

CHAMBERS OF
HON. FRED T. VAN SOELEN
DISTRICT JUDGE
Division III



CURRY COUNTY COURTHOUSE
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STATE OF NEW MEXICO
Ninth Judicial District Court

FILED
5th JUDICIAL DISTRICT COURT
Lea County
4/19/2022 4:14 PM
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April 19, 2022

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Counsel:

The Court has considered both the Legislative and Executive Defendants' motions to dismiss under Rule 1-012(B)(1) and (6) NMRA, which allege that the Court lacks jurisdiction over the subject matter, and that Plaintiff's complaint fails to state a claim upon which relief can be granted. The question of whether Plaintiffs' claim is justiciable giving the Court jurisdiction to hear the case is intertwined with the second part of the motion as to whether there is a claim for which relief can be granted, so the Court will address both questions at the same time.

Plaintiff's complaint alleges a violation of Article II, Section 18 of the New Mexico Constitution, the equal protection clause. This clause mirrors the Fourteenth Amendment equal protection clause. *See* U.S. Const. amend XIV, § 1. Under the interstitial approach to constitutional interpretation, New Mexico's Constitution will only provide broader protections than the United States Constitution if the federal approach is unpersuasive because it is flawed or undeveloped.

The Plaintiffs allege that Senate Bill 1, the law that was passed creating the new Congressional districts, creates a partisan gerrymander that violates their right to equal protection

under the law. Both sides cite *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019), which decided that political gerrymandering claims are non-justiciable at the federal level, as there was no consensus as to a standard to apply to political gerrymandering and “how much is too much”. But *Rucho* also said that this did not foreclose possible court action at the state level, where constitutional or statutory grounds may be available to address the issue.

Plaintiffs allege unconstitutional political gerrymandering. They raise equal protection grounds as the basis for the complaint. Plaintiff’s complaint makes a strong, well-developed case that Senate Bill 1 is a partisan gerrymander created in an attempt to dilute Republican votes in Congressional races in New Mexico. They make a strong, well-developed case that Senate Bill 1 does not follow traditional districting principles, including a lack of compactness, lack of preservation of communities of interest, and failure to take into consideration political and geographic boundaries. In considering a motion to dismiss under Rule 1-012, the Court is to accept as true all well pleaded facts.

If the Plaintiffs facts are true, the question is whether this adequately raises an equal protection claim. It is the role of the courts to decide constitutional claims, and this Court has jurisdiction to do so in this case. As the Supreme Court stated, “(i)t is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 1 Cranch at 177, even if to later say that “this is not law”. *Rucho*, at 2508.

As to the basis of Plaintiffs’ claims, they cite to the traditional districting principles cited in *Maestas v. Hall*, 2012-NMSC-006, ¶ 34, and to the statutory guidelines of the Redistricting Act, § 1-3A-7(A), (2021), alleging the violation of these strictures give rise to their equal protections claim. Defendants claim these two sources do not apply to districting maps created by the Legislature and signed by the Governor, because the *Maestas* case applies to court-drawn maps only, and the Redistricting Act requirements are not binding on the Legislature, and serve only as recommendations. They further argue that New Mexico’s equal protection protections are the same as federal protections, citing to a Court of Appeals case, *Vasquez v. Wal-Mart Stores, Inc.*, 1998-NMCA-030, which deals with worker compensation claims. While the New Mexico Court of Appeals did say both the federal and state equal protection clauses offered the same level of protection in that area, in this undeveloped area of political gerrymandering as an equal protection claim, this Court can not say that *Vasquez* definitively answers the question in this case. Further, Plaintiffs cite to a North Carolina case, *Harper v. Hall*, 2022-NCSC-17, decided post-*Rucho*, that found equal protection violations (among other violations) in a partisan redistricting map.

Without deciding the full merits of the Plaintiffs’ case, in deciding whether this Court has jurisdiction to hear the case, and whether, taking Plaintiff’s facts alleged as true, the complaint states a claim upon which this Court could grant relief, the Court finds both to be true, and denies the Defendants’ motions to dismiss.

Counsel for Plaintiffs shall prepare an order to this effect, and circulate for signatures, and present the order to the Court within five (5) days of receipt of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Fred Van Soelen". The signature is written in black ink and is positioned above the printed name.

Hon. Fred Van Soelen
District Judge