IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

PROVISIONAL GOVERNMENT OF SANTA TERESA, a New Mexico Non-Profit Corporation, MARY GONZALEZ; WILFREDO SANTIAGO-VALIENTO; SONIA SANTIAGO; TOMMY HIGGINS; SACH SUE COCHRAN; EVELIA CHAPARRO; RALPH ENCIAS; PAUL MAXWELL; STEPHEN WATSON; CRAIG CARPENTER; EDWINA SEISS,

Appellants/Plaintiffs-Respondents/Defendants,

v.

CITY OF SUNLAND PARK,

Appellee/Defendant-Plaintiff/Petitioner,

v.

SOCORRO PARTNERS I, LP, aka SOCORRO PARTNERS LP, d/b/a SOCORRO PARTNERS 1, LTD,

Defendant-Interested Party,

v.

DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS,

Intervenor/Appellant.

No. S-1-SC-39541

Ct. App: A-1-CA-36279;A-1-CA-36363
Dist. Ct. No.: D-307-CV-2016-02087

DOÑA ANA COUNTY'S ANSWER BRIEF

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SUMMARY OF PROCEEDINGS

The Doña Ana County Board of County Commissioners ("Doña Ana County") is in general agreement with the Summary of Proceedings as set forth in the City of Sunland Park's ("Sunland Park") Brief in Chief with the exception of the final paragraph where in Sunland Park states that if the ruling of the Court of Appeals is allowed to stand that Sunland Park would be indefinitely barred from any future growth and that a few residents could control the destiny of an incorporated city. Being in general agreement with the Summary of Proceedings, pursuant to Rule 12-318(C), a separate summary of proceedings is not deemed necessary.

QUESTION PRESENTED

Doña Ana County concurs with Sunland Park's question presented.

STANDARD OF REVIEW

Doña Ana County concurs with Sunland Park that the question presented is a question of law and therefore the standard of review is *de novo* review.

ARGUMENT

This court adopted the doctrine of "prior jurisdiction" as it relates to in annexation disputes. *Amrep Southwest., Inc. v. Town of Bernalillo*, 1991-NMCA-110, ¶8. 113 N.M. 19, 821.P2d 357. The application of this doctrine of "prior jurisdiction" is the central issue in this case.

1. ***Provisional II[1] correctly determined that prior jurisdiction rested with the Board of County Commissioners and was not lost while this matter was on appeal.***

As to its first argument, the City of Sunland Park argues that Doña Ana County's prior jurisdiction over the incorporation attempt was lost when Doña Ana County issued its ruling that the Provisional Government of Santa Teresa, and those seeking to incorporate (referred to jointly as "PGOST") filed a petition for incorporation, had not meet the requirements under NMSA Section 3-2-3 and that the decision of the Board of County Commissioners was not stayed. (SP's Brief in Chief pp 7-15). Sunland Park raises for the first time that a stay of the Board of County Commissioners' ("BOCC") decision was necessary in order for the BOCC to retain jurisdiction and therefore the issue was not preserved. Sunland Park states in its Brief in Chief that "this issue was preserved as noted in *Provisional II*, 2022-N.M. App. Unpub. Lexis 256, 13 (2022)." (Brief in Chief p 7, fn 2). The issue of whether jurisdiction attached in favor of the BOCC, and if so, when it was lost was the subject of arguments in the Court of Appeals. However, the argument that the issuance of a stay was necessary for the BOCC to maintain its prior jurisdiction is being raised for the first time in Sunland Park's Brief in Chief and therefore the argument that a stay was necessary was not properly preserved.

[1] *Provisional II* refers to this current case.

For the purpose of this argument, it appears that Sunland Park is not contesting that prior jurisdiction over the subject area had vested with Doña Ana County but rather is arguing that the prior jurisdiction ended when the BOCC issued it ruling that PGOST had not met all the statutory requirements for incorporation (a decision ultimately reversed by the court in *Provisional I*[2]). Sunland Park argues that the appeals by PGOST and the petitioners for incorporation did not keep the jurisdiction vested with the BOCC.

