

**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 QUASH DOCUMENT SUBPOENAS TO  
NON-PARTIES LISA CURTIS AND MICHAEL SANCHEZ**

COME NOW Defendant Javier Martinez in his official capacity as Speaker of the House of Representatives of the State of New Mexico, and Defendant Mimi Stewart, in her official capacity as President Pro-Tempore of the New Mexico Senate (together, the "Legislative Defendants") and respectfully move the Court to quash the document subpoenas issued by Plaintiffs to non-parties Lisa Curtis and Michael Sanchez, both of whom served on the Citizens Redistricting Committee ("CRC") that was constituted in 2021 pursuant to the Redistricting Act, § 1-3A-1 *et seq.* The subpoenas should be quashed for two reasons: (1) by issuing these subpoenas, Plaintiffs improperly attempt to circumvent the pending discovery objections and

assertions of privilege made by the Legislative Defendants and the Non-Party Citizen Legislators in their pending motions to quash and by Defendant Stewart in her discovery objections served on August 22, 2023, in violation of established New Mexico law, *see Wallis v. Smith*, 2001-NMCA-017, ¶¶ 19-20, 22 P.3d 682; and (2) the documents requested by these two subpoenas are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because the congressional maps proposed by the CRC were not ultimately adopted by the legislature and are not challenged by Plaintiffs in this lawsuit. *See* Rule 1-026(B)(1) NMRA. In support of this motion, Legislative Defendants state as follows:

#### **RELEVANT FACTUAL AND PROCEDURAL HISTORY**

1. On or about July 29, 2023, Plaintiffs issued document subpoenas to more than 70 current and former members of the New Mexico Legislature, seeking, among numerous other document requests, emails between those legislators and Michael Sanchez or Lisa Curtis. *See Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order*, filed Aug. 8, 2023, at Exhibit A thereto (exemplar subpoena issued to Sen. Duhigg) at p. 9 of the exhibit (document request 1(f)).

2. On August 8, 2023, those non-party legislators moved to quash those document subpoenas in their entirety, asserting that the communications sought are absolutely privileged under Article IV, Section 13 of the New Mexico Constitution (among other grounds for quashing them). That motion is fully briefed and pending before the Court.

3. On or about August 5, 2023, Plaintiffs served Defendant Stewart with a set of document requests, including requests for Senator Stewart's text messages and emails with Lisa Curtis and/or Michael Sanchez. On August 22, 2023, Senator Stewart served Plaintiffs with her responses and objections to that set of discovery, including her assertions of legislative privilege

under Article IV, Section 13 of the New Mexico Constitution, in response to those requests. *See* Exhibit 1 hereto.

4. Despite these pending assertions of privilege, Plaintiffs on August 29, 2023 issued document subpoenas to former CRC members Lisa Curtis and Michael Sanchez, seeking the very same category of documents—namely, their communications with any Democratic member of the legislature or anyone working on their behalf. *See* Exhibit 2 (Subpoena to Lisa Curtis) and Exhibit 3 (Subpoena to Michael Sanchez).

5. Lisa Curtis and Michael Sanchez are both former members of the New Mexico Legislature who were appointed to serve, and did serve, on the Citizens Redistricting Committee in 2021. The CRC ultimately proposed three “concept maps” for Congress to the legislature for its consideration. The legislature did not adopt any of the CRC maps for the congressional districts and instead enacted SB-1.

6. The Redistricting Act provides that the legislature shall give plans adopted by the Citizens Redistricting Committee the same consideration as proposed legislation submitted by an interim legislative committee. *See*, § 1-3A-9 NMSA 1978.

### **ARGUMENT**

#### **A. The Subpoenas Should Be Quashed as an Improper Attempt to Circumvent Discovery Objections and Assertions of Privilege.**

Once the Legislative Defendants and the Non-Party Legislators objected to and asserted the legislative privilege under Art. IV, Sec. 13 of the New Mexico Constitution in response to Plaintiffs’ document requests for communications between those legislators and Ms. Curtis or Mr. Sanchez, “all efforts at obtaining discovery of that information should cease until the discovery dispute is resolved.” *Wallis*, 2001-NMCA-017, ¶ 19 (quoting *Keplinger v. Virginia Electric and Power Co.*, 208 W. Va. 11, 537 S.E.2d 632, 646 (2000)). Those discovery disputes

have not yet been resolved by the Court. Yet rather than awaiting the Court's determination of the issue, Plaintiffs went ahead and served Ms. Curtis and Mr. Sanchez with document subpoenas containing mirror requests for the same category of communications. This is exactly the type of improper tactic that the New Mexico Rules of Civil Procedure and *Wallis* prohibit.

