

**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 DEANN
KIMBRO, and PEARL GARCIA,

Plaintiffs,

v.

Cause No. D-506-CV-2022-00041

MAGGIE TOULOUSE OLIVER, as New
Mexico Secretary of State, MICHELLE
LUJAN GRISHAM as Governor of New Mexico
Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART as
President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ, as Speaker
of the House of Representatives,

Defendants.

MOTION TO QUASH SUBPOENA

COMES NOW, Kyra Ellis-Moore, by and through counsel, F. Michael Hart, Kelly
Stout Sanchez & Julio C. Romero (Martinez, Hart, Sanchez & Romero, P.C.), and for her
Motion to Quash Subpoena hereby states:

**I. PLAINTIFFS' SUBPOENA TO NON-PARTY KYRA ELLIS-MOORE
IS INCONSISTENT WITH THE DISCOVERY AUTHORIZED BY THE NEW
MEXICO SUPREME COURT.**

As has been argued by Defendants in their Motions to Quash Subpoenas, the New Mexico
Supreme Court set forth the scope and breadth of permissible discovery on the issues raised by
the Plaintiffs. In its July 5, 2023 order, the Supreme Court identified the allowable discovery in the
district court:

In evaluating the degree of partisan gerrymandering in this case, if any, the district court

shall consider and address evidence comparing the relevant congressional district's voter registration percentage/data, regarding the individual plaintiffs' party affiliation under the challenged congressional maps, as well as the same source of data under the prior maps. The district court shall also consider any other evidence relevant to the district court's application of the [three-part test articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*].

Order; July 5, 2023, *Grisham (et al.) v. Republican Party (et al.)* NO. S-1-SC-39481 ¶ 7.

The subpoena served on non-party Kyra Ellis-Moore demands that she produce potentially thousands of documents, emails, papers, etc. that she either sent or received in communications with ten (10) different individuals that “relate to the subject matter of redistricting in New Mexico”. The subpoena requires that any such materials be collected and delivered by August 16, 2023. Ms. Ellis-Moore is a campaign worker for U.S. House of Representatives Congresswoman Teresa Leger Fernandez. The redistricting decisions at issue in this case were entirely conducted by New Mexico state legislators. As a U.S. Congresswoman, Representative Leger Fernandez and her campaign staff had no authority in the decisions. Demanding that the elected official's staff mine through countless email exchanges with other elected officials without any focus, and knowing this staff person had no role in any of the redistricting decisions is inconsistent with the Supreme Court order. The subpoena should be quashed.

The Subpoena

The subpoena to non-party Ellis-Moore demands that she:

permit inspection of the following described books, papers, documents or tangible things:

All emails and text messages (including those in your personal, work, and/or campaign email account(s) and/or cell phone(s)) and other written communications (including hardcopy letters and memos, and messages sent through Facebook, Microsoft Teams, WhatsApp, Kik, etc.) that were sent by or to you in the year 2021 and that either:

- (1) were between you and any one or more of the following individuals (regardless of whether other individuals were also on the distribution list): Joseph Cervantes, Brian Egolf, Kyra Ellis-Moore, Dominic Gabella, Daniel Ivy-Soto, Loanne Leith, Georgene Louis, Melanie Stansbury, Mimi Stewart, or Peter Wirth, or any person you know to have been specifically handling congressional-redistricting issues on behalf of any of the foregoing individuals; and/or
- (2) relate to the subject of congressional redistricting in New Mexico and/or contain one or more of the following non-case-sensitive search terms: "Concept H", "People's Map," "Concept E", "S.B. 1", "Senate Bill 1", or "Redistricting Committee".

The sheer volume of the materials demanded by the subpoena is overwhelming. Plaintiffs seek communications “between you and *any one or more* of the following individuals.” Leaving aside for the moment that it is impossible to discern what the Plaintiffs mean by “any one or more” individuals, and whether Ms. Ellis-Moore is requested to guess who the “more” individuals might be, the subpoena does not limit the context or content of the communications sought in paragraph (1) above. The term “or” is disjunctive, and separates the list of individuals identified in paragraph (1) from those persons “you know to have been specifically handling congressional redistricting issues . . .” Therefore, the subpoena, on its face, seeks all communications of any type between Ms. Ellis-Moore and the listed individuals. The Supreme Court clearly did not contemplate allowing this extent of discovery untethered to the matters at issue.

