

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.

**NON-PARTY KYRA ELLIS-MOORE'S EMERGENCY MOTION FOR  
CLARIFICATION, OR ALTERNATIVELY, RECONSIDERATION OF THE COURT'S  
DECISION LETTER ISSUED ON SEPTEMBER 26, 2023**

Non-Party Kyra Ellis-Moore seeks clarification, or in the alternative, reconsideration, of  
the Court's Decision Letter issued on September 26, 2023, for the following reasons:

1. The Court's decision letter contains the following discussion:

Statements made to the public . . . are not protected. . . . While a member of  
Congress does have an interest in the enactment of this legislation, and while such  
a member might have input that is relevant and informative to legislators as they  
proceed, the Court finds this to be the same information as any other citizen who  
may have an interest and desire to run for office. Any relevant information a  
member of Congress may have is similar to information an advocacy group may  
have. In that role, a member of Congress is on the same level as any other citizen.  
Because they have no official role in the enactment of the legislation, *statements  
made to them are not protected by legislative privilege.*

Decision Letter at 1.

2. Our interpretation of the decision letter is that the Court may, subject to other objections, allow Plaintiffs to question Ms. Ellis-Moore about her conversations with legislators or legislative aids about the redistricting legislation. However, we do not read the decision to allow Plaintiffs to question Ms. Ellis-Moore about any internal discussions she may have had about the redistricting legislation. Notwithstanding the fact that discussions between Ms. Ellis-Moore and a sitting member of Congress are irrelevant and speculative about the Legislature's intent in enacting redistricting legislation, the Court's decision letter does not address this part of Ms. Ellis-Moore's objection to the trial and document subpoena.

3. To this point, Ms. Ellis-Moore does not have the authority to waive the privilege of a sitting member of Congress. Nor does counsel have the authority to authorize Ms. Ellis-Moore to waive privilege regarding any internal communications. Given the imminence of trial, the short setting, and the importance of the magnitude of a sitting member of Congress' privilege, the decision letter ought to be more specific concerning the scope of the testimony that Plaintiffs will be allowed to ask.

4. For these reasons, Non-Party Ellis-Moore respectfully requests the Court clarify the Order by making clear that (1) the scope of the Order shall be limited to questioning Ms. Ellis-Moore about her external conversations with legislators or their aids about the redistricting legislation; (2) the parties shall not be allowed to question Ms. Ellis-Moore about any internal conversations she had with Congresswoman Teresa Ledger-Fernandez about the redistricting legislation; and (3) the scope of the Order does not require Ms. Ellis-Moore to respond to the document portion of the subpoena (because, as discussed in more detail below, this part of the request is cumulative of an Order to testify and burdensome given the limited time Ms. Ellis-Moore has to prepare for her testimony).

5. In considering the proposed clarification, this Court should be mindful of the fact that Ms. Ellis Moore is not the sitting member of Congress and has no authority to waive privilege belonging to a constitutionally, federally elected official. Additionally, Plaintiffs have had several months to litigate this issue prior to trial. It is unreasonable for Plaintiffs to place this Court in the position of deciding a privilege question like this within a three-day bench trial when there are more important matters to take up that are dispositive of Plaintiffs' claims.

6. Finally, in the event Plaintiffs call Ms. Ellis-Moore to testify, it would be unreasonable to expect her to search for, review and provide documents that are asked for in the trial subpoena. The trial subpoena asks her to produce every communication she might possess about the redistricting legislation with no limitations. This Court is vested with broad authority to protect a non-party from abusive and burdensome discovery tactics. Plaintiffs had several months to properly litigate this issue. The question of privilege requires a thorough vetting. The Court can satisfy the interests of Plaintiffs by allowing them to call Ms. Ellis-Moore as a witness to discuss her communications with legislators or staff, but she should not be required to waive privilege that does not belong to her, or review documents to determine which are relevant and which are subject to privilege. None of this is necessary for this Court to decide the case.

### **CONCLUSION**

For these reasons, non-party Ellis-Moore respectfully requests that this Court clarify, or alternatively, reconsider, its September 26, 2023 Decision Letter.

Respectfully submitted,

THE WARD LAW FIRM

/s/ Vincent J. Ward

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 27, 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