

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT

FILED  
5th JUDICIAL DISTRICT COURT  
Lea County  
9/5/2023 9:25 AM  
NELDA CUELLAR  
CLERK OF THE COURT  
Cory Hagedoorn

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

Plaintiffs,

v.

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

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

Defendants.

**LEGISLATIVE DEFENDANTS' EXPEDITED MOTION FOR  
ENTRY OF PRE-TRIAL ORDER TO PREVENT TRIAL BY AMBUSH**

Pursuant to the New Mexico Supreme Court's Order of July 5, 2023,<sup>1</sup> this matter is proceeding on a highly compressed and expedited docket, including a three-day bench trial noticed by the Court for September 27-29, 2023. Despite the very real time constraints for discovery and trial preparation presented by the schedule, Plaintiffs filed a fact witness list identifying *one hundred and nineteen* (119) named individuals and four additional potential categories of witnesses whom Plaintiffs "may call...to testify via affidavit, at a deposition, and/or at trial." Plaintiffs' Witness Lists [sic], filed Aug. 1, 2023. Plaintiffs' witness list does not identify which

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<sup>1</sup> As amended by the New Mexico Supreme Court's Amended Order of August 25, 2023.

witnesses Plaintiffs actually intend to call at the three-day trial, nor what the substance of any witness’s anticipated testimony might be (nor does it provide contact information for any of them).

The Legislative Defendants—Mimi Stewart as President Pro Tempore of the New Mexico Senate, and Javier Martinez as Speaker of the House of Representatives—have repeatedly asked Plaintiffs to identify which of their 119+ witnesses they intend to call at trial, so that the defendants in this case may have a meaningful opportunity to prepare for trial. Plaintiffs have refused to do so.<sup>2</sup>

Legislative Defendants had hoped that the parties could work together to agree on workable, common-sense pre-trial deadlines that would permit all parties to prepare adequately for trial, without requiring intervention by the Court. Unfortunately, Plaintiffs appear determined to hide their cards until the last possible moment before trial—or perhaps until trial itself—leaving the defendants in this case to try to guess which of more than a hundred potential witnesses Plaintiffs will call during a three-day trial. This has left Legislative Defendants with no choice but to bring this expedited motion requesting that the Court enter a pre-trial order to assure the timely exchange of sufficiently detailed witness lists and exhibits the parties intend to introduce at trial.<sup>3</sup> This Motion is brought on an expedited basis, as trial is set to begin in three weeks. In support of this Expedited Motion, Legislative Defendants state as follows.

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<sup>2</sup> In response to the Legislative Defendants’ initial request, Plaintiffs proposed a “stipulation” in which they would not have to disclose their trial witnesses *until the day before trial*. Legislative Defendants declined that stipulation and instead proposed that sufficiently in advance of trial the parties exchange lists of witnesses they intend to call at trial, ranked in order of priority and with a brief summary of each witness’s anticipated testimony. Plaintiffs simply did not respond to that counter proposal.

<sup>3</sup> The Legislative Defendants’ fact witness list presents no such problem, as their only fact witness is the Custodian of Records for the New Mexico Legislature, including the records of the Citizens Redistricting Committee.

## RELEVANT PROCEDURAL FACTS

1. The Court has set this matter for a three-day bench trial on September 27-29, 2023. *See* Notice of Hearing filed August 4, 2023.
2. On August 1, 2023, Plaintiffs filed their witness list, identifying 119 named individuals whom Plaintiffs “may call... to testify via affidavit, at a deposition, and/or at trial. Plaintiffs’ Witness Lists [sic], filed August 1, 2023.
3. On August 16, 2023, undersigned counsel for Legislative Defendants wrote to counsel for Plaintiffs asking Plaintiffs to identify which of the individuals on their witness list Plaintiffs intend to present, and a summary of their anticipated testimony. *See* Exhibit A hereto (S. Sanchez to C. Harrison, Aug. 16, 2023). In that letter, Legislative Defendants recognized that, even setting aside the 70+ New Mexico legislators on Plaintiffs’ witness list who have asserted legislative privilege, that still leaves almost 40 witnesses for whom there is no indication as to whether Plaintiffs intend to present their testimony, nor the expected content of their testimony. *Id.*
4. On August 23, 2023, Plaintiffs’ counsel responded in a letter, declining Legislative Defendants’ request and suggesting instead that the parties enter a stipulation under which each party would disclose by August 28, 2023 the names of individuals they intend to depose, and that by 3:00 p.m. on September 26, 2023, the parties would exchange “will-call” and “may-call” witness lists for the trial starting the next day. *See* Exhibit B hereto (C. Harrison to S. Sanchez, Aug. 23, 2023, and attached proposed stipulation).
5. On August 31, 2023, counsel for Legislative Defendants emailed counsel for Plaintiffs, explaining that Plaintiffs’ proposed stipulation would still leave defendants in the dark