In *Wallis*, the plaintiff served the defendant with interrogatories regarding her medical treatment and asked plaintiff to sign a medical release for certain of her treatment records. 2001-NMCA-017, ¶ 17. The defendant raised privilege objections and declined to sign the release. *Id.* Instead of litigating the privilege assertion and obtaining a ruling from the court, the plaintiff issued subpoenas to all of defendant's medical providers for production of her medical records. *Id.* Defendant moved to quash those subpoenas and for sanctions against plaintiff for seeking materials by a subpoena after defendant had raised a privilege objection. *Id.* The court granted the motion to quash and sanctioned the plaintiff with a \$1,000 fine. *Id.*

The *Wallis* court affirmed the trial court's ruling on the motion to quash,<sup>1</sup> emphasizing that, "once a privilege is asserted in response to interrogatories, counsel cannot unilaterally disregard the privilege and then issue subpoenas to sidestep the procedure outlined in Rule 1-033 for resolving the dispute." *Id.*, ¶ 20. "[S]uch a practice is fundamentally unfair and violates all sense of civility and decency." *Id.* (quoting *Keplinger*, 537 S.E.2d at 646). Accordingly, the *Wallis* Court held that "a party may not use Rule 1-045 to pursue discovery of material that is subject to an ongoing discovery dispute that has not been resolved by the parties or decided by the court." *Id.*

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<sup>1</sup> The Court reversed the district court's imposition of the sanction, because at that time (over 20 years ago) the law was "not expressly clear on this point." *Wallis*, 2001-NMCA-017, ¶ 21.

By issuing document subpoenas to Ms. Curtis and Mr. Sanchez for their communications with legislators, after the legislators had already raised privilege assertions in response to requests for those same communications, Plaintiffs have engaged in exactly the type of improper discovery tactics that *Wallis* prohibits. Therefore, the subpoenas should be quashed.

In addition, given the mandate of the Citizen Redistricting Committee, the functions it performed, and its advisory relationship to the legislature, the challenged subpoenas directly implicate the legislative privilege provided in Art. IV, § 13 of the New Mexico constitution. *See League of Women Voters of Pa. v. Commonwealth*, 177 A.3d 1000 (Pa. Commw. Ct. 2017); *Arizona Independent Redistricting Commission v Fields*, 75 P. 3d 1088, 206 Ariz. 130 (Ct. App. Az. 2003). The Committee was tasked to gather information, formulate plans and report to the legislature. *See*, § 1-3A-9A NMSA 1978. There is no question that its function was advisory to the legislature and therefore properly the subject of legislative privilege.

**B. The Material Sought by the Subpoenas is Neither Relevant nor Reasonably Calculated to Lead to the Discovery of Admissible Evidence.**

“All discovery, including discovery under Rule 1-045, is limited by Rule 1-026 to the acquisition of information ‘regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.’” *Wallis*, 2001-NMCA-017, ¶ 20 (quoting Rule 1-026(B)(1)) (emphasis omitted). The material sought by Plaintiffs in their subpoenas to Ms. Curtis and Mr. Sanchez are neither relevant to the subject matter of this case nor reasonably calculated to lead to the discovery of admissible evidence. Ms. Curtis and Mr. Sanchez served on the CRC in 2021. Pursuant to its statutory charge, the CRC ultimately adopted three proposed “concept maps” for redistricting New Mexico’s congressional districts. None of those proposed maps were enacted by the Legislature, and none of them are the subject of Plaintiff’s claim of unconstitutional partisan gerrymandering. Neither Ms. Curtis nor Mr. Sanchez were

members of the legislature during the development and passage of SB-1. Whether or not legislators (or members of the Congressional delegation, or anyone acting on their behalf) communicated with Ms. Curtis or Mr. Sanchez in 2021 about redistricting is totally irrelevant and immaterial to a determination of Plaintiffs' claim that the enacted map, SB-1, constitutes an unconstitutional partisan gerrymander. Accordingly, the subpoenas should be quashed on relevance grounds, as well.

**WHEREFORE**, the Legislative Defendants respectfully request that this Court quash the document subpoenas issued by Plaintiffs to Lisa Curtis and Michael Sanchez in their entirety, and for any further relief as the Court deems just and proper.

