

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

REPUBLICAN PART 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.

SCHEDULING ORDER

Pursuant to Rule 1-016 NMRA, the court enters the following scheduling order:

1. Plaintiffs shall file with the court a list of all lay witnesses and a separate list of all expert witnesses who may be called to testify via affidavit, deposition or at trial by 08/01/23.
2. Defendants shall file with the court a list of all lay and a separate list of all expert witnesses who may be called to testify via affidavit, deposition, or at trial, if any, by 08/10/23.
3. Plaintiffs shall file with the court an expert report complying with Fed. R. Civ. P. 26(a)(2)(B)(i)-(vi) for all experts who have been retained or specially employed to provide expert testimony, by 8/11/23.
4. Plaintiffs shall file any motion to compel discovery/testimony that was withheld based on a claim of legislative privilege — defined here broadly to include any privilege grounded in Article IV, § 13 of the New Mexico Constitution, or otherwise arising from the privilege-holder's or -asserter's role in the Legislature or involvement with the legislative process — by 8/14/23. Defendants shall respond to such motion within 7 calendar days, and Plaintiffs

shall reply to that response within 3 calendar days.

5. The parties shall file all briefs and motions directed to standing, if any, on or before 08/10/23, with all rebuttal briefs or responses to motions directed to standing filed on or before 08/16/23.
6. Defendants shall file with the court an expert report complying with Fed. R. Civ. P. 26(a)(2)(B)(i)-(vi) for all experts who have been retained or specially employed to provide expert testimony by 8/25/23.
7. The court may, in its discretion, set a hearing on any motion(s) to compel, including regarding legislative privilege, and will endeavor to issue an order or other guidance to the parties on its resolution of the dispute(s) by 09/06/23. The parties should be prepared to provide any discovery or deposition testimony so compelled by the end of discovery.
8. Discovery shall be completed by 09/13/23. Parties shall seek discovery sufficiently before this date so that persons responding to discovery reasonably may comply with discovery requests prior to the deadline.
9. The case will be submitted by deposition, affidavit and documentary evidence. The parties shall file simultaneous annotated Findings of Fact and Conclusions of Law, with supporting affidavits, deposition excerpts and documentary evidence, on or before 09/15/23.
10. The parties shall file rebuttal briefs and responses to the parties' Findings and Conclusions, if any, with supporting affidavits or documentary evidence by 09/20/23.
11. The court may, in its discretion, set a hearing after 09/20/23 and before 10/01/23, in which it will hear argument, expert testimony, or any other evidence the court desire to see live. The court will inform the parties in its notice of hearing what evidence, if any, is to be permitted.
12. The Court shall, in accordance with the Order from the Supreme Court entered in this matter on July 5, 2023, issue its decision on or before 10/01/23.

The Court also orders, in light of the truncated timeline of this case, the following modifications to the normal practice:

1. Any claim of legislative privilege asserted in response to a discovery request, notice, or subpoena *duces tecum* under Rules 30(B)(6), 33, 34, 36, or 45 of the New Mexico Rules of Civil Procedure, shall be claimed in writing with the specificity required by Rule 26(B)(7) within 10 calendar days of the service of the request, notice, or subpoena.
2. All documents filed and/or served shall be promptly served by email on all counsel of record, in addition to filing/service through Odyssey. Rule 1-006(C) shall not apply in this case.

3. The expert work-product protections of Fed. R. Civ. P. 26(b)(4)(A)-(C) shall apply to all draft reports and communications between each side's attorneys and its primary, report-writing expert witness.
4. Given the extraordinarily truncated timeline of this case and the number of counsel involved, all counsel must be correspondingly extremely flexible regarding the scheduling of depositions. Witnesses being produced by counsel for a party should be made available for at least one date within two weeks of the request absent agreement or specifically described good cause; when a witness is not being produced by counsel for a party, if the subpoenaing/deposition-taking counsel provides at least three dates of availability to opposing counsel, the deposition may be taken on the date objected to by counsel for the fewest parties. No proposed date should be rejected due to the unavailability of lawyers when at least one lawyer is available (including to attend remotely) for Plaintiffs and one for any Defendant. Counsel taking depositions should make telephonic appearance possible even for in-person depositions unless it is impracticable, and all recordings of depositions should be produced promptly to any counsel who requests it as soon as the recording is available.

By 
Fred Van Soelen, District Judge

Submitted by:


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