

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.

EMERGENCY MOTION OF THE PLAINTIFFS¹
TO COMPEL DEPOSITIONS AND/OR APPOINT A SPECIAL MASTER

Despite *first* agreeing to the approach laid out in the Scheduling Order (*i.e.*, producing legislators for depositions immediately, having them assert the putative legislative privilege on a question-by-question basis, and then using the pattern of questions and privilege invocations to kickstart a briefing schedule that begins with the August 14 deadline for “motion[s] to compel discovery/testimony that was withheld based on a claim of legislative privilege”), and *then* separately proposing the idea of appointing a special master to manage these issues in real time

¹ The Plaintiffs request expedited briefing and hearing on this Motion.

(so the master could accept early briefing on the privilege and then referee in-deposition disputes over the phone, thus avoiding the need to have legislators be deposed twice if they invoked a privilege and later had some or all of those invocations overruled), the Legislative Defendants have now changed their minds, and no longer want *either* a special master or to obey the Scheduling Order. The basis for this change of heart is just that the Plaintiffs have been seeking more documents (not even depositions) from more legislators than the Legislative Defendants had apparently expected. Why this justifies blowing up the entire agreed structure of this case, and replacing it with *no* discovery, has not been stated, but the benefits of the Legislative Defendants' approach are rather one-sided.

The Legislative Defendants' current position — that they now “need to get a final ruling from the court on legislative privilege before *any* legislator depositions take place” — just doesn't work under the timeline given by the Supreme Court, which is why the Scheduling Order was not structured as they propose. Email Exchange Between Leg. Defs' Counsel to Plfs' Counsel Re: “Depo dates and special master” (dated Aug. 1, 2023) (Exhibit 1 to this Motion) (“Depo Emails”) (emphasis added). And although the Legislative Defendants stated on Monday, when they unilaterally shut down depositions, that they would “get the legislative privilege issues teed up before the Court as quickly as possible,” and would “certainly seek to expedite that briefing to the extent possible,” it is now Thursday, and still nothing has been filed. *Id.* (Ex. 1).

This Court has already ordered that, “[g]iven the extraordinarily truncated timeline of this case and the number of counsel involved, all counsel must be correspondingly extremely flexible regarding the scheduling of depositions,” and that “[w]itnesses being produced by counsel for a party *should be made available for at least one date within two weeks of the request* absent agreement or specifically described good cause” — a dictate that the Legislative Defendants are

simply flouting. Scheduling Order ¶ 4, at 3 (emphasis added). The Court should order the Legislative Defendants to follow its previous order and begin (1) producing those witnesses that are represented by their counsel for depositions immediately; and (2) allowing the depositions of other legislators not represented by their counsel. The Court should order this relief regardless of what it opts to do vis-à-vis a special master — which, despite being the Legislative Defendants’ idea initially, the Plaintiffs now support fully, as this time-limited case has gone into discovery-obstructionism mode. The Plaintiffs do implore the Court to recall that, absent close judicial management, the brief 41-day period from today until the close of discovery is one that a determined opposition could easily waste completely.

The Plaintiffs do not request monetary sanctions in this motion. But we do need the Court’s prompt intervention to move forward with the truth-seeking phase of this litigation, or we will be unable to comply with the Supreme Court’s order.

BACKGROUND

Upon remand from the Supreme Court with its instruction to expedite the litigation to an October 1 finish, the parties conferred on a scheduling order. That proposed order was completed by Friday, July 15 in substantially the same form entered by the Court, except for the Court’s addition of an August 10 standing-motions deadline in ¶ 5. The Scheduling Order contemplates that (1) both written discovery and depositions would begin immediately, with legislative-privilege invocations being made (and supported with robust logs) within 10 days of the propounding of any written discovery or 30(B)(6) deposition notice, *see* Scheduling Order ¶ 1, at 2; (2) these objections and privilege logs compiled in response to the written and 30(B)(6) discovery, and the question-by-question invocations of privilege at individual depositions, would then form the basis of one or more motions to compel, which, for the putative legislative privilege

alone, would be due on August 14, with briefing completed 10 days after, *see id.* ¶ 4, at 1; and (3) the Court would set a hearing if it needed one and “endeavor to issue an order or other guidance to the parties on its resolution of the dispute(s) by 09/06/23,” at which point, if and to the extent that any assertions of privilege were overruled, the legislators in question would be re-deposed in order to get the answers previously withheld, *id.* ¶ 7, at 2. The Scheduling Order took pains to clarify that depositions needed to be scheduled and taken, and that not only would deposition obstructionism or slow-rolling not be tolerated, but the normal rules of deposition-scheduling etiquette would have to be relaxed substantially under the circumstances:

