

**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 DEANN
KIMBRO, and PEARL GARCIA,

Plaintiffs,

v.

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

MAGGIE TOULOUSE OLIVER as New
Mexico Secretary of State, MICHELLE
LUJAN GRISHAM as Governor of New
Mexico, HOWIE MORALES as New Mexico
Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART as
President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ as Speaker
of the House of Representatives,

Defendants.

**MOTION TO QUASH SUBPOENAS TO 74 NON-PARTY LEGISLATORS
AND FOR PROTECTIVE ORDER**

After initially feigning recognition of the constitutional and practical need for restraint, Plaintiffs have now unleashed an onslaught of document subpoenas to 74 non-party state legislators, along with requests that those legislators participate in depositions or “informal discussions” with Plaintiffs’ counsel.¹ If allowed to proceed, Plaintiffs will transform this case

¹ Plaintiff’s subpoena packet to Senator Duhigg (Exhibit A) is attached as an exemplar of the 70 otherwise identical subpoenas pursuant to Rule 1-026(C) NMRA’s requirement that “[a] motion filed pursuant to Paragraph C of this rule shall set forth or attach a copy of the discovery request at issue.” Plaintiff’s subpoena packet also contained a copy of the Court’s July 24, 2023 Scheduling Order and of the New Mexico Supreme Court’s July 5, 2023 Order. Both have been omitted from the Exhibit for brevity.

into an unconstitutional circus that cannot be completed by the October 1, 2023 deadline set by the New Mexico Supreme Court. The Court instead should: (1) quash Plaintiffs’ subpoenas and enter a protective order; (2) order Plaintiffs to submit a discovery plan for approval so the Court can determine whether the discovery is limited to that which the constitution permits, is probative of the disputed issues in the litigation, and can be completed in the time available; and (3) award the costs and fees the Defendants and non-party witnesses incur to secure this relief. Granting that relief is necessary for three reasons.

First, Plaintiffs’ subpoenas are a direct assault on the state constitution. Article IV, Section 13 provides unconditionally 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.” N.M. Const. art. IV, § 13. Our Speech and Debate Clause is directly analogous to the federal and other state constitutions across the country that bestow an absolute privilege on legislators, their staff, and advisors for matters within the legislature’s jurisdiction. Plaintiffs indisputably are demanding discovery protected by that constitutional privilege.

Second, Plaintiffs’ subpoenas and discovery requests ignore the standards and deadlines the New Mexico Supreme Court has imposed. Recognizing that they cannot prove that SB1 results in the type of entrenched political power that could qualify as an egregious partisan gerrymander, Plaintiffs are trying to turn this into a case about the personal motivations for every Democratic legislator’s vote. That is not how redistricting litigation is handled—for obvious constitutional, evidentiary, and practical realities. Nor is it material to the test for egregious partisan gerrymandering that the New Mexico Supreme Court has now adopted.

Finally, even if Plaintiffs’ subpoenas were not constitutionally barred, they are so wildly overbroad and unduly burdensome that they cannot survive any application of the limits on

discovery under Rules 1-026 and 1-045 NMRA. Each subpoena demands that within 14 days, each legislator perform hundreds of searches on no fewer than four email accounts (and their cellular phone text messages) using detailed search terms, sophisticated Boolean operators (*e.g.*, “&”, “^”, or “and”) and wildcard operators (*e.g.*, “*”). As set forth in the attached Declarations from the Legislative Council Service and Legislative Information Systems (Exhibits B1 and B2, attached), the searches demanded are so extensive, labor-intensive and technically sophisticated that legislators would almost certainly require substantial IT assistance and dedication of unreasonable resources—estimated to require approximately 560 days of technical assistance just to search legislative email accounts—to respond even if they had more time. *See* Exhibit B2, ¶ 6.

I. PLAINTIFFS’ SUBPOENAS ARE A DIRECT ASSAULT ON LEGISLATIVE PRIVILEGE UNDER THE NEW MEXICO CONSTITUTION AND FUNDAMENTAL SEPARATION OF POWERS PRINCIPLES.

A. The Speech and Debate Clause Establishes an Absolute Constitutional Privilege.

The New Mexico constitution expressly provides a privilege for one branch of government, and one branch only. The Speech and Debate Clause provides: “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.” N.M. Const. art. IV, § 13.

Courts interpreting analogous provisions from state and the federal constitutions have recognized that the constitutional privilege this creates is absolute and applies equally to testimony and documents.² *See, e.g.* U.S. Const. art. I, § 6 and *Doe v. McMillan*, 412 U.S. 306, 324 (1973)

² Federal court decisions applying legislative privilege to state legislators rely upon federal common law rather than constitutional rights and are inapposite. *See, e.g. Lee v. Va. State Bd. of Elec.*, 2015 WL 9461505, *3-5 (E.D. Va. Dec. 23, 2015). Likewise, decisions discussing Florida’s treatment of legislative privilege are inapposite because Florida does not have a constitutional speech and debate clause. *See Rucho v. Common Cause*, 139 S.Ct. 2484, 2507 (2019) (explaining Florida’s Fair Districts Amendment).

(“The business of Congress is to legislate; Congressmen and aides are absolutely immune when they are legislating.”); Az. Const. art. IV, pt. 2, § 7 and *Fann v. Kemp in and for City of Maricopa*, 515 P.3d 1275, 1281 (Ariz. 2022) (legislative privilege extends beyond pure speech or debate where the communication concerns matters placed within the jurisdiction of the legislature); Md. Const. Decl. of Rts. art. 10, Md. Const. art. III, § 18, and *Matter of 2022 Legislative Districting of State*, 282 A.3d 147, 198 (Md. 2022) (“The drafting of [redistricting] legislation fell within the legislative conduct protected by the Speech and Debate Clause.”); Pa. Const. art. 2, § 15 and *League of Women Voters of Pa. v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017) (legislators enjoy absolute legislative immunity in redistricting litigation); Ohio Const. art. II, § 12 and *Kniskern v. Amstutz*, 760 N.E.2d 876, 877 (Ohio Ct. App. 2001) (absolute immunity for legislative functions); R.I. Const. art. VI, § 5 and *Holmes v. Farmer*, 475 A.2d 976, 984 (R.I. 1984); see also Restatement (Second) of Torts § 590 (1977). Put plainly, the New Mexico Constitution’s Speech and Debate Clause bars legislators from being forced to testify or produce documents regarding any matter within the jurisdiction of the legislature, including redistricting.³

The legislative privilege protects evidence of “legislative acts”—a broad term which encompasses not only legislative actions but also the motivation for those acts, such as how a legislator voted or decided on matters. *Gravel v. U.S.*, 408 U.S. 606, 615-616 (1972); see also

³ Our courts have recognized privileges for the judiciary even where the privilege is not expressly guaranteed by the state constitution. Most recently, that includes the New Mexico Supreme Court recognizing a judicial deliberative privilege to “shield from public disclosure a judge’s notes, research, mental impression, analysis, and drafts of orders and decisions.” *Pacheco v. Hudson*, 2018-NMSC-022, ¶¶ 44-45, 47, 49. Here, Plaintiffs are asking the Court to override a specific constitutional privilege because they insist it will lead to discovery of relevant information. That is not how privilege works. Rather, privileges routinely protect otherwise relevant information—a fact our appellate courts have recognized is not a justification for undermining the protection they afford. See, e.g., *Pub. Serv. Co. of New Mexico v. Lyons*, 2000-NMCA-077, ¶ 21 (refusing to find waiver of attorney-client privilege even though the party asserting privilege put their state of mind at issue and asserted privilege over communications directly relevant to that state of mind).

McSurely v. McClellan, 753 F.2d 88, 106 (D.C. Cir. 1985) (the court may not “inquire into ‘the propriety and the motivation for the action taken’”); *United States v. Helstoski*, 442 U.S. 477, 487-490 (1979) (privilege bars all references to past legislative acts, direct proof of performance of legislative acts, evidence of correspondence and conversations that mention those acts). Legislative acts include introducing a bill, *Helstoski*, 442 U.S. at 489, drafting, debating and voting on a bill, *Lattaker v Rendell*, 269 F. App'x 230, 232 (3d Cir. 2008), participation in committee hearings, and preparation for committee hearings or floor debates, *U.S. v. Swindall*, 971 F.2d 1531, 1544-46 (11th Cir. 1992); *Jewish War Veterans of the U.S. of Am., Inc. v. Gates*, 506 F.Supp.2d 30, 53, 57 (D. D.C. 2007).

The development and consideration of legislative redistricting plans are protected by the privilege. *See Holmes v. Farmer*, 475 A.2d 976. In *Holmes*, plaintiffs sought discovery from legislators and a legislative consultant about directions given to the consultant, legislators’ communications with each other, and their expressed views about proposed redistricting legislation. *Id.* at 983. The Court found all the requested discovery absolutely privileged, stating that inquiry into “the actions or motivations of the legislators in proposing, passing, or voting upon a particular piece of legislation (as plaintiffs attempted to require) falls clearly within the most basic elements of legislative privilege.” *Id.* at 984.

Moreover, state courts interpreting and applying the privilege under their state constitutions have held that it is absolute—including in the context of challenges to redistricting plans. *See, e.g., League of Women Voters of Pa.*, 177 A.3d at 1003-06 (quashing eleven (11) subpoenas on Speech and Debate grounds directed at legislative aides, employees, consultants, and experts assisting in redistricting); *In the Matter of 2022 Legislative Districting*, 282 A.3d 197-8 (process of drafting map was within legislative conduct and therefore protected by Speech and Debate

Clause); *Holmes*, 475 A.2d 976, 983-84 (R.I. 1984) (deposition testimony of legislators and their aides regarding alleged political or partisan motivations in redistricting legislation is protected under Speech and Debate Clause).