Respectfully submitted,

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

*/s/ Sara N. Sanchez*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 11, 2023, I caused a true and correct copy of the foregoing motion to be e-mailed to all parties or counsel of record as follows and caused a copy of the motion and this Certificate of Service to be filed electronically through the Tyler Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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

/s/ Sara N. Sanchez  
Sara N. Sanchez

**STATE OF NEW MEXICO**  
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REPUBLICAN PARTY OF NEW MEXICO,  
DAVID GALLEGOS, TIMOTHY  
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GONZALES, JR., BOBBY AND DEANN  
KIMBRO, and PEARL GARCIA,

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

MAGGIE TOULOUSE OLIVER as New  
Mexico Secretary of State, MICHELLE  
LUJAN GRISHAM as Governor of New  
Mexico, HOWIE MORALES as 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.

**DEFENDANT SENATOR MIMI STEWART'S RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION**

Defendant Senator Mimi Stewart, by and through counsel, responds as follows to Plaintiffs'

First Set of Requests for Production:





## **GENERAL OBJECTIONS**

1. Defendant objects to any definitions, instructions or commentary in Plaintiffs' discovery requests that attempt to impose obligations on Defendants greater than those imposed by the New Mexico Rules of Civil Procedure.

2. Defendant objects to each Request that seeks, directly or indirectly, documents which are neither relevant to this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence, or which are otherwise outside of the scope of permissible discovery.

3. Defendant expressly reserves the right to modify, revise, or supplement these Answers and Objections as additional information become available to Defendants. All of Defendant's Answers to Plaintiffs' Requests for Production are subject to and without waiver of these general objections and any individual objections made to each request.

4. Defendant objects to the Requests for Production on the grounds and to the extent that they seek discovery in violation of the work product, attorney/client and other applicable privileges. Defendant will not provide any information or produce any documents which are subject to a claim of privilege. Inadvertent production of such documents by Defendant shall not constitute a waiver of any privilege. Moreover, the production of any document or the answering of any interrogatory does not constitute a waiver of any objection, including relevance or materiality, to the admission of such document as evidence at the trial of this matter or to the use of any interrogatory.

5. Defendant objects to the Requests for Production to the extent that they seek information regarding or from third parties, including predecessors, who are not parties to this litigation, and which information is not in the possession of Defendants or subject to its direction.

6. Discovery is ongoing, and Defendants have not completed their investigation. These responses are made based on facts now known. Defendant reserves the right to seasonably supplement the responses.

Subject to the above general objections and without waiving those objections, Defendant makes the following specific responses and objections to the Requests for Production:

### **REQUESTS FOR PRODUCTION**

**RFP NO. 1:** Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that were sent or received by you any time in 2021, and were between you and one or more of the following individuals: Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Oriana Sandoval, and/or Melanie Stansbury.

#### **RESPONSE:**

Defendant objects to this Request on the grounds that the information sought, in significant part, is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants' Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants' Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants' Response to Plaintiffs' Motion to Compel (filed Aug. 21, 2023).

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs' claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, in that it would require Defendant to search an entire year's worth of text messages with nine different individuals, without any limitation as to the subject matter of those messages. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless

adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

**RFP NO. 2:** Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that were sent or received by you between November 1, 2021 and December 7, 2021, and were between you and one or more of the following individuals: Joseph Cervantes, Peter Wirth, Brian Egolf, Daniel Ivey-Soto, and/or Georgene Louis.

**RESPONSE:**

Defendant objects to this Request on the grounds that the information sought, in significant part, is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants’ Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants’ Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants’ Response to Plaintiffs’ Motion to Compel (filed Aug. 21, 2023).

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs' claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, in that the Request is not limited by subject matter. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-

NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

**RFP NO. 3:** Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that were sent or received by you between December 7, 2021 and December 11, 2021, and were sent to at least one individual who is not either yourself or an immediate family member of yours.

**RESPONSE:**

Defendant objects to this Request to the extent that the information sought (including communications during the special legislative session regarding redistricting) is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants’ Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants’ Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants’ Response to Plaintiffs’ Motion to Compel (filed Aug. 21, 2023).

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those

documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs' claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, in that the Request is not limited by subject matter, nor by sender or recipients (other than excluding immediate family members). *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid

them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

Defendant further objects to this Request on relevance grounds, as it is not limited to discovery reasonably calculated to lead to the discovery of admissible evidence. It seeks communications wholly unrelated to the subject matter of this litigation and intrudes upon personal or private communications, which amounts to harassment. *See* Rule 1-026(B).

