require, at a minimum, the Secretary to set new deadlines and revise existing rules and review new candidate applications. *See Schrier*, 427 F.3d at 1261 ("We characterize an injunction as mandatory if the requested relief affirmatively requires the nonmovant to act in a particular way, and as a result . . . places the issuing court in a position where it may have to provide ongoing supervision to assure the nonmovant is abiding by the injunction." (internal quotation marks and citation omitted)); *cf.* Motion at 14 (requesting Court to set new deadlines for declaring candidacy based on new map).

Second, Plaintiffs' request to force the Secretary to adopt a new map would upset the status quo. Contrary to Plaintiffs' suggestion, Motion at 5, maintaining the status quo means using the existing map, which was duly enacted into law and already relied on by the candidates—not using some alternative map that was never voted into law. As our Supreme Court recently explained, preliminary injunctive relief preventing the implementation of a law already in effect should be considered as upsetting the status quo. *See Lujan Grisham*, 2021-NMSC-009, ¶ 22 (noting that "the United States Supreme Court has suggested that a TRO preventing the implementation of new regulations would alter the status quo" and stating that "[w]e find this approach compelling here, given that the district court's order enjoined the enforcement of a statewide emergency order that had already become effective").

Lastly, the requested relief would supply Plaintiffs with substantially all the relief they could hope to win from a full trial. Plaintiffs ultimately seek to have the current Congressional map overturned and replaced with a map consistent with Congressional Concept E. Complaint at 27. Plaintiffs essentially seek the same thing now: they want the Secretary of State to prepare for and conduct the election using their preferred map until the Legislature adopts a new one. Motion at 14-15. Plaintiffs could hope for no better outcome after a final trial. *Cf. Lujan Grisham*, 2021-

NMSC-009, ¶ 21 (concluding that a request to enjoin the enforcement of a public health order "would supply [them] with all the relief [they] could hope to win from a full trial" (quoting *Legacy Church, Inc. v. Kunkel*, 472 F. Supp. 3d 926, 1023 (D.N.M. 2020)).

In sum, this Court must closely scrutinize the Motion and ensure that Plaintiffs have demonstrated that all four factors "weigh heavily and compellingly in [their] favor." *Lujan Grisham*, 2021-NMSC-009, ¶ 20 (quoting *O Centro*, 389 F.3d at 975).

II. Plaintiffs fail to demonstrate any of likelihood of success on the merits of their claims

A. Plaintiffs' claims are nonjusticiable political questions

The Executive Defendants agree with the Legislative Defendants' Motion to Dismiss in their discussion of Plaintiffs' failure to state a justiciable claim. As the U.S. Supreme Court recently recognized in *Rucho*, 139 S. Ct. at 2498, "Any standard for resolving [partisan gerrymandering] claims must be grounded in a limited and precise rationale and be clear, manageable, and politically neutral." (Internal quotation marks and citation omitted). This is primarily because "[t]he opportunity to control the drawing of electoral boundaries through the legislative process of apportionment is a critical and traditional part of politics in the United States[,]" *id.*, which has always encompassed as least some measure of "constitutional political gerrymandering." *Id.* at 2499 (internal quotation marks and citation omitted). At bottom, the decisive question in partisan gerrymandering claims boils down to "how much partisan dominance is too much?" *Id.* at 2496 (internal quotation marks and citation omitted). After thoroughly reviewing the history of partisan gerrymandering (and the courts' difficulty addressing the phenomenon), the Court concluded the Constitution provided no "principled, rational, and based upon reasoned distinctions" to adjudicate partisan gerrymandering claims. *Id.* at 2507. In other

words, partisan gerrymandering claims are political questions for which the federal judiciary can provide no answer.

State courts have reached the same conclusion based on their state constitutions. For instance, in *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, 399 Wis. 2d 623, the Wisconsin Supreme Court addressed whether a court tasked with adopting a redistricting map (after the legislature failed to enact one) should consider the partisan makeup of the districts. *Id.* ¶ 39. The court answered in the negative, recognizing that [a]djudicating claims of 'too much' partisanship in the redistricting process would recast this court as a policymaking body rather than a law-declaring one." *Id.* ¶ 52. "Whether a map is 'fair' to the two major political parties is quintessentially a political question[,]" the Court concluded, because "(1) [the state constitution provided] no 'judicially discoverable and manageable standards' by which to judge partisan fairness; and (2) the Wisconsin Constitution explicitly assigns the task of redistricting to the legislature—a political body." *Id.* In so holding, the Court refused to read its state constitution "as a reservoir of additional requirements [that] would violate axiomatic principles of interpretation" and "plung[e] this court into the political thicket lurking beyond its constitutional boundaries." *Id.* ¶ 63 (citations omitted).

