

**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 SUBPOENAS SERVED ON
LEGISLATIVE STAFF AND CONSULTANTS**

Plaintiffs' discovery strategy in this litigation involves a fundamental disregard for the state constitution and separation of powers. To prevail at trial, Plaintiffs have to prove Senate Bill 1 involves an unconstitutionally egregious partisan gerrymander that entrenches political power for Democrats. Rather than attempting to develop that proof, however, Plaintiffs are devoting the limited time the New Mexico Supreme Court afforded the parties and this Court to pursuing a tangled mass of document subpoenas and deposition requests focused on every legislator's individual thoughts and communications. That discovery is at the heart of legislative privilege.

The constitutional problems with Plaintiffs’ approach already have been briefed in a pending motion to quash more than 70 subpoenas Plaintiffs issued to every Democrat who serves in the New Mexico Legislature or who served during the redistricting process. *See* Mot. to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order (Aug. 8, 2023) (“Mot. to Quash Legislator Subpoenas”). This motion calls on the Court to recognize, as other courts have recognized for decades, that legislative privilege is meaningless if it does not extend to legislative staff and consultants. Therefore, Representative Javier Martinez in his official capacity as Speaker of the House of Representatives of the State of New Mexico, and Senator Mimi Stewart, in her official capacity as President Pro-Tempore of the New Mexico Senate (together “Legislative Defendants”) ask that the Court quash (1) the document subpoenas Plaintiffs issued to legislative staffers Leanne Leith and Reena Szczepanski¹; and (2) the Rule 1-030(B)(6) NMRA deposition subpoena and document requests Plaintiffs issued to Research and Polling, Inc.

ARGUMENT

Rule 1-045(C)(3) NMRA instructs that the Court “shall quash or modify [a] subpoena if it... requires disclosure of privileged or other protected matter and no exception or waiver applies.” Here, each of the three subpoenas at issue seeks discovery of matters squarely within the Legislature’s jurisdiction and therefore subject to legislative privilege.

I. ABSOLUTE LEGISLATIVE PRIVILEGE NECESSARILY EXTENDS TO LEGISLATIVE STAFF AND CONSULTANTS.

As the legislators emphasized in their pending motion to quash, the New Mexico constitution expressly establishes a privilege for the Legislature without carving out express

¹ Reena Szczepanski took office as an elected Representative of New Mexico House District 47 in January 2023.

privileges for either the executive or judicial branches of government. *See* Mot. to Quash Legislator Subpoenas. The Speech and Debate Clause provides: “Members of the legislature...shall not be questioned in any other place for any speech or debate or for any vote cast in either house.” N.M. Const. art. IV, § 13. That privilege reflects the need for legislators to act as a body, freely communicating as representatives of the people subject to direct accountability through regular elections.

Courts interpreting analogous provisions from state and the federal constitutions have recognized that the constitutional legislative privilege is absolute and applies equally to testimony and documents. *See* Mot. to Quash Legislator Subpoenas, at 3-6. The legislative privilege protects evidence of “legislative acts”—a broad term which encompasses not only legislative actions but also the motivation for those acts, such as how a legislator voted or decided on matters. *Id.* And at the heart of the specific dispute over these subpoenas lies a substantial body of case law recognizing that legislative privilege protects more than communications directly with or by legislators.

Acknowledging the indisputable reality that legislation involves a range of people around legislators, courts have extended the privilege to cover parties as varied as legislative staff and consultants, political party leaders, and even lobbyists so long as the discovery sought is part of legitimate legislative activity: the proposal, formulation, and passage of legislation and the information-gathering necessary to accomplish the same. *Id.* at 5-6 (*La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 236 (5th Cir. 2023); *League of Women Voters of Pa.*, 177 A.3d 1000, 1003-06 (Pa. Commw. Ct. 2017) (quashing eleven (11) subpoenas on Speech and Debate grounds directed at legislative aides, employees, consultants, and experts assisting in redistricting); *In the Matter of 2022 Legislative Districting*, 282 A.3d 147, 197-8 (Md. 2022)

(process of drafting map was within legislative conduct and therefore protected by Speech and Debate 6 Clause); *Holmes v. Farmer*, 475 A.2d 976, 983-84 (R.I. 1984) (finding that deposition testimony of legislators and their aides regarding alleged political or partisan motivations in redistricting legislation is protected under Speech and Debate Clause)). Moreover, if the constitution did not expressly provide for legislative privilege, fundamental separation of powers considerations would require recognizing such a privilege and that the privilege reaches *at least* to staff and consultants. Mot. to Quash Legislator Subpoenas, at 6-7.

II. THE CHALLENGED SUBPOENAS SEEK TESTIMONY AND DOCUMENTS THAT ARE PROTECTED BY LEGISLATIVE PRIVILEGE.

The Legislative Defendants ask that the Court quash the three subpoenas subject to this motion and hold that the recipients of those subpoenas cannot be required to sit for depositions related to the subpoenaed matters or the testimony topics set out in Plaintiffs' proposed Rule 1-030(B)(6) notices.² Taking the subpoenas in turn:

A. Staff Subpoenas

Two of the subpoenas are directed to staff for the Speaker of the House during the special session for redistricting (Leanne Leith and Reena Szczepanski). *See* Exs. A and B.³ Ms. Leith is the New Mexico House Democratic Caucus Director, serving members of the House majority under the leadership of the Speaker of the House. For the entirety of the second special session of 2021, when the congressional maps were introduced and enacted, Ms. Leith was formally

² The Legislative Defendants incorporate by reference their Mot. to Quash Legislator Subpoenas, filed on August 8, 2023, as if fully restated herein.

³ Exhibits A and B include the cover letters from Plaintiffs' counsel that accompanied the subpoenas. The Court's Scheduling Order and the New Mexico Supreme Court's Order of July 5, 2023, which were also included with the subpoenas, have been omitted from these exhibits for the sake of brevity.

employed by the New Mexico House of Representatives as a Policy Advisor for the Speaker of the House. For Ms. Leith, Plaintiffs' document subpoena demands the production of every communication she had with legislators and others who were responsible for assisting the Legislature with redistricting, every communication related to congressional redistricting, and communications that have any of a list of eight key terms that all focus on redistricting. Ex. A.

Representative Reena Szczepanski was Speaker of the House Brian Egolf's chief legislative staff from 2017 to 2022. As chief of staff to the Speaker, her responsibilities included: executing all directives of the Speaker, which included managing the House floor agenda, communication with House members of all parties, and communication with House Chief Clerk Staff; management of all Speaker's staff at the direction of the Speaker; oversight of administrative operations of the Speaker's Office; consultation with the Speaker on policy and procedural matters; communication with Senate, LCS, LFC and LESC staff on the Speaker's behalf, and ensuring timely and efficient flow of the House Floor and other House operations as needed per the Speaker's guidance.