Unlike many other privileges, legislative privilege also may extend to communications with third parties who are neither state legislators nor work for state legislators. In the Fifth Circuit’s recent *Abbott* opinion, the Court considered communications with parties outside the legislature, party leaders, and lobbyists to be part and parcel of legitimate legislative activity: the proposal, formulation, and passage of legislation and the information-gathering necessary to accomplish the same. *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 236 (5th Cir. 2023). Rather than going “outside” the legislative sphere, the legislators in question in *Abbott* “brought third parties into the process.” *Id.* at 237. The Fifth Circuit adopted the view that to find waiver as easily as those challenging the legislative action demanded would unduly interfere with lawmakers’ ability to focus on their jobs, sacrificing one public good (policymaking) for another (transparency). *Id.*

Finally, the Speech and Debate Clause implicates important separation of powers principles. It exists to “prevent intimidation of legislators by the Executive and accountability before a hostile judiciary.” *Gravel*, 408 U.S. at 617; *see also Pirtle v. Legislative Council Comm. of N.M. Legislature*, 2021-NMSC-026, ¶ 29 (emphasizing legislative independence from the executive and judiciary as a “careful balance separation of powers between coordinate branches of government”). The privilege applies to legislators regardless of whether they are parties to a lawsuit or will face any direct consequences from it. *In the Matter of 2022 Legislative Districting*, 282 A.3d at 195 (citing *Montgomery County v. Schooly*, 627 A.2d 69, 75 (Md. Ct. Spec. App.

1993) (*adopting Gravel*, 408 U.S. 606). Legislators may not be compelled to explain or produce documents related to legislative conduct unless before the legislative body. *Id.*⁴

B. Plaintiffs’ 74 Subpoenas Would Pervasively Invade Legislative Privilege.

On Saturday, July 29, 2023, beginning at 10:36 PM, Plaintiffs emailed copies to undersigned counsel consisting of identical subpoena packets directed to an expansive list⁵ of current and former members of the New Mexico Legislature. *See* Exhibit A. The subpoenas would demand that each legislator search for and produce documents that go to the heart of the legislative privilege. The time periods covered by the subpoenas begins with the 2020 Congressional election, extends through the 2021 regular legislative session (when SB 304 was passed, creating the advisory Citizens Redistricting Committee), and continues through the 2021 special session on redistricting in December, 2021. *See* Exh. A.10-12. Legislators are asked to produce their communications with other legislators, legislative staff, consultants, or anyone else about proposed legislation related to redistricting, including but not limited to the legislation that led to the creation of the Citizens Redistricting Committee, the proposed redistricting plans submitted to the Legislature by that Committee, the congressional plan known as SB-1 that was ultimately passed and enacted into law, and any other redistricting proposals or ideas that were considered, conceptualized or discussed by legislators. *See* Exh. A.10-12, ¶¶ 1-3.⁶

⁴ The legislative privilege is individually held by each legislator (and by others working with them). *Marylanders for Fair Representation v. Schaefer*, 144 F.R.D. 292, 299 (D. Md. 1992). None of the legislators subpoenaed by Plaintiffs have chosen to waive the privilege.

⁵ A list of all 74 current and former legislators to whom Plaintiffs have issued subpoenas is attached hereto at Exhibit G.

⁶ In addition to the constitutional legislative privilege enshrined in the Speech and Debate Clause, Plaintiffs’ subpoenas also seek communications protected under NMSA 1978 § 2-3-13, which provides that legislators’ communications with and requests for service from the Legislative Council Service are to remain confidential “except with the consent of the person making such request or statement.”

The subpoenas then go even farther by specifically seeking evidence of each legislator’s own thought processes, motivations, feelings and personal views on issues before the Legislature, including by demanding the production of emails in which any legislator is “expressing opposition to or misgivings about the creation of an independent redistricting committee;” their “justifications for” changes made to proposed redistricting legislation; “any complaints, protests or misgivings expressed by any legislator” regarding certain redistricting proposals; and “any views or opinions expressed on, or the results of any analysis conducted by” consultants or organizations consulted by legislators in connection with redistricting. Ex. A.12 at ¶ 4.

The subpoenas were accompanied by a four-page letter dated July 28, 2023 from Plaintiffs’ attorney Carter B. Harrison IV. Exh. A.1-4. In that letter, Plaintiffs’ counsel represents to the subpoena targets that “the relief [Plaintiffs] are seeking is an order that the Legislature pass a new congressional map in time for the 2024 election cycle.” Exh. A.1. But that is *not* the relief Plaintiffs request: their Complaint asks the Court to “[adopt] a partisan-neutral congressional map consistent with Congressional Concept E (Justice Chavez’s map)” and to award “attorneys’ fees and costs” Complaint at p. 27. In his letter to legislators, Plaintiffs’ counsel also advised⁷ the subpoena targets that “there is a widely recognized exception⁸ to the legislative privilege in criminal cases and

⁷ The Rules of Professional Conduct prohibit “giv[ing] legal advice to an unrepresented person, other than advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client,” Rule 16-403 NMRA, or “us[ing] methods of obtaining evidence that violate the legal rights of such a person.” Rule 16-404(A) NMRA; *see also* N.M. Const. art. IV, § 13 (establishing legislative immunity).

⁸ Remarkably, none of the cases cited in Plaintiff’s counsel’s letter advise the subpoena targets regarding constitutional Speech and Debate privileges. Instead, Plaintiffs cite to federal common law legislative privilege cases and Florida case law where that state does not have a constitutional Speech and Debate clause and limits legislative privilege by statute.

redistricting cases” and that they “can waive the privilege at [their] sole discretion, even if [they] believe it does apply.” Exh. A.2.

Plaintiffs subsequently served similar but not identical subpoenas directed to former Speaker of the House and Representative Egolf, and Senators Cervantes, Ivey-Soto, and Wirth. *See* Exhibits C, D, E, and F hereto. Beyond the subpoenas to other legislators, Plaintiffs’ subpoenas to Senators Cervantes and Wirth also demand that they “contact the carrier(s) for all cell phones that [they] use regularly (whether for personal, work, or legislative purposes) and produce logs of [their] phone calls and text messages over the period of November 1, 2021 to December 17, 2021.” Exh. D.9; Exh. F.11.

Enforcing Plaintiffs’ subpoenas would be unprecedented in New Mexico’s redistricting jurisprudence. Redistricting cases have been litigated for decades—including in New Mexico—and that litigation has not involved mass discovery from legislators, legislative staff, and others who participate in the legislative process. This case does not justify reinventing how parties proceed with challenges like Plaintiffs’. Legislative privilege is enshrined in the state constitution, and courts evaluate the constitutionality of legislation all the time while honoring the privilege. Even when redistricting maps are litigated under the Voting Rights Act’s prohibition on racial discrimination, courts have not allowed the litigation to turn into a referendum on every legislator’s vote, reasoning, communications regarding the vote, or other matters protected by legislative privilege. And Plaintiffs could engage in all of this discovery without advancing their claims—they are still going to have to prove that SB1 is an egregious entrenchment of Democratic power that subverts the democratic process, and that proof is going to have to come from the impact of the map itself, not the opinions or feelings behind any particular legislator’s thought process or vote.

II. PLAINTIFFS' SUBPOENAS IGNORE THE ANALYSIS AND DEADLINES THE NEW MEXICO SUPREME COURT IMPOSED.

On July 5, 2023, the New Mexico Supreme Court first recognized that claims of partisan gerrymandering are justiciable under the New Mexico constitution. In its order of that date, the Court specified that such claims are subject to the three-part test Justice Elena Kagan set out in her dissent in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2516, 204 L.Ed.2d 931 (2019) (Kagan, J., dissenting). To prevail under that test, Plaintiffs must:

1. Prove that state officials' "'predominant purpose' in drawing a district's lines was to 'entrench [their party] in power' by diluting the votes of citizens favoring its rival." *Rucho*, 139 S. Ct. 2484, 2516. As Justice Kagan explained, "when political actors have a specific and predominant intent to entrench themselves in power by manipulating district lines, that goes too far." *Id.* at 2517.
2. Prove that the effect of the map at issue is substantial vote dilution—a matter *Rucho* underscores also is addressed by analysis of data to identify whether a challenged map is an "extreme outlier" (or an "out-out-outlier" as Justice Kagan put it); not depositions or document production from every individual legislator who voted in support of the map Plaintiffs oppose. *Id.* at 2518.
3. If Plaintiffs satisfy the first two prongs of the test, they must also overcome evidence the State presents regarding "a legitimate, non-partisan justification" for its map. *Id.* at 2516.

Consistent with this test, the New Mexico Supreme Court specified in its July 5 order that "a reasonable degree of partisan gerrymandering—taking into account the inherently political nature of redistricting"—is constitutionally permissible. The Court explained that it would not determine the "precise degree" of partisanship "that is permissible so long as the degree is not

egregious in intent and effect.” Regarding the evidence the New Mexico Supreme Court contemplated, it said nothing to suggest it was opening the door to eviscerating the Speech and Debate Clause. Rather, the Court provided in paragraph 7 of its order that:

In evaluating the degree of partisan gerrymandering in this case, if any, the district court shall consider and address evidence comparing the relevant congressional district’s voter registration percentage/data, regarding the individual plaintiffs’ party affiliation under the challenged congressional maps, as well as the same source of data under the prior maps. The district court shall also consider any other evidence relevant to the district court’s application of the test referenced in paragraph 2 of this order.

Order at ¶ 7. This approach is consistent with the scope of what Justice Kagan considered in her dissent: where legislative purpose or intent is concerned, Justice Kagan looked at the “overwhelming direct evidence” of purpose in the form of the extreme nature of the challenged maps themselves and lawmakers’ open and public statements of express intent to maximize political power for their own party. Nothing about the Kagan test indicates that individual legislators’ constitutionally protected communications, deliberations, motivations or viewpoints about proposed litigation ought to become part of the analysis where discoverable, let alone that it should eviscerate express protection state constitutions provide for legislative acts.

III. THE SUBPOENAS ARE GROSSLY OVERBROAD AND BURDENSOME TO THE POINT OF CONSTITUTING HARASSMENT.

Even if Plaintiffs’ subpoenas did not run afoul of the Constitution, they must be quashed as overly broad, unduly burdensome and wholly unreasonable in terms of the time allowed for compliance. Rule 1-045(C)(1) NMRA (“[o]n timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow a reasonable time for compliance; ... (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv) subjects a person to undue burden.”); *see also* Rule 1-026(C) NMRA (“[u]pon motion by any party or interested person for good cause, the court may make any order which

justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense....”)

