



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MIMI STEWART,

Petitioner,

v.

Case No: S-1-SC-40573

District Court Case No.:

D-202-CV-2022-01805

THE HON. DANIEL J. RAMCZYK,

Respondent/District Court Judge,

and

JACOB CANDELARIA,

Real Party in Interest ("RPI").

**RESPONSE BY REAL PARTY IN INTEREST JACOB CANDELARIA TO
WRIT OF SUPERINTENDING CONTROL AND REQUEST FOR STAY**

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I. PRELIMINARY MATTERS

1. RPI joins with Respondent Judge Ramczyk's argument and requests that this Court should not grant Ms. Stewart's Petition because Petitioner has adequate remedies available to her through the ordinary appellate process. [Ramczyk Response *generally*].
2. RPI also agrees with Respondent Judge Ramczyk that this case does not present issues that implicate fundamental rights, the public interest, or an erroneous, arbitrary, and tyrannical order by the lower courts for which the ordinary appellate process does not provide an adequate remedy. [Ramczyk Response *generally*].
3. On this point, Petitioner Stewart presents no argument why the ordinary appellate procedures that Respondent Judge Ramczyk discusses provide her with a wholly inadequate remedy or why she elected not to pursue an Interlocutory Appeal or Writ of Error with the Court of Appeals. [Petition *generally*].
4. This glaring omission alone should counsel strongly against granting the Petition, given this Court's policy of not considering undeveloped arguments on appeal. *Nguyen v. Khiem Bui*, 2023-NMSC-020, ¶ 20, 536 P.3d 482 (appellate courts do not review unclear or undeveloped arguments...this

Court will not promulgate case law based on our own speculation rather than the parties' carefully considered arguments.).

5. Petitioner's request for a stay is now moot, as RPI has agreed to entry of an Order by the District Court staying all discovery pending a decision from this Court on the Petition.
6. If the Court reaches the merits of the Petition, however, RPI agrees with Petitioner's argument that the District Court should not consider Ms. Stewart's subjective intent or motivations behind the retaliatory actions that she took in order to determine, a priori, if these actions are Legislative activities for which Ms. Stewart has absolute Legislative immunity. [Petition at pg. 12-14].
7. RPI took this same position before the District Court. [Exhibit A at parags. 5-6].
8. RPI agrees that this Court should look to federal Court decisions—especially those by the U.S. Supreme Court—interpreting the Speech and Debate Clause of the United States Constitution, U.S. Const., art. 1, Section 6, to resolve this issue of first impression regarding the scope of the Speech and Debate Clause contained in the New Mexico Constitution, N.M. Const., art. IV, Section 13.

9. RPI also agrees with Petitioner that this Court applies a de novo standard of review to the District Court’s September 10, 2024 Order denying Petitioner’s Second Motion for Judgment on the Pleadings based upon Legislative Immunity.

II. ARGUMENT

Ms. Stewart's Retaliatory Actions are Not Legislative Activities

10. On the merits, the Court should reject Petitioner’s argument that the retaliatory actions she took in this case are within the heartland of Legislative activities—i.e. sponsoring, voting on, amending, debating, or substituting pieces of legislation—for which the federal or state constitution provide Ms. Stewart with immunity from suit.

11. The Supreme Court and Tenth Circuit Court of Appeals recognize important limits on the broad interpretation that is generally afforded to the federal Speech and Debate Clause.

12. To that end, the Supreme Court held in *United States v. Brewster*, 408 U.S. 501, 508 (1972):

“Our speech or debate privilege was designed to preserve legislative independence, not supremacy. Our task therefore, is to apply the Clause in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government.”

13. The broad interpretation afforded to the federal Speech and Debate Clause includes anything “generally done in a session of the House by one of its members in relation to the business before it.” *Brewster*, 501, 509 (1972).
14. Legislative activities that are political in nature—such as making appointments with Government agencies, assistance in securing Government contracts, preparing letters to constituents, news releases, and speeches delivered outside of Congress—do not enjoy the protection afforded by the Speech and Debate Clause because they are not “generally done in a session of the House by one of its members in relation to the business before it.” *Brewster*, 501, 512-513 (1972).
15. The Tenth Circuit Court of Appeals has recognized similar place and subject matter limits on the broad protections afforded by the Speech and Debate Clause:

