

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

2 **August 25, 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.

29 **AMENDED ORDER**

30 WHEREAS, this matter initially came on for consideration by the Court

1 upon *verified petition for writ of superintending control and request for stay* and
2 responses thereto;

3 WHEREAS, this Court granted the request for stay in D-506-CV-2022-
4 00041 on October 14, 2022, and ordered the parties to file briefs on the issues
5 presented in the *verified petition for writ of superintending control*;

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

10 WHEREAS, this matter now comes before the Court upon the parties'
11 supplemental briefs and motion to substitute public officer and amend caption;

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

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

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

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

5 IT IS FURTHER ORDERED that the stay in D-506-CV-2022-00041 is
6 hereby VACATED, and the district court shall take all actions necessary to resolve
7 this matter **no later than October 6, 2023**, including entry of a final, appealable
8 order, which shall set forth the court's findings of facts and conclusions of law;

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

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

- 14 1. A partisan gerrymandering claim is justiciable under Article II,
15 Section 18 of the New Mexico Constitution;
- 16 2. A partisan gerrymandering claim under the New Mexico Constitution
17 is subject to the three-part test articulated by Justice Kagan in her
18 dissent in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2516 (2019);
19
- 20 3. Clearly, a district drawn without taking partisan interests into account
21 would not present a partisan gerrymander. *Cf.* N.M. Const. art. II, §§
22 2, 3, 4. However, as with partisan gerrymandering under the
23 Fourteenth Amendment, some degree of partisan gerrymandering is
24 permissible under Article II, Section 18 of the New Mexico
25 Constitution. *Accord Rucho*, 139 S.Ct. at 2497. At this stage in the
26

1 proceedings, it is unnecessary to determine the precise degree that is
2 permissible so long as the degree is not egregious in intent and effect;
3

4 4. Intermediate scrutiny is the proper level of scrutiny for adjudication of
5 a partisan gerrymandering claim under Article II, Section 18 of the
6 New Mexico Constitution. *See Breen v. Carlsbad Municipal Schools*,
7 2005-NMSC-028, ¶¶ 11-15, 30-32, 138 N.M. 331, 120 P.3d 413;
8

9 5. In evaluating the degree of partisan gerrymandering in this case, if
10 any, the district court shall assess whether individual plaintiffs' party-
11 affiliated votes were in fact substantially diluted by the challenged
12 map by comparing objective district-specific data under that map
13 against analogous evidence under the prior congressional map. The
14 district court shall also consider any other evidence relevant to the
15 district court's application of the test referenced in paragraph 2 of this
16 order.
17

18 IT IS FURTHER ORDERED that a writ of superintending control shall
19 issue contemporaneously with this order;

20 IT IS FURTHER ORDERED that an opinion in this matter shall follow;

21 IT IS FURTHER ORDERED that following the district court's entry of its
22 final, appealable order on or before October 6, 2023, the Court of Appeals shall
23 certify the matter to this Court under Rule 12-606 NMRA upon the filing of a
24 notice of appeal, if any, under Rule 12-201 NMRA;

25 IT IS FURTHER ORDERED that upon this Court's acceptance of the
26 certification, the district court shall transmit the record proper, transcripts, and any
27 exhibits to this Court within fifteen (15) days;

28 IT IS FURTHER ORDERED that the parties shall file briefs in accordance
29 with the requirements in Rule 12-318 NMRA;

30 IT IS FURTHER ORDERED that the brief in chief shall be due fifteen (15)

1 days after notice from this Court that the record proper and transcripts have been
2 filed, with the answer brief due fifteen (15) days after service of the brief in chief,
3 and the reply brief, if any, due five (5) days after service of the answer brief; and

4 IT IS FURTHER ORDERED that oral argument may be requested pursuant
5 to Rule 12-319(B) NMRA.

6 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 25th day of August, 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

A handwritten signature in cursive script, appearing to read "Lysette Romero Córdoba".

Chief Deputy Clerk of Court

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