The subpoena to now-Rep. Szczepanski includes more requests and is consistent with the subpoenas Plaintiffs served on legislators. Ex. B. It commands her to produce "emails... and text messages, letters, and other written communications" based upon computer searches using sophisticated Boolean operators (e.g., "&", "^", or "and") and wildcard operators (e.g., "*"). *Id.* The subpoena covers at least four types of email accounts: "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 accounts(s).*" *Id.* From each of those email accounts Plaintiffs demand that Rep. Szczepanski conduct:

(1) more than 80 individual searches upon each of four types of email accounts for a total of more than 320 computerized searches for emails between July 1, 2021, and December 18, 2021. Ex. B., ¶¶ 1(a)-1(f).

(2) seven (7) email searches per account, or twenty-eight (28) total, for emails between November 2, 2020, and January 21, 2021. Ex. B, ¶ 2.

(3) nineteen (19) individual searches—76 total for the four email accounts—for emails between January 22, 2021, and April 6, 2021. Exh. B, ¶ 3; and finally,

(4) the following additional searches: “extending back as far as you have been a Member of the Legislature and forward to the present day, and that are not captured by the searches outlined above, 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,” including her thoughts, views, “misgivings,” and analysis regarding various topics related to redistricting and beyond. Ex. B, ¶¶ 4(a)-4(g) (footnote omitted).

Plaintiffs demand similar searches of Rep. Szczepanski’s text messages and other written communications, including demanding production of “copies of all text messages, letters, memoranda, and/or other written communications — including messages sent through Facebook, Microsoft Teams, WhatsApp, Kik Messenger, etc. — that relate to one or more of the subject matters described in ¶¶ (4)(a)-(g) above. Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible.” Ex. B.

The United States Supreme Court long ago correctly recognized that “for the purpose of construing the [legislative] privilege *a Member and his aide are to be ‘treated as one’* [T]he ‘Speech or Debate Clause prohibits inquiry into things done . . . as the Senator’s agent or assistant which would have been legislative acts, and therefore privileged, if performed by the Senator personally.’” *Gravel v. United States*, 408 U.S. 606, 616 (1972) (emphasis added). Even with members of the United States Congress, with their salaries and paid full-time staff, the Court recognized that:

[I]t is literally impossible, in view of the complexities of the modern legislative process, with Congress almost constantly in session and matters of legislative concern constantly proliferating, for Members of Congress to perform their legislative tasks without the help of aides and assistants; . . . the day-to-day work of such aides is so critical to the Members’ performance that they must be treated as the latter’s alter egos; . . . if they are not so recognized, the central role of the Speech or Debate Clause - to prevent intimidation of legislators by the Executive and accountability before a hostile judiciary, *United States v. Johnson*, 383 U.S. 169, 181 (1966) - will inevitably be diminished and frustrated.

Id. at 616-17.

These subpoenas fall squarely within the body of cases extending legislative privilege to legislative staff, legislative consultants, and others whom legislators bring into the process of developing legislation. *Mot. To Quash Legislator Subpoenas*, at 5-6. There is no sunlight between the communications sought by these subpoenas and the work these staffers did for legislative leadership. From the face of the subpoenas, the Court can see that all Plaintiffs are looking for is discovery regarding legislators’ votes and the process preceding those votes. They are not entitled to that discovery, and the Legislative Defendants ask that the Court quash these subpoenas.

B. Research & Polling, Inc. Subpoena

The third subpoena subject to this motion is for the Rule 1-030(B)(6) deposition and extensive documents from Research & Polling, Inc. (“RPI”). Ex. C. RPI has provided redistricting and demographic services in New Mexico since its founding in 1986. It was hired by the Legislative Council Service (“LCS”) to deliver professional technical consulting services related to designing redistricting plans as requested, finalizing alternative redistricting plans, providing expert technical assistance, and assisting in preparation for public and committee hearings. *See LCS Contract No. 20-36*, Ex. D. RPI’s contract with LCS began November 9, 2020 and ran until June 30, 2022. The agreement provides that, “[i]n performing services pursuant to this Agreement, the Contractor shall comply with the laws and policies of the LCS just as if the Contractor were a member of the LCS staff.” Ex. D at ¶ 12.

Further, by the terms of a *Memorandum of Understanding between the Citizen Redistricting Committee and Research and Polling, Inc.*, RPI agreed “to assist the CRC in performing its redistricting duties,” and from July 2, 2021 to October 23, 2021 to refrain from consulting with or taking requests from individual legislators. *See MOU between CRC & RPI*, Ex. E. Of course, the CRC was created by the Legislature to hold public meetings and, with technical assistance from RPI, develop proposed redistricting plans for consideration by the Legislature. NMSA 1978, § 1-3A-1 (Redistricting Act). These are quintessentially legislative acts—indeed, the Redistricting Act expressly recognizes that the redistricting plans adopted by the CRC are to be received by the Legislature “for consideration in the same manner as for legislation recommended by interim legislative committees.” *Id.* § 1-3A-9(B).

In fulfilling its roles for LCS and the CRC in the redistricting process, RPI worked closely with CRC members, LCS, and legislators and legislative staff members to assist in the

many facets of the redistricting legislation process. In addition, as the attached declaration confirms, RPI's role did *not* include the design of the map that became Senate Bill 1 that is at issue in this case, nor did RPI communicate with legislators about the design effects, intent or policies behind SB1. *See* Declaration of Brian Sanderoff, Ex. F. As a result, he will not be a fact witness in this case.

Plaintiffs' subpoena and deposition notice to RPI require testimony and the production of documents specific to RPI's work as retained consultants for the Legislature during the legislative redistricting process and as consultants to the CRC. Regarding the deposition, Plaintiffs' request that RPI designate one or more witnesses to testify regarding the following:

- (1) RPI's "role...in designing or assisting in the design" of SB-1, to include modification of CRC Concept H map and the Senate Judiciary Committee Substitute;
- (2) All communications between RPI and state legislators, written and verbal, on the subject of redistricting from July 1, 2021 to December 11, 2021;

Regarding documents, the subpoena includes three corresponding categories:

- (A) All written communications between RPI and 6 named legislators exchanged from January 1, 2021 to December 31, 2021;
- (B) All written communications between RPI and any state legislator or legislative staffer during the 2021 2nd Special Session;
- (C) "Any instructional documents, guides, manuals, handbooks, etc. distributed by [RPI] - or at [RPI's] behest, or which [RPI] participated in the making/compiling of - to the members of either the CRC and/or the Legislature that relate to redistricting."