The subpoenas command each of the 74 non-party citizen legislators to produce “emails...and text messages, letters, and other written communications” based upon Plaintiffs’ command that the legislators perform computer searches using sophisticated Boolean operators (*e.g.*, “&”, “^”, or “and”) and wildcard operators (*e.g.*, “*”). Ex. A.10. They seek production from at least four types of email accounts: “all emails, including attachments thereto—including emails on which you were carbon copied or blind carbon-copied, and including emails sent/received through your *legislative email account, work email account(s), campaign account(s), and/or any personal accounts(s).*” Ex. A.10 (emphasis added). From each of those email accounts Plaintiffs demand the following:

(1) more than 80 individual searches upon each of the four types of email accounts for a total of more than 320 computerized searches for emails between July 1, 2021, and December 18, 2021. Ex. A.10-A.11, ¶¶ 1(a)-1(f).

(2) Plaintiffs require seven (7) email searches per account, or twenty-eight (28) total, for emails between November 2, 2020, and January 21, 2021. Ex. A.12, ¶ 2.

(3) Plaintiffs command Respondents to perform nineteen (19) individual searches—76 total for the four email accounts—for emails between January 22, 2021, and April 6, 2021. Exh. A.12, ¶ 3]; and finally,

(4) Plaintiffs demand that legislators complete the following searches: “extending back as far as you have been a Member of the Legislature and forward to the present day, and that are not captured by the searches outlined above, but

which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters,” including legislators’ thoughts, views, “misgivings,” and analysis regarding various topics related to redistricting and beyond. Ex. A.12-A.14, ¶¶ 4(a)-4(g) (footnote omitted). These requests require each non-party citizen legislator to engage in detailed reviews of their emails to evaluate whether they possess potentially responsive documents.

Plaintiffs demand similar searches of legislators’ text messages and other written communications to “produce copies of all text messages, letters, memoranda, and/or other written communications — including messages sent through Facebook, Microsoft Teams, WhatsApp, Kik Messenger, etc. — that relate to one or more of the subject matters described in ¶¶ (4)(a)-(g) above. Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible.” Exh. A.14.

The Legislative Council Service (“LCS”) provides email IT support to New Mexico legislators and legislative staff, including document production. Ex. B1, Declaration of Amy Chavez-Romero, at ¶¶ 3, 8. Legislators and their staffers often require assistance from LCS and IT services through Legislative Information Systems (LIS) for both their government email, government equipment, and personal equipment involved in legislative functions. *Id.* ¶ 4; *see also* Ex. B2, Declaration of Mark Guillen, ¶¶ 3, 5. It is very likely that most or all legislators would require extensive technical assistance to perform the searches identified in Exhibit A of the 70 identical subpoenas issued by Plaintiffs. Ex. B1, ¶ 6; Ex. B2, ¶ 5.

The LIS Manager for the Legislature estimates that conducting a search of legislative emails for the search terms contained in the seventy (70) identical subpoenas would consume

approximately eight (8) days of devoted staff time *per legislator*, amounting to approximately five hundred sixty days (560) for all the legislators subpoenaed. Ex. B2, ¶ 6. The LIS office currently employs six (6) staff members—thus, splitting the searches amongst those staff members would result in **each LIS staff member having to devote approximately ninety-three (93) days of uninterrupted time to conduct identified searches.** *Id.*

LCS also estimates that the searches required by the Subpoenas issued to former Speaker Egolf and Senators Cervantes, Wirth and Ivey-Soto are even more burdensome and will take longer than the other subpoena responses. Ex. B.1, ¶¶ 11, 12. And, after the searches are complete, reviewing the resulting materials for responsiveness, privilege, and confidentiality would likely take weeks and multiple staff; the work cannot be completed within ten (10) days with existing resources.⁹ *Id.* ¶¶ 8-10. In sum, the time and expense to the Legislature, its staff and the legislators is breathtaking and cannot be condoned.

At bottom, it appears that Plaintiffs' strategy is to force a waiver of the absolute privilege attendant to the Speech and Debate Clause by overwhelming the subpoena targets. Because of this sort of abuse, a legislator is generally not required to produce a detailed privilege log in invoking the privilege because a description of documents or communications irreversibly reveals protected information. *See Edwards v. Vesilind*, 790 S.E.2d 469, 478-79 (Va. 2016). This concern is heightened here, where the subpoenas demand such extensive and detailed searches of multiple accounts over an extended period of time that even assembling a log (which itself would likely reveal privileged information) is untenable.

⁹ Based upon experience with the legislators and their staff, the burden would likely be similar for campaign, work, or personal emails, text messages, and social media. Ex. B1 at ¶ 8.

IV. THE COURT SHOULD QUASH THE SUBPOENAS AND DIRECT PLAINTIFFS TO PROPOUND DISCOVERY THAT GOES TO THE ISSUES AT HAND AND IS REALISTIC IN THE TIMEFRAME SET BY THE SUPREME COURT.

The Plaintiffs' approach to discovery through these subpoenas is incompatible with both the timeline and the framework for this case imposed by the New Mexico Supreme Court. With so many subpoenas directly implicating a constitutionally-enshrined privilege and imposing extensive search and review obligations on so many legislators, there is no practical path forward except an order quashing the subpoenas and directing Plaintiffs to propose a discovery plan that comports with the Supreme Court's Order and the very compressed timeframe the parties face. There simply is not time for extensive electronic discovery, dozens of depositions, and litigation of a constitutional privilege as it applies to dozens of legislators, staffers, consultants or others. Nor is it necessary, given the scope and import of the Justice Kagan test that the Supreme Court has adopted for New Mexico.

V. CONCLUSION

WHEREFORE the Non-Party Citizen Legislators respectfully request that the Court (1) quash Plaintiffs' subpoenas and enter a protective order; (2) order Plaintiffs to submit a discovery plan for approval so the Court can determine whether the discovery is limited to that which the constitution permits, is probative of the disputed issues in the litigation, and can be completed in the time available; and (3) award the costs and fees the Defendants and non-party witnesses incur to secure this relief, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Pursuant to Limited Entry of Appearance*

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2023, I caused the foregoing Motion, along with this Certificate of Service, to be served and filed electronically through the Tyler Technologies Odyssey File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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July 28, 2023

The Honorable Katy M. Duhigg
New Mexico Senate



Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Sen. Duhigg:

Enclosed with this letter is a subpoena *duces tecum* requesting certain documents relevant to the ongoing litigation over the most-recent congressional redistricting bill, numbered Senate Bill 1 in the 2021 Second Special Session; I represent the Plaintiffs in that matter. Earlier this month, the New Mexico Supreme Court issued an order recognizing a claim for partisan gerrymandering and outlining a test and a standard of review therefor; the Court then remanded the case to the District Court (Judge Fred T. Van Soelen of Clovis, whom the Supreme Court personally appointed) with instructions to resolve the matter on an ultra-expedited timeline. I have enclosed a copy of the Supreme Court's order for your review.

I do not represent you, and I want to make you aware that there are lawyers who have been retained to represent what we call the 'Legislative Defendants' in the lawsuit, namely Sen. Mimi Stewart and Rep. Javier Martínez, who have been named in their respective official capacities as President Pro Tempore and Speaker of the House — meaning that we have in effect named the Legislature as a body. To that end, we are not seeking damages (or any relief) from any Member distinct from the body as a whole; the relief we are seeking is an order that the Legislature pass a new congressional map in time for the 2024 election cycle. The lawyers for the Legislative Defendants are mostly from the Roswell office of Hinkle Shanor LLP and the Albuquerque firm of Peifer, Hanson, Mullins, and Baker, P.A., two excellent firms whose contact information is available online. These firms have not stated to us that they currently represent you (or any rank-and-file Member), but I strongly suspect that they would be willing to assist you in procuring representation if you were to ask; you are also, of course, free to retain your own counsel.

I also want to make you aware that you may have — *i.e.*, the aforementioned lawyers have asserted, at least in concept — a colorable claim of what is known as 'legislative privilege' under the state constitution's Speech or Debate Clause, N.M. Const. art. IV, § 13, as to some of the documents being requested. This provision of the state constitution has not been meaningfully

Exhibit A

judicially interpreted,¹ and I believe that its application to this case is very limited, as there is a widely recognized “exception to the legislative privilege [in] criminal cases and redistricting cases.”² However, that is just my position (I am not a court), and I do not want to deprive you of a full and fair opportunity to independently consider and assert this privilege. Likewise, my understanding (which you should also feel free to verify) is that you can waive the privilege at your sole discretion, even if you believe it does apply. I want to point out to you, though, that under the scheduling order in this case (which I have enclosed), you will have **ten (10) days to assert this privilege** — which you should do by collecting all of the requested documents as if you were going to produce them, and then preparing a list/log of those documents that describes them in sufficient detail to allow me to vet your claim of privilege.³ More detailed instructions are printed on the back of the subpoena packet (as required by law), but I wanted to flag those issues for you.

The three time periods in which we are asking you to search your email account(s) correspond to, first, ‘redistricting season’ — the period during which the Citizen Redistricting Committee (“CRC”) conducted its hearings and the subsequent special redistricting session of the Legislature; second, the period immediately after the 2020 election; and, third, the legislative session at which the CRC was created. I believe that the relevance of the specified searches and topics is for the most part self-evident, but if your attorney (or you, if you wish to proceed *pro se*) contacts me, I am happy to discuss the matter.

¹ Analogous provisions exist in the federal Constitution, *see* U.S. Const. art. I, § 6, cl. 1 (applying to Members of Congress), and most other state constitutions, *see infra* note 2. These provisions typically impart a (broader) immunity from being named as a defendant in a civil suit and a (narrower) testimonial privilege.

² *Thompson v. Merrill*, 2020 WL 2545317, at *4 (M.D. Ala. May 19, 2020); *see also Lee v. Virginia State Bd. of Elec.*, 2015 WL 9461505, at *5 (E.D. Va. Dec. 23, 2015) (justifying the “limited exception to legislative privilege in cases involving legislative redistricting” by pointing out “the unique nature of redistricting cases [and] noting that they are ‘extraordinary’ and that ‘the natural corrective mechanisms built into our republican system of government offer little check upon the very real threat of legislative self-entrenchment’” (citation omitted)); *League of Women Voters of Fla. v. Fla. House of Reps.*, 132 So.3d 135, 154 (Fla. 2013) (“[W]e conclude that Florida law should recognize a legislative privilege, but that this privilege is not absolute in this case, where the violations alleged are of an explicit state constitutional provision prohibiting partisan political gerrymandering and improper discriminatory intent in redistricting.”).

