

FILED
5th JUDICIAL DISTRICT COURT
Lea County
8/14/2023 10:15 PM
NELDA CUELLAR
CLERK OF THE COURT
Cory Hagedoorn

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity
as New Mexico Secretary of State, MICHELLE LUJAN
GRISHAM, in her official capacity as Governor of New
Mexico, HOWIE MORALES, in his official capacity as
New Mexico Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART, in her official
capacity as President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ, in his official
capacity as Speaker of the New Mexico House of
Representatives,

Defendants.

PLAINTIFFS' MOTION TO COMPEL DISCOVERY

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT..... 1

 A. Plaintiffs’ Verified Complaint Alleges That, With Senate Bill 1, The Legislature Unconstitutionally Gerrymandered New Mexico’s Congressional District Map Based On Partisanship 1

 B. The New Mexico Supreme Court Holds That Plaintiffs’ Partisan-Gerrymandering Claim Is Justiciable, Adopting The Three-Part, Intent-Effects-Justification Test From Justice Kagan’s Dissent In *Rucho v. Common Cause* 2

 C. Plaintiffs Serve Discovery, Tailored To Ascertain Facts Relevant To Satisfying The Controlling, Three-Part Test For Partisan-Gerrymandering Claims In Justice Kagan’s *Rucho* Dissent 3

ARGUMENT 5

 I. Plaintiffs’ Discovery Is Highly Relevant To The Issue Of Defendants’ Partisan Intent Under Justice Kagan’s First Element 5

 II. Neither Legislative Nor Executive Privilege Bars Any Of Plaintiffs’ Discovery Requests 8

 A. Legislative And Executive Privilege Have No Application To The Requests For Information Regarding Legislators’ And Executives’ Communications With Outside Third Parties..... 10

 B. Legislative And Executive Privilege Do Not Prevent Plaintiffs From Discovering Communications Among Legislators, Executive Branch Officials, Or Their Staff About Partisan Intent 12

CONCLUSION..... 15

INTRODUCTION

Pursuant to this Court’s Scheduling Order and Rule 1-037 of the New Mexico Rules of Civil Procedure for the District Courts, and in light of certain non-parties’ blanket refusal to respond to discovery requests absent an order from this Court, Plaintiffs respectfully request that this Court enter an Order compelling all recipients of Plaintiffs’ subpoenas and discovery requests to answer and respond fully and promptly to those requests. *See* Scheduling Order 1–2, ¶ 4. Plaintiffs’ discovery requests served to date seek highly relevant information to support their partisan-gerrymandering claim—specifically, whether the Legislature acted with partisan intent in enacting Senate Bill 1, under the first part of the controlling test from Justice Kagan’s dissent in *Rucho v. Common Cause*—and so squarely fall within the permissible scope of discovery. Further, no legislative or executive privilege bars these otherwise appropriate requests for discovery here, for two reasons. First, legislative and executive privilege do not even arguably apply to communications with outside third parties. Second, claims of privilege over intrabranched communications among legislators or executive-branch officials should yield to Plaintiffs’ requests, after the Court balances the competing constitutional considerations presented by this partisan-gerrymandering case.

STATEMENT

A. Plaintiffs’ Verified Complaint Alleges That, With Senate Bill 1, The Legislature Unconstitutionally Gerrymandered New Mexico’s Congressional District Map Based On Partisanship

On January 21, 2022, Plaintiffs filed a Verified Complaint alleging that the Legislature partisan gerrymandered New Mexico’s congressional-district map with

Senate Bill 1, violating Article II, Section 18 of the New Mexico Constitution. Compl. ¶¶ 1–7, 15–17. Plaintiffs’ Complaint alleges that the Democratic-controlled Legislature purposefully cracked southeastern New Mexico, comprising all or parts of Chaves, Eddy, Lea, and Otero Counties, across the State’s three redrawn districts, with the intent to oust Republican Representative Yvette Herrell from her seat and replace her with a Democrat. *Id.* ¶¶ 72–76, 78, 86–95(b), 98. This egregious partisan gerrymander produced the intended results: In the very first election under Senate Bill 1—and in a year that favored Republicans nationally—the new District 2 elected Representative Vasquez, a Democrat. N.M. Sec’y Of State, *Official Results 2022 General Nov. 8, 2022* (last updated Nov. 29, 2022).¹

B. The New Mexico Supreme Court Holds That Plaintiffs’ Partisan-Gerrymandering Claim Is Justiciable, Adopting The Three-Part, Intent-Effects-Justification Test From Justice Kagan’s Dissent In *Rucho v. Common Cause*

On July 5, 2023, the New Mexico Supreme Court issued its Superintending Order, *Grisham v. Van Soelen*, No.S-1SC-39481 (N.M. July 5, 2023), holding that Plaintiffs’ partisan-gerrymandering claim is justiciable under Article II, Section 18 of the New Mexico Constitution and “is subject to the three-part test articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*.” Superintending Order at 3 (citing 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting)). Under that test, a partisan-gerrymandering claim proceeds as follows: “First, the plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing a

¹ Available at <https://electionresults.sos.state.nm.us/resultsSW.aspx?type=FED&map=CTY> (all websites last visited Aug. 14, 2023).

district's lines was to entrench their party in power by diluting the votes of citizens favoring its rival." *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (citations omitted; brackets omitted). "Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by substantially diluting their votes." *Id.* (citation omitted). "And third, if the plaintiffs make those showings, the State must come up with a legitimate, non-partisan justification to save its map." *Id.*

The Supreme Court then remanded to this Court to adjudicate Plaintiffs' claim under this controlling standard, on an expedited timeline, and this Court issued a scheduling order complying with that mandate. As relevant here, the Supreme Court instructed this Court to "consider any [] evidence relevant to" the "application of the test" to Plaintiffs' partisan-gerrymandering claim. Superintending Order 4. This Court thus set an "extraordinarily truncated timeline [for] this case," which timeline instructed Plaintiffs to file "any motion to compel discovery/testimony that was withheld based on a claim of legislative privilege" by August 14, 2023; provided that the Court would endeavor to resolve such motions by September 6, 2023; and ordered the parties to complete discovery by September 13, 2023. Scheduling Order at 1–3.

C. Plaintiffs Serve Discovery, Tailored To Ascertain Facts Relevant To Satisfying The Controlling, Three-Part Test For Partisan-Gerrymandering Claims In Justice Kagan's *Rucho* Dissent

Plaintiffs served discovery on Legislative Defendants, including former House Speaker Brian Egolf (previously named as a party in his official capacity); other legislators, not parties here; Executive Defendants; Secretary of State Toulouse Oliver; the Center for Civic Policy; and Research & Polling, Inc. *See* Pls.' Certificate Of Service (Aug. 5, 2023). For example, as relevant here, Plaintiffs served:

(1) subpoenas *duces tecum*, including requests that each provide dates for deposition or informal interview, on Democratic or “Declined to Select” members of the Legislature not named as parties in this case, *e.g.*, Ex.1–2; (2) subpoenas *duces tecum* on certain legislative and executive staffers, *e.g.*, Ex.3–4; (3) Rule 1-030(B)(6) subpoenas *ad testificandum* on the Center for Civic Policy and on Research & Polling, Inc., Exs.5–6; (4) a notice of deposition under Rule 1-030(B)(6) for the deposition of a designee from the Office of the Governor, Ex.7; (5) a first set of requests for production under Rule 1-034 to Defendant Senator Mimi Stewart, Ex.8; and (6) a first set of interrogatories under Rule 1-033 and requests for admissions under Rule 1-036 to all Defendants. Pls.’ Certificate Of Service at 1–2; Exs.9–10. Plaintiffs also formally noticed the depositions of members of the Legislature, including Defendant Senator Mimi Stewart. *E.g.*, Ex.11.

Plaintiffs’ discovery seeks to uncover facts directly relevant to the first part of Justice Kagan’s controlling test for Plaintiffs’ partisan-gerrymandering claim: that is, that the Legislature acted with partisan intent in enacting Senate Bill 1. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting). The communications that Plaintiffs seek to that end fall into two categories: (1) communications between legislators or executive-branch officials and third parties outside of the Legislature/Executive Branch, and (2) communications among legislators and/or executive-branch officials.

To date, Defendants have asserted various claims of legislative privilege to Counsel for Plaintiffs, alleging that they need not respond to this discovery absent an order of this Court. Non-party Legislators have asserted that they “need to get a final

ruling from the court on legislative privilege” before they answer discovery. Ex.12 at 1; Ex.13. Further, the Court has already received three motions to quash—one from non-party Legislators (filed August 8, 2023); one from Executive Defendants (filed August 11, 2023); and one from Legislative Defendants, as to staff and consultants (filed August 14, 2023)—which motions Plaintiffs will respond to later this week. Given these developments and per this Court’s Scheduling Order, Plaintiffs file this Motion To Compel all recipients’ discovery responses.

ARGUMENT

I. Plaintiffs’ Discovery Is Highly Relevant To The Issue Of Defendants’ Partisan Intent Under Justice Kagan’s First Element

A. To prove their partisan-gerrymandering claim under Justice Kagan’s controlling standard, Plaintiffs must show, as relevant to this motion, that the Legislature acted with partisan intent in enacting Senate Bill 1. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting). Documentary and testimonial evidence from legislators and the Executive who drafted and enacted the redistricting map into law supply highly relevant, direct evidence of the illicit purpose in drawing and enacting that map. *Id.* at 2517. That is precisely why courts frequently allow discovery into, and rely upon, such evidence in redistricting cases, at the request of parties like Plaintiffs here, who are seeking to prove impermissible partisan intent. *Benisek v. Lamone*, 241 F. Supp. 3d 566, 575 (D. Md. 2017); *Rucho*, 139 S. Ct. at 2517 (Kagan, J., dissenting); *see also, e.g., Common Cause v. Rucho*, 279 F. Supp. 3d 587, 606, 652 (M.D.N.C. 2018), *vacated and remanded*, 138 S. Ct. 2679 (2018); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 391–92 (Fla. 2015); *League of Women Voters*

of *Ohio v. Ohio Redistricting Comm.*, 164 Ohio St. 3d 1457, 2021-Ohio-3607, 174 N.E.3d 805 (unpublished table decision); accord Motion of Dr. Cervas, *et al.*, for Leave to File *Amici Curiae* Brief in Support of Neither Party, Ex.A at 3.²

“Parties may obtain discovery of any information, not privileged, which is *relevant* to the subject matter involved in the pending action.” Rule 1-026(B)(1) (emphasis added). Information is “relevant” to the subject matter—and thus within the scope of permissible discovery—if it “has any tendency to make a fact more or less probable than it would be without” the information, and “the fact is of consequence in determining the action.” N.M. R. Evid. 11-401(A)–(B); *see also* Rule 1-026(B)(1) (also providing that discovery seeking information that would lead to discovery of admissible evidence is permissible).

B. Here, Plaintiffs’ discovery requests fall squarely within the scope of permissible discovery, Rule 1-026(B)(1); N.M. R. Evid. 11-401(A)–(B), as they all seek information that is highly relevant to satisfying the partisan-intent prong of Justice Kagan’s controlling test, *Rucho*, 139 S. Ct. at 2516–17 (Kagan, J., dissenting). Plaintiffs’ discovery requests seek documentary and testimonial evidence from Legislative Defendants, non-party Legislators, Executive Defendants, and outside third parties regarding the process of drafting and enacting Senate Bill 1, as well as

² That said, and as Plaintiffs intend to discuss more fully in their responses to the three pending Motions To Quash, while such direct evidence is highly relevant, indirect or circumstantial evidence of the Legislature’s and/or Executive’s intent—such as, for example, sophisticated social-science analysis explaining the maps that a mapmaker not seeking to maximize partisan advantage would have adopted—can also present powerful evidence under the partisan-intent element of Justice Kagan’s test. *See Rucho*, 139 S. Ct. at 2520–21 (Kagan, J., dissenting); *Benisek*, 241 F. Supp. 3d at 575 (“direct evidence, as well as circumstantial evidence, may be used to prove the element of intent”); *Harkenrider v. Hochul*, 197 N.E.3d 437, 452 (N.Y. 2022) (“Such invidious intent could be demonstrated directly or circumstantially[.]”).

partisan gerrymandering and/or Democratic party prospects in District 2. *See* Exs. 1–11. And those requests fall into two categories: communications between legislators or executive-branch officials and outside third parties, and communications among legislators and/or executive-branch officials. *Supra* pp.3–5.