Ex. C.

Legislative privilege necessarily protects this discovery from disclosure. After all, the highly technical nature of redistricting requires the use of sophisticated software and statistical analysis, such that the CRC, legislators, and associated staff cannot complete this important work without the services of consultants like RPI. *See Edwards v. Vesilind*, 292 Va. 510, 535,

790 S.E.2d 469, 483 (2016) (holding that privilege extends to non-legislators “[e]specially in redistricting, where policy consultants and additional attorneys are more likely to be working in the legislative sphere” and where legislators rely on “assistance in legislative drafting from the experienced staff at DLS”). To hold otherwise would leave legislators with the Hobson’s choice of either not availing themselves of this essential assistance or engaging in communications at the heart of legislation knowing that—unlike any other legislation—those communications can be discovered and used in front of the judiciary to attack duly enacted laws. Add to that the difficulties for our part-time citizen legislators working under substantial budgetary constraints, and the need to protect the communications and work of experts and staff is obvious. *See, e.g., Arizona Independent Redistricting Comm’n v. Fields*, 75 P.3d 1088, 1098, 206 Ariz. 130 (Ct. App 2003); *see also ACORN v. County of Nassau*, 05CV2301, 2009 WL 2923435 (E.D.N.Y. Sept. 10, 2009).

Thus, the law renders privileged and nondiscoverable the communications between legislators, legislative staff, and RPI concerning SB1 and the redistricting process. *See Fields*, 75 P.3d 1088, 1095-99 (independent contractor retained by a redistricting commission entitled to the same protection as members of the commission when performing tasks on their behalf and legislative privilege shield against inquiry in testimony and “disclosure of documentation reflecting those communications”); *see also Fann v. Kemp in & for Cnty. of Maricopa*, 253 Ariz. 537, 543, 515 P.3d 1275, 1281 (2022) (legislative immunity and privilege extends to activities of contractor hired by legislature related to business before the legislature or during legislative session). To hold otherwise would undermine the privilege by unnecessarily hampering legislators’ ability to delegate or rely on experts, “frustrate the purposes of the Clause, ... and severely hamper the legislative process.” *Edwards*, 292 Va. at 536.

Moreover, Plaintiffs are threatening core separation of powers principles. The judiciary has inferred a privilege for its internal work, *see Pacheco v. Hudson*, 2018-NMSC-022, ¶ 10, and it should show extraordinary care before undermining the specific protection the Speech and Debate Clause provides its co-equal counterpart in the Legislature. Legislators answer to voters for their legislative acts. Dragging them before judicial tribunals for questioning about that work fundamentally threatens that accountability and involves judges in the work of officials directly accountable to the public. The judiciary gets to say what the law is, including speaking to the constitutionality of statutes. But it must show care when litigants start dragging it into overseeing the process by which legislators pass statutes courts apply.

Further, NMSA 1978, § 2-3-13 requires the judiciary to protect against Plaintiffs delving into RPI's work on LCS's behalf. The statute requires LCS and those working for it to keep confidential "the contents or nature of any request or statement for service, except with the consent of the person making such request or statement." NMSA 1978, § 2-2-13. The New Mexico Supreme Court has recognized that the statute is intended to require confidentiality for all requests or statements for services through LCS. *See Estate of Romero v. City of Santa Fe*, 2006-NMSC-028, ¶ 15, 139 N.M. 671. And under RPI's contract with LCS, RPI is held to the same confidentiality requirements as any member of LCS. Ex. D at ¶ 12. That confidentiality preserves and enhances the quality of legislative action by encouraging free information gathering and exchange, avoiding the same dangerous "chilling effect" that legislative privilege aims to protect against.

Finally, in the event this Court were to find that Plaintiffs' *RPI Subpoena* did not request disclosure of privileged testimony and documents, Plaintiffs still have the burden to show first that the information is critical to the cause of action or defense, and second, that the information

is otherwise unavailable. *Romero*, 2006-NMSC-028, ¶ 19. Plaintiffs must also show that the public interest in preserving confidentiality does not outweigh their need for the information. *Id.* They cannot meet those burdens, and the subpoenas therefore would need to be quashed for those reasons as well.

WHEREFORE, for the above reasons and as set forth in the Legislative Defendant's *Motion to Quash 74 Subpoenas to Non-Party Legislators*, a proper application of Rules 1-045 and 1-026 NMRA 2023 requires that this Court quash the subpoenas to Leann Leith, Reena Szczepanski, and RPI. The Legislative Defendants therefore respectfully request that this Court enter an Order quashing these three subpoenas, in order to protect all information precluded from discovery by the legislative privilege afforded in the New Mexico constitution, and for any further relief as the Court deems just and proper.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Richard E. Olson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that as of August 14, 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.

/s/ Sara N. Sanchez
Sara N. Sanchez

HARRISON & HART, LLC

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CARTER B. HARRISON IV
NICHOLAS T. HART
DANIEL J. GALLEGOS

August 2, 2023

Leanne C. Leith

Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Ms. Leith:

Enclosed with this letter is a subpoena *duces tecum* requesting certain documents relevant to the ongoing litigation over the most-recent congressional redistricting bill; I represent the Plaintiffs in that matter. A little less than a month ago, the New Mexico Supreme Court made history by recognizing a claim for partisan gerrymandering and outlining a test and a standard of review therefor; the Court then remanded the case to the District Court (Judge Fred T. Van Soelen of Clovis, whom the Supreme Court personally appointed) with instructions to resolve the matter on an ultra-expedited timeline. I have enclosed a copy of the Supreme Court's order for your review, as well as a copy of our scheduling order now that we're back in front of the District Court; note in the latter that, "[g]iven the extraordinarily truncated timeline of this case . . . [everyone] must be correspondingly extremely flexible regarding the scheduling of depositions." Scheduling Order ¶ 4, at 3.

In that vein, I am asking that, **within 10 days of the date of this letter, you please contact my office by email (carter@harrisonhartlaw.com) or phone (see the letterhead above) with dates of availability for a deposition** — which should only take a few hours and which we are willing to conduct via Zoom — or potentially an informal discussion if that is your preference. We require **at least three (3) pre-September-8th** dates of availability for depositions (weekends are acceptable), and we would prefer if you simply gave us a limited number of dates of *un*availability. We are required to conclude discovery by early/mid-September, so our presumption unfortunately has to be that you are available on all dates that you do not expressly disclaim.

