Official Publication of the State Bar of New Mexico

Bar Bulletin

January 10, 2024 • Volume 63, No. 1

The Tire Shop, by Mike Rizzo (see page 5)

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Center for Legal Education

CLE PROGRAMMING

from the Center for Legal Education

JANUARY 10
Teleseminar
2024 Uniform Commercial Code Update
1.0 G
11 a.m.–Noon

JANUARY 11
Teleseminar
Taxation of Settlements & Judgments in Civil Litigation
1.0 G
11 a.m.–Noon

JANUARY 12
Teleseminar
Exit Rights in Business Agreements
1.0 G
11 a.m.–Noon

JANUARY 17
Teleseminar
Health Care Issues in Estate Planning
1.0 G
11 a.m.–Noon

JANUARY 17
Webinar
Identifying & Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV
1.0 EIJ (*new Equity in Justice credit*)
11 a.m.–Noon

JANUARY 17
Webinar
A Little Meaningful Planning Now, a Lot Less Painful Panic Later: Mandatory Succession Planning
1.0 EP
Noon–1 p.m.

JANUARY 18
Teleseminar
Arbitration Clauses in Business Agreements
1.0 G
11 a.m.–Noon

JANUARY 19
Teleseminar
Ethics of Working with Experts and Witnesses
1.0 EP
11 a.m.–Noon

JANUARY 22
Teleseminar
Practical Lessons in Diversity, Equity & Inclusion in Law Practice
1.0 EIJ (*new Equity in Justice credit*)
11 a.m.–Noon

JANUARY 24
Teleseminar
Drafting Wills & Trust Documents to Reduce Risks of Challenge
1.0 G
11 a.m.–Noon

JANUARY 24
In Person and Webinar
QDROs: NM Retirement Plans for Family Lawyers
1.0 G
Noon–1 p.m.

JANUARY 25
Teleseminar
Lawyer Ethics of Using Paralegals
1.0 EP
11 a.m.–Noon

WHAT YOU MISSED DURING THE 2023 ANNUAL MEETING –

Watch for more upcoming Annual Meeting Highlights, available soon as **Live Replays** and **On-Demand Courses**

https://cle.sbnm.org

Register online at www.sbnm.org/CLE or call 505-797-6020

State Bar of New Mexico
Est. 1886

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www.sbnm.org

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Meetings

January

12
Cannabis Law Section
9 a.m., virtual

15
Children's Law Section
Noon, virtual

16
Health Law Section
9 a.m., virtual

19
Family Law Section
9 a.m., virtual

19
Indian Law Section
Noon, virtual

23
Intellectual Property Law Section
Noon, virtual

26
Immigration Law Section
Noon, virtual

Workshops and Legal Clinics

January

16
Common Legal Issues for Senior Citizens Workshop
11 a.m.-noon, virtual
For more details and to register, call 505-797-6005

24
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

February

7
Divorce Options Workshop
6-8 p.m., virtual

13
Common Legal Issues for Senior Citizens Workshop
11 a.m.-noon, virtual
For more details and to register, call 505-797-6005

21
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

About Cover Image and Artist: Michael Rizzo Jr. works in several mediums. He started out in film photography and now works digitally and enjoys the freedom of Photoshop. He also creates serigraphs using some of those digital images and finds the rich colors of screen printing exciting to experiment. For more information, contact Rizzo at rizzo_art@hotmail.com.

Notices

Please email notices desired for publication to notices@sbnm.org.

Court News

New Mexico Supreme Court

Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at https://supremecourt.nmcourts.gov. To view all New Mexico Rules Annotated, visit New Mexico OneSource at https://nmonesource.com/nmos/en/nav.do.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. (MT). Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. (MT). For more information call: 505-827-4850, email: libref@nmcourts.gov or visit https://lawlibrary.nmcourts.gov.

N.M. Administrative Office of the Courts

Learn About Access to Justice in New Mexico in the "Justice for All" Newsletter

Learn what's happening in New Mexico's world of access to justice and how you can participate by reading "Justice for All," the New Mexico Commission on Access to Justice's monthly newsletter! Email atj@nmcourts.gov to receive "Justice for All" via email or view a copy at https://accesstojustice.nmcourts.gov.

Third Judicial District Court

Notice of Mass Reassignment of Cases

Effective Dec. 15 in Dona Ana County, all pending cases currently assigned to the Honorable Mark Standridge will be reassigned to Division IV Judge. New and reopened DM and DV cases will be assigned 40% to the Honorable Robert Lara, 30% to the Honorable Grace Duran and 30% to Division IV Judge. Parties to these cases who have not previously exercised their right to excuse a judge may do so within 10 days of the last publication in the Bar Bulletin, pursuant to Rule 1-088.1 NMRA.

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will be open to constructive criticism and make such changes as are consistent with this creed and the Code of Judicial Conduct when appropriate.

Changes Coming in 2024!

Some exciting changes are coming to the Bar Bulletin distribution in 2024! The Bar Bulletin will continue to publish on the second and fourth Wednesday of each month. The first issue of each month will continue to be distributed as both a printed and digital version to Bar Bulletin subscribers who are currently receiving a printed copy. The second issue of each month will be exclusively digital and will be emailed to Bar Bulletin subscribers. The digital version of all issues of the Bar Bulletin will continue to be posted on the State Bar of New Mexico website at https://www.sbnm.org/News-Publications/Bar-Bulletin/Current-Issue.

State Bar News

License Renewal and MCLE Compliance Due Feb. 1, 2024

State Bar of New Mexico annual license renewal and Minimum Continuing Legal Education requirements are due Feb. 1, 2024. For more information, visit www.sbnm.org/compliance. To complete your annual license renewal and verify your MCLE compliance, visit www.sbnm.org and click "My Dashboard" in the top right corner. For questions about license renewal and MCLE compliance, email license@sbnm.org. For technical assistance accessing your account, email techsupport@sbnm.org.

Board of Bar Commissioners

Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on Dec. 6 at the La Fonda Hotel in Santa Fe, NM. Action taken at the meeting follows:

- Approved the Oct. 13, 2023 meeting minutes;
- Discussed Rule 24-101(A) NMRA, Objective #2, Promote the Interests of the Legal Profession in the State of New Mexico;
- Reported that we're on track with the 2023-2025 Three-Year Strategic Plan; the Appellate Court Case Summaries project, which includes sending out the case summaries to the members and publishing them in the Bar Bulletin, is underway and is going well;
- Held an executive session to discuss a personnel issue;
- Reviewed an expedited analysis from the Ethics Advisory Committee on the handling of trust accounts and assignments regarding the Hermit's Peak/Calf Canyon Fire in response to correspondence from members and approved forwarding the analysis to two attorneys who had requested information/input from the State Bar;
- Appointed Douglas Echols and Alexander F. Flores to the Access to Justice Commission for a three-year term;
- Reappointed Don Anque to the Client Protection Fund Commission for a three-year term;
- Reappointed Benjamin I. Sherman and appointed Judge Nan G. Nash to the Access to Justice Fund Grant Commission for three-year terms;
- Reappointed Board of Bar Commissioner Members Mitchell L. Mender and Elizabeth J. Travis, and public member Stephanie Wagner to the New Mexico State Bar Foundation Board and appointed Board of Bar Commissioner Member Rosenda Chavez-Lara to replace Aja N. Brooks on the New Mexico State Bar Foundation Board. All were appointed/reappointed to three-year terms;
- Pursuant to Rule 23-106(F), appointed the Supreme Court Board and Committee Liaisons for 2024;
- Received a report from the meeting of the joint Executive Committees of the State Bar and the Bar Foundation and created an Annual Meeting Committee;

- Received a report from the Executive Committee and ratified the action taken by the Committee with regard to two requests from New Mexico Legal Aid regarding extending the terms of two of the Board of Bar Commissioners' appointees to their board and postponing two additional appointments until the Board of Bar Commissioners' February meeting;
- Received a report from the Finance Committee, which included: 1) approval of the Oct. 12 Finance Committee meeting minutes; 2) acceptance of the October 2023 Financials; 3) reported that no challenges were received to the 2024 Budget; 4) approved a reimbursement to the Bar Foundation for the free CLE provided throughout the year and the Annual Meeting content at the 20 percent discounted rate based on $28 per credit hour for a total of $92,044.80; 5) discussed the deficit from the State Bar Annual Meeting and approved a reimbursement to the Bar Foundation in the amount of $49,517.50 as debt forgiveness; and 6) received a report on the 2024 Licensing Renewals;
- Received a report from the Member Services Committee, and approved the Committees Policy which will provide the standing committees of the State Bar with some guidelines and expectations;
- Received an update on the activities and programs of the Committee on Diversity in the Legal Profession;
- Received an update on the Professional Programs Group Roadshows held in 2023;
- Received reports from the Presidents of the State Bar and NM State Bar Foundation;
- Received a report from the President-Elect of the State Bar, which included plans for the 2024 Annual Meeting, which will be a hybrid event in Albuquerque in October 2024, and the 2024 meeting dates as follows: February 23, May 17, July 26, October 24 (in conjunction with the Annual Meeting on October 25), December 4 or 11 (Santa Fe);
- Received a report from the Executive Director; and
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal Divisions; and
- Presented awards to outgoing commissioners Carolyn A. Wolf from the First Judicial District, Damon Hudson, the Young Lawyers Division Chair, and Linda Sanders, the Paralegal Division Liaison. President Sherman was also presented with a gift for his service as president this year.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Feb. 23 meeting.

Equity in Justice Program

Have Questions?

Do you have specific questions about equity and inclusion in your workplace or in general? Send in questions to Equity in Justice Program Manager Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the Bar Bulletin. Go to www. sbnm.org/eij, click on the Ask Amanda link and submit your question. No question is too big or too small.

New Mexico Lawyer Assistance Program

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Join the meeting via Zoom at https://bit.ly/attorneysupportgroup

NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. (MT) on Jan. 11, 2024. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

— Featured —

Member Benefit

The Solutions Group

Take advantage of a free employee assistance program, a service offered by the New Mexico Judges and Lawyers Assistance Program in cooperation with The Solutions Group. Get help and support for yourself, your family and your employees. Services include up to four FREE counseling sessions/issue/year for any behavioral health, addiction, relationship conflict, anxiety and/or depression issue. Counseling sessions are with a professionally licensed therapist. Other free services include management consultation, stress management education, critical incident stress debriefing, substance use disorder assessments, video counseling and 24/7 call center. Providers are located throughout the state.

To access this service call 855-231-7737 or 505-254-3555 and identify with NMJLAP. All calls are confidential.

The Solutions Group Employee Assistance Program

Presented by the New Mexico Lawyer Assistance Program, the Solutions Group, the State Bar's Employee Assistance Program (EAP), extends its supportive reach by offering up to four complimentary counseling sessions per issue, per year, to address any mental or behavioral health challenges to all SBNM members and their direct family members. These counseling

sessions are conducted by licensed and experienced therapists. In addition to this valuable service, the EAP also provides a range of other services, such as management consultation, stress management education, webinars, critical incident stress debriefing, video counseling, and a 24/7 call center. The network of service providers is spread across the state, ensuring accessibility. When reaching out, please make sure to identify yourself with the NM LAP for seamless access to the EAP's array of services. Rest assured, all communications are treated with the utmost confidentiality. Contact 505-254-3555 to access your resources today.

New Mexico State Bar Foundation

Pro Bono Opportunities

The New Mexico State Bar Foundation and its partner legal organizations gratefully welcome attorneys and paralegals to volunteer to provide pro bono service to underserved populations in New Mexico. For more information on how you can help New Mexican residents through legal service, please visit www.sbnm.org/probono.

UNM School of Law

Law Library Hours

The Law Library is happy to assist attorneys via chat, email, or in person by appointment from 8 a.m.-8 p.m. (MT) Monday through Thursday and 8 a.m.-6 p.m. (MT) on Fridays. Though the Library no longer has community computers for visitors to use, if you bring your own device when you visit, you will be able to access many of our online resources. For more information, please see lawlibrary.unm.edu.

Call for Nominations for the Alumni/ae Association Distinguished Achievement Awards

The nomination process for the Alumni/ae Association Distinguished Achievement Awards will begin and end earlier for next year. To nominate someone you think deserving of the Distinguished Achievement Award, please go to https://forms.unm.edu/forms/daad_nomination. Closing date for 2024 award nominations will be Feb. 15, 2024.

ABA Free Legal Answers is a virtual legal advice portal where qualifying users request brief advice about a specific civil legal issue and pro bono volunteer attorneys provide information and basic legal advice.

Register as a volunteer attorney today and you will be able to provide answers 24/7/365. The platform can be accessed anytime, anywhere at ***your*** convenience.

To Register as a volunteer attorney:

- Go to https://nm.freelegalanswers.org/
- Click on "Attorney Registration" and follow the prompts

ABA AMERICAN BAR ASSOCIATION Free Legal Answers

New Mexico State Bar Foundation

The NEW MEXICO STATE BAR FOUNDATION is the State Administrator of the ABA Free Legal Answers Program

Legal Education Calendar

January

10 **2024 Uniform Commercial Code Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

11 **Taxation of Settlements & Judgments in Civil Litigation**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

12 **Exit Rights in Business Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

17 **Webinar: Evidence Wednesdays: A Defender's Guide to 2023 Amendments**
1.2 G
Webcast (Live Credits)
Administrative Office
of the U.S. Courts
www.uscourts.gov

17 **Health Care Issues in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

17 **Identifying & Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV**
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24 **Drafting Wills & Trust Documents to Reduce Risks of Challenge**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

24 **QDROs: NM Retirement Plans for Family Lawyers**
1.0 G
In-Person and Webinar
Center for Legal Education of NMSBF
www.sbnm.org

25 **Lawyer Ethics of Using Paralegals**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

25 **Trial Skill Workshop: Bail Boot Camp**
14.7 G
Live Program
Administrative Office
of the U.S. Courts
www.uscourts.gov

26 **Tools for Creative Lawyering: An Introduction to Expanding Your Skill Set**
1.0 G, 2.0 EP
Video Replay with Monitor
(Live Credits)
The Ubuntuworks Project
www.ubuntuworksschool.org

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@sbnm.org. Include course title, credits, location/course type, course provider and registration instructions.

2024 PRESIDENT

ERINNA M. "ERIN" ATKINS *is Sworn In*

2024 State Bar of New Mexico **President Erinna M. "Erin" Atkins, President-Elect Aja N. Brooks** and **Secretary-Treasurer Allison H. Block-Chavez** were sworn in on Dec. 6, 2023, at La Fonda on the Plaza in Santa Fe by Chief Justice C. Shannon Bacon. The Chief Justice was accompanied by Justice David K. Thomson and Justice Julie J. Vargas from the New Mexico Supreme Court, as well.