This information is plainly “relevant” to Plaintiffs’ claim here, Rule 1-026(B)(1), since it has a powerful “tendency” to make it “more or less probable,” N.M. R. Evid. 11-401(A), that the Legislature and/or the Governor acted with impermissible partisan intent, *see Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting), including by revealing the content of their communications about Senate Bill 1, as well as the communications they received from third parties that helped forward partisan designs. The straightforward relevance of these discovery requests is why they are standard fare in partisan-gerrymandering cases like this one, in both federal and state court. *See, e.g., Benisek v. Lamone*, 348 F. Supp. 3d 493, 497, 518 (D. Md. 2018), *vacated and remanded sub nom. Rucho*, 139 S. Ct. 2484 (noting that “extensive discovery,” including documentary and testimonial evidence from elected officials, resulted in a “record [] replete with direct evidence of . . . precise [partisan] purpose”); *Common Cause*, 279 F. Supp. 3d at 640; *League of Women Voters of Ohio*, 164 Ohio St. 3d 1457 (granting analogous discovery requests, including requests for production of documents and depositions of the Ohio Governor, Senate President, and House Speaker, among other officials); *League of Women Voters of Fla.*, 172 So. 3d at 391–92 (discussing how evidence obtained through discovery revealed that “political operatives ‘obtain[ed] the necessary cooperation and collaboration’ from the

Legislature to ensure that the ‘redistricting process and the resulting map’ were ‘taint[ed]’ with ‘improper partisan intent’” (alterations in original)).

II. Neither Legislative Nor Executive Privilege Bars Any Of Plaintiffs’ Discovery Requests

New Mexico’s discovery rules prevent Plaintiffs from obtaining relevant information via discovery that is protected by “privilege[],” Rule 1-026(B)(1), but neither legislative nor executive privilege bars Plaintiffs’ discovery requests here.

As for legislative privilege, although the appellate courts of this State have not specifically recognized this doctrine, the New Mexico Constitution’s Speech or Debate Clause likely creates some form of such legislative privilege from answering discovery in court proceedings. *See* N.M. Const., art. IV, § 13; *see generally State ex rel. Atty. Gen. v. First Jud. Dist. Ct. of N.M.*, 1981-NMSC-053, ¶ 18, 96 N.M. 254, 629 P.2d 330, *abrogated by Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-026, ¶ 17, 283 P.3d 853 (stating, in dicta, that the Legislature has a legislative privilege). That Clause provides that “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. Any legislative-privilege doctrine in New Mexico is narrow, however, given that the Supreme Court narrowly understands executive privilege—explained immediately below—and considers legislative privilege to “similar” to executive privilege, *First Jud.*, 1981-NMSC-053, ¶ 18; *see Republican Party*, 2012-NMSC-026, ¶ 51 (favorably citing Patrick Henry’s statement at the constitutional debates to “[g]ive us at least a plausible apology why Congress should keep their proceedings in secret”).

Moving to executive privilege, the New Mexico Supreme Court recognizes only a narrow form of this doctrine, as noted immediately above. In the landmark *Republican Party of New Mexico*, 2012-NMSC-026, decision, the Court held that the Governor had only a limited, qualified executive privilege under the New Mexico Constitution, extending only to communications or documents “authored, or solicited and received, by either the Governor or an immediate advisor,” to the exclusion of all other executive-branch officials. *Id.* ¶ 46 (citations omitted). Further, even this limited privilege was subject to a “balanc[ing of] the public’s interest in preserving confidentiality to promote intra-governmental candor with the individual’s need for disclosure of the particular information sought” with litigation discovery. *Id.* ¶ 49 (citations omitted). The New Mexico Constitution, the Court explained, requires this narrow understanding of executive privilege because “[t]ransparency is an essential feature of the relationship between the people and their government,” so “executive privilege must be confined to the constitutional limits” to “protect the people’s vital right to access information about the workings of government.” *Id.* ¶¶ 51–52.

As explained in full immediately below, neither legislative nor executive privilege bars Plaintiffs’ discovery requests, since these privilege doctrines categorically do not apply to requests for communications with outside third parties, *infra* Part II.A, and because, in any event, these doctrines’ balancing tests weigh in favor of discovery here, *infra* Part II.B.

A. Legislative And Executive Privilege Have No Application To The Requests For Information Regarding Legislators' And Executives' Communications With Outside Third Parties

1. Legislative and executive privilege do not extend to communications with third parties, such as independent consultants, outside interest groups, or members of the public who communicate with legislators or executive-branch officials. For legislative privilege, New Mexico's Speech or Debate Clause specifically limits its protections to "*Members of the legislature*," N.M. Const., art. IV, § 13 (emphasis added)—that is, "to state legislators," N.M. Att'y Gen. Op. No. 93-04, 1993 WL 364398 at *3 (Mar. 5, 1993)—with no reference to outside third parties. Executive privilege, in turn, covers only those executive-branch communications involving "the Governor or an immediate advisor," *Republican Party*, 2012-NMSC-026, ¶ 46 (citations omitted), to the exclusion of communications with "individuals outside of the executive department," *see id.* at ¶¶ 37, 42 (discussing and then affirming this holding from *First Judicial*). The Supreme Court's detailed discussion of executive privilege in *Republican Party* makes the inapplicability of that doctrine—and, necessarily, the "similar" legislative-privilege doctrine as well, *First Jud.*, 1981-NMSC-053, ¶ 18—as to outside third parties unambiguous. As *Republican Party* explains, "executive privilege does not cover *all communications* in furtherance of gubernatorial decision," but rather extends only to communications between the Governor and her immediate advisors—meaning that even communications with other executive-branch officials are not covered. 2012-NMSC-026, ¶ 46 (emphasis added). So, necessarily then, communications between the Governor and persons *outside of* the Executive Branch would not enjoy the privilege either. *See id.* ¶¶ 37, 42, 46; *First Jud.*, 1981-NMSC-

053, ¶ 18 (legislative privilege is “similar”). Finally, multiple courts have recognized that communications between legislators or executive-branch officials and third parties are subject to discovery in redistricting cases, notwithstanding claims of privilege. See, e.g., *League of Women Voters of Ohio*, 164 Ohio St. 3d 1457; *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 11 C 5065, 2011 WL 4837508, at *10 (N.D. Ill. Oct. 12, 2011); *Favors v. Cuomo*, No. 1:11-cv-05632, 2013 WL 11319831, at *10 (E.D.N.Y. Feb. 8, 2013); *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *2 (E.D. Wis. Dec. 8, 2011); *Edwards v. Vesilind*, 292 Va. 510, 532–33 (Va. 2016); accord *Almonte v. City of Long Beach*, No.2:04-cv-04192, 2005 WL 1796118, at *3 (E.D.N.Y. July 27, 2005).

2. Here, multiple of Plaintiffs’ discovery requests seek testimony, communications, and information from third parties outside of the legislative or executive process—that is, communications between third parties and legislators/legislative staffers, and communications between third parties and the Governor/her close aides—thus neither legislative nor executive privilege apply to these requests, as a categorical matter. For example, Plaintiffs have sought communications between legislators and third parties, such as “any person [known] to have been retained or employed by any Democratic party, caucus, or campaign committee . . . to serve as a consultant, demographer, or expert on the 2021 New Mexico congressional-redistricting bill.” *E.g.*, Ex.8 at 5–6; see *Comm. for a Fair & Balanced Map*, 2011 WL 4837508, at *10 (allowing discovery for “[c]ommunications” with, among others, “the Democratic Congressional Campaign Committee”).

Plaintiffs have also sought communications between legislators and other third parties, such as “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.” *E.g.*, Ex.1, Subpoena 12; *see Comm. for a Fair & Balanced Map*, 2011 WL 4837508, at *10. Additionally, Plaintiffs have served Rule 1-030(B)(6) subpoenas *ad testificandum* on the Center for Civic Policy and on Research & Polling, Inc., two organizations outside of the Legislature. Exs.5–6. And Plaintiffs desire to depose their discovery-request recipients on these communications, as that could reveal valuable evidence of legislators and/or the Governor communicating with third-party actors, including third-party partisan actors attempting to help the Legislature draw Senate Bill 1 to most flip the Second Congressional District.

B. Legislative And Executive Privilege Do Not Prevent Plaintiffs From Discovering Communications Among Legislators, Executive Branch Officials, Or Their Staff About Partisan Intent

While the Legislature’s and Executive’s *intrabran*ch communications do implicate legislative or executive privilege to some degree—that is, communications from closely within the legislative or executive branch that “assist[] the Governor [or the Legislature] with . . . decisionmaking,” *Republican Party*, 2012-NMSC-026, ¶ 46; *First Jud.*, 1981-NMSC-053, ¶ 18—other, competing constitutional considerations may overcome these privileges and thus allow discovery of otherwise-privileged information in appropriate cases, including the New Mexico Constitution’s Equal Protection Clause, the source of the prohibition on egregious partisan gerrymandering, N.M. Const. art. II, § 18; Superintending Order 3–4.

1. Where legislative or executive privilege would apply to a communication, the New Mexico Constitution does not recognize *absolute* claims of such privilege. Rather, such privileges are “qualified,” meaning that they may yield in the face of other considerations in the New Mexico Constitution, after appropriate “balancing” of such competing concerns. *Republican Party*, 2012-NMSC-026, ¶ 49; *First Jud.*, 1981-NMSC-053, ¶ 18 (legislative privilege “similar”). Thus, for example, in *Republican Party of New Mexico*, the Court explicitly recognized a balancing test of executive privilege in the face of a “public records request,” 2012-NMSC-026, ¶ 49, recognizing that the constitutional concern for the “people hav[ing] access to the information necessary to determine whether their elected officials are faithfully fulfilling their duties” may outweigh executive privilege in a given case, *id.* ¶ 52.

Given the need to balance claims of legislative or executive privilege here with other, competing constitutional considerations, Plaintiffs respectfully suggest that the Court adopt the five-factor balancing test for privilege claims applied in *Benisek*, 241 F. Supp. 3d at 575—a decision from one of the district courts preceding the Supreme Court’s *Rucho* decision—as well as in multiple other partisan-gerrymandering cases. The five factors for this legislative-privilege test for redistricting cases, which factors the court must balance when determining whether to compel compliance with discovery, are as follows: “(1) the relevance of the evidence sought, (2) the availability of other evidence, (3) the seriousness of the litigation, (4) the role of the State, as opposed to individual legislators, in the litigation, and (5) the extent to which the discovery would impede legislative action.” *Id.* Courts

applying this five-factor test frequently allow discovery of legislators in redistricting cases, notwithstanding claims of legislative privilege. *See, e.g., id.* at 577; *Bethune-Hill v. Va. State Bd. of Elections*, 114 F.Supp.3d 323, 337–38 (E.D. Va. 2015); *Page v. Va. State Bd. of Elections*, 15 F. Supp. 3d 657, 666 (E.D. Va. 2014); *Favors v. Cuomo*, 285 F.R.D. 187, 217–21 (E.D.N.Y. 2012); *Baldus*, No. 11-CV-562 JPS-DPW-RMD, 2011 WL 6122542 at *2; *Comm. for a Fair & Balanced Map*, 2011 WL 4837508, at *7; *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 101–03 (S.D.N.Y. 2003), *affd*, 293 F. Supp. 2d 302 (S.D.N.Y. 2003).

2. All of Plaintiffs’ discovery requests satisfy the five-factor balancing test that courts regularly apply to claims of legislative or executive privilege in partisan-gerrymandering cases, thus this Court should overrule any such privilege objections to Plaintiffs’ discovery requests lodged by the discovery recipients here.

First, Plaintiffs’ discovery requests seek highly relevant testimony, communications, and documents, as explained above. *Supra* Part I.

Second, Plaintiffs’ discovery requests seek evidence not readily available elsewhere. Only the legislators or executive-branch officials themselves or third-parties with whom they communicated possess the direct evidence of intent that Plaintiffs’ discovery requests seek, where those communications were not disclosed to the public. *See Benisek*, 241 F. Supp. 3d at 575. Further, Plaintiffs cannot possibly know all of the third parties involved so as to obtain this evidence through other sources. *See id.* And for intrabranched communications, there are no other sources from whom Plaintiffs could obtain this information. *See id.*

Third, Plaintiffs’ partisan-gerrymandering claim raises extremely serious issues, striking at the heart of “the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives,” *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting), in violation of the New Mexico Constitution, *see* N.M. Const. art. II, § 18; Superintending Order 3–4.

Fourth, considering the role of the State vis-à-vis individual legislators also weighs in favor of Plaintiffs, since Plaintiffs have brought an *official-capacity* suit against Defendants, meaning that none of the discovery recipients have a “personal stake in the litigation” or “face [] direct adverse consequence[s] if the plaintiffs prevail.” *Benisek*, 241 F. Supp. 3d at 576.

