

FILED  
5th JUDICIAL DISTRICT COURT  
Lea County  
9/26/2023 3:09 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 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.**

**NOTICE OF AUTOMATIC STAY PURSUANT TO NMSA 1978, § 39-3-23**

**NOTICE IS HEREBY GIVEN** by Mimi Stewart, President Pro-Tempore of the New Mexico Senate, and Javier Martinez, Speaker of the New Mexico House of Representatives (the “Legislative Defendants”), that the Legislative Defendants have filed a Petition for Writ of Error in the New Mexico Supreme Court, seeking review of this Court’s Decision Letter dated September 26, 2023 (hereafter, the “Writ Petition”) which operates to automatically stay only the effect of the Court’s Decision Letter pursuant to Section 39-3-23, NMSA 1978 (“When the appellant or plaintiff in error is the state, a county or a municipal corporation, the taking of an appeal or suing out of a writ of error operates to stay the execution of the judgment, order or

decision of the district court without bond.”), and Rule 1-062 of the New Mexico Rules of Civil Procedure. N.M. R. Civ. P. Dist. Ct. 1-062(E) (“When an appeal is taken by the state or an officer or agency thereof, or by direction of any department of the state, or by any political subdivision or institution of the state...the taking of an appeal shall...operate as a stay.”). The filing of an appeal or a writ petition by state elected officials on behalf of the Legislature “triggers the automatic stay provisions of Section 39-3-23.” *City of Sunland Park v. New Mexico Pub. Regul. Comm’n*, 2004-NMCA-024, ¶ 20, 135 N.M. 143, 150, 85 P.3d 267, 274. Here, the named parties seeking review of the Court’s Order are the President Pro-Tempore of the New Mexico Senate and Speaker of the New Mexico House of Representatives on behalf of the legislative branch which is a “political subdivision or institution of the state.” Rule 1-062(E) NMRA 2023; *Cf. State ex rel. New Mexico State Highway Dept. v. Silva*, 1982-NMCA-121, ¶ 44, 98 N.M. 549, 556, 650 P.2d 833, 840 (explaining that “The [State Highway Department] is a state agency; its appeal operated as a stay.”).

By the filing of the Writ Petition and this Notice of Stay, the Legislative Defendants understand the stay is only effective as to the enforcement of the Court’s Decision Letter, specifically as to Plaintiffs’ trial subpoenas of legislators and staff, and pending document subpoenas to the same. The Legislative Defendants intend and are prepared to proceed with trial on the merits in this matter scheduled to commence September 27, 2023.

Respectfully submitted,

**HINKLE SHANOR LLP**

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*Attorneys for Legislative Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that as of September 27, 2023, I caused a true and correct copy of the foregoing motion to be e-mailed to all parties or counsel of record as follows and caused a copy of the motion and this Certificate of Service to be filed electronically through the Tyler Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

HINKLE SHANOR LLP

/s/ Richard E. Olson