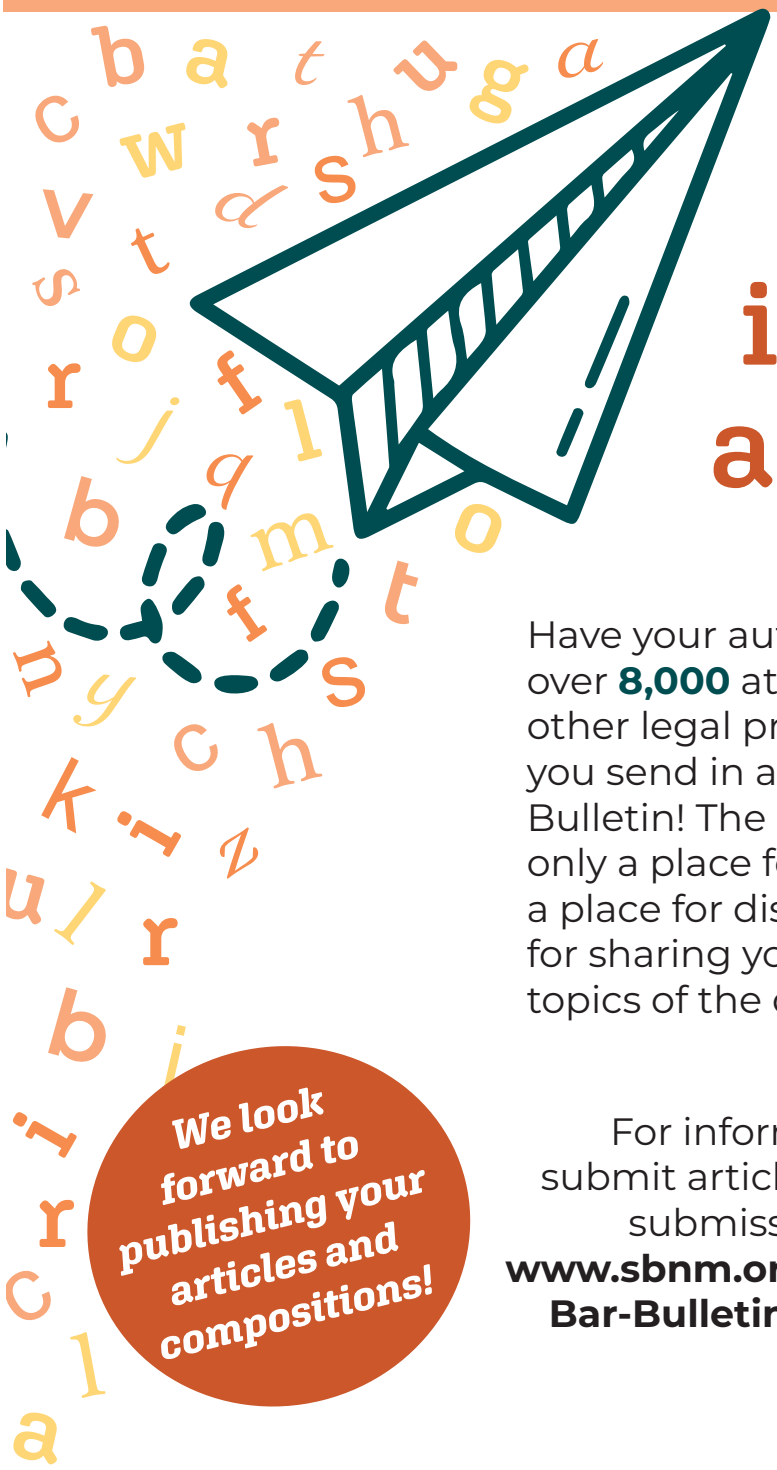
Chief Justice C. Shannon Bacon and 2024 President Erinna M. "Erin" Atkins

Chief Justice C. Shannon Bacon and 2024 President-Elect Aja N. Brooks

Chief Justice C. Shannon Bacon and 2024 Secretary-Treasurer Allison H. Block-Chavez

2024 Officers: (From left to right) President-Elect Aja N. Brooks, President Erinna M. "Erin" Atkins and Secretary-Treasurer Allison H. Block-Chavez

Pictured with 2024 President Atkins are 2023 Immediate Past President Benjamin I. Sherman, 2022 Past President Carolyn A. Wolf, 2021 Past President Carla C. Martinez, and 2019 Past President Gerald G. Dixon.



Send in your articles!

Have your authored work read by over **8,000** attorneys, judges and other legal professionals when you send in articles for the Bar Bulletin! The Bar Bulletin is not only a place for information—it's a place for discourse and a hub for sharing your ideas on the legal topics of the day and beyond!

We look forward to publishing your articles and compositions!

For information on how to submit articles and guidelines for submissions, please visit **www.sbnm.org/News-Publications/Bar-Bulletin/Submit-An-Article**.

State Bar of New Mexico
Est. 1886

Bar Admission Rules

Rule 15-309

15-309. Reinstated license method.

A. Description. As further specified in this rule, a person who was previously admitted to practice law in New Mexico on a non-limited license may apply for admission under this method of licensure if the applicant (1) withdrew from the practice of law before January 1, 2017, (2) transferred to inactive status under Rule 24-102.2(E) NMRA and has remained inactive for a period of two (2) years or more, (3) was suspended from the practice of law under Rule 24-102 NMRA and is required to submit an application to the board under Rule 24-102(F) NMRA, or (4) was ordered by the Supreme Court to reapply for licensure through the board.

B. Application deadlines. An application for a license under this rule may be submitted at any time.

C. Qualifications. An applicant for a license under this rule shall submit an application for this method of licensure as prescribed by the board, and shall prove the applicant:

(1) meets the qualifications set forth in Rule 15-202 NMRA;

(2) satisfies all applicable requirements for an active status attorney in New Mexico;

(3) has the requisite character and fitness to practice law in New Mexico; and

(4) if referred to the board under Rule 24-102(F)(2) NMRA:

(a) has remedied all deficiencies that led to the supsension;

(b) is current on dues owed to the State Bar of New Mexico

(c) has satisfied all mandatory continuing legal education credits under Rules 18-101 to -303 NMRA;

(d) has complied with any other requirements imposed by the Supreme Court, including, but not limited to, enrollment in and attendance of specific continuing legal education classes or bar review courses; and

(e) has paid the fee described in Rule 24-102(F)(1) NMRA.

D. Character and fitness. The board shall make a determination about the character and fitness of an applicant as set forth in Rule 15-205 NMRA for any applicant who has submitted an application for a license under this rule. An applicant shall pay any fees and costs associated with evaluating the applicant's character and fitness.

E. Procedure for issuance. On the board's receipt from an applicant of (a) a completed application for a license under this rule, (b) the required fees and costs, and (c) documents required by Paragraph C, then

(1) the board shall evaluate the applicant's character and fitness as described in Rule 15-205 NMRA; and

(2) on the board's determination that the applicant has the requisite character and fitness, is qualified, and has complied with any requirements for that applicant set by the Supreme Court, the board shall recommend to the Supreme Court that the applicant be reinstated, and the Clerk of the Supreme Court shall summarily issue the applicant a certificate of reinstatement to active status unless otherwise ordered by the Supreme Court.

F. Fees and costs. The following fees and costs must be paid by the applicant on submission of the application for a license under this rule, and shall not offset fees and costs required to apply for another method of licensure:

(1) ***Application fee.*** An application fee according to a published schedule of application fees promulgated by the board and approved by the Supreme Court; and

(2) ***Investigation costs.*** Investigation costs according to the schedule of pass-through costs promulgated by the board as described in Rule 15-204(B) NMRA.

G. Specific ongoing requirements. An applicant approved for a license under this rule shall comply with the requirements of Rule 15-206 NMRA and Rule 15-207 NMRA.

H. Limitations. A person practicing law under a license issued under this rule is not subject to any limitation, unless otherwise ordered by the Supreme Court.

I. Expiration. A license issued under this rule does not expire.

J. Suspension of license. A license issued under this rule is only subject to suspension as described in the Rules Governing Discipline, Rules 17-101 to -316 NMRA.

K. Revocation. A license issued under this rule is only subject to revocation as described in Rule 15-201(F) NMRA and the Rules Governing Discipline, Rules 17-101 to -316 NMRA.

[Adopted by Supreme Court Order No. S-1-RCR-2023-00036, effective December 31, 2023.]

Committee commentary. — This rule only permits reinstatement in the specified instances. An attorney suspended under the Rules Governing Discipline, Rules 17-101 to -316 NMRA, must seek reinstatement as described in those rules. An attorney who withdrew from the State Bar of New Mexico on or after December 31, 2016, must apply for admission under anothermethod of licensure. See Rule 24-102.2(G) NMRA.

An attorney suspended under Rule 24-102 NMRA is not required to submit an application to the board if it is that attorney's first suspension under that rule. See Rule 24-102(F)(2).

[Adopted by Supreme Court Order No. S-1-RCR-2023-00036, effective December 31, 2023.]

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-026
No: S-1-SC-37277 (filed September 18, 2023)

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v.
KAYLEE R. ORTIZ,
Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Fred Van Soelen, District Judge

Hector H. Balderas, Attorney General
Walter M. Hart, III,
Assistant Attorney General
Santa Fe, NM

for Petitioner

Bennett J. Baur, Chief Public Defender
Nina Lalevic, Assistant Appellate Defender
Santa Fe, NM

for Respondent

OPINION

VARGAS, Justice.

{1} It is always the State's burden to produce specific evidence to demonstrate the reasonableness of a warrantless search. This case exemplifies the importance of making a sufficient record to support both the reasoning justifying a warrantless search, as well as judicial notice of adjudicative facts pursuant to Rule 11-201 NMRA relied upon to support such a search.

{2} The State filed its petition for writ of certiorari following the Court of Appeals' reversal of Defendant Kaylee R. Ortiz's conviction for possession of a controlled substance, contrary to NMSA 1978, Section 30-31-23(E) (2011, amended 2021), concluding that the district court erred when it denied Defendant's motion to suppress. *See State v. Ortiz*, A-1-CA-34703, mem. op. ¶ 1 (N.M. Ct. App. Sept. 10, 2018) (nonprecedential). Because we agree with the Court of Appeals that the State failed to meet its burden to establish the reasonableness of the warrantless search of Defendant's purse, we affirm the Court of Appeals. We nonetheless take this opportunity to remind the State and the district courts of their obligations to make a sufficient record when considering the propriety of warrantless searches and when taking judicial notice under Rule 11-201.

I. BACKGROUND

{3} Clovis Police Officers James Gurule and Jonathan Howard went to the house where Defendant was known to stay to execute an arrest warrant for criminal trespass. Upon arriving, the officers saw Defendant in an alley behind her house with a purse hanging over her shoulder. The officers made contact with Defendant and informed her that they had a warrant for her arrest, at which point Officer Gurule placed Defendant in handcuffs and arrested her. Officer Howard took possession of Defendant's purse and searched it, locating a small knife and two flashlights that appeared identical, except that one was lighter than the other and the lighter flashlight did not work. He opened the lighter flashlight and found a small plastic baggie inside containing a substance that was later identified to be .14 grams of methamphetamine. Defendant was subsequently charged with one count of possession of a controlled substance.

A. District Court

{4} Prior to trial, Defendant filed a motion to suppress, arguing that all controlled substances seized and statements made by Defendant when she was arrested were the result of a warrantless, illegal search and seizure. At the hearing on Defendant's motion to suppress, the State argued that the search of Defendant's purse and flashlights was a search incident to a lawful arrest, relying on the testimony of Officer Howard. The district court agreed with the State and denied Defendant's motion to suppress, concluding that the search was a proper search incident to arrest. The district court also sua sponte concluded that even if the search was not a proper search incident to arrest, the purse would have been inevitably searched and the methamphetamine discovered at the jail, and it denied Defendant's motion on the alternative grounds of inevitable discovery. A jury found Defendant guilty on the single charge of possession of a controlled substance and received a suspended sentence of eighteen months of probation. Defendant then filed an appeal with the Court of Appeals.

B. Court of Appeals

{5} On appeal, Defendant challenged her conviction and the denial of her motion to suppress. She argued that the State did not meet its burden to prove that the warrantless search of her purse was reasonable under the search-incident-to-arrest exception or that the methamphetamine would have been inevitably discovered, rendering it admissible. *Ortiz*, A-1-CA-34703, mem. op. ¶ 1. The Court of Appeals agreed with Defendant and reversed the district court. *Id.* ¶ 16. The Court of Appeals concluded that "the State failed to meet its burden of proving that Officer Howard's search of Defendant's purse—including his removal and disassembly of the flashlights he found inside—was reasonable as a search incident to arrest" because the limited evidence in the record did not support "that the purse remained either on Defendant's shoulder after she was placed under arrest or, critically, within her 'immediate control[.]'" *Id.* ¶ 9. Considering the district court's ruling that the methamphetamine would have inevitably been discovered, the Court of Appeals held that "there was no evidence adduced whatsoever regarding inventory procedures at the detention center to which Defendant was taken." *Id.* ¶ 14. The Court went on to note,

> Because the record, here, is void of even a scintilla of evidence that would allow anything more than a speculative conclusion that the "baggie" inside the flashlight inside Defendant's purse would have been found upon her arrival at the detention facility, we conclude that the district court erred in finding that the discovery of the illegally seized evidence was inevitable.

Id. ¶ 15. The State then filed its petition for writ of certiorari, which this Court granted.

II. DISCUSSION

{6} Both the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution protect against unreasonable searches. "Any warrantless search analysis must start with the bedrock principle of both federal and state constitutional jurisprudence that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable,' subject only to well-delineated exceptions." *State v. Rowell,* 2008-NMSC-041, ¶ 10, 144 N.M. 371, 188 P.3d 95 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967), *superseded by statute as stated in United States v. Koyomejian*, 946 F.2d 1450, 1455 (9th Cir. 1991)). "Warrantless seizures are presumed to be unreasonable and the State bears the burden of proving reasonableness." *Id.* (internal quotation marks and citation omitted).

A. Standard of Review

{7} "Appellate review of a district court's ruling on a motion to suppress involves a mixed question of fact and law. We review the contested facts in the manner most favorable to the prevailing party and defer to the factual findings of the district court if substantial evidence exists to support those findings." *Id.* ¶ 8 (internal quotation marks and citation omitted). "Rather than being limited to the record made on a motion to suppress, appellate courts may review the entire record to determine whether there was sufficient evidence to support the trial court's denial of the motion to suppress." *State v. Monafo*, 2016-NMCA-092, ¶ 10, 384 P.3d 134; *see also State v. Martinez*, 1980-NMSC-066, ¶ 16, 94 N.M. 436, 612 P.2d 228 (stating that the scope of review "should be broadened so that the appellate court may determine if probable cause did or did not exist by an examination of all the record surrounding an arrest or search and seizure"). "We then review the application of the law to those facts, making a de novo determination of the constitutional reasonableness of the search or seizure." *State v. Martinez,* 2018-NMSC-007, ¶ 8, 410 P.3d 186 (internal quotation marks and citation omitted).

B. Search Incident to Arrest

{8} Here, the State contends that the search of Defendant's purse was reasonable pursuant to the search-incident-to-arrest exception to the warrant requirement, arguing that the Court of Appeals erred in requiring the State to produce particularized "evidence of the presence of a weapon, instrument of escape or destructible evidence."

{9} We recognize that "[o]ne of the most firmly established exceptions to the warrant requirement is the right on the part of the government . . . to search the person of the accused when legally arrested." *State v. Paananen*, 2015-NMSC-031, ¶ 29, 357 P.3d 958 (internal quotation marks and citation omitted). The search-incident-to-arrest exception permits "arresting officers, in order to prevent the arrestee from obtaining a weapon or destroying evidence, [to] search both 'the person arrested' and 'the area within his immediate control'" following a lawful arrest. *Birchfield v. North Dakota*, 579 U.S. 438, 459 (2016) (quoting *Chimel v. California*, 395 U.S. 752, 763 (1969)). "Th[is] rule allowing contemporaneous searches is justified . . . by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime—things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control." *Chimel*, 395 U.S. at 764 (internal quotation marks and citation omitted). Recognizing that generally "the federal search incident to arrest exception was construed in the same fashion as the New Mexico exception," *Rowell*, 2008-NMSC-041, ¶ 14, this Court has held, "a search incident to arrest is a reasonable preventative measure to eliminate any possibility of the arrestee's accessing weapons or evidence, without any requirement of a showing that an actual threat exists in a particular case." *Paananen*, 2015-NMSC-031, ¶ 29. "[T]he scope of a lawful search incident to arrest," however, is "defined and limited by its supporting justification[,] . . . consistent with the established principle that a warrantless search should be strictly circumscribed by the exigencies which justify its initiation." *Rowell*, 2008-NMSC-041, ¶ 14 (internal quotation marks and citation omitted). With these principles in mind, we consider the evidence presented to support Officer Howard's search of Defendant's purse and flashlight.

1.. Search of Defendant's person

{10} The State contends that the search of Defendant's purse was effectively a search of her person because the purse was "'associated with the person of [Defendant].'" The district court found that because Defendant was wearing the purse on her shoulder when she encountered the officers, "[it's the] same thing [as] searching a person's pockets when you arrest someone." In reaching its conclusion, the district court ignored an important difference between pockets and a purse—the latter could be removed from Defendant and kept safely away from her. For this reason, we are not persuaded by the district court's rationale and conclude that the evidence presented to the district court to support the search of Defendant was insufficient.

{11} In *United States v. Knapp*, the Tenth Circuit Court of Appeals rejected an argument similar to that made by the State, holding that a search of an arrestee's person permits "searches of an arrestee's clothing, including containers concealed under or within her clothing" and that a "carried purse does *not* qualify as 'of the person.'" 917 F.3d 1161, 1166-67 (10th Cir. 2019). In reaching its conclusion, the Tenth Circuit reasoned:

> [T]he animating reasons supporting arresting officers' "unqualified authority" to search an arrestee's person are less salient in the context of visible, handheld containers such as purses. . . . Because of an arrestee's ability to always access weapons concealed in her clothing or pockets, an officer must necessarily search those areas because it would be impractical (not to mention demeaning) to separate the arrestee from her clothing. . . . Containers held in an arrestee's hand and not concealed on her body or within her clothing do not implicate such concerns to the same degree.

Id. at 1166-67 (citation omitted).

