

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

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

Plaintiff-Appellants,

vs.

No. S-1-SC-40146

MAGGIE TOULOUSE OLIVER in her
official capacity as New Mexico
Secretary of State, 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,

Defendant-Respondents.

**PLAINTIFF-APPELLANTS' RESPONSE TO THE DEMOCRATIC PARTY
OF NEW MEXICO'S MOTION FOR LEAVE TO PARTICIPATE AS
AMICUS CURIAE**

The Plaintiff-Appellants respectfully oppose the Motion of the Democratic Party of New Mexico (“DPNM”) to participate as *amicus curiae* in this appeal. As the DPNM concedes, its participation is untimely under Rule 12-320(D)(1). See Motion at 6 (“DPNM was not able to provide 14 days’ notice to the parties as required by Rule 12-320(D)(1) . . .”). The filing of the Motion and brief one business day—more specifically, exactly one-and-a-half ‘business hours,’ if a

business day is deemed to start at 9:00 and end at 5:00—before oral argument makes it very difficult for the parties to respond to, or for the Court to incorporate into its consideration of this case.

More importantly, as the Plaintiffs told counsel for the DPNM when they declined to consent to the Motion, when first contacted by the DPNM for a position, the Plaintiffs reached out to counsel for a consortium of good-governance groups and redistricting experts—including Common Cause, the League of Women Voters, the Election Reformers Network, former Court of Appeals Judge Roderick Kennedy, and three leading redistricting scholars from Princeton University, Carnegie Mellon University, and a private firm retained by a number of state redistricting commissions (hereinafter, “the Neutral Consortium”)—that, like the DPNM, had filed an *amicus* brief before the District Court, to see whether the Neutral Consortium would be refiling before this Court. (The Neutral Consortium’s *amicus* brief, filed August 14, 2023, was formally “in support of neither party,” but it was as a practical matter helpful to the Plaintiffs. The Plaintiffs consented to its filing, while the Defendants fought tooth and nail—through a full round of robust briefing—to keep it out. The District Court ultimately denied leave to both the DPNM and the Neutral Consortium on the grounds that it believed *amici* briefs are

not permitted at the trial-court level.¹) The Plaintiffs indicated to the Neutral Consortium, and to the DPNM, that they were amenable to consenting to both *amici* briefs, but not *just* to the DPNM's.

The Neutral Consortium's response to the Plaintiffs' entreaty was that it would not be filing before this Court, because **(1)** it had missed the Rule 12-302(D)(1) deadline; and **(2)** the Neutral Consortium's *amicus* brief before the District Court had been replete with adjudicative facts—namely, a complete expert analysis—which had been the primary legal basis for the Defendants' opposition to it,² and, while the Neutral Consortium disagreed that this had made it inappropriate at the trial-court level, it believed that, given the District Court's ultimate denial of leave to file, refile before this Court would likely be futile.

The same factors that caused the Neutral Consortium to refrain from refile, in this Court, its high-quality *amicus* brief before the District Court should also prevent the DPNM from being able to refile its brief: the DPNM also missed the Rule 12-302(D)(1) deadline (by quite a lot, with the Plaintiffs receiving 4 days'

¹ See the two identical (but for the identity of the proposed *amicus*) orders filed by the District Court on September 25, 2023. Orders at 1 (“[T]he New Mexico Rules of Civil Procedure for District Courts contain no provision for allowing *amici curiae*, while Rule 12-320 NMRA does provide for a brief of an *amicus curiae* to be filed only on order of the appellate court, and the Court being sufficiently advised, the Motion is hereby denied.”).

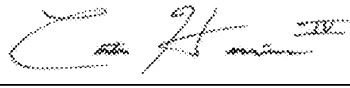
² See Defendants' Response to [the Neutral Consortium's] Motion for Leave to File *Amici Curiae* Brief at 1 (filed Aug. 28, 2023) (opening line of response) (“Proposed *amici* caption as an *amicus* brief what is really the combined report of three proposed experts that no party has offered.”).

notice instead of the required 14); and the DPNM's *amicus* brief is also chock full of adjudicative (expert) facts. One side should not be able to benefit from the fact that it is not as shy about seeking relief from noncompliance with the rules as the opposite, identically situated side is.

If this Court does decide to grant the DPNM's Motion, the Plaintiffs respectfully request that it also grant leave to the Plaintiffs—or to the Neutral Consortium, although that may be more difficult in practice as it is a collective that joined together for the purposes of litigation, which, from its perspective, has concluded—to refile the Neutral Consortium's brief before this Court so that it can inform the Court's opinion.

Respectfully submitted,

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This Response Has No Exhibits

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November 2023, I submitted the foregoing Response electronically via the Court's Odyssey filing system, and when doing so I selected the option for automated electronic service of the certified document, which will occur on the date the clerk's office formally files the document.

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV
Carter B. Harrison IV