Fifth, there is little risk that legitimate governmental deliberations will be improperly chilled or impeded by such discovery. *Id.* The New Mexico Constitution bans egregious partisan gerrymandering, N.M. Const. art. II, § 18; Superintending Order 3–4, so subjecting legislators or executive-branch officials to Plaintiffs’ discovery would, at most, discourage them from engaging in this unconstitutional practice in the future.

CONCLUSION

This Court should enter an Order compelling all recipients of Plaintiffs’ subpoena and discovery requests to answer and respond fully to these requests.

Dated: August 14, 2023

MISHA TSEYTLIN*
MOLLY S. DIRAGO*
KEVIN M. LEROY*
TROUTMAN PEPPER
HAMILTON SANDERS LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240 (MT)
(312) 759-1926 (MD)
(312) 759-1938 (KL)
(312) 759-1939 (fax)
misha.tseytlin@troutman.com
molly.dirago@troutman.com
kevin.leroy@troutman.com

*Attorneys for Plaintiff Manuel
Gonzales, Jr.*

**Pro Hac Vice Pending*

Respectfully Submitted,

HARRISON & HART, LLC

/s/Carter B. Harrison, IV
CARTER B. HARRISON, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
(505) 312-4245
(505) 341-9340 (fax)
carter@harrisonhartlaw.com

*Attorneys for Plaintiff Republican
Party Of New Mexico, David Gallegos,
Timothy Jennings, Dinah Vargas,
Bobby and Dee Ann Kimbro, and
Pearl Garcia*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing will be served on all counsel via the e-filing system.

Dated: August 14, 2023

/s/Carter B. Harrison, IV
CARTER B. HARRISON, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
(505) 312-4245
(505) 341-9340 (fax)
carter@harrisonhartlaw.com

EXHIBIT 1

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

August 2, 2023

The Honorable Daniel A. Ivey-Soto
New Mexico Senate
3700 Valencia Place NE
Albuquerque, NM 87110

Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Sen. Ivey-Soto:

I hope you are doing well. 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 (you were a co-sponsor so I suspect you remember it). 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 know you're already familiar with all of this from your briefing on the case in committee.

You're well aware that I don't represent you, and that there is the possibility that you may be able to assert the so-called legislative privilege¹ in response to some of the document requests I'm propounding on you, so I won't belabor the point.² I do want to point out to you, though, that

¹ New Mexico's Speech or Debate Clause, N.M. Const. art. IV, § 13, has never been judicially interpreted, and our courts have obviously construed the *executive* privilege quite narrowly. But analogous provisions do exist in the federal Constitution, *see* U.S. Const. art. I, § 6, cl. 1 (applying to Members of Congress), and most other state constitutions, and these provisions typically impart a (broader) immunity from being named as a defendant in a civil suit and a (narrower) testimonial privilege. "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).

² I will, however, note that there is a widely recognized "exception to the legislative privilege [in] criminal cases and redistricting cases." *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

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, as usual, 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.

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. I am particularly interested to hear about your role in the establishment of the Citizen’s Redistricting Committee in the early part of 2021. 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 *unavailability*. 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. Our scheduling order also allows me more flexibility than usual to schedule depositions quickly.

I regret the imposition I know this creates. Thank you for your time and attention to this matter, and more generally for your service to our state. Always enjoy speaking with you.

Very truly yours,

HARRISON & HART, LLC



Carter B. Harrison IV

CBH

Enclosures (2):
Subpoena *Duces Tecum* with Exhibit A (9 pages)
Scheduling Order (4 pages)

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.”).

Sen. Daniel Ivey-Soto
August 2, 2023
Page 3 of 3

Subpoena Cover Letter

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: Daniel A. Ivey-Soto
3700 Valencia Place NE
Albuquerque, NM 87110

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:
See Exhibit A 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 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 1, 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 certain emails and text messages. The email searches requested below can be conducted using the search function of most common email clients and websites. All date ranges are ‘inclusive,’ meaning a range of “January 1 to 7” includes messages sent on the 1st, as well as those sent on the 7th. If an email account does not support the ‘asterisk’ Boolean operator, please run separate searches for all permutations of the word listed in the Merriam-Webster free online dictionary, as well as the possessive form of the word. Please ensure that all searches are non-case sensitive (*e.g.*, a search for “GOP” should capture “GOP”, “gop”, and “Gop”). An email is sent “to” a person if that person is listed in any of the “TO,” “CC,” or “BCC” fields. 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 to 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 January 21, 2022 and extending to the date of service of this subpoena, and that either:
 - (a) 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*, GOP*; or
 - (b) 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.);
- (2) 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”;
- (3) 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, Mimi Stewart, 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 (N.B.: You may exclude from your production messages that are *wholly unrelated in every way* to redistricting.);

- (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 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).

Text Messages

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:

- (A) 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;
- (B) 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, Mimi Stewart, Brian Egolf, and/or Georgene Louis;

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

- (C) 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; and/or
- (D) explicitly discuss drawing the Second/Southern Congressional District in such a way that a Democrat would be likely to win the seat.

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. For each category (A)-(C) above, you may exclude from your production messages that are *wholly unrelated in every way* to redistricting, provided all messages within a week of the excluded message in the same conversation are likewise wholly unrelated.

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity as
New Mexico Secretary of State, MICHELLE LUJAN
GRISHAM, in her official capacity as Governor of New
Mexico, HOWIE MORALES, in his official capacity as
New Mexico Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART, in her official
capacity as President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ, in his official capacity as
Speaker of the New Mexico House of Representatives,

Defendants.

SCHEDULING ORDER

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

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

shall reply to that response within 3 calendar days.

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

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

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

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

By 
Fred Van Soelen, District Judge

Submitted by:


HINKLE SHANOR LLP

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
P.O. Box 10
Roswell, NM 88202-0010
575-622-6510 / 575-623-9332 Fax
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

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

Approved via email on 7/21/23

Sara N. Sanchez
Mark T. Baker
20 First Plaza, Suite 725
Albuquerque, NM 87102
505-247-4800
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

STELZNER, LLC

Approved via email on 7/21/23

Luis G. Stelzner, Esq.
3521 Campbell Ct. NW
Albuquerque NM 87104
505-263-2764
pstelzner@aol.com

Professor Michael B. Browde

751 Adobe Rd., NW
Albuquerque, NM 87107
505-266-8042
mbrowde@me.com

Attorneys for Legislative Defendants

Approved by:

OFFICE OF THE GOVERNOR

Approved via email on 7-21-23

Holly Agajanian
Kyle P. Duffy
490 Old Santa Fe Trail, Suite 400
Santa Fe, NM 87501
(505) 476-2200
*Attorneys For Governor Michelle Lujan Grisham and
Lieutenant Governor Howie Morales*

HARRISON & HART, LLC

Approved via email on 7/22/23

Carter B. Harrison, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Email: carter@harrisonhartlaw.com
(505) 312-4245 / (505) 341-9340 Fax
Attorneys for Respondents-Plaintiffs

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 Daniel Ivey-Soto 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

EXHIBIT 2

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 [X] DEPOSITION [] TRIAL

TO: **Daniel Ivey-Soto**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
HINKLE SHANOR LLP
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Professor Michael B. Browde
mbrowde@me.com

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

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

Date: August 29, 2023 Time: 9:00 a.m.

to

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

testify at trial.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Please comply with the subpoena *duces tecum* previously served upon you. No new document production is commanded by this subpoena.

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment. Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

August 10, 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. 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.

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 _____, 20____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, the statutory witness fee of \$95.00 and mileage in the amount of \$ _____ (*\$0.655/mile x _____ miles*).

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

EXHIBIT 3

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

August 2, 2023

Kyra E. Ellis-Moore
4909 Skyline Ridge Ct. NE
Albuquerque, NM 87111

Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Ms. Ellis-Moore:

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. Be advised that, while I'm doubtful that either you or Congresswoman Leger Fernandez is actively looking to help the Plaintiffs in this case, we do not consider ourselves adverse to her (or to you) and in fact share many of her perspectives on the new congressional map.

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.

Ms. Kyra Ellis-Moore
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,
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: Kyra E. Ellis-Moore
4909 Skyline Ridge Ct. NE
Albuquerque, NM 87111

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:

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

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

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

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.

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity as
New Mexico Secretary of State, MICHELLE LUJAN
GRISHAM, in her official capacity as Governor of New
Mexico, HOWIE MORALES, in his official capacity as
New Mexico Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART, in her official
capacity as President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ, in his official capacity as
Speaker of the New Mexico House of Representatives,

Defendants.

SCHEDULING ORDER

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

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

shall reply to that response within 3 calendar days.

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

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

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

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

By 
Fred Van Soelen, District Judge

Submitted by:


HINKLE SHANOR LLP

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
P.O. Box 10
Roswell, NM 88202-0010
575-622-6510 / 575-623-9332 Fax
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

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

Approved via email on 7/21/23

Sara N. Sanchez
Mark T. Baker
20 First Plaza, Suite 725
Albuquerque, NM 87102
505-247-4800
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

STELZNER, LLC

Approved via email on 7/21/23

Luis G. Stelzner, Esq.
3521 Campbell Ct. NW
Albuquerque NM 87104
505-263-2764
pstelzner@aol.com

Professor Michael B. Browde

751 Adobe Rd., NW
Albuquerque, NM 87107
505-266-8042
mbrowde@me.com

Attorneys for Legislative Defendants

Approved by:

OFFICE OF THE GOVERNOR

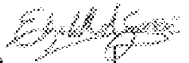
Approved via email on 7-21-23

Holly Agajanian
Kyle P. Duffy
490 Old Santa Fe Trail, Suite 400
Santa Fe, NM 87501
(505) 476-2200
*Attorneys For Governor Michelle Lujan Grisham and
Lieutenant Governor Howie Morales*

HARRISON & HART, LLC

Approved via email on 7/22/23

Carter B. Harrison, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Email: carter@harrisonhartlaw.com
(505) 312-4245 / (505) 341-9340 Fax
Attorneys for Respondents-Plaintiffs



1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **July 5, 2023**

3 **NO. S-1-SC-39481**

4 **MICHELLE LUJAN GRISHAM in her**
5 **official capacity as Governor of the New Mexico,**
6 **HOWIE MORALES, in his official capacity as New**
7 **Mexico Lieutenant Governor and President of**
8 **New Mexico Senate, MIMI STEWART, in her**
9 **official capacity as President Pro Tempore of**
10 **the New Mexico Senate, and JAVIER MARTINEZ,**
11 **in his official capacity as Speaker of**
12 **the New Mexico House of Representatives,**

13 Petitioners,

14 v.

15 **HON. FRED VAN SOELEN,**
16 **District Court Judge,**
17 **Fifth Judicial District Court,**

18 Respondent,

19 and

20 **REPUBLICAN PARTY OF NEW MEXICO,**
21 **DAVID GALLEGOS, TIMOTHY JENNINGS,**
22 **DINAH VARGAS, MANUEL GONZALES JR.,**
23 **BOBBY and DEE ANN KIMBRO, and PEARL**
24 **GARCIA,**

25 Real Parties in Interest,

26 and

27 **MAGGIE TOULOUSE OLIVER,**
28 Defendant-Real Party in Interest.

