

**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 TOULOUSE 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.

**LEGISLATIVE DEFENDANTS' MOTION TO STRIKE OR IN THE ALTERNATIVE
MOTION IN LIMINE RELATING TO CERTAIN EVIDENCE PROFFERED BY
PLAINTIFFS**

COME NOW 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 (the "Legislative Defendants") and file this *Motion to Strike or Motion in Limine* regarding certain evidence proffered by the Plaintiffs. As grounds therefore, Legislative Defendants would show this Court as follows:

1. The Court's Pretrial Scheduling Order provided that on or before September 15, 2023, the parties were to file their Annotated Findings of Fact and Conclusions of Law with supporting evidence, consisting of deposition excerpts, affidavits, expert reports, and the like.

2. Implicit, if not explicit, in the Court’s Order was the presupposition that the evidence submitted would be admissible under the New Mexico Rules of Evidence. *See*, Rule 11-402 NMRA (relevant evidence generally admissible unless proscribed by Constitution, a statute or the Rules of Evidence).

3. A number of Exhibits attached to Plaintiffs’ *Annotated Findings of Fact and Conclusions of Law* are not admissible evidence, either due to the evidence not being authenticated, not relevant, or—more glaringly—clearly prohibited under the hearsay rule. *See*, Rule 11-801, *et. seq.* NMRA 2023.

4. Specifically, the Legislative Defendants challenge the following items of evidence and identified defects, as submitted to the Court by Plaintiffs:

- A. **Exhibit 19:** Exhibit 19 is entitled “Redistricting Report Card”. It appears to be from an entity called the “Gerrymandering Project”. It is not authenticated. *See*, Rule 11-901 NMRA. It also contains hearsay for which there is no exception, *see*, Rule 11-801 NMRA, as well as opinion evidence proffered by a party not identified as an expert on Plaintiffs’ witness list nor accompanied by a report or disclosures. Rule 11-702 NMRA, Scheduling Order at ¶3.
- B. **Exhibit 20:** Exhibit 20 is apparently a news article from KUNM News, dated August 17, 2023. It is merely a news article concerning issues relating to the instant litigation. There is no authentication. *See*, Rule 11-901 NMRA. It is not relevant, *see* Rule 11-401 NMRA. It also constitutes hearsay, *see* Rule 11-801 NMRA.
- C. **Exhibit 22:** Exhibit 22 is an article relating to a congressional race in south Texas. It has no relevancy, *see*, Rule 11-401 NMRA, is not authenticated, *see*, Rule 11-901 NMRA, and is also hearsay. *See*, Rule 11-801 NMRA.

- D. **Exhibit 23:** Exhibit 23 is a download from some website, perhaps “Ballotpedia.” It relates to results from congressional races nationwide in 2022. There is no authentication. *See*, Rule 11-901 NMRA. It is not relevant. *See* Rule 11-401 NMRA. It also constitutes hearsay. *See*, *Rule* 11-801 NMRA.
- E. **Exhibit 24:** Exhibit 24 is represented to be a “Tweet” from somebody named “Dave Wasserman”. There is no authentication of the Tweet. *See*, *Rule* 11-901 NMRA. In addition, the Tweet itself is hearsay as to which there is no exception under the hearsay rules. *See* Rule 11-801, et seq. NMRA.
- F. **Exhibit 30:** Exhibit 30 is alleged to be election data from a 2014 election in Maryland. It is not authenticated. *See*, Rule 11-901 NMRA. It also contains hearsay for which there is no exception. *See*, Rule 11-801 NMRA.
- G. **Exhibit 31:** Exhibit 31 purports to be a printout from an article allegedly carried on December 11, 2021 by the Daily Post from Los Alamos County. It is not authenticated. *See*, Rule 11-901 NMRA. It also constitutes hearsay for which there is no exception. *See* 11-801 NRMA.
- H. **Exhibit 33:** Exhibit 33 is an article relating to congressional races in Ohio. There is no authentication. *See*, Rule 11-901 NMRA. It is not relevant, *see* Rule 11-401 NMRA. It also constitutes hearsay, *see Rule* 11-801 NMRA.

The exhibits objected to by the Legislative Defendants are a hodge-podge of miscellaneous items that are unauthenticated and mostly hearsay. Accordingly, this Court should enter its Order striking those items of evidence and they should be given no consideration in the Court’s determination of the issues in this matter.

WHEREFORE, the Legislative Defendants request that this Court strike Plaintiffs' Exhibits 19-20, 22-24, 30-31 and 33 appended to Plaintiffs' September 15, 2023 *Annotated Findings of Fact and Conclusions of Law*, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

PEIFER, HANSON, MULLINS & BAKER, P.A.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was submitted for e-filing and service through the District Court's "Odyssey File & Serve" filing system this 20th day of September 2023, which caused all counsel of record to be served by electronic means or as otherwise stated, as more fully reflected on the Notification of Service.

PEIFER, HANSON, MULLINS & BAKER, P.A.

By: /s/ Sara N. Sanchez
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