



1                   **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2   **July 5, 2023**

3                   **NO. S-1-SC-39481**

4                   **MICHELLE LUJAN GRISHAM in her**  
5                   **official capacity as Governor of the New Mexico,**  
6                   **HOWIE MORALES, in his official capacity as New**  
7                   **Mexico Lieutenant Governor and President of**  
8                   **New Mexico Senate, MIMI STEWART, in her**  
9                   **official capacity as President Pro Tempore of**  
10                   **the New Mexico Senate, and JAVIER MARTINEZ,**  
11                   **in his official capacity as Speaker of**  
12                   **the New Mexico House of Representatives,**

13                   Petitioners,

14                   v.

15                   **HON. FRED VAN SOELEN,**  
16                   **District Court Judge,**  
17                   **Fifth Judicial District Court,**

18                   Respondent,

19                   and

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

25                   Real Parties in Interest,

26                   and

27                   **MAGGIE TOULOUSE OLIVER,**

28                   Defendant-Real Party in Interest.

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1 **ORDER**

2 WHEREAS, this matter initially came on for consideration by the Court  
3 upon *verified petition for writ of superintending control and request for stay* and  
4 responses thereto;

5 WHEREAS, this Court granted the request for stay in D-506-CV-2022-  
6 00041 on October 14, 2022, and ordered the parties to file briefs on the issues  
7 presented in the *verified petition for writ of superintending control*;

8 WHEREAS, this Court heard arguments in this matter on January 9, 2023,  
9 and thereafter ordered the parties to file supplemental briefs addressing the issue of  
10 whether the New Mexico Constitution provides greater protection than the United  
11 States Constitution against partisan gerrymandering;

12 WHEREAS, this matter now comes before the Court upon the parties’  
13 supplemental briefs and motion to substitute public officer and amend caption;

14 WHEREAS, the Court having considered the foregoing and being  
15 sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil,  
16 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora  
17 concurring;

18 NOW, THEREFORE, IT IS ORDERED that the motion to substitute is  
19 GRANTED, and Javier Martinez shall be substituted for Brian Egolf as Speaker of  
20 the House;

1 IT IS FURTHER ORDERED that the caption on any further pleadings filed  
2 in this proceeding, if any, shall conform to the caption of this order;

3 IT IS FURTHER ORDERED that the *verified petition for writ of*  
4 *superintending control* is GRANTED with respect to Petitioners' request that this  
5 Court provide the district court guidance for resolving a partisan gerrymandering  
6 claim;

7 IT IS FURTHER ORDERED that the stay in D-506-CV-2022-00041 is  
8 hereby VACATED, and the district court shall take all actions necessary to resolve  
9 this matter **no later than October 1, 2023**;

10 IT IS FURTHER ORDERED that as a threshold matter, the district court  
11 shall conduct a standing analysis for all parties;

12 IT IS FURTHER ORDERED that in resolving this matter, the district court  
13 shall act in accordance with and apply the following holdings and standards as  
14 determined herein:

- 15 1. A partisan gerrymandering claim is justiciable under Article II,  
16 Section 18 of the New Mexico Constitution;
- 17  
18 2. A partisan gerrymandering claim under the New Mexico Constitution  
19 is subject to the three-part test articulated by Justice Kagan in her  
20 dissent in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2516 (2019);  
21
- 22 3. Clearly, a district drawn without taking partisan interests into account  
23 would not present a partisan gerrymander. *Cf.* N.M. Const. art. II, §§  
24 2, 3, 4. However, as with partisan gerrymandering under the  
25 Fourteenth Amendment, some degree of partisan gerrymandering is

1 permissible under Article II, Section 18 of the New Mexico  
2 Constitution. *Accord Rucho*, 139 S.Ct. at 2497. At this stage in the  
3 proceedings, it is unnecessary to determine the precise degree that is  
4 permissible so long as the degree is not egregious in intent and effect;  
5

- 6 4. Intermediate scrutiny is the proper level of scrutiny for adjudication of  
7 a partisan gerrymandering claim under Article II, Section 18 of the  
8 New Mexico Constitution. *See Breen v. Carlsbad Municipal Schools*,  
9 2005-NMSC-028, ¶¶ 11-15, 30-32, 138 N.M. 331, 120 P.3d 413;
- 10  
11 5. Under one-person, one-vote jurisprudence, some mathematical  
12 deviation from an ideal district population may be permissible as  
13 “practicable.” *Cf. Harris v. Ariz. Indep. Redistricting Comm’n*, 578  
14 U.S. 253, 258-59 (2016) (quoting *Reynolds v. Sims*, 377 U.S. 533, 579  
15 (1964)) (“The Constitution . . . does not demand mathematical  
16 perfection. In determining what is ‘practicable,’ we have recognized  
17 that the Constitution permits deviation when it is justified by  
18 ‘legitimate considerations incident to the effectuation of a rational  
19 state policy.’”);
- 20  
21 6. In the context of a partisan gerrymandering claim, a reasonable degree  
22 of partisan gerrymandering—taking into account the inherently  
23 political nature of redistricting—is likewise permissible under Article  
24 II, Section 18 and the Fourteenth Amendment;
- 25  
26 7. In evaluating the degree of partisan gerrymandering in this case, if  
27 any, the district court shall consider and address evidence comparing  
28 the relevant congressional district’s voter registration percentage/data,  
29 regarding the individual plaintiffs’ party affiliation under the  
30 challenged congressional maps, as well as the same source of data  
31 under the prior maps. The district court shall also consider any other  
32 evidence relevant to the district court’s application of the test  
33 referenced in paragraph 2 of this order.  
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35 IT IS FURTHER ORDERED that a writ of superintending control shall  
36 issue contemporaneously with this order; and  
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IT IS FURTHER ORDERED that an opinion in this matter shall follow.

IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of July, 2023.

Elizabeth A. Garcia, Clerk of Court  
Supreme Court of New Mexico

I CERTIFY AND ATTEST:  
A true copy was served on all parties  
or their counsel of record on date filed.  
Lysette Romero Córdoba  
Chief Deputy Clerk of the Supreme Court  
of the State of New Mexico

By *Lysette Romero Córdoba*  
Chief Deputy Clerk of Court