about trial witnesses *until the day before trial*. Exhibit C hereto (S. Sanchez to C. Harrison, Aug.

31, 2023). Legislative Defendants asked instead that Plaintiffs to agree to the following:

(1) nine days before trial, on September 18, 2023, the parties would exchange lists of witnesses they intend to call at trial, ranked in order of priority, with a brief summary of each witness's anticipated testimony;

(2) at the same time, the parties would exchange lists of exhibits they intend to introduce at trial (if not already included in the parties' Annotated Findings and Conclusions submitted on September 15); and

(3) trial time would be split evenly between Plaintiffs and Defendants (1.5 days each). *Id.* Legislative Defendants asked Plaintiffs to respond to Defendants' proposal by close of business on Friday, September 1, 2023. *Id.* Plaintiffs did not do so, and still have not responded as of the filing of this Motion.

6. Without an Order from the Court, the defendants in this case will be deprived of their ability to meaningfully prepare for trial because Plaintiffs have chosen to identify over 119 potential witnesses for a three-day trial. This amounts to trial by ambush and is completely contrary to the spirit and intent of the New Mexico Rules of Civil Procedure. Accordingly, Legislative Defendants invoke this Court's inherent authority to control and manage the proceedings and parties before it, and request entry of an Order setting reasonable pre-trial deadlines that will allow both parties to prepare for trial.

**THE COURT SHOULD EXERCISE ITS INHERENT AUTHORITY TO CONTROL  
THE PROCEEDINGS AND ENTER AN EXPEDITED PRE-TRIAL ORDER  
REQUIRING ADEQUATE DISCLOSURE OF TRIAL WITNESSES SUFFICIENTLY IN  
ADVANCE OF THE TRIAL.**

The Court has the inherent authority to control the proceedings before it and to manage its docket and the parties accordingly. *See In re Jade G.*, 2001-NMCA-058, ¶ 27 (“a court may exercise authority that is essential to the court’s fulfilling its judicial functions. This authority embraces the ability of a court to control its docket and the proceedings before it.”); *State v. Ngo*, 2001-NMCA-041, ¶ 25 (recognizing judge’s “inherent power to control his or her own courtroom”); *Belser v. O’Cleirachain*, 2005-NMCA-073, ¶ 3 (discussing district court’s inherent authority to manage the proceedings before it). Indeed, if this matter were not subject to an accelerated schedule pursuant to the New Mexico Supreme Court’s Order, the Court would have presumably required the parties to attend a pretrial conference and prepare a proposed Pretrial Order pursuant to Rule 1-016(E) NMRA to address matters such as exchange of final witness and exhibit lists, allocation of trial time, etc.

It is in the interests of all parties, the Court and the public to ensure that the parties and their counsel have a meaningful opportunity to prepare for trial, both in terms of readying their own presentations but also to prepare for witnesses who may be called by the opposing party. It is indisputable that Plaintiffs cannot call 119 witnesses at a three-day bench trial—nor is there time to present even a sizeable fraction of that many witnesses at trial. Yet their massive witness list leaves Legislative Defendants with no means of deciphering which individuals Plaintiffs actually intend to present at trial nor what their testimony might consist of. In a normal case, a very large preliminary witness list might not be so problematic, because the typical discovery period (and standard pre-trial orders and deadlines) would provide adequate time and tools for the opposing party to develop a better understanding of how the opposing party intended to present their case.

