

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' REPLY IN SUPPORT OF THEIR MOTION TO  
STRIKE PROPOSED INTERVENOR THE DEMOCRATIC PARTY  
OF NEW MEXICO'S PROPOSED WITNESS LIST**

Plaintiffs the Republican Party of New Mexico ("RPNM") and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") hereby file this Reply in support of their Motion To Strike the Proposed Witness List filed by Proposed Intervenor the Democratic Party of New Mexico ("DPNM").

As Plaintiffs explained in their Motion, Rule 1-012(F) of the New Mexico Rules of Civil Procedure for the District Courts provides that this Court may strike improper pleadings, and striking such papers is especially justified where they are "prejudicial to the substantial rights of the moving party." *Roberts v. Sparks*, 1982-

NMCA-171, ¶¶ 11–12, 99 N.M. 152, 655 P.2d 539 (emphasis omitted; citation omitted); *Peoples v. Peoples*, 1963-NMSC-067, ¶ 18, 72 N.M. 64, 380 P.2d 513; Mot. To Strike 1–2. Here, DPNM’s Proposed Witness List is improper and “prejudicial” to Plaintiffs’ “substantial rights,” thus this Court should strike it. *Roberts*, 1982-NMCA-171, ¶ 12 (citation omitted); *Peoples*, 1963-NMSC-067, ¶ 18; Mot. To Strike 2–4. As Plaintiffs explained in their Motion, this Court has not granted DPNM party status, thus it has no right to file any document in this case, including its Proposed Witness List. Mot. To Strike 3. Additionally, DPNM’s Proposed Witness List is prejudicial to Plaintiffs’ substantial rights, as it adds an additional defense-side expert to the three experts already named by Legislative Defendants—all of whom have now filed expert reports to which Plaintiffs must respond, including at the upcoming trial. Mot. To Strike 3–4. That additional expert-report-response burden—for an expert report that Plaintiffs first filed this morning, after they failed to attach the actual proposed expert report of Dr. Christopher S. Warshaw in their filing from last Friday, *see* DPNM’s Am. [Proposed] Expert Disclosure 1 (Aug. 28, 2023)—is especially significant here, given the extraordinarily truncated schedule in this case, Mot. To Strike 3–4.

DPNM’s Response In Opposition To Plaintiffs’ Motion To Strike (“Opp.”) misunderstands the prejudice that DPNM’s Proposed Witness List imposes here.

To begin, this Court has ample authority to strike the Proposed Witness List, notwithstanding DPNM’s brief argument to the contrary. Rule 1-012(F) provides that this Court “may order stricken from any pleading any . . . redundant, immaterial, . . . or scandalous matter,” Rule 1-012(F), and striking such improper filings is especially

appropriate where those filings cause prejudice to substantial rights, Mot. To Strike 1–2 (citing *Roberts*, 1982-NMCA-171, ¶¶ 11–12; *Peoples*, 1963-NMSC-067, ¶ 18). There is no reason to limit this Court’s authority under Rule 1-012(F) to pleadings like a complaint, an answer, or the like, as DPNM asserts, Opp.2, especially when DPNM itself analogizes its Proposed Witness List to a proposed “pleading” that must accompany motions to intervene under Rule 1-024(C), Opp.2–3. In any event, this Court has the “[i]nherent judicial power . . . to control its docket and the proceedings before it,” which includes the authority to issue orders “designed to regulate the court’s docket, promote judicial efficiency, and deter frivolous filings.” *In re Jade G.*, 2001-NMCA-058, ¶¶ 27–28, 130 N.M. 687, 30 P.3d 376. That inherent judicial power encompasses the authority to strike DPNM’s improper and prejudicial Proposed Witness List, even apart from Rule 1-012(F).

DPNM claims that its Proposed Witness List causes no “prejudice to Plaintiffs,” Opp.3, because it “is just that—a *proposed* list,” Opp.2. Yet, this Proposed Witness List works prejudice to Plaintiffs, as DPNM’s filing—including now their filing of the actual expert report this morning, *see supra* p.2—causes Plaintiffs uncertainty as to whether they are responding to a fourth expert on the other side of this case, on an extremely abbreviated schedule.

Finally, citing two cases, DPNM asserts that submitting proposed pleadings like its Proposed Witness List is a “common practice” that “avoid[s] delay” in the event that a pending motion to intervene is granted. Opp.2–3. But the first example occurred in the very early stages of the litigation, *see* Opp.2 (citing proposed

opposition to preliminary-injunction motion in *Cawthorn v. Circosta*, No. 5:22-cv-0050-M, (E.D.N.C. Feb. 7, 2022), ECF No. 27-1, filed less than one month after the filing of the January 31, 2022 complaint)), which is unlike the case here, where this case was filed over 18 months, and the parties are now approaching trial. The second example cited by DPNM, Opp.2 (citing proposed summary judgment filings in *Bost v. Ill. State Bd. of Elections*, No. 1:22-cv-2754 (N.D. Ill. Aug. 22, 2022), ECF Nos.44, 45), occurred in a case where the court denied intervention to the Democratic Party of Illinois in part because it “would likely further impede the timely resolution of the action” in an election-related case that must be resolved “quickly,” Mem. Op. & Order 16, *Bost v. Ill. State Bd. of Elections*, No.1:22-cv-2754 (N.D. Ill. Oct. 11, 2022), ECF No.56 (denying permissive intervention for those reasons, while denying intervention as of right based on adequacy-of-representation grounds).

This Court should strike DPNM’s Proposed Witness List, while also making clear that Plaintiffs need not respond to the proposed expert report that DPNM filed today.

Dated: August 28, 2023

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Respectfully Submitted,

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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: August 28, 2023

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