To support this argument, Sunland Park cites to *Amrep Southwest, supra,* and cases cited therein, for the proposition that once the administrative body, in this case the BOCC, made its final decision it lost jurisdiction despite the matter being appealed to the District Court. *Amrep Southwest* does not go this far. In *Amrep Southwest* the boundary commission had not made a final decision as their decision was subject to further judicial proceedings. The Court of Appeals held that under those circumstances, the commission retained jurisdiction pending the judicial determination. The circumstances in this care are somewhat different. The BOCC did in fact issue its final determination but it was appealed to the District Court. *Amrep Southwest* and the cases cited therein, hold that the jurisdiction rests with the entity to first take action and that they retain jurisdiction until the action is concluded.

[2] *Provisional 1* refers to *Provisional Gov't of Santa Teresa v. Doña Ana Cty. Bd. of Cty. Comm'rs*, 2018-NMCA-070, 429 P.3 981.

Then the question arises: When is the matter concluded? Is it when the administrative body issues its decision or is it when the administrative body issues its decision and any subsequent appeals are concluded?

Sunland Park suggests the answer to the question should be when the administrative agency issues its decision, however, Doña Ana County believes the decision is not final until any and all appeals have been decided. Sunland Park cites to 2 McQuillin, *The Law of Municipal Corporations,* stating:

> McQuillin makes it clear that prior jurisdiction only continues while the "proceeding is pending and undetermined."

Brief in Chief page 8, citing McQuillin §7.39.3.

Sunland Park then continues:

> Similarly, the Court in *Amrep Southwest* suggested that prior jurisdiction may be lost once the administrative body with that jurisdiction makes a final decision. [citations omitted]

Brief in Chief p. 9.

Sunland Park concludes this point stating:

> In *In re Appeal of Lenexa to Decision of Bd. of Cty. Comm'rs* – a case cited favorably in *Amrep Southwest* – the Supreme Court of Kansas observed that any prior jurisdiction a proceeding may possess vanishes "once the proceeding is terminated adversely to the first [petitioner]. 23 Kan. 568, 657 P.2d 47, 57 (1983)"

Brief in Chief p. 9.

A review of *Amrep Southwest,* and the cases cited therein, do not support the argument being made by Sunland Park. The cases cited support the proposition that

prior jurisdiction ends when a case has been decided and is no longer pending, however, none of those cases held that a case is decided and no longer pending when an appeal to the administrative decision is pending in the courts, as Sunland Park seems to suggest. *In re Appeal of Lenexa to Decision of Bd. of Cty. Comm'rs*, 343 Or. 44, 411 P.2d 282 (1966), actually supports the proposition that prior jurisdiction continues when an administrative decision is appealed until the appeals have been decided. As Sunland Park points out, the court in *Lenexa* stated:

> Thus, the city which first takes the valid step toward annexation of territory has priority over any other city which later seeks to annex, so long as the original proceeding is pending. Once the proceeding is terminated adversely to the first city, however, the priority which accompanied the original proceeding vanishes.

Lenexa, p 57.

What Sunland Park leaves out from its reliance on Lenexa is the following:

> In the case now before us, Lenexa's first valid step was to filed a petition for annexation with the Board. During the pendency of that proceeding, Lenexa undoubtedly had priority to the area being sought to be annexed, and would have a right to annex that territory against any other city. **When the Board denied Lenexa's petition (and the trial court and this court affirmed), both the City and the territory returned to their former positions** and the doctrine of prior jurisdiction had no further relevance. The doctrine does not create affirmative rights independent of a valid pending proceeding.