“[T]he above “broad” constructions of the Speech or Debate Clause have always been confined within the limits of formal, official proceedings. This limitation has been recognized from *Kilbourn*, 103 U.S. at 204 (describing object of Clause as “things generally done in a session of the House by one of its member in relation to the business before it”) to *Johnson*, 383 U.S. at 172 (attempts to influence executive agency are outside Clause’s scope) to *Brewster*, 408 U.S. at 512 (the “Clause prohibits inquiry only into those things generally said or done in the House or Senate in the performance of official duties and into the motivation for those acts”), to *Gravel*, 408 U.S. at 625 (“insofar as the Clause is construed to reach other matters [than

speech or debate in either House], they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House"), and to *Proxmire*, 443 U.S. at 126 ("this privilege is strictly confined to things done in the course of parliamentary proceedings, and does not cover things done beyond the place and limits of duty" (quoting Story)). The expression summarizing this proposition is that the Clause protects only "legislative," not "political," acts. See *Brewster*, 408 U.S. at 512." *Bastien v. Office of Campbell*, 390 F.3d 1301, 1315 (10th Cir. 2004)

16. The Court may inquire into the nature of the acts at issue, and the function of the Legislator in committing those acts, and this does not conflict with the long-held principle that a legislator's subjective motives are not a proper consideration for deciding the availability of Legislative Immunity. *Kamplain v. Curry Cty. Bd. of Com'rs*, 159 F.3d 1248, 1252 n.4 (10th Cir. 1998)
17. Here, the applicable U.S. Supreme Court and Tenth Circuit Court of Appeals precedence counsel against affording Ms. Stewart's retaliatory actions Legislative Immunity under either the federal or state Speech and Debate Clause.
18. When the allegations in the Complaint are accepted as true, Ms. Stewart's retaliatory actions are not speech made by Petitioner in either House of the

New Mexico Legislature in relation to Legislative business before either House. [Exhibit E at parags. 7, 26-34].

19. The location of a Senator's Office in the Roundhouse and their seat on the Senate floor are also not an integral part of the deliberative and communicative process by which Legislators participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

20. To wit, during the COVID-19 pandemic, the Senate allowed members to participate in committee meetings and floor sessions remotely from any place within the Roundhouse. [Exhibit One, *A Resolution Enacting and Suspending Certain Senate Rules to Allow for Remote Participation of Members in the Legislative Process and Allow for Public Participation and Safety During a Declared Public Health Emergency*, N.M. Senate, 55th Legislature-First Session, Senate Resolution No. 1 (2021)].

21. This confirms that decisions regarding the location of a Senator's Office or seat on the Senate Floor are not an "integral" part of the Legislative process; as this deliberative process can occur irrespective of where a Senator sits on the Senate floor or where their office is located.

22. The authority that Petitioner relies upon from other federal Circuit Courts of Appeal are, therefore, unpersuasive to the extent that they suggest that this Court should expand the scope of Legislative Immunity to include Petitioner's acts at issue in this case, which does not involve speech by Petitioner in either House regarding official business before either House, and did not effect a matter that is integral to the Legislative process.

23. The difference between the plain text of the Speech and Debate Clause found in the New Mexico Constitution and its federal analog also supports the conclusion that Ms. Stewart's retaliatory activities were political and not Legislative in nature, and are thus not entitled to Legislative immunity.

24. N.M. Const., art. IV, Section 13 states that:

“Members of the legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and on going to and returning from the same. And they shall not be questioned in any other place for any speech or debate or for any vote cast in either house.”

25. U.S. Const., art. 1, Section 6 states in relevant part that:

“The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and

for any Speech or Debate in either House, they shall not be questioned in any other Place.”

26. The framers of N.M. Const., art. IV, Section 13 enacted this provision against the backdrop of its federal analog.

27. By including the provision that the Legislative immunity provided by this Section includes “or for any vote cast in either House,” a provision not found in U.S. Const. art. 1, Section 6, provides strong textual evidence that the framers of N.M. Const., art. IV, Section 13 intended that our State’s Legislative immunity be available only for official acts taken by a member of the Legislature, during the proceedings of the Legislature, and regarding a matter before it—i.e. a matter requiring a vote.

Ms. Stewart has Admitted that her Retaliatory Actions were Administrative and not Legislative in Nature

28. Even if the Court concludes that Ms. Stewart’s retaliatory actions are generally Legislative activities for which a legislator may enjoy Legislative immunity, it should nonetheless deny Ms. Stewart’s request to dismiss this lawsuit because Petitioner has admitted that her actions were administrative—and not Legislative—in nature.

29. RPI believes the Court can also resolve this case on these grounds without actually having to reach the underlying constitutional question. *Schlieter v.*

- Carlos*, 1989-NMSC-037, ¶ 13, 108 N.M. 507, 775 P.2d 709 (“Courts will avoid deciding constitutional questions unless required to do so.”).
30. Ms. Stewart titled her email of August 6, 2021 “Administrative Notice.” [Exhibit E at parags. 26-29; Exhibit Two]. Petitioner herself has thus recognized that the actions she took against RPI fell outside of her Legislative function and were instead administrative activities.
31. The Court may consider the August 6, 2021 email on a Rule 1-012(C) Motion for Judgment on the Pleadings without converting the same into a Motion for Summary Judgment. *See, Tunis v. Country Club Estates Homeowners Ass'n*, 2014-NMCA-025, ¶ 46, 318 P.3d 713.
32. Petitioner concedes that she does not enjoy Legislative immunity for administrative actions, but now asks this Court to contort the intent and scope of Legislative immunity in a post-hoc attempt to avoid accountability.
33. The Court should not countenance such a self-interested volt face and interpretation of our State’s constitution.

