

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.

**PLAINTIFFS' MOTION TO FILE RESPONSE BRIEF TO LEGISLATIVE
DEFENDANTS' ANNOTATED FINDINGS OF FACT AND CONCLUSIONS
OF LAW AT A LENGTH OF 30 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 Response Brief To Legislative Defendants' Annotated Findings Of Fact And Conclusions Of Law at a length of 30 pages. In support of this Motion, Plaintiffs state as follows:

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

2. In affirming this Court’s denial of Defendants’ Motion To Dismiss Plaintiffs’ claim on justiciability grounds, the New Mexico Supreme Court 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 explained in her *Rucho* dissent, a partisan-gerrymandering claim has three steps: “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 Plaintiffs’ claim to this Court with instructions 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. Following the Supreme Court’s remand, this Court entered a Scheduling Order that, as relevant, 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**,” and then to file “rebuttal briefs and responses to the parties’ Findings and Conclusions, if any, with supporting affidavits or documentary evidence by **09/20/23**.” Scheduling Order 2 (July 24, 2023).

6. Plaintiffs and Legislative Defendants filed their respective Annotated Findings Of Fact And Conclusions Of Law (with supporting papers) on September 15, 2023, in accord with this Court’s Scheduling Order.

7. Contemporaneously with this Motion, Plaintiffs have now timely filed a rebuttal brief contemplated by this Court’s Scheduling Order, with supporting papers, titled Response Brief To Legislative Defendants’ Annotated Findings Of Fact And Conclusions Of Law, which rebuttal brief is 30 pages in length.

8. Plaintiffs hereby move, in an abundance of caution, for leave to file their Response Brief To Legislative Defendants’ Annotated Findings Of Fact And Conclusions Of Law at this 30-page length.

9. Pursuant to this Court’s LR5-206(A), titled “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.” Moreover, “[t]hese page limits may be exceeded with leave of the court.” *Id.*

10. Plaintiffs do not understand LR5-206(A)’s page limits to apply to the parties’ rebuttal briefs in support of their respective Annotated Findings Of Fact And Conclusions Of Law, as contemplated by this Court’s Scheduling Order, as these filings are not briefs in support of any motion—including a motion for summary judgment under Rule 1-056 NMRA. But in an abundance of caution, Plaintiffs seek leave to file their Response Brief To Legislative Defendants’ Annotated Findings Of Fact And Conclusions Of Law of 30 pages in length, should this Court’s understanding of LR5-206(A) differ from Plaintiffs’ understanding.

11. Granting Plaintiffs leave to file their Response Brief To Legislative Defendants’ Annotated Findings Of Fact And Conclusions Of Law of 30 pages in length is well justified here.

12. As Plaintiffs explained in their Motion To File Annotated Findings Of Fact And Conclusions Of Law At A Length Of 44 Pages (Sept. 15, 2023), Plaintiffs’ partisan-gerrymandering claim involves weighty and significant issues, involving “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), pursuant to the New Mexico Constitution, *see* N.M. Const. art. II, § 18; Am. Superintending Order 3–4.

13. Moreover, in adjudicating Plaintiffs' partisan-gerrymandering claim, this Court will need to consider serious legal and factual issues regarding: (1) Defendants' impermissible partisan intent when enacting SB1; (2) SB1's impermissible partisan effect; and (3) whether Defendants have a legitimate, non-partisan justification for SB1. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

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

15. To take just one example of the weighty legal and factual issues that this Court must address, Justice Kagan explained that a challenger to a partisan-gerrymandered map may demonstrate 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 offered four experts, each of whom has filed an expert report and given an expert deposition, addressing such issues (among others)—and Plaintiffs discussed each of these experts' opinions in their Annotated Findings Of Fact And Conclusions Of Law.

16. Legislative Defendants' Annotated Findings Of Fact And Conclusions Of Law spans 42 substantive pages and addresses many of the weighty legal and factual issues that Plaintiffs' partisan-gerrymandering claim raises. Thus, for example, Legislative Defendants recite substantial factual material related to redistricting in New Mexico in general and the process to draw SB1 in particular, *see* Legislative

Defendants' Annotated Findings Of Fact And Conclusions Of Law 1–32 (Sept. 15, 2023), and they present legal arguments on each of the three essential elements of Plaintiffs' partisan-gerrymandering claim, drawn from Justice Kagan's controlling *Rucho* dissent, *id.* at 33–42.

17. Even after striving for appropriate brevity, Plaintiffs required 30 pages in their Response Brief To Legislative Defendants' Annotated Findings Of Fact And Conclusions Of Law to fully respond to the legal and factual issues that Legislative Defendants addressed in their own Annotated Findings Of Fact And Conclusions Of Law, for the benefit of the Court.

18. Finally, Plaintiffs' counsel attempted to confer with Legislative Defendants' counsel via email to secure a joint agreement to a 30-page limit for their respective rebuttal briefs. However, as of the time of filing this Motion, Legislative Defendants' counsel has not responded to Plaintiffs' counsel's email.

For these reasons, and in an abundance of caution, Plaintiffs respectfully request leave to file their Response Brief To Legislative Defendants' Annotated Findings Of Fact And Conclusions Of Law at a length of 30 pages.

Dated: September 20, 2023

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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 20, 2023

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