

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' REPLY IN SUPPORT OF THEIR EMERGENCY MOTION TO
COMPEL DEPOSITIONS AND/OR APPOINT A SPECIAL MASTER**

Plaintiffs the Republican Party of New Mexico and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") hereby file this Reply in support of their Emergency Motion To Compel Depositions And/Or Appoint A Special Master.

As Plaintiffs explained in their Emergency Motion, they "need the Court's prompt intervention" in the pending discovery disputes if Plaintiffs are to obtain any discovery from Legislative Defendants, in compliance "with the Supreme Court's order." Emergency Mot. Of Pls.' To Compel Deps. And/Or Appoint A Special Master 3 (Aug. 3, 2023). Specifically, Plaintiffs need this Court's action in light of the fact that they are entitled under law to all "evidence relevant" to "the three-part test

articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*, 139 S. Ct. 2484, 2516 (2019),” Amended Order (“Superintending Order”), at 3–4, *Grisham v. Van Soelen*, No. S-1-SC-39481 (N.M. Aug. 25, 2023), not just the currently available public evidence. Pursuant to this Court’s Scheduling Order, as relevant here, the parties must complete all discovery in *the next eight days, by September 13, 2023*. Scheduling Order 2 (July 24, 2023). Plaintiffs timely served discovery requests and deposition notices upon Legislative Defendants to uncover highly relevant facts regarding their impermissible partisan intent, *see Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting), and those requests are standard fare in partisan-gerrymandering litigation, including under Justice Kagan’s test in *Rucho*, Pls.’ Mot. To Compel Discovery 7–8, 11 (Aug. 14, 2023); Pls.’ Combined Opp. To Mots. To Quash at 3, 5–7 (Aug. 17, 2023). Yet, to date, Legislative Defendants have refused to turn over *any* responsive material or sit for *any* depositions, including—remarkably—refusing to provide documents or to answer questions as to Legislative Defendants’ communications with third parties outside of the legislative branch, such as special-interest groups seeking advantage for the Democratic Party or political operatives for Democratic Party candidates whom Senate Bill 1’s partisan gerrymander benefits. *See generally* Pls.’ Mot. To Compel Discovery; Pls.’ Combined Opp. To Mots. To Quash.

Legislative Defendants’ continued obstructionist conduct, including in their Response To Plaintiffs’ Emergency Motion (“Resp”) (Aug. 21, 2023), threatens to deprive Plaintiffs of unquestionably relevant discovery in this important partisan-gerrymandering case. So, for example, Legislative Defendants continue to press in

their Response their claim that legislative privilege provides them with “absolute” protection from answering any of Plaintiffs’ discovery requests, Resp.3, although no such absolute protection exists under the New Mexico Constitution, Pls.’ Mot. To Compel Discovery 13; Pls.’ Combined Opp. To Mots. To Quash 4–5. Further, Legislative Defendants claim that an advisory admonition regarding adverse inferences is not even appropriate here, Resp.3, but Legislative Defendants’ overly broad, unjustified claims of legislative privilege—coupled with their refusal to engage with Plaintiffs’ offer to narrow appropriately their requests—merit meaningful relief from the Court here. In all, given the impending September 13 deadline for the close of discovery—as well as the fast-approaching September 27–29 trial dates and the October 6, 2023 date for final judgment—Plaintiffs very respectfully urge this Court to provide some resolution to these issues, so that Plaintiffs may have the fair opportunity to present their case that the Supreme Court envisioned in its Superintending Order and that this Court contemplated in its Scheduling Order.

Dated: September 5, 2023

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed and served via the State of New Mexico E-File & Serve System on September 5, 2023, which caused service upon all parties.

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