Given the extraordinarily truncated timeline of this case and the number of counsel involved, all counsel must be correspondingly extremely flexible regarding the scheduling of depositions. Witnesses being produced by counsel for a party should be made available for at least one date within two weeks of the request absent agreement or specifically described good cause; when a witness is not being produced by counsel for a party, if the subpoenaing/deposition-taking counsel provides at least three dates of availability to opposing counsel, the deposition may be taken on the date objected to by counsel for the fewest parties. No proposed date should be rejected due to the unavailability of lawyers when at least one lawyer is available (including to attend remotely) for Plaintiffs and one for any Defendant. Counsel taking depositions should make telephonic appearance possible even for in-person depositions unless it is impracticable, and all recordings of depositions should be produced promptly to any counsel who requests it as soon as the recording is available.

Scheduling Order ¶ 4, at 3. The Scheduling Order set a discovery-termination date of September 13 and required submissions of evidence two days later, with rebuttal five days after that. *See id.* ¶¶ 8-10, at 2.

On July 14 (the Friday before the Court’s Monday scheduling conference), the Legislative Defendants reached out to the Plaintiffs to propose the idea of appointing a special master to rule on legislative-privilege issues in the deposition context. This master would be on call during depositions to rule on invocations of the privilege, which would then obviate the need for

legislators to be deposed twice. The Plaintiffs were amenable to the idea, and the parties quickly agreed on four names to submit to the Court. On the Sunday before the scheduling conference, the Legislative Defendants emailed the Court both to transmit the agreed Scheduling Order — which at that point contained no reference to a special master, as the idea had come up late in the game — and to propose the idea of a special-master appointment. *See* Email from Leg. Defs’ Counsel to Court Re: “DRAFT Proposed Scheduling Order” (dated July 16, 2023) (Exhibit 2 to this Motion). The Legislative Defendants told the Court that, “[a]ssuming the Court approves such an appointment, the parties would submit an order for the Court’s approval appointing the special master who had accepted that role.” *Id.* (Ex. 2).

At the Monday scheduling conference, the Court accepted the idea of a special master, although it ultimately entered the Scheduling Order without explicit reference to that appointment. The parties agreed on the wording of a joint email to use to reach out to three of the four names proposed,² and unfortunately all three were unable to take the appointment: former state judge Jim Hall is “fully retired”; former federal judge William Lynch is “traveling much of August and September”; and former federal judge Alan Torgerson determined that his firm had previously “represented someone who [he was] confident will be a witness in this case.” The Legislative Defendants then proposed two new names to reach out to — former Fifth Judicial District Judge William Shoobridge and former state Court of Appeals Judge Linda Vanzi — to which the Plaintiffs agreed; the parties also agreed that it would be acceptable to reach out immediately without awaiting court approval of the two new names, and on July 30 the Plaintiffs drafted and circulated a revised joint email to send to them. *See* Depo Emails at 3-4 (Ex. 1).

² One of the names, former federal judge Bruce Black, was believed by the Legislative Defendants to have a conflict that would prevent his appointment.

During this time — starting before the scheduling conference and extending up to the day before the Legislative Defendants’ pronouncement that no legislator depositions would take place — the Plaintiffs asked early and often for dates to take the depositions of three centrally important legislators being personally represented by (*i.e.*, produced by) counsel for the Legislative Defendants: S.B. 1 main sponsor Joseph Cervantes, then-Speaker of the House Brian Egolf, and Senate President Pro Tempore Mimi Stewart. *See* Email from Plfs’ Counsel to Defense Counsel at 1 (dated July 12) (Exhibit 3 to this Motion) (“We would at this point also like to request dates for the depositions of Brian Egolf, Mimi Stewart, and Joseph Cervantes”); Email Exchange Between Plfs’ Counsel & Leg. Defs’ Counsel Re: “Depos and special master” at 1 (dated July 25, 2023) (Exhibit 4 to this Motion) (“Special Master Emails”) (“Have you been able to secure dates for Egolf, Stewart, and Cervantes? More broadly, could you please give me an answer on who (legislator-wise) you’ll be representing so that we can serve and schedule through you”); Depo Emails at 3 (dated July 30) (Ex. 1) (“I’m following up again for dates on Egolf, Cervantes, and Stewart.”). The Legislative Defendants largely ignored these entreaties, but when they finally did answer them, they stated the reason for delay was that “we should have the Special Master nailed down and briefed before depositions” are taken. Special Master Emails at 1 (Ex. 4).