I regret the imposition I know this creates, but it is a necessary part of evidence-gathering in the justice system. Thank you for your time and attention to this matter.

**EXHIBIT
A**

Ms. Leanne Leith
August 2, 2023
Page 2 of 2

Subpoena Cover Letter

Very truly yours,

HARRISON & HART, LLC

A handwritten signature in black ink, appearing to read "Carter B. Harrison IV". The signature is written in a cursive style with a large initial "C" and "H".

Carter B. Harrison IV

CBH

Enclosures (3):
Subpoena *Duces Tecum* (5 pages)
Scheduling Order (4 pages)
N.M. Supreme Court's Order Remanding Case (5 pages)

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,
DAVID GALLEGOS, TIMOTHY JENNINGS,
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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: Leanne C. Leith



YOU ARE HEREBY COMMANDED ON:

Date: By August 16, 2023
*(Or 14 days from service,
whichever is later.)*

Time: By 12:00 p.m.

TO:

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, Kyra Ellis-Moore, Dominic Gabello, Daniel Ivey-Soto, Teresa Leger Fernandez, Leanne Leith, Georgene Louis, 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;
- (2) relate to the subject of congressional redistricting in New Mexico, including its predicted electoral effects in the 2022 election, regardless of who the communication is from or to; and/or
- (3) 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”, “Redistricting Committee”, “Yvette”, or “Herrell”.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering electronic copies on a USB storage device to an agent or employee of one of the following businesses during normal business hours:

Harrison & Hart, LLC
924 Park Avenue SW, Ste. 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 2, 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

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 August, 2023, in _____ County, I served this subpoena on Leanne Leith 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

HARRISON & HART, LLC

ATTORNEYS AND COUNSELORS AT LAW
924 PARK AVENUE SOUTHWEST, SUITE E
ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE
(505) 295-3261

FACSIMILE
(505) 341-9340

CARTER B. HARRISON IV
NICHOLAS T. HART
DANIEL J. GALLEGOS

July 28, 2023

The Honorable Reena Szczepanski

Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Rep. Szczepanski:

Enclosed with this letter is a subpoena *duces tecum* requesting certain documents relevant to the ongoing litigation over the most-recent congressional redistricting bill, numbered Senate Bill 1 in the 2021 Second Special Session; I represent the Plaintiffs in that matter. Earlier this month, the New Mexico Supreme Court issued an order recognizing a claim for partisan gerrymandering and outlining a test and a standard of review therefor; the Court then remanded the case to the District Court (Judge Fred T. Van Soelen of Clovis, whom the Supreme Court personally appointed) with instructions to resolve the matter on an ultra-expedited timeline. I have enclosed a copy of the Supreme Court's order for your review.

I do not represent you, and I want to make you aware that there are lawyers who have been retained to represent what we call the 'Legislative Defendants' in the lawsuit, namely Sen. Mimi Stewart and Rep. Javier Martínez, who have been named in their respective official capacities as President Pro Tempore and Speaker of the House — meaning that we have in effect named the Legislature as a body. To that end, we are not seeking damages (or any relief) from any Member distinct from the body as a whole; the relief we are seeking is an order that the Legislature pass a new congressional map in time for the 2024 election cycle. The lawyers for the Legislative Defendants are mostly from the Roswell office of Hinkle Shanor LLP and the Albuquerque firm of Peifer, Hanson, Mullins, and Baker, P.A., two excellent firms whose contact information is available online. These firms have not stated to us that they currently represent you (or any rank-and-file Member), but I strongly suspect that they would be willing to assist you in procuring representation if you were to ask; you are also, of course, free to retain your own counsel.

I also want to make you aware that you may have — *i.e.*, the aforementioned lawyers have asserted, at least in concept — a colorable claim of what is known as 'legislative privilege' under the state constitution's Speech or Debate Clause, N.M. Const. art. IV, § 13, as to some of the documents being requested. This provision of the state constitution has not been meaningfully

**EXHIBIT
B**

judicially interpreted,¹ and I believe that its application to this case is very limited, as there is a widely recognized “exception to the legislative privilege [in] criminal cases and redistricting cases.”² However, that is just my position (I am not a court), and I do not want to deprive you of a full and fair opportunity to independently consider and assert this privilege. Likewise, my understanding (which you should also feel free to verify) is that you can waive the privilege at your sole discretion, even if you believe it does apply. I want to point out to you, though, that under the scheduling order in this case (which I have enclosed), you will have **ten (10) days to assert this privilege** — which you should do by collecting all of the requested documents as if you were going to produce them, and then preparing a list/log of those documents that describes them in sufficient detail to allow me to vet your claim of privilege.³ More detailed instructions are printed on the back of the subpoena packet (as required by law), but I wanted to flag those issues for you.

The three time periods in which we are asking you to search your email account(s) correspond to, first, ‘redistricting season’ — the period during which the Citizen Redistricting Committee (“CRC”) conducted its hearings and the subsequent special redistricting session of the Legislature; second, the period immediately after the 2020 election; and, third, the legislative session at which the CRC was created. I believe that the relevance of the specified searches and topics is for the most part self-evident, but if your attorney (or you, if you wish to proceed *pro se*) contacts me, I am happy to discuss the matter.

¹ Analogous provisions exist in the federal Constitution, *see* U.S. Const. art. I, § 6, cl. 1 (applying to Members of Congress), and most other state constitutions, *see infra* note 2. These provisions typically impart a (broader) immunity from being named as a defendant in a civil suit and a (narrower) testimonial privilege.

² *Thompson v. Merrill*, 2020 WL 2545317, at *4 (M.D. Ala. May 19, 2020); *see also Lee v. Virginia State Bd. of Elec.*, 2015 WL 9461505, at *5 (E.D. Va. Dec. 23, 2015) (justifying the “limited exception to legislative privilege in cases involving legislative redistricting” by pointing out “the unique nature of redistricting cases [and] noting that they are ‘extraordinary’ and that ‘the natural corrective mechanisms built into our republican system of government offer little check upon the very real threat of legislative self-entrenchment’” (citation omitted)); *League of Women Voters of Fla. v. Fla. House of Reps.*, 132 So.3d 135, 154 (Fla. 2013) (“[W]e conclude that Florida law should recognize a legislative privilege, but that this privilege is not absolute in this case, where the violations alleged are of an explicit state constitutional provision prohibiting partisan political gerrymandering and improper discriminatory intent in redistricting.”).

