

STATE OF NEW MEXICO  
COUNTY OF LEA  
FIFTH JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO, et al.,  
Plaintiffs

v.

MAGGIE TOULOUSE OLIVER, et al.,  
Defendants.

No. D-506-CV-2022-00041

**ORDER DENYING LEGISLATIVE DEFENDANTS' AND  
EXECUTIVE DEFENDANTS' MOTIONS TO DISMISS**

THIS MATTER is before the Court on Defendants Mimi Stewart and Brian Egolf's ("Legislative Defendants") and Defendants Michelle Lujan Grisham and Howie Morales's ("Executive Defendants") Motions to Dismiss filed February 18, 2022 ("Motions to Dismiss"). The Court having considered the Motions to Dismiss, Plaintiffs' Combined Response to Defendants' Motions to Dismiss, Executive Defendants' Reply in Support, and Legislative Defendants' Reply in Support, and having called the matter for hearing on April 18, 2022, now DENIES the Motions to Dismiss.

1. Plaintiffs' Verified Complaint alleges a violation of the New Mexico Constitution's Equal Protection Clause, Article II, Section 18. Specifically, Plaintiffs allege that Senate Bill 1, the state law creating the new congressional districts in New Mexico, violates the state's Equal Protection Clause because it effects an unlawful political gerrymander.

2. The state's Equal Protection Clause mirrors the Fourteenth Amendment of the U.S. Constitution. Under the interstitial approach to constitutional interpretation, New Mexico's Constitution will only provide broader protections than the U.S. Constitution if the federal approach is unpersuasive because it is flawed or undeveloped. The relevant question here is whether Plaintiffs well-pleaded facts adequately raises an equal protection claim.

3. Legislative Defendants and Executive Defendants moved to dismiss the Verified Complaint under Rule 1-012(B)(1) and (6), NMRA, arguing the Court lacks jurisdiction over the subject matter and that Plaintiffs failed to state a claim upon which relief can be granted. Because the question of whether Plaintiffs' constitutional claim is justiciable giving the Court jurisdiction to hear the case is intertwined with whether Plaintiffs state a claim for which relief can be granted, the Court will address both question at the same time.

4. Both sides cite the U.S. Supreme Court's decision in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), which held that political gerrymandering claims are nonjusticiable in federal court because there was no consensus as to the standard to apply to political gerrymandering claims to determine how much partisanship is "too much." But *Rucho* also said that its conclusion did not foreclose possible court action at the state level where constitutional or statutory grounds may be available to address the issue.

5. Initially, it is the role of the court to decide constitutional claims, and this Court has jurisdiction to do so in this case. As the Supreme Court stated in *Marbury v. Madison*, "[i]t is emphatically the province and duty of the judicial department to say what the law is," 1 Cranch 137, 177 (1803), even if to later say that "this is not law," *Rucho*, 139 S. Ct. at 2508.

6. Next, in considering a motion to dismiss under Rule 1-012, the Court accepts as true all well-pleaded facts. Accepting the well-pleaded facts as true, Plaintiffs' Verified Complaint makes a strong, well-developed case that Senate Bill 1 is an unlawful political gerrymander that dilutes Republican votes in congressional races in New Mexico. As to the basis of Plaintiffs' claims, they cite to the traditional redistricting principles cited in *Maestas v. Hall*, 2012-NMSC-006, ¶ 34, and the standards in the Redistricting Act, § 1-3A-7(A) (2021), alleging the violation of these strictures give rise to their equal protection claim. The Court finds Plaintiffs make a strong, well-developed case that Senate Bill 1 does not follow traditional redistricting principles, including

lack of compactness, failure to preserve communities of interest, and failure to take into consideration political and geographic boundaries.

7. Defendants claim *Maestas* and the Redistricting Act do not apply to redistricting maps adopted by the Legislature and signed by the Governor, because *Maestas* applies to only court-drawn maps, and the Redistrict Act requirement are not binding on the Legislature, but rather serves only as a recommendation. Defendants further argue that New Mexico's Equal Protection Clause is the same as the federal analogue, citing *Vasquez v. Wal-Mart Stores, Inc.*, 1998-NMCA-030, which dealt with workers' compensation claims. While the New Mexico Court of Appeals did say both the federal and state Equal Protection Clauses offer the same level of protection in that area, this Court cannot say that *Vasquez* definitively answers the question in the case. Further, Plaintiffs cite *Harper v. Hall*, 2022-NCSC-17, a North Carolina Supreme Court case decided post-*Rucho*, where the court found equal protection violations (among other violations) in a partisan redistricting map.