³ *See* Rule 1-045(D)(2)(a) NMRA (“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.”). For an email or text message, I would ask that you please include the ‘header information’ — the date and time of the email, the author/sender, all recipients (including those designated as “TO”, “CC”, and, if you were the sender, “BCC”), and the subject — as well as any additional information necessary to lay the foundation for the privilege (which may be necessary if, *e.g.*, the subject line itself is uninformative as to the nature of the communication).

I will be candid that my hope is that at least some legislators elect to produce documents without requiring us to litigate over privilege. I say that not to discount the policy values underlying the legislative privilege as it has been recognized elsewhere,⁴ but in the belief that our state’s legislators are independent-minded decisionmakers, and that some lawmakers will weigh the countervailing values of government transparency and equality under the law (which is implicated because the legislative privilege is certainly not an evidentiary privilege available to everyone) in such a way as to counsel in favor of uncontested disclosure.

I also ask that, **within 10 days of the date of this letter, you please contact my office with dates of availability for a deposition** — which should only take a few hours and which we are willing to conduct via Zoom — or potentially an informal discussion if that is your preference. We may or may not be able to actually schedule a deposition or interview with you, but we require **at least three pre-September-8th** dates of availability (weekends are acceptable), and we would prefer if you simply gave us a limited number of dates of *unavailability*. We are required to conclude discovery by early/mid-September, so our presumption unfortunately has to be that you are available on all dates that you do not expressly disclaim.

I regret the imposition I know this creates, but it is a necessary part of evidence-gathering in the justice system. Thank you for your time and attention to this matter, and more generally for your service to our state.

Very truly yours,

HARRISON & HART, LLC



Carter B. Harrison IV

CBH

⁴ “The Speech or Debate Clause [is primarily a separation-of-powers provision] designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats *from the Executive Branch*.” *Gravel v. United States*, 408 U.S. 606, 616 (1972) (emphasis added). “[T]he privilege was *not* born primarily of a desire to avoid private suits . . . , but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary.” *United States v. Johnson*, 383 U.S. 169, 181 (1966) (emphasis added). To the extent that the legislative privilege applies in private civil cases like this one, in which the legislator in question is merely a witness and not a defendant, its policy rationale is to ensure “that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions” — a rationale that I would respectfully submit is somewhat lessened by the part-time nature of our Legislature. *Powell v. McCormack*, 395 U.S. 486, 505 (1969).

Sen. Katy M. Duhigg
July 28, 2023
Page 4 of 4

Subpoena Cover Letter

Enclosures (3):
Subpoena *Duces Tecum* with Exhibit A (10 pages)
Scheduling Order (4 pages)
N.M. Supreme Court's Order Remanding Case (5 pages)

cc: Richard E. Olson
Lucas M. Williams
Ann C. Tripp
Sara N. Sanchez
Mark T. Baker
Luis G. Stelzner
Michael B. Browde

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 DOCUMENTS OR OBJECTS INSPECTION OF PREMISES

TO: Hon. Katy M. Duhigg
New Mexico Senate



YOU ARE HEREBY COMMANDED ON:

Date: By August 14, 2023
*(Or 14 days from service,
whichever is later.)*

Time: By 12:00 p.m.

TO:

permit inspection of the following described books, papers, documents or tangible things:
See **Exhibit A** (5 pages) attached to this subpoena for the list of records to be produced.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering them (either hardcopies or electronic copies on a USB storage device) to the following business:

Harrison & Hart, LLC
924 Park Avenue SW, Ste. E
Albuquerque, NM 87102

If and only if the above address is not within 100 miles (as the crow flies) of either your residence or place of employment, you also have the option to hand-deliver, during normal business hours, the records to an agent or employee of whichever one of the following businesses is closest to your residence:

Republican Party of Doña Ana County		Republican Party of San Juan County
Pioneer Building	<i>or</i>	1309 East 20th Street
2111 North Main Street, Ste. A		Farmington, NM 87401
Las Cruces, NM 88005		

permit the inspection of the premises located at:

N/A (address).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the

reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION “DUTIES IN RESPONDING TO SUBPOENA.”

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

July 28, 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 person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, 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.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney 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 and serve on all parties a motion to quash the subpoena. **An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days.** If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) 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,
- (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.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

EXHIBIT A

This subpoena requests both emails — defined mostly by reference to email-account searches to which the emails are responsive, but also by subject matter in ¶ 4, below — and text messages, letters, and other written communications — which are defined exclusively by reference to the subject matter to which the communication relates. The searches requested below can be conducted using the search function of most common email clients and websites; if an email account does not support the ‘asterisk’ Boolean operator (used three times in this exhibit), you may simply search for each of the examples given parenthetically after each asterisked term. Although this subpoena requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know for a certainty there will be no relevant and responsive emails in a given account.

Once a search is conducted, the easiest way to separate the responsive emails for production is typically to ‘select all’ emails shown as responsive to the search (using Control + A in an application like Outlook, or clicking the select-all checkbox at the top-left of the results in an online interface like Gmail) and then save the selected emails in a folder in their native format (usually .pst, .ost, or .eml). Printing the emails to .pdf files is also acceptable, but please ensure that attachments are also opened, printed to .pdf, and produced along with the email itself.

Emails

Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period:

- (1) beginning July 1, 2021 and ending December 18, 2021, and that are captured by one or more of the following non-case-sensitive searches conducted on all emails (including the attachments thereto):
 - (a) searches for any one or more of the following: “S.B.1”, “SB1”, “S.B. 1”, “SB 1”, “Senate Bill 1”, “Concept H”, “Concept E”, “CCP Map”, “People’s Map”, “Center for Civic”, “Chavez’ Map”, “Chavez’s Map”, “CD”, “C.D.”, “CD2”, “SJC Sub”, “Southern Congressional”, “Second Congressional”, “Gerrymander”, “Gerrymandering”, “Yvette”, and/or “Herrell”;

- (b) searches for emails that contain *both* the Boolean search term congress* (which covers the words “Congress” and “Congressional”) *and* one or more of the following: “Concept”, “Performance”, “Partisan”, “Registration”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Competitive”, “Substitute”, “Amendment”, “Hispanic”, “Majority-Minority”, “Map”, “Maps”, “District”, “Districts”, and/or “Redistricting”;
- (c) searches for emails that contain *both* the Boolean search term map* (which covers the words “Map”, “Maps”, etc.) *and* one or more of the following: “Concept”, “Performance”, “Partisan”, “Party”, “Registration”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Competitive”, and/or “Substitute”;
- (d) searches for emails that contain *both* the Boolean search term district* (which covers the words “District”, “Districts”, “Districting”, etc.) *and* one or more of the following: “Concept”, “Performance”, “Partisan”, “Registration”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Competitive”, and/or “Substitute”;
- (e) searches for emails that contain *all three* of the following: (i) rural; (ii) urban; *and* (iii) one or more of the following: “Districts”, “Divide”, “Split”, “Congress”, “Majority-Minority”, “Hispanic”, “All 3”, and/or “All Three”; and
- (f) searches for emails where one or more of the following individuals is either the sender or a recipient: Michael Sanchez and/or Lisa Curtis (former state senators); Oriana Sandoval and/or Melanie Aranda (executives of the Center for Civic Policy); or any person you know to have been retained or employed by any Democratic party, caucus, or campaign committee (at any level of government) to serve as a consultant, demographer, or expert on the 2021 redistricting bill(s);

- (2) beginning November 2, 2020 and ending January 21, 2021, and that are captured by one or more of the following non-case-sensitive searches conducted on all emails (including the attachments thereto):
- (a) searches for any one or more of the following: “Redistrict”, “Redistricting,” “Districting”, “CD2”, “CD 2”, “Yvette”, and/or “Herrell”;
- (3) beginning January 22, 2021 and ending April 6, 2021, and that are captured by one or more of the following non-case-sensitive searches conducted on all emails (including the attachments thereto):
- (a) searches for any one or more of the following: “Citizen Redistricting Committee”, “S.B.304”, “SB304”, “S.B. 304”, “SB 304”, “Senate Bill 304”, “CD2”, “CD 2”, “Yvette”, and/or “Herrell”; and
 - (b) searches for emails that contain *both* “Redistricting” *and* one or more of the following: “Congress”, “Congressional”, “Dem”, “Democrat”, “Democratic”, “Republican”, “GOP”, “Party”, and/or “Competitive”;
- (4) extending back as far as you have been a Member of the Legislature and forward to the present day,¹ and that are not captured by the searches outlined above, but which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters:
- (a) any legislator (including yourself) expressing opposition to or misgivings about the creation of an independent redistricting committee based on its depriving the Legislature of its ability either to maximize partisan gains or to draw districts likely to result in certain electoral outcomes;
 - (b) any justification given by you, or to you by another legislator or legislative staffer, for the deviations between the Citizen Redistricting Committee’s Concept H (sometimes called the “People’s Map”) and either (i) the bill introduced as S.B. 1

¹ In actuality the date ranges implicated are much narrower, given the topics described in ¶¶ (4)(a)-(g).

(2021 Spec. Sess.), or **(ii)** its substitute in the Senate Judiciary Committee (which was the final congressional map passed);

- (c)** any communications specifically explaining or justifying the Senate Judiciary Committee Substitute for S.B. 1, particularly those made on or around December 9 or 10, 2021;
- (d)** any complaints, protests, or misgivings expressed by any legislator, or any response thereto, regarding proposals to adopt maps other than those proposed by the Citizen Redistricting Committee (including maps that could be characterized as ‘modifications of’ or ‘based on’ a CRC-approved concept); you may limit your response to emails that either pre-date S.B. 1 being signed into law (December 17, 2021) or post-date passage but refer to complaints/protests/misgivings that were lodged/vocalized before passage (in other words, you may exclude from your production post-bill-passage emails relating to complaints, etc. made for the first time post-bill-passage);
- (e)** any discussion or mention of how the redistricting process would affect the partisan composition of New Mexico’s *congressional* delegation, including any supposition about the then-Congresswoman Herrell’s electoral prospects, that pre-dates S.B. 1 being signed into law;
- (f)** any views or opinions expressed on, or the results of any analysis conducted by, any non-New Mexico-based consultant, political operative, or political organization regarding any of the concept-maps adopted by the Citizen Redistricting Committee or proposed by any legislator, regardless of whether you were the direct recipient of these communications or were forwarded them or had them described to you second-or-more-hand (you may limit your response to views/opinions that were originally expressed, and analyses that were originally conducted, before December 17, 2021); and/or

- (g) any instructions or suggestions given by party leadership about how to talk publicly about the redistricted map(s) in such a way as to avoid allegations or the appearance of gerrymandering or partisanship (whether you regard said allegations/appearance as correct or not).