On Saturday, July 29, the Plaintiffs sent document-request-only subpoenas to the vast majority (68 of approximately 75) of Democratic members of the 2021 Legislature; the document requests/topics in these subpoenas were identical to one another, and largely directed the recipients to run certain search terms on certain date ranges of emails. *See* Example Subpoena Packet (directed to Rep. Patricia Roybal Caballero, but identical to all others) (Exhibit 5 to this Motion) (containing a cover letter,³ subpoena, and an exhibit containing the actual topics/requests/

³ It should be noted that the subpoena packet goes out of its way to explain to the recipients the background of the litigation (the Scheduling Order and the Supreme Court’s order are enclosed), their

searches). Four days later, on Wednesday, August 2, the Plaintiffs served additional subpoenas on six of the remaining Democratic legislators (bill sponsors or individuals in leadership), four political consultants, the main progressive advocacy group responsible for lobbying for the creation of Concept H and the passage of S.B. 1, and the mapping-consultant firm used by the Citizen Redistricting Committee and the Legislature; these subpoenas differed from each other and the past set of subpoenas and were tailored to the specific individuals to whom they were directed.⁴

The Legislative Defendants claim to view either the number of individuals subpoenaed or the breadth of the search terms as unreasonable, and are using the subpoenas as the basis to refuse to participate in any depositions (although the nexus between their alleged grievance and their chosen remedy has never really been made clear). The Monday after the service of the first round of subpoenas (July 31), the Legislative Defendants wrote the following to the Plaintiffs:

The Legislative Defendants' consent to pursue assignment of a special master in this matter was based on your repeated representations about the Plaintiffs' intent to conduct relatively limited and targeted discovery. It was only late Saturday night that we learned instead that Plaintiffs have issued no fewer than 65 subpoenas to virtually every member of the Democratic caucus in both houses, seeking documents that go to the heart of the legislative privilege and directing each legislator to provide you with their availability for questioning. In light of this approach you are now taking, it simply does not make sense for the parties to use a special master. Rather, we need to get the legislative privilege issues teed up before

options for representation, and that they “may have . . . a colorable claim of what is known as ‘legislative privilege’ under the state constitution’s Speech or Debate Clause.” Subpoena Packet Cover Ltr. at 1 (Ex. 5). It also specifically points out the main case-specific deviations from normal practice, like the reduction from the normal 14 days to 10 days in the amount of time the recipient has to interpose privilege-based objections. *See id.* at Cover Ltr. 2 (bolded) & Subpoena 4 (red type) (Ex. 5).

⁴ The Plaintiffs had previously prepared individually-tailored subpoenas for the first 68 legislators, but made the deliberate decision to make them identical in order to increase the efficiency of litigating objections. *See Depo Emails at 2* (Ex. 1) (describing the Plaintiffs decision to “switch from an approach where we requested different (and more burdensome) topics from (a smaller number of) different people, to one where we requested the same (narrower) topics of everyone — which has obvious efficiencies for litigation”).

the Court as quickly as possible, and we intend to do so. Nor does it make sense to schedule any legislator depositions until we have a final ruling on these issues, given the nature of the requests in the subpoenas.