29
30

1 **ORDER**

2 WHEREAS, this matter initially came on for consideration by the Court
3 upon *verified petition for writ of superintending control and request for stay* and
4 responses thereto;

5 WHEREAS, this Court granted the request for stay in D-506-CV-2022-
6 00041 on October 14, 2022, and ordered the parties to file briefs on the issues
7 presented in the *verified petition for writ of superintending control*;

8 WHEREAS, this Court heard arguments in this matter on January 9, 2023,
9 and thereafter ordered the parties to file supplemental briefs addressing the issue of
10 whether the New Mexico Constitution provides greater protection than the United
11 States Constitution against partisan gerrymandering;

12 WHEREAS, this matter now comes before the Court upon the parties'
13 supplemental briefs and motion to substitute public officer and amend caption;

14 WHEREAS, the Court having considered the foregoing and being
15 sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil,
16 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora
17 concurring;

18 NOW, THEREFORE, IT IS ORDERED that the motion to substitute is
19 GRANTED, and Javier Martinez shall be substituted for Brian Egolf as Speaker of
20 the House;

1 IT IS FURTHER ORDERED that the caption on any further pleadings filed
2 in this proceeding, if any, shall conform to the caption of this order;

3 IT IS FURTHER ORDERED that the *verified petition for writ of*
4 *superintending control* is GRANTED with respect to Petitioners' request that this
5 Court provide the district court guidance for resolving a partisan gerrymandering
6 claim;

7 IT IS FURTHER ORDERED that the stay in D-506-CV-2022-00041 is
8 hereby VACATED, and the district court shall take all actions necessary to resolve
9 this matter **no later than October 1, 2023**;

10 IT IS FURTHER ORDERED that as a threshold matter, the district court
11 shall conduct a standing analysis for all parties;

12 IT IS FURTHER ORDERED that in resolving this matter, the district court
13 shall act in accordance with and apply the following holdings and standards as
14 determined herein:

- 15 1. A partisan gerrymandering claim is justiciable under Article II,
16 Section 18 of the New Mexico Constitution;
- 17
18 2. A partisan gerrymandering claim under the New Mexico Constitution
19 is subject to the three-part test articulated by Justice Kagan in her
20 dissent in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2516 (2019);
21
- 22 3. Clearly, a district drawn without taking partisan interests into account
23 would not present a partisan gerrymander. *Cf.* N.M. Const. art. II, §§
24 2, 3, 4. However, as with partisan gerrymandering under the
25 Fourteenth Amendment, some degree of partisan gerrymandering is

1 permissible under Article II, Section 18 of the New Mexico
2 Constitution. *Accord Rucho*, 139 S.Ct. at 2497. At this stage in the
3 proceedings, it is unnecessary to determine the precise degree that is
4 permissible so long as the degree is not egregious in intent and effect;
5

- 6 4. Intermediate scrutiny is the proper level of scrutiny for adjudication of
7 a partisan gerrymandering claim under Article II, Section 18 of the
8 New Mexico Constitution. *See Breen v. Carlsbad Municipal Schools*,
9 2005-NMSC-028, ¶¶ 11-15, 30-32, 138 N.M. 331, 120 P.3d 413;
10
- 11 5. Under one-person, one-vote jurisprudence, some mathematical
12 deviation from an ideal district population may be permissible as
13 “practicable.” *Cf. Harris v. Ariz. Indep. Redistricting Comm’n*, 578
14 U.S. 253, 258-59 (2016) (quoting *Reynolds v. Sims*, 377 U.S. 533, 579
15 (1964)) (“The Constitution . . . does not demand mathematical
16 perfection. In determining what is ‘practicable,’ we have recognized
17 that the Constitution permits deviation when it is justified by
18 ‘legitimate considerations incident to the effectuation of a rational
19 state policy.’”);
20
- 21 6. In the context of a partisan gerrymandering claim, a reasonable degree
22 of partisan gerrymandering—taking into account the inherently
23 political nature of redistricting—is likewise permissible under Article
24 II, Section 18 and the Fourteenth Amendment;
25
- 26 7. In evaluating the degree of partisan gerrymandering in this case, if
27 any, the district court shall consider and address evidence comparing
28 the relevant congressional district’s voter registration percentage/data,
29 regarding the individual plaintiffs’ party affiliation under the
30 challenged congressional maps, as well as the same source of data
31 under the prior maps. The district court shall also consider any other
32 evidence relevant to the district court’s application of the test
33 referenced in paragraph 2 of this order.
34

35 IT IS FURTHER ORDERED that a writ of superintending control shall
36 issue contemporaneously with this order; and
37

1
2

IT IS FURTHER ORDERED that an opinion in this matter shall follow.

IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of July, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By _____

Handwritten signature of Elizabeth A. Garcia in cursive script.

Chief Deputy Clerk of Court

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Elizabeth A. Garcia

Chief Deputy Clerk of the Supreme Court
of the State of New Mexico

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 Kyra Ellis-Moore 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

EXHIBIT 4

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

August 2, 2023

Dominic P. Gabello
1401 Casa Roja Place NW
Albuquerque, NM 87120

Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Mr. Gabello:

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.

Mr. Dominic Gabello
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 fluid and cursive, with a prominent "C" at the beginning and "IV" at the end.

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,
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: Dominic P. Gabello
1401 Casa Roja Place NW
Albuquerque, NM 87120

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, Brian Egolf, Kyra Ellis-Moore, Daniel Ivey-Soto, Teresa Leger Fernandez, Leanne Leith, Georgene Louis, Melanie Stansbury, Mimi Stewart, or Peter Wirth, or any person you know to have been specifically handling congressional-redistricting issues on behalf of any of the foregoing individuals; and/or
- (2) relate to the subject of congressional redistricting in New Mexico and/or contain one or more of the following non-case-sensitive search terms: “Concept H”, “People’s Map,” “Concept E”, “S.B. 1”, “Senate Bill 1”, “Redistricting Committee”, “Yvette”, or “Herrell”.

In compiling documents in response to request #1, above, if you have more than 50 emails (in the year 2022) with any one of the individuals listed, you may, if you want, go through and exclude those emails that are *wholly unrelated in every way* to redistricting.

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.

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity as
New Mexico Secretary of State, MICHELLE LUJAN
GRISHAM, in her official capacity as Governor of New
Mexico, HOWIE MORALES, in his official capacity as
New Mexico Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART, in her official
capacity as President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ, in his official capacity as
Speaker of the New Mexico House of Representatives,

Defendants.

SCHEDULING ORDER

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

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

shall reply to that response within 3 calendar days.

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

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

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

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

By 
Fred Van Soelen, District Judge

Submitted by:


HINKLE SHANOR LLP

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
P.O. Box 10
Roswell, NM 88202-0010
575-622-6510 / 575-623-9332 Fax
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

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

Approved via email on 7/21/23

Sara N. Sanchez
Mark T. Baker
20 First Plaza, Suite 725
Albuquerque, NM 87102
505-247-4800
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

STELZNER, LLC

Approved via email on 7/21/23

Luis G. Stelzner, Esq.
3521 Campbell Ct. NW
Albuquerque NM 87104
505-263-2764
pstelzner@aol.com

Professor Michael B. Browde

751 Adobe Rd., NW
Albuquerque, NM 87107
505-266-8042
mbrowde@me.com

Attorneys for Legislative Defendants

Approved by:

OFFICE OF THE GOVERNOR

Approved via email on 7-21-23

Holly Agajanian
Kyle P. Duffy
490 Old Santa Fe Trail, Suite 400
Santa Fe, NM 87501
(505) 476-2200
*Attorneys For Governor Michelle Lujan Grisham and
Lieutenant Governor Howie Morales*

HARRISON & HART, LLC

Approved via email on 7/22/23

Carter B. Harrison, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Email: carter@harrisonhartlaw.com
(505) 312-4245 / (505) 341-9340 Fax
Attorneys for Respondents-Plaintiffs

1 **ORDER**

2 WHEREAS, this matter initially came on for consideration by the Court
3 upon *verified petition for writ of superintending control and request for stay* and
4 responses thereto;

5 WHEREAS, this Court granted the request for stay in D-506-CV-2022-
6 00041 on October 14, 2022, and ordered the parties to file briefs on the issues
7 presented in the *verified petition for writ of superintending control*;

8 WHEREAS, this Court heard arguments in this matter on January 9, 2023,
9 and thereafter ordered the parties to file supplemental briefs addressing the issue of
10 whether the New Mexico Constitution provides greater protection than the United
11 States Constitution against partisan gerrymandering;

12 WHEREAS, this matter now comes before the Court upon the parties'
13 supplemental briefs and motion to substitute public officer and amend caption;

14 WHEREAS, the Court having considered the foregoing and being
15 sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil,
16 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora
17 concurring;

18 NOW, THEREFORE, IT IS ORDERED that the motion to substitute is
19 GRANTED, and Javier Martinez shall be substituted for Brian Egolf as Speaker of
20 the House;

1 IT IS FURTHER ORDERED that the caption on any further pleadings filed
2 in this proceeding, if any, shall conform to the caption of this order;

3 IT IS FURTHER ORDERED that the *verified petition for writ of*
4 *superintending control* is GRANTED with respect to Petitioners' request that this
5 Court provide the district court guidance for resolving a partisan gerrymandering
6 claim;

7 IT IS FURTHER ORDERED that the stay in D-506-CV-2022-00041 is
8 hereby VACATED, and the district court shall take all actions necessary to resolve
9 this matter **no later than October 1, 2023**;

10 IT IS FURTHER ORDERED that as a threshold matter, the district court
11 shall conduct a standing analysis for all parties;

12 IT IS FURTHER ORDERED that in resolving this matter, the district court
13 shall act in accordance with and apply the following holdings and standards as
14 determined herein:

- 15 1. A partisan gerrymandering claim is justiciable under Article II,
16 Section 18 of the New Mexico Constitution;
- 17
18 2. A partisan gerrymandering claim under the New Mexico Constitution
19 is subject to the three-part test articulated by Justice Kagan in her
20 dissent in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2516 (2019);
21
- 22 3. Clearly, a district drawn without taking partisan interests into account
23 would not present a partisan gerrymander. *Cf.* N.M. Const. art. II, §§
24 2, 3, 4. However, as with partisan gerrymandering under the
25 Fourteenth Amendment, some degree of partisan gerrymandering is

1 permissible under Article II, Section 18 of the New Mexico
2 Constitution. *Accord Rucho*, 139 S.Ct. at 2497. At this stage in the
3 proceedings, it is unnecessary to determine the precise degree that is
4 permissible so long as the degree is not egregious in intent and effect;
5

- 6 4. Intermediate scrutiny is the proper level of scrutiny for adjudication of
7 a partisan gerrymandering claim under Article II, Section 18 of the
8 New Mexico Constitution. *See Breen v. Carlsbad Municipal Schools*,
9 2005-NMSC-028, ¶¶ 11-15, 30-32, 138 N.M. 331, 120 P.3d 413;
10
- 11 5. Under one-person, one-vote jurisprudence, some mathematical
12 deviation from an ideal district population may be permissible as
13 “practicable.” *Cf. Harris v. Ariz. Indep. Redistricting Comm’n*, 578
14 U.S. 253, 258-59 (2016) (quoting *Reynolds v. Sims*, 377 U.S. 533, 579
15 (1964)) (“The Constitution . . . does not demand mathematical
16 perfection. In determining what is ‘practicable,’ we have recognized
17 that the Constitution permits deviation when it is justified by
18 ‘legitimate considerations incident to the effectuation of a rational
19 state policy.’”);
20
- 21 6. In the context of a partisan gerrymandering claim, a reasonable degree
22 of partisan gerrymandering—taking into account the inherently
23 political nature of redistricting—is likewise permissible under Article
24 II, Section 18 and the Fourteenth Amendment;
25
- 26 7. In evaluating the degree of partisan gerrymandering in this case, if
27 any, the district court shall consider and address evidence comparing
28 the relevant congressional district’s voter registration percentage/data,
29 regarding the individual plaintiffs’ party affiliation under the
30 challenged congressional maps, as well as the same source of data
31 under the prior maps. The district court shall also consider any other
32 evidence relevant to the district court’s application of the test
33 referenced in paragraph 2 of this order.
34

35 IT IS FURTHER ORDERED that a writ of superintending control shall
36 issue contemporaneously with this order; and
37

1
2

IT IS FURTHER ORDERED that an opinion in this matter shall follow.

IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of July, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By _____

Handwritten signature of L. Pamela Vidora in cursive script.

Chief Deputy Clerk of Court

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

L. Pamela Vidora

Chief Deputy Clerk of the Supreme Court
of the State of New Mexico

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 Dominic Gabello 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

EXHIBIT 5

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 DEANN KIMBRO, and PEARL
GARCIA,

Plaintiffs,

vs.

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.

AMENDED
(ADDITIONAL) NOTICE OF VIDEOTAPED RULE 1-030(B)(6) DEPOSITION

TO: **The Center for Civic Policy**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
HINKLE SHANOR LLP
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinkelawfirm.com

Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Professor Michael B. Browde
mbrowde@me.com

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of a person or persons designated by The Center for Civic Policy (“CCP”) to testify, pursuant to Rule 1-030(B)(6) NMRA, on the matters regarding the topics on Exhibit A, attached hereto.

The deposition will be taken before a certified court reporter on Friday, August 25, 2023, beginning at 12:30 p.m., at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

Notice is further given that Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

Respectfully submitted,

/s/ Carter B. Harrison IV

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Ave SW, Suite E
Albuquerque, NM 87102
(505) 295-3261
carter@harrisonhartlaw.com

Attorneys for Plaintiffs

EXHIBIT A

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 the Center for Civic Policy ("CCP") as a whole on the following matters:

- (1) All communications — including emails, text messages, phone calls, and in-person conversations — that took place in the year 2021 *between*
 - (a) any CCP executive, director, official, employee, and/or volunteer, on the one hand, *and*
 - (b) any individual who was at the time a member of, or a staffer to a member of, either the New Mexico Legislature or New Mexico's congressional delegation, on the other, and

that relates to congressional redistricting, the Congressional Concept H map, and/or the partisan breakdown of New Mexico's congressional delegation.

