

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 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 move to strike the Proposed Witness List filed by Proposed Intervenor the Democratic Party of New Mexico ("DPNM"), filed with this Court on August 10, 2023. *See* Rule 1-012(F).

Under Rule 1-012(F) of the New Mexico Rules of Civil Procedure for the District Courts, this Court may strike improper pleadings upon motion from a party, and granting a motion to strike is especially justified where an improper pleading is "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.

Here, this Court should strike DPNM’s entirely improper Proposed Witness List, including because it is “prejudicial” to Plaintiffs’ “substantial rights.” *Roberts*, 1982-NMCA-171, ¶ 12 (citation omitted); *Peoples*, 1963-NMSC-067, ¶ 18.

This Court has adopted an “extraordinarily truncated” schedule in this case, Scheduling Order 3, so that it may enter final judgment by October 1, 2023, per the New Mexico Supreme Court’s Superintending Order, Order 3, *Grisham v. Van Soelen*, No.S-1SC-39481 (N.M. July 5, 2023). In particular, Plaintiffs had to identify lay and expert witnesses by August 1 and file their expert report by August 11; Defendants had to identify lay and expert witnesses by August 10 and must file their expert reports by August 25; accelerated discovery closes September 13; and competing Findings Of Fact and Conclusions Of Law are due September 15 and September 20. Scheduling Order 1–2.

Consistent with that expedited schedule, Plaintiffs timely identified one supporting expert witness, Sean P. Trende, and filed his expert report with the Court. Pls. Witness List (Aug. 1, 2023); Expert Report of Sean P. Trende (Aug. 11, 2023). Legislative Defendants then identified *three* expert witnesses of their own—Brian Sanderoff, Jowei Chen, and Kimball Brace—and presumably will submit one report for each by their August 25 deadline. Leg. Defs. Witness List (Aug. 10, 2023). Then, in the coming weeks, Plaintiffs must defend Legislative Defendants’ deposition of Sean P. Trende and prepare for and depose all three of Legislative Defendants’ expert

witnesses—all while completing the accelerated fact discovery in this case and meeting other case-related deadlines. Finally, on August 10, 2023, Proposed Intervenor DPNM—who has not been granted intervention by this Court, and so has no right to file here—purported to file a Proposed Witness List with the Court, identifying Christopher S. Warshaw as their expert witness.

Proposed Intervenor DPNM’s Proposed Witness List is improper and prejudicial to Plaintiffs’ substantial rights, thus this Court should strike it. *Roberts*, 1982-NMCA-171, ¶ 12; *Peoples*, 1963-NMSC-067, ¶ 18.

To begin, as noted, this Court has not granted DPNM’s pending Motion To Intervene, thus it is not a party to this case and so has no right to file a witness list or any other pleading with the Court. See Scheduling Order 1 (providing that “Plaintiffs” and “Defendants” shall file witness lists). That is reason enough to strike DPNM’s Proposed Witness List in full, as it is an improper pleading from a non-party. See Rule 1-012(F).

Further, DPNM’s Proposed Witness List is severely prejudicial to the substantial rights of Plaintiffs in this case, *Roberts*, 1982-NMCA-171, ¶ 12; *Peoples*, 1963-NMSC-067, ¶ 18, for the same reasons Plaintiffs identified in their Opposition To The Motion To Intervene Of DPNM (Aug. 1, 2023). As Plaintiffs explained, this Court’s extraordinarily truncated schedule in this case imposes a significant burden on all the parties, particularly with respect to the sophisticated expert-witness testimony and expert-witness reports that are necessary to adjudicate Plaintiffs’ partisan-gerrymandering claim. *Id.* at 8–9. Indeed, within this already fast-paced

schedule, Plaintiffs must prepare to respond to *three* separate experts from Legislative Defendants, each of whom is likely to file a lengthy expert report with highly technical statistical analyses purporting to show that Senate Bill 1 is not an egregious partisan gerrymander. Yet, DPNM would further add to Plaintiffs' heavy litigation burden with an *additional* expert—making the expert-witness count 4-1 in Defendants' favor, rather than the already lopsided 3-1—whom Plaintiffs would obviously also have to respond to. That significant, added burden from a non-party, coming at the eleventh hour in an “extraordinary truncated” case, Scheduling Order 3, is obviously “prejudicial to” Plaintiffs' “substantial rights” here, *Roberts*, 1982-NMCA-171, ¶ 12 (citation omitted); *Peoples*, 1963-NMSC-067, ¶ 18. Accordingly, this Court should strike Proposed Intervenor DPNM's Proposed Witness List.

Dated: August 17, 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: August 17, 2023

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