Not so here. Yet Plaintiffs have rebuffed Legislative Defendants' efforts to reach an agreement to address the problem without involving the Court.

### **CONCLUSION**

WHEREFORE the Legislative Defendants respectfully move the Court to enter a pre-trial order which:

- (1) requires that, at least seven days before trial, the parties exchange (a) lists of witnesses whom they intend to call at trial, ranked in order of priority and with each witness's contact information and a brief summary of each witness's anticipated testimony and (b) any exhibits they intend to introduce at trial which have not previously been included with the parties' written submissions to the Court;
- (2) excludes from trial any witness not listed on that pre-trial disclosure; and
- (3) splits the three-day trial time evenly between Plaintiffs and Defendants (1.5 days each).

Respectfully submitted,

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

By: /s/ Sara N. Sanchez  
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*Attorneys for the Legislative Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2023 I caused the foregoing Motion, along with this Certificate of Service, to be served and filed electronically through the Tyler Technologies Odyssey File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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

By: /s/ Sara N. Sanchez  
Sara N. Sanchez



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

ATTORNEYS AND COUNSELORS AT LAW

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ELIZABETH K. RADOSZYTOH  
MATTHEW M. BECK  
REBEKAH A. GALLEGGOS  
SARAH E. JABGER

August 16, 2023

**VIA EMAIL ONLY**

Carter B. Harrison IV ([carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com))  
Harrison & Hart, LLC  
924 Park Avenue SW, Suite E  
Albuquerque, New Mexico 87102

Re: *Republican Party of New Mexico v. Oliver, et al.*, D-506-CV-2022-00041

Dear Mr. Harrison:

As you know, this case is proceeding under a very tight timeline pursuant to the New Mexico Supreme Court's July 5, 2023 Order directing the district court to resolve this matter no later than October 1, 2023. On August 1, 2023, you filed Plaintiffs' Witness List identifying 119 named witnesses whom Plaintiffs "may call . . . to testify via affidavit, at a deposition, and/or at trial." Even if we set aside the dozens of current and former legislators on Plaintiffs' Witness List who have asserted legislative privilege in response to Plaintiffs' document and/or deposition subpoenas, and other witnesses for whom Plaintiffs have thus far issued subpoenas, that still leaves thirty-eight (38) individuals on Plaintiffs' witness list for whom there is no indication as to whether Plaintiffs actually intend to present their testimony, nor what that testimony might consist of.

Obviously, there is not anywhere close to sufficient time in our discovery period (which closes on September 13, 2023) for Defendants to depose all those individuals or to obtain the substance of their testimony through written discovery—nor is there sufficient time for Plaintiffs to present the testimony of that many individuals under the Court's Scheduling Order. Therefore, we are asking Plaintiffs to identify which of the following individuals on Plaintiffs' Witness List whose testimony (whether by affidavit, deposition or live testimony) Plaintiffs *actually* intend to present in this case, and to provide each such witness's contact information and a summary of their anticipated testimony:

Gregory A. Baca

Amy Barela

Fred Beard

EXHIBIT  
A

Carter B. Harrison, IV

August 16, 2023

Page 2

Jacob R. Candalaria

Ryan Cangiolosi

Conroy Chino

Lisa Curtis

Dara Dana

Gary Eidson

T. Calder Ezzell, Jr.

Scott Forrester

Dominic Gabello

David M. Gallegos

Manuel Gonzales

Cheryl Harris

Jon Henry

Stella Yvette Herrell

Stuart Ingle

Timothy Jennings

Gay G. Kernan

T. Ryan Lane

Teresa Leger Fernandez

Michelle Lujan Grisham

Mark Moores

John Morgan

Greg Nibert

Cliff R. Pirtle

Robert Rhatigan

Joaquin Sanchez

Juan Sanchez

Oriana Sandoval

Chris Saucedo

Pat Sims

Melanie Stansbury  
Richard Taylor  
Vince Torres  
James G. Townsend  
Dinah Vargas

Please provide the requested information no later than August 22, 2023. Otherwise, Legislative Defendants will have no choice but to file a motion to exclude the testimony of these witnesses.