**RFP NO. 4:** Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period beginning January 21, 2022 and extending to the date of service of these RFPs, and that are captured by one or more of the following searches conducted on all emails (including the attachments thereto): **(i)** searches for emails that contain either of the following terms: the Boolean search term *Gerrymander\** or “D-506-CV-2022-00041”; and/or **(ii)** searches for emails that contain both the term “Lawsuit” and one or more of the following Boolean search terms: *Republican\**, *RPNM\**, and/or *GOP\**.

**RESPONSE:**

Defendant objects to this Request to the extent that the information sought is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants’ Motion to Quash Subpoenas



Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants' Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants' Response to Plaintiffs' Motion to Compel (filed Aug. 21, 2023).

Defendant further objects to this Request on the grounds that it seeks communications protected by the attorney client privilege and/or attorney work product privilege. *See* Rule 11-503 NMRA.

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs' claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a

communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, in that the Request is not limited by subject matter, sender or recipient and seeks communications over more than a year and half. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep’t ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

Defendant further objects to this Request on relevance grounds, as it is not limited to discovery reasonably calculated to lead to the discovery of admissible evidence. *See* Rule 1-026(B).

**RFP NO. 5:** Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period beginning January 21, 2022 and extending to the date of service of these RFPs (the same time period searched in RFP No. 1), and that were sent by you to any person who is not a Member or staffer of the Legislature (regardless of whether one or more Members/staffers were also recipients of the same email), and that mentions *both* the redistricted

congressional map (whether by the name “S.B. 1,” “the new map,” “the redrawn district,” or any other clearly discernible reference) *and* the prospects for Democratic Party victory in the 2022 CD 2 race (whether framed as a numerical partisan advantage, a prediction regarding Yvette Herrell’s ability to retain the seat, a discussion of Gabe Vasquez’s campaign or odds of success, etc.).

**RESPONSE:**

Defendant objects to this Request to the extent that the information sought is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants’ Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants’ Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants’ Response to Plaintiffs’ Motion to Compel (filed Aug. 21, 2023).

Defendant further objects to this Request to the extent that it seeks communications protected by the attorney client privilege and/or attorney work product privilege. *See* Rule 11-503 NMRA.

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs’ claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where

good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, in that the Request is vague, not limited by sender or recipient and seeks communications over more than a year and half. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep’t ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

Defendant further objects to this Request on relevance grounds, as it is not limited to discovery reasonably calculated to lead to the discovery of admissible evidence. *See* Rule 1-026(B).

**RFP NO. 6:** Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period beginning December 1, 2021 and ending December 18, 2021, and that contain one or more of the following: “S.B.1”, “SB1”, “S.B. 1”, “SB 1”, “Senate Bill 1”, “Concept H”, “Concept E”, “CCP Map”, “People’s Map”, “Center for Civic”, “Chavez’ Map”, “Chavez’s Map”, “CD”, “C.D.”, “CD2”, “SJC Sub”, “Southern Congressional”, “Second Congressional”, “Gerrymander”, “Gerrymandering”, “Majority-Minority”, “Hispanic”, “Yvette”, and/or “Herrell”.

**RESPONSE:**

Defendant objects to this Request on the grounds that the information sought is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants’ Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants’ Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants’ Response to Plaintiffs’ Motion to Compel (filed Aug. 21, 2023).

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs’ claim and sole purpose of inquiry,

Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, in that the Request would require defendant to perform at least 24 separate searches on four (4) email accounts, for a total of at least 96 searches, even before resulting documents are subject to a legal review for responsiveness, privilege and other issues. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep’t ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

**RFP NO. 7:** Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period beginning July 1, 2021 and ending December 18, 2021, and that were sent by or to any one or more of the following individuals: Joseph Cervantes, Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Georgene Louis, Michael Sanchez (the former state senator), Oriana Sandoval, Melanie Stansbury, Peter Wirth, and/or any person you know to have been retained or employed by any Democratic party, caucus, or campaign committee (at any level of government) to serve as a consultant, demographer, or expert on the 2021 New Mexico congressional-redistricting bill.

**RESPONSE:**

Defendant objects to this Request on the grounds that the information sought is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants’ Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants’ Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants’ Response to Plaintiffs’ Motion to Compel (filed Aug. 21, 2023).