- (2) The CCP's 2021 efforts to recruit, mobilize, and/or support individuals giving testimony or written input to either the Citizen Redistricting Committee ("CRC") or the Legislature (including individual committees and/or members thereof) on the subject of redistricting, including any incentives or financial stipends offered and/or paid.
- (3) The process by which the CCP designed Congressional Concept H, and any individuals or groups whose feedback/input on the map was solicited before its submission to the CRC — including specifically any mapping or demographic professionals, experts, or consultants.
- (4) 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 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.

EXHIBIT 6

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 DEANN KIMBRO, and
PEARL GARCIA,

Plaintiffs,

vs.

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.

AMENDED
(ADDITIONAL) NOTICE OF VIDEOTAPED RULE 1-030(B)(6) DEPOSITION

TO: **Research & Polling, Inc.**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
HINKLE SHANOR LLP
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Professor Michael B. Browde
mbrowde@me.com

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of a person or persons designated by Research & Polling, Inc. (“R&P”) to testify, pursuant to Rule 1-030(B)(6) NMRA, on the matters regarding the topics on Exhibit A, attached hereto.

The deposition will be taken before a certified court reporter on Friday, August 25, 2023, beginning at 8:00 a.m., at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

Notice is further given that Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

Respectfully submitted,

/s/ Carter B. Harrison IV

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Ave SW, Suite E
Albuquerque, NM 87102
(505) 295-3261
carter@harrisonhartlaw.com

Attorneys for Plaintiffs

EXHIBIT A

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 R&P collected and produced the documents requested; 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.

EXHIBIT 7

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.

**PLAINTIFFS' NOTICE OF VIDEOTAPED RULE 1-030(B)(6) DEPOSITION
OF THE GOVERNOR'S OFFICE**

TO: The Office of the Governor of New Mexico
c/o Holly Agajanian & Kyle Duffy
490 Old Santa Fe Trail, Room 400
Santa Fe, NM 87501
Email: Holly.Agajanian@state.nm.us
Kyle.Duffy@state.nm.us

PLEASE TAKE NOTICE that beginning the hour of 9:00 a.m. MDT on August 21, 2023, at the offices of Harrison & Hart, LLC (924 Park Avenue SW, Ste. E, Albuquerque, NM 87102), and continuing from day to day thereafter until completed, the Plaintiffs will take the stenographic

and video-recorded deposition of a person or persons designated by the Office of the Governor to testify, pursuant to Rule 1-030(B)(6) NMRA, on the Matters of Examination enumerated below. This deposition will be taken before Paul Baca Court Reporters, or another officer qualified under Rule 1-028 NMRA who will be present at the noticed location, and it may be taken by telephone or other remote means pursuant to Rule 1-030(B)(7). Notice is further given that this deposition may be used at trial and for any and all purposes permitted by the New Mexico Rules of Civil Procedure.

Pursuant to Rule 1-030(B)(6), the Governor's Office is required to designate and fully prepare one or more officers, directors, managing agents, or other persons who consent to testify on the Office's behalf, and whom the Office will fully prepare to testify regarding all information that is known or reasonably available to the Office regarding the following matters:

MATTERS OF EXAMINATION

1. All communications (including emails, text messages, phone calls, and in-person conversations) that took place in the year 2021 between any official or employee of the Governor's Office (including the Governor herself) and any of the following persons —

a. Brian Egolf, Mimi Stewart, Peter Wirth, Joseph Cervantes, Georgene Louis, Teresa Leger Fernandez, Melanie Stansbury, or any employee or agent of any of the foregoing;

b. any other official or employee of the Governor's Office (*i.e.*, this asks for internal communications within the Governor's Office); and/or

c. any official, employee, or agent of any non-New Mexico-based political organization, 501(c)(4) organization, law firm, or consultant or expert in the field of demography or mapping

— that relate to the 2021 New Mexico congressional-redistricting process; consideration of various proposed congressional maps (including specifically Congressional Concept H, S.B. 1 as originally introduced, and the S.B. 1 Senate Judiciary Committee substitute ultimately signed into law); the preferences of the individuals listed in ¶ 1(a), above, regarding the drawing of

congressional districts; and/or effect of various proposed congressional maps on electoral outcomes and/or the likely partisan composition of the state's congressional delegation.

2. The Governor's position and/or opinions on various proposed congressional maps — including specifically Concept H, S.B. 1 as originally introduced, and the S.B. 1 Senate Judiciary Committee substitute that was eventually signed into law — and how those positions/opinions evolved over the course of 2021.

3. The Governor's communications (including both written and spoken) in 2021 and the first three months of 2022 with any person with whom the Governor does not have a claim of any privilege — including, at a minimum, members of the press, personal and political contacts, etc. — evincing the position and/or opinions referenced in ¶ 2, above.

4. All non-privileged communications from January 21, 2022 to the present day either within the Governor's Office, or between an official or employee of the Office and one of the individuals listed in ¶ 1(a), above, relating to this litigation.


5. All invocations of any privilege asserted by the Governor's Office in this case, including information sufficient for the Plaintiffs to fully vet each of the Office's claims of privilege.

6. Details of the steps taken by the designee and any other person in the Governor's Office to prepare for this deposition, including but not limited to the individuals talked to, the substance of those communications, what documents were reviewed (including who was asked to search their emails and any search terms requested), and estimates of how much time was spent on each step.

Please remember that it is your responsibility to prepare a designee to testify fully on each and every one of these topics, unless you both move the Court for a protective order and serve and file a notice of non-appearance three days before the deposition, at the latest. *See* Rule 1-030(G)(3) NMRA. Since your ability to interpose objections based on the putative ambiguity or vagueness of this notice is limited — but, at the same time, we have a duty to designate the matters of examination “with reasonable particularity” — if you have any confusion regarding any of the topics, please contact us in advance of the deposition, and we will generally be willing to clarify (and even potentially narrow) any issues.

Respectfully,

HARRISON & HART, LLC

By:  _____

Carter B. Harrison IV
924 Park Avenue SW, Suite E
Albuquerque, NM 87102
Tel: (505) 295-3261
Fax: (505) 341-9340
Email: carter@harrisonhartlaw.com

Attorneys for the Plaintiffs

EXHIBIT 8

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 DEANN KIMBRO, and
PEARL GARCIA,

Plaintiffs,

vs.

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.

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT
MIMI STEWART**

The Plaintiffs, pursuant to the New Mexico Rules of Civil Procedure, propounds the requests for productions ("RFPs") below on Defendant Mimi Stewart.

INSTRUCTIONS

These RFPs request emails, text messages, and certain records obtainable from your cell-phone carrier. The email searches requested below can be conducted using the search function of most common email clients and websites. All date ranges are 'inclusive,' meaning a range of "January 1 to 7" includes messages sent on the 1st, as well as those sent on the 7th. If an email

account does not support the 'asterisk' Boolean operator, please run separate searches for all permutations of the word listed in the Merriam-Webster free online dictionary, as well as the possessive form of the word. Please ensure that all searches are non-case sensitive (*e.g.*, a search for "GOP" should capture "GOP", "gop", and "Gop"). An email is sent "to" a person if that person is listed in any of the "TO," "CC," or "BCC" fields. Although these RFPs requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know to 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.

For text-messages and other phone-based documents (not including emails), 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. For RFP Nos. 1 through 3 and 8 below, you may (but are not required to) conduct a document-by-document review of the responsive materials and exclude from your production messages that are *wholly unrelated in every way* to redistricting, provided all messages within a week of the excluded message in the same conversation are likewise wholly unrelated.

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:

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:

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:

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:

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:

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:

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:

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:

Respectfully submitted,

HARRISON & HART, LLC

By: _____

Carter B. Harrison IV
924 Park Avenue SW, Suite E
Albuquerque, NM 87102
Tel: (505) 295-3261
Fax: (505) 341-9340
Email: carter@harrisonhartlaw.com

Attorneys for the Plaintiffs

EXHIBIT 9

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity as New Mexico Secretary of State, MICHELLE LUJAN GRISHAM, in her official capacity as Governor of New Mexico, HOWIE MORALES, in his official capacity as New Mexico Lieutenant Governor and President of the New Mexico Senate, MIMI STEWART, in her official capacity as President Pro Tempore of the New Mexico Senate, and JAVIER MARTINEZ, in his official capacity as Speaker of the New Mexico House of Representatives,

Defendants.

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

Plaintiffs the Republican Party of New Mexico and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") hereby serve their First Set Of Interrogatories To All Defendants, per Rule 1-033 of the New Mexico Rules of Civil Procedure for the District Courts. These Interrogatories are addressed to each Defendant to answer on the basis of his or her own knowledge and/or contentions, and the materials and information within his or her possession, custody, and control. Any combination of Defendants may submit joint responses, at the Defendants' option, provided that the responses are the complete and truthful responses of all

Defendants submitting them, with any differences among the Defendants' individual responses being explained in full detail in the joint response.

DEFINITIONS

As used herein, the following terms are intended to have the meanings indicated.

1. **"You," "Your,"** or **"Defendants"** refers to Defendants to whom these Interrogatories are addressed and, without limitation, any counsel, consultants, experts, investigators, special administrators, agents, or other persons acting on their behalf.

2. **"Legislature"** refers to the New Mexico State Legislature, including any individual legislator, legislative leadership, and legislative aides.

3. The **"Citizen Redistricting Committee"** or **"Committee"** refers to New Mexico's independent, non-partisan body tasked to develop and propose district maps for New Mexico's Congressional delegation, the New Mexico Senate, the New Mexico House of Representatives, and the Public Education Commission.

4. **"And"** and **"or"** shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each request all responses that might otherwise be construed to be outside the scope.

5. The “**SB 1 Map**” refers to the Legislature’s currently enacted redistricting plan, Senate Bill 1, which is the subject of Plaintiffs’ partisan-gerrymandering claim in this case.¹

6. “**Second Congressional District**” or “**District 2,**” unless context requires otherwise, refers to the Second Congressional District created by the SB 1 Map, which district was previously represented by Representative Yvette Herrell and is now represented by Representative Gabe Vasquez.

7. “**Identify**” has the following meanings:

- a. When used in reference to a *document*, it means to state:
 1. the data and description of the document;
 2. the document’s present location and the name and address of its custodian;
 3. the name and address of the person who drafted, prepared, and signed the document, and the name and address of his or her current employer; and
 4. any other descriptive information necessary to adequately describe the document.
- b. When used in reference to an *individual person*, it means to state:
 1. the person’s full name;

¹ The full text of the SB 1 Map and the maps of the congressional districts that it drew are available at <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s2> (last visited Aug. 8, 2023).

2. the person's last-known residential address and telephone number; and
3. the person's last-known employer, business address, and business telephone number.

GENERAL INSTRUCTIONS

1. Each Interrogatory is addressed to, and the answer thereto is to include and is to be based upon, information and knowledge in the possession of or gathered by You, Your agents, employees, servants, investigators, attorneys, and any other persons who have investigated or gathered information concerning the subject matter of this litigation at the request of or on Your behalf.

2. In the event that the attorney-client privilege, work-product privilege, or any other claim is asserted with respect to any information requested in these Interrogatories, or any document, the identification of which is sought by these Interrogatories, then as to each such item of information or document subject to such assertion, You shall supply in writing a specific basis for the assertion of the privilege and an identification of such information or documents with sufficient specificity to permit the Court to reach a determination in the event of a motion to compel as to the applicability of the asserted privilege.

3. Under the District Court's Scheduling Order, "[a]ny claim of legislative privilege asserted in response to a discovery request . . . shall be claimed in writing

with the specificity required by Rule 26(B)(7) within 10 calendar days of the service of the request[.]” Scheduling Order 2.

4. Rule 1-033 provides further instructions for answering these Interrogatories, including the requirement that the party provide its response “within thirty (30) days after the service of the interrogatories.” Rule 1-033(C)(3).

These Interrogatories are continuing in nature, and You are under a duty to amend Your response if You obtain information indicating that Your prior response was incorrect, or the response is no longer true even if correct when made.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all individuals or entities who drafted or created, or were in any way involved in the drafting or creation of, the SB 1 Map, and, for each identified person, identify the date or dates on which he or she drafted or created it or was involved in drafting or creating it.

Response:

INTERROGATORY NO. 2: Identify all individuals or entities who provided comment on or to the SB 1 Map.

Response:

INTERROGATORY NO. 3: Identify any individuals or entities—whether paid or unpaid—who the Legislature consulted with when drafting the SB 1 Map.

Include in Your answer the particular advice, analysis, or other service that such individual or entity provided.

Response:

INTERROGATORY NO. 4: Identify all individuals or entities who submitted maps, data, or plans that You used to draft the SB 1 Map, incorporated into the SB 1 Map, or adopted as part or all of the SB 1 Map.

Response:

INTERROGATORY NO.5: Identify all individuals and entities who evaluated, reviewed, analyzed, were shown, or commented on the SB 1 Map or on maps, data, or plans that You used to draft the SB 1 Map, incorporated into the SB 1 Map, or adopted as part or all of the SB 1 Map.