[Emphasis added] *Id.* at p. 13

In this current case, PGOST's petition for incorporation vested jurisdiction with the Doña Ana County Board of County Commissioners until such time as the

matter was concluded. Sunland Park would have this court determine that the matter was concluded when the BOCC issued its decision despite the fact that its decision was appealed to the District Court and ultimately overruled by the Court of Appeals in *Provisional I* and remanded to the BOCC for further decision. Doña Ana County, on the other hand urges this court to determine that the jurisdiction vested in Doña Ana County continue until the matter is actually finally resolved and is no longer pending before the BOCC or any court reviewing the decision as is suggested by the court in *Lenexa* as cited above.

Sunland Park further argues, for the first time in its Brief in Chief, that a stay was required in order the prior jurisdiction that had vested in the county to remain in place. To support this argument, Sunland Park again cites *Amrep Southwest* arguing that it "supports the idea that a stay is necessary in order for a proceeding to retain prior jurisdiction after a final decision has already been issued." Brief in Chief p. 11. This is a misreading and application of *Amrep Southwest*. In *Amrep Southwest*, the Boundary Commission made its decision that the annexation should take place but was unsure of its jurisdiction so it stayed, or withheld its decision, until there was a judicial determination that it had the jurisdiction to order the annexation. In essence, the Boundary Commission did not issue its determination on the matter until the court confirmed its jurisdiction to do so.

What occurred in *Amrep Southwest* and the Boundary Commission's stay or withholding its decision is quite different than what occurred in the current cases. The BOCC issued its decision which was appealed to the District Court, therefore, the decision of the BOCC was not final and was still subject to the determination of the District Court. After the District Court upheld the decision of the BOCC, that decision was also appealed to the Court of Appeals, thereby leaving the matter undecided. The Court of Appeals reversed the decisions of the District Court and the BOCC and remanded for further proceedings thus leaving the matter still undecided and continuing the jurisdiction with the BOCC.

Sunland Park further suggests, citing *Zuni Indian Tribe v, McKinley Cty. Bd. of Cty. Comm'rs*, 2013-NMCA-041, ¶21, 300 P.3d 133, that "absent a stay, a party may act in accordance with an agency's final decision, notwithstanding the existence of an appeal." Brief in Chief p 11. A complete reading of *Zuni Indian Tribe* makes it clear that while a party may act in accordance with the agency's decision while an appeal is pending **it does so at its own risk.**

Zuni Indian Tribe involved a preliminary subdivision plat that was appealed. While the appeal was pending, the subdivision developer went forward to obtain a final subdivision plat. The court in *Zuni Indian Tribe* stated:

> Nothing in the [subdivision] Act prevents a subdivision developer from proceeding with the final plat review and approval process once a preliminary plat has been approved. However, where an aggrieved party has timely filed an appeal from a decision on a preliminary plat application,

> the subdivision developer **undertakes such action during the pendency of the appeal at his or her own risk.** *See, City of Bowie v. Prince George's Cnty.*, 384 Md. 413, 863 A.2d 976, 978 (Md. 2004)(holding that "an applicant may seek final plat approval of a subdivision . . . during the time that the preliminary plat approval remains under judicial review, but the applicant undertakes such action at his own risk that the underlying preliminary plat approval may be invalidated at a future time, thus, potentially voiding all subsequent governmental action dependent upon that approval").

Zuni Indian Tribe, at ¶21.

Even if this Court were to accept the argument that Sunland Park could move forward with the annexation during the pendency of the appeal on the incorporation matter, Sunland Park did so at its own peril and at its risk that its action related to the annexation would be voided in the future.

2. *Provisional II* does not need to be reversed to be in conformity with State law and policy regarding incorporation and annexations.

Sunland Park next argues that *Provisional II* must be reversed because State law and policy do not permit a small group of residents in an unincorporated area to indefinitely prevent the growth of a neighboring city. Brief in Chief page 16.

The cases cited by Sunland Park do not support this argument. These cases support the idea that a city seeking to annex or opposing the annexation of certain areas should be granted some deference in that decision. However, none of these cases address the issue or prior jurisdiction and what deference should be given to a city's desires (or the desire of property owners) to annex certain property into the

city. As none of the cases city by Sunland Park to support this argument have a competing incorporation attempt they are irrelevant to this argument.