Depo Emails at 2-3 (Ex. 1). The Plaintiffs responded the same day, pointing out that: **(1)** the special master was proposed by the Legislative Defendants, so describing it as something they “consent[ed]” to suggests unfamiliarity with this process; **(2)** the Scheduling Order clearly “requires [them] to make each of the 3 deponents available ‘for at least one date within two weeks of the request,’” which had first been made 19 days earlier; and **(3)** no representations were ever made that the Plaintiffs would not pursue far-ranging discovery. Depo Emails at 1-2 (Ex. 1) (quoting Scheduling Order ¶ 4, at 3). Counsel for the Legislative Defendants wrote back the next day confirming that they “represent Egolf, Stewart and Cervantes” — effectively preventing the Plaintiffs from just subpoenaing them to a deposition, or contacting them informally — and

reiterate[d] that in light of the approach you are taking with the subpoenas, which are not at all narrow and seek documents and communications at the heart of the privilege from every rank and file member of the Democratic caucus, we need to get a final ruling from the court on legislative privilege before any legislator depositions take place. We will certainly seek to expedite that briefing to the extent possible.

Depo Emails at 1 (Ex. 1) (dated Aug. 1). The Legislative Defendants did not elaborate on their prior “repeated representations” claims.

Expecting that, given the “extraordinarily truncated timeline” here, “as quickly as possible” would mean, say, that same day or the next day, the Plaintiffs waited until Thursday, August 3 to receive the promised “expedite[d]” briefing before seeking the Court’s intervention. No such briefing has yet materialized.

ARGUMENT

There really is not much to ‘argue’ on the motion-to-compel portion of this Motion. When the Court ordered that counsel produce their clients for depositions “within two weeks of [a] request” being made, it intended that those deponents be produced on the timeline stated — not after “get[ting] a final ruling from the court on legislative privilege,” Depo Emails at 1 (Ex. 1), especially given that the Scheduling Order itself says that such a ruling likely won’t come until September, *see* Scheduling Order ¶ 7, at 2 (“The court may . . . set a hearing on any motion(s) to compel, including regarding legislative privilege, and will endeavor to issue an order or other guidance to the parties on its resolution of the disputes by 09/06/23.”). It is hardly a surprise to the parties that the legislative privilege has come up; no fewer than three full paragraphs of the Scheduling Order are devoted to outlining a somewhat elaborate procedural framework for litigating this exact issue. *See id.* ¶ 4, at 1; *id.* ¶¶ 7 & 1, at 2. Nor was it a mystery that legislators were going to be deposed in this case, or that the “[w]itnesses being produced by counsel” (subject to strict timing obligations under the order) would include legislators — who else would counsel for “the Legislative Defendants” possibly be “produc[ing]”? *Id.* ¶ 4, at 3.

There is little rejoinder for the commonsense propositions in this motion, *e.g.*: **(1)** a party cannot unilaterally shut off discovery, or any component of it (here, arguably the largest and most significant component); **(2)** court orders cannot be disregarded at one party’s discretion; **(3)** one side’s view about the other side’s overuse of written discovery (document subpoenas on *non-parties*, so there is not even a burdensomeness issue here), even if correct, does not justify refusing to participate at all in a completely separate type of discovery; and **(4)** if a party does not want a special master to expedite the resolution of discovery issues, it should not propose appointing a special master both to the other side and to the Court, and it should especially not cause the other

side to continually reasonably rely on the expectation that depositions will be forthcoming once a special master is appointed. *See generally* Rule 1-037(B)(2) NMRA (authorizing sanctions when “a party . . . fails to obey an order to provide or permit discovery, . . . or if a party fails to obey an order under Rule 1-026”); *id.* 1-037(D)(1) (covering deposition non-appearance specifically).

It remains the Plaintiffs’ position that either this Court or a special master could manage these super-expedited discovery and pretrial proceedings equally well — but one or the other will clearly have to manage the case actively to ensure it stays on pace. The Plaintiffs would frankly prefer the Court, but they understand that the Court (unlike the special masters the Legislative Defendants proposed) has a full docket of other cases to manage at the same time. Regardless, this dispute underscores the need for oversight and rapid decision-making on discovery issues: the Legislative Defendants’ actions here are an aggressive form of obstructionism, and they will almost certainly succeed in delaying the Plaintiffs’ efforts to depose the three leading figures of this gerrymander (which date back to July 12) for over a full month. This case cannot spare that kind of time-wasting.