Thank you for your prompt attention to this matter.

Very truly yours,

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

By: \_\_\_\_\_



Sara N. Sanchez

SNS/gb

cc (via email only):

Rich Olson  
Mark Baker  
Lucas Williams  
Ann Trip  
Michael Browde  
Luis Stelzner  
Holly Agajanian  
Kyle Duffy  
Peter Auh

# HARRISON & HART, LLC

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

August 23, 2023

**VIA EMAIL ONLY: [ssanchez@peiferlaw.com](mailto:ssanchez@peiferlaw.com)**

Sara N. Sanchez  
Peifer, Hanson, Mullins & Baker, P.A.  
20 First Plaza, Suite 725  
Albuquerque, NM 87102

**Re: *RPNM v. Oliver, D-506-CV-2022-00041* (N.M. 5th Jud. Dist.)  
Response to Your August 16 Letter Regarding the Plaintiffs' Fact Witnesses**

Dear Sara:

I'm writing in response to your August 16 letter asking us to provide additional information regarding our witnesses. I should note first that we complied fully with the Scheduling Order, and, if an opposing party wants the additional information you are now seeking, its entitlement to that information is through discovery, *i.e.*, RFPs and/or interrogatories, which we have 30 days to respond to (or less, if you move for that and the Court orders it pursuant to Rule 1-033(C)(3) or 03-4(B)). *See* Rule 1-026(B)(3) N.M.R.A. ("Parties may *obtain discovery* of . . . the subject matter of the witness's expected testimony and the substance of the witness's testimony[, and ] may also *discover* the name, address and telephone number of each individual likely to have discoverable information . . . ." (emphases added)). We have and will continue to comply with our discovery obligations, and with obligations imposed by the Scheduling Order.

Further, your statement that "nor is there sufficient time for Plaintiffs to present the testimony of that many individuals under the Court's Scheduling Order" appears to be geared toward depositions and trial testimony, since there clearly are no temporal barriers to presenting a large number of affidavits. To that end, I am willing to enter a discovery stipulation providing that **(1)** by Monday, August 28, each party will disclose the names of all individuals whose depositions have not yet been noticed whom the party intends to depose, and, for any witnesses whom the party is unsure whether it will depose, the contingencies affecting the uncertainty briefly described, and any subsequent additions to the list being supported by a specific explanation amounting to good cause; and **(2)** by 3:00 p.m. on Tuesday, September 26, each party will disclose a 'will-call' and 'may-call' list that summarizes the subject matter and substance of the witness's expected testimony. I am sure you understand that we do not want to be making unrequited disclosures here.

EXHIBIT  
B

Ms. Sara Sanchez  
August 23, 2023  
Page 2 of 2

I will note, again, that neither of these proposed stipulations reflects pre-existing obligations on us; we are offering them as a compromise in light of the fast-paced nature of this litigation.

Very truly yours,

HARRISON & HART, LLC

A handwritten signature in black ink, appearing to read "Carter B. Harrison IV", written over a dotted line.

Carter B. Harrison IV

CBH

Enclosure:  
Proposed Rule 1-029(B) Stipulation

cc: All Counsel

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.

**DISCOVERY STIPULATIONS REGARDING WITNESSES**

Pursuant to Rule 1-029(B) NMRA, all parties stipulate and agree that they, along with any  
future parties to this litigation, shall be bound to comply with the following two disclosure  
requirements:

1. By Monday, August 28, each party<sup>1</sup> will disclose the names of all individuals whose  
depositions have not yet been noticed and whom the party intends to depose. For any witnesses

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<sup>1</sup> For purposes of these Stipulations, a “party” is a group of co-plaintiffs or -defendants represented by  
joint counsel and presenting their case at trial jointly, *i.e.*, the Plaintiffs, the Legislative Defendants, and the  
Executive Defendants are each one party for these purposes. *Cf.* Rule 1-088.1(A)(1)-(5) NMRA.

whom the party is unsure whether it will depose, the contingencies affecting the uncertainty shall be briefly described. Any subsequent additions to the list (*i.e.*, the deposition(s) of any individual(s) not on the list) must be made as soon as possible and be supported by a specific explanation amounting to good cause; an alleged violation of this provision shall not be grounds for non-appearance at a deposition, but may be grounds for other discovery sanctions, including exclusion.