Response:

INTERROGATORY NO. 6: Identify and describe all instructions provided to individuals or entities who drafted or created, or were in any way involved in the drafting or creation of, the SB 1 Map, including but not limited to the map drawers and their staff.

Response:

INTERROGATORY NO. 7: Identify any analyses that the Legislature conducted or had others conduct on the SB 1 Map before enacting it, such as, for example only, a compactness test like the Polsby-Popper test.

Response:

INTERROGATORY NO. 8: If the Legislature conducted or had others conduct any analyses on the SB 1 Map, please summarize the results of each analysis.

Response:

INTERROGATORY NO. 9: Did the Legislature use any software or other computer programming to develop the SB 1 Map? If so, identify that software or computer programming.

Response:

INTERROGATORY NO. 10: Did the Legislature seek public comment on the SB 1 Map before enacting it? If so, identify the dates and methods of seeking public comment, *e.g.*, in-person hearing, Zoom hearing, etc.

Response:

INTERROGATORY NO. 11: Did the Legislature hold public hearings on the SB 1 Map before enacting it? If so, identify the dates and methods of holding the hearings, *e.g.*, in-person hearing, Zoom hearing, etc.

Response:

INTERROGATORY NO. 12: Did the Legislature seek comment on the SB 1 Map from any community interest groups before enacting the SB 1 Map?

Response:

INTERROGATORY NO. 13: Did the Legislature receive comment on the SB 1 Map from any community interest groups before enacting the SB 1 Map?

Response:

INTERROGATORY NO. 14: Identify anyone in the Legislature who was opposed to the SB 1 Map.

Response:

INTERROGATORY NO. 15: When creating the SB 1 Map, did the Legislature use federal decennial census data generated by the United States bureau of the census?

Response:

INTERROGATORY NO. 16: Did the Legislature create draft maps that were not ultimately enacted by SB 1?

Response:

INTERROGATORY NO. 17: If You contend that there are any justifications for the boundaries of the Second Congressional District, state the factual basis for all such justifications and identify all facts, documents, and communications supporting all such justifications.

Response:

INTERROGATORY NO. 18: Do You contend that the SB 1 Map creates districts that include both significant urban and rural populations and, if so, that districts with both significant urban and rural populations assure better advocacy on behalf of every New Mexican, vis-à-vis a district without both significant urban and rural populations? If yes, explain why districts with both significant urban and rural populations assure advocacy on behalf of every New Mexican, vis-à-vis a district without both significant urban and rural populations.

Response:

INTERROGATORY NO. 19: Do You contend that the SB 1 Map creates districts that include both significant urban and rural populations and, if so, that districts with both significant urban and rural populations create unified priorities rather than exacerbating divisions and differences? If yes, explain why districts with both significant urban and rural populations create unified priorities rather than exacerbating divisions and differences.

Response:

INTERROGATORY NO. 20: Explain why the Legislature did not adopt the “Concept E” Map from the Citizen Redistricting Committee, also known as the “Justice Chávez Map.”

Response:

INTERROGATORY NO. 21: Explain why the Legislature based the SB 1 Map off of the Citizen Redistricting Committee’s “Concept H” Map.

Response:

INTERROGATORY NO. 22: Did the Legislature have concerns with or objections to the “Concept H” map? If so, specify what those concerns or objections were.

Response:

INTERROGATORY NO. 23: Why did the Legislature draft the SB 1 Map to deviate from the Citizen Redistricting Committee’s “Concept H” Map?

Response:

INTERROGATORY NO. 24: Does the Legislature contend that the SB 1 Map better serves New Mexico citizens than the “Concept H” map? If so, explain why.

Response:

INTERROGATORY NO. 25: Did the Legislature deviate from the Citizen Redistricting Committee’s “Concept H” Map because that map was not sufficiently favorable to Democrats?

Response:

INTERROGATORY NO. 26: Does the Legislature contend that the SB 1 Map is more favorable to Democrats than the “Concept H” map? If so, explain why.

Response:

INTERROGATORY NO. 27: If the Legislature does not contend that the SB 1 Map is more favorable to Democrats than the “Concept H” map, explain why.

Response:

INTERROGATORY NO. 28: State whether You considered or determined if the SB 1 Map—and in particular District 2—would favor or disfavor a political party and, if so, what Your determination was, and describe Your reasons for making that determination.

Response:

INTERROGATORY NO. 29: When drawing District 2 in the SB 1 Map, did the Legislature consider partisan data, such as voting history or party registration data?

Response:

INTERROGATORY NO. 30: If You contend that the Legislature did not use and/or was not influenced by partisan data, such as voting history or party registration data, when drawing District 2, state the factual basis for Your contention and identify all facts, documents, and communications related to Your contention.

Response:

INTERROGATORY NO. 31: If You contend that the Legislature's consideration of partisan data did not affect the drawing of the lines of the Second Congressional District in a way that altered the outcome of the congressional election in District 2, state the factual basis for Your contention and identify all facts, documents, and communications related to Your contention.

Response:

INTERROGATORY NO. 32: Identify all individuals who have knowledge of the facts and issues described in the Verified Complaint.

Response:

INTERROGATORY NO. 33: Identify all documents You intend to use to support Your defense(s) in this case.

Response:

INTERROGATORY NO. 34: Identify all documents You intend to reference, cite, or include in Your Court-ordered submission of Findings of Fact and Conclusions of Law.

Response:

Dated: August 9, 2023

MISHA TSEYTLIN*
MOLLY S. DIRAGO*
KEVIN M. LEROY*
TROUTMAN PEPPER
HAMILTON SANDERS LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240 (MT)
(312) 759-1926 (MD)
(312) 759-1938 (KL)
(312) 759-1939 (fax)
misha.tseytlin@troutman.com
molly.dirago@troutman.com
kevin.leroy@troutman.com

*Attorneys for Plaintiff Manuel
Gonzales, Jr.*

**Pro Hac Vice Forthcoming*

HARRISON & HART, LLC

/s/ Carter B. Harrison, IV
CARTER B. HARRISON, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
(505) 312-4245
(505) 341-9340 (fax)
carter@harrisonhartlaw.com

*Attorneys for Plaintiff Republican
Party Of New Mexico, David Gallegos,
Timothy Jennings, Dinah Vargas,
Bobby and Dee Ann Kimbro, and
Pearl Garcia*

EXHIBIT 10

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

MAGGIE TOLOUSE OLIVER, in her official capacity as New Mexico Secretary of State, MICHELLE LUJAN GRISHAM, in her official capacity as Governor of New Mexico, HOWIE MORALES, in his official capacity as New Mexico Lieutenant Governor and President of the New Mexico Senate, MIMI STEWART, in her official capacity as President Pro Tempore of the New Mexico Senate, and JAVIER MARTINEZ, in his official capacity as Speaker of the New Mexico House of Representatives,

Defendants.

PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO ALL DEFENDANTS

Plaintiffs the Republican Party of New Mexico and a bipartisan group of New Mexico voters (collectively, "Plaintiffs") hereby serve their First Set Of Requests For Admission To All Defendants, per Rule 1-036 of the New Mexico Rules of Civil Procedure for the District Courts. These RFAs are addressed to each Defendant to answer on the basis of his or her own knowledge and/or contentions, and the materials and information within his or her possession, custody, and control. Any combination of Defendants may submit joint responses, at the Defendants' option, provided that the responses are the complete and truthful responses of all Defendants

submitting them, with any differences among the Defendants' individual responses being explained in full detail in the joint response.

DEFINITIONS

As used herein, the following terms are intended to have the meanings indicated.

1. **"You," "Your,"** or **"Defendants"** refers to Defendants to whom these Requests For Admission are addressed and, without limitation, any counsel, consultants, experts, investigators, special administrators, agents, or other persons acting on their behalf.

2. **"Legislature"** refers to the New Mexico State Legislature, including any individual legislator, legislative leadership, and legislative aides.

3. The **"Citizen Redistricting Committee"** or **"Committee"** refers to New Mexico's independent, non-partisan body tasked to develop and propose district maps for New Mexico's Congressional delegation, the New Mexico Senate, the New Mexico House of Representatives, and the Public Education Commission.

4. **"And"** and **"or"** shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each request all responses that might otherwise be construed to be outside the scope.

5. The “**SB 1 Map**” refers to the Legislature’s currently enacted redistricting plan, Senate Bill 1, which is the subject of Plaintiffs’ partisan-gerrymandering claim in this case.¹

6. “**Second Congressional District**” or “**District 2,**” unless context requires otherwise, refers to the Second Congressional District created by the SB 1 Map, which district was previously represented by Representative Yvette Herrell and is now represented by Representative Gabe Vasquez.

GENERAL INSTRUCTIONS

1. Each Request For Admission is addressed to, and the answer thereto is to include and is to be based upon, information and knowledge in the possession of or gathered by You, Your agents, employees, servants, investigators, attorneys, and any other persons who have investigated or gathered information concerning the subject matter of this litigation at the request of or on Your behalf.

2. In the event that the attorney-client privilege, work-product privilege, or any other claim is asserted with respect to any information requested in these Requests For Admission, or any document, the identification of which is sought by these Requests For Admission, then as to each such item of information or document subject to such assertion, You shall supply in writing a specific basis for the assertion of the privilege and an identification of such information or documents with sufficient

¹ The full text of the SB 1 Map and the maps of the congressional districts that it drew are available at <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s2> (all websites last visited Aug. 8, 2023).

specificity to permit the Court to reach a determination in the event of a motion to compel as to the applicability of the asserted privilege.

3. Under the District Court's Scheduling Order, "[a]ny claim of legislative privilege asserted in response to a discovery request . . . shall be claimed in writing with the specificity required by Rule 26(B)(7) within 10 calendar days of the service of the request[.]" Scheduling Order 2.

4. Rule 1-036 provides further instructions for answering these Requests For Admission, including the requirement that a "matter is admitted" unless the party to whom the request is directed serves "a written answer or objection addressed to the matter" within "thirty (30) days." Rule 1-036(A).

These Requests For Admission are continuing in nature, and You are under a duty to amend Your response if You obtain information indicating that Your prior response was incorrect, or the response is no longer true even if correct when made.

REQUESTS FOR ADMISSIONS

RFA No. 1: Admit that Plaintiff the Republican Party of New Mexico is an unincorporated nonprofit association and a political party.

Response:

RFA No. 2: Admit that Steve Pearce is the Chairman of Plaintiff the Republican Party of New Mexico.

Response:

RFA No. 3: Admit that Plaintiff the Republican Party of New Mexico's headquarters are located at 5150 San Francisco Road NE #A, Albuquerque, New Mexico 87109.

Response:

RFA No. 4: Admit that Plaintiff David Gallegos resides at 907 20th Street, Eunice, New Mexico 88231, and is an elected State Senator from Senate District 41.

Response:

RFA No. 5: Admit that Plaintiff Senator Gallegos is a registered Republican in New Mexico and a supporter of Republican candidates and policies.

Response:

RFA No. 6: Admit that, both before and after the SB 1 Map, Plaintiff Senator Gallegos' home was/is in District 2.

Response:

RFA No. 7: Admit that Plaintiff Timothy Jennings resides at 2716 North Pennsylvania Avenue, Roswell, New Mexico 88201.

Response:

RFA No. 8: Admit that Plaintiff Jennings served in the New Mexico State Senate for 34 years from 1978–2012, representing Senate District 32, and served as the Senate President Pro-Tempore from 2008–12.

Response:

RFA No. 9: Admit that Plaintiff Jennings is a registered Democrat in New Mexico and a supporter of Democratic candidates and policies.

Response:

RFA No. 10: Admit that, before the SB 1 Map was enacted, Plaintiff Jennings' home was historically in District 2.

Response:

RFA No. 11: Admit that, after the SB 1 Map was enacted, Plaintiff Jennings' home is in District 3.

Response:

RFA No. 12: Admit that Plaintiff Dinah Vargas resides at 4707 Coors Boulevard SW, Albuquerque, New Mexico 87121.

Response:

RFA No. 13: Admit that Plaintiff Vargas was the Republican candidate for House District 10 in 2020.

Response:

RFA No. 14: Admit that Plaintiff Vargas is a registered Republican in New Mexico and a supporter of Republican candidates and policies.

Response:

RFA No. 15: Admit that, before the SB 1 Map was enacted, Plaintiff Vargas' home was historically in District 1.

Response:

RFA No. 16: Admit that, after the SB 1 Map was enacted, Plaintiff Vargas' home is in District 2.

Response:

RFA No. 17: Admit that Plaintiff Manuel Gonzales, Jr. resides at 5 Briarwood Court, Alamogordo, New Mexico 88310-9536.