To summarize the relief being requested here: *First*, the Court should appoint a special master,⁵ either by handling the appointment itself or giving detailed instructions to counsel on how and to whom to reach out and what the scope of the master’s authority should be.⁶ Given the sudden breakdown in collaboration, it would be preferable if the Court could handle more rather

⁵ The New Mexico Supreme Court “has left the appointment of special masters ‘entirely to the discretion of the district judge in civil cases.’” *Schwartzman v. Schwartzman*, 1983-NMSC-010, ¶ 17, 99 N.M. 436, 659 P.2d 888 (citation omitted). Even if there were a meaningful legal standard for when appointment of a special master is proper, the Legislative Defendants have very clearly waived any right to object.

⁶ Although the application of the putative legislative privilege in the deposition context is the single most obvious discrete area where a special master would clearly be useful, prompt resolution is needed of all discovery disputes, so the Court should have the master’s mandate extend to all discovery disputes.

than less (or allow the Plaintiffs to handle these tasks). The parties have agreed on Judges Vanzi and Shoobridge, so they would be a logical starting point in terms of who to appoint, but if neither of them is available then the Court has full authority to select its own master. *Second*, the Court should order counsel for the Legislative Defendants to produce the legislators they represent for depositions that should *all* be taken within the next two weeks, and the Court should clarify again — perhaps in even stronger, more-specific language than ¶ 4 of page 3 of the Scheduling Order already does — that no party has the right to obstruct or refuse to allow the deposition of a witness they do not represent, including a legislator, and including by refusing to supply compliant dates of availability in a timely fashion. *Third*, either this Court or the special master should set regular (the Plaintiffs propose weekly) hearings in order to hear and rule quickly on any issues that may arise, and to prevent the interstitial delays inherent in normal motions practice from allowing obstructionist practices to eat up our little remaining time. *Finally*, the Court should make clear to the parties that, if this case reaches the point of disposition with large swaths of discoverable material not produced, adverse inferences are as appropriate in this case as in any other. Rarely does a party adopt entrenched resistance to discovery if it has nothing to hide, and if the truncated timeline of this case is deliberately exploited to prevent the acquisition of information to which the parties are lawfully entitled, it is both reasonable and necessary to infer that the information would have been harmful to the contumacious or obstructionist individual.

CONCLUSION

This case's timeline allows the Plaintiffs less than two months of discovery to compile evidence of intent by the wrongdoers — who possess all the relevant information, much of which they are understandably reluctant to disclose because it is bad for them. Their obvious incentives for delay now find a shield in a never-before-recognized privilege, which they are attempting to

use to maximum dilatory effect. Under the circumstances, the typical informal negotiations between counsel cannot bear fruit quickly enough to meet the needs of the case.

No party should be permitted to run out the clock here. As the Legislative Defendants should know better than anyone, while the gerrymander is a tool reserved for the majority, only the minority can successfully employ the filibuster.

Respectfully submitted,

HARRISON & HART, LLC

By: 

Carter B. Harrison IV
924 Park Avenue SW, Suite E
Albuquerque, NM 87102
Tel: (505) 295-3261
Fax: (505) 341-9340
Email: carter@harrisonhartlaw.com

Attorneys for the Plaintiffs

Exhibits to This Motion

- Ex. 1: Depo Emails (4 pages)
- Ex. 2: Legislative Defs' Email to the Court Re: Special Master (1 page)
- Ex. 3: Plfs' 1st Request for Deposition Dates (1 page)
- Ex. 4: Special Master Emails (2 pages)
- Ex. 5: Sample Subpoena Packet (14 pages)

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August 2023, I submitted the foregoing Motion electronically via the Court's Odyssey filing system, and when doing so I selected the option for automated electronic service of the certified document, which will occur on the date the clerk's office formally files the document.

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV
Carter B. Harrison IV

Carter B. Harrison IV

From: Sara Sanchez <ssanchez@peiferlaw.com>
Sent: Tuesday, August 1, 2023 1:26 PM
To: Carter B. Harrison IV; Mark Baker; Lucas Williams; rolson@hinklelawfirm.com
Cc: Mark Allen; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV; Ann Tripp; peter.auh@sos.nm.gov
Subject: RE: Redistricting: Depo dates and special master

Carter,

You are correct that my firm and Hinkle represent Egolf, Stewart and Cervantes. I'll just reiterate that in light of the approach you are taking with the subpoenas, which are not at all narrow and seek documents and communications at the heart of the privilege from every rank and file member of the Democratic caucus, we need to get a final ruling from the court on legislative privilege before any legislator depositions take place. We will certainly seek to expedite that briefing to the extent possible.