Text Messages & Other Written Communications

In addition to the emails described in the categories above, please produce copies of all text messages, letters, memoranda, and/or other written communications — including messages sent through Facebook, Microsoft Teams, WhatsApp, Kik Messenger, etc. — that relate to one or more of the subject matters described in ¶¶ (4)(a)-(g) above. Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible.

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

REPUBLICAN PARTY OF NEW MEXICO, *et al.*,

Plaintiffs,

vs.

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

MAGGIE TOULOUSE OLIVER, *et al.*,

Defendants.

DECLARATION OF AMY CHAVEZ-ROMERO

1. My name is Amy Chavez-Romero. I am over the age of eighteen years old, am otherwise competent to testify to the matters contained in this Declaration, and have personal knowledge of the same.
2. I am the Assistant Director for Legislative Affairs for the Legislative Council Service for the New Mexico Legislature.
3. The Legislative Council Service (LCS) is the custodian of legislative records for the New Mexico Legislature and is responsible for the email accounts of legislators and legislative staff.
4. Legislators often require technical assistance from LCS's Legislative Information Systems (LIS-IT) for their legislative and personal devices, laptops, tablets, cell phones, and legislative email.

Plaintiffs' Subpoenas to Past and Present Legislators

5. I have reviewed the subpoenas and the request for documents set forth in "Exhibit A" to those subpoenas that Plaintiffs' counsel issued to seventy (70) members of the New Mexico Legislature beginning on July 29, 2023, and as reflected in the "Limited Entry of Appearance on Behalf of the Non-Party Citizen Legislators" and that portion of its Exhibit A titled "Identically-Subpoenaed Non-Party Citizen Legislators."
6. Based on my experience working with legislators to respond to requests involving searches of their emails, it is very likely that most or all legislators would require extensive technical assistance to perform the searches identified in "Exhibit A."
7. I have reviewed and agree with the time estimates provided by Mark Guillen, LIS manager, for conducting the searches identified in Exhibit A of the subpoenas.
8. These estimates are based on previous email searches where we assisted legislators to respond to Inspection of Public Records Act ("IPRA") requests, usually involving a single search term or simple search criteria. The search criteria

set forth in Exhibit A are much more complex and extensive by comparison. Additionally, most of those previous searches were conducted on network servers that were in-house at the Legislature. Because our email is now cloud-based, conducting searches of each legislator's email account would be more difficult because the data files no longer reside on our premises. The searches required by Exhibit A are not limited to legislators' official nmlegis.gov email accounts; they also ask legislators to search their campaign, personal, and work emails, to search their cell phone text messages, and to search other computer-based communication systems. However, the LCS/LIS-IT does not have access to legislators' outside email accounts and, as stated earlier, legislators would need IT support to run the search logic requested in Exhibit A on those accounts. Even after running the search criteria, attorneys would have to review the selected documents for purposes of identifying communications protected under the legislative privilege provided by Article IV, Section 13 of the New Mexico Constitution and/or subject to the confidentiality provision of Section 2-3-13 NMSA 1978, which prohibits LCS from disclosing the nature or content of any request for service. Based on the search terms in Exhibit A, we expect that a large number of responsive emails would include those that fall under the confidentiality provisions of Section 2-3-13 because they provided direction to LCS staff for bills, amendments or research related to redistricting of congressional districts, but not necessarily to SB-1 or its development.

9. Under normal circumstances, responding to a relatively simple IPRA request for a legislator's emails takes considerable time and resources, often around fifteen (15) days and more than one staff person, to run a search and then review the emails to determine if the content can be disclosed. After the necessary searches have been conducted by LIS, review of legislative emails retrieved by LIS in response to an IPRA request involving multiple search terms would likely exceed fifteen (15) days *per legislator*. The amount of time in excess of fifteen days (15) per legislator that would be needed to adequately conduct such a review would depend upon the scope of the IPRA request.
10. It would be physically impossible to complete electronic searches and subsequent manual reviews of the email accounts of seventy (70) or more legislators within ten days or with existing resources. With respect to the requests set forth in paragraphs (4)(a) through (4)(g) of Exhibit A, most legislators would need the assistance of IT (whether LCS's LIS-IT or an outside computer technical expert) to produce the entire universe of emails, which each legislator would then have to review to assist in their recollection of the subject matters listed in paragraphs (4)(a) through (4)(g), in order to identify whether any responsive emails exist. The LCS does not have access to legislators' text messages or other social media platforms.

*Plaintiffs' Subpoenas to
Former Speaker of the House Representative Egolf
and Senators Cervantes, Ivey-Soto, and Wirth*

11. I have also reviewed the four (4) subpoenas issued by Plaintiffs to former Speaker of the House and Representative Egolf and Senators Cervantes, Ivey-Soto, and Wirth.
12. Although the document requests are not identical, they are each more burdensome than the document requests for the seventy (70) subpoenas described above and will require more time and resources for response.

I affirm on this 8th day of August, 2023, under penalty of perjury under the laws of the State of New Mexico, that the foregoing is true and correct.

By: Amy Chavez-Romero
Amy Chavez-Romero

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

REPUBLICAN PARTY OF NEW MEXICO, *et al.*,

Plaintiffs,

vs.

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

MAGGIE TOULOUSE OLIVER, *et al.*,

Defendants.

DECLARATION OF MARK GUILLEN

1. My name is Mark Guillen. I am over the age of eighteen years old, am otherwise competent to testify to the matters contained in this Declaration, and have personal knowledge of the same.
2. I am the Legislative Information Systems (LIS) manager for the New Mexico Legislature.
3. LIS provides technical assistance and IT support to members of the New Mexico Legislature, including assistance with conducting searches of electronically-stored information.
4. I have reviewed the subpoenas and the request for documents set forth in "Exhibit A" to those subpoenas that Plaintiffs' counsel issued to seventy (70) members of the New Mexico Legislature beginning on July 29, 2023, and as reflected in the "Limited Entry of Appearance on Behalf of the Non-Party Citizen Legislators" and that portion of its Exhibit A titled "Identically-Subpoenaed Non-Party Citizen Legislators."
5. Based on my experience working with legislators to respond to requests involving searches of their emails, it is very likely that most or all legislators would require extensive technical assistance to perform the searches identified in "Exhibit A."
6. Conducting a search of legislative emails for the search terms contained in the seventy (70) subpoenas would consume an estimated eight (8) days of devoted staff time per legislator, amounting to approximately five hundred sixty days (560) for all of the legislators subpoenaed. The LIS office currently employs six (6) staff members and splitting the searches amongst those staff members would result in each LIS staff member devoting approximately ninety-three (93) days of uninterrupted time to conduct the identified searches. In addition, conducting email searches of the magnitude requested for multiple legislators at one time would put a significant strain on the existing servers and thus negatively impact the ability of legislators and legislative staff that rely on the legislative information systems to efficiently send and receive emails.

I affirm on this 8th day of August, 2023, under penalty of perjury under the laws of the State of New Mexico, that the foregoing is true and correct.

By: Mark Guillen 8-8-23
Mark Guillen

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 DOCUMENTS OR OBJECTS INSPECTION OF PREMISES

TO: Brian Egolf



YOU ARE HEREBY COMMANDED ON:

Date: By August 16, 2023
*(Or 14 days from service,
whichever is later.)*

Time: By 12:00 p.m.

EXHIBIT C

TO:

permit inspection of the following described books, papers, documents or tangible things:
See **Exhibit A** attached to this subpoena for the list of records to be produced.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering electronic copies on a USB storage device to an agent or employee of one of the following businesses during normal business hours:

Harrison & Hart, LLC
924 Park Avenue SW, Ste. E
Albuquerque, NM 87102

permit the inspection of the premises located at: _____ *(address)*.

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 2, 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 person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, 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.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney 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 and serve on all parties a motion to quash the subpoena. **An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days.** If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) 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,
- (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.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

EXHIBIT A

This subpoena requests certain emails and text messages. The email searches requested below can be conducted using the search function of most common email clients and websites. All date ranges are ‘inclusive,’ meaning a range of “January 1 to 7” includes messages sent on the 1st, as well as those sent on the 7th. If an email account does not support the ‘asterisk’ Boolean operator, please run separate searches for all permutations of the word listed in the Merriam-Webster free online dictionary, as well as the possessive form of the word. Please ensure that all searches are non-case sensitive (*e.g.*, a search for “GOP” should capture “GOP”, “gop”, and “Gop”). An email is sent “to” a person if that person is listed in any of the “TO,” “CC,” or “BCC” fields. Although this subpoena requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know to a certainty there will be no relevant and responsive emails in a given account.

Once a search is conducted, the easiest way to separate the responsive emails for production is typically to ‘select all’ emails shown as responsive to the search (using Control + A in an application like Outlook, or clicking the select-all checkbox at the top-left of the results in an online interface like Gmail) and then save the selected emails in a folder in their native format (usually .pst, .ost, or .eml). Printing the emails to .pdf files is also acceptable, but please ensure that attachments are also opened, printed to .pdf, and produced along with the email itself.

Emails

Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period:

- (1) beginning January 21, 2022 and extending to the date of service of this subpoena, and that either:
 - (a) are captured by one or more of the following searches conducted on all emails (including the attachments thereto):
 - (i) searches for emails that contain *either* of the following terms: the Boolean search term *Gerrymander** or “D-506-CV-2022-00041”; and/or

- (4) extending back as far as you have been a Member of the Legislature and forward to the present day,¹ and that are not captured by the searches outlined above, but which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters:
- (a) any discussion or mention of how the 2021 redistricting process would affect the partisan composition of New Mexico's congressional delegation, including any supposition about the then-Congresswoman Herrell's electoral prospects, that pre-dates S.B. 1 being signed into law; and/or
 - (b) any views or opinions expressed on, or the results of any analysis conducted by, any non-New Mexico-based consultant, political operative, or political organization regarding any of the concept-maps adopted by the Citizen Redistricting Committee or proposed by any legislator, regardless of whether you were the direct recipient of these communications or were forwarded them or had them described to you second-or-more-hand (you may limit your response to views/opinions that were originally expressed, and analyses that were originally conducted, before December 17, 2021).

