

**STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT**

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

Plaintiffs,

v.

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

**MAGGIE TOLOUSE OLIVER, in her official capacity as
New Mexico Secretary of State, MICHELLE LUJAN
GRISHAM, in her official capacity as Governor of New
Mexico, HOWIE MORALES, in his official capacity as
New Mexico Lieutenant Governor and President of the
New Mexico Senate, MIMI STEWART, in her official
capacity as President Pro Tempore of the New Mexico
Senate, and JAVIER MARTINEZ, in his official capacity as
Speaker of the New Mexico House of Representatives,**

Defendants.

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

Having already launched an assault on New Mexico's constitutional legislative privilege by issuing document subpoenas to 74 current and former legislators and then to legislative staffers and consultants, Plaintiffs now seek to depose several current and former legislators about their involvement in the redistricting legislation at issue in this case. Once again, Plaintiffs' discovery conduct flies in the face of New Mexico's Constitution and separation of powers. Just as the legislative privilege protects against disclosure of legislators' written communications in the legislative process, it guards against compulsory testimony on

the same subjects.

Accordingly, Rep. Javier Martinez, in his official capacity as Speaker of the House of Representatives of the State of New Mexico, and Senator Mimi Stewart, in her official capacity as President Pro-Tempore of the New Mexico Senate (together “Legislative Defendants”), joined by Senator Mimi Stewart, Representative Brian Egolf, Senator Joseph Cervantes, Senator Peter Wirth, and former Representative Georgene Louis, by and through undersigned counsel of record pursuant to the Limited Entry of Appearance filed herein on August 7, 2023, (collectively the “Responding Parties”) seek a Protective Order from this Court quashing the deposition subpoenas served by Plaintiffs on the Responding Parties and prohibiting compelled testimony by Responding Parties on the grounds of the constitutional and absolute legislative privilege under N.M Const. art. IV, § 13. As grounds for this Motion, Legislative Defendants and Responding Parties state as follows:

A. BACKGROUND AND PROCEDURAL STATUS

1. Beginning July 29, 2023, Plaintiffs issued 74 subpoenas for documents to Non-Party Legislators Those document subpoenas are the subject of Legislative Defendants’ August 8, 2023 *Motion to Quash Subpoenas to 74 Non-Party Legislators and for Protective Order*, (hereinafter “First Motion”), which Legislative Defendants and the Responding Parties incorporate in full hereto.

2. Two days after the First Motion was filed, on Friday, August 10, 2023, Plaintiffs noticed Senator Cervantes, Representative Egolf, and Senator Stewart for videotaped depositions on August 21, 22 & 23, respectively, and filed corresponding Amended Notices in this matter. *See Certificates of Service of Notices* filed August 10, 2023 and Ex. A to COS (unlabeled); Notices of Deposition to Responding Parties attached hereto as Exhibit “1”.

3. On Sunday, August 13, Plaintiffs notified counsel for Legislative Defendants of three additional subpoenas and notices of depositions addressed to Senator Wirth, former Representative Louis, and Senator Ivey-Soto.

4. On Monday, August 14, undersigned counsel accepted service on behalf of Senator Stewart, Senator Cervantes, Senator Wirth, Representative Egolf, and Representative Louis.

5. The deposition subpoenas served on Senator Wirth and Representative Louis include the additional instruction to “comply with the subpoena *duces tecum* previously served upon you. No new document production is commanded by this subpoena.” *See Wirth and Louis Subpoenas and Notices*, attached hereto as Exhibit “2”; *see also First Motion at 7-9 & 11-14* (describing scope and substance of Non-Party Legislator Subpoenas as grossly overbroad and harassing).

6. Under the Notices and Subpoenas served by Plaintiffs on the Responding Parties, Plaintiffs have set the following schedule for depositions:

- a. Monday, August 21, 2023: Senator Cervantes
- b. Tuesday, August 22, 2023: Representative Egolf
- c. Wednesday, August 23, 2023: Senator Stewart
- d. Thursday, August 24, 2023: Representative Louis
- e. Monday, August 28, 2023: Senator Wirth

7. Pursuant to the timeframe set by the Scheduling Order, NMRA Rules 1-045 & 1-030, this *Motion to Quash Subpoenas for Depositions and for Protective Order* is timely and presumed opposed.