Thank you,
Sara

Sara N. Sanchez

Peifer, Hanson, Mullins & Baker, P.A.
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From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Monday, July 31, 2023 3:45 PM
To: Sara Sanchez <ssanchez@peiferlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com
Cc: Mark Allen <mallen@nmag.gov>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; Ann Tripp <atripp@hinklelawfirm.com>
Subject: RE: Redistricting: Depo dates and special master

Hi Sara,

The special master was the Legislative Defendants' idea (although I thought it was a good one). I don't know what 'repeated representations' you're referring to, but since I think your side (Lucas) has been working with me in good faith, I'll do the best I can to clear up any confusion: I've always wanted extensive fact discovery

on asked whether I thought this could be done with fewer than 10 depositions, and I gave him an answer that was tentative but closer to a ‘no’ than a ‘yes’), although the Party has resource constraints given the cyclical nature of political-party funding (a lot of my work to date has been scrounging for national resources), which I’ve also shared, and I’m still not sure how many depositions will be required (of the 68 I sent out, we won’t successfully serve everyone, of those we serve some will be cooperative but not worth deposing, some will be uncommunicative and not worth following up with, etc.). When I foreshadowed on the phone (on Thurs. or Fri.) that we’d be sending out SDTs to legislators, I did tell Lucas that we were ‘trying to be a little discriminating’ about who we served, but we ultimately opted to switch from an approach where we requested different (and more burdensome) topics from (a smaller number of) different people, to one where we requested the same (narrower) topics of everyone — which has obvious efficiencies for litigation. Beyond that, I’m unclear what you’re referring to (I don’t believe you and I have ever talked).

On your end, my understanding was that you would be producing the 3 deponents I’ve been asking for for weeks now, and that they’d assert the privilege on a question-by-question basis — Lucas may have used tentative/non-committal language in saying that, but the whole reason you guys came up with the special master idea was to avoid the inefficiency of potentially having to sit deponents twice. I contend that our scheduling order (which we agreed on before the special master idea was floated) requires you to make each of the 3 deponents available “for at least one date within two weeks of the request.” Scheduling Order ¶ 4, at 3. I suppose I should also confirm at this point what we’ve talked about on the phone (and emailed about, but there it’s just been me repeatedly emailing you): the Legislative Defendants will be producing (or not producing; I’m just clarifying their party/represented status here) Brian Egolf, Mimi Stewart, and Joseph Cervantes, correct?

If you have time this afternoon or tomorrow morning for a phone call, I would appreciate it.

Best,
Carter

Carter B. Harrison IV
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From: Sara Sanchez <ssanchez@peiferlaw.com>

Sent: Monday, July 31, 2023 8:44 AM

To: Carter B. Harrison IV <carter@harrisonhartlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com

Cc: Mark Allen <mallen@nmag.gov>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; Ann Tripp <atripp@hinklelawfirm.com>

Subject: RE: Redistricting: Depo dates and special master

Carter:

The Legislative Defendants’ consent to pursue assignment of a special master in this matter was based on your repeated representations about the Plaintiffs’ intent to conduct relatively limited and targeted discovery. It was only late Saturday night that we learned instead that Plaintiffs have issued no fewer than 65 subpoenas to virtually every member of the Democratic caucus in both houses, seeking documents that go to the heart of the legislative privilege and directing each legislator to provide you with their availability for questioning. In light of this approach you are now taking, it simply does not make sense for the parties to use a special master. Rather, we need to get the legislative

privilege issues teed up before the Court as quickly as possible, and we intend to do so. Nor does it make sense to schedule any legislator depositions until we have a final ruling on these issues, given the nature of the requests in the subpoenas.

As for Justice Chavez, we do not represent him and cannot speak for him in response to your request for his deposition.