Response:

RFA No. 18: Admit that Plaintiff Gonzales is the former Chairman of the Republican Party of Otero County.

Response:

RFA No. 19: Admit that Plaintiff Gonzales is the former Republican Party of New Mexico Vice Chairman — CD 2.

Response:

RFA No. 20: Admit that Plaintiff Gonzales is the former First Vice Chairman of the Republican Party of New Mexico.

Response:

RFA No. 21: Admit that Plaintiff Gonzales is a registered Republican in New Mexico and supporter of Republican candidates and policies.

Response:

RFA No. 22: Admit that, both before and after the SB 1 Map was enacted, Plaintiff Gonzales' home was/is in District 2.

Response:

RFA No. 23: Admit that Plaintiffs Bobby and Dee Ann Kimbro are husband and wife and reside at 3908 West Payne Road, Lovington, New Mexico 88260.

Response:

RFA No. 24: Admit that Plaintiffs Bobby and Dee Ann Kimbro have lived in Lovington for over 20 years.

Response:

RFA No. 25: Admit that Plaintiffs Bobby and Dee Ann Kimbro are registered Republicans in New Mexico and supporters of Republican candidates and policies.

Response:

RFA No. 26: Admit that, before the SB 1 Map, Plaintiffs Bobby and Dee Ann Kimbro's home was historically in District 2.

Response:

RFA No. 27: Admit that, after the SB 1 Map was enacted, Plaintiffs Bobby and Dee Ann Kimbro's home is in District 3.

Response:

RFA No. 28: Admit that Plaintiff Pearl Garcia resides at 2601 Pajarito Road SW, Albuquerque, New Mexico 87105.

Response:

RFA No. 29: Admit that Plaintiff Garcia is retired from Sandia National Laboratories.

Response:

RFA No. 30: Admit that Plaintiff Garcia is a registered Republican in New Mexico and a supporter of Republican candidates and policies.

Response:

RFA No. 31: Admit that, before the SB 1 Map, Plaintiff Garcia's home was historically in District 1.

Response:

RFA No. 32: Admit that, after the SB 1 Map, Plaintiff Garcia's home is in District 2.

Response:

RFA No. 33: Admit that, historically, the area of New Mexico with the most geographically concentrated block of Republican voters in the State (specifically, all or part of Chaves, Eddy, Lea, and Otero Counties, in southeastern New Mexico) was located in District 2, under prior redistricting maps for New Mexico.

Response:

RFA No. 34: Admit that, under the redistricting map before the SB 1 Map, the area of New Mexico with the most geographically concentrated block of Republican voters in the State (specifically, all or part of Chaves, Eddy, Lea, and Otero Counties, in southeastern New Mexico), which was located in District 2, had a real opportunity to elect and, in fact, did elect, a Republican Representative to Congress from District 2.

Response:

RFA No. 35: Admit that the communities in Chaves, Eddy, Lea, and Otero Counties share common economic, social, and cultural interests, based in part on the robust agricultural and oil and gas presence in the area.

Response:

RFA No. 36: Admit that the Legislature did not invite public comment on the SB 1 Map before enacting it.

Response:

RFA No. 37: Admit that Republican members of the Legislature were not allowed to participate in the drafting of the SB 1 Map.

Response:

RFA No. 38: Admit that any input offered by Republican members of the Legislature was not incorporated into the SB 1 Map.

Response:

RFA No. 39: Admit that the SB 1 Map passed the Legislature on a party-line vote.

Response:

RFA No. 40: Admit that the SB 1 Map split the area of New Mexico with the most geographically concentrated block of Republican voters in the State (specifically, all or part of Chaves, Eddy, Lea, and Otero Counties, in southeastern New Mexico), which was located in District 2, across the three districts that the SB 1 Map created.

Response:

RFA No. 41: Admit that the Legislature considered partisanship when drafting and enacting the SB 1 Map.

Response:

RFA No. 42: Admit that the Legislature considered partisan data, such as voting history or party registration data, when drafting and enacting the SB 1 Map.

Response:

RFA No. 43: Admit that the Legislature considered partisanship when drafting and enacting District 2 in the SB 1 Map.

Response:

RFA No. 44: Admit that the Legislature considered partisan data, such as voting history or party registration data, when drafting and enacting District 2 in the SB 1 Map.

Response:

RFA No. 45: Admit that the Concept H map from the Citizen Redistricting Committee was the most favorable map for Democrats adopted by the Committee.

Response:

RFA No. 46: Admit that District 2 in the Concept H map from the Citizen Redistricting Committee comprised 50% or more of voters likely to elect a Democratic Representative in a typical election year, absent unusual circumstances or significant differences in candidate quality.

Response:

RFA No. 47: Admit that the Concept H map from the Citizen Redistricting Committee was submitted to the Committee by a coalition of politically liberal community organizations.

Response:

RFA No. 48: Admit that the Concept H map from the Citizen Redistricting Committee adhered the least to traditional redistricting principles of the three maps recommended by the Citizen Redistricting Committee, in terms of compactness.

Response:

RFA No. 49: Admit that the Concept H map from the Citizen Redistricting Committee adhered the least to traditional redistricting principles of the three maps recommended by the Citizen Redistricting Committee, in terms of retaining the core of previous districts.

Response:

RFA No. 50: Admit that the Concept H map from the Citizen Redistricting Committee adhered the least to traditional redistricting principles of the three maps recommended by the Citizen Redistricting Committee, in terms of preserving communities of interest.

Response:

RFA No. 51: Admit that the Concept H map from the Citizen Redistricting Committee adhered the least to traditional redistricting principles of the three maps

recommended by the Citizen Redistricting Committee, in terms of avoiding the splitting of political subdivisions.

Response:

RFA No. 52: Admit that the Legislature based the SB 1 Map on the Concept H map.

Response:

RFA No. 53: Admit that the Legislature made certain changes to the Concept H Map—and, in particular, to District 2—that made the SB 1 Map more favorable to Democrats.

Response:

RFA No. 54: Admit that District 2 in the SB 1 Map comprises 50% or more of voters likely to elect a Democratic Representative in a typical election year, absent unusual circumstances or significant differences in candidate quality.

Response:

RFA No. 55: Admit that Districts 1 and District 3 each comprise 50% or more of voters likely to elect a Democratic Representative in a typical election year, absent unusual circumstances or significant differences in candidate quality.

Response:

RFA No. 56: Admit that the Legislature did not perform any analyses on the SB 1 Map to determine its compactness score.

Response:

RFA No. 57: Admit that the SB 1 Map has a worse compactness score than the Concept H map.

Response:

RFA No. 58: Admit that the SB 1 Map does not retain the core of previous districts as well as the Concept H map.

Response:

RFA No. 59: Admit that the SB 1 Map does not preserve communities of interest as well as the Concept H map.

Response:

RFA No. 60: Admit that the Concept H map avoids splitting of political subdivisions better than the SB 1 Map.

Response:

RFA No. 61: Admit that the SB 1 Map was the most favorable map to Democrats that the Legislature considered or had before it, including the three maps submitted to the Legislature from the Citizen Redistricting Committee.

Response:

RFA No. 62: Admit that the Legislature's goal, at least in part, when drafting the SB 1 Map was to flip the political party of the Congressional Representative elected from the prior District 2; that is, the Legislature drew District 2 in the SB 1 Map, at least in part, to elect a Democrat Representative to Congress instead of a Republican Representative from Congress.

Response:

RFA No. 63: Admit that the Legislature knew that, in drafting the SB 1 Map, District 2 was more likely to elect a Democratic than a Republican Representative in the 2022 election under the SB 1 Map.

Response:

RFA No. 64: Admit that the Legislature knew that, in drafting the SB 1 Map, District 2 was less likely to elect a Republican Representative than a Democratic Representative in the 2022 election under the SB 1 Map.

Response:

RFA No. 65: Admit that the Legislature knew that, in drafting the SB 1 Map, District 2 was more likely to elect a Democratic than a Republican Representative in the 2022 election under the SB 1 Map than under the “Concept H” Map.

Response:

RFA No. 66: Admit that the Legislature knew that, in drafting the SB 1 Map, District 2 was less likely to elect a Republican Representative than a Democratic Representative in the 2022 election under the SB 1 Map than under the “Concept H” Map.

Response:

RFA No. 67: Admit that the Legislature knew that, in drafting the SB 1 Map, District 2 was more likely to elect a Democratic than a Republican Representative in the 2022 election under the SB 1 Map than the prior District 2 in the 2020 election under the prior map.

Response:

RFA No. 68: Admit that the Legislature knew that, in drafting the SB 1 Map, District 2 was less likely to elect a Republican Representative than a Democratic Representative in the 2022 election under the SB 1 Map than the prior District 2 in the 2020 election under the prior map.

Response:

RFA No. 69: Admit that it was possible to draw a legally compliant redistricting map that retained the area of New Mexico with the most geographically concentrated block of Republican voters in the State (specifically, all or part of Chaves, Eddy, Lea, and Otero Counties, in southeastern New Mexico) in District 2.

Response:

RFA No. 70: Admit that the Legislature drew District 2 in the SB 1 Map with the intent to elect a Democrat to Congress from that district.

Response:

RFA No. 71: Admit that the Legislature drew District 2 in the SB 1 Map with the intent to defeat the reelection of incumbent Representative Yvette Herrell in District 2.

Response:

RFA No. 72: Admit that Representative Yvette Herrell is a Republican.

Response:

RFA No. 73: Admit that it was not necessary to separate Chaves, Eddy, Lea, and Otero Counties in order to draw a legally compliant redistricting map.

Response:

RFA No. 74: Admit that the SB 1 Map's inclusion of significant urban and rural populations in District 2 favors Democrats.

Response:

RFA No. 75: Admit that, if the Legislature intended to draft the SB 1 Map to flip District 2 from being represented by a Republican in Congress to being represented by a Democrat in Congress, and the Legislature succeeded in that goal, this would be an unconstitutional partisan gerrymander under the New Mexico Constitution.

Response:

RFA No. 76: Admit that the "Concept E" Map from the Citizen Redistricting Committee, also known as the "Justice Chávez Map," is a legally compliant redistricting map.

Response:

RFA No. 77: Admit that the "Concept E" Map from the Citizen Redistricting Committee, also known as the "Justice Chávez Map," was not drafted with an intent to favor or disfavor any political party.

Response:

RFA No. 78: Admit that the “Concept E” Map from the Citizen Redistricting Committee, also known as the “Justice Chávez Map,” has a better compactness score than the SB 1 Map.

Response:

RFA No. 79: Admit that the “Concept E” Map from the Citizen Redistricting Committee, also known as the “Justice Chávez Map,” retains the core of previous districts better than the SB 1 Map.

Response:

RFA No. 80: Admit that the “Concept E” Map from the Citizen Redistricting Committee, also known as the “Justice Chávez Map,” preserves communities of interest better than the SB 1 Map.

Response:

RFA No. 81: Admit that the “Concept E” Map from the Citizen Redistricting Committee, also known as the “Justice Chávez Map,” created a District 2 that comprised 50% or more of voters likely to elect a Republican Representative in a typical election year, absent unusual circumstances or significant differences in candidate quality.

Response:

RFA No. 82: Admit that the “Concept E” Map from the Citizen Redistricting Committee, also known as the “Justice Chávez Map,” did not separate the area of New Mexico with the most geographically concentrated block of Republican voters in the State (specifically, all or part of Chaves, Eddy, Lea, and Otero Counties, in southeastern New Mexico), which was located in District 2, across three districts.

Response:

RFA No. 83: Admit that the Legislature knew that District 2 in the SB 1 Map would be more likely to elect a Democratic Representative than a Republican Representative in the 2022 election than District 2 in the “Concept E” Map/“Justice Chávez Map.”

Response:

RFA No. 84: Admit that the Legislature knew that District 2 in the SB 1 Map would be less likely to elect a Republican Representative than a Democratic Representative in the 2022 election than District 2 in the “Concept E” Map/“Justice Chávez Map.”

Response:

RFA No. 85: Admit that former House Speaker Brian Egolf, previously named as a Defendant in his official capacity in this case, stated as follows to reporters after Representative Yvette Herrell won election from District 2 in the 2020 election: “This

is the last election for New Mexico's 2nd Congressional District with a map that looks like it looks now." "So, next time it'll be a different district and we'll have to see what that means for Republic changes to hold it."²

Response:

RFA No. 86: Admit that Defendant President Pro Tempore of the New Mexico Senate Mimi Stewart stated in a tweet on February 19, 2022, as follows, in reference to Representative Yvette Herrell: "We are sorry we've sent her to DC. Our redistricting session is offering a way out of her chaotic and divisive politics." Plfs' Combined Reply ISO Mtn. for Prelim. Inj. at 13 (filed Mar. 10, 2022) (reproducing screenshot of relevant Tweet).