B. STANDARD OF REVIEW

The Court has discretion to make any order with respect to discovery which justice

requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. Rule 1-026(B)(2), -026(C) & 1-026(F) NMRA 2023; *DeTevis v. Aragon*, 1986-NMCA-105, ¶¶ 10 & 11; 104 N.M. 793, 797, 727 P.2d 558, 56. Furthermore, Rule 1-045(C)(3) mandates the Court “quash or modify the subpoena if it: (i) fails to allow 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.” Rule 1-045(C)(3)(a)(i)-(iv).

Here, the Responding Parties are named in the subpoenas and notices individually, not in a representative capacity on behalf of the New Mexico Legislature as a collective body. Therefore, all Responding Parties are Non-Parties to the instant suit and the burden and expense of these subpoenas and requested discovery should weigh heavily in their favor in the Court’s analysis. *See, e.g., Blake v. Blake*, 1985-NMCA-009, ¶ 14, 102 N.M. 354, 359, 695 P.2d 838, 843 (requiring court balance party’s need for information against non-party’s privacy interests and “right to be free from unreasonable harassment, disadvantage and expense”); *Cf. Aero Tech, Inc. v. Great Am. Ins. Co.*, 2023 WL 5002618, at *3 (D.N.M. Aug. 3, 2023) (advocating for closely regulated discovery from non-parties to protect against “undue burden or significant expense”).

C. ARGUMENT

1. *New Mexico’s Constitutional Legislative Privilege Prohibits Compulsory Testimony.*

The Legislative Defendants and Responding Parties previously moved to quash subpoenas for documents on the grounds of legislative privilege granted under New Mexico’s Speech and Debate Clause, N.M. Const. art. IV, § 13. *See generally First Motion* at Part I.A, 3–6. Where the scope of legislative privilege prevents compulsory production of privileged

documents, the privilege also protects elected representatives from compelled testimony regarding matters and activities within the legislative sphere. *See, e.g., Fann v. Kemp in & for Cnty. of Maricopa*, 253 Ariz. 537, 543, 515 P.3d 1275, 1281 (2022) (explaining that as a testimonial and evidentiary privilege, “legislative privilege extends beyond pure speech or debate in the legislature....A legislator engaged in legitimate legislative activities cannot be compelled to testify about those activities or the motives underlying legislative decisions.”) (citing *Gravel v. United States*, 408 U.S. 606, 625 92 S.Ct. 2614 (1972), and *Arizona Independent Redistricting Commission v. Fields*, 206 Ariz. 130, 136–37, 75 P.3d 1088, 1094–99 (App. 2003)). “Legislative privilege protects both oral testimony and document production.” *Id.* at 1281.

Article IV, Section 13 of the New Mexico Constitution commands 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.” This separate immunity and privilege allows legislators to execute and perform the essential, critical functions of their office without the specter of being hailed into court or depositions to defend their conduct. *Fann v. Kemp*, 253 Ariz. at 543, 515 P.3d at 1281; *Montgomery Cnty. v. Schooley*, 97 Md. App. 107, 113, 627 A.2d 69, 73 (1993). This interpretation of legislative privilege bolsters the longstanding principle of legislative independence and separation of powers adopted by the Framers. *Dombrowski v. Eastland*, 387 U.S. 82, 85, 87 S.Ct. 1425, 1427 (1967).

Here, the Responding Parties each invoke their individual right to absolute legislative privilege in response to deposition questions regarding the origin, drafting, proposal, discussion, investigation, consideration, debate, approval or rejection of SB-1 and any other aspect of legislative activity. “The privilege is a personal one and may be waived or asserted by each

individual legislator.” *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992).

2. Legislators’ Participation in Drafting, Proposing, Considering, and Voting on Redistricting Legislation all Constitutes Protected, Legitimate Legislative Activity.