8. Without deciding the merits of Plaintiffs' case, the Court finds it has jurisdiction to hear Plaintiffs' constitutional claim, and that Plaintiffs have stated a claim upon which relief can be granted. The Court therefore denies the Motions to Dismiss.

IT IS SO ORDERED.



HON. FRED VAN SOELEN  
DISTRICT JUDGE

**SUBMITTED BY:**

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By /s/ Eric R. Burris

Eric R. Burris  
Harold D. Stratton, Jr.  
201 Third Street NW, Suite 1800  
Albuquerque, New Mexico 87102-4386  
Emails: [eburris@bhfs.com](mailto:eburris@bhfs.com); [hstratton@bhfs.com](mailto:hstratton@bhfs.com)  
Telephone: (505) 244-0770  
Facsimile: (505) 244-9266

Julian R. Ellis, Jr. (*pro hac vice*)  
410 Seventeenth Street, Suite 2200  
Denver, Colorado 80202-4432  
Email: [jellis@bhfs.com](mailto:jellis@bhfs.com)  
Telephone: (303) 223-1100  
Facsimile: (303) 223-1111

Christopher O. Murray (*pro hac vice*)  
STATECRAFT PLLC  
1263 Washington Street  
Denver, CO 80203  
Email: [chris@statecraftlaw.com](mailto:chris@statecraftlaw.com)  
Telephone: (602) 362-0034

Carter B. Harrison, IV  
HARRISON & HART, LLC  
924 Park Avenue SW, Suite E  
Albuquerque, New Mexico 87102  
Email: [carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com)  
Telephone: (505) 312-4245  
Facsimile: (505) 341-9340

*Attorneys for Plaintiffs*

**APPROVED AS TO FORM BY:**

HINKLE SHANOR LLP

By *s/ Richard E. Olson* \_\_\_\_\_

Richard E. Olson  
Lucas M. Williams  
P.O. Box 10  
Roswell, NM 88202-0010  
Telephone: (575) 622-6510; Fax: (575) 623-9332  
Email: [rolson@hinklelawfirm.com](mailto:rolson@hinklelawfirm.com); [lwilliams@hinklelawfirm.com](mailto:lwilliams@hinklelawfirm.com)

PEIFER, HANSON, MULLINS & BAKER, P.A

Sara N. Sanchez  
Mark T. Baker  
20 First Plaza, Suite 725  
Albuquerque, NM 87102  
Telephone: (505) 247-4800  
Email: [mbaker@peiferlaw.com](mailto:mbaker@peiferlaw.com); [ssanchez@peiferlaw.com](mailto:ssanchez@peiferlaw.com)

STELZNER, LLC

Luis G. Stelzner  
3521 Campbell Ct. NW  
Albuquerque, NM 87104  
Telephone: (505) 263-2764  
Email: [pstelzner@aol.com](mailto:pstelzner@aol.com)

PROFESSOR MICHAEL B. BROWDE

751 Adobe Rd., NW  
Albuquerque, NM 87107  
Telephone: (505) 266-8042  
Email: [mbrowde@me.com](mailto:mbrowde@me.com)

*Counsel for Mimi Stewart and Brian Egolf*

GOVERNOR MICHELLE LUJAN GRISHAM AND  
LIEUTENANT GOVERNOR HOWIE MORALES

By *s/ Holly Agajanian* \_\_\_\_\_

Holly Agajanian  
*Chief General Counsel to*

*Governor Michelle Lujan Grisham*  
490 Old Santa Fe Trail, Suite 400  
Santa Fe, New Mexico 87501  
Telephone: (505) 476-2210  
Email: [holly.agajanian@state.nm.us](mailto:holly.agajanian@state.nm.us)

Kyle P. Duffy  
*Deputy General Counsel to*  
*Governor Michelle Lujan Grisham*  
490 Old Santa Fe Trail, Suite 400  
Santa Fe, New Mexico 87501  
Telephone: (505) 476-2210  
Email: [kyle.duffy@state.nm.us](mailto:kyle.duffy@state.nm.us)

Maria S. Dudley  
*Deputy General Counsel to*  
*Governor Michelle Lujan Grisham*  
490 Old Santa Fe Trail, Suite 400  
Santa Fe, New Mexico 87501  
Telephone: (505) 476-2210  
Email: [maria.dudley@state.nm.us](mailto:maria.dudley@state.nm.us)

*Counsel for Michelle Lujan Grisham and*  
*Howie Morales*

SECRETARY OF STATE  
MAGGIE TOULOUSE OLIVER

By *s/ Dylan K. Lange*  
Dylan K. Lange  
General Counsel  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87501  
Telephone: (505) 827-3600  
Email: [Dylan.lange@state.nm.us](mailto:Dylan.lange@state.nm.us)

*Counsel for the New Mexico Secretary of State*