This Court should reach the same result. True, the U.S. Supreme Court did not foreclose the possibility that state courts could address such claims. *See id.* However, the Court suggested state courts could do so only when state statutes or constitutions provided a standard to apply. *See id.* ("Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply."). New Mexico (like Wisconsin) does not have a statutory or constitutional provision that could give this Court the necessary guidance that the U.S. Supreme Court found lacking. The only statute arguably on point is Section 1-3A-7 of the Redistricting Act of 2021. But

Section 1-3A-7's redistricting standards are inapplicable, as they have no binding effect on the Legislature. *See* § 1-3A-9. To hold otherwise would clearly contradict the Legislature's intent to retain ultimate control over the redistricting process without regard to the same standards. *See Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶ 15, 149 N.M. 162, 245 P.3d 1214 ("This Court's primary goal when interpreting statutes is to further legislative intent.").

Nor does New Mexico's constitution provide the Court with the necessary guidance. Plaintiffs rely solely on the State's equal protection clause in Article II, Section 18, which provides, in pertinent part that "nor shall any person be denied equal protection of the laws." Complaint at ¶¶ 15-16, 24, 78, 96, 98. But New Mexico courts have interpreted this clause "as providing the same protections" as its federal counterpart that was insufficient to provide guidance to the nation's highest court. *See Valdez v. Wal-Mart Stores, Inc.*, 1998-NMCA-030, ¶ 6, 124 N.M. 655, 954 P.2d 87. Plaintiffs give the Court no reason to reach a contrary conclusion. *See State v. Gomez*, 1997-NMSC-006, ¶ 19, 122 N.M. 777, 932 P.2d 1 ("A state court [using the interstitial] approach may diverge from federal precedent for three reasons: a flawed federal analysis, structural differences between state and federal government, or distinctive state characteristics."). Indeed, our Supreme Court has previously cautioned against wading into the "political thicket" of redistricting unless absolutely necessary. *Maestas*, 2012-NMSC-006, ¶ 46. And while it is true the *Maestas* Court required the district court to take into account partisan considerations, *id.* ¶ 45, it "emphasize[d] that the principles articulated herein apply only to court-drawn maps." *Id.* ¶ 46. In contrast to the situation the Court was confronted with in *Maestas*, the judiciary's sister branches *have* enacted a new map. Accordingly, there is no need for the Court to take up politics.

In sum, New Mexico law (like federal and Wisconsin law) does not provide any standards necessary for the Court to determine the question Plaintiffs essentially raise: "how much partisan

dominance is too much?" *Rucho*, 139 S. Ct. at 2498 (internal quotation marks and citation omitted). Without such standards, the courts should refrain from diving into the political thicket. *Cf. Mutz v. Mun. Boundary Comm'n*, 1984-NMSC-070, ¶ 19, 101 N.M. 694, 688 P.2d 12 (recognizing that courts should not decide political questions). Without a viable claim, Plaintiffs' request for a preliminary injunction must be denied, regardless of the other factors. *See Peterson v. Kunkel*, 492 F. Supp. 3d 1183, 1193-94 (D.N.M. 2020) ("Likelihood of success on the merits is the threshold issue; all other factors depend on the Plaintiffs satisfying this requirement.").

B. Even if partisan gerrymandering was justiciable, Plaintiffs fail to demonstrate a strong likelihood of success

Even if such a claim were justiciable, it should be reserved only for egregious cases of partisan gerrymandering. *See Rucho*, 139 S. Ct. at 2516 (2019) (Kagan, J. dissenting) ("Respect for state legislative processes—and restraint in the exercise of judicial authority—counsels intervention in only egregious cases."); *see also id.* at 2517 (stating that "even the naked purpose to gain partisan advantage may not rise to the level of constitutional notice when it is not the driving force in mapmaking or when the intended gain is slight"). Plaintiffs have failed to cite any evidence showing improper partisan gerrymandering. To the contrary, statistical analysis suggests that SB 1 creates two competitive Congressional districts when there used to be one.[10] On this record, the Court should deny Plaintiffs' requested preliminary injunction regardless of the justiciability of their claims. *See Favors v. Cuomo*, 881 F. Supp. 2d 356, 370 (E.D.N.Y. 2012) (denying preliminary injunction against redistricting plan when the plaintiffs' claims rested on

[10] *See generally The partisan breakdown of New Mexico's new map*, FiveThirtyEight, https://projects.fivethirtyeight.com/redistricting-2022-maps/new-mexico/ (last visited Feb 11, 2022) (showing the current map with one "competitive" Democrat district and two highly competitive districts; showing the previous map with one "solid" Democrat district, one "competitive" Democrat district, and one "competitive" Republican district).