Sunland Park cites *City of Albuquerque v. State Mun. Boundary Comm'n*, 2002-NMCA-024, 131 N.M. 665 to support this argument. *City of Albuquerque* involves a land developer's petition to the Municipal Boundary Commission to have certain areas annexed into the City of Albuquerque. The City opposed the annexation as conflicting with several established polices, including policies on infill and expansion of city services. *Id.* at ¶18. Despite the city's opposition, the Boundary Commission ordered the area to be annexed into the city. This court reversed the decision of the Boundary Commission holding that where a city opposes annexation as being in conflict with existing policies the Commission should defer to the municipality's objections and deny the annexation. In *City of Albuquerque*, there were no competing petitions for incorporation or annexation and therefore, and therefore, no issue of prior jurisdiction which is the main issue before this court.

Likewise, there are no competing petitions for incorporation or annexation in the other cases cited by Sunland Park to support this argument. In making this argument, Sunland Park is asking this court ignore the doctrine of prior jurisdiction as established in *Amrep Southwes* and therefore this court should not reverse the court of appeals on this basis.

3. Provisional II does not have to be reversed because Sunland Park had an obligation to entertain a voluntary annexation petition.

Sunland Park next argues that this case must be reversed because it had an obligation to entertain the voluntary petition for annexation submitted by Socorro Partners. Brief in Chief p. 20.

NMSA section 3-7-17(A)(4) does require that when a petition for annexation is presented to a the governing body of the municipality that "the governing body shall by ordinance express its consent or rejection to the annexation of such contiguous territory." This section does not require that the municipality accept the petitioned territory into the city. Sunland Park seems to be trying to give this court the impression that it had no alternative but to accept the petition and annex the territory proposed in Socorro Partner's petition for annexation. While section NMSA 3-7-17 would impose a duty upon Sunland Park to act on the annexation petition once submitted, it was free to reject the annexation. Sunland Park was well aware of that the issue of prior jurisdiction as it was well aware of the pending petition for incorporation by PGOST. Sunland Park participated in the hearing before the BOCC and was fully participating in the appeal to the District Court in what would ultimately come before this court in *Provisional I.*[3]

[3] This Court granted *certiorari* in *Provisional I,* but after briefing was completed quashed *certiorari* as having been improvidently granted.

Furthermore, as part of the annexation process, the BOCC was required under NMSA section 3-7-17.1 to review and comment on Socorro Partners' the petition for annexation. The BOCC provided the required comment and specifically advised Sunland Park that the BOCC believed that Sunland Park lacked jurisdiction over the area proposed to be annexed due to the pending petition for incorporation and the appeal of the BOCC's decision on the petition for incorporation. **[RP 126].**

While Sunland Park may have had an obligation to entertain the voluntary petition for annexation, it did was not required to approve the annexation.

Sunland Park asks this court to ignore the doctrine of prior jurisdiction arguing that "when a common-law principle – such as prior jurisdiction – conflicts with a statute – such as the statutory obligation to entertain annexation petitions found in NMSA 1978, Section 3-7-17 (1998) – the statute must prevail." Brief in Chief 20. This proposition is correct except the conflict must be a **"direct"** conflict. *Belen Consol. Sch. Dist. v. Cty. of Valencia*, 2019-NMCA-044, ¶10, 447 P.3d 1154, *cf. Sims v. Sims* 1996 NMSC-078, ¶23, 122 N.M. 618, 930 P.2d 153 (holding that legislation controls when it "directly and clearly conflicts with the common law."