Thank you,
Sara

Sara N. Sanchez

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From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Sunday, July 30, 2023 2:38 AM
To: Sara Sanchez <ssanchez@peiferlaw.com>; Mark Baker <mbaker@peiferlaw.com>; Lucas Williams <LWilliams@hinklelawfirm.com>; rolson@hinklelawfirm.com
Cc: Mark Allen <mallen@nmag.gov>; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>
Subject: Redistricting: Depo dates and special master

Counsel:

Please let me know which of August 14, 15, and 25 works best for the deposition of Ed Chavez. Also, I'm following up again for dates on Egolf, Cervantes, and Stewart.

On our special-master hunt, I propose we send the following to former judges Vanzi and Shoobridge:

The New Mexico Supreme Court recently remanded litigation over whether the 2021 congressional-redistricting plan constitutes an unconstitutional partisan gerrymander to the District Court, namely Judge Fred Van Soelen of Clovis. The Supreme Court briefly outlined the parameters of a partisan-gerrymandering claim and instructed the District Court to bring the case to final judgment by October 1 (order attached), and Judge Van Soelen has since entered a scheduling order (attached) and accepted, at the scheduling conference preceding the entry of the order, the parties' proposal that a special master be appointed to rule on discovery disputes — most specifically assertions of legislative privilege at depositions, which we know to a virtual certainty will arise.

The parties are now jointly reaching out to you and one other retired state judge to gauge whether you would be willing and able to serve in this role. There will likely be a number of depositions throughout August and extending into September, and the hope would be that the master would be generally available on-call to referee disputes; the

master may wish to order advance briefing, as the state-constitutional provision at issue, the Speech & Debate Clause, N.M. Const. art. IV, § 13, has never been subject to judicial interpretation.

If you are willing and able to take on the appointment, we would appreciate it if you would let us know. Our only preference between the two of you is for the one who believes they are most well-situated to take the appointment.

Respectfully,

If that's acceptable, please let me know.

Best,
Carter

Carter B. Harrison IV
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Fax: (505) 341-9340

Carter B. Harrison IV

From: Lucas Williams <LWilliams@hinklelawfirm.com>
Sent: Sunday, July 16, 2023 9:04 PM
To: cloddiv3criminalproposedtxt@nmcourts.gov
Cc: Rich Olson; Sara Sanchez; Ann Tripp; Mark Baker - Peifer, Hanson & Mullins, P.A. (mbaker@peiferlaw.com); Carter B. Harrison IV; gorence@golaw.us; Holly Agajanian GOV; Duffy, Kyle, GOV; Michael Browde; Luis Stelzner; mallen@nmag.gov
Subject: D-506-CV-2022-00041 (Redistricting): DRAFT Proposed Scheduling Order
Attachments: 2023-07-16 - DRAFT Proposed Scheduling Order.docx

Dear Judge Van Soelen:

Defendants and Plaintiffs have drafted the attached scheduling order for the Court's consideration at the July 17, 2023, 1:00 PM hearing.

Because of the Court's preexisting obligations, the parties have contemplated the appointment of a special master to address time sensitive disputes that may arise in fact or expert depositions related to legislative intent and privilege. Candidates being discussed include retired Judges Jim Hall, Alan Torgerson, Bruce Black, and William Lynch. Assuming the Court approves such an appointment, the parties would submit an order for the Court's approval appointing the special master who had accepted that role. The appointment of a special master may also assist in resolving discovery issues contemplated in the first proposed modification to the normal rules of practice.

The parties look forward to discussing the proposed scheduling order with the Court tomorrow.

Very truly yours,

Lucas M. Williams



Lucas Williams, Esq. | Partner | [Hinkle Shanor LLP](#) | P.O. Box 10 | Roswell, New Mexico 88202-0010 | (575) 622-6510 office | (575) 627-2497 direct | lwilliams@hinklelawfirm.com

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Carter B. Harrison IV

From: Carter B. Harrison IV
Sent: Wednesday, July 12, 2023 7:43 PM
To: rolson@hinklelawfirm.com; Lucas Williams; Ann Tripp; Sara Sanchez; Mark Baker; Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV; mallen@nmag.gov; mbrowde@me.com; pstelzner01@gmail.com
Cc: gorence@golaw.us; Daniel Gallegos; Amanda Bustamante
Subject: Redistricting Litig.: Edits to proposed scheduling order
Attachments: 2023-07-12 Scheduling Order (Defs' Draft + Plfs' Clean Edits).docx; 2023-07-12 Scheduling Order (Defs' Draft + Plfs' Redline Edits).docx

Counsel:

Please take a look at the redlined and edited-but-clean versions of the scheduling order sent to me by Lucas Williams earlier this afternoon. I hate to do this, but I would like to get something in front of Judge Van Soelen by midnight tomorrow, whether we have a perfect agreement or not. I am free all day for a call; my cell is 901-230-3556.

