

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.

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.

**EMERGENCY MOTION TO QUASH TRIAL SUBPOENA ISSUED TO  
NON-PARTY KYRA ELLIS-MOORE**

Kyra Ellis-Moore is a non-party who happens to be the campaign manager for  
Congresswoman Teresa Ledger-Fernandez. She is not an elected or state official and she had  
nothing to do with the passage of the redistricting legislation that is the subject of this lawsuit. Ms.  
Ellis-Moore's boss, Congresswoman Ledger-Fernandez, also had nothing to do with the passage  
of the redistricting legislation because that decision was made by the New Mexico Legislature—  
not the United States Congress. This Motion seeks to quash a trial subpoena (attached as Exhibit  
A) served less than a week before trial on Ms. Ellis-Moore. As explained below, Rule 1-045 NMRA  
requires Plaintiffs to demonstrate substantial need for Ms. Ellis-Moore's testimony because she  
lives more than a hundred miles away from the site of the trial. Plaintiffs' decision to serve the trial  
subpoena last minute makes the Court's job much more difficult because the showing of substantial

need should be made before Ms. Ellis-Moore is ordered to travel to Lovington. This tactic—to wait until the eve of trial to serve this subpoena—is unfair to Ms. Ellis-Moore and contradicts the intent of Rule 1-045.

This is the third time Plaintiffs have abused the subpoena process to draw Ms. Ellis-Moore into this proceeding, apparently based on the mistaken belief that Ms. Ellis-Moore possesses information that is relevant to the litigation between the parties. Plaintiffs somehow believe that Congresswoman Ledger-Fernandez was critical of or otherwise opposed to the redistricting legislation, **and** that this helps their case. Even if the characterization of the Congresswoman Ledger-Fernandez’s view were true, she did not vote on the redistricting legislation. Her opinions about the redistricting legislation—whatever they may be—have nothing to do with the decision this Court must make concerning the constitutionality of the legislation. And Ms. Ellis-Moore, the Congresswoman’s campaign manager, cannot speak to why the New Mexico Legislature enacted the legislation. Therefore, Ms. Ellis-Moore’s testimony irrelevant to the constitutionality of the redistricting legislation and there is no substantial need for her testimony.

## **ARGUMENT**

### **I. Non-Party Ellis-Moore’s Testimony is Irrelevant.**

As the non-party Legislators and Staff astutely explain in their Emergency Motion to Quash Trial Subpoenas, “[t]he views of individual legislators are not controlling because the sovereign authority of the legislature is instilled in the representative body, not its individual members.” Emergency Motion to Quash Trial Subpoenas and Staff and for a Protective Order, filed September 21, 2023, at 9 (*quoting Whitely v. New Mexico State Pers. Bd.*, 1993-NMSC-019, ¶ 16, 115 N.M. 308, 313, 850 P.2d 1011, 1016). Hence, even if it were true that Ms. Ellis-Moore had spoken to or exchanged communications with individual legislators about the redistricting litigation, those

communications are irrelevant because this Court’s focus is on the intent of the New Mexico Legislature as a whole, not the intent of any individual members of the Legislature.

## **II. The Trial Subpoena Violates Rule 1-045 NMRA.**

Turning to the facts and circumstances surrounding the trial subpoena, there are three other reasons this Court should quash the subpoena.

First, Ms. Ellis-Moore was served with the trial subpoena on September 21st, less than a week before the commencement of trial. The subpoena requires her to search for a broad category of documents—a request Ms. Ellis-Moore has already objected to in a motion pending before this Court. *See* Motion to Quash filed on August 15, 2023. Plaintiffs have known about the trial setting for quite some time. If Plaintiffs believed that Ms. Ellis-Moore, a non-party, should be called as a witness—they should have issued the subpoena in time for the objection to be heard by this Court.

Second, Ms. Ellis-Moore lives more than 100 miles from the site of the trial. Rule 1-045(b)(iii) NMRA states that this Court may quash or modify the subpoena unless Plaintiffs “show[] a substantial need for the testimony or material that cannot be otherwise met without undue hardship[.]” Plaintiffs have made no such showing of substantial need or undue hardship here. To the extent Plaintiffs desire to introduce evidence of the Legislature’s intent, they can do so through Defendants or other parties who were involved with the passage of the legislation, if the Court determines testimony of this nature is even relevant.

Third, in her Motion to Quash the Document Subpoena (filed August 15, 2023), Ms. Ellis-Moore raised arguments concerning the privilege of communications concerning Congresswoman Ledger-Fernandez. Those legal issues have not been heard by the Court. Because it is Plaintiff’s burden to demonstrate “substantial need” for Ms. Ellis-Moore’s documents and materials, they should have ensured this issue was decided by the Court before trial. If Ms. Ellis-Moore is called

as a witness, Plaintiffs will certainly ask her questions that will infringe on privileged communications. Ms. Ellis-Moore's ability to ensure the Congresswoman's privilege is protected will be compromised if this Court attempts to decide the issue in the context of a short, three-day trial involving complicated constitutional questions concerning redistricting.

Fourth and finally, the Court has set a trial for three days. Ms. Ellis-Moore is a third party—not a party, not a Legislator, and not even a State employee. Given the task at hand and the limited time available to the Court to take evidence on the issue of the constitutionality of the redistricting legislation, Ms. Ellis-Moore is not relevant or important to the Court's consideration of the issues. If the Court is not inclined to take up this issue before trial begins, it should at least wait until Plaintiffs have presented their case to decide whether Ms. Ellis-Moore truly possesses evidence that Plaintiffs have a substantial need for. While this does not resolve the concern about the confidentiality of the materials Plaintiffs are seeking to obtain from Ms. Ellis-Moore, this would at least ensure that Ms. Ellis-Moore—who is well into her pregnancy—is not forced to travel to Lovington for no reason.

### **CONCLUSION**

For these reasons, non-party Ellis-Moore respectfully requests that this Court quash the trial subpoena.

Respectfully submitted,

THE WARD LAW FIRM

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 22, 2023, I filed the foregoing electronically, which caused all parties or counsel of record to be served by electronic means. I will also send a true and correct copy of this pleading by electronic mail to all counsel of record.

/s/ Vincent J. Ward