The legislative process of redistricting has long been held to constitute legislative activity for the purposes of invoking the privilege. *See, e.g., Holmes v. Farmer*, 475 A.2d 976, 984 (R.I. 1984) (excluding deposition testimony from legislators concerning actions and motivations with regard to drafting, proposal, and passage of redistricting plan as “clearly within the most basic elements of legislative privilege.”). In the context of redistricting, both federal and state courts regularly quash, limit, and prohibit depositions of legislators, members of redistricting committees, and legislative staff under both absolute state legislative privilege and federal common law privilege. *See, e.g., In re Perry*, 60 S.W.3d 857, 862 (Tex. 2001) (holding trial court committed abuse of discretion in failing to quash subpoenas for depositions served on redistricting board members and staff); *Corporacion Insular de Seguros v. Garcia*, 709 F. Supp. 288, 298 (D.P.R. 1989) (finding federal Speech and Debate Clause barred deposition in civil proceeding regardless of third-party or non-party status because of legitimate legislative activity); *Marylanders for Fair Representation v. Schaefer*, 144 F.R.D. 292, 295 (D.Md.1992) (depositions of Maryland General Assembly members, to include the Senate President and House Speaker, “flatly prohibit[ed]” as to actions taken after introduction of legislation). In fact, in one of the most recent decisions on the issue, the Maryland Court of Appeals denied discovery requests outright rather than propose limitations. *In the Matter of 2022 Legislative Districting of State*, 481 Md. 507, 561 & 592, 282 A.3d 147, 179 & 198 (Md. Ct. App. 2022) (upholding legislative privilege as including: (1) proceedings at regularly scheduled meetings; (2) meetings with citizens or private interest groups, (3) caucuses and meetings with political officials called to discuss pending or proposed legislation,

and (4) drafting of the redistricting map by legislative agency, therefore barring production or testimony regarding the same); *see also League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1004–05 & 1009 (Pa. Commw. Ct. 2017) (quashing all subpoenas regarding legislatively enacted redistricting plan served on legislators, staff, aides, and consultants); *see also U.S. v. Swindall*, 971 F.2d 1531, 1546 (11th Cir. 1992) (holding that legislative privilege extends to necessary acts of investigation, evaluation, and preparation); *Jewish War Veterans v. Gates*, 506 F. Supp. 2d 30, 57 (D.D.C. 2007).

3. Legislative Privilege Bars All Inquiry into Motive and Intent.

Legislative privilege prevents inquiry into legislative acts and well as the propriety, purpose, or motivation for those acts. *McSurely v. McClellan*, 753 F.2d 88, 1 Fed. R. Serv. 3d 102 (D.C. Cir. 1985); *Government of the Virgin Islands v. Lee*, 775 F.2d 514, 522 (3d Cir. 1985). Thus, Legislative Privilege encompasses all testimony and material which would reveal a legislator’s motivations with respect to the legislative activity at issue, regardless of whether ill-willed or nefarious. *See Tenney*, 341 U.S. at 377 (“The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty”); *Matter of 2022 Legislative Districting of State*, 481 Md. at 590, 282 A.3d at 197 (“As with other legislation, the issue is not whether a sponsoring legislator’s personal motives were noble or nefarious, but what does the legislation actually provide?”); *Fann*, 253 Ariz. at 547, 515 P.3d at 1285 (“[A]ny purported political motive for the legislature’s action...is irrelevant. We consider actions, not motives. Our analysis rests on the legislative nature of, rather than the motive for....”); *In re 1991 Pennsylvania Legislative Reapportionment Com’n*, 609 A.2d 132, 147 (finding motives and purposes irrelevant).

By shielding the internal thoughts, communications, and actions of legislators, legislative privilege serves the vital function in a democratic government of advancing the quality of

legislation through freely exercised speech and debate. *See Irons v. Rhode Island Ethics Com'n*, 973 A.2d 1124, 1125 (R.I. 2009). It serves to “safeguard the decision-making process of government by fostering candid expression of recommendations” and to prevent members from “temper[ing] their comments because of their concern for their own personal interests, safety, or reputation.” *See State ex rel. Atty. Gen. v. First Judicial Dist. Court of New Mexico*, 1981-NMSC-053, ¶18, 96 N.M. 254, 258, 629 P.2d 330, 334, *abrogated by RPNM*, 2012-NMSC-026, 283 P.3d 853. In this regard, Legislative Privilege exists “not with the intention of protecting the members [of the Legislature] ...but to support the rights of the people, by enabling their representatives to execute the functions of their office, without fear of prosecutions, civil or criminal.” *Irons*, 973 A.2d at 1131 (internal quotations and citations omitted). Thus, “Legislative privilege against compulsory evidentiary process exists to safeguard this legislative immunity and to further encourage the republican values it promotes.” *EEOC v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011).