2. By 3:00 p.m. on Tuesday, September 26, each party will disclose a 'will-call' and 'may-call' list that summarizes the subject matter and substance of the witness's expected testimony.

Respectfully submitted,

HARRISON & HART, LLC

By: 

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

*Attorneys for the Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_th day of August 2023, I submitted the foregoing Stipulations electronically via the Court's Odyssey filing system, and when doing so I selected the option for automated electronic service of the certified document, which will occur on the date the clerk's office formally files the document.

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV  
Carter B. Harrison IV



**From:** Sara Sanchez  
**To:** Amanda Bustinante; Lucas Williams; colson@hinkielawfirm.com; Ann Tapp; Mark Baker; mhrowce@rre.com; psteizner@aol.com; Luis Stelzner; Holly.Arsenault@state.nm.us; Duffy, Kyle, GCY; pefer\_suh@psa.nm.gov; nstele@hinkielawfirm.com  
**Cc:** Carter B. Harrison IV; LeRoy, Kevin M.; DiRocco, Misha; Tsevdin, Misha; Orlando, Anthony L.  
**Subject:** RE : Redistricting Litigation - RPNM, et al. v. Toulouse Oliver et al.  
**Date:** Thursday, August 31, 2023 9:37:00 AM

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Carter,

I'm writing to follow up on my letter to you of August 16, 2023, asking Plaintiffs to identify which of their listed 119+ witnesses they actually intend to present at the 3-day trial in September. Plaintiffs refused to do so and instead proposed a "stipulation" which does not address the problem because it would still leave Defendants in the dark *until the day before trial* as to which witnesses Plaintiffs will be calling. It's plain as day that there is nowhere near enough time for Plaintiffs to call even a substantial portion of its listed witnesses in the time the Court has allotted.

We'd like to avoid having to involve the Court in yet another pre-trial issue, so please let us know by close of business tomorrow (Friday, September 1) if Plaintiffs agree to the following: (1) nine days before trial, on September 18, 2023, the parties will exchange lists of witnesses they intend to call at trial, ranked in order of priority, with a brief summary of each witness's anticipated testimony; (2) at the same time, the parties will exchange lists of exhibits they intend to introduce at trial (if not already included in the parties' Annotated Findings and Conclusions submitted on September 15); and (3) trial time will be split evenly between Plaintiffs and Defendants (1.5 days each).

We hope Plaintiffs will agree to this common sense proposal so that we will not have to engage the Court on this issue.

Thank you,  
Sara

**Sara N. Sanchez**  
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Post Office Box 25245  
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EXHIBIT  
C

**From:** Amanda Bustamante <amandab@harrisonhartlaw.com>

**Sent:** Wednesday, August 23, 2023 3:25 PM

**To:** Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com; Ann Tripp <atripp@hinklelawfirm.com>; Mark Baker <mbaker@peiferlaw.com>; Sara Sanchez <ssanchez@peiferlaw.com>; mbrowde@me.com; pstelzner@aol.com; Luis Stelzner <stelznerllc@outlook.com>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; peter.auh@sos.nm.gov; nsteele@hinklelawfirm.com

**Cc:** Carter B. Harrison IV <carter@harrisonhartlaw.com>; LeRoy, Kevin M. <Kevin.LeRoy@troutman.com>; DiRago, Molly <Molly.DiRago@troutman.com>; Tseytlin, Misha <Misha.Tseytlin@troutman.com>; Orlando, Anthony L. <Anthony.Orlando@troutman.com>

**Subject:** Redistricting Litigation - RPNM, et al. v. Toulouse Oliver et al.

Good Afternoon,

Attached is Mr. Harrison's letter, along with the referenced Proposed Rule 1-029(B) Stipulation.

Thank you,

Amanda

Amanda Bustamante  
Paralegal

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