Text Messages

Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that:

- (A) were sent or received by you any time in 2021, and were between you and one or more of the following individuals: Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Oriana Sandoval, and/or Melanie Stansbury;
- (B) were sent or received by you between November 1, 2021 and December 7, 2021, and were between you and one or more of the following individuals:

¹ In actuality the date ranges implicated are much narrower, given the topics described in ¶¶ (4)(a)-(c).

Joseph Cervantes, Mimi Stewart, Peter Wirth, Daniel Ivey-Soto, and/or
Georgene Louis; and/or

- (C) were sent or received by you between December 7, 2021 and December 11, 2021, and were sent to at least one individual who is not either yourself or an immediate family member of yours.

Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible. For each category (A)-(C) above, you may exclude from your production messages that are *wholly unrelated in every way* to redistricting, provided all messages within a week of the excluded message in the same conversation are likewise wholly unrelated.

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 August, 2023, in _____ County, I served this subpoena on Brian Egolf 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
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 DOCUMENTS OR OBJECTS INSPECTION OF PREMISES

TO: Joseph Cervantes



YOU ARE HEREBY COMMANDED ON:

Date: By August 16, 2023
*(Or 14 days from service,
whichever is later.)*

Time: By 12:00 p.m.

EXHIBIT D

TO:

permit inspection of the following described books, papers, documents or tangible things:
See **Exhibit A** attached to this subpoena for the list of records to be produced.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering electronic copies on a USB storage device to an agent or employee of one of the following businesses during normal business hours:

Harrison & Hart, LLC		Republican Party of Doña Ana County
924 Park Avenue SW, Ste. E	or	2111 North Main Street, Ste. A
Albuquerque, NM 87102		Las Cruces, NM 88005

permit the inspection of the premises located at: _____ (*address*).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 2, 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 person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, 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.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney 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 and serve on all parties a motion to quash the subpoena. **An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days.** If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) 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,
- (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.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

EXHIBIT A

This subpoena requests emails, text messages, and certain records obtainable from your cell-phone carrier. The email searches requested below can be conducted using the search function of most common email clients and websites. All date ranges are ‘inclusive,’ meaning a range of “January 1 to 7” includes messages sent on the 1st, as well as those sent on the 7th. If an email account does not support the ‘asterisk’ Boolean operator, please run separate searches for all permutations of the word listed in the Merriam-Webster free online dictionary, as well as the possessive form of the word. Please ensure that all searches are non-case sensitive (*e.g.*, a search for “GOP” should capture “GOP”, “gop”, and “Gop”). An email is sent “to” a person if that person is listed in any of the “TO,” “CC,” or “BCC” fields. Although this subpoena requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know to a certainty there will be no relevant and responsive emails in a given account.

Once a search is conducted, the easiest way to separate the responsive emails for production is typically to ‘select all’ emails shown as responsive to the search (using Control + A in an application like Outlook, or clicking the select-all checkbox at the top-left of the results in an online interface like Gmail) and then save the selected emails in a folder in their native format (usually .pst, .ost, or .eml). Printing the emails to .pdf files is also acceptable, but please ensure that attachments are also opened, printed to .pdf, and produced along with the email itself.

Emails

Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period:

- (1) beginning January 21, 2022 and extending to the date of service of this subpoena, and that either:
 - (a) are captured by one or more of the following searches conducted on all emails (including the attachments thereto):
 - (i) searches for emails that contain *either* of the following terms: the Boolean search term Gerrymander* or “D-506-CV-2022-00041”; and/or

- (ii) searches for emails that contain *both* the term “Lawsuit” *and* one or more of the following Boolean search terms: Republican*, RPNM*, GOP*; or
 - (b) were sent by you to any person who is not a Member or staffer of the Legislature (regardless of whether one or more Members/staffers were also recipients of the same email), and that mentions *both* the redistricted congressional map (whether by the name “S.B. 1,” “the new map,” “the redrawn district,” or any other clearly discernible reference) *and* the prospects for Democratic Party victory in the 2022 CD 2 race (whether framed as a numerical partisan advantage, a prediction regarding Yvette Herrell’s ability to retain the seat, a discussion of Gabe Vasquez’s campaign or odds of success, etc.); and/or
 - (c) were sent to you by Gabe Vasquez and that mention, in any way, the new/redistricted congressional map and/or the new/redistricted Second Congressional District;
- (2) beginning December 1, 2021 and ending December 18, 2021, and that either:
- (a) were sent by you and contain one or more of the following search terms: Dem*, Republican*, GOP*, Veto*, Chavez*, Competitive*, Map*, “District”, “Rural”, “Concept H”, and/or “Substitute”; and/or
 - (b) were sent to you and contain one or more of the following: “S.B.1”, “SB1”, “S.B. 1”, “SB 1”, “Senate Bill 1”, “Concept H”, “Concept E”, “CCP Map”, “People’s Map”, “Center for Civic”, “Chavez’ Map”, “Chavez’s Map”, “CD”, “C.D.”, “CD2”, “SJC Sub”, “Southern Congressional”, “Second Congressional”, “Gerrymander”, “Gerrymandering”, “Majority-Minority”, “Hispanic”, “Yvette”, and/or “Herrell”;
- (3) beginning July 1, 2021 and ending December 17, 2021, and that were sent by or to any one or more of the following individuals: Lisa Curtis, Kyra

Ellis-Moore, Brian Egolf, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Michael Sanchez (the former state senator), Oriana Sandoval, Melanie Stansbury, Peter Wirth, and/or any person you know to have been retained or employed by any Democratic party, caucus, or campaign committee (at any level of government) to serve as a consultant, demographer, or expert on the 2021 New Mexico congressional-redistricting bill;

- (4) extending back as far as you have been a Member of the Legislature and forward to the present day,¹ and that are not captured by the searches outlined above, but which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters:
- (a) any discussion or mention of how the 2021 redistricting process would affect the partisan composition of New Mexico's congressional delegation, including any supposition about the then-Congresswoman Herrell's electoral prospects, that pre-dates S.B. 1 being signed into law;
 - (b) any views or opinions expressed on, or the results of any analysis conducted by, any non-New Mexico-based consultant, political operative, or political organization regarding any of the concept-maps adopted by the Citizen Redistricting Committee or proposed by any legislator, regardless of whether you were the direct recipient of these communications or were forwarded them or had them described to you second-or-more-hand (you may limit your response to views/opinions that were originally expressed, and analyses that were originally conducted, before December 17, 2021); and/or
 - (c) any documents created before 2015 that either were written by you or quote you, and that broadly describe your goals for congressional redistricting generally, or for redistricting the Second Congressional District specifically, in past (pre-2020) redistricting cycles.

¹ In actuality the date ranges implicated are much narrower, given the topics described in ¶¶ (4)(a)-(c).

Text Messages

Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that:

- (A) were sent or received by you any time in 2021, and were between you and one or more of the following individuals: Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Oriana Sandoval, and/or Melanie Stansbury;
- (B) were sent or received by you between November 1, 2021 and December 7, 2021, and were between you and one or more of the following individuals: Mimi Stewart, Peter Wirth, Brian Egolf, Daniel Ivey-Soto, and/or Georgene Louis; and/or
- (C) were sent or received by you between December 7, 2021 and December 11, 2021, and were sent to at least one individual who is not either yourself or an immediate family member of yours.

Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible. For each category (A)-(C) above, you may exclude from your production messages that are *wholly unrelated in every way* to redistricting, provided all messages within a week of the excluded message in the same conversation are likewise wholly unrelated.

Logs of Cell-Phone Communications

Please contact the carrier(s) for all cell phones that you use regularly (whether for personal, work, or legislative purposes) and produce logs of your phone calls and text messages over the period from November 1, 2021 to December 17, 2021. These logs should contain entries showing the phone number being communicated with and the date, time, and (for calls) duration of the communication; they should not show the content of text messages. Most carriers provide this information online to subscribers who login to the secure portion of the carrier's website; these logs can typically be exported to a .csv or .xls file (*i.e.*, an Excel spreadsheet). You may redact entries pertaining to communications with individuals you know in an exclusively personal capacity, who are your employer, employee, or co-worker, or with whom you have an attorney-client relationship.

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 August, 2023, in _____ County, I served this subpoena on Joseph Cervantes 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

HARRISON & HART, LLC

ATTORNEYS AND COUNSELORS AT LAW
924 PARK AVENUE SOUTHWEST, SUITE E
ALBUQUERQUE, NEW MEXICO 87102

CARTER B. HARRISON IV
NICHOLAS T. HART
DANIEL J. GALLEGOS

TELEPHONE
(505) 295-3261

FACSIMILE
(505) 341-9340

August 2, 2023

The Honorable Daniel A. Ivey-Soto
New Mexico Senate



Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Sen. Ivey-Soto:

I hope you are doing well. Enclosed with this letter is a subpoena *duces tecum* requesting certain documents relevant to the ongoing litigation over the most-recent congressional redistricting bill, numbered Senate Bill 1 in the 2021 Second Special Session (you were a co-sponsor so I suspect you remember it). Earlier this month, the New Mexico Supreme Court issued an order recognizing a claim for partisan gerrymandering and outlining a test and a standard of review therefor; the Court then remanded the case to the District Court (Judge Fred T. Van Soelen of Clovis, whom the Supreme Court personally appointed) with instructions to resolve the matter on an ultra-expedited timeline. I know you're already familiar with all of this from your briefing on the case in committee.

You're well aware that I don't represent you, and that there is the possibility that you may be able to assert the so-called legislative privilege¹ in response to some of the document requests I'm propounding on you, so I won't belabor the point.² I do want to point out to you, though, that

¹ New Mexico's Speech or Debate Clause, N.M. Const. art. IV, § 13, has never been judicially interpreted, and our courts have obviously construed the *executive* privilege quite narrowly. But analogous provisions do exist in the federal Constitution, *see* U.S. Const. art. I, § 6, cl. 1 (applying to Members of Congress), and most other state constitutions, and these provisions typically impart a (broader) immunity from being named as a defendant in a civil suit and a (narrower) testimonial privilege. "The Speech or Debate Clause [is primarily a separation-of-powers provision] designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats *from the Executive Branch*." *Gravel v. United States*, 408 U.S. 606, 616 (1972) (emphasis added). "[T]he privilege was *not* born primarily of a desire to avoid private suits . . . , but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary." *United States v. Johnson*, 383 U.S. 169, 181 (1966) (emphasis added). To the extent that the legislative privilege applies in private civil cases like this one, in which the legislator in question is merely a witness and not a defendant, its policy rationale is to ensure "that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions" — a rationale that I would respectfully submit is somewhat lessened by the part-time nature of our Legislature. *Powell v. McCormack*, 395 U.S. 486, 505 (1969).