{12} The *Knapp* Court further noted that treating visible handheld containers, such as purses, as part of the person presented additional concerns, stating, "[G]iven that handheld containers such as purses are easily dispossessed, classifying such containers as potentially part of an arrestee's person would necessitate unworkable determinations about what the arrestee was holding at the exact time of her arrest." *Id.* at 1167. "[A] holding to the contrary," the *Knapp* Court reasoned, "would erode the distinction between the arrestee's person and the area within her immediate control." *Id*. The *Knapp* Court concluded:

> The better formulation, we believe, would be to limit . . . searches of an arrestee's [person to the person's] clothing, including containers concealed under or within her clothing. Accordingly, visible containers in an arrestee's hand such as [an arrestee's] purse are best considered to be within the area of an arrestee's immediate control—thus governed by *Chimel*—the search of which must be justified in each case.

Id.

{13} We are persuaded by the rationale of *Knapp* and adopt it here. As was the case in *Knapp*, there was no evidence offered, either at the suppression hearing or at trial, that Defendant's purse was concealed under or within her clothing. Certainly, there was no evidence offered to support the district court's finding that searching Defendant's purse is the "same thing [as] searching a person's pockets," particularly

where, as here, the purse could be and was removed from Defendant's person. As such, the record does not support a finding that the search of Defendant's purse was akin to a search of her person. *See State v. Vandenburg*, 2003-NMSC-030, ¶ 18, 134 N.M. 566, 81 P.3d 19 ("[W]e review the facts in a light most favorable to the prevailing party, as long as the facts are supported by substantial evidence.").

2. Search of the area in Defendant's immediate control

{14} Because the search at issue here cannot be considered a search of Defendant's person, the State must establish that the searched purse was found within the area of her immediate control. *Birchfield*, 579 U.S. at 459. Such a search is limited to "'the area from within which [the arrestee] might gain possession of a weapon or destructible evidence.'" *Id.* at 471 (quoting *Chimel*, 395 U.S. at 763). This limitation is "consistent with the established principle that a warrantless search should 'be strictly circumscribed by the exigencies which justify its initiation.'" *Rowell,* 2008-NMSC-041, ¶ 14 (quoting *Terry v. Ohio*, 392 U.S. 1, 26 (1968)).

{15} In *Arizona v. Gant*, the United States Supreme Court held, "[i]f there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the [search-incident-to-arrest] rule does not apply." 556 U.S. 332, 339 (2009). The *Gant* Court recognized that "the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." *Id.* at 343. The language in *Gant* supports our interpretation that the United States Supreme Court intended to limit the scope of searches of the area in an arrestee's immediate control to instances where officers demonstrate an arrestee may gain access to a weapon or destroy evidence. The *Gant* Court reinforced this interpretation when it wrote:

> [A] search incident to arrest may only include the arrestee's person and the area within his immediate control—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy.

Id. at 339 (internal quotation marks and citation omitted).

{16} In this case, we hold that the State failed to meet its burden to demonstrate the reasonableness of the officer's search of Defendant's purse because the State failed to put forth any evidence that the purse was within the Defendant's immediate control such that Defendant presented a danger of gaining possession of a weapon or was in a position to destroy evidence of her arrest. Despite the State's arguments to the contrary, there is limited evidence in the record as to the location of the purse at the time of arrest, whether it was secured, its distance from Defendant, how she was handcuffed such that she would be able to access the purse, and whether and why the officers had concerns for their own safety or the destruction of evidence. At the suppression hearing, Officer Howard testified that Defendant was carrying her purse when he and Officer Gurule approached her and that he searched the purse. At the trial, Officer Howard testified that "[a]s Officer Gurule was placing [Defendant] under arrest into handcuffs, she had a purse draped up over her shoulder. I removed the purse so that it didn't get locked up in the handcuffs. And I did a search incident to arrest of that purse. It was on her." Officer Gurule also testified at trial, but merely observed that "Officer Howard took possession of [Defendant's] purse and property incident to arrest at that point in time. . . . He took the purse, at which point in time he looked at the contents incident to arrest." However, nothing in the testimony above, or in the record at all, details where Officer Howard searched the purse while Defendant was arrested. Specifically, there is nothing to indicate that at the time Defendant was arrested, Officer Howard and the purse were within Defendant's immediate control, only at most that they were an "arm's reach away." Further, as the testimony repeatedly indicates, Officer Howard searched the purse only after Defendant had been arrested and was in handcuffs. Absent evidence that Defendant could reach the purse to access weapons or destroy evidence, there can be no inference that the officer's search was reasonable.

{17} In reaching our conclusion, we note that the record does not reflect any evidence that Officers Howard and Gurule had concerns for their own safety or the destruction of evidence. In fact, there is contrary testimony that the officer was merely searching Defendant's purse for contraband. Officer Howard testified that "[s]he was arrested, and the property at the time is going to the jail with her, so we have to search it to make sure no contraband is taken into the jail, any weapons, guns, knives." The United States Supreme Court in *Gant* made clear that the purpose of a search incident to arrest is "protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy." 556 U.S. at 339. To be clear, while there is no requirement that the State have "specific probable cause to believe weapons or evidence are present in a particular situation," *Rowell*, 2008-NMSC-041, ¶ 13, the State bears the burden of presenting *some* evidence of the reasonableness of the search "anchored in the specific circumstances facing an officer." *Id.* ¶ 24.

{18} The State directs this Court to *Paananen* in support of its assertion that we should liberally construe what makes up "the area in Defendant's immediate control" and "even the handcuffing of an arrestee does not negate the reasonable possibility of access to an area subject to search." Regardless of whether we construe what makes up the area in Defendant's immediate control liberally or not, the State's argument fails because it did not provide us with any evidence that supports a conclusion that Defendant's purse was within "the area from within which [s]he might gain possession of a weapon or destructible evidence." *Gant*, 556 U.S. at 339 (internal quotation marks and citation omitted).

{19} Furthermore, *Pannanen* does not provide us with any useful guidance, as it does not explain its analysis. The *Paananen* Court concluded that the search of the defendant's backpack and cigarette pack "was conducted incident to a valid arrest." 2015-NMSC-031, ¶ 29. Citing *Rowell*, 2008-NMSC-041, ¶ 25 fn.1, the *Paananen* Court explained that "a search incident to arrest is a reasonable preventative measure to eliminate any possibility of the arrestee's accessing weapons or evidence." 2015-NMSC-031, ¶ 29. But it did not provide any analysis explaining how the search was appropriate because the facts show that handcuffed arrestee in that case might have been able to access the backpack and cigarette pack searched by police. Nor did it evaluate whether "the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy." *Gant*, 556 U.S. at 339. Finally, it did not address whether the state presented evidence that the search at issue was "anchored in the specific circumstances facing the officer." *Rowell*, 2008-NMSC-041, ¶ 24. *Paananen* is neither instructive nor controlling here.

{20} Lastly, to the extent that the State relies on *Paananen* because the officers similarly testified that they were conducting the search to "'make sure [the suspects] don't take contraband to jail,'" 2015-NMSC-031,

¶ 30, the State points to no authority that permits a search incident to arrest for contraband without satisfying the requirements that any such search be to prevent an arrestee from obtaining a weapon or destroying evidence of the arrest. While other exceptions to the warrant requirement may apply, *Paananen* does not assist the State to expand searches incident to arrest to allow for searches for contraband before taking an arrestee to jail.

{21} Because the State has not produced any evidence in the record to support a finding that the search of Defendant's purse was a search of her person or was within the area of her immediate control, we hold that the State did not meet its burden in demonstrating the reasonableness of the warrantless search pursuant to the search-incident-to-arrest exception.

C. Inevitable Discovery

{22} We now turn to the district court's ruling that the methamphetamine would have inevitably been discovered when officers took Defendant to jail and conducted an inventory search of her purse. The State argues that Defendant's objections to the district court's finding of inevitable discovery are not properly preserved before this Court because Defendant never objected to nor availed herself of the opportunity to be heard pursuant to Rule 11-201(E). Alternatively, the State contends that the district court properly took judicial notice of the jail's inventory procedure and that such a finding is sufficient to support the district court's conclusion that the methamphetamine would have inevitably been discovered. We are not persuaded by either of the State's arguments.

1. Preservation

{23} Our rules require that parties preserve their issues for appellate review. *See* Rule 12-321(A) NMRA ("To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked."). The preservation requirement includes instances when district courts take judicial notice of adjudicative facts under Rule 11-201, and the parties do not request an opportunity to be heard to object to the district court's proposed judicial notice. *See* Rule 11-201(E) ("Opportunity to be heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed."). The record indicates that Defendant made no attempt to object to the district court taking judicial notice of the jail's inventory process. Had Defendant requested an opportunity to be heard and raised her objections to the district court's sua sponte ruling on grounds not raised by the State and the associated judicial notice, the district court may have been notified of potential error and given the opportunity to correct it, including permitting the parties a fair opportunity to consider and respond to the facts to be judicially noticed and creating a sufficient record for appellate review. *See Gonzales v. Shaw*, 2018-NMCA-059, ¶ 14, 428 P.3d 280 (explaining the primary purpose of the preservation rule). Accordingly, we agree Defendant's arguments against the district court's judicial notice were not preserved.

{24} However, the preservation rule is not absolute, and this Court may address unpreserved issues that involve, among others, the fundamental rights of a party. *See* Rule 12-321(B)(2) (recognizing the Court's discretion to hear unpreserved "issues involving . . . fundamental rights of a party"). As this case involves Defendant's fundamental right to be free from unreasonable searches, this Court has the inherent authority to address the issue, even if it was not preserved below, and we do so now. *See State v. Gomez*, 1997-NMSC-006, ¶ 31 n.4, 122 N.M. 777, 932 P.2d 1 (recognizing this Court's discretion to hear unpreserved search and seizure issues).

2. Judicial notice of inevitable discovery

{25} Next, we turn to the circumstances surrounding the district court's decision to take judicial notice of the jail's inventory process. District courts "may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the court's territorial jurisdiction, (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned, or (3) notice is provided by statute." Rule 11-201(B). However, "[w]hen a court takes judicial notice of a fact, *it must be done on the record*." *City of Aztec v. Gurule*, 2010-NMSC-006, ¶ 7, 147 N.M. 693, 228 P.3d 477 (emphasis added). "Our trial courts should be explicit when taking judicial notice, for the benefit of the parties and the reviewing courts." *Id.* "There are two main reasons trial courts should make a clear record when taking judicial notice of a fact: (1) to facilitate appellate review and (2) to provide notice, as required by due process, to the opposing party." *Id.* (citation omitted). "The matter of which a court will take judicial notice must be a subject of common and general knowledge. The matter must be known, that is well established and authoritatively settled. Thus, uncertainty of the matter or fact in question will operate to preclude judicial notice thereof." *State v. Torres*, 1999-NMSC-010, ¶ 41, 127 N.M. 20, 976 P.2d 20 (internal quotation marks and citation omitted).

{26} In this case, the district court did not properly take judicial notice of the jail's inventory process because it failed to establish on the record how the inventory process is the subject of common and general knowledge or is well established and settled. At the suppression hearing, the district court sua sponte took judicial notice of the inventory policies and procedures of the Curry County Detention Center without ever specifically identifying it when it stated:

> But in this case, the purse would go with [Defendant] to the jail . . . when you go to the jail, if you've got a purse with you, it's going to be searched at the jail. So that in addition to search incident to arrest, I think there's probably an inevitable discovery rule. It would have been—it would have been searched at some point anyway. . . . [I]n addition I would say because the purse would have been searched at the jail pursuant to their policy anyway and the contents would have been logged into—I mean, that's what they have to do. They log the contents of a purse—they come into the jail and would have—the items would have been found at that time anyway, so inevitable discovery also would have resulted in the seizure of this evidence.

There is nothing in the record to show that the inventory procedures of the Curry County Detention Center are generally known within the district court's territorial jurisdiction or that they can be accurately and readily determined. The State argues that the district court may utilize its prior experiences with the jail's practices and procedures, but the district court does not explicitly, on the record, state that it has personal prior knowledge and experience of the jail's inventory policy. Further, as the Court of Appeals properly noted, it is uncertain whether the jail's inventory policy would include searching the insides of the flashlights within Defendant's purse and the district court failed to explain how such information is generally known or can be accurately and readily determined. *See Ortiz*, A-1-CA-34703, mem. op. ¶ 14. The State attempts to counter this point by directing this Court to the testimony of Officer Howard who testified that he was suspicious of the flashlights because of their different weights. However, this argument does not support that the jail's inventory procedure is the proper subject of judicial notice. Additionally, because Officer Howard does not establish that he has personal knowledge of the jail's inventory process, his testimony cannot support the basis for the district court to take judicial notice of the inventory process or independently support that the flashlights would have been inevitably searched.

{27} Therefore, given that the district court did not properly and explicitly es-

tablish in the record how the policies and procedures of the Curry County Detention Center were generally known or could be accurately and readily determined, the district court erred when it took judicial notice of the jail's inventory policies. Based on this conclusion, this Court declines to address the State's invitation to adopt a categorical rule on whether district courts may or may not take judicial notice to support the application of the inevitable discovery doctrine. The State contends that the Court of Appeals concluded that judicial notice is not available in the context of the inevitable discovery doctrine. We disagree and interpret the Court of Appeals' conclusion to indicate, in line with this opinion, that the district court erred in taking judicial notice of the jail's inventory process under Rule 11-201 by its failure to explain its ruling, rendering the judicial notice improper under the circumstances. *See Ortiz*, A-1-CA-34703, mem. op. ¶ 14.

{28} Given our conclusion that the district court did not properly take judicial notice of the jail's inventory process, the State's theory of inevitable discovery fails. "The inevitable discovery doctrine is an exception to the exclusionary rule that permits the admission of unlawfully seized evidence if that evidence would have been seized independently and lawfully in due course." *State v. Barragan*, 2001-NMCA-086, ¶ 18, 131 N.M. 281, 34 P.3d 1157, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110. "In order for the inevitable discovery doctrine to apply, the lawful means by which the evidence could have been attained must be wholly independent of the illegal search." *Id.* "Like all warrantless searches, however, inventory searches are presumed to be unreasonable and the burden of establishing their validity is on the State." *State v. Davis*, 2018-NMSC-001, ¶ 11, 408 P.3d 576 (internal quotation marks and citation omitted).

{29} Because the district court did not properly take judicial notice of the jail's inventory process, there is no evidence in the record to establish the jail's inventory process and whether it would have inevitably discovered the methamphetamine in Defendant's purse. Further, there is no evidence that the jail's procedures would have included a search of the flashlights found in Defendant's purse during an inventory search. *See State v. Johnson*, 1996-NMCA-117, ¶ 15, 122 N.M. 713, 930 P.2d 1165 ("A search for purposes of making an inventory can include the search of containers so long as it is conducted according to established procedure."). As the record does not contain any evidence concerning whether the methamphetamine would have been inevitably discovered, we hold that the State did not meet its burden to establish the validity and reasonableness of the search under the inevitable discovery doctrine.

III. CONCLUSION

{30} Because the State did not produce any evidence in the record to support a finding that the warrantless search of Defendant's purse was a search of her person or was within the area of her immediate control, we conclude that the State failed to meet its burden to demonstrate that the search was reasonable under the search-incident-to-arrest exception to the warrant requirement. Additionally, because the district court failed to explain how the information it relied upon to establish the jail's inventory process was generally known and how that information could be accurately and readily determined and because the State did not produce any evidence that the purse and flashlights would have been inevitably discovered, we further hold that the State failed to meet its burden to demonstrate that the search was reasonable under the inevitable discovery doctrine. Therefore, because the State failed to meet its burden to establish the reasonableness of the warrantless search of Defendant's purse, we hold that the search was a violation of Defendant's Fourth Amendment rights. We affirm the Court of Appeals' reversal of the district court's denial of Defendant's motion to suppress and remand the case to the district court to vacate Defendant's conviction and sentence.

{31} IT IS SO ORDERED.

JULIE J. VARGAS, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

DAVID K. THOMSON, Justice

From the New Mexico Supreme Court

Opinion Number: 2023-NMSC-027
No: S-1-SC-39481 (filed September 22, 2023)

MICHELLE LUJAN GRISHAM in her official capacity as Governor of the State of New Mexico, HOWIE MORALES, in his official capacity as New Mexico Lieutenant Governor and President of New Mexico Senate, MIMI STEWART, in her official capacity as President Pro Tempore of the New Mexico Senate, and JAVIER MARTINEZ, in his official capacity as Speaker of the New Mexico House of Representatives,
Petitioners,
v.
HON. FRED T. VAN SOELEN, District Court Judge, Fifth Judicial District Court,
Respondent,
and
REPUBLICAN PARTY OF NEW MEXICO, DAVID GALLEGOS, TIMOTHY JENNINGS, DINAH VARGAS , MANUEL GONZALES JR., BOBBY AND DEE ANN KIMBRO, AND PEARL GARCIA,
Real Parties in Interest,
and
MAGGIE TOULOUSE OLIVER,
Defendant-Real Party in Interest.
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OPINION

BACON, Chief Justice.