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those

documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs' claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is overly broad and unduly burdensome, as it is not limited by subject matter and would require extensive searches of over 6 months of email on four (4) email accounts. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid



them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

**RFP NO. 8:** Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — that are not responsive to any of the previous RFPs, but which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters: **(a)** any discussion or mention of how the 2021 redistricting process would affect the partisan composition of New Mexico’s congressional delegation, including any supposition about the then-Congresswoman Herrell’s electoral prospects, that pre-dates S.B. 1 being signed into law; and/or **(b)** any views or opinions expressed on, or the results of any analysis conducted by, any non-New Mexico-based consultant, political operative, or political organization regarding any of the concept-maps adopted by the Citizen Redistricting Committee or proposed by any legislator, regardless of whether you were the direct recipient of these communications or were forwarded them or had them described to you second-or-more-hand (you may limit your response to views/opinions that were originally expressed, and analyses that were originally conducted, before December 17, 2021).

**RESPONSE:**

Defendant objects to this Request on the grounds that the information sought is subject to the absolute privilege provided under Article IV, § 13 of the New Mexico Constitution. Defendant incorporates herein the arguments and authorities set forth by the Legislative Defendants in the

following motions filed with the Court: Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (filed Aug. 8, 2023); Legislative Defendants' Motion to Quash Subpoenas Served on Legislative Staff and Consultants (filed Aug. 14, 2023); Legislative Defendants' Motion to Quash Subpoenas for Deposition and for Protective Order (filed Aug. 16, 2023); Legislative Defendants' Response to Plaintiffs' Motion to Compel (filed Aug. 21, 2023).

Defendant hereby expressly claims privilege pursuant to Rule 1-026(B)(7)(a) NMRA 2023, which requires that a party simply describe the nature of the documents, communications or things not produced without revealing information itself privileged or protected. As to those documents and communications withheld by Defendant on the grounds of legislative privilege, given the purpose of the privilege and the nature of Plaintiffs' claim and sole purpose of inquiry, Defendant will not produce a privilege log at this time. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 35, 144 N.M. 601, 609, 190 P.3d 322, 330 (detailed privilege log unnecessary where good faith claim of privilege made and disclosure would not preserve privilege); *Cf. In re Hubbard*, 803 F.3d 1298, 1309–11 (11th Cir. 2015); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 233 (5th Cir. 2023) (distraction of compiling unnecessary privilege log frustrates purpose of legislative privilege and against public interest); *N. Carolina State Conference of the NAACP v. McCrory*, 2014 WL 12526799, at \*5 & \*5 n.6 (M.D.N.C. Nov. 20, 2014), *objections overruled sub nom. N. Carolina State Conference v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (construction of privilege log by legislator “would itself significantly intrude into the legislative sphere, and would also place a heavy burden on the legislatures in contravention of one of the aims of the legislative privilege...[O]n balance, the possibility that there may be a communication that is relevant but not within the scope of legislative privilege does not outweigh the significant burden and intrusion involved in preparing a privilege log.”).

Defendant further objects to this Request on the grounds that it is vague and ambiguous, overly broad and unduly burdensome. *See* Rule 1-026(B)(1); *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 23 (“[A] party will not be required to respond to an overly broad discovery request unless adequate guidance exists as to what extent the request is not objectionable.” (alteration in original)); *State v. Tackett*, 1967-NMSC-207, ¶ 13 (a party “has no right to go upon a tour of investigation, in the hope that they will find something to aid them, . . . and if it appears that the request for such inspection is merely ‘a fishing expedition to see what may turn up’ it should be denied.” (omission in original)).

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

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*Attorneys for Legislative Defendants*

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,  
DAVID GALLEGOS, TIMOTHY JENNINGS,  
DINAH VARGAS, MANUEL  
GONZALES, JR., BOBBY AND DEE ANN  
KIMBRO, and PEARL GARCIA,

Plaintiffs,

vs.

Case 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.

**SUBPOENA**

SUBPOENA FOR  DOCUMENTS OR OBJECTS  INSPECTION OF PREMISES

TO: Lisa K. Curtis  
Custis & Co. Law Firm  
215 Central Avenue NW, Suite 300  
Albuquerque, NM 87102

YOU ARE HEREBY COMMANDED ON:

Date: September 13, 2023

Time: Noon



TO:

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

All written communications — including but not limited to emails and text messages — sent or received by you that meet all 3 of the following descriptions:

- (1) were sent between March 20 and November 2 of 2021;
- (2) were sent or received by a Democratic then-Member of the Legislature, a then-Congresswoman, or someone you understood to be a consultant of employee, or otherwise acting for the benefit of, such a then-Member or -Congresswoman (this includes but is not limited to Scott Forrester, Kyra Ellis-Moore, and Leanne Leith); and
- (3) relate to the subject(s) of redistricting, your appointment to or service on the Citizen's Redistricting Committee, New Mexico's congressional map, and/or then-Congresswomen Yvette Herrell or Teresa Leger Fernandez.