D. CONCLUSION

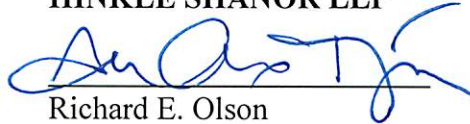
Under New Mexico’s Constitution and the guiding decisions by other state and federal courts interpreting and applying a constitutional grant of legislative immunity and privilege to civil discovery, the Court should quash these subpoenas and enter a protective order prohibiting the depositions of the Responding Parties entirely, or, at a minimum, provide sufficient limitations to preserve each Responding Party’s right to rely upon his or her absolute legislative privilege as to Plaintiff’s lines of inquiry which touch upon activities within the legislative sphere.

WHEREFORE, for the above reasons and as set forth in the Legislative Defendant’s *First Motion*, Rules 1-045 and 1-026 require that this Court quash Plaintiffs’ subpoenas, enter a

protective order, and provide such other and further relief as the Court deems just and proper.

Respectfully submitted,

HINKLE SHANOR LLP



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Attorneys for Legislative Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that as of 8/16/23 I caused a true and correct copy of Legislative Defendants' *Motion to Quash and for Protective Order* to be e-mailed to all parties or counsel of record as follows and caused a copy of Legislative Defendants' Motion to Quash and for Protective Order and this Certificate of Service to be filed electronically through the Tyler Tech System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

HINKLE SHANOR LLP

By: 
Ann Cox Tripp

EXHIBIT 1

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 DEANN KIMBRO, and
PEARL GARCIA.

Plaintiffs.

vs.

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.

NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Joseph Cervantes**

c/o Sara N. Sanchez
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& BAKER P.A.
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Luis G. Stelzner
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Richard E. Olson
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Professor Michael B. Browde
mbrowde@me.com

EXHIBIT 1

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of Joseph Cervantes, by a certified court reporter and videographer, on Monday, August 21, 2023, beginning at 9:00 a.m., at the offices of Mesilla Legal Center, 1799 Avenida De Mesilla, Las Cruces, NM 88005, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

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

Respectfully submitted,

/s/ Carter B. Harrison IV

Carter B. Harrison IV
HARRISON & HART, LLC
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Albuquerque, NM 87102
(505) 295-3261
carter@harrisonhartlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that the foregoing was as electronically filed and served via the State of New Mexico's Tyler/Odyssey E-File & Serve System on August 10, 2023, which caused service upon all parties through counsel of record.

/s/ Carter B. Harrison IV
Carter B. Harrison IV

EXHIBIT 1

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,
DAVID GALLEGOS, TIMOTHY JENNINGS,
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Defendants.

AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Brian Egolf**

c/o Sara N. Sanchez
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& BAKER P.A.
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EXHIBIT 1

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of Brian Egolf, by a certified court reporter and videographer, on Tuesday, August 22, 2023, beginning at 9:00 a.m., at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

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

Respectfully submitted,

/s/ Carter B. Harrison IV

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Attorneys for Plaintiffs

EXHIBIT 1

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,
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Defendants.

AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Mimi Stewart**

c/o Sara N. Sanchez
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& BAKER P.A.
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Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Professor Michael B. Browde
mbrowde@me.com

EXHIBIT 1

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of Mimi Stewart, by a certified court reporter and videographer, on Wednesday, August 23, 2023, beginning at 9:00 a.m., at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

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

Respectfully submitted,

/s/ Carter B. Harrison IV

Carter B. Harrison IV
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Albuquerque, NM 87102
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carter@harrisonhartlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that the foregoing was as electronically filed and served via the State of New Mexico's Tyler/Odyssey E-File & Serve System on August 10, 2023, which caused service upon all parties through counsel of record.

/s/ Carter B. Harrison IV

Carter B. Harrison IV

EXHIBIT 2

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

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

Plaintiffs,

vs.

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

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

Defendants.

SUBPOENA

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

TO: **Peter Wirth**

c/o Sara N. Sanchez
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& BAKER P.A.
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Luis G. Stelzner
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pstelzner@aol.com

Professor Michael B. Browde
mbrowde@me.com

EXHIBIT 2

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

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

Date: August 28, 2023 Time: 9:00 a.m.

to

- testify at the taking of a deposition in the above case.
 testify at trial.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Please comply with the subpoena *duces tecum* previously served upon you. No new document production is commanded by this subpoena.

