

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, et al.,

Defendants.

**NON-PARTY DOMINIC P. GABELLO'S
MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER**

COMES NOW Dominic P. Gabello, by and through counsel, Park & Associates, LLC (Alfred A. Park), and pursuant to Rules 1-030(G)(3), 1-026(C) and 1-045(C), NMRA, hereby moves this Court to quash the subpoena issued by Plaintiffs and issue a protective order. A copy of the subpoena is attached as Exhibit A to this Motion. In support of the Motion, Mr. Gabello states as follows:

1. On August 30, 2023, Plaintiffs issued a Subpoena for the deposition of Dominic P. Gabello for September 12, 2023 beginning at 12:30 p.m. See Exhibit A.
2. On September 5, Plaintiffs issued an Amended Subpoena for the deposition of Dominic P. Gabello for September 12, 2023, beginning at 8:00 a.m. See Exhibit B. Plaintiffs also issued a Notice to Take Videotaped Deposition of Domnic P. Gabello on September 5, 2023. See Exhibit C.

3. Previously, on August 2, 2023, Plaintiffs issued a Subpoena Duces Tecum to Mr. Gabello. On September 6, 2023, Mr. Gabello filed a Motion to Quash that subpoena and for Protective Order on the basis that the subpoena was confusing, overbroad, and unduly burdensome. In addition, Mr. Gabello argued that the subpoena should be quashed pending this Court's ruling on the assertions of legislative and executive privilege made by various parties and non-parties to this matter.

4. In support of this Motion, Mr. Gabello specifically incorporates the arguments made in the previous Motion to Quash and for Protective Order.

WHEREFORE, non-party Dominic Gabello respectfully requests this Court Quash the subpoena issued by Plaintiffs and issue a protective order protecting Mr. Gabello from responding, and for all further relief the Court determines is appropriate.

Respectfully Submitted,

PARK & ASSOCIATES, LLC

/s/ Alfred A. Park
Alfred A. Park
Attorney for Non-Party Dominic P. Gabello
3840 Masthead Street, N.E.
Albuquerque, NM 87109
apark@parklawnm.com
(505) 246-2805

I hereby certify that a true and correct copy of the foregoing was served via the Court's Odyssey filing system to all counsel of record on this 6th day of September 2023.

/s/ Alfred A. Park
Alfred A. Park

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
KIMBRO, and PEARL GARCIA,

Plaintiffs,

vs.

Case 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.

SUBPOENA

SUBPOENA FOR APPEARANCE OF PERSON FOR [X] DEPOSITION [] TRIAL

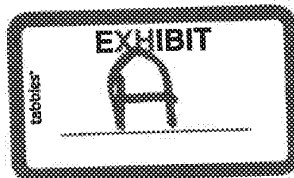
TO: Dominic P. Gabello
1401 Casa Roja Place NW
Albuquerque, NM 87120

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: 12:30 p.m. (Mountain Time)



to

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):

The documents requested in the previous subpoena served on you should be produced at least 24 hours before this deposition.

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 _____, 2023, in _____ County, I served this subpoena on Dominic Gabello 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

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,
DAVID GALLEGOS, TIMOTHY JENNINGS,
DINAH VARGAS, MANUEL
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KIMBRO, and PEARL GARCIA,

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MICHELLE LUJAN GRISHAM, in her official
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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
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Defendants.

AMENDED SUBPOENA

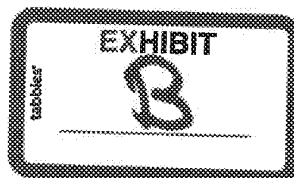
SUBPOENA FOR APPEARANCE OF PERSON FOR [X] DEPOSITION [] TRIAL

TO: Dominic P. Gabello
c/o Alfred Park
Park & Associates, LLC
apark@parklawnm.com

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

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):

The documents requested in the previous subpoena served on you should be produced at least 24 hours before this deposition.

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.

September 5, 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

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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.

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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:

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If a subpoena:

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- (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.

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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 _____, 2023, in _____ County, I served this subpoena on Dominic Gabello by delivering to the person named a copy of the subpoena.

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

STATE OF NEW MEXICO
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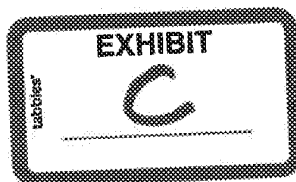
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her official capacity as President Pro Tempore
of the New Mexico Senate, and JAVIER
MARTINEZ in his official capacity as Speaker
of the New Mexico House of Representatives,

Defendants.

NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Dominic P. Gabello**
c/o Alfred Park
Park & Associates, LLC
apark@parklawnm.com



PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of **Dominic Gabello**, by a certified court reporter and videographer, on **Tuesday, September 12, 2023, beginning at 8:00 a.m. (Mountain Time)**, at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

Notice is further given that Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

Respectfully submitted,

/s/ Carter B. Harrison IV

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Ave SW, Suite E
Albuquerque, NM 87102
(505) 295-3261
carter@harrisonhartlaw.com

Attorneys for Plaintiffs