

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

REPUBLICAN PARTY OF NEW MEXICO, *et al.*,

Plaintiffs,

vs.

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

MAGGIE TOULOUSE OLIVER, *et al.*,

Defendants.

**THE LEGISLATIVE DEFENDANTS' RESPONSE TO PLAINTIFF'S AUGUST 21, 2023
"EMERGENCY" MOTION**

Plaintiffs, having described their discovery in this matter as involving 4 fact depositions and up to 10 subpoenas duces tecum, should not now be heard to complain when the Legislative Defendants, and more than 74 other legislators, legislative staffers, and legislative contractors oppose Plaintiffs' shotgun attack on the New Mexico Constitution's Speech and Debate Clause. The New Mexico Supreme Court's mandate that this matter be decided no later than October 1 imposed an obligation upon the litigants to engage in thoughtful and targeted discovery; Plaintiff's pre-Scheduling Order representations of 4 fact depositions and up to 10 subpoenas duces tecum were consistent with that mandate and that parties agreed to a meaningful and efficient means to move that focused discovery forward with a Special Master. After the Court entered the Scheduling Order, Plaintiff's strategy changed. Voluminous discovery aimed at the absolute immunity of the Speech and Debate Clause coupled with none of the agreed-upon Special Masters being available to serve that function has, unfortunately, shifted the burden of resolving this fundamental Constitutional issue and attendant discovery issues to the Court. As discussed below, Plaintiff's Emergency Motion to Compel Depositions and/or appoint a Special Master should be denied.

I. STATEMENT OF RELEVANT FACTS

1. Plaintiffs' representation that "[t]he Legislative Defendants then proposed two new names to reach out out—former Fifth Judicial District Judge William Shoobridge and former state Court of Appeals Judge Linda Vanzi—to which Plaintiffs agreed," [Motion p. 5], is not correct. First, Plaintiffs' counsel's email of July 30, 2023, at 2:38 AM states "[o]n our special-master hunt, I propose we send the following to former judges Vanzi and Shoobridge..." [Motion Exh. 1 p. 3] Defendants had not proposed those jurists nor agreed to their appointment.

2. On August 8, 2023, the Non-Party Citizen Legislators Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order. To the extent that Plaintiffs' Motion is based upon objections to attacks on legislative privilege, and pursuant to Rule 1-010(C) NMRA, Defendants incorporate the arguments and authority raised in the August 8, 2023 Motion.

II. ARGUMENT

Plaintiffs' Motion asserts four claims for relief. All should be denied.

A. PLAINTIFFS' REQUEST FOR THE APPOINTMENT OF A SPECIAL MASTER.

Plaintiffs' burdensome and shotgun approach to discovery attacking the Speech and Debate Clause, coupled with the passage of time and the lack of an agreed-upon person able to serve as Special Master, counsels against appointing a Special Master. At present, the parties have briefed (and continue to brief) the issue of legislative privilege to the Court. Rather than appoint a special master—should one be willing—the Court should decide these issues.

B. PLAINTIFF'S REQUEST THAT 76 LEGISLATORS BE DEPOSED IN THE "NEXT TWO WEEKS."

Plaintiffs' request to depose 76 legislators was and is facially unreasonable and contingent upon the Court's determination of whether the New Mexico Constitution's Speech and Debate

Clause is absolute. Before deciding whether any of the 76 legislators should be deposed, the Court must first address legislative privilege.

C. PLAINTIFFS' REQUEST FOR WEEKLY HEARINGS.

Defendants take no position on the Court's regulation of its docket.

D. PLAINTIFFS' "ADVERSE INFERENCE" REFERENCE.

Finally, Plaintiffs' Motion requests the Court to give an advisory admonition that "adverse inferences are as appropriate in this case as in any other." [Motion p. 11] The Legislative Defendants and the Non-Party Citizen Legislators have asserted their fundamental Constitutional right to not be questioned, and by doing so cannot be penalized.

WHEREFORE the Legislative Defendants request that the Court deny Plaintiffs' Emergency Motion and for such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 1-005(E) NMRA, the foregoing The Legislative Defendants' Response to Plaintiff's August 21, 2023 "Emergency" Motion was served on the following on August 21, 2023, by the method reflected:

Person Served

All counsel of record

Method

Efile/Eserve

Respectfully Submitted,

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