{1} This case presents the issue of whether a partisan gerrymandering claim is cognizable and justiciable under the Equal Protection Clause in Article II, Section 18 of the New Mexico Constitution and, if so, what standards should be applied in its adjudication. N.M. Const. art. II, § 18 ("No person shall be deprived of life, liberty or property without due process of law; *nor shall any person be denied equal protection of the laws*." (emphasis added)). Real Parties in Interest (Real Parties)—Republican Party of New Mexico, David Gallegos, Timothy Jennings, Dinah Vargas, Manuel Gonzales Jr., Bobby and Dee Ann Kimbro, and Pearl Garcia—had filed suit as Plaintiffs in the district court, alleging that the congressional districting maps enacted in 2021 violate New Mexico's Equal Protection Clause. As Defendants in the district court, Petitioners—in their capacities as elected officials, the Governor, Lieutenant Governor-President of the Senate, President Pro Tempore of the Senate, and Speaker of the House of Representatives[1]—filed a petition for a writ of superintending control and request for stay in this Court to resolve the aforementioned issues. Following oral argument and supplemental briefing on those issues, we filed an order and an amended order, both of which, among other things, granted the petition insofar as declaring the justiciability of a partisan gerrymander claim and providing guidance and standards for the district court. Today, we explain that order and provide additional guidance to the district court regarding the resolution of a partisan gerrymandering case.

I. FACTUAL AND PROCEDURAL BACKGROUND

{2} Within a special legislative session in December 2021, the challenged congressional map and associated legislation was introduced in the Senate, approved by both chambers, and signed into law by the Governor.[2] In November 2021, the Citizen Redistricting Committee had submitted to the Legislature its proposed redistricting plans, promulgated in accordance with the Redistricting Act, NMSA 1978, §§ 1-3A-1 to -9 (2021).[3] However, the Legislature exercised its discretion to draw

[1] Secretary of State Maggie Toulouse Oliver, also named as a real party in interest, asserted that she is a nominal party and therefore has declined to take a position on the questions presented in this matter.

[2] Senate Bill 1, 2021 N.M. Laws, 2d Spec. Sess., ch. 2, §§ 1-5, https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legType=B&legNo=1&year=21s2 (last visited Sept. 18, 2023) (choose "Final Version" and "Congress -Final Version Maps and Data" hyperlinks); see NMSA 1978, § 1-15-15 (2021), § 1-15-16 (2021), § 1-15-16.1 (2021), § 1-15-17 (2021), § 1-15-15.2 (2021).

and enact its own maps, including the challenged congressional map. *See* Senate Bill 1, "Congress-Final Version Maps and Data" hyperlink; *see also* § 1-3A-9(B) ("The legislature shall receive the adopted district plans for consideration in the same manner as for legislation recommended by interim legislative committees.").

{3} Approximately one month after the congressional map's adoption, the Real Parties filed their lawsuit in district court challenging the map as an unconstitutional partisan gerrymander. Among other claims, the Real Parties quoted *Maestas v. Hall*, 2012-NMSC-006, ¶¶ 25, 34, 274 P.3d 66, for the proposition that "[w]hen drafters of congressional maps use 'illegitimate reasons' to discriminate against regions at the expense of others, including failing to adhere to New Mexico's 'traditional districting principles,' aggrieved voters may seek redress of this constitutional injury in the courts through an equal protection challenge." The Real Parties further alleged that the challenged map "drastically" split (or "crack[ed]")[4] the votes of registered Republicans in southeastern New Mexico from a single district (Congressional District 2) into all three congressional districts and diluted those votes by splitting registered Democrats in the greater-Albuquerque area into all three districts as well. The alleged effect was to "impose a severe partisan performance swing by shifting [Congressional District] 2's strong Republican block . . . into majority-Democratic seats." The Real Parties sought a declaration that the challenged map is an unconstitutional partisan gerrymander in violation of Article II, Section 18. They additionally moved for a preliminary injunction to block the map from taking effect for the 2022 congressional elections.

{4} The Real Parties also moved for injunctive relief in asking the district court to adopt "a partisan neutral congressional map consistent with [map E]," one of the three partisan-neutral congressional plans developed by the Citizen Redistricting Committee and recommended to the Legislature.

{5} Petitioners moved to dismiss the Real Parties' lawsuit, arguing under *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), and separation-of-powers principles that the lawsuit raised a nonjusticiable political question. The district court denied the motions, reasoning that the Real Parties had alleged "a strong, well-developed case that [the challenged map] is an unlawful political gerrymander that dilutes Republican votes in congressional races in New Mexico." The district court also held that the Real Parties' partisan-gerrymandering claim was not definitively barred by *Rucho* or state law and noted that the Real Parties had cited state law authorities, namely *Maestas* and the Redistricting Act, that may provide a standard for evaluating their equal protection claim.

{6} In separate findings and conclusions, the district court denied the Real Parties' motion for preliminary injunction, concluding among other things (1) that the court likely could not grant the requested relief of adopting map E or drawing its own map, (2) that enjoining the 2021 map would cause "chaos and confusion" for the imminent primary election, and (3) that the Real Parties had not shown a "likelihood of success on the merits." In its second letter decision on the motion, the district court further explained that, because the challenged map "will be used . . . potentially for the next five (5) elections, . . . the case will continue, and the Court will hear further argument at a later date on [the] complaint, that could affect the elections after 2022."

{7} Shortly after the district court filed its orders denying the motions to dismiss and for preliminary injunction, Petitioners filed the instant petition seeking a stay of proceedings and a writ of superintending control to resolve two "controlling legal issues" in the underlying suit:

> (1) Whether Article II, Section 18 . . . provides a remedy for a claim of alleged partisan gerrymandering?
>
> (2) Whether the issue of alleged partisan gerrymandering is a justiciable issue; and if such a claim is justiciable under the New Mexico Constitution, what standards should the district court apply in resolving that claim in this case?

This Court stayed the proceedings in the district court and heard oral arguments, following which we ordered supplemental briefing addressing whether "the New Mexico Constitution provide[s] greater protection than the United States Constitution against partisan gerrymandering." Subsequently herein we discuss the parties' arguments in these proceedings as relevant to the issues.

{8} We granted the petition and provided guidance and standards for the district court. As we discuss further herein, our guidance and standards include (1) that a partisan gerrymandering claim is justiciable under Article II, Section 18, (2) that such a claim is subject to the three-part test articulated by Justice Kagan in her dissent in *Rucho*, (3) that at this stage in the proceedings, we need not determine the precise degree of partisan gerrymandering that is permissible under the New Mexico Constitution, (4) that intermediate scrutiny is the proper level of scrutiny for such a claim, and (5) what evidence must be considered of the relevant evidence that may be considered.

II. DISCUSSION

A. Our Exercise of Superintending Control and Standard of Review

{9} "Article VI, Section 3 of the New Mexico Constitution confers on this Court superintending control over all inferior courts and the power to issue writs necessary or proper for the complete exercise of our jurisdiction and to hear and determine the same." *Kerr v. Parsons*, 2016-NMSC-028, ¶ 16, 378 P.3d 1 (text only) (citation omitted).[5] "The power of superintending control is the power to control the course of ordinary litigation in inferior courts." *Dist. Ct. of Second Jud. Dist. v. McKenna*, 1994-NMSC-102, ¶ 3, 118 N.M. 402, 881 P.2d 1387 (internal quotation marks and citation omitted). "In granting a writ of superintending control, we may offer guidance to lower courts on how to properly apply the law." *State ex rel. Torrez v. Whitaker*, 2018-NMSC-005,

[3] See Citizen Redistricting Committee, CRC District Plans & Evaluations (reissued Nov. 8, 2021) at 4, https://www.nmredistricting.org/wp-content/uploads/2021/11/2021-11-2-CRC-Map-Evaluations-Report-Reissued-1.pdf (last visited Sept. 8, 2023); see also § 1-3A-5(A)(1)(a) (providing that the committee shall "adopt three district plans each for . . . New Mexico's congressional districts"); § 1-3A-7(C)(1) (prohibiting the use of partisan data other than "to ensure that the district plan complies with applicable federal law"); § 1-3A-9(A) ("The committee shall deliver its adopted district plans . . . to the legislature by October 30, 2021, or as soon thereafter as practicable . . . .").

[4] As expressed in the Alaska Supreme Court's In re 2021 Redistricting Cases:

> Gerrymandering often takes one of two forms, "packing" or "cracking." "Packing" occurs when groups of voters of similar expected voting behavior are unnaturally concentrated in a single district; this may create a "wasted" excess of votes that otherwise might have influenced candidate selection in one or more other districts. "Cracking" occurs when like-minded voters are unnaturally divided into two or more districts; this often is done to reduce the split group's ability to elect a candidate of its choice.

528 P.3d 40, 54 (Alaska 2023) (footnotes omitted).

[5] The "text only" parenthetical as used herein indicates the omission of all of the following—internal quotation marks, ellipses, and brackets—that are present in the quoted source, leaving the quoted text itself otherwise unchanged.

¶ 30, 410 P.3d 201. We may exercise the power of superintending control "where it is deemed to be in the public interest to settle the question involved at the earliest moment." *Griego v. Oliver*, 2014-NMSC-003, ¶ 11, 316 P.3d 865 (internal quotation marks and citation omitted).

{10} The implications and constitutional interests of the underlying lawsuit warrant the exercise of this authority. The adjudication of a partisan gerrymandering claim is a matter of first impression that implicates both New Mexicans' constitutional right to vote and the Legislature's constitutional responsibility for redistricting. *See State ex rel. Walker v. Bridges*, 1921-NMSC-041, ¶ 8, 27 N.M. 169, 199 P. 370 ("[T]he supreme right guaranteed by the Constitution of the state is the right of a citizen to vote at public elections."); *see also* N.M. Const. art. IV, § 3(D) (identifying the Legislature as the provenance of reapportionment). We echo the district court's observation that uncertainty as to the applicable districting maps for upcoming elections could result in "chaos and confusion," further highlighting the clear and substantial public interest served by resolving the underlying legal issues here. *See McKenna*, 1994-NMSC-102, ¶ 5 ("[T]his Court has used its power of superintending control to address issues of great public interest and importance." (internal quotation marks and citation omitted)). "Because this case presents an issue of first impression . . . without clear answers under New Mexico law, . . . we agree that this is an appropriate case in which to exercise our superintending control authority." *Torrez*, 2018-NMSC-005, ¶ 31 (first omission in original) (internal quotation marks and citation omitted).

B. Resolution of This Case Is Proper Under Article II, Section 18 Without Application of Interstitial Analysis

{11} As a preliminary matter, we determine whether the instant claim under the Equal Protection Clause of Article II, Section 18 can be resolved through interstitial analysis. For the reasons that follow, we determine that it cannot.

{12} Under the framework for interstitial analysis announced in *State v. Gomez*, "[w]hen a litigant asserts protection under a New Mexico Constitutional provision that has a parallel or analogous provision in the United States Constitution," a state "court asks first whether the right being asserted is protected under the federal constitution. If it is, then the state constitutional claim is not reached. If it is not, then the state constitution is examined." 1997-NMSC-006, ¶¶ 19-22, 122 N.M. 777, 932 P.2d 1. Under the latter scenario, a court "may diverge from federal precedent for three reasons [or prongs]: a flawed [or undeveloped] federal analysis, structural differences between state and federal government, or distinctive state characteristics." *Id.* ¶ 19. For purposes of this discussion, we consider the framework above to consist of two stages: the first stage consists of the initial question and answer regarding the scope of federal constitutional protection, and the second stage, if no such protection applies, consists of determining which prong if any supports divergence from federal precedent.

{13} The applicability of *Gomez* is debated at length in the parties' supplemental briefing. The Real Parties first assert that a partisan gerrymander violates the federal equal protection standard, and they thus invite this Court to "adjudicate claims asserting the full substantive scope of the federal Equal Protection Clause." The Real Parties then assert in the alternative that each of the three *Gomez* prongs of interstitial analysis supports adjudication under Article II, Section 18; that *Rucho*'s holding establishes the relevant federal analysis to be "undeveloped" where federal courts cannot reach the merits of such a claim for prudential reasons; that structural differences exist for New Mexico, including our lack of provisions analogous to the "Cases" or "Controversies" of the United States Constitution's Article III, Section 2; and that distinctive New Mexico characteristics include "[t]his Court's [b]road[er] [c]onstruction of the [s]tate Equal Protection Clause."

{14} In response, Petitioners first reject the availability of the federal equal protection standard here, asserting that "the U.S. Supreme Court has *never* held that partisan gerrymandering violates the federal equal protection clause." Regarding the three *Gomez* prongs of interstitial analysis, Petitioners assert that none avail: that federal analysis is not *undeveloped*, given *Rucho*'s "ultimate rejection" of "th[at] Court's political gerrymandering jurisprudence"; that no state "structural differences command departure from *Rucho*'s federal analysis," where "[r]espect for separation of powers" should constrain this Court; and that no "[s]pecial [s]tate [c]haracteristics . . . [j]ustify [d]eparture" from the federal standard. Regarding the Real Parties' assertion that this Court has construed the state Equal Protection Clause more broadly, Petitioners argue that "the State and Federal Equal Protection Clauses are coextensive, providing the same protections" (internal quotation marks and citation omitted), and that this Court has only interpreted our state Equal Protection Clause more broadly in discrete circumstances that do not apply here.

{15} Notwithstanding the parties' arguments, we determine that the instant case should be resolved under Article II, Section 18 without application of interstitial analysis. Our conclusion rests primarily on the undetermined nature of the federal Equal Protection Clause—which we discuss further herein—as it applies to a partisan gerrymandering claim. Because that substantive matter is undetermined rather than undeveloped, we cannot answer "whether the right being asserted is protected under the federal constitution." *Gomez*, 1997-NMSC-006, ¶ 19. Importantly, the *Gomez* framework of interstitial analysis is best suited to state constitutional claims for which the relevant "federal protections are extensive and well-articulated," whereas the framework's utility is significantly diminished when federal precedent is unclear. *Id.* ¶ 21 (internal quotation marks and citation omitted). Without a clear answer to that initial question of the *Gomez* framework, we do not reach the framework's second stage.

{16} Under the plain language of *Gomez*, interstitial analysis of the instant claim under the state Equal Protection Clause *begins* by asking whether the right to vote is protected by the federal Equal Protection Clause from vote dilution effected by a partisan gerrymander—envisioning a clear, yes-or-no answer. *See id.* ¶ 19. If *yes*, "then the state constitutional claim is not reached"; if *no*, "then [Article II, Section 18] is examined." *Id.* Because *Rucho* did not address the merits of the alleged equal protection violation therein, we are left with uncertainty as to the substantive scope of

[6] By way of illustration, we note that, pre-Rucho, the United States Supreme Court recognized that invidious discrimination against political groups, like that against racial groups, could be cognizable under equal protection:

> What is done in so arranging for elections, or to achieve political ends or allocate political power, is not wholly exempt from judicial scrutiny under the Fourteenth Amendment. As we have indicated, for example, multimember districts may be vulnerable, if racial or political groups have been fenced out of the political process and their voting strength invidiously minimized.

Gaffney v. Cummings, 412 U.S. 735, 754 (1973) (emphasis added). However, as that proposition regarded the merits, we cannot know if the principle would be applicable by a court unbound by the federal standard of nonjusticiability announced subsequently in Rucho. See 139 S. Ct. at 2494, 2496.

the federal standard for this context,[6] and thus we lack the clear answer required by *Gomez*'s initial question. In this regard, we read *Gomez* to require clarity as to the existence of federal protection as a prerequisite to reaching the second stage of interstitial analysis. Stated differently, proceeding to the framework's second stage without such clarity would rely on speculation as to the reach of the relevant federal protection. We do not read *Gomez* to allow such speculation, and accordingly we cannot resolve the instant case under interstitial analysis.

{17} We recognize that *Gomez* does contemplate application of interstitial analysis where the relevant federal analysis is "undeveloped," as argued by the Real Parties. *Id.* ¶ 20. However, this argument does not avail for two reasons. First, we have read *Gomez* to apply this consideration within the second stage of interstitial analysis, specifically within the first prong of "reasons to depart from established federal precedent." *State v. Adame*, 2020-NMSC-015, ¶ 14, 476 P.3d 872 (stating the first such "reason" as "the federal analysis is flawed or undeveloped"); *see also State v. Crane*, 2014-NMSC-026, ¶ 15, 329 P.3d 689. As explained, here we do not reach that second stage of the analysis.