"novel, contested legal ground" and the plaintiffs had adduced "virtually no" evidence to support them).

III. Plaintiffs will not suffer irreparable injury absent a preliminary injunctive relief

Equally fatal to Plaintiffs' requested preliminary injunction is their failure to demonstrative irreparable harm. Plaintiffs' sole basis for showing irreparable harm is a purported constitutional violation. *See* Motion at 6. However, Plaintiffs have not established a likelihood of success on the merits of their claims. As a result, they cannot use a purported constitutional violation as the basis for any irreparable harm. *See Logan v. Pub. Emps. Ret. Ass'n*, 163 F. Supp. 3d 1007, 1030 (D.N.M. 2016) ("[A] plaintiff who cannot demonstrate a substantial likelihood of success is not entitled to a presumption of irreparable harm." (citing *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1266 (10th Cir. 2005)).

Even if Plaintiffs *could* demonstrate some sort of likelihood of success on the merits of their action, they fail to demonstrate any real irreparable harm that would occur in the absence of an immediate injunction. As demonstrated in *Maestas* following the 2010 redistricting, the courts and parties can quickly adopt a new map, if necessary. 2012-NMSC-006. In the unlikely scenario that the court finds this dispute justiciable and ultimately resolves the matter in favor of Plaintiffs, a new map could likely be implemented before the June primary elections. Any potential harm in simply preparing for the election using the current, duly enacted map does not rise to the level necessary for a preliminary injunction. *See Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) ("Irreparable harm is not harm that is merely serious or substantial." (internal quotation marks and citation omitted)). Accordingly, there is no need to grant any preliminary injunctive relief, irrespective of Plaintiffs' likelihood of success on the merits. *See Amoco Oil Co. v. Rainbow Snow, Inc.*, 809 F.2d 656, 664 (10th Cir. 1987) ("As a prerequisite to the granting of a

preliminary injunction, the moving party must show . . . that it will suffer irreparable injury unless the injunction issues.").

IV. The balance of the equities and public interest weigh in Defendants' favors

The final two factors similarly dictate in favor of denying the Motion. Both Defendants and the public have a significant interest in having the upcoming election proceed without delay or disruption. *See Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887, 910 (D. Ariz. 2005); *see also Favors*, 881 F. Supp. 2d at 371 ("It is best for candidates and voters to know significantly in advance of the petition period who may run where."). True, there are still several months between now and the primary and general elections. But as explained above, the candidates have already filed their declarations of candidacy and nominating petitions based on the districts drawn in SB 1. *See* Background Section III, *supra*. The Republican and Democratic pre-primary conventions are scheduled to be held next week and the following week. *See id.* As explained more fully by the Secretary of State, implementing a new map at this time would upend this entire process—harming the candidates and the public who relied on SB 1 and potentially delaying the primary election by requiring the Secretary of State to readjust deadlines. *See Ariz. Minority Coal. for Fair Redistricting*, 366 F. Supp. 2d at 892 & n.5, 910 (denying preliminary injunction sought in late April when the September 7 primary election was "quickly approaching, and the public had a significant interest in having those elections proceed without delay"); *Kostick v. Nago*, 878 F. Supp. 2d 1124, 1147 (D. Haw. 2012) (holding that any effort to implement an alternative plan approximately three months before the primary elections "would result in significant delay, grave confusion and potential chaos at the polls").

Plaintiffs' delay in filing this action, serving the Executive, and moving for preliminary injunctive relief also weigh heavily against replacing SB 1's map at this point. "[I]t is well

established that in election-related matters, extreme diligence and promptness are required." *McClafferty v. Portage Cty. Bd. of Elections*, 661 F. Supp.2d 826, 839 (N.D. Ohio 2009) (internal quotation marks and citation omitted); *see also Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) ("A party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere." (citation omitted)). Here, Plaintiffs waited over a month after the Governor signed SB 1 into law before filing this action. *See* Background Section III, *supra*. Plaintiffs then waited two weeks to serve the Executive Defendants and file their request for a preliminary injunction. *See id.* Yet Plaintiffs provide absolutely no explanation for why they waited so long. The Court should not allow Plaintiffs to upset the status quo at this point given such inexplicable delay. *Cf. Dobson v. Balt. City*, 330 F. Supp. 1290, 1301-04 (D. Md. 1971) (refusing to enjoin city council elections when suit was not filed until ten days after the candidates' filing date and two months before the primary); *see generally Wreal, Ltd. Liab. Co. v. Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016) ("A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.").

CONCLUSION

For the foregoing reasons, this Court should deny the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, I filed the foregoing through the New Mexico Electronic Filing System, which caused all counsel of record to be served by electronic means.

Respectfully submitted,

/s/ Holly Agajanian
Holly Agajanian