³ *See* Rule 1-045(D)(2)(a) NMRA (“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.”). For an email or text message, I would ask that you please include the ‘header information’ — the date and time of the email, the author/sender, all recipients (including those designated as “TO”, “CC”, and, if you were the sender, “BCC”), and the subject — as well as any additional information necessary to lay the foundation for the privilege (which may be necessary if, *e.g.*, the subject line itself is uninformative as to the nature of the communication).

I will be candid that my hope is that at least some legislators elect to produce documents without requiring us to litigate over privilege. I say that not to discount the policy values underlying the legislative privilege as it has been recognized elsewhere,⁴ but in the belief that our state's legislators are independent-minded decisionmakers, and that some lawmakers will weigh the countervailing values of government transparency and equality under the law (which is implicated because the legislative privilege is certainly not an evidentiary privilege available to everyone) in such a way as to counsel in favor of uncontested disclosure.

I also ask that, **within 10 days of the date of this letter, you please contact my office with dates of availability for a deposition** — which should only take a few hours and which we are willing to conduct via Zoom — or potentially an informal discussion if that is your preference. We may or may not be able to actually schedule a deposition or interview with you, but we require **at least three pre-September-8th** dates of availability (weekends are acceptable), and we would prefer if you simply gave us a limited number of dates of *un*availability. We are required to conclude discovery by early/mid-September, so our presumption unfortunately has to be that you are available on all dates that you do not expressly disclaim.

I regret the imposition I know this creates, but it is a necessary part of evidence-gathering in the justice system. Thank you for your time and attention to this matter, and more generally for your service to our state.

Very truly yours,

HARRISON & HART, LLC



Carter B. Harrison IV

CBH

⁴ “The Speech or Debate Clause [is primarily a separation-of-powers provision] designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats *from the Executive Branch*.” *Gravel v. United States*, 408 U.S. 606, 616 (1972) (emphasis added). “[T]he privilege was *not* born primarily of a desire to avoid private suits . . . , but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary.” *United States v. Johnson*, 383 U.S. 169, 181 (1966) (emphasis added). To the extent that the legislative privilege applies in private civil cases like this one, in which the legislator in question is merely a witness and not a defendant, its policy rationale is to ensure “that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions” — a rationale that I would respectfully submit is somewhat lessened by the part-time nature of our Legislature. *Powell v. McCormack*, 395 U.S. 486, 505 (1969).

Rep. Reena Szczepanski
July 28, 2023
Page 4 of 4

Subpoena Cover Letter

Enclosures (3):
Subpoena *Duces Tecum* with Exhibit A (10 pages)
Scheduling Order (4 pages)
N.M. Supreme Court's Order Remanding Case (5 pages)

cc: Richard E. Olson
Lucas M. Williams
Ann C. Tripp
Sara N. Sanchez
Mark T. Baker
Luis G. Stelzner
Michael B. Browde

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

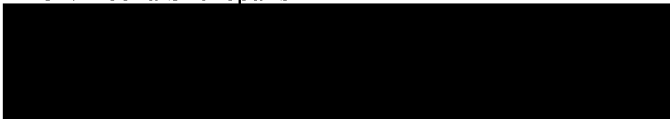
MAGGIE TOULOUSE OLIVER, in her official
capacity as New Mexico Secretary of State,
MICHELLE LUJAN GRISHAM, in her official
capacity as Governor of New Mexico, HOWIE
MORALES, in his official capacity as New
Mexico Lieutenant Governor and President of
the New Mexico Senate, MIMI STEWART, in
her official 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: Hon. Reena Szczepanski



YOU ARE HEREBY COMMANDED ON:

Date: By August 14, 2023 Time: By 12:00 p.m.
*(Or 14 days from service,
whichever is later.)*

TO:

permit inspection of the following described books, papers, documents or tangible things:
See Exhibit A (5 pages) attached to this subpoena for the list of records to be produced.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering them (either hardcopies or electronic copies on a USB storage device) to the following business:

Harrison & Hart, LLC
924 Park Avenue SW, Ste. E
Albuquerque, NM 87102

If and only if the above address is not within 100 miles (as the crow flies) of either your residence or place of employment, you also have the option to hand-deliver, during normal business hours, the records to an agent or employee of whichever one of the following businesses is closest to your residence:

Republican Party of Doña Ana County		Republican Party of San Juan County
Pioneer Building	<i>or</i>	1309 East 20th Street
2111 North Main Street, Ste. A		Farmington, NM 87401
Las Cruces, NM 88005		

permit the inspection of the premises located at:

N/A (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.

July 28, 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

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.

EXHIBIT A

This subpoena requests both emails — defined mostly by reference to email-account searches to which the emails are responsive, but also by subject matter in ¶ 4, below — and text messages, letters, and other written communications — which are defined exclusively by reference to the subject matter to which the communication relates. The searches requested below can be conducted using the search function of most common email clients and websites; if an email account does not support the ‘asterisk’ Boolean operator (used three times in this exhibit), you may simply search for each of the examples given parenthetically after each asterisked term. Although this subpoena requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know for a certainty there will be no relevant and responsive emails in a given account.

Once a search is conducted, the easiest way to separate the responsive emails for production is typically to ‘select all’ emails shown as responsive to the search (using Control + A in an application like Outlook, or clicking the select-all checkbox at the top-left of the results in an online interface like Gmail) and then save the selected emails in a folder in their native format (usually .pst, .ost, or .eml). Printing the emails to .pdf files is also acceptable, but please ensure that attachments are also opened, printed to .pdf, and produced along with the email itself.

Emails

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:

- (1) beginning July 1, 2021 and ending December 18, 2021, and that are captured by one or more of the following non-case-sensitive searches conducted on all emails (including the attachments thereto):
 - (a) searches for any 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”, “Yvette”, and/or “Herrell”;

- (b) searches for emails that contain *both* the Boolean search term congress* (which covers the words “Congress” and “Congressional”) *and* one or more of the following: “Concept”, “Performance”, “Partisan”, “Registration”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Competitive”, “Substitute”, “Amendment”, “Hispanic”, “Majority-Minority”, “Map”, “Maps”, “District”, “Districts”, and/or “Redistricting”;
- (c) searches for emails that contain *both* the Boolean search term map* (which covers the words “Map”, “Maps”, etc.) *and* one or more of the following: “Concept”, “Performance”, “Partisan”, “Party”, “Registration”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Competitive”, and/or “Substitute”;
- (d) searches for emails that contain *both* the Boolean search term district* (which covers the words “District”, “Districts”, “Districting”, etc.) *and* one or more of the following: “Concept”, “Performance”, “Partisan”, “Registration”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Competitive”, and/or “Substitute”;
- (e) searches for emails that contain *all three* of the following: **(i)** rural; **(ii)** urban; *and* **(iii)** one or more of the following: “Districts”, “Divide”, “Split”, “Congress”, “Majority-Minority”, “Hispanic”, “All 3”, and/or “All Three”; and
- (f) searches for emails where one or more of the following individuals is either the sender or a recipient: Michael Sanchez and/or Lisa Curtis (former state senators); Oriana Sandoval and/or Melanie Aranda (executives of the Center for Civic Policy); 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 redistricting bill(s);