{18} Second, *Gomez*'s incorporation of *undeveloped* federal analysis derives from *State v. Attaway*, wherein this Court interpreted Article II, Section 10 of the New Mexico Constitution in a context not previously reached by the United States Supreme Court's interpretation of the Fourth Amendment. *Attaway*, 1994-NMSC-011, ¶ 14, 117 N.M. 141, 870 P.2d 103 ("The [United States] Supreme Court has not determined whether officers executing a search warrant must knock and announce prior to entry."). The *Attaway* Court thus reached its holding without having to navigate an established, analogous federal standard. *See id.* ¶ 20 ("The New Mexico Constitution embodies a knock-and-announce requirement." (emphasis omitted)). In this regard, we read *Gomez*'s use of "*undeveloped* federal analogs," 1997-NMSC-006, ¶ 20 (emphasis added), to mean situations in which no United States Supreme Court standard for a federal provision exists relevant to a state court's analysis of a specific provision of the New Mexico Constitution. In contrast to the issue in *Attaway*, the issue of partisan gerrymandering under the Federal Equal Protection Clause has been debated extensively over decades by the United States Supreme Court, *see Rucho*, 139 S. Ct. at 2497-98, resulting in the uncertainty discussed above regarding the scope of the federal standard. We determine that this uncertainty is not what the *Gomez* Court envisioned by its use of "undeveloped."

{19} Further, because that uncertainty necessarily extends to the relationship of our state Equal Protection Clause to its federal analog, we deem that any ruling by this Court interpreting or relying on the unknown scope of the federal provision—regardless of the prevailing party—would be especially uncertain. In the event of subsequent federal development in this area of law, the circumstances of New Mexico's ensuing congressional elections could indeed be thrown into chaos and confusion. Accordingly, we determine that exercising our constitutional "power of superintending control to address issues of great public interest and importance," *McKenna*, 1994-NMSC-102, ¶ 5 (internal quotation marks and citation omitted), warrants a ruling solely under Article II, Section 18, thus allowing the public to rely on the result.[7]

{20} Under our determination that this case cannot be resolved under interstitial analysis, we need not further address the parties' arguments in this regard.

C. A Partisan Gerrymandering Claim Is Justiciable Under Article II, Section 18

{21} Citing *Rucho*, 139 S. Ct. at 2494, Petitioners argue that this Court should hold a partisan gerrymandering claim to be nonjusticiable, that is, not "capable of being disposed of judicially." *Justiciable*, *Black's Law Dictionary* (11th ed. 2019). Petitioners assert that separation of powers principles are offended by adjudication of such "fundamentally political dispute[s]"; that the New Mexico Equal Protection Clause is "coextensive" with its federal analog, and thus additional state constitutional or statutory guideposts are necessary for adjudication under Article II, Section 18; and that political question doctrine precludes the justiciability of a partisan gerrymandering claim. Implicitly, these arguments suggest that concerns regarding federal standards of justiciability should override state judicial concerns regarding constitutional violations of equal protection and, consequently, that a partisan gerrymandering claim under Article II, Section 18 is excepted from judicial review. We disagree.

1. The right to vote is of paramount importance in New Mexico

{22} At the outset, we emphasize that "[t]he right to vote is the essence of our country's democracy, and therefore the dilution of that right strikes at the heart of representative government." *Maestas*, 2012-NMSC-006, ¶ 1; *see State ex rel. League of Women Voters of N.M. v. Advisory Comm. to N.M. Compilation Comm'n*, 2017-NMSC-025, ¶ 1, 401 P.3d 734 ("[T]he elective franchise . . . is among the most precious rights in a democracy."). In *State ex rel. League of Women Voters v. Herrera*, we "reiterat[ed] the longstanding and fundamental principle that the right to vote is of paramount importance. The courts of New Mexico have long held that in service of this important right, courts should guard against voter disenfranchisement whenever possible and interpret statutes broadly to favor the right to vote." 2009-NMSC-003, ¶ 8, 145 N.M. 563, 203 P.3d 94 (citations omitted). We have further identified voting as "a fundamental personal right or civil liberty . . . which the Constitution explicitly or implicitly guarantees." *Marrujo v. N.M. State Highway Transp. Dep't*, 1994-NMSC-116, ¶ 10, 118 N.M. 753, 887 P.2d 747.

{23} In addition, we recognize that other provisions in our state Bill of Rights—specifically Article II, Sections 2, 3, and 8—support that the right to vote is of paramount importance in New Mexico. Article II, Section 2 (Popular Sovereignty Clause) provides, "All political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good." Article II, Section 3 (Right of Self-Government Clause) provides, "The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state." Article II, Section 8 (Freedom of Elections Clause) provides, "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." As we discuss herein, we determine that the right to vote is intrinsic to the guarantees embodied in these provisions of our state Bill of Rights.

[7] We take note of Justice Bosson's observations that "Gomez is not inscribed in granite; it is not part of the state Constitution. It is merely a means to an end . . . [intended to] serve[] the purposes of justice and an independent development of our state Constitution." State v. Garcia, 2009-NMSC-046, ¶ 56, 147 N.M. 134, 217 P.3d 1032 (Bosson, J., specially concurring). We agree that Gomez does not bind this Court as to our analysis of state constitutional questions, and we encourage thoughtful and reasoned argument in the future addressing whether the interstitial approach is the proper method to ensure the people of New Mexico the protections promised by their constitution. Cf. Jeffery S. Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law, 174, Oxford Univ. Press (2018) ("[A] chronic underappreciation of state constitutional law has been hurtful to state and federal law and the proper balance between state and federal courts in protecting individual liberty.").

{24} We begin this discussion with our Freedom of Elections Clause, which we have also characterized as our Free and Open Clause. *See, e.g.*, *Crum v. Duran*, 2017-NMSC-013, ¶ 2, 390 P.3d 971. By its plain language, the Clause implicitly asserts the importance of "the free exercise of the right of suffrage." N.M. Const. art. II, § 8. We have characterized the Freedom of Elections Clause as "intended to promote voter participation during elections" and as "Provid[ing] a Broad Protection of the Right to Vote." *Crum*, 2017-NMSC-013, ¶¶ 2-6; *see also Gunaji v. Macias*, 2001-NMSC-028, ¶ 29, 130 N.M. 734, 31 P.3d 1008 ("[A]n election is only 'free and [open]' if the ballot allows the voter to choose between the lawful candidates for that office."). In *Crum*, we further noted with approval the Missouri Supreme Court's interpretation of that state's "substantively identical" provision "to mean that every qualified voter may freely exercise the right to vote without restraint or coercion of any kind and that his or her vote, when cast, shall have the same influence as that of any other voter." 2017-NMSC-013, ¶ 9 (text only) (quoting *Preisler v. Calcaterra*, 243 S.W.2d 62, 64 (Mo. 1951) (en banc)).

{25} While we have not had prior occasion to construe either our Popular Sovereignty Clause or our Right of Self-Government Clause, we determine that Article II, Sections 2 and 3 by their plain language are constitutional provisions articulating the sovereignty of the people over their government, which sovereignty under our system of representative democracy is ensured by the right to vote. These two provisions—which have no federal analog—underscore the importance of the franchise to effectuating the other rights guaranteed by the New Mexico Constitution. To that extent, we agree with the Real Parties that we "should construe the Equal Protection Clause's application here *in par*[*i*] *materia* or through the 'prism' of [these] other Bill of Rights provisions that also speak directly to the right to fair electoral representation." *Cf. Herrera*, 2009-NMSC-003, ¶ 8 ("[T]he right to vote is of paramount importance."); *Walker*, 1921-NMSC-041, ¶ 8 ("[T]he supreme right guaranteed by the Constitution of the state is the right of a citizen to vote at public elections."); *Hannett v. Jones*, 1986-NMSC-047, ¶ 13, 104 N.M. 392, 722 P.2d 643 (recognizing "the principle that constitutions must be construed so that no part is rendered surplusage or superfluous"); *State v. Gutierrez*, 1993-NMSC-062, ¶ 55, 116 N.M. 431, 863 P.2d 1052 ("Surely, the framers of the Bill of Rights of the New Mexico Constitution meant to create more than 'a code of ethics under an honor system.'" (quoting Potter Stewart, *The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 Colum. L. Rev. 1365, 1369-72 (1983))).

{26} We need not determine here whether these broad constitutional provisions are merely "meant to express . . . basic political principle[s]" or are meant "as a textual enumeration of certain substantive rights." Marshall J. Ray, *What Does the Natural Rights Clause Mean to New Mexico?*, 39 N.M. L. Rev. 375, 399, 403 (2009) (discussing the New Mexico Constitution Article II, Section 4). The right to vote *is* the essential democratic mechanism intrinsic to these provisions that links the people to their guaranteed power and rights. We therefore read Article II, Section 18 together with Sections 2, 3, and 8 to evaluate an individual's right to vote under the New Mexico Constitution.

2. Vote dilution can rise to a level of constitutional harm for which Article II, Section 18 provides a remedy

{27} In the seminal case of *Reynolds v. Sims*, the United States Supreme Court stated in the one-person, one-vote context that the "federally protected right suffers substantial dilution where a favored group has full voting strength and the groups not in favor have their votes discounted." 377 U.S. 533, 555 n.29 (1964) (text only) (citation omitted); *see Maestas*, 2012-NMSC-006, ¶ 1. In reliance on *Reynolds*, this Court has recognized constitutional harm where the individual right to vote is infringed, including through debasement or dilution. *Wilson v. Denver*, 1998-NMSC-016, ¶ 27, 125 N.M. 308, 961 P.2d 153 ("'[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" (quoting *Reynolds*, 377 U.S. at 555)); *see also State ex rel. Witt v. State Canvassing Bd.*, 1968-NMSC-017, ¶ 22, 78 N.M. 682, 437 P.2d 143 ("'To the extent that a citizen's right to vote is debased, [that individual] is that much less a citizen.'" (quoting *Reynolds*, 377 U.S. at 567)).

{28} A partisan gerrymander by its very nature results in vote dilution. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 791 (2015) (defining "the problem of partisan gerrymandering" as "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power"); *cf. Vieth v. Jubelirer*, 541 U.S. 267, 274-75 (2004) (recognizing a historical gerrymander as a political party's "'attempt to gain power which was not proportionate to its numerical strength'" (citation omitted)). Just five years ago, a unanimous United States Supreme Court agreed that the "harm" of vote dilution "arises from the particular composition of the voter's own district, which causes his vote—having been packed or cracked[8]—to carry less weight than it would carry in another, hypothetical district." *Gill v. Whitford*, 138 S. Ct. 1916, 1930-31 (2018).

{29} However, some degree of vote dilution under a partisan gerrymander does not offend the United States Constitution. *See Rucho*, 139 S. Ct. at 2497 ("[W]hile it is illegal for a jurisdiction to depart from the one-person, one-vote rule, or to engage in racial discrimination in districting, a jurisdiction may engage in constitutional political gerrymandering." (internal quotation marks and citation omitted)); *see also Gaffney*, 412 U.S. at 753 ("Politics and political considerations are inseparable from districting and apportionment.").

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[8] As described by Justice Kagan,

> Partisan gerrymandering operates through vote dilution—the devaluation of one citizen's vote as compared to others. A mapmaker draws district lines to "pack" and "crack" voters likely to support the disfavored party. He packs supermajorities of those voters into a relatively few districts, in numbers far greater than needed for their preferred candidates to prevail. Then he cracks the rest across many more districts, spreading them so thin that their candidates will not be able to win. Whether the person is packed or cracked, his vote carries less weight—has less consequence—than it would under a neutrally drawn (non-partisan) map. In short, the mapmaker has made some votes count for less, because they are likely to go for the other party.

Rucho, 139 S. Ct. at 2513-14 (Kagan, J., dissenting) (citations omitted).

[9] We note that the dangers for democracy of such gerrymanders are recognized in Rucho by both the majority and the dissent. See Rucho, 139 S. Ct. at 2506 (the majority recognizing that "[e]xcessive partisanship in districting leads to results that reasonably seem unjust" as well as "the fact that such gerrymandering is 'incompatible with democratic principles'" (quoting Ariz. State Legislature, 576 U.S. at 791)); id. at 2507 ("Our conclusion does not condone excessive partisan gerrymandering."); id. at 2509 (Kagan, J., dissenting) ("The partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights[.] . . . If left unchecked, gerrymanders like the ones here may irreparably damage our system of government.").

Stated differently, depending on the degree of vote dilution under a political gerrymander, it may not rise to the level of constitutional harm.

{30} Although some degree of partisan gerrymandering is permissible, *egregious* partisan gerrymandering can effect vote dilution to a degree that denies individuals their "inalienable right to full and effective participation in the political process[]," *Reynolds*, 377 U.S. at 565, and "enable[s] politicians to entrench themselves in office as against voters' preferences," *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting).[9] The consequences of such entrenchment under a partisan gerrymander include that ensuing elections are effectively predetermined, essentially removing the remedy of the franchise from a class of individuals whose votes have been diluted.

{31} 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 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. *See Griego*, 2014-NMSC-003, ¶ 1 ("[W]hen litigants allege that the government has unconstitutionally interfered with a right protected by the Bill of Rights, or has unconstitutionally discriminated against them, courts must decide the merits of the allegation. If proven, courts must safeguard constitutional rights and order an end to the discriminatory treatment."); *see also Walker*, 1921-NMSC-041, ¶ 8; *cf. Gill*, 138 S. Ct. at 1930-31 ("Remedying the individual voter's harm [of vote dilution] . . . requires revising only such districts as are necessary to reshape the voter's district—so that the voter may be unpacked or uncracked, as the case may be.").

{32} Similarly, we fail to see how all political power would be "vested in and derived from the people" and how "all government of right [would] originate[] with the people" and be "founded upon their will," as required by the Popular Sovereignty Clause, if the will of an entrenched political party were to supersede the will of New Mexicans. N.M. Const. art II, § 2. In such a scenario, the will of the people would come second to the will of the entrenched party, and the fundamental right to vote in a free and open election as required by Article II, Section 8 of the New Mexico Constitution would be transformed into a meaningless exercise. *See* N.M. Const. art. II, § 8 ("All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."). Such a result cannot stand.

{33} We reiterate and emphasize that although we refer to federal cases for the purpose of guidance, such cases do not compel our result. Rather, our opinion is separately, adequately, and independently based upon the protections provided by the New Mexico Constitution. *See* N.M. Const. art. II, § 18; *id.* § 3 ("The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state."); *see also Michigan v. Long*, 463 U.S. 1032, 1041 (1983) ("If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved. If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.").

{34} We conclude 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. *See Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 19, 138 N.M. 331, 120 P.3d 413 ("[A] politically powerless group has no independent means to protect its constitutional rights."). Given the consequences of entrenchment, we reiterate that denial of a judicial remedy to individuals directly affected by such a degree of vote dilution would be a dereliction of our responsibility to vindicate constitutional protections, including the equal protection guarantee.

3. A partisan gerrymandering claim under Article II, Section 18 is not excepted from judicial review

{35} In accordance with our foregoing conclusions on the New Mexico Constitution, we next address Petitioners' arguments that a partisan gerrymandering claim should be excepted from judicial review.

{36} As a general proposition under separation of powers principles, this Court conducts judicial review of legislation alleged to commit constitutional harm. *State ex rel. Vill. of Los Ranchos de Albuquerque v. City of Albuquerque*, 1994-NMSC-126, ¶ 15, 119 N.M. 150, 889 P.2d 185 ("The reviewability of executive and legislative acts is implicit and inherent in the common law and in the division of powers between the three branches of government."). The judiciary's proper "function and duty [is] to say what the law is and what the Constitution means." *Dillon v. King*, 1974-NMSC-096, ¶ 28, 87 N.M. 79, 529 P.2d 745 (citing *Marbury v. Madison*, 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.")); *United States v. Nixon*, 418 U.S. 683, 703 (1974) (same); *see* N.M. Const. art. III, § 1. "[T]he primary responsibility for enforcing the Constitution's limits on government, at least since the time of *Marbury v. Madison*, . . . has been vested in the judicial branch." *Gutierrez*, 1993-NMSC-062, ¶ 55 (internal quotation marks and citation omitted); *see Moore v. Harper*, 143 S. Ct. 2065, 2079 (2023) ("Since early in our Nation's history, courts have recognized their duty to evaluate the constitutionality of legislative acts."). "When government is alleged to have threatened any of [the provisions in the New Mexico Bill of R]ights, it is the responsibility of the courts to interpret and apply the protections of the Constitution." *Griego*, 2014-NMSC-003, ¶ 1.

{37} However, in conducting such review,

> "[w]e will not question the wisdom, policy, or justness of a statute, and the burden of establishing that the statute is invalid rests on the party challenging the constitutionality of the statute. An act of the Legislature will not be declared unconstitutional in a doubtful case, . . . and if possible, it will be so construed as to uphold it."