² I will, however, note that there is a widely recognized "exception to the legislative privilege [in] criminal cases and redistricting cases." *Thompson v. Merrill*, 2020 WL 2545317, at *4 (M.D. Ala. May 19, 2020); *see also Lee v. Virginia State Bd. of Elec.*, 2015 WL 9461505, at *5 (E.D. Va. Dec. 23, 2015) (justifying

under the scheduling order in this case (which I have enclosed), you will have **ten (10) days to assert this privilege** — which you should do, as usual, by collecting all of the requested documents as if you were going to produce them, and then preparing a list/log of those documents that describes them in sufficient detail to allow me to vet your claim of privilege.

I also ask that, **within 10 days of the date of this letter, you please contact my office with dates of availability for a deposition** — which should only take a few hours and which we are willing to conduct via Zoom — or potentially an informal discussion if that is your preference. I am particularly interested to hear about your role in the establishment of the Citizen’s Redistricting Committee in the early part of 2021. We may or may not be able to actually schedule a deposition or interview with you, but we require **at least three pre-September-8th** dates of availability (weekends are acceptable), and we would prefer if you simply gave us a limited number of dates of *unavailability*. We are required to conclude discovery by early/mid-September, so our presumption unfortunately has to be that you are available on all dates that you do not expressly disclaim. Our scheduling order also allows me more flexibility than usual to schedule depositions quickly.

I regret the imposition I know this creates. Thank you for your time and attention to this matter, and more generally for your service to our state. Always enjoy speaking with you.

Very truly yours,

HARRISON & HART, LLC



Carter B. Harrison IV

CBH

Enclosures (2):
Subpoena *Duces Tecum* with Exhibit A (9 pages)
Scheduling Order (4 pages)

the “limited exception to legislative privilege in cases involving legislative redistricting” by pointing out “the unique nature of redistricting cases [and] noting that they are ‘extraordinary’ and that ‘the natural corrective mechanisms built into our republican system of government offer little check upon the very real threat of legislative self-entrenchment’” (citation omitted); *League of Women Voters of Fla. v. Fla. House of Reps.*, 132 So.3d 135, 154 (Fla. 2013) (“[W]e conclude that Florida law should recognize a legislative privilege, but that this privilege is not absolute in this case, where the violations alleged are of an explicit state constitutional provision prohibiting partisan political gerrymandering and improper discriminatory intent in redistricting.”).

Sen. Daniel Ivey-Soto
August 2, 2023
Page 3 of 3

Subpoena Cover Letter

cc: Richard E. Olson
Lucas M. Williams
Ann C. Tripp
Sara N. Sanchez
Mark T. Baker
Luis G. Stelzner
Michael B. Browde

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 DOCUMENTS OR OBJECTS INSPECTION OF PREMISES

TO: Daniel A. Ivey-Soto



YOU ARE HEREBY COMMANDED ON:

Date: By August 16, 2023
*(Or 14 days from service,
whichever is later.)*

Time: By 12:00 p.m.

TO:

permit inspection of the following described books, papers, documents or tangible things:
See **Exhibit A** attached to this subpoena for the list of records to be produced.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering electronic copies on a USB storage device to an agent or employee of one of the following businesses during normal business hours:

Harrison & Hart, LLC
924 Park Avenue SW, Ste. E
Albuquerque, NM 87102

permit the inspection of the premises located at: _____ *(address)*.

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 1, 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 person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, 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.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney 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 and serve on all parties a motion to quash the subpoena. **An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days.** If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) 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,
- (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.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

EXHIBIT A

This subpoena requests certain emails and text messages. The email searches requested below can be conducted using the search function of most common email clients and websites. All date ranges are ‘inclusive,’ meaning a range of “January 1 to 7” includes messages sent on the 1st, as well as those sent on the 7th. If an email account does not support the ‘asterisk’ Boolean operator, please run separate searches for all permutations of the word listed in the Merriam-Webster free online dictionary, as well as the possessive form of the word. Please ensure that all searches are non-case sensitive (*e.g.*, a search for “GOP” should capture “GOP”, “gop”, and “Gop”). An email is sent “to” a person if that person is listed in any of the “TO,” “CC,” or “BCC” fields. Although this subpoena requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know to a certainty there will be no relevant and responsive emails in a given account.

Once a search is conducted, the easiest way to separate the responsive emails for production is typically to ‘select all’ emails shown as responsive to the search (using Control + A in an application like Outlook, or clicking the select-all checkbox at the top-left of the results in an online interface like Gmail) and then save the selected emails in a folder in their native format (usually .pst, .ost, or .eml). Printing the emails to .pdf files is also acceptable, but please ensure that attachments are also opened, printed to .pdf, and produced along with the email itself.

Emails

Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period:

- (1) beginning January 21, 2022 and extending to the date of service of this subpoena, and that either:
 - (a) are captured by one or more of the following searches conducted on all emails (including the attachments thereto):
 - (i) searches for emails that contain *either* of the following terms: the Boolean search term Gerrymander* or “D-506-CV-2022-00041”; and/or

- (4) extending back as far as you have been a Member of the Legislature and forward to the present day,¹ and that are not captured by the searches outlined above, but which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters:
- (a) any discussion or mention of how the 2021 redistricting process would affect the partisan composition of New Mexico's congressional delegation, including any supposition about the then-Congresswoman Herrell's electoral prospects, that pre-dates S.B. 1 being signed into law; and/or
 - (b) any views or opinions expressed on, or the results of any analysis conducted by, any non-New Mexico-based consultant, political operative, or political organization regarding any of the concept-maps adopted by the Citizen Redistricting Committee or proposed by any legislator, regardless of whether you were the direct recipient of these communications or were forwarded them or had them described to you second-or-more-hand (you may limit your response to views/opinions that were originally expressed, and analyses that were originally conducted, before December 17, 2021).

Text Messages

Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that:

- (A) were sent or received by you any time in 2021, and were between you and one or more of the following individuals: Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Oriana Sandoval, and/or Melanie Stansbury;
- (B) were sent or received by you between November 1, 2021 and December 7, 2021, and were between you and one or more of the following individuals: Joseph Cervantes, Mimi Stewart, Brian Egolf, and/or Georgene Louis;

¹ In actuality the date ranges implicated are much narrower, given the topics described in ¶¶ (4)(a)-(c).

- (C) were sent or received by you between December 7, 2021 and December 11, 2021, and were sent to at least one individual who is not either yourself or an immediate family member of yours; and/or
- (D) explicitly discuss drawing the Second/Southern Congressional District in such a way that a Democrat would be likely to win the seat.

Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible. For each category (A)-(C) above, you may exclude from your production messages that are *wholly unrelated in every way* to redistricting, provided all messages within a week of the excluded message in the same conversation are likewise wholly unrelated.

HARRISON & HART, LLC

ATTORNEYS AND COUNSELORS AT LAW
924 PARK AVENUE SOUTHWEST, SUITE E
ALBUQUERQUE, NEW MEXICO 87102

CARTER B. HARRISON IV
NICHOLAS T. HART
DANIEL J. GALLEGOS

TELEPHONE
(505) 295-3261

FACSIMILE
(505) 341-9340

August 2, 2023

The Honorable Peter Wirth
New Mexico Senate



Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Sen. Wirth:

Enclosed with this letter is a subpoena *duces tecum* requesting certain documents relevant to the ongoing litigation over the most-recent congressional redistricting bill, numbered Senate Bill 1 in the 2021 Second Special Session. Earlier this month, the New Mexico Supreme Court issued an order recognizing a claim for partisan gerrymandering and outlining a test and a standard of review therefor; the Court then remanded the case to the District Court (Judge Fred T. Van Soelen of Clovis, whom the Supreme Court personally appointed) with instructions to resolve the matter on an ultra-expedited timeline.

Please be advised that, under the scheduling order in this case (which I have enclosed), you will have **ten (10) days to assert any and all claims of the legislative privilege**. You should do this, as usual, by collecting all of the requested documents as if you were going to produce them, and then preparing a list/log of those documents that describes them in sufficient detail to allow me to vet your claim of privilege.

I also ask that, **within 10 days of the date of this letter, you please contact my office with dates of availability for a deposition** — which should only take a few hours and which we are willing to conduct via Zoom — or potentially an informal discussion if that is your preference. I am particularly interested to hear about your role in the establishment of the Citizen's Redistricting Committee in the early part of 2021. We may or may not be able to actually schedule a deposition or interview with you, but we require **at least three pre-September-8th** dates of availability (weekends are acceptable), and we would prefer if you simply gave us a limited number of dates of *unavailability*. We are required to conclude discovery by early/mid-September, so our presumption unfortunately has to be that you are available on all dates that you do not expressly disclaim. Our scheduling order also allows me more flexibility than usual to schedule depositions quickly.

I regret the imposition I know this creates. Thank you for your time and attention to this matter, and more generally for your service to our state.

EXHIBIT F

Sen. Peter Wirth
August 2, 2023
Page 2 of 2

Subpoena Cover Letter

Very truly yours,

HARRISON & HART, LLC



Carter B. Harrison IV

CBH

Enclosures (2):
Subpoena *Duces Tecum* with Exhibit A (9 pages)
Scheduling Order (4 pages)

cc: Richard E. Olson
Lucas M. Williams
Ann C. Tripp
Sara N. Sanchez
Mark T. Baker
Luis G. Stelzner
Michael B. Browde

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 DOCUMENTS OR OBJECTS INSPECTION OF PREMISES

TO: Peter Wirth



YOU ARE HEREBY COMMANDED ON:

Date: By August 16, 2023
*(Or 14 days from service,
whichever is later.)*

Time: By 12:00 p.m.

TO:

permit inspection of the following described books, papers, documents or tangible things:
See **Exhibit A** attached to this subpoena for the list of records to be produced.

Please produce these documents either by emailing them (a Dropbox link is acceptable) to carter@harrisonhartlaw.com or by mailing or hand-delivering electronic copies on a USB storage device to an agent or employee of one of the following businesses during normal business hours:

Harrison & Hart, LLC
924 Park Avenue SW, Ste. E
Albuquerque, NM 87102

permit the inspection of the premises located at: _____ *(address)*.

