

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

Cause No.  
D-506-CV-2022-00041

MAGGIE TOLOUSE OLIVER, in her official capacity as New Mexico Secretary of State, MICHELLE LUJAN GRISHAM, in her official capacity as Governor of New Mexico, HOWIE MORALES, in his official capacity as New Mexico Lieutenant Governor and President of the New Mexico Senate, MIMI STEWART, in her official capacity as President Pro Tempore of the New Mexico Senate, and JAVIER MARTINEZ, in his official capacity as Speaker of the New Mexico House of Representatives,

Defendants.

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**PLAINTIFFS' MOTION TO FILE ANNOTATED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW AT A LENGTH OF 44 PAGES**

Plaintiffs the Republican Party of New Mexico ("RPNM") and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") hereby move, in an abundance of caution, for leave to file their Annotated Findings Of Fact And Conclusions Of Law at a length of 44 pages. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs have asserted a claim that New Mexico's Senate Bill 1 ("SB1") is an egregious, near-perfect partisan gerrymander, in violation of Article II, Section 18 of the New Mexico Constitution.

2. The New Mexico Supreme Court, in affirming this Court's denial of Defendants' Motion To Dismiss Plaintiffs' claim on justiciability grounds, held that

Plaintiffs' partisan-gerrymandering claim was justiciable under Article II, Section 18 of the New Mexico Constitution and "is subject to the three-part test articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*." Am. Order 3, *Grisham v. Van Soelen*, No.S-1-SC-39481 (N.M. Aug. 25, 2023) (citing 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting)) ("Am. Superintending Order"); *see also* Order 3, *Grisham v. Van Soelen*, No.S-1-SC-39481 (N.M. July 5, 2023) ("Superintending Order").

3. As Justice Kagan's *Rucho* dissent explains, a partisan-gerrymandering claim proceeds as follows: "First, the plaintiffs challenging a districting plan must prove that state officials' predominant purpose in drawing a district's lines was to entrench their party in power by diluting the votes of citizens favoring its rival." *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (citations omitted; brackets omitted). "Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by substantially diluting their votes." *Id.* (citation omitted). "And third, if the plaintiffs make those showings, the State must come up with a legitimate, non-partisan justification to save its map." *Id.*

4. The Supreme Court then remanded to this Court to adjudicate Plaintiffs' claim on the merits, including by "assess[ing] whether individual plaintiffs' party-affiliated votes were in fact substantially diluted by the challenged map by comparing objective district-specific data under that map against analogous evidence under the prior congressional map" and "consider[ing] any other evidence relevant to the [ ] application of the [Justice Kagan] test." Am. Superintending Order 4.

5. After the Supreme Court’s remand, this Court entered a Scheduling Order that, as relevant here, ordered all parties to file “annotated Findings of Fact and Conclusions of Law, with supporting affidavits, deposition excerpts and documentary evidence, on or before 09/15/23.” Scheduling Order 2 (July 24, 2023).

6. Contemporaneously with this Motion, Plaintiffs have timely filed their Annotated Findings of Fact and Conclusions of Law (with supporting papers), which is 44 pages in length.

7. Plaintiffs hereby move, in an abundance of caution, for leave to file their Annotated Findings of Fact and Conclusions of Law at this 44-page length.

8. Under this Court’s LR5-206(A), entitled “Motions and exhibits,” “the page limit for briefs [in support of or opposing motions] shall be fifteen (15) pages,” but “[b]riefs filed under Rule 1-056 NMRA [regarding summary-judgment motions] shall not exceed twenty-five (25) pages in length.” Further, “[t]hese page limits may be exceeded with leave of the court.” *Id.*

9. Plaintiffs do not understand LR5-206(A)’s page limits to apply to the parties’ Annotated Findings of Fact and Conclusions of Law, as contemplated by this Court’s Scheduling Order, given that these filings are not briefs in support of any motion—including a motion for summary judgment under Rule 1-056 NMRA. However, in an abundance of caution, Plaintiffs seek leave to file their Annotated Findings of Fact and Conclusions of Law of 44 pages in length, should this Court’s understanding of LR5-206(A) differ from Plaintiffs’ understanding.

10. Granting Plaintiffs' leave to file their Annotated Findings of Fact and Conclusions of Law of 44 pages in length is well justified here.

11. Plaintiffs' partisan-gerrymandering claim raises serious issues, striking at the heart of "the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives," *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting), in violation of the New Mexico Constitution, *see* N.M. Const. art. II, § 18; Am. Superintending Order 3–4.

12. Further, adjudication of this claim requires this Court to consider significant legal and factual issues regarding: (1) Defendants' impermissible partisan intent when enacting SB1; (2) the impermissible partisan effect of SB1; and (3) whether Defendants have a legitimate, non-partisan justification for SB1. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

13. Indeed, this Court set a three-day bench trial to adjudicate the merits of Plaintiffs' claim, powerfully demonstrating the significance of legal and factual issues here. *See* Am. Notice (Sept. 13, 2023).

14. To take one example of the significant legal and factual issues that this Court must address, Justice Kagan explained that a challenger to a partisan-gerrymandered map may establish that map's impermissible partisan effects (element 2 of Justice Kagan's controlling test) by presenting either qualitative evidence about the map and/or sophisticated social-science analysis. *Rucho*, 139 S. Ct. at 2517–18 (Kagan, J., dissenting). The parties here have presented four experts,

each of whom have filed an expert report and given expert depositions, addressing such issues (among others)—and Plaintiffs discuss each of these experts' opinions in their Annotated Findings of Fact and Conclusions of Law.

15. To fully address the significant legal and factual issues of Plaintiffs' claim, for the benefit of the Court, Plaintiffs required 44 pages in their Annotated Findings of Fact and Conclusions of Law—even after striving for appropriate brevity.

16. Finally, Plaintiffs' counsel attempting to confer with Defendants' counsel via email to secure a joint agreement to a 45-page limit for their respective Annotated Findings of Fact and Conclusions of Law. However, as of the time of filing this Motion, Defendants' counsel have not responded to Plaintiffs' counsel's email.

For the foregoing reasons, and in an abundance of caution, Plaintiffs' respectfully request leave to file their Annotated Findings Of Fact And Conclusions Of Law at a length of 44 pages.

Dated: September 15, 2023

MISHA TSEYTLIN\*  
MOLLY S. DIRAGO\*  
KEVIN M. LEROY\*  
TROUTMAN PEPPER  
HAMILTON SANDERS LLP  
227 W. Monroe Street  
Suite 3900  
Chicago, IL 60606  
(608) 999-1240 (MT)  
(312) 759-1926 (MD)  
(312) 759-1938 (KL)  
(312) 759-1939 (fax)  
misha.tseytlin@troutman.com  
molly.dirago@troutman.com  
kevin.leroy@troutman.com

*Attorneys for Plaintiffs Manuel  
Gonzales, Jr., Dinah Vargas, David  
Gallegos, and Timothy Jennings*

*\*Admitted Pro Hac Vice*

Respectfully Submitted,

**HARRISON & HART, LLC**

/s/Carter B. Harrison, IV  
CARTER B. HARRISON, IV  
924 Park Avenue SW, Suite E  
Albuquerque, New Mexico 87102  
(505) 312-4245  
(505) 341-9340 (fax)  
carter@harrisonhartlaw.com

*Attorney for Plaintiffs Republican  
Party Of New Mexico, Bobby and Dee  
Ann Kimbro, and Pearl Garcia*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing will be served on all counsel via the e-filing system.

Dated: September 15, 2023

/s/Carter B. Harrison, IV  
CARTER B. HARRISON, IV  
924 Park Avenue SW, Suite E  
Albuquerque, New Mexico 87102  
(505) 312-4245  
(505) 341-9340 (fax)  
carter@harrisonhartlaw.com