Please deliver these records electronically (unless they are kept in their native hardcopy format, in which hardcopies are acceptable) to [carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com) or via deliver on a USB storage device to 924 Park Avenue SW, Suite E, Albuquerque, NM 87102.

permit the inspection of the premises located at:

\_\_\_\_\_ (address).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION “DUTIES IN RESPONDING TO SUBPOENA.”

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 29, 2023

Date of Issuance



---

Judge, Clerk or Attorney

Carter B. Harrison IV  
HARRISON & HART, LLC  
924 Park Avenue SW  
Albuquerque, NM 87102  
Tel: (505) 295-3261  
Fax: (505) 341-9340  
Email: [carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com)

*Attorneys for the Plaintiffs*

## INFORMATION FOR PERSONS RECEIVING SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.
3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. *See* Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. *See* Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.
4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. The order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:



- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information,
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### **DUTIES IN RESPONDING TO SUBPOENA**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

**RETURN FOR COMPLETION BY PERSON MAKING SERVICE**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_ day of \_\_\_\_\_, 2023, in \_\_\_\_\_ County, I served this subpoena on Lisa Curtis by delivering to the person named a copy of the subpoena.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2023 (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

My commission expires: \_\_\_\_\_  
(if notarized)

THIS SUBPOENA issued by or at request of:

Carter B. Harrison IV  
*Name of attorney of party*

924 Park Avenue SW  
Albuquerque, NM 87102  
*Address*

(505) 295 3261  
*Telephone*

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,  
DAVID GALLEGOS, TIMOTHY JENNINGS,  
DINAH VARGAS, MANUEL  
GONZALES, JR., BOBBY AND DEE ANN  
KIMBRO, and PEARL GARCIA,

Plaintiffs,

vs.

Case 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.

**SUBPOENA**

SUBPOENA FOR  DOCUMENTS OR OBJECTS  INSPECTION OF PREMISES

TO: Michael S. Sanchez  
3 Bunton Road  
Belen, NM 87002

YOU ARE HEREBY COMMANDED ON:

Date: September 13, 2023

Time: Noon



TO:

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

All written communications — including but not limited to emails and text messages — sent or received by you that meet all 3 of the following descriptions:

- (1) were sent between March 20 and November 2 of 2021;
- (2) were sent or received by a Democratic then-Member of the Legislature, a then-Congresswoman, or someone you understood to be a consultant of employee, or otherwise acting for the benefit of, such a then-Member or -Congresswoman (this includes but is not limited to Scott Forrester, Kyra Ellis-Moore, and Leanne Leith); and
- (3) relate to the subject(s) of redistricting, your appointment to or service on the Citizen's Redistricting Committee, New Mexico's congressional map, and/or then-Congresswomen Yvette Herrell or Teresa Leger Fernandez.

Please deliver these records electronically (unless they are kept in their native hardcopy format, in which hardcopies are acceptable) to [carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com) or via deliver on a USB storage device to 924 Park Avenue SW, Suite E, Albuquerque, NM 87102.

permit the inspection of the premises located at:

\_\_\_\_\_ (address).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION “DUTIES IN RESPONDING TO SUBPOENA.”

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 29, 2023

Date of Issuance



---

Judge, Clerk or Attorney

Carter B. Harrison IV  
HARRISON & HART, LLC  
924 Park Avenue SW  
Albuquerque, NM 87102  
Tel: (505) 295-3261  
Fax: (505) 341-9340  
Email: [carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com)

*Attorneys for the Plaintiffs*

## INFORMATION FOR PERSONS RECEIVING SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.
3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. *See* Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. *See* Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.
4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. The order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information,
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### **DUTIES IN RESPONDING TO SUBPOENA**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

**RETURN FOR COMPLETION BY PERSON MAKING SERVICE**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_ day of \_\_\_\_\_, 2023, in \_\_\_\_\_ County, I served this subpoena on Michael S. Sanchez by delivering to the person named a copy of the subpoena.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2023 (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

My commission expires: \_\_\_\_\_  
*(if notarized)*

THIS SUBPOENA issued by or at request of:

Carter B. Harrison IV  
*Name of attorney of party*

924 Park Avenue SW  
Albuquerque, NM 87102  
*Address*

(505) 295 3261  
*Telephone*