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 2, 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 person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, 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.

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, 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 that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney 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 and serve on all parties a motion to quash the subpoena. **An exception in this specific case is that assertions of legislative privilege must be made within ten (10) days.** If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under 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. The 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. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

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 (100) 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,
- (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.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

EXHIBIT A

This subpoena requests emails, text messages, and certain records obtainable from your cell-phone carrier. The email searches requested below can be conducted using the search function of most common email clients and websites. All date ranges are ‘inclusive,’ meaning a range of “January 1 to 7” includes messages sent on the 1st, as well as those sent on the 7th. If an email account does not support the ‘asterisk’ Boolean operator, please run separate searches for all permutations of the word listed in the Merriam-Webster free online dictionary, as well as the possessive form of the word. Please ensure that all searches are non-case sensitive (*e.g.*, a search for “GOP” should capture “GOP”, “gop”, and “Gop”). An email is sent “to” a person if that person is listed in any of the “TO,” “CC,” or “BCC” fields. Although this subpoena requests production of emails from all accounts to which you have access, you need not conduct all searches across all accounts if you know to a certainty there will be no relevant and responsive emails in a given account.

Once a search is conducted, the easiest way to separate the responsive emails for production is typically to ‘select all’ emails shown as responsive to the search (using Control + A in an application like Outlook, or clicking the select-all checkbox at the top-left of the results in an online interface like Gmail) and then save the selected emails in a folder in their native format (usually .pst, .ost, or .eml). Printing the emails to .pdf files is also acceptable, but please ensure that attachments are also opened, printed to .pdf, and produced along with the email itself.

Emails

Please produce all emails, including attachments thereto — including emails on which you were carbon-copied or blind carbon-copied, and including emails sent/received through your legislative email account, work email account(s), campaign account(s), and/or any personal account(s) — in the time period:

- (1) beginning January 21, 2022 and extending to the date of service of this subpoena, and that either:
 - (a) are captured by one or more of the following searches conducted on all emails (including the attachments thereto):
 - (i) searches for emails that contain *either* of the following terms: the Boolean search term Gerrymander* or “D-506-CV-2022-00041”; and/or

- (ii) searches for emails that contain *both* the term “Lawsuit” *and* one or more of the following Boolean search terms: Republican*, RPNM*, GOP*; or
 - (b) were sent by you to any person who is not a Member or staffer of the Legislature (regardless of whether one or more Members/staffers were also recipients of the same email), and that mentions *both* the redistricted congressional map (whether by the name “S.B. 1,” “the new map,” “the redrawn district,” or any other clearly discernible reference) *and* the prospects for Democratic Party victory in the 2022 CD 2 race (whether framed as a numerical partisan advantage, a prediction regarding Yvette Herrell’s ability to retain the seat, a discussion of Gabe Vasquez’s campaign or odds of success, etc.);
- (2) beginning December 1, 2021 and ending December 18, 2021, and that contain one or more of the following: “S.B.1”, “SB1”, “S.B. 1”, “SB 1”, “Senate Bill 1”, “Concept H”, “Concept E”, “CCP Map”, “People’s Map”, “Center for Civic”, “Chavez’ Map”, “Chavez’s Map”, “CD”, “C.D.”, “CD2”, “SJC Sub”, “Southern Congressional”, “Second Congressional”, “Gerrymander”, “Gerrymandering”, “Majority-Minority”, “Hispanic”, “Yvette”, and/or “Herrell”;
- (3) beginning July 1, 2021 and ending December 18, 2021, and that were sent by or to any one or more of the following individuals: Joseph Cervantes, Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Georgene Louis, Michael Sanchez (the former state senator), Oriana Sandoval, Melanie Stansbury, Mimi Stewart, and/or any person you know to have been retained or employed by any Democratic party, caucus, or campaign committee (at any level of government) to serve as a consultant, demographer, or expert on the 2021 New Mexico congressional-redistricting bill (N.B.: You may exclude from your production messages that are *wholly unrelated in every way* to redistricting.);

- (4) extending back as far as you have been a Member of the Legislature and forward to the present day,¹ and that are not captured by the searches outlined above, but which you recall (after committing a reasonable amount of thought) sending/receiving and which relate to one or more of the following subject matters:
- (a) any discussion or mention of how the 2021 redistricting process would affect the partisan composition of New Mexico's congressional delegation, including any supposition about the then-Congresswoman Herrell's electoral prospects, that pre-dates S.B. 1 being signed into law; and/or
 - (b) any views or opinions expressed on, or the results of any analysis conducted by, any non-New Mexico-based consultant, political operative, or political organization regarding any of the concept-maps adopted by the Citizen Redistricting Committee or proposed by any legislator, regardless of whether you were the direct recipient of these communications or were forwarded them or had them described to you second-or-more-hand (you may limit your response to views/opinions that were originally expressed, and analyses that were originally conducted, before December 17, 2021).

Text Messages

Please produce copies of all text messages (including SMS messages, iMessages, and other messages sent through the same cell-phone application as either or both of the foregoing) that:

- (A) were sent or received by you any time in 2021, and were between you and one or more of the following individuals: Lisa Curtis, Kyra Ellis-Moore, Scott Forrester, Dominic Gabello, Teresa Leger Fernandez, Leanne Leith, Michelle Lujan Grisham, Oriana Sandoval, and/or Melanie Stansbury;
- (B) were sent or received by you between November 1, 2021 and December 7, 2021, and were between you and one or more of the following individuals:

¹ In actuality the date ranges implicated are much narrower, given the topics described in ¶¶ (4)(a)-(c).

Joseph Cervantes, Mimi Stewart, Brian Egolf, Daniel Ivey-Soto, and/or Georgene Louis; and/or

- (C) were sent or received by you between December 7, 2021 and December 11, 2021, and were sent to at least one individual who is not either yourself or an immediate family member of yours.

Screenshots are acceptable, but please produce these messages in a manner where the sender and parties to the messages, as well as the date and time of the messages, are visible. For each category (A)-(C) above, you may exclude from your production messages that are *wholly unrelated in every way* to redistricting, provided all messages within a week of the excluded message in the same conversation are likewise wholly unrelated.

Logs of Cell-Phone Communications

Please contact the carrier(s) for all cell phones that you use regularly (whether for personal, work, or legislative purposes) and produce logs of your phone calls and text messages over the period from November 1, 2021 to December 17, 2021. These logs should contain entries showing the phone number being communicated with and the date, time, and (for calls) duration of the communication; they should not show the content of text messages. Most carriers provide this information online to subscribers who login to the secure portion of the carrier's website; these logs can typically be exported to a .csv or .xls file (*i.e.*, an Excel spreadsheet). You may redact entries pertaining to communications with individuals you know in a exclusively personal capacity, who are your employer, employee, or co-worker, or with whom you have an attorney-client relationship.

Identically-Subpoenaed Non-Party Citizen Legislators				
1	Rep A. Romero (Santa Fe)		36	Rep. Sanchez (Alcalde)
2	Rep. Alcon (Grants)		37	Rep. Sarinana (ABQ)
3	Rep. Allison (Fruitland)		38	Rep. Serrato (Santa Fe)
4	Rep. Anderson (Roswell)		39	Rep. Small (Las Cruces)
5	Rep. Barreras (ABQ)		40	Rep. Sweetser (Deming)
6	Rep. Bash (ABQ)		41	Rep. Szczepanski (Santa Fe)
7	Rep. Bounkeua (ABQ)		42	Rep. Thomson (ABQ)
8	Rep. Caballero (ABQ)		43	Rep. Trujillo (ABQ)
9	Rep. Cadena (Las Cruces)		44	Rep. Martinez (ABQ)
10	Rep. Castellano (Serafina)		45	Rep. Matthews (ABQ)
11	Rep. Chandler (Los Alamos)		46	Rep. McQueen (Lamy)
12	Rep. Chasey (ABQ)		47	Rep. Georgene Louis (ABQ)
13	Rep. Chavez (ABQ)		48	Rep. Brenda McKenna (ABQ)
14	Rep. De La Cruz (ABQ)		49	Sen. Campos (Las Vegas)
15	Rep. Dixon (ABQ)		50	Sen. Duhigg (ABQ)
16	Rep. Ely (Corrales)		51	Sen. Gonzales (Taos)
17	Rep. Ferrary (Las Cruces)		52	Sen. Hamblen (Las Cruces)
18	Rep. Figueroa (ABQ)		53	Sen. Hemphill (Silver City)
19	Rep. G. Romero (ABQ)		54	Sen. Hickey (ABQ)
20	Rep. Gallegos (Las Cruces)		55	Sen. Jaramillo (Espanola)
21	Rep. Garratt (ABQ)		56	Sen. Lopez (ABQ)
22	Rep. H. Garcia (Grants)		57	Sen. Maestas (ABQ)
23	Rep. Herndon (ABQ)		58	Sen. Munoz (Gallup)
24	Rep. Herrera (Dixon)		59	Sen. O'Neill (ABQ)
25	Rep. Hochman-Vigil		60	Sen. Ortiz y Pino (ABQ)
26	Rep. Johnson (Gallup)		61	Sen. Padilla (ABQ)
27	Rep. Lara (Chamberino)		62	Sen. Pinto (Tohatchi)
28	Rep. Lente (Sandia Pueblo)		63	Sen. Pope (ABQ)
29	Rep. Lujan (Santa Fe)		64	Sen. Rodriguez (Santa Fe)
30	Rep. Lundstrom (Gallup)		65	Sen. Sedillo Lopez (ABQ)
31	Rep. M. Garcia (ABQ)		66	Sen. Shendo (Jemez Pueblo)
32	Rep. Madrid (Chapparal)		67	Sen. Soules (Las Cruces)
33	Rep. Montoya (Velarde)		68	Sen. Stefanics (Santa Fe)
34	Rep. Ortez (Taos)		69	Sen. Steinborn (Las Cruces)
35	Rep. Rubio (Las Cruces)		70	Sen. Tallman (ABQ)
Similarly-Subpoenaed Non-Party Citizen Legislators				
71	Brian Egolf (Santa Fe)		72	Sen. Joe Cervantes (Las Cruces)
			73	Sen. Daniel Ivey-Soto (ABQ)
			74	Sen. Peter Wirth (Santa Fe)

EXHIBIT G