Response:

RFA No. 87: Admit that political gerrymandering causes dilution of voting power, injuring individual voters of the disfavored party.

Response:

RFA No. 88: Admit that, if the SB 1 Map were an unconstitutional partisan gerrymander, this would injure Plaintiff Republican Party Of New Mexico by diluting the votes of its members based on partisanship.

² *E.g.*, Susan Montoya Bryan, *Top Democrat says district will be redrawn after GOP win*, Associated Press (Nov. 5, 2020), <https://apnews.com/article/legislature-redistricting-steve-pearce-elections-house-elections-86a3113b29a38a622ac3b5216e818a06>

Response:

RFA No. 89: Admit that, if the SB 1 Map were an unconstitutional partisan gerrymander, this would injure individual Plaintiffs by diluting their votes based on partisanship.

Response:

RFA No. 90: Admit that, if the SB 1 Map were an unconstitutional partisan gerrymander, this would injure Plaintiff Republican Party Of New Mexico by subjecting its members to disfavored treatment because of their voting history, expression of political views, and choices to associate with candidates who espouse their political views.

Response:

RFA No. 91: Admit that, if the SB 1 Map were an unconstitutional partisan gerrymander, this would injure individual Plaintiffs by subjecting them to disfavored treatment because of their voting history, expression of political views, and choices to associate with candidates who espouse their political views.

Response:

Dated: August 9, 2023

MISHA TSEYTLIN*
MOLLY S. DIRAGO*
KEVIN M. LEROY*
TROUTMAN PEPPER
HAMILTON SANDERS LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240 (MT)
(312) 759-1926 (MD)
(312) 759-1938 (KL)
(312) 759-1939 (fax)
misha.tseytlin@troutman.com
molly.dirago@troutman.com
kevin.leroy@troutman.com

*Attorneys for Plaintiff Manuel
Gonzales, Jr.*

**Pro Hac Vice Forthcoming*

HARRISON & HART, LLC

/s/ Carter B. Harrison, IV
CARTER B. HARRISON, IV
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
(505) 312-4245
(505) 341-9340 (fax)
carter@harrisonhartlaw.com

*Attorneys for Plaintiff Republican
Party Of New Mexico, David Gallegos,
Timothy Jennings, Dinah Vargas,
Bobby and Dee Ann Kimbro, and
Pearl Garcia*

EXHIBIT 11

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 DEANN KIMBRO, and
PEARL GARCIA,

Plaintiffs,

vs.

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.

AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Mimi Stewart**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
HINKLE SHANOR LLP
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

Professor Michael B. Browde
mbrowde@me.com

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of Mimi Stewart, by a certified court reporter and videographer, on Wednesday, August 23, 2023, beginning at 9:00 a.m., at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

Notice is further given that Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

Respectfully submitted,

/s/ Carter B. Harrison IV

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Ave SW, Suite E
Albuquerque, NM 87102
(505) 295-3261
carter@harrisonhartlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that the foregoing was as electronically filed and served via the State of New Mexico's Tyler/Odyssey E-File & Serve System on August 10, 2023, which caused service upon all parties through counsel of record.

/s/ Carter B. Harrison IV
Carter B. Harrison IV

EXHIBIT 12

LeRoy, Kevin M.

From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Monday, August 14, 2023 7:22 PM
To: LeRoy, Kevin M.
Subject: FW: Redistricting: Depo dates and special master

CAUTION: This message came from outside the firm. DO NOT click links or open attachments unless you recognize this sender (look at the actual email address) and confirm the content is safe.

From: Sara Sanchez <ssanchez@peiferlaw.com>
Sent: Tuesday, August 1, 2023 1:26 PM
To: Carter B. Harrison IV <carter@harrisonhartlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com
Cc: Mark Allen <mallen@nmag.gov>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; Ann Tripp <atripp@hinklelawfirm.com>; peter.auh@sos.nm.gov
Subject: RE: Redistricting: Depo dates and special master

Carter,

You are correct that my firm and Hinkle represent Egolf, Stewart and Cervantes. I'll just reiterate that in light of the approach you are taking with the subpoenas, which are not at all narrow and seek documents and communications at the heart of the privilege from every rank and file member of the Democratic caucus, we need to get a final ruling from the court on legislative privilege before any legislator depositions take place. We will certainly seek to expedite that briefing to the extent possible.

Thank you,
Sara

Sara N. Sanchez
Peifer, Hanson, Mullins & Baker, P.A.
Post Office Box 25245
Albuquerque, New Mexico 87125-5245
Office: (505) 247-4800
Fax: (505) 243-6458

DISCLAIMER:

This e-mail is confidential and intended for the addressee only. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purpose, or disclose its contents to any other person. Any views or opinions expressed in this e-mail may be solely those of the author and are not necessarily those of Peifer, Hanson, Mullins, & Baker, P.A.

From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Monday, July 31, 2023 3:45 PM
To: Sara Sanchez <ssanchez@peiferlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com
Cc: Mark Allen <mallen@nmag.gov>; Holly Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; Ann Tripp <atripp@hinklelawfirm.com>
Subject: RE: Redistricting: Depo dates and special master

Hi Sara,

The special master was the Legislative Defendants' idea (although I thought it was a good one). I don't know what 'repeated representations' you're referring to, but since I think your side (Lucas) has been working with me in good faith, I'll do the best I can to clear up any confusion: I've always wanted extensive fact discovery (e.g., Lucas early on asked whether I thought this could be done with fewer than 10 depositions, and I gave him an answer that was tentative but closer to a 'no' than a 'yes'), although the Party has resource constraints given the cyclical nature of political-party funding (a lot of my work to date has been scrounging for national resources), which I've also shared, and I'm still not sure how many depositions will be required (of the 68 I sent out, we won't successfully serve everyone, of those we serve some will be cooperative but not worth deposing, some will be uncommunicative and not worth following up with, etc.). When I foreshadowed on the phone (on Thurs. or Fri.) that we'd be sending out SDTs to legislators, I did tell Lucas that we were 'trying to be a little discriminating' about who we served, but we ultimately opted to switch from an approach where we requested different (and more burdensome) topics from (a smaller number of) different people, to one where we requested the same (narrower) topics of everyone — which has obvious efficiencies for litigation. Beyond that, I'm unclear what you're referring to (I don't believe you and I have ever talked).

On your end, my understanding was that you would be producing the 3 deponents I've been asking for for weeks now, and that they'd assert the privilege on a question-by-question basis — Lucas may have used tentative/non-committal language in saying that, but the whole reason you guys came up with the special master idea was to avoid the inefficiency of potentially having to sit deponents twice. I contend that our scheduling order (which we agreed on before the special master idea was floated) requires you to make each of the 3 deponents available "for at least one date within two weeks of the request." Scheduling Order ¶ 4, at 3. I suppose I should also confirm at this point what we've talked about on the phone (and emailed about, but there it's just been me repeatedly emailing you): the Legislative Defendants will be producing (or not producing; I'm just clarifying their party/represented status here) Brian Egolf, Mimi Stewart, and Joseph Cervantes, correct?

If you have time this afternoon or tomorrow morning for a phone call, I would appreciate it.

Best,
Carter

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Tel: (505) 295-3261
Fax: (505) 341-9340

From: Sara Sanchez <ssanchez@peiferlaw.com>
Sent: Monday, July 31, 2023 8:44 AM
To: Carter B. Harrison IV <carter@harrisonhartlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com
Cc: Mark Allen <mallen@nmag.gov>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; Ann Tripp <atripp@hinklelawfirm.com>
Subject: RE: Redistricting: Depo dates and special master

Carter:

The Legislative Defendants' consent to pursue assignment of a special master in this matter was based on your repeated representations about the Plaintiffs' intent to conduct relatively limited and targeted discovery. It was only late Saturday night that we learned instead that Plaintiffs have issued no fewer than 65 subpoenas to virtually every member of the Democratic caucus in both houses, seeking documents that go to the heart of the legislative privilege and directing each legislator to provide you with their availability for questioning. In light of this approach you are now taking, it simply does not make sense for the parties to use a special master. Rather, we need to get the legislative privilege issues teed up before the Court as quickly as possible, and we intend to do so. Nor does it make sense to schedule any legislator depositions until we have a final ruling on these issues, given the nature of the requests in the subpoenas.

As for Justice Chavez, we do not represent him and cannot speak for him in response to your request for his deposition.

Thank you,
Sara

Sara N. Sanchez
Peifer, Hanson, Mullins & Baker, P.A.
Post Office Box 25245
Albuquerque, New Mexico 87125-5245
Office: (505) 247-4800
Fax: (505) 243-6458

DISCLAIMER:

This e-mail is confidential and intended for the addressee only. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purpose, or disclose its contents to any other person. Any views or opinions expressed in this e-mail may be solely those of the author and are not necessarily those of Peifer, Hanson, Mullins, & Baker, P.A.

From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Sunday, July 30, 2023 2:38 AM
To: Sara Sanchez <ssanchez@peiferlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com
Cc: Mark Allen <mallen@nmag.gov>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>
Subject: Redistricting: Depo dates and special master

Counsel:

Please let me know which of August 14, 15, and 25 works best for the deposition of Ed Chavez. Also, I'm following up again for dates on Egolf, Cervantes, and Stewart.

On our special-master hunt, I propose we send the following to former judges Vanzi and Shoobridge:

The New Mexico Supreme Court recently remanded litigation over whether the 2021 congressional-redistricting plan constitutes an unconstitutional partisan gerrymander to the District Court, namely Judge Fred Van Soelen of Clovis. The Supreme Court briefly outlined the parameters of a partisan-gerrymandering claim and instructed the District Court to bring the case to final judgment by October 1 (order attached), and Judge Van Soelen has since entered a scheduling order (attached) and accepted, at the scheduling conference preceding the entry of the order, the parties' proposal that a special master be appointed to rule on discovery disputes — most specifically assertions of legislative privilege at depositions, which we know to a virtual certainty will arise.

The parties are now jointly reaching out to you and one other retired state judge to gauge whether you would be willing and able to serve in this role. There will likely be a number of depositions throughout August and extending into September, and the hope would be that the master would be generally available on-call to referee disputes; the master may wish to order advance briefing, as the state-constitutional provision at issue, the Speech & Debate Clause, N.M. Const. art. IV, § 13, has never been subject to judicial interpretation.

If you are willing and able to take on the appointment, we would appreciate it if you would let us know. Our only preference between the two of you is for the one who believes they are most well-situated to take the appointment.

Respectfully,

If that's acceptable, please let me know.

Best,
Carter

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Tel: (505) 295-3261
Fax: (505) 341-9340

EXHIBIT 13

LeRoy, Kevin M.

From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Monday, August 14, 2023 7:22 PM
To: LeRoy, Kevin M.
Subject: FW: Redistricting Litigation: Limited EOA

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This message came from outside the firm. DO NOT click links or open attachments unless you recognize this sender (look at the actual email address) and confirm the content is safe.

From: Sara Sanchez <ssanchez@peiferlaw.com>
Sent: Monday, August 7, 2023 5:03 PM
To: Carter B. Harrison IV <carter@harrisonhartlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>
Cc: rolson@hinklelawfirm.com; Mark Baker <mbaker@peiferlaw.com>; Amanda Bustamante <amandab@harrisonhartlaw.com>; gorenice@golaw.us
Subject: RE: Redistricting Litigation: Limited EOA

Yes.

Sara N. Sanchez
Peifer, Hanson, Mullins & Baker, P.A.
Post Office Box 25245
Albuquerque, New Mexico 87125-5245
Office: (505) 247-4800
Fax: (505) 243-6458

DISCLAIMER:

This e-mail is confidential and intended for the addressee only. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purpose, or disclose its contents to any other person. Any views or opinions expressed in this e-mail may be solely those of the author and are not necessarily those of Peifer, Hanson, Mullins, & Baker, P.A.

From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Monday, August 7, 2023 4:34 PM
To: Lucas Williams <LWilliams@hinklelawfirm.com>
Cc: rolson@hinklelawfirm.com; Mark Baker <mbaker@peiferlaw.com>; Sara Sanchez <ssanchez@peiferlaw.com>; Amanda Bustamante <amandab@harrisonhartlaw.com>; gorenice@golaw.us
Subject: Redistricting Litigation: Limited EOA

Just to verify (since this arguably falls into a slight gap in the scope of representation described, although I think it's probably included): you're representing these folks with regard to any depositions/interviews I want to conduct, as well, correct, such that we should not be contacting these folks for any reason relating to this litigation?

Best,

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Tel: (505) 295-3261
Fax: (505) 341-9340