

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' OPPOSITION TO EXECUTIVE DEFENDANTS'**  
**EMERGENCY MOTION TO STAY TRIAL**

Plaintiffs the Republican Party of New Mexico and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") hereby file this Opposition To Executive Defendants' Emergency Motion For Stay, which Motion requests the extraordinary relief of a stay of the trial set to begin *tomorrow* in this matter. Exec. Defs. Emergency Mot. For Stay 1 (Sept. 26, 2023) (hereinafter "Exec.Mot."). In support of this Opposition, Plaintiffs state as follows:

1. On July 28, 2023, Executive Defendants moved this Court for an order dismissing them from this lawsuit under Rule 1-012(C) of the New Mexico Rules of Civil Procedure for the District Courts, claiming that Plaintiffs lacked standing to

sue Executive Defendants and that Executive Defendants’ asserted legislative immunity wholly bars Plaintiffs’ partisan-gerrymandering claim. *See* Mot. To Dismiss Exec. Defs. 1, 6–10 (July 28, 2023).

2. Plaintiffs opposed Executive Defendants’ Motion To Dismiss, explaining that Executive Defendants’ arguments were incorrect. Pls. Resp. In Opp. To Exec. Defs. Mot. To Dismiss 4–5 (Aug. 4, 2023). As Plaintiffs explained, the Governor and Lieutenant Governor have historically participated as named parties in redistricting litigation in New Mexico. *Id.* Additionally, the Governor’s presence may be necessary to afford Plaintiffs complete relief, as the Governor may have to call a special session of the Legislature or issue a special message for the regular legislative session before the Legislature could adopt any remedial map. *Id.*; *see generally id.* at 2–3, 5–6 (raising other arguments against Executive Defendants’ Motion To Dismiss).

3. On September 22, 2023, this Court entered its Order Denying Motion To Dismiss Executive Defendants (Sept. 22, 2023) (hereinafter “Order”). The Court explained that it “reviewed the pleadings,” was “sufficiently advised,” and concluded that it was “unpersuaded by the Executive Defendants’ arguments regarding standing and legislative immunity.” *Id.* Thus, the Court denied Executive Defendants’ Motion To Dismiss. *Id.*

4. Today, Executive Defendants have filed an Emergency Motion For Stay, requesting the extraordinary remedy of staying the trial in this matter, Exec.Mot.1, which is set to begin *tomorrow*, *see* Notice of Bench Trial (Aug. 4, 2023).

5. This Court should deny Executive Defendants’ Motion For Stay and proceed with the trial as scheduled, including by commencing the trial *tomorrow*.

6. To begin, Executive Defendants’ have no likelihood of success on the merits of their challenge to this Court’s Order. This Court has already found Executive Defendants’ merits arguments to be unpersuasive, Order at 1, and nothing that Executive Defendants state in their Motion itself or in their attached emergency filing with the New Mexico Supreme Court justifies a different conclusion.

7. Further, this Court granting a stay of the trial would severely and unfairly prejudice all trial witnesses, this Court, as well as Plaintiffs and their counsel, which alone is sufficient to deny Executive Defendants’ stay request. Specifically, trial witnesses have already made plans to attend the scheduled trial in this matter—set to begin *tomorrow*—requiring obvious scheduling inconveniences and the expenditure of their resources. Further, this Court too has invested substantial time in preparing for this immediately upcoming trial, while also reserving three days of the Court’s busy calendar for this proceeding. Finally, Plaintiffs and their counsel are already en route to the Fifth Judicial District for tomorrow’s trial, and those travel arrangements of course required significant investments of time and resources—including because certain of Plaintiffs’ counsel are traveling from out of State.

8. Additionally, the Supreme Court has ordered this Court to fully resolve Plaintiffs’ partisan-gerrymandering claim on the merits “**no later than October 6, 2023**,” Am. Order 3, *Grisham v. Van Soelen*, No.S-1-SC-39481 (N.M. Aug. 25, 2023)

(hereinafter “Am. Superintending Order”), thus any delay in commencing trial could also unfairly prejudice Plaintiffs by limiting their ability both to present in the trial setting their affirmative case to the Court and to respond to Legislative Defendants’ defensive case, in turn.