We would at this point also like to request dates for the depositions of Brian Egolf, Mimi Stewart, and Joseph Cervantes, although, other than Sen. Stewart, it is not clear whether you all will be producing those folks or whether we should subpoena them; please let me know.

I am going to be joined on this case by Bob Gorence (copied on this email), who will be entering his appearance here shortly.

Best,
Carter

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Tel: (505) 295-3261
Fax: (505) 341-9340

Carter B. Harrison IV

From: Lucas Williams <LWilliams@hinklelawfirm.com>
Sent: Tuesday, July 25, 2023 4:13 PM
To: Carter B. Harrison IV; Rich Olson; Mark Baker; Sara Sanchez
Cc: Holly.Agajanian@state.nm.us; Duffy, Kyle, GOV; Mark Allen
Subject: Re: Redistricting: Depos and special master

Carter,

Sara and Mark will be taking lead on the depositions.

Insofar as the Special Master is concerned, I think its a good idea for us to reach out jointly to these fellows and gauge availability and interest. We are exploring whether there may be a conflict with J. Black's involvement but had not yet fleshed that out. While we do that, what are your thoughts about reaching out to J's Hall, Lynch, and Torgerson first?

Also, it seems that **we should have the Special Master nailed down and briefed before depositions** so that he has time to consider the briefs. What are your thoughts?

Very truly yours,

Lucas M. Williams



Lucas Williams, Esq. | Partner | [Hinkle Shanor LLP](#) | P.O. Box 10 | Roswell, New Mexico 88202-0010 | (575) 622-6510
office | (575) 627-2497 direct | lwilliams@hinklelawfirm.com

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From: Carter B. Harrison IV <carter@harrisonhartlaw.com>
Sent: Tuesday, July 25, 2023 12:17 PM
To: Lucas Williams <LWilliams@hinklelawfirm.com>; Rich Olson <ROlson@hinklelawfirm.com>; Mark Baker <mbaker@peiferlaw.com>; Sara Sanchez <ssanchez@peiferlaw.com>
Cc: Holly.Agajanian@state.nm.us <Holly.Agajanian@state.nm.us>; Duffy, Kyle, GOV <Kyle.Duffy@state.nm.us>; Mark Allen <mallen@nmag.gov>
Subject: Redistricting: Depos and special master

Counsel:

Now that we have our scheduling order, we would like to start scheduling depositions. **Have you been able to secure dates for Egolf, Stewart, and Cervantes?** More broadly, could you please give me an answer on who (legislator-wise) you'll be representing so that we can serve and schedule through you (I do not contend this makes them appropriate recipients of party-discovery under Rules 33-36).

Finally, it doesn't appear that the Court made a decision on the mechanics of setting up a special master, which I assume means he just wants to sign the order. I would like to reach out jointly to the folks discussed to see who's available and willing; I can circulate something shortly unless your side wanted to take the first crack at it.

Best,

Carter B. Harrison IV
HARRISON & HART, LLC
924 Park Avenue SW, Suite E
Albuquerque, New Mexico 87102
Tel: (505) 295-3261
Fax: (505) 341-9340

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

July 28, 2023

The Honorable Patricia Roybal Caballero
House of Representatives of the State of New Mexico
9600 Central Avenue SW, Apt. 51
Albuquerque, NM 87121

Re: Subpoena for Documents in the Congressional-Redistricting Litigation

Dear Rep. Roybal Caballero:

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

PLAINTIFF'S
EXHIBIT

5

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).

Rep. Patricia Roybal Caballero
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. Patricia Roybal Caballero
House of Representatives of the State of New Mexico
9600 Central Avenue SW, Apt. 51
Albuquerque, NM 87121

YOU ARE HEREBY COMMANDED ON:

Date: By August 14, 2023 Time: By 12:00 p.m.
*(Or 14 days from service,
whichever is later.)*

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.