



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHELLE LUJAN GRISHAM in her official capacity as Governor of New Mexico, **HOWIE MORALES**, in her 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 **Brian Egolf**, in his official capacity as Speaker of the New Mexico House of Representatives,

Petitioners,

v.

No. S-1-SC-39481

HON.FRED VAN SOELEN,
District Court Judge,
Fifth Judicial District Court,

Respondent,

and

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

Real Parties in Interest,

and

MAGGIE TOULOUSE OLIVER,

Defendant – Real Party in Interest.

**MOTION TO SUBSTITUTE PUBLIC OFFICER
AND AMEND CAPTION**

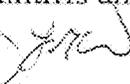
COMES NOW Petitioners-Defendants Mimi Stewart, in her official capacity as President Pro Tempore of the New Mexico Senate, and Javier Martinez, in his official capacity as Speaker of the New Mexico House of Representatives, (collectively the “Legislative Defendants”), by and through undersigned counsel, and request the Court enter an Order of Substitution in the above-captioned matter pursuant to Rule 12-301(C) NMRA 2022. As grounds therefore, the Legislative Defendants show the Court as follows:

1. Respondents-Plaintiffs filed their Complaint in Cause No. D-506-CV-2022-00041 on January 21, 2022, naming, among others, Senator Mimi Stewart and Representative Brian Egolf as defendants in their official capacities as the respective leaders of the New Mexico Senate and New Mexico House of Representatives.

2. Following the commencement of the Fifty-Sixth Legislature on January 17, 2023, being the first scheduled 2023 Regular Session, Representative Javier Martinez was elected by the members of the New Mexico House of Representatives as Speaker of the House, replacing Representative Brian Egolf.

3. Rule 12-301(C)(1) NMRA 2022 provides for the automatic substitution of public officers in proceedings in the appellate court upon death, resignation, or termination of office.

4. Rule 12-301 further provides that the appellate proceedings “shall be in the name of the substituted party” and that an “order of substitution may be entered at any time.” *Id.*

5. The Legislative Defendants have attached a proposed Order to accomplish the substitution of Representative Javier Martinez in his official capacity as Speaker of the New Mexico House of Representatives and to amend the caption in this extraordinary writ proceeding accordingly. *See Proposed Order, attached hereto as Exhibit “A”*. Concurrence from counsel for Respondent-Plaintiffs and the Executive Defendants has been sought and [oppose/do not oppose]. 

WHEREFORE, for the reasons set forth herein, the Legislative Defendants respectfully request the Court enter the proposed Order, Ex. A, providing for substitution of Javier Martinez and amending the caption herein.

//

Respectfully submitted,

HINKLE SHANOR-LLP



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Approved by:

OFFICE OF THE GOVERNOR

By: *via email on 2-17-2023*

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CERTIFICATE OF SERVICE

Pursuant to Rules 12-307(C) and 12-307.2(D)(2) NMRA, the foregoing Reply Brief was served on the following on February 17, 2023, by the method reflected:

Person Served

Method

All parties or counsel of record

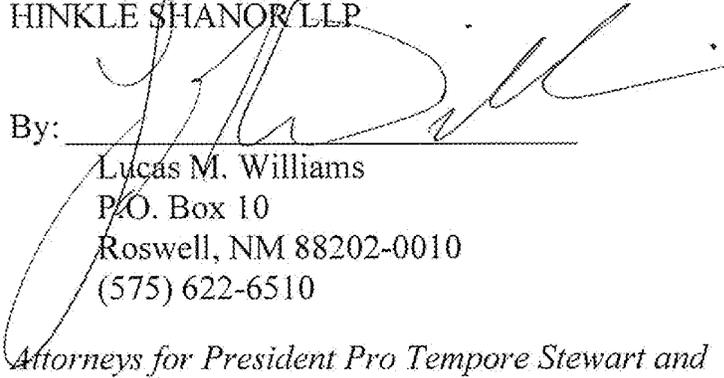
E-File/E-Serve

The Honorable Fred Van Soelen, Curry County Courthouse,
700 N. Main St., Suite 3, Clovis, NM 88101

USPS

Respectfully Submitted,

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and

MAGGIE TOULOUSE OLIVER,

EXHIBIT A

Defendant – Real Party in Interest.

ORDER

WHEREAS, this matter came for consideration by the Court upon motion by the Legislative Defendants, the Motion is not opposed, and the Court having considered the foregoing and being sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that Javier Martinez, in his official capacity as Speaker of the New Mexico House of Representatives shall be substituted as a Petitioner in the above matter pursuant to Rule 12-301 NMRA;

IT IS FURTHER ORDERED that all filings in this matter shall be made under the caption as it is styled in this Order, substituting Javier Martinez.

IT IS SO ORDERED.

WITNESS, the Honorable C. Shannon Bacon,
Chief Justice of the Supreme Court of the State of
New Mexico, and the seal of said Court this
___th day of February, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By _____
Chief Deputy Clerk of Court

Submitted by:

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