The subpoena inexplicitly asks Ms. Ellis-Moore to produce all communications she had had *with herself*. The list of persons with whom Plaintiffs are inquiring about communications

identifies, “Joseph Cervantes, Brian Egolf, *Kyra Ellis-Moore*, Dominic Gabello, Daniel Ivey-Soto. . .” Again, the Supreme Court Order cannot be read to tolerate abstract and nonsensical discovery.

Paragraph (2) of the subpoena documents Plaintiffs demand be produced from this non-party campaign worker only deepens the confusion, and further illuminates the overly burdensome nature of the subpoena. The Plaintiffs demand Ms. Ellis-Moore initially identify anything that “relates to the subject of redistricting in New Mexico.” On its face the subpoena demands production of anything that in any way “relates to” redistricting. Do Plaintiffs believe the litigation entitles them to require a non-party citizen with absolutely no role in the redistricting process to spend the time and effort necessary to mine through all of her materials to find anything that “relates” to redistricting?

Under any rational analysis, the subpoena to Ms. Ellis-Moore is overly broad, unduly burdensome and wholly unreasonable in light of the Supreme Court Order, and particularly when the Court considers the time allowed for compliance. Rule 1-045(C)(l) NMRA (“[o]n timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow a reasonable time for compliance; or (iv) subjects a person to undue burden.”); *see also* Rule 1-026(C) NMRA (“[u]pon motion by any party or interested person for good cause, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. . . .”)

II. THE COURT SHOULD REQUIRE PLAINTIFFS TO PROPOUND DISCOVERY THAT GOES TO THE ISSUES AT HAND AND IS REALISTIC IN THE TIMEFRAME SET BY THE SUPREME COURT.

As has been raised by other parties and non-parties who have likewise been served overly broad and unduly burdensome subpoenas, the Plaintiffs should be ordered to narrow

their discovery requests to enable a meaningful response and/or a Motion for Protective Order to be grounded in the actual materials sought. Presently, Ms. Ellis-Moore cannot determine what privileges may apply to materials in her possession because the subpoena served on her is so broad, and so confused she cannot yet identify what Plaintiffs are genuinely asking her to produce. An order quashing the subpoenas and directing Plaintiffs to propose a discovery plan that comports with the Supreme Court's Order is necessary and appropriate.

III. COMMUNICATIONS MS. ELLIS-MOORE SENT OR RECEIVED IN HER ROLE AS STAFF TO A MEMBER OF CONGRESS ARE PRIVILEGED

Ms. Ellis-Moore is employed by an elected member of the United States Congress. Congress Representative Leger Fernandez and her staff are immune from discovery of matters connected to their political titles and responsibilities under Article 1, Sec. 6, Clause 1 of the United States Constitution – the “Speech and Debate” clause. This provision of the Constitution applies to a member of Congress’ staff. “[F]or the purpose of construing the privilege a Member and his aide are to be ‘treated as one.’” *Gravel v. U.S.*, 408 U.S. 606 (1972). Ms. Ellis-Moore raises the privilege as an additional reason for the Court to quash the subpoena served on her.

Any communication Ms. Ellis-Moore had with anyone involved in the New Mexico state legislature’s redistricting plan would necessarily arise from her duties and responsibilities to Rep. Leger Fernandez. Assuming there were any communications Ms. Ellis-Moore has received or sent related to redistricting, all would have been as an aide to her employer, a Member of Congress. While Ms. Ellis-Moore is unable to articulate the exact contours of such privileges because she cannot determine what Plaintiffs actually want from her, she preserves all such privileges and rights personally, and to protect and safeguard against any indirect effort to undermine Rep. Leger Fernandez’ Constitutionally established privilege. Only the Member of

Congress has authority to surrender the privilege – it is not Ms. Ellis-Moore’s privilege to waive.

U.S. v. Helstoski, 442 U.S. 477 (1979)

IV. CONCLUSION

WHEREFORE non-party Kyra Ellis-Moore respectfully requests that the Court (1) quash Plaintiffs' subpoena; (2) order Plaintiffs to submit a discovery plan for approval so the Court can determine whether the discovery sought complies with that which the Supreme Court allowed; (3) upon Plaintiffs’ narrowing the requested discovery enable Ms. Ellis-Moore to determine to what extent the information sought is privileged pursuant to the United States Constitution.

Respectfully Submitted,

**MARTINEZ, HART, SANCHEZ
& ROMERO, P.C.**

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I HEREBY CERTIFY that the foregoing pleading was electronically filed, and a true and correct copy of the same was e-mailed this 15th day of August, 2023 to:

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