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment. Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

August 10, 2023
Date of Issuance



Judge, Clerk or Attorney

Carter B. Harrison IV
HARRISON & HART, LLC
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Albuquerque, NM 87102
Tel: (505) 295-3261
Fax: (505) 341-9340
Email: carter@harrisonhartlaw.com

Attorneys for the Plaintiffs

EXHIBIT 2

INFORMATION FOR PERSONS RECEIVING SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.
3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. *See* Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. *See* Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.
4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,

EXHIBIT 2

- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT 2

RETURN FOR COMPLETION BY PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the ____ day of _____, 20____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, the statutory witness fee of \$95.00 and mileage in the amount of \$ _____ (*\$0.655 mile x _____ miles*).

Person making service

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023 (date).

Judge, notary or other officer
authorized to administer oaths

My commission expires: _____
(if notarized)

THIS SUBPOENA issued by or at request of:

Carter B. Harrison IV
Name of attorney of party

924 Park Avenue SW
Albuquerque, NM 87102
Address

(505) 295 3261
Telephone

EXHIBIT 2

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 DEANN KIMBRO, and
PEARL GARCIA,

Plaintiffs.

vs.

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.

NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Peter Wirth**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
HINKLE SHANOR LLP
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

Professor Michael B. Browde
mbrowde@me.com

EXHIBIT 2

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of Peter Wirth, by a certified court reporter and videographer, on Monday, August 28, 2023, beginning at 9:00 a.m., at the offices of Harrison & Hart, I.L.C. 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

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

Respectfully submitted,

/s/ Carter B. Harrison IV

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

Attorneys for Plaintiffs

EXHIBIT 2

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT COURT

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

Plaintiffs,

vs.

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

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

Defendants.

SUBPOENA

SUBPOENA FOR APPEARANCE OF PERSON FOR DEPOSITION TRIAL.

TO: **Georgene Louis**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Richard E. Olson
Lucas M. Williams
Ann C. Tripp
HINKLE SHANOR LLP
rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

Luis G. Stelzner
STELZNER, LLC
pstelzner@aol.com

Professor Michael B. Browde
mbrowde@me.com

EXHIBIT 2

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

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

Date: August 24, 2023 Time: 9:00 a.m.

to


- testify at the taking of a deposition in the above case.
 testify at trial.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Please comply with the subpoena *duces tecum* previously served upon you. No new document production is commanded by this subpoena.

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment. Pursuant to Rule 1-032(A)(3)(c) NMRA, the Plaintiffs intend to use this deposition at trial.

August 10, 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

EXHIBIT 2

INFORMATION FOR PERSONS RECEIVING SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.
3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. *See* Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. *See* Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.
4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,

EXHIBIT 2

- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel.

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT 2

RETURN FOR COMPLETION BY PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the ____ day of _____, 20____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, the statutory witness fee of \$95.00 and mileage in the amount of \$ _____ (*\$0.655 mile x _____ miles*).

Person making service

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023 (date).

Judge, notary or other officer
authorized to administer oaths

My commission expires: _____
(*if notarized*)

THIS SUBPOENA issued by or at request of:

Carter B. Harrison IV
Name of attorney of party

924 Park Avenue SW
Albuquerque, NM 87102
Address

(505) 295 3261
Telephone

EXHIBIT 2

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 DEANN KIMBRO, and
PEARL GARCIA.

Plaintiffs,

vs.

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.

NOTICE TO TAKE VIDEOTAPED DEPOSITION

TO: **Georgene Louis**

c/o Sara N. Sanchez
Mark T. Baker
PEIFER, HANSON, MULLINS
& BAKER P.A.
mbaker@peiferlaw.com
ssanchez@peiferlaw.com

Luis G. Stelzner
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rolson@hinklelawfirm.com
lwilliams@hinklelawfirm.com
atripp@hinklelawfirm.com

Professor Michael B. Browde
mbrowde@me.com

EXHIBIT 2

PLEASE TAKE NOTICE that Plaintiffs, by and through undersigned counsel, will take the deposition upon oral examination of Georgene Lewis, by a certified court reporter and videographer, on Thursday, August 24, 2023, beginning at 9:00 a.m., at the offices of Harrison & Hart, LLC, 924 Park Avenue SW, Suite E, Albuquerque, NM, 87102, and continuing until complete before a certified court reporter. This deposition may be conducted via Zoom, and the information necessary for joining the deposition will be provided to all parties by the court reporter.

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

Respectfully submitted,

/s/ Carter B. Harrison IV

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

Attorneys for Plaintiffs