Bounds v. State ex rel. D'Antonio, 2013-NMSC-037, ¶ 11, 306 P.3d 457 (alteration and omission in original) (citation omitted); *cf. Pirtle v. Legis. Council Comm.*, 2021-NMSC-026, ¶ 32, 492 P.3d 586 ("'[I]t is only when a legislative body adopts internal procedures that 'ignore constitutional restraints or violate fundamental rights' that a court can and must become involved." (quoting *United States v. Ballin*, 144 U.S. 1, 5 (1892))).

A. Judicial review of a partisan gerrymander does not offend separation of powers principles

{38} To the extent that Petitioners assert that judicial review of redistricting "do[es] violence to New Mexico's constitutional separation of powers," we reject such a blanket proposition. We agree with Petitioners that "th[is] Court should not interject itself into this fundamentally political dispute *to impose its own policy preference* as to just how 'fair' maps need to be" (emphasis added). To conduct judicial review with such a purpose would contradict the judicial limitation expressed above in *Bounds*. Our proper role, here as in conducting judicial review of legislation

generally, is determining whether the acts of the political branches have exceeded constitutional authority. *See Rodriguez v. Brand West Dairy*, 2016-NMSC-029, ¶ 2, 378 P.3d 13 ("When litigants allege that the government has unconstitutionally discriminated against them, courts must decide the merits of the allegation because if proven, courts must resist shrinking from their responsibilities as an independent branch of government, and refuse to perpetuate the discrimination . . . by safeguarding constitutional rights. Such is the constitutional responsibility of the courts."); *see also Moore*, 143 S. Ct. at 2083 ("[W]hen legislatures make laws, they are bound by the provisions of the very documents that give them life."). The fact that the results of adjudication in a partisan gerrymandering case, as Petitioners assert, "*will*—not maybe—favor one political party over [an]other" reflects the nature of the case, not judicial policymaking.[10] *Cf. Rucho*, 139 S. Ct. at 2519-23 (Kagan, J., dissenting) (concluding that "judicial oversight of partisan gerrymandering" by the lower courts there "us[ed] neutral and manageable—and eminently legal—standards").

{39} We will leave no power on the table in properly fulfilling our constitutional obligations, including to vindicate individual rights. As we explained in *Griego*, when the "government is alleged to have threatened" rights such as equal protection of the law and the right to vote, "it is the responsibility of the courts to interpret and apply the protections of the Constitution" to both safeguard individual rights and put an end to the discriminatory treatment. 2014-NMSC-003, ¶ 1. *See Reynolds*, 377 U.S. at 566 ("We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.").

b. New Mexico's Equal Protection Clause should not be read as coextensive with the federal Equal Protection Clause for purposes of a partisan gerrymandering claim

{40} Petitioners further assert that the instant case is nonjusticiable because the New Mexico Equal Protection Clause is coextensive with its federal counterpart and the additional requisite "standards and guidance" identified in *Rucho* for justiciability do not exist in New Mexico law.

{41} Petitioners' view of the state Equal Protection Clause does not square with our precedent. As Petitioners recognize, we have interpreted Article II, Section 18 as providing broader protection than the Fourteenth Amendment in other contexts.

{42} In *Griego*, we held that "[d]enying same-gender couples the right to marry and thus depriving them and their families of the rights, protections, and responsibilities of civil marriage violates the equality demanded by the Equal Protection Clause of the New Mexico Constitution." 2014-NMSC-003, ¶ 68. In *Breen*, we stated,

> [T]he Equal Protection Clause of the New Mexico Constitution affords "rights and protections" independent of the United States Constitution. While we take guidance from the Equal Protection Clause of the United States Constitution and the federal courts' interpretation of it, we will nonetheless interpret the New Mexico Constitution's Equal Protection Clause independently when appropriate. . . . Federal case law is certainly informative, but only to the extent it is persuasive. In analyzing equal protection guarantees, we have looked to federal case law for the basic definitions for the three-tiered approach [regarding the level of scrutiny to apply to legislation], but we have applied those definitions to different groups and rights than the federal courts.

2005-NMSC-028, ¶ 14 (citations omitted); *id.* ¶ 50 (holding that certain provisions of the Workers' Compensation Act "violate equal protection by discriminating against the mentally disabled in violation of equal protection guarantees").

{43} Petitioners attempt to confine *Griego* and *Breen* as cases wherein we have "invoked Article II, Section 18's Equal Protection Clause as providing greater protection of civil rights only to protect against historical, invidious and purposeful discrimination against a discrete group of vulnerable plaintiffs." Petitioners also note that in both cases we "pointed to the enaction of legislation protecting the very same class of plaintiffs." *See Griego*, 2014-NMSC-003, ¶ 48 (citing recent legislation prohibiting discrimination and profiling based on sexual orientation and "add[ing] sexual orientation as a protected class under hate crimes legislation"); *Breen*, 2005-NMSC-028, ¶ 27 ("protecting the mentally disabled against possible discrimination" by statutorily defining the "'least drastic means principle'"). However, nothing in *Griego* or *Breen* expresses that these features identified by Petitioners were necessary to our finding broader "rights and protections" under Article II, Section 18. Given the constitutional importance of the right to vote, as discussed above, we reject any suggestion that an absence of these features negates protection under our state Equal Protection Clause.

{44} Petitioners also argue that, due to the provisions' textual similarity, "[u]nsurprisingly, New Mexico courts have repeatedly held that the State and Federal Equal Protection Clauses are coextensive, providing the same protections" (internal quotation marks and citation omitted). We note, however, that Petitioners do not cite this Court's cases for their proposition regarding equal protection. Instead, Petitioners cite two New Mexico Court of Appeals cases and one federal district court case that itself cites a third New Mexico Court of Appeals case. *See E. Spire Commc'ns, Inc. v. Baca*, 269 F. Supp. 2d 1310, 1323 (D.N.M. 2003) (citing *Valdez v. Wal-Mart Stores, Inc.,* 1998-NMCA-030, ¶ 6, 124 N.M. 655, 954 P.2d 87); *Mieras v. Dyncorp*, 1996-NMCA-095, ¶ 16, 122 N.M. 401, 925 P.2d 518; *Garcia v. Albuquerque Pub. Schs. Bd. of Educ.*, 1980-NMCA-081, ¶ 4, 95 N.M. 391, 622 P.2d 699. The Real Parties in reply make the apt observation that the cited Court of Appeals cases predate *Breen* and *Griego*. Without more, these citations therefore do not support Petitioners' argument.

{45} Because Article II, Section 18 should not be read as coextensive with the Fourteenth Amendment in this context, we do not accept Petitioners' premise that, to the extent the federal Equal Protection Clause may be read to lack standards supporting justiciability of a partisan gerrymander, the New Mexico Equal Protection Clause does as well. Our rejection of the premise is bolstered by the undetermined nature of the substantive scope of the federal Equal Protection Clause. Accordingly, we reject the assertion that New Mexico law lacks adequate standards and guidance, a point that we address more fully subsequently herein by setting out the applicable equal

[10] We note the Rucho majority's public perception concern that, without "especially clear standards," "intervening courts—even when proceeding with best intentions—would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust." 139 S. Ct. at 2498 (internal quotation marks and citation omitted). However, we find no explanation in Rucho for how such risk is distinct from that borne by courts in numerous other contexts under their constitutional mandate to interpret the laws. We also note and affirm the dissent's full agreement that "[j]udges should not be apportioning political power based on their own vision of electoral fairness, whether proportional representation or any other." Id. at 2515 (Kagan, J., dissenting).

protection test.

{46} Notwithstanding our conclusion, we concur with Petitioners' argument that neither *Maestas* nor the Redistricting Act is a source of redistricting standards that bind the Legislature. Quoting *Rucho* and *Maestas*, the Real Parties point to "traditional districting principles" (*Maestas*, 2012-NMSC-006, ¶ 34) and the Redistricting Act as supplying "standards and guidance for state courts to apply" (*Rucho*, 139 S. Ct. at 2507). *Maestas*, however, only mandates the use of "traditional districting principles" for *court*-drawn plans when the political branches have failed to reach agreement. *Maestas*, 2012-NMSC-006, ¶¶ 31, 34. It says nothing about whether the *Legislature* is bound by such principles in the political redistricting process. *See, e.g.*, *id.* ¶ 34 ("These guidelines . . . should be considered by a state court when called upon to draw a redistricting map."). Significantly, the *Maestas* Court was careful to describe these principles as "guidelines that are relevant to state districts," not as binding requirements that provide a constitutional basis for striking down a duly enacted district map. *Id.* The Redistricting Act, although requiring the Citizen Redistricting Committee to prepare and submit nonpartisan redistricting plans to the Legislature, specifies that those plans are merely recommendations which the Legislature is not required to follow. *See* § 1-3A-9(B) ("The legislature shall receive the adopted district plans for consideration in the same manner as for legislation *recommended* by interim legislative committees." (emphasis added)). Thus, the Real Parties' reliance on the traditional redistricting principles in *Maestas* and the Redistricting Act as standards to satisfy *Rucho* is misplaced.

c. Political question doctrine is nonbinding and does not avail

{47} Petitioners also assert that this Court should follow "the holding and rationale of *Rucho*" when, Petitioners allege, "There is no means for the Judiciary to supply a clear and discernable standard."[11] *See Rucho*, 139 S. Ct. at 2494 ("Among the political question cases the [United States Supreme] Court has identified are those that lack 'judicially discoverable and manageable standards for resolving [them].'" (second alteration in original) (quoting *Baker*, 369 U.S. at 217)).

{48} The political question doctrine as applied in *Rucho* binds federal courts through Article III, Section 2 of the United States Constitution, whereas "the New Mexico Constitution does not expressly impose a [parallel] 'cases or controversies' limitation on state courts." *New Energy Economy, Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 16, 149 N.M. 42, 243 P.3d 746. Notwithstanding their nonbinding status, we have stated that prudential considerations should guide this Court's discretion in the context of conferring standing, *N.M. Right to Choose/NARAL v. Johnson,* 1999-NMSC-005, ¶ 13, 126 N.M. 788, 975 P.2d 841, and we have noted that "'prudential rules' of judicial self-governance, like standing, ripeness, and mootness, are 'founded in concern about the proper—and properly limited—role of courts in a democratic society' and are always relevant concerns," *Shoobridge*, 2010-NMSC-049, ¶ 16 (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). In other words, federal prudential standards—including the political question doctrine—are relevant here but are merely persuasive, a point that Petitioners acknowledge.

{49} Because the federal prudential standard is merely a persuasive consideration instead of a requirement, the question for this Court is limited to whether our constitutional responsibility to vindicate the individual right claimed in this case under Article II, Section 18 outweighs relevant prudential concerns regarding the adjudicatory standards to be applied. Further, our Constitution contains provisions that *Rucho* did not consider, provisions with no federal counterpart. *See* N.M. Const. art. II, §§ 2, 3, and 8. Given the importance of the right to vote, and the manageable standards to be applied under our own constitution discussed below, we conclude that the constitutional concerns here outweigh the prudential concerns. We hold that a partisan gerrymander claim is justiciable under Article II, Section 18 of the New Mexico Constitution.

D. A Partisan Gerrymandering Claim Under Article II, Section 18 Is Subject to the Three-Part Test Articulated by Justice Kagan in Her *Rucho* Dissent

{50} For an equal protection claim asserting a partisan gerrymander under Article II, Section 18, we adopt the three-part test articulated by Justice Kagan in her *Rucho* dissent:

> As many legal standards do, that test has three parts: (1) intent; (2) effects; and (3) causation. First, the plaintiffs challenging a districting plan must prove that state officials' predominant purpose in drawing a district's lines was to entrench their party in power by diluting the votes of citizens favoring its rival. Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by substantially diluting their votes. And third, if the plaintiffs make those showings, the State must come up with a legitimate, non-partisan justification to save its map.

139 S. Ct. at 2516 (Kagan, J., dissenting) (text only) (citations omitted).

{51} This test fits within our existing equal protection framework. "The threshold question in analyzing all equal protection challenges is whether the legislation creates a class of similarly situated individuals who are treated dissimilarly." *Breen*, 2005-NMSC-028, ¶ 10. Where the evidence in a partisan gerrymandering claim satisfies this threshold question, the district court should then apply the Kagan test to determine whether the disparate treatment of vote dilution rises to the level of an egregious gerrymander. As discussed above, the touchstone of an egregious par-

[11] Though not an ingredient of our conclusion here, we note that the formulation of the political question doctrine urged by Petitioners involves a bright-line approach to political questions being nonjusticiable, as followed by the supreme courts of Kansas and North Carolina. See Rivera v. Schwab, 512 P.3d 168, 185 (Kan. 2022); Harper v. Hall, 886 S.E.2d 393, 399 (N.C. 2023). Instead, we interpret the seminal political question cases of Baker v. Carr and Marbury as requiring a case-by-case analysis, Baker, 369 U.S. 186, 210-11 (1962) ("Much confusion results from the capacity of the 'political question' label to obscure the need for case-by-case inquiry. Deciding . . . whether the action of [another] branch exceeds whatever authority has been committed[] is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution."); id. at 217 ("The courts cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority. The cases we have reviewed show the necessity for discriminating inquiry into the precise facts and posture of the particular case, and the impossibility of resolution by any semantic cataloguing."), that excepts a political question from nonjusticiability where the case involves vindication of individual rights, see Marbury, 5 U.S. at 166 ("[T]here exists, and can exist, no power to control [executive] discretion [where t]he subjects [of an executive officer's acts] are political. They respect the nation, not individual rights, and . . . when the rights of individuals are dependent on the performance of [such an executive officer's] acts[,] he . . . is amenable to the laws for his conduct[] and cannot at his discretion sport away the vested rights of others. . . . But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured[] has a right to resort to the laws of his country for a remedy." (emphasis added)).

tisan gerrymander under Article II, Section 18 is political entrenchment through intentional dilution of individuals' votes, and the Kagan test serves to determine whether the disparate treatment in an alleged gerrymander rises to such a level. *See* N.M. Const. art. II, § 2 (providing that our Popular Sovereignty Clause vests *all* political power in, and derives all power from, the people rather than a particular party engaging in allegedly egregious gerrymandering); *id.* § 8 (requiring that "[a]ll elections . . . be free and open"). We find it inconceivable that the framers of our constitution would consider an election in which the entrenched party effectively predetermined the result to be an election that is "free and open."

{52} In *Rucho*, the dissent provides relevant discussion of the purpose and scope of this test and of the lower courts' standards on which it is based. *See generally*, 139 S. Ct. at 2509-25 (Kagan, J., dissenting); *id.* at 2513 (Kagan, J., dissenting) ("Partisan gerrymandering of the kind before us . . . subverts democracy . . . [and] violates individuals' constitutional rights."). On the one hand,

> courts across the country, including those below, have coalesced around manageable judicial standards to resolve partisan gerrymandering claims. Those standards satisfy the majority's own benchmarks. They do not require—indeed, they do not permit—courts to rely on their own ideas of electoral fairness, whether proportional representation or any other. And they limit courts to correcting only egregious gerrymanders, so judges do not become omnipresent players in the political process. But yes, the standards used here do allow—as well they should—judicial intervention in the worst-of-the-worst cases of democratic subversion, causing blatant constitutional harms. In other words, they allow courts to undo partisan gerrymanders of the kind we face today from North Carolina and Maryland.

Id. at 2509 (Kagan, J., dissenting). On the other hand, we agree and caution that

> [j]udges should not be apportioning political power based on their own vision of electoral fairness, whether proportional representation or any other. And judges should not be striking down maps left, right, and center, on the view that every smidgen of politics is a smidgen too much. Respect for state legislative processes—and restraint in the exercise of judicial authority—counsels intervention in only egregious cases.

Id. at 2515-16 (Kagan, J., dissenting) (concurring in the majority's identification of "some dangers everyone should want to avoid"). We emphasize that "by requiring plaintiffs to make difficult showings relating to both purpose and effects, the standard [in the Kagan test] invalidates the most [egregious], but only the most [egregious], partisan gerrymanders." *Id.* at 2516 (Kagan, J., dissenting).

E. So Long as the Degree Is Not Egregious in Intent and Effect, We Need Not Determine at This Stage of the Proceedings the Precise Minimum Degree That Is Impermissible Under Article II, Section 18

{53} Our ruling on the petition for extraordinary writ resolves pure questions of law and comes before any record has been developed in the district court. At this stage in the proceedings, we conclude that we need not determine the precise minimum degree of partisan gerrymander that would constitute an egregious partisan gerrymander.