In this case there is no direct conflict between the doctrine of prior jurisdiction and Sunland Park's statutory obligation to "express its consent or rejection to the annexation" under NMSA section 3-7-17. Sunland Park could have complied with this obligation by rejecting the petition on the basis that, due to prior jurisdiction

having vesting with Doña Ana County and PGOST due to the pending petition for incorporation, it lacked jurisdiction to consent to the annexation. In making this argument, Sunland Park is asking this court ignore the doctrine of prior jurisdiction as established in *Amrep Southwest* and therefore this court should not reverse the Court of Appeals on this basis.

***4. Provisional II* should not be reversed due to a misapplication of *Provisional I*. Even if *Provisional I* were wrongly decided it has no bearing on this case.**

Sunland Park next argues that the Court of Appeals misapplied its ruling in *Provisional I,* to this current case and therefore this Court should reverse the Court of Appeals. Brief in Chief p 22. This argument by Sunland Park is largely unsupported by citations to any prior case law.

Provisional I's discussion of prior jurisdiction, and the Court of Appeals reliance upon it in deciding this case only reinforced the doctrine of prior jurisdiction. It did not add anything new to the application of the doctrine or prior jurisdiction nor did it take anything away. What the court did in *Provisional I* was to show how the interpretation of section 3-2-3(B) being advanced by Sunland Park and Doña Ana County ran contrary to the application of prior jurisdiction. While Doña Ana County believes the decision in *Provisional I* may create issues in its application in future cases, those potential issues are not with the application of prior jurisdiction. Even if this court were to determine that the Court of Appeals

misinterpreted NMSA section 3-2-3(B), it does not affect the application of prior jurisdiction.

Since Sunland Park is also asking this Court to overturn *Provisional I*, Doña Ana County will address it briefly. NMSA section 3-2-3(B) provides:

> (B) No territory within an urbanized territory shall be incorporated as a municipality unless the:
>
> > (1) municipality or municipalities causing the urbanized territory approve, by resolution, the incorporation of the territory as a municipality;
> >
> > (2) residents of the territory proposed to be incorporated have filed with the municipality a valid petition to annex the territory proposed to be incorporated and the municipality fails, within one hundred twenty days after the filing of the annexation petition, to annex the territory proposed to be incorporated; or
> >
> > (3) residents of the territory proposed to be annexed conclusively prove that the municipality is unable to provide municipal services within the territory proposed to be incorporated within the same period of time that the proposed municipality could provide municipal service.

The confusion in interpreting and apply this statute, which is a statute dealing with incorporation, is in subsection (B)(3) it refers to the "residents of the territory proposed to be annexed" prove that the neighboring municipality can't provide municipal services in the territory proposed to be incorporated. The confusion arises because this statute is dealing with incorporation but then refers to "residents of the territory proposed to be annexed." What "territory proposed to be annexed" is being

referenced? This statute deals with incorporation. Why is it now referencing annexation?

When Doña Ana County was performing its duties related to its review of PGOST's petition for annexation the BOCC was faced with this question. What "territory proposed to be annexed?" Does it relate to the annexation petition referenced in subsection 2 or some other annexation? Review of prior case law to answer this question provided little assistance. This question was before this court in *City of Sunland Park v. Santa Teresa Concerned Citizens Ass'n*, 1991-NMSC-050, 110 N.M. 95, 792 P.2d. 1138. In *City of Sunland Park* it was argued, in an amicus brief before the court of appeals, that the annexation referred to in subsection 3 was an annexation petition under subsection 2. Unfortunately, this court left the question of the interplay between the various subsections of 3-2-3(B) unanswered stating:

> We need not reach here the question of the interrelationship of the three subparts of Section 3-2-3(B). Nothing in our opinion is to be read as approving either the court of appeals' or the district court's reading of subsection (B) as permitting parties similarly situated to the association and city here to proceed directly to resolution of a "dispute" under sub-part (3) without first adhering to the procedures set forth in sub-parts (1) and (2) of subsection (B). In this particular case, even had the parties proceeded by way of sub-parts (1) and (2) before arriving at the evidentiary determination contemplated by sub-part (3), the association still would not have prevailed. Hence, under the peculiar factual pattern before us, it is pointless for us to consider the question of the interrelationship of the three sub-parts of subsection (B).