- (2) beginning November 2, 2020 and ending January 21, 2021, and that are captured by one or more of the following non-case-sensitive searches conducted on all emails (including the attachments thereto):
- (a) searches for any one or more of the following: “Redistrict”, “Redistricting,” “Districting”, “CD2”, “CD 2”, “Yvette”, and/or “Herrell”;
- (3) beginning January 22, 2021 and ending April 6, 2021, and that are captured by one or more of the following non-case-sensitive searches conducted on all emails (including the attachments thereto):
- (a) searches for any one or more of the following: “Citizen Redistricting Committee”, “S.B.304”, “SB304”, “S.B. 304”, “SB 304”, “Senate Bill 304”, “CD2”, “CD 2”, “Yvette”, and/or “Herrell”; and
 - (b) searches for emails that contain *both* “Redistricting” *and* one or more of the following: “Congress”, “Congressional”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Party”, and/or “Competitive”;
- (4) extending back as far as you have been a Member of the Legislature and forward to the present day,¹ and that are not captured by the searches outlined above, 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 legislator (including yourself) expressing opposition to or misgivings about the creation of an independent redistricting committee based on its depriving the Legislature of its ability either to maximize partisan gains or to draw districts likely to result in certain electoral outcomes;
 - (b) any justification given by you, or to you by another legislator or legislative staffer, for the deviations between the Citizen Redistricting Committee’s Concept H (sometimes called the “People’s Map”) and either (i) the bill introduced as S.B. 1

¹ In actuality the date ranges implicated are much narrower, given the topics described in ¶¶ (4)(a)-(g).

(2021 Spec. Sess.), or **(ii)** its substitute in the Senate Judiciary Committee (which was the final congressional map passed);

- (c)** any communications specifically explaining or justifying the Senate Judiciary Committee Substitute for S.B. 1, particularly those made on or around December 9 or 10, 2021;
- (d)** any complaints, protests, or misgivings expressed by any legislator, or any response thereto, regarding proposals to adopt maps other than those proposed by the Citizen Redistricting Committee (including maps that could be characterized as ‘modifications of’ or ‘based on’ a CRC-approved concept); you may limit your response to emails that either pre-date S.B. 1 being signed into law (December 17, 2021) or post-date passage but refer to complaints/protests/misgivings that were lodged/vocalized before passage (in other words, you may exclude from your production post-bill-passage emails relating to complaints, etc. made for the first time post-bill-passage);
- (e)** any discussion or mention of how the 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;
- (f)** 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); and/or

- (g) any instructions or suggestions given by party leadership about how to talk publicly about the redistricted map(s) in such a way as to avoid allegations or the appearance of gerrymandering or partisanship (whether you regard said allegations/appearance as correct or not).

Text Messages & Other Written Communications

In addition to the emails described in the categories above, please produce copies of all text messages, letters, memoranda, and/or other written communications — including messages sent through Facebook, Microsoft Teams, WhatsApp, Kik Messenger, etc. — that relate to one or more of the subject matters described in ¶¶ (4)(a)-(g) above. Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible.

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 Reena Szczepanski by delivering to the person named a copy of the subpoena.

Person making service

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023.

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 APPEARANCE OF PERSON FOR DEPOSITION TRIAL

TO: Research & Polling, Inc.
5140 San Francisco Road NE
Albuquerque, NM 87109

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: Harrison & Hart, LLC
924 Park Avenue SW, Suite E
Albuquerque, NM 87102

Date: August 25, 2023

Time: 8:00 a.m.

EXHIBIT
C

to

testify at the taking of a deposition in the above case.

testify at trial.

YOU ARE ALSO COMMANDED, pursuant to Rule 1-030(B)(6) NMRA, to designate and fully prepare one or more persons (who consent to testify on your office's behalf) to testify as to all information known or reasonably available to Research & Polling, Inc. ("R&P") as a whole on the following matters:

- (1) R&P's role, if any, in designing or assisting in the design of the 2021 congressional-redistricting law (S.B. 1), including specifically the ways in which the Citizen Redistricting Committee's ("CRC's") Congressional Concept H was modified to create the originally introduced S.B. 1 bill, and the ways in which the originally introduced S.B. 1 was modified to create the Senate Judiciary Committee Substitute, which was eventually enacted into law.
- (2) All communications (including emails, text messages, phone calls, and in-person conversations) that R&P personnel had with state legislators on the subject of redistricting — including congressional redistricting specifically, and redistricting generally, but you may exclude communications that relate specifically and exclusively to the state House and Senate maps — in the following time periods (tracking, to the extent possible, what communications took place in what time periods):
 - (a) from the beginning of July to the end of October 2021 (this loosely corresponds to the CRC process);
 - (b) from the beginning of November to the end of December 6, 2021 (this is the period between the CRC process and the legislative redistricting session); and
 - (c) from December 6 to 11, 2021 (this is the legislative redistricting session itself).
- (3) The processes by which you prepared your designee(s) to testify about the topics above; the process by which CCP collected and produced the documents requested below; and the factual bases for any objections interposed (including, for burden-based objections, detailed information

regarding the costs and/or time that a given record-collection step would have required).

If your office elects to prepare and produce multiple designees to give testimony, you must be prepared to state the matters on which each person will testify.

YOU ARE ALSO COMMANDED to produce, **within 14 days of the service of this subpoena**, the following documents:

- (A) All written communications (including, but not limited to, emails and text messages) exchanged in 2021 *between* any R&P principal or employee *and* any of the following legislators: Joseph Cervantes, Daniel Ivey-Soto, Georgene Louis, Brian Egolf, Mimi Stewart, and/or Peter Wirth.
- (B) All written communications that any R&P principal or employee had with any state legislator or legislative staffer from December 6 to 11, 2021.
- (C) Any instructional documents, guides, manuals, handbooks, etc. distributed by R&P — or at R&P's behest, or which R&P participated in the making/compiling of — to the members of either the CRC and/or the Legislature that relate to redistricting.

Please produce these documents in the format in which they exist currently (*e.g.*, please do not print out hardcopies of emails). Please produce these documents either by emailing them to carter@harrisonhartlaw.com or by delivering them to 924 Park Avenue SW, Suite E, Albuquerque NM 87102.