{54} We recognize the concerns raised in *Rucho*, albeit under the rubric of justiciability analysis, regarding the difficulty of "provid[ing] a standard for deciding how much partisan dominance is too much." *Rucho*, 139 S. Ct. at 2498 (internal quotation marks and citation omitted) ("[T]he question is one of degree."). However, we conclude that those concerns are outweighed by the constitutional harm effected by an egregious partisan gerrymander. To withhold relief for such harm would illogically render the political branches' *most* egregious violations of equal protection immune to judicial review by virtue of there being *less* egregious partisan gerrymanders which are hard to assess, which would be contrary to Article II, Sections 2, 3, and 8 of our New Mexico Constitution.

{55} 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. We find such a concern assuaged by the fact that plaintiffs in such cases will bear the burden to establish that the evidence places defendants' actions within the range of constitutional harm, and by our own prudential directive in *Bounds*: "An act of the Legislature will not be declared unconstitutional in a doubtful case, and if possible, it will be so construed as to uphold it." 2013-NMSC-037, ¶ 11 (text only) (citation omitted).

F. Intermediate Scrutiny Is the Proper Level of Scrutiny for Adjudication of a Partisan Gerrymandering Claim Under Article II, Section 18

{56} Balancing the competing constitutional interests involved, we determine that intermediate scrutiny is the proper level of scrutiny for a partisan gerrymandering claim under Article II, Section 18. Our determination is based on the nature of the restricted right rather than on the legislative classification involved, which the Real Parties concede cannot invoke strict scrutiny. *See Breen*, 2005-NMSC-028, ¶ 12 ("Only legislation that affects the exercise of a fundamental right or a suspect classification such as race or ancestry will be subject to strict scrutiny." (internal quotation marks and citation omitted)). "The determination of which level of scrutiny is applicable under the Constitution is a purely legal question, and is reviewed de novo." *Id.* ¶ 15.

{57} "Under . . . the New Mexico Constitution, there are three standards of review that this Court uses when reviewing equal protection claims: strict scrutiny; intermediate scrutiny; and the rational basis test." *State v. Ortiz*, 2021-NMSC-029, ¶ 27, 498 P.3d 264 (text only) (citation omitted). As we explained in *Marrujo*:

> Strict scrutiny applies when the violated interest is a fundamental personal right or civil liberty—such as . . . voting . . .—which the Constitution explicitly or implicitly guarantees. . . . Under this analysis the burden is placed upon the state to show that the restriction of a fundamental right . . . supports a compelling state interest, and that the legislation accomplishes its purposes by the least restrictive means. Otherwise the statute will be invalidated. . . .
>
> [Intermediate] scrutiny is triggered by . . . [l]egislation that impinges upon an important—rather than fundamental—individual interest[.] . . . This level of evaluation is more sensitive to the risks of injustice than the rational basis standard and yet less blind to the needs of governmental flexibility than strict scrutiny. The burden is on the party maintaining the statute's validity—the state—to prove that the classification is substantially related to an important governmental interest.
>
> The rational basis standard of review is triggered by all other interests.

1994-NMSC-116, ¶¶ 10-12 (internal quotation marks and citations omitted).

{58} The right to vote being fundamental, we do not consider the rational basis test here, regardless of the importance of the governmental interest in redistricting. Thus, we explain why intermediate scrutiny, rather than strict scrutiny, is the proper level of scrutiny for a partisan gerrymandering claim under the New Mexico Equal Protec-

tion Clause.

{59} As previously discussed, we recognize the right to vote as "a fundamental personal right or civil liberty," which ordinarily would warrant strict scrutiny. *Marrujo*, 1994-NMSC-116, ¶ 10; *see Torres v. Village of Capitan*, 1978-NMSC-065, ¶ 23, 92 N.M. 64, 582 P.2d 1277 (quoting *Reynolds*, 377 U.S. at 562) (noting that voting rights are "'fundamental interests' that must be subjected to the strictest standard"); *see also Richardson v. Carnegie Library Restaurant, Inc.*, 1988-NMSC-084, ¶ 31, 107 N.M. 688, 763 P.2d 1153 ("'The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'" (ellipsis omitted) (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943))), *overruled on other grounds by Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 36, 125 N.M. 721, 965 P.2d 305. We have also said that "[t]he nature of the individual interest and of the legislative classification determines the appropriate level of scrutiny, not the importance of the government's goal or the vagaries of history." *Trujillo v. City of Albuquerque*, 1990-NMSC-083, ¶ 19, 110 N.M. 621, 798 P.2d 571, *overruled on other grounds*, 1998-NMSC-031, ¶ 36.

{60} However, we also recognize the Legislature's constitutional responsibility for redistricting under Article IV, Section 3 of the New Mexico Constitution. The importance of such a responsibility eclipses that of a statutory goal and counsels against strict scrutiny. *See Trujillo*, 1990-NMSC-083, ¶ 21 (recognizing "the nearly fatal invocation of strict scrutiny" for challenged legislation (internal quotation marks and citation omitted)); *see also Richardson*, 1988-NMSC-084, ¶ 31 ("Strict scrutiny has operated as an antimajoritarian safeguard. Accordingly, the application of the strict scrutiny test has resulted in the virtual immunization of certain liberties from legislative affliction.").

{61} Critically, strict scrutiny entails the least restrictive means analysis, which would render vulnerable a legislative districting plan involving any degree of partisan gerrymandering. To hold the state to a least restrictive means requirement in redistricting where some degree of partisan gerrymandering is constitutionally permissible would be unreasonable and contradictory. *Cf. Torres*, 1978-NMSC-065, ¶ 22 ("Great latitude must of necessity be accorded the discretionary acts of the legislature, and every reasonable presumption in favor of the validity of its action must be indulged.").

{62} Instead, under intermediate scrutiny a court applies a *less* restrictive means analysis, thereby "allowing for a more flexible accommodation of legislative purposes . . . [while] not abandon[ing] totally the concern with over- and under-inclusiveness that, under strict scrutiny, is given form as the *least* restrictive alternative test." *Trujillo*, 1990-NMSC-083, ¶ 28 (emphasis added). The *less* restrictive means test abides with the "hallmark" of intermediate scrutiny to "assess[] the importance of the state interest by balancing it against the burdens imposed on the individual and on society." *Id.* ¶ 29 ("[A] state's interest in preserving limited educational funds for legal residents did not justify statute's burden on the interests of children of [undocumented immigrants]." (citing *Plyler v. Doe*, 457 U.S. 202 (1982))). "While the *least restrictive alternative* need not be selected if it poses serious practical difficulties in implementation, the existence of *less restrictive alternatives* is material to the determination of whether the classification substantially furthers an important governmental interest." *Id.* ¶ 30. Such balancing of interests abides with the objective of the Kagan test to apply a "standard [that] invalidates the most [egregious], but only the most [egregious], partisan gerrymanders." *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

{63} Under the foregoing considerations, we hold that intermediate scrutiny properly balances the competing constitutional interests of a partisan gerrymandering claim. "Therefore, when applying intermediate scrutiny, [a c]ourt must examine (1) the governmental interests served by the [restriction of the right affected], and (2) whether the [restriction of the right affected] under the statute bear[s] a substantial relationship to any such important interests. The burden is on the party supporting the legislation's constitutionality." *Breen*, 2005-NMSC-028, ¶ 30 (internal quotation marks and citation omitted).

G. While All Relevant Evidence May Be Considered by the District Court in a Partisan Gerrymandering Claim, the District Court Shall Consider and Address Evidence of Packing or Cracking Relating to an Individual Plaintiff's Own District

{64} In applying the Kagan test within a partisan gerrymandering claim, a district court may consider all evidence relevant to whether the challenged legislation seeks to effect political entrenchment through intentional and substantial vote dilution. To satisfy the effects prong, however, a plaintiff must provide sufficient evidence that the plaintiff's own district was either *packed* or *cracked*, depending on the allegations, and that the resultant dilution of the plaintiff's vote is substantial. *Cf. Rucho*, 139 S. Ct. at 2492 ("[A] plaintiff asserting a partisan gerrymandering claim based on a theory of vote dilution must establish standing by showing he lives in an allegedly 'cracked' or 'packed' district." (quoting the unanimous holding in *Gill*, 138 S. Ct. at 1931)). For a district court to find a violation of Article II, Section 18, such district-specific evidence of disparate

[12] In *Gill*, the United States Supreme Court articulated propositions that we find persuasive of our conclusions above, albeit in the context of establishing Article III standing. First, the Gill Court recognized the well-established proposition "that a person's right to vote is 'individual and personal in nature.'" 138 S. Ct. at 1929 (quoting Reynolds, 377 U.S. at 561). Next, "[t]o the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific. . . . The boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked." Id. at 1930. Finally, *Gill* invoked the reasoning of racial and one-person, one-vote gerrymandering jurisprudence in analyzing the nature of constitutional harm and remedy under a partisan gerrymandering claim. See id. at 1930-31.

In the same vein, we also note Justice Kagan's related discussion in her concurrence in *Gill*:

> The harm of vote dilution, as this Court has long stated, is individual and personal in nature. It arises when an election practice—most commonly, the drawing of district lines—devalues one citizen's vote as compared to others. Of course, such practices invariably affect more than one citizen at a time. For example, our original one-person, one-vote cases considered how malapportioned maps contracted the value of urban citizens' votes while expanding the value of rural citizens' votes. But we understood the injury as giving diminished weight to each particular vote, even if millions were so touched. In such cases, a voter living in an overpopulated district suffered disadvantage to herself as an individual: Her vote counted for less than the votes of other citizens in her State. And that kind of disadvantage is what a plaintiff asserting a vote dilution claim—in the one-person, one-vote context or any other—always alleges.

138 S. Ct. at 1935 (Kagan, J., concurring) (text only) (citations omitted).

[13] By way of example, we note the voter registration evidence from Maryland's Sixth Congressional District, which offers a stark before-and-after comparison of registered Republican voters dropping from 47% under the prior map to 33% under the challenged map. Rucho, 139 S. Ct. at 2519 (Kagan, J., dissenting).

treatment should be as objective as possible, for example, by comparing voter registration percentages or data for the political party affiliation of the individual plaintiffs under the prior districting map against parallel percentages or data under the challenged districting map. Further, a district court adjudicating a partisan gerrymandering claim must determine whether the evidence shows the challenged redistricting map substantially diluted the votes of plaintiffs within their district, though statewide evidence may also be relevant.[12] *See Gill*, 138 S. Ct. at 1929-31; *see also Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

{65} We find a useful evidentiary template in *Rucho*, where extensive evidence of intent and effect indicated that the districting plans in North Carolina and Maryland were "highly partisan, by any measure." 139 S. Ct. at 2491. This record in *Rucho* supports that many forms of evidence may be relevant to prove predominant intent and substantial effect for an egregious partisan gerrymander. Regarding the effects prong of the Kagan test, we reiterate that evidence of substantial dilution of plaintiffs' votes must rely on objective district-specific evidence.[13] We point to the evidence in *Rucho* as guidance to the district court, not as limitation on what other relevant evidence may be considered.

{66} Regarding the Kagan test's third prong of causation, we reiterate that "if the plaintiffs make those showings [of intent and effects], the State must come up with a legitimate, non-partisan justification to save its map." *Id.* at 2516 (Kagan, J., dissenting).

{67} We conclude by emphasizing that the touchstone of an egregious partisan gerrymander under Article II, Section 18 is political entrenchment through intentional dilution of individuals' votes, thereby invoking the protections of Article II, Sections 2, 3, and 8. In an egregious partisan gerrymandering claim, evidence of disparate treatment sufficient to establish a violation of the New Mexico Equal Protection Clause must prove under intermediate scrutiny that the predominant purpose underlying a challenged map was to entrench the redistricting political party in power through vote dilution of a rival party; that individual plaintiffs' rival-party votes were in fact substantially diluted by the challenged map; and, upon those showings, that the State cannot demonstrate a legitimate, nonpartisan justification for the challenged map.

{68} IT IS SO ORDERED.

C. SHANNON BACON, Chief Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 11/30/2023

No. A-1-CA-40077

LYNNE JARAMILLO,
Worker-Appellant,
v.
NEW MEXICO TAXATION & REVENUE DEPARTMENT and RISK MANAGEMENT,
Employer/Self-Insured-Appellees.

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION
Rachel A. Bayless,
Workers' Compensation Judge

Dorato & Weems LLC
Derek Weems
Albuquerque, NM

for Appellant

Cuddy & McCarthy, LLP
Scott P. Hatcher
Santa Fe, NM

for Appellees

▶ Introduction of Opinion

Lynne Jaramillo (Worker) appeals from an order of a Workers' Compensation Judge (WCJ) awarding her 115 weeks of benefits for a scheduled injury to "one foot at the ankle," pursuant to NMSA 1978, Section 52-1-43(A)(32) (2003) of the Workers' Compensation Act (WCA), NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2017). This case raises a single issue of statutory construction: Worker contends that an injury to the upper part of the ankle, resulting in partial loss of use of the ankle, is an injury to Worker's "leg between knee and the ankle," compensable under Subsection1 (A)(31) of Section 52-1-43. Worker argues that both the plain language of the WCA and longstanding precedent support her claim that the Legislature used the phrase "at the [joint]" in the list of scheduled injuries to include only injuries to the body member named up to the named joint, and not injuries to the joint itself. Worker seeks compensation for 130 weeks for her ankle injury, which she claims is an injury to the "leg between knee and the ankle," compensated under Subsection (A)(31), and an additional 115 weeks of compensation for what she claims is a separate injury to her foot, under Subsection (A)(32). **View full PDF online.**

Jane B. Yohalem, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40077**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 11/30/2023

No. A-1-CA-40605

STATE OF NEW MEXICO,
Plaintiff-Appelle
v.
MICHAEL FIERRO a/k/a MICHAEL S. FIERRO a/k/a MIKE SAMUEL FIERRO
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY
Eileen P. Riordan, District Court Judge

Raul Torrez, Attorney General
Santa Fe, NM
Michael J. Thomas, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Joelle N. Gonzales, Assistant Appellate Defender
Santa Fe, NM

for Appellant

Introduction of Opinion

[1] The Decision filed in this matter on November 21, 2023 is hereby withdrawn and replaced with this Opinion, based upon a motion to publish, which the Court has simultaneously granted by separate order.

[2] Defendant Michael Fierro appeals his convictions for criminal trespass in violation of NMSA 1978, Section 30-14-1(A) (1995); and criminal damage to property over $1000 in violation of NMSA 1978, Section 30-15-1 (1963). Defendant argues that: (1) the evidence presented at trial was insufficient to support a conviction of criminal trespass; (2) the district court provided improper jury instructions regarding the criminal trespass charge; and (3) his conviction for criminal damage to property over $1000 violated his right to equal protection. The State concedes that there was insufficient evidence presented at trial to convict Defendant of criminal trespass. Because we agree, we reverse Defendant's conviction for criminal trespass and therefore do not address the merits of Defendant's second argument. **View full PDF online.**

Kristina Bogardus, Judge
WE CONCUR:
Zachary A. Ives, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40605**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/4/2023

No. A-1-CA-39522

WILDEARTH GUARDIANS,
Petitioner-Appellant,
v.
NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD,
Respondent-Appellee,
and
NEW MEXICO ENVIRONMENT DEPARTMENT; XTO ENERGY INC.; and 3 BEAR DELAWARE OPERATING -- NM, LLC; SPUR ENERGY PARTNERS LLC,
Intervenors-Appellees.