III. CONCLUSION

WHEREFORE, RPI respectfully asks the Court to not issue a Writ of Superintending control because ordinary appellate procedures provide Petitioner with adequate relief.

Alternatively, if the Court reaches the merits of the Petition, RPI counsel respectfully asks the Court to deny the same and not dismiss the Complaint because: 1) the actions that Ms. Stewart took are political in nature, and are not Legislative activities—i.e. are not speech or debate in either House of the Legislature regarding official business before either House, and do not impact matters that are integral to the Legislative process; or, 2) Ms. Stewart has waived any claim that her actions are entitled to Legislative immunity by conceding in her August 6, 2021 email that her actions were administrative—not Legislative—in nature.

RPI lastly asks for any other forms of relief the Court deems just and proper.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I hereby certify that the body of this Response uses Times New Roman, a proportionally-spaced type style or typeface, and consists of 2,205 words as determined using the Google-Docs word count tool.

/s/ Jacob R. Candelaria

Jacob R. Candelaria
Real Party in Interest pro se

CERTIFICATE OF SERVICE

I hereby certify that I filed a true and correct copy of the foregoing Response with the Court's Odyssey Electronic File and Serve System on October 28, 2024 which thereafter caused a true and correct copy of the same to be electronically and promptly served upon all parties entitled to notice of the same, as more accurately set forth in the Court's record of electronic delivery.

/s/ Jacob R. Candelaria

Jacob R. Candelaria
Real Party in Interest pro se

SENATE RESOLUTION 1

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Linda M. Lopez

A RESOLUTION

ENACTING AND SUSPENDING CERTAIN SENATE RULES TO ALLOW FOR REMOTE PARTICIPATION OF MEMBERS IN THE LEGISLATIVE PROCESS AND ALLOW FOR PUBLIC PARTICIPATION AND SAFETY DURING A DECLARED PUBLIC HEALTH EMERGENCY.

WHEREAS, on March 11, 2020, because of the spread of coronavirus disease 2019, the governor declared that a public health emergency exists in New Mexico under the Public Health Emergency Response Act and invoked the governor's authority under the All Hazard Emergency Management Act; and

WHEREAS, the governor has renewed the declaration of a public health emergency due to the continued spread of coronavirus disease 2019 in New Mexico, with more than one hundred forty-one thousand cases documented and over one thousand three hundred deaths attributed to the coronavirus disease 2019 pandemic through December 2020; and

WHEREAS, numerous orders have been issued by the department of health to limit the spread of coronavirus disease 2019 within the state, including limitations on gatherings of more than five persons and recommendations on social distancing; and

WHEREAS, there is a continuing threat of community spread of the virus; and

EXHIBIT ONE

WHEREAS, Article 4, Sections 1 and 5 of the constitution of New Mexico require the legislature to convene at the seat of government and on the third Tuesday of January; and

WHEREAS, Article 4, Section 11 of the constitution of New Mexico provides that each house may determine the rules of its procedures; and

WHEREAS, allowing for the functional presence and full participation of members by simultaneous, remote electronic means during the current coronavirus disease 2019 pandemic in 2021 will help limit the risks to public health and safety inherent in the gathering of a large number of people from across the state in the state capitol; and

WHEREAS, any staff and members of the media that will be working in the state capitol will be required to be tested for coronavirus disease 2019 on a weekly basis, and senators will be strongly encouraged to do so in order to better ensure the safety of staff and members that may be present in the state capitol; and

WHEREAS, Article 4, Section 12 of the constitution of New Mexico requires that all sessions of the legislature be public, and the senate has provided public access via webcasting of all legislative proceedings and has provided for public participation and comment via electronic means for committee hearings; and

WHEREAS, the senate recognizes that the following rules may only be used during declared public health emergencies where health and safety require extraordinary measures be employed to prevent the spread of disease; and

WHEREAS, all three branches of government have implemented changes throughout the coronavirus disease 2019 pandemic to safely carry out their constitutional and statutory duties and provide services to the residents of the state via remote electronic means; and