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

August 2, 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

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 command to produce evidence or to permit inspection may be joined with a command to appear for a deposition 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.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

Subject to Subparagraph (2) of Paragraph D below, 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 such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena 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 a motion to quash the subpoena and serve the motion on all parties to the action. 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, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to 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. Such an 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.

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 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, or
- (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.

STATE OF NEW MEXICO

Legislative Council Service

**Agreement for Professional Technical Services for
State and Congressional Redistricting**

This Agreement for Professional Technical Services for State and Congressional Redistricting ("Agreement") is made between the Legislative Council Service ("LCS"), an agency of the legislative branch of the State of New Mexico ("State"), and Research & Polling, Inc. ("Contractor").

In consideration of their mutual promises, the parties agree that:

1. **Scope of Work.** The Contractor will furnish technical consulting services to the LCS as generally requested and directed by or through the Director of the LCS, including the following specified services:

A. design alternative legislative, congressional and Public Education Commission (PEC) redistricting plans as requested through the LCS by the redistricting committee and the legislature and finalize alternative plans during the special legislative session for redistricting;

B. as requested by the Director of the LCS, provide expert technical assistance to the New Mexico Legislative Council, the redistricting committee, the legislature and the LCS, in conjunction with legal counsel, for the development of procedures, policies, guidelines and technical standards to complete state and congressional redistricting while ensuring compliance with the United States Constitution and the federal Voting Rights Act of 1965;

C. develop and provide the necessary database for redistricting, utilizing maps and data from the completed Redistricting Data Program, PL 94-171 data, voter registration and election return data and any other data needed to track changes in precincts and districts since the last census and produce redistricting plans for congressional districts, state legislative districts and PEC districts.

D. recommend appropriate software and hardware necessary for production and distribution of redistricting plans and maps and provide necessary training to LCS staff as designated by the Director of the LCS;

E. assist LCS staff and the redistricting committee in preparation for and participation in public hearings on redistricting throughout the state or online virtual meetings, if necessary, and in committee hearings during legislative sessions dealing with redistricting;

F. develop county-level, regional-level and statewide-level tables and maps comparing 2010 census data with 2020 census data;

**EXHIBIT
D**

G. develop and assist in presenting alternate redistricting plans at public hearings;

H. meet with LCS staff, the redistricting committee, the New Mexico Legislative Council and legal counsel as needed to plan for and coordinate redistricting tasks properly;

I. assist and advise the secretary of state, county clerks and county commissioners in making any changes to precincts that are necessary to meet the legal and constitutional requirements of redistricting and to ensure that all precincts coincide with the census block boundaries of the completed redistricting data program;

J. advise and coordinate with Legislative Information Service staff on appropriate data transfer to the LCS and from the LCS to the legislature and the public;

K. provide other services to the LCS relating to the redistricting process as requested by the Director of the LCS, including post-session services necessary to complete the redistricting process; and

L. if there are legal challenges to the redistricting process or plans, negotiate with the LCS on the provision of and compensation for services necessary for such legal proceedings if requested by the Director of the LCS.

2. **Compensation.**

A. The LCS shall pay the Contractor compensation for services rendered, materials and supplies provided and expenses approved pursuant to Subparagraph B of this paragraph no more than one million fifty-five thousand dollars (\$1,055,000) for work done in fiscal years 2021 and 2022, except as provided in Subparagraphs C and E of this paragraph. The LCS shall pay the Contractor:

- (1) for services rendered at the rate of:
 - (a) two hundred dollars (\$200) per hour for the president;
 - (b) one hundred fifty dollars (\$150) per hour for the vice president;
 - (c) one hundred dollars (\$100) per hour for redistricting specialists; and
 - (d) seventy-five dollars (\$75.00) per hour for other staff;

(2) materials and supplies at actual cost; and

(3) reimbursement or allowance for expenses for necessary travel in accordance with Subparagraph B of this paragraph.

B. The Contractor agrees that any out-of-state travel must be approved in advance by the Director of the LCS. The LCS shall pay the Contractor for all necessary travel as follows:

(1) reasonable lodging and other accommodations at actual cost, including the reasonable costs for accommodations during the special legislative session for redistricting;

(2) map mileage for in-state travel at the federal Internal Revenue Service standard mileage rate;

(3) for approved out-of-state travel, taxi and other transportation at actual cost; and

(4) for travel to meetings outside of Albuquerque, an allowance of forty dollars (\$40.00) per day for meals.

C. The LCS shall pay the Contractor the New Mexico gross receipts tax for which the Contractor is liable on the amount of compensation payable under this Agreement. The limitation of Subparagraph A of this paragraph does not include gross receipts tax passed on to the LCS.

D. Payment shall be made upon receipt and review by the LCS of a detailed statement from the Contractor of services rendered in the period preceding the month the bill is submitted. Billing shall not be made more frequently than monthly.

E. Following the special legislative session for redistricting, the LCS may decide whether services necessary to address any legal challenges to the redistricting process or plans are required and may negotiate with the Contractor to amend the Agreement accordingly.

3. **Term.** This Agreement is effective on November 9, 2020 and shall continue in effect until June 30, 2022, unless it is terminated earlier pursuant to Paragraph 4 of this Agreement. It may be renewed for an additional term of up to two (2) years beginning on July 1 of the year of renewal.

4. **Termination.** This Agreement may be terminated without cause by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. A termination pursuant to this provision does not nullify a party's obligations for performance or liabilities for failure to perform already incurred prior to the date of termination.

5. **Status of Contractor.** The Contractor is an independent contractor and is not an employee of the State.

6. **Assignment.** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the LCS. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of this Agreement.

7. **Subcontracting.** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the LCS.

8. **Records and Audit.** The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered. These records shall be provided by the Contractor for inspection by the LCS and the State Auditor upon written request of the LCS. The LCS has the right to audit billings both before and after payment. Payment under this Agreement is not a waiver of the right of the LCS to recover excessive or illegal payments.

9. **Appropriations.** The continuation of this Agreement is contingent upon sufficient appropriations and authorizations for expenditures being made by the legislature to permit those payments. If sufficient appropriations and authorizations are not made by the legislature, this Agreement shall terminate upon the Contractor's receipt of written notice of termination from the LCS. The LCS's decision of whether sufficient appropriations and authorizations for expenditures have been made shall be accepted by the Contractor and shall be final.

10. **Release.** Upon receipt of final payment of the amount due under this Agreement, the Contractor shall release the LCS, its employees and the State from all liabilities, claims and obligations arising from or under this Agreement.