APPEAL FROM THE ENVIRONMENTAL IMPROVEMENT BOARD
Phoebe Suina, Board Chair

Daniel L. Timmons
Samantha Ruscavage-Barz
Tim Davis
Santa Fe, NM

for Appellant

Raúl Torrez, Attorney General
Karla J. Soloria, Assistant Attorney General
Emily Bowen, Assistant Attorney General
Santa Fe, NM

for Respondent-Appellee

Lara Katz, Special Assistant Attorney General
Chris Vigil, Assistant General Counsel, Et al.
Santa Fe, NM

for Appellee New Mexico Environment Department

▶ Introduction of Opinion

We are presented with a technically and legally complex direct appeal challenging the New Mexico Environmental Improvement Board's (the Board) decision to affirm the New Mexico Environment Department's (the Department) grant of an air quality permit and three 20.2.72.220 NMAC general construction permit registrations. WildEarth Guardians (WildEarth) argues that (1) 20.2.72.208(D) NMAC's requirement that a facility's emissions not "cause or contribute to" a violation of National Ambient Air Quality Standards (NAAQS) does not allow use of a de minimis standard—commonly called a significant impact level (SIL); (2) the air quality permit and registrations at issue were improperly granted because evidence demonstrates they will cause or contribute to a violation of the NAAQS; and (3) the registrations at issue were improperly granted because they are located in nonattainment areas, pursuant to 20.2.79.7(AA) NMAC (6/3/2011). **View full PDF online.**

Michael D. Bustamante, Judge, retired,
Sitting by designation
WE CONCUR:
Megan P. Duffy, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39522**

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/4/2023

No. A-1-CA-40597

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ADRIAN D. VASQUEZ a/k/a
ADRIAN DION VASQUEZ,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF OTERO COUNTY
Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Leland M. Churan, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Nina Lalevic, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

Defendant was convicted on multiple charges after entering a home with two other individuals—all three of them armed—to confront another individual about a romantic entanglement. The individual was not there, only three other teenagers, whom Defendant and the others kept in the home, with weapons drawn, in anticipation of a confrontation that never occurred. A jury convicted Defendant on eight counts: aggravated burglary with a deadly weapon, conspiracy, three counts of false imprisonment, and three counts of aggravated assault with a deadly weapon. At sentencing, the district court applied firearm enhancements, found aggravating circumstances, suspended a portion of the sentence, and ultimately sentenced Defendant to thirty years in prison. On appeal, Defendant argues that six of the convictions violate double jeopardy and that the district court abused its discretion in aggravating and enhancing the sentence. As to double jeopardy, we conclude that three of the convictions must be vacated, because Defendant's conduct was unitary and based on the State's theory of the present case, the Legislature did not intend to create separately punishable offenses. **View full PDF online.**

Katherine A. Wray, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40597**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 11/30/2023

No. A-1-CA-40207

NANCY HENRY,
Petitioner-Appellant,
v.
NEW MEXICO LIVESTOCK BOARD, and JESSICA BACA, in her official capacity as Records Custodian for the New Mexico Livestock Board,
Respondents-Appellees.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Bryan Biedscheid, District Court Judge

Nancy Henry
Albuquerque, NM

Pro Se Appellant

Long, Komer & Associates, P.A.
Nancy R. Long
Jonas M. Nahoum
Santa Fe, NM

for Appellees

▶ Introduction of Opinion

Petitioner Nancy Henry appeals the district court's order in this Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2023), enforcement action against Respondents New Mexico Livestock Board and Records Custodian Jessica Baca (collectively, NMLB). Henry challenges the district court's denial of her request for statutory damages under Section 14-2-11(C). We affirm.

Jennifer L. Attrep, Chief Judge
WE CONCUR:
J. Miles Hanisee, Judge
Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-40207**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 11/30/2023

No. A-1-CA-39827

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JORGE IDROVO,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Douglas R. Driggers, District Court Judge

Raúl Torrez, Attorney General
Benjamin L. Lammons, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Joelle N. Gonzales, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

After a jury trial, Defendant Jorge Idrovo was convicted of aggravated battery against a household member (NMSA 1978, § 30-3-16(C) (2018)); aggravated assault against a household member (NMSA 1978, Section 30-3-13(A)(1) (1995)); criminal damage to property of a household member over $1,000 (NMSA 1978, Section 30-3-18(A) (2009)); arson over $500 (NMSA 1978, Section 30-17-5(A) (2006)); and violation of a restraining order (NMSA 1978, Section 40-13-6 (2013)). On appeal, Defendant argues that (1) the convictions for aggravated battery and aggravated assault as well as the convictions for arson and criminal damage to property violate double jeopardy; (2) the failure to provide a definitional jury instruction amounted to fundamental error; (3) insufficient evidence supports Defendant's conviction for aggravated battery; and (4) Defendant's Sixth Amendment right to self-representation was infringed. We agree that Defendant's double jeopardy rights were violated with regard to the convictions for arson and criminal damage to property and therefore remand for the district court to vacate one of those convictions and to resentence Defendant accordingly. We affirm in all other respects.

Zachary A. Ives, Judge
WE CONCUR:
Jennifer L. Attrep, Chief Judge
Shammara H. Henderson, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39827**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/4/2023

No. A-1-CA-39305

LAURENCIO MONSIVAIS,
Worker-Appellant,
v.
BAKER-HUGHES OILFIELD OPERATIONS and ELECTRIC INSURANCE COMPANY,
Employer/Insurer-Appellees.

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION
Leonard J. Padilla, Workers' Compensation Judge

Jasso & Jasso Law Firm, LLC
Ricardo Jasso
Frank Jasso
Hobbs, NM

for Appellant

Elmore Law, LLC
Christopher T. Elmore
Albuquerque, NM

for Appellees

▶ Introduction of Opinion

Worker Laurencio Monsivais appeals the workers' compensation judge's (WCJ) order denying Worker's motion for reconsideration of the WCJ's earlier order granting summary judgment in favor of Baker-Hughes Oilfield Operations and Insurer Electric Insurance Company (collectively, Employer). Worker argues that the WCJ erred in denying his motion for reconsideration because (1) under NMSA 1978, Section 52-1-36 (1989), he was prejudiced by Employer's misrepresentations which impacted the timeliness of his claim and (2) the authorized health care provider's (HCP) opinion regarding causation was unreliable and therefore did not satisfy NMSA 1978, Section 52-1-28(B) (1987). We affirm.

Shammara H. Henderson, Judge
WE CONCUR:
Jennifer L. Attrep, Chief Judge
Zachary A. Ives, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39305**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/4/2023

No. A-1-CA-39521

RACHEL BRIS,
Worker-Appellee,
v.
ENTERTAINMENT PARTNERS
and ILLINOIS NATIONAL INSURANCE COMPANY,
Employer/Insurer-Appellants.

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION
Shanon S. Riley, Workers' Compensation Judge

James A. Rawley
Albuquerque, NM

for Appellee

Hoffman Kelley Lopez LLP
Lori A. Martinez
Albuquerque, NM

for Appellants

▶ Introduction of Opinion

Entertainment Partners and Illinois National Insurance Company (Employer) appeal a compensation order finding that Rachel Bris's (Worker) left hip condition was compensable under the New Mexico Worker's Compensation Act (WCA), NMSA 1978, Section 52-1-1 to -70 (1929, as amended through 2017). Employer argues that (1) the worker's compensation judge (WCJ) erred in concluding that Dr. Franco is an authorized health care provider (HCP) as defined by Section 52-1-49 and NMSA 1978, Section 52-4-1 (2007), (2) the WCJ erred in admitting the deposition testimony of Dr. Franco, and (3) Worker did not meet her burden of proof as required by Section 52-1-28(B). We affirm.

Shammara H. Henderson, Judge
WE CONCUR:
Megan P. Duffy, Judge
Gerald E. Baca, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39521**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/4/2023

No. A-1-CA-39976

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ISAAC LAUSHAUL,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY
James Waylon Counts, District Court Judge

Raul Torrez, Attorney General
Laurie Blevins, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Melanie C. McNett, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

Defendant Isaac Laushaul appeals his convictions of trafficking a controlled substance in violation of NMSA 1978, Section 30-31-20 (2006), and conspiracy to traffic a controlled substance in violation of Section 30-31-20 and NMSA 1978, Section 30-28-2 (1979), which occurred in separate trials in 2018 and 2019. He advances two primary arguments on appeal. First, Defendant argues that comments made by the prosecutor during the State's rebuttal closing argument in the second trial amount to fundamental error and require reversal. Second, Defendant claims that he received ineffective assistance of counsel in the first trial while arguing that evidence seized during his arrest should have been suppressed. For reasons set forth below, we affirm.

J. Miles Hanisee, Judge
WE CONCUR:
Jacqueline R. Medina, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39976**

MEMORANDUM OPINION

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/5/2023

No. A-1-CA-39562

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JASON STRAUCH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Michael E. Martinez, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Joelle N. Gonzales, Assistant Appellate Defender
Santa Fe, NM

for Appellant

▶ Introduction of Opinion

In 2016, Defendant pleaded guilty to three counts of third-degree criminal sexual contact of a minor, contrary to NMSA 1978, Section 30-9-13(A) (2003). The district court entered an order of conditional discharge, deferred the eighteen-year prison sentence, and placed Defendant on supervised probation. The district court revoked Defendant's probation after the fourth admitted probation violation and sentenced him to eighteen years in prison. Defendant filed a pro se motion to reconsider the sentence, and the district court denied the motion to reconsider. On appeal, Defendant first contends that he had a right to counsel for the motion to reconsider and that because he argued the motion pro se, a new hearing on the motion to reconsider is warranted. See State v. Leon, 2013-NMCA-011, ¶ 11, 292 P.3d 493 (observing that the right to counsel post-conviction is a matter of due process and fundamental fairness). Defendant also argues that any waiver of the right to counsel was not knowing or voluntary because the district court did not conduct a sufficient colloquy before allowing him to proceed pro se. **View full PDF online.**

Katherine A. Wray, Judge
WE CONCUR:
Kristina Bogardus, Judge
Megan P. Duffy, Judge

To read the entire opinion, please visit the following link: **https://bit.ly/A-1-CA-39562**

Classified

Positions

Associate Attorney

Civerolo, Gralow & Hill, P.A. seeks an associate attorney for our fast paced, well established civil litigation defense firm. This is a great opportunity to grow and share your talent. Salary DOE, great benefits including health, dental & life insurance and 401K match. Please email your resume to kayserk@civerolo.com. Inquiries kept confidential.

Associate Attorney

Atkinson, Baker & Rodriguez, P.C. is a successful and established Albuquerque-based complex civil commercial and tort litigation firm seeking motivated and talented associate attorney candidates with great academic credentials. Join our small but growing focused Firm and participate in litigating cases from beginning to end with the support of our nationally recognized, experienced attorneys! Come work for a team that fosters development and growth to become a stand-out civil litigator. Highly competitive compensation and benefits. Send resumes, references, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

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Hermit's Peak/Calf Canyon Fire Claims Office Attorney Vacancy Announcement

The Federal Emergency Management Agency's (FEMA) Office of Chief Counsel is seeking qualified applicants for an Attorney position to support the Hermit's Peak/Calf Canyon Fire Claims Office (Office). The duty station is Santa Fe, NM. Salary range is $99,450 to $152,775. The successful candidate will be expected to: Represent the Office in arbitration and support Federal court litigation; Support the administrative appeal program; Advise on claim handling/valuation issues and Office-specific authorities; and Advise Office leadership on general administrative legal issues. Qualifications: The candidate must possess strong oral and written communication skills and be able to discuss nuanced legal issues with program leadership, attorneys, and stakeholders both across and outside of the agency. Experience with insurance, property loss, business loss, tort or similar litigation required. The successful candidate will have the following minimum qualifications: 1. United States Citizenship; 2. Ability to successfully pass a background investigation; 3. Selective Service registration for males born after 12/31/59; 4. A J.D. or LL.B. degree from an ABA accredited law school; 5. An active membership, in good standing, of the bar of a state, territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. Minimum Experience: The candidate must demonstrate at least three years of full-time professional legal experience gained after being admitted to the bar, including at least three years of specialized experience that is directly related to the position being filled. Application Instructions: Interested applicants should submit a detailed resume and statement expressing their interest to Anthony Juzaitis via email at Anthony.Juzaitis@fema.dhs.gov. Applications must be received by 5PM ET on January 31, 2024. Candidates may be asked to provide additional documentation, including a list of references and a short response to a legal writing prompt.

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DNA-People's Legal Services Wants To Hire You!

DNA - People's Legal Services ("DNA") is committed to providing high quality legal services to persons living in poverty on the Navajo, Hopi and Jicarilla Apache Reservations, and in parts of Northern Arizona, New Mexico, and Southern Utah. DNA's main office, as well as DNA's Fort Defiance branch office, are located in Window Rock, Arizona. DNA also has branch offices in Chinle, Arizona, Tuba City, Arizona, Flagstaff, Arizona, on the Hopi BIA judicial compound near Keams Canyon, Arizona, and Farmington, New Mexico. DNA legal staff practice in tribal, state, federal, and administrative courts. DNA IS SEEKING TO HIRE MANAGING AND STAFF ATTORNEYS FOR THE FOLLOWING OPEN POSITIONS: 1. Managing and Staff Attorney (State Licensed – Multiple Locations – NM & AZ); 2. Managing and Staff Attorney (Tribal Court Licensed – Multiple Locations – NM & AZ); 3. NM VOCA Project Director (Farmington, NM or Hybrid-Remote). WHAT TO SUBMIT: Employment Application (found at https://dnalegalservices.org/careeropportunities-2/), Resume, Cover Letter, and upon request, Transcripts and (Writing Sample-Attorneys only). HOW TO APPLY: Email: HResources@dnalegalservices.org | Direct: 928.871.4151 ext. 5640 or Cell: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted). Preference is given to qualified Navajo and other Native American applicants. DNA requires all applicants to be eligible to work within the United States. DNA will not sponsor visas unless otherwise noted on the position description.

Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. Hybrid in person/remote work schedule available. The Legal Department's team of attorneys provides a broad range of legal services to the City and represents the City in legal proceedings in court and before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Current open positions include: Litigation Division: The City is seeking attorneys to join its in house Litigation Division, which defends claims brought against the City; Property and Finance Division: The City is seeking attorneys to enforce traffic violations, bring code enforcement actions, and serve as counsel to the planning department and other various City departments; Office of Civil Rights: The City is seeking an attorney to enforce the Human Rights Ordinance in conjunction with the Human Rights Board and enforce the Closed Captioning Ordinance. This attorney will advise various departments and conduct educational and investigative programs; General Counsel to APD: The City is seeking an attorney to advise APD regarding policies, procedures and training, review and negotiate contracts, review uses of force, draft legal opinions, review and draft legislation and administrative instructions. Additional duties may be assigned based on experience; Real Property Attorney: The City is seeking an attorney to represent the City in all aspects of its real property needs. Responsibilities include negotiating, drafting, reviewing, advising and approving commercial contracts for the sale/purchase, lease/rent, license, use, exchange, grants of easements and donation of real property. This attorney will represent the City in any related litigation, advise on implementation of federal, state and city rules and regulations concerning telecoms, property management, right-of-way acquisitions and relocations, and will prosecute condemnation, quiet title, eviction and foreclosure actions. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Three (3)+ years' experience as licensed attorney; experience with government agencies, government compliance, litigation, contracts, and policy writing. Salary based upon experience. For more information or to apply please send a resume and writing sample to Angela Aragon at amaragon@cabq.gov.

Attorney

Houser LLP, a litigation law firm, is looking to add an attorney for its New Mexico office with a focus on consumer finance litigation. Licenses in other states like Arizona, Nevada and/or California is a plus. The ideal candidate will have strong writing, research and communication skills. We offer competitive compensation, which includes a great benefits package. Houser LLP lawyers take pride in their work, deeply value their clients, and the firm. If you're interested in this position, please submit your resume. Resumes to: rnorman@houser-law.com

Modest Means Helpline Staff Attorney

Are you tired of billable hours? Would you love not to have to go to court? Do you enjoy interacting with and helping people? If you answered yes, then Helpline attorney work may be the perfect fit for you! The New Mexico State Bar Foundation seeks a Full-Time (40 hours/week) or Part-Time (30 hours/week) helpline staff attorney for its Modest Means Helpline. Most of the work can be performed remotely from within New Mexico, with occasional mandatory office days. The position includes an excellent benefits package and competitive salary for legal work in the non-profit sector. Duties include providing legal advice and brief legal services over the phone to New Mexico residents who have moderate or low income. Additionally, the attorney may conduct legal workshops and clinics – some remotely and some in-person throughout New Mexico. Applicants must be licensed to practice law in New Mexico, and able to work as part of a busy team in a fast-paced environment. Excellent customer service and computer skills are required. Fluency in Spanish is a plus as is a demonstrable interest in issues affecting the lower-income community. To be considered, applicants must submit a cover letter and resume to hr@sbnm.org. In your cover letter, please explain why you are interested in working as a helpline attorney. EOE. Visit www.sbnm.org/sbnmjobs for full details and application instructions.

Briefing Attorney

Excellent licensed briefing attorney with strong education, experience and appellate qualifications. Practice includes Texas, New Mexico, and other states, State and Federal Courts. Expect an active trial practice for Nationally recognized Texas NM Plaintiff PI trial attorney in El Paso/Las Cruces. Full-time Salary range: $100,000.00 - $180,000.00 per year. Please submit resume and writing sample to jimscherr@yahoo.com

JSC Investigative Trial Counsel

State of NM Judicial Standards Commission located in Albuquerque seeks a JSC Investigative Trial Counsel, an FLSA exempt (not classified), at-will and full-time position with benefits including PERA retirement. NMJB Pay Range LL $31.273/hr-$62.546/hr, or ($65,048-$130,096) yearly. JSC target pay range ($90,000 - $95,000) DOE and budget. Flexible work schedules available. Under general direction and review, the Investigative Trial Counsel assists in the investigation and prosecution of