WHEREAS, Senate Rule 24-1 provides that the rules of the senate may be amended by a two-thirds' majority vote of the members of the senate or by a

majority vote of the members of the senate upon the recommendation of the rules committee;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NEW MEXICO that the following new senate rules, effective for any sessions of the fifty-fifth legislature held in 2021 during the pendency of the coronavirus disease 2019 public health emergencies, be adopted to read:

"4-1-1 The presiding officer shall ensure that all members, staff, employees and guests who are physically present in the senate chambers follow proper social distancing, including by limiting the number of persons physically present, ensuring that those persons wear a mask that covers the mouth and nose, and not consume food in the senate chambers."; and

"6-1-1 The sergeant at arms shall ensure that all members, staff, employees and guests who are physically present in the senate gallery, senate committee rooms, rooms connected therewith, the senate lounge and the senate hallways shall follow proper social distancing, including by limiting the number of persons physically present and ensuring that those persons wear a mask that covers the mouth and nose and not consume food in those areas."; and

"7-1-1 A senator shall be considered to be present and in attendance for the purposes of establishing a quorum, doing business or voting during a floor session or a call of the senate if the member is physically present or participating by simultaneous, remote electronic means from within the capitol and is visually present as confirmed by the presiding officer of the senate. For purposes of a call, members who are present must vote on the legislation that is the subject of the call."; and

"7-1-2 A senator shall be considered to be present and in attendance for the purposes of establishing a quorum, doing business or voting

during standing committee meetings only if the member, as confirmed by the committee chair, is participating by simultaneous, remote electronic means and is visually present, or if participating by telephone is confirmed to be present by voice, whether the member is within the capitol or not.";

"7-1-3

A senator who has tested positive for coronavirus disease 2019 within ten days before or during a session or who has actual knowledge of a person who has tested positive for coronavirus disease 2019 with whom the senator has been in personal contact during that time shall inform the senator's respective floor leader or whip. The senator shall either be excused or shall self-isolate outside the capitol in the city of Santa Fe and participate by simultaneous, remote electronic means and be visually present or, if participating by telephone, confirm the senator's presence by voice. A senator who is self-isolating shall continue in self-isolation until advised by a medical professional that self-isolation is no longer necessary.";

"7-8-1

A senator who is participating by simultaneous, remote electronic means during a floor session and wishes to be recognized shall contact the presiding officer, who shall then add that member's name to the list of senators desiring to be recognized.";

"7-19

Members of the senate, staff, employees and guests shall wear face masks covering the mouth and nose when physically present in the senate, galleries, lobby, senate committee rooms and rooms connected therewith. Failure to do so shall constitute a violation of these rules, and violators are subject to disciplinary action and removal from the chamber or committee room. A senator removed from the senate chamber or committee room may participate remotely from the member's office.";

- "9-5-9 Meetings conducted by simultaneous, remote electronic means shall be staffed by one or more hosts to facilitate and allow participation by the committee, expert witnesses and members of the public. The chair may determine the duration of public comment allowed. Each standing committee may also accept public comment by email."; and
- "9-6-1 Notice of and the agendas for all standing committee meetings conducted by simultaneous, remote electronic means shall be posted at least twenty-four hours in advance of the meetings; provided that during the final two weeks of a session, notice and agendas shall be posted as soon as practicable in advance of the meeting."; and
- "11-9-2 Electronic signatures may be used by sponsors to sign bills, resolutions or memorials or amendments thereto."; and
- "11-21-1 Committee reports on a bill, resolution or memorial may be digitally signed and electronically transmitted from the committee to the chief clerk."; and
- "23-3-1 Accommodations for the press will be made in accordance with public health guidelines as outlined by the legislative council service."; and
- "23-8-2 If at any time during standing committee hearings or floor sessions the live audio and video stream from the state capitol of those sessions ceases to function, upon notice of the outage, the presiding officer shall immediately recess, subject to the call of the presiding officer, until the stream is able to resume."; and

BE IT FURTHER RESOLVED that Senate Rules 23-3 and 23-4-1 be suspended, effective for the remainder of the coronavirus disease 2019 public health emergency.



Jacob Candelaria <jacob@jacobcandelaria.com>

Administrative notice

Stewart, Mimi <Mimi.Stewart@nmlegis.gov>

Fri, Aug 6, 2021 at 5:03 PM

To: "Candelaria, Jacob" <Jacob.Candelaria@nmlegis.gov>

Cc: "Naranjo, Lenore" <Lenore.Naranjo@nmlegis.gov>, "Pacheco, David" <David.Pacheco@nmlegis.gov>

Dear Senator Candelaria,

This is to inform you that, over the next several weeks, there will be changes to your Capitol office and your Senate chamber seat assignment.

Our building services and our Chief Clerk Naranjo will be carrying out these changes. They will reach out to you regarding your personal items.

Sincerely,

Senator Mimi Stewart

Sent from my iPhone

EXHIBIT TWO