

New Mexico Supreme Court issues opinion on partisan gerrymandering

Written by gallupsun

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The state Supreme Court issued an opinion Sept. 22 providing additional guidance to a trial court for resolving a partisan gerrymandering challenge to New Mexico's congressional districts.

The Court's unanimous opinion provides the legal reasoning for an order by the justices in August that allowed a congressional redistricting lawsuit to move forward to trial to determine whether alleged partisan gerrymandering violated rights protected by New Mexico's Constitution.

The lawsuit contends that boundaries of New Mexico's three congressional districts were drawn by the Democratic-controlled Legislature to unlawfully dilute the voting strength of Republicans in the 2nd Congressional District and allow Democrats to win the seat in an area of the state that traditionally favored GOP candidates. A three-day trial in the case is scheduled to start Sept. 27 in Lovington.

In an opinion by Chief Justice C. Shannon Bacon, the Court concluded that a partisan gerrymandering claim can be adjudicated by state courts under the Equal Protection Clause of the New Mexico Constitution, Article II, Section 18. The Court noted that it has previously interpreted the state Equal Protection Clause as "providing broader protection" than its federal counterpart in the 14th Amendment of the U.S. Constitution.

The justices explained that state courts have an obligation to protect the right to vote, which is "the essential democratic mechanism" for securing other guarantees in the New Mexico Bill of Rights in Article II of the constitution: the Popular Sovereignty Clause in Section 2, The Right of Self-government Clause in Section 3, and the Freedom of Elections Clause in Section 8.

The Court stated that "some degree of partisan gerrymandering is permissible" in drawing district boundaries of elective offices but that "egregious" or excessive partisan gerrymandering dilutes the votes of people with similar voting behavior such that it entrenches candidates of the controlling political party.

"To allow such a result would be an abdication of our duty to 'apply the protections of the Constitution' when the government is alleged to have threatened the constitutional rights that all

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New Mexicans enjoy; accordingly, we would be derelict in our responsibility to vindicate constitutional protections, including the equal protection guarantee, were we to deny a judicial remedy to individuals directly affected by such a degree of vote dilution,” the Court wrote.

The justices held that “a partisan gerrymander of an egregious degree violates the democratic principles expressed above in the New Mexico Constitution and our precedent through disparate treatment of a class of voters and thus is cognizable under Article II, Section 18.”

To determine whether there has been egregious partisan gerrymandering, the Court directed New Mexico courts to use a three-pronged legal test outlined by U.S. Supreme Court Justice Elena Kagan in a dissenting opinion in a redistricting case known as *Rucho v. Common Cause*. In the case, the U.S. Supreme Court majority ruled that federal courts are not empowered to resolve partisan gerrymandering claims.

For the first prong of the test, the New Mexico justices explained, those bringing a partisan gerrymandering claim – the plaintiffs – must prove that the “predominant purpose” or intent of the challenged redistricting map was to entrench the political party in power by diluting votes of people who support the rival party. Second, the plaintiffs must prove that the redistricting map “in fact substantially diluted” the rival party’s votes. And third, if both of those are proven, the government must fail to demonstrate a “legitimate, nonpartisan justification” for its redistricting map.

The trial court “may consider all evidence relevant to whether the challenged legislation seeks to effect political entrenchment through intentional and substantial vote dilution,” the Court wrote. For the second part of the legal test, the justices explained, “evidence of substantial dilution of plaintiffs’ vote must rely on objective district-specific evidence.” For example, there could be a comparison of “voter registration percentages or data for the political party affiliation of the individual plaintiffs under the prior redistricting map against parallel percentages or data under the challenged districting map,” the justices stated.

The Court declined to “determine the precise minimum degree of partisan gerrymander that would constitute an egregious partisan gerrymander” because it had not been presented with a complete record and evidence from the congressional redistricting lawsuit. The issue before the Court at the time of its order was whether state courts have the authority to decide questions of partisan gerrymandering.

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"Our duty to vindicate individual rights outweighs any prudential concern that the minimum degree of constitutional harm under an egregious partisan gerrymander is difficult to specify," the Court wrote.