11. **Authority.** The Contractor agrees not to purport to bind the State to any obligation not assumed in this Agreement by the State, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. **Application of the LCS's Laws and Policies to Contractor.** In performing services pursuant to this Agreement, the Contractor shall comply with the laws and policies of the LCS just as if the Contractor were a member of the LCS staff.

13. **Product of Services; Copyright.** All materials developed or acquired by the Contractor under this Agreement are the property of the State and shall be delivered to the LCS not later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

14. **Conflict of Interest.** The Contractor warrants that the Contractor currently has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor further warrants that the Contractor has not violated the provisions of Section 10-16-8 or 10-16-13 NMSA 1978 by entering into this Agreement.

15. **Amendment.** This Agreement shall not be changed or supplemented except by a written instrument executed by the parties.

16. **Scope of Agreement.** This Agreement incorporates all the agreements and understandings between the parties concerning its subject matter, and all agreements and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents concerning the subject matter of this Agreement is valid or enforceable unless included in this Agreement.

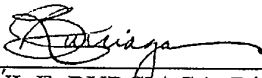
17. **Applicable Law.** This Agreement shall be governed by the laws of New Mexico.

18. **Notice.** This Agreement is subject to the applicable provisions of the Procurement Code. That act imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.

19. **Equal Opportunity Compliance.** The Contractor agrees to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, be excluded from employment or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

STATE OF NEW MEXICO
LEGISLATIVE COUNCIL SERVICE

RESEARCH & POLLING, INC.

By: 
RAÚL E. BURCIAGA, Director


BRIAN SANDEROFF, President

Date: November 10, 2020

Date: Nov. 11, 2020

N.M. Tax I.D. # 2013-6305-1

Federal Tax I.D. # 85-0343955

- 5 - NMCRS - 02-057131-003

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITIZEN
REDISTRICTING COMMITTEE AND RESEARCH & POLLING, INC.**

This memorandum of understanding (MOU) is made and entered into this 2nd day of July, 2021, by the Citizen Redistricting Committee (CRC) and Research & Polling, Inc. (R&P), collectively referred to as "the Parties", for the purpose of establishing the terms of agreement whereby R&P will perform professional technical redistricting services for the CRC.

WHEREAS, R&P is currently on contract with the Legislative Council Service (LCS) to provide various technical redistricting services to the legislature and to work with the secretary of state, county clerks and the United States Census Bureau to prepare the state for redistricting following release of the 2020 census data; and

WHEREAS, the Redistricting Act (Laws 2021, Chapter 79, Sections 2 through 10) establishes an independent committee, the CRC, to conduct public hearings for public input on the redrawing of district boundaries for the state's congressional districts, legislative districts and Public Education Commission districts and to develop redistricting plans for those offices for submission to the legislature; and

WHEREAS, because the legislature did not create a separate legislative committee to create and propose redistricting plans, R&P will be available to assist the CRC in performing its redistricting duties; and

WHEREAS, it is in the public interest that all technical and mapping data used in the redistricting process be uniform and therefore that R&P, the vendor providing the data and redistricting services, be allowed to do so for both the CRC and the legislature; and

WHEREAS, while performing services for the CRC, R&P will not consult with or take requests from individual legislators or caucuses until after the earlier of October 23, 2021 or the date of final selection of plans by the CRC; and

WHEREAS, R&P will continue its nonpartisan preliminary work with the secretary of state, counties and the LCS in preparing for the 2021 special redistricting session, including its work with the secretary of state and counties and in preparing mapping and census data for use in the redistricting process;

NOW, THEREFORE, in consideration of the mutual benefits that will accrue to the state and to the Parties in having R&P assist the CRC, the Parties agree to the following terms:

1. Terms of Agreement

A. This MOU will be effective from July 2, 2021 until October 23, 2021.

EXHIBIT E

B. R&P shall:

(1) participate in up to seven (7) preliminary public meetings held by the CRC pursuant to Sections 6 and 7 of Chapter 79 of Laws 2021;

(2) assist the CRC in reviewing and developing district plans in accordance with the provisions of Section 8 of Chapter 79 of Laws 2021 in consultation with legal counsel hired by the CRC;

(3) participate in up to seven (7) public meetings held by the CRC to receive public comment and testimony on the CRC's proposed district plans pursuant to Section 6 of Chapter 79 of Laws 2021;

(4) prepare the final district plans adopted by the CRC to be submitted to the legislature;

(5) refrain from any participation, writing, advising or editing concerning evaluations and statements required by Sections 9 and 10 of Chapter 79 of Laws 2021;

(6) complete all work for the CRC by October 23, 2021; and

(7) submit its invoices for services performed for the CRC to the LCS on a monthly basis.

C. The CRC shall:

(1) submit its final redistricting plans to the LCS for preparation of the accompanying bills to be submitted to the legislature; and

(2) release R&P from all service obligations no later than October 23, 2021.

STATE OF NEW MEXICO
CITIZEN REDISTRICTING COMMITTEE

By: _____
HON. EDWARD L. CHÁVEZ, Chair

Date: _____

RESEARCH & POLLING, INC.

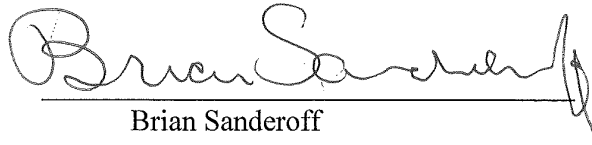

BRIAN SANDEROFF, President

Date: 6/29/2021

DECLARATION OF BRIAN SANDEROFF

I, Brian Sanderoff, declare as follows:

1. I have been the President of Research & Polling, Inc. ("RPI") since its inception in 1986. I am over the age of 18 and have personal knowledge of the facts in this declaration.
2. RPI was hired as a consultant through the Legislative Council Service under LCS Contract No. 20-36. The agreement began November 9, 2020 and ran until June 30, 2022. Exhibit D filed with this declaration is a true and accurate copy of that contract.
3. RPI also entered a *Memorandum of Understanding between the Citizen Redistricting Committee and Research and Polling, Inc.*, under which RPI agreed "to assist the CRC in performing its redistricting duties." That agreement provided that, from July 2, 2021 to October 23, 2021, RPI would refrain from consulting with or taking requests from individual legislators. *See MOU between CRC & RPI*, Ex. E.
4. RPI did not design the map that became Senate Bill 1.
5. RPI did not communicate with legislators about the design effects, intent or policies behind Senate Bill 1.



Brian Sanderoff

**EXHIBIT
F**