Id. at ¶26.

Finding little assistance in how to apply the phrase "residents of the territory proposed to be annexed," the BOCC applied the interpretation suggested in by the amicus brief in *City of Sunland Park*, and determined that in order to proceed to a hearing on municipal services under subsection 3, those seeking to incorporate as the City of Santa Teresa were first required to petition the City of Sunland Park to be annexed.

The Court of Appeals, in *Provisional I*, in recognizing that the interpretation applied by the BOCC in that matter created issues around the application of the doctrine of prior jurisdiction, concluded that the BOCC's interpretation that the "residents of the territory proposed to be annexed" in subsection 3, could not be read to require that those seeking to incorporate had to first petition to be annexed under subsection 2. This still left open the question of what annexation proposal is being reference in subsection 3's reference to the "residents of the territory to be annexed."

In *Provisional I*, the court of appeals determined that if there was an informal proposal of some sort to annex territory that others wanted to incorporate that the requirements of having "residents of the territory proposed to be annexed" was met and those seeking to incorporate could proceed with their incorporation efforts. *Id.* at ¶20. The held:

> We hold that Section 3-2-3(B)(3) does not require residents of a territory to first formally petition the existing municipality to annex the territory before they can file a petition to incorporate as a municipality; such residents may file an incorporation petition pursuant to Section 3-

> 2-1 and Section 3-2-5 if the municipality informally proposes to consider or otherwise expresses an interest in annexing the territory, short of actually initiating formal annexation proceedings. We conclude that the aforementioned actions taken by Sunland Park in 2014 amounted to such an informal proposal.

Id. at 31.

While the application of the doctrine of prior jurisdiction answers the question that the reference to "residents of the territory proposed to be annexed" is not referring to a petition for annexation under subsection 2, the conclusion that any informal proposal for annexation that might be floating around does not make sense. What if residents want to go through the incorporation process but there has been no discussion of an annexation. Are they precluded from petitioning for incorporation? This court granted Sunland Parks Petition for Writ of Certiorari in *Provisional I* to further address the application of section 3-2-3, however, almost two years after briefing was complete, this court quashed the Writ of Certiorari leaving these questions unanswered.

Recognizing that the courts cannot rewrite legislation, *see, State ex rel. Sugg v. Oliver*, 2020-NMSC-002, ¶19, 456 P.3d 1065, section 3-2-3(B)(3) would make since if rather than referring to "residents of the area proposed to be annexed" it stated "residents of the area proposed to be incorporated" making the statue read as follows:

> **(3)** residents of the territory proposed to be ~~annexed~~ incorporated conclusively prove that the municipality is unable to provide municipal

services within the territory proposed to be incorporated within the same period of time that the proposed municipality could provide municipal services.

***5. Doña Ana County* does have standing, however, if the Court were to determine Doña Ana County does not have traditional standing then it should confer standing to resolve a matter of great public interest.**

While Sunland Park raised the issue of PGST's standing previously, it is raising the issue of Doña Ana County's standing for the first time. Sunland Park asserts that standing is a "jurisdictional question and can be raised at any time" and cites *Rio Grande Kennel Club v. City of Albuquerque*, 2008-NMCA-093, ¶7, 144 N.M. 636 to support this proposition. Doña Ana County acknowledges that standing can be raised at any time, however, does not agree that standing is jurisdictional. Twenty days after the Court of Appeals issued its decision in *Rio Grand Kennel Club* stating that standing was jurisdictional, this Court stated: "standing in our courts is not derived from the state constitution, and is not jurisdictional." *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶9, 144 N.M. 471, 188 P.3d 1222.

Sunland Park asserts that Doña Ana County lacks standing in this matter as it does not own land within the territory annexed. Doña Ana County acknowledges that it does not own land in the territory annexed, however, this does not deprive Doña Ana County of standing.

Sunland Park asserts that standing to appeal an annexation is **limited** to those owning land in the annexed territory. Brief in Chief p. 17. Section 3-7-17(C), relied

upon by Sunland Park provides: "any person owning land within the territory annexed to the municipality may appeal to the district court questioning the validity of the annexation proceeding." Section 3-7-17(C) allows those who own property in the territory to appeal the annexation. Section 3-7-17(C) does not say that **only** property owners can appeal or that the right to appeal is **limited** to property owners.

Since section 3-7-17(C) does not limit filing appeals to only property owners, the standing of Doña Ana County in this case should be analyzed under the general rules of standing.

In order to have standing, a party generally must satisfy three elements: (1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision. *ACLU of N.M.*, at ¶1.

Doña Ana County was directly injured as a result of Sunland Park's proceeding with the subject annexation as it infringed on Doña Ana County's authority, and statutory obligations, to review PGOST's petition for incorporation and to determine if the petition for incorporation complied with the statutory requirements. While the BOCC had made its determination that the requirements for the BOCC to call for an election on the issue of PGOST's proposed incorporation were not met, the issue was still pending before the courts. When Sunland Park proceeded with the annexation in an area where it did not have jurisdiction, due to

Doña Ana County having been conferred with prior jurisdiction, Sunland Park usurped the authority of Doña Ana County and injured and impeded Doña Ana County's ability to perform it statutory obligations.

The injury suffered by Doña Ana County, by having its authority usurped and interfered with its statutory duties related to incorporations, was a direct result of the actions of Sunland Park in ignoring that prior jurisdiction over the subject territory was vested with Doña Ana County. The injury to Doña Ana County can be remedied if this court were to issue a decision favorable to PGST and Doña Ana County by restoring the existing prior jurisdiction to Doña Ana County to allow it to complete its duties related to PGOST's petition for incorporation.

Even if this Court determines that Doña Ana County does not have standing, this court should exercise its discretion to confer standing to reach the merits because this is a matter of public importance. *See, ACLU of N.M.* at ¶9. Sunland Park acknowledges in its Statement in Support of Oral Argument that this "matter is not only procedurally complex but is of significant public interest . . . ." Brief in Chief p. 31. The actions of Sunland Park, in usurping the authority to make certain determinations related to incorporation petitions, involves a "clear threat to the essential nature of state government." Sunland Park, a political subdivision of the state, has directly impaired the ability of Doña Ana County, another political subdivision of the state from fulfilling its statutory rights and duties thereby affecting

the rights of individuals who are seeking to incorporate a new city. Therefore, even if the elements of traditional standing are not met, this Court should confer standing to decide this issue of important public interest and finally address and issue that has remained undecided for over three decades.

CONCLUSION

For the foregoing reasons, the Doña Ana County Board of County Commissioners respectfully request that this court affirm the decision of the Court of Appeals in this case and find that prior jurisdiction vested with the BOCC upon the filing of the Petition for Incorporation of the City of Santa Teresa. It is further requested that this court uphold the Court of Appeals and determine that the prior jurisdiction vested with and currently remains with the BOCC until such time that the determination of whether the petition for incorporation will be allowed to proceed, including during such time as the matter related to the petition for incorporation continue to be litigated in the courts.

Respectfully submitted,

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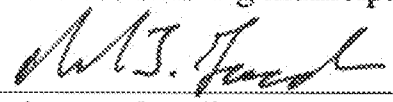
STATEMENT IN SUPPORT OF ORAL ARGUMENT

The undersigned believes that oral argument may assist the Court's understanding of this matter which is not only procedurally complex but which is of significant public importance for municipalities, counties, those petitioning for incorporation, and landowners seeking annexation into existing municipalities.



Nelson J. Goodin

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2023 I caused a true and correct copy of the foregoing pleading to be served upon the following counsel of record via the Odyssey File and Serve system:

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