9. Executive Defendants, for their part, will not suffer prejudice if this Court proceeds with the trial in this matter as scheduled—and that lack of prejudice provides independent grounds for this Court to deny Executive Defendants’ Motion.

10. To begin, this Court’s three-day trial in this matter does not burden Executive Defendants in any material way. Executive Defendants have already chosen not to meaningfully participate in the trial before this Court, presumably due to their own assessment of the trial’s ultimate impact on Executive Defendants’ interests. Thus, Executive Defendants will not suffer the “burdens of litigation” from having “to stand trial” if this Court proceeds with the trial as scheduled—which is notably unlike the situation that may arise where a trial court denies a state official’s qualified-immunity defense. *See* Exec.Mot.2 (quoting *Chavez v. Bd. of Cnty. Com’rs*, 2001-NMCA-065, ¶ 10, 130 N.M. 753, 31 P.3d 1027).

11. Indeed, further demonstrating the complete lack of prejudice in this case, Executive Defendants’ presence here is an entirely collateral issue to the merits of Plaintiffs’ partisan-gerrymandering claim, which collateral issue the New Mexico Supreme Court may fully review *before* Executive Defendants would have to take any action pursuant to any judgment from this Court. As Plaintiffs explained in their Opposition To Executive Defendants’ Motion To Dismiss, they opposed Executive

Defendants' dismissal primarily because the presence of the Governor may be necessary—as a formal matter—for Plaintiffs to obtain complete relief. Pls. Resp. In Opp. To Exec. Defs. Mot. To Dismiss 4–5. That is because, for the Legislature to adopt a remedial map to replace Senate Bill 1—if this Court chooses that remedial approach—the Governor may have to call a special legislative session or issue a special message for the regular legislative session. *Id.* Yet, even if this Court did enter a final judgment on the merits in Plaintiffs' favor that does require such formal action from the Governor, the New Mexico Supreme Court is poised to promptly review that judgment *before* the Governor would have to take any such formal action, as the Supreme Court's Amended Superintending Order in this case shows. Am. Superintending Order 3–5. Thus, this Court holding the trial as scheduled could not possibly cause Executive Defendants any prejudice, in light of the adequate and available appellate avenue to the New Mexico Supreme Court in this case. *See id.*

12. This Court should similarly reject Executive Defendants' complaints that monitoring this trial will somehow impair their defenses in other litigation in which they are involved. *See* Exec.Mot.2–3. Again, this Court's scheduled trial imposed no material litigation burdens on Executive Defendants, thus counsel for Executive Defendants' decision to monitor the trial would likewise impose no material burden upon them. In any event, as explained above, trial witnesses, this Court, and Plaintiffs and their counsel would suffer severe prejudice from a stay of this Court's trial, which prejudice significantly outweighs whatever inconvenience Executive Defendants' counsel may have from that trial proceeding as scheduled.

13. Finally, the New Mexico Supreme Court recently denied Executive Defendants' request to stay the trial in this case, which request Executive Defendants had presented to the Supreme Court in the emergency filing attached to their Motion here. Order 2, *Grisham v. Van Soelen*, No.S-1-SC-40121 (N.M. Sept. 26, 2023). In denying Executive Defendants' request, the Supreme Court ordered that "the trial shall proceed as scheduled." *Id.* This also provides an independent reason for this Court to deny Executive Defendants' Motion here.

For the foregoing reasons, this Court should deny Executive Defendants' Emergency Motion For Stay.

Dated: September 26, 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

*Attorneys for Plaintiffs Republican  
Party Of New Mexico, David Gallegos,  
Dinah Vargas, Bobby and Dee Ann  
Kimbrow, 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 26, 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