

**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.

**LEGISLATIVE DEFENDANTS' MOTION TO QUASH DEPOSITION SUBPOENA TO
LEGISLATIVE STAFFER AND FOR PROTECTIVE ORDER**

At this point in these proceedings, the Court has been fully briefed on the express and absolute legislative privilege conferred by the New Mexico Constitution's speech or debate provision. *See* N.M. Const., art. IV, sec. 13 (providing in pertinent part 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"). The Legislative Defendants have shown that the privilege applies absolutely and extends to legislative staff, consultants and others who perform legislative functions in support of legislative activity. Plaintiffs, however, have continued their discovery strategy of denigrating and disregarding this constitutional privilege by seeking to compel

members of the Legislature, their staff and consultants, to produce documents and provide testimony on matters unquestionably protected by the privilege.

Plaintiffs' latest maneuver is to subpoena the deposition of legislative staffer Leanne Leith, who, for the entirety of the second special legislative session of 2021 when the congressional maps were introduced and enacted, was formally employed by the New Mexico House of Representatives as a Policy Advisor for the Speaker of the House. There is no plausible reason for Plaintiffs to have done so other than to question Ms. Leith about her involvement on behalf of the Speaker in the development of redistricting legislation and her communications with others in performing that work. Because all that information is protected by New Mexico's legislative privilege, the subpoena should be quashed and a protective order entered prohibiting the deposition entirely, or, at a minimum, providing sufficient limitations to ensure that privileged information is not sought or disclosed.

In support of this Motion, Representative Javier Martinez in his official capacity as Speaker of the House of Representatives of the State of New Mexico, and Senator Mimi Stewart, in her official capacity as President Pro-Tempore of the New Mexico Senate (together "Legislative Defendants") state as follows.

1. On or about July 29, 2023, Plaintiffs issued document subpoenas to seventy-four (74) members of the New Mexico Legislature, seeking their emails and text messages directly related to legislative activity. On August 8, 2023, the Legislative Defendants and all the Non-Party Legislators who were issued those subpoenas timely moved to quash them on legislative privilege and other grounds. *See Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order*, filed August 8, 2023 (the "First Motion to Quash"). The arguments and

authorities presented in the First Motion to Quash are hereby incorporated by reference as if fully set forth herein.

2. On or about August 2, 2023, Plaintiffs issued a document subpoena to legislative staffer Leith (among others), again seeking production of documents and communications squarely protected by the legislative privilege. On August 14, 2023, the Legislative Defendants timely moved to quash that subpoena, based on well-established United States Supreme Court precedent applying the legislative privilege to legislative staffers performing legislative functions. *See Legislative Defendants' Motion to Quash Subpoenas Served on Legislative Staff and Consultants*, filed August 14, 2023 (the "Second Motion to Quash"). The arguments and authorities presented in the Second Motion to Quash, and the facts presented regarding Ms. Leith's employment and legislative functions, are hereby incorporated by reference as if fully set forth herein.

3. On or about August 10, 2023, Plaintiffs issued deposition notices and subpoenas for six (6) current and former members of the New Mexico Legislature. On August 16, 2023, the Legislative Defendants moved for a protective order and to quash those subpoenas on legislative privilege grounds. *See Legislative Defendants' Motion to Quash Subpoenas for Deposition and for Protective Order*, filed August 16, 2023 (the "Third Motion to Quash"). The arguments and authorities presented in the Third Motion to Quash are hereby incorporated by reference as if fully set forth herein.

4. On August 29, 2023, Plaintiffs issued a subpoena to legislative staffer Leith for a deposition on September 12, 2023. Exhibit A hereto. The deposition subpoena includes the same document requests that Plaintiffs included in their previous document subpoena to Ms. Leith, which is the subject of the pending Second Motion to Quash. *Id.*

5. Rule 1-045(C)(3) NMRA instructs that the Court “shall quash or modify [a] subpoena if it... requires disclosure of privileged or other protected matter and no exception or waiver applies.”

6. For all the reasons stated in the First, Second and Third Motions to Quash, the deposition subpoena (and document requests included therein) issued to legislative staffer Leith impermissibly seeks to invade the legislative privilege that applies to Ms. Leith’s legislative acts and communications in performing her legislative functions on behalf of the Speaker of the House.

7. Accordingly, the Legislative Defendants timely filed this motion to quash the subpoena and for a protective order prohibiting the deposition entirely, or, at a minimum, providing sufficient limitations to ensure that privileged information is not disclosed.

8. A Notice of Non-Appearance pursuant to Rule 1-030(G)(3) for legislative staffer Leith is filed concurrently herewith.

WHEREFORE, for the above reasons and as set forth in the First, Second and Third Motions to Quash, a proper application of Rules 1-045 and 1-026 NMRA 2023 requires that this Court quash the deposition subpoena to Ms. Leith. The Legislative Defendants therefore respectfully request that this Court enter a Protective Order and quash this subpoena, in order to protect all information precluded from discovery by the legislative privilege afforded in the New Mexico constitution, and for any further relief as the Court deems just and proper.

Respectfully submitted,

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/s/ Sara N. Sanchez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that as of September 5, 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.

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

/s/ Sara N. Sanchez
Sara N. Sanchez

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

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capacity as New Mexico Secretary of State,
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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: Leanne C. Leith

████████████████████
████████████████████

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

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

Date: September 12, 2023

Time: 8:00 a.m. (Mountain Time)



to

[X] 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):

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, Kyra Ellis-Moore, Dominic Gabello, Daniel Ivey-Soto, Teresa Leger Fernandez, Georgene Louis, 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;
- (2) relate to the subject of congressional redistricting in New Mexico, including its predicted electoral effects in the 2022 election, regardless of who the communication is from or to; and/or
- (3) 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”.

Please produce these documents **at least 24 hours before your deposition** either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by hand-delivering electronic copies on a USB storage device to Harrison & Hart at 924 Park Avenue SW, Suite E in Albuquerque.

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 29, 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 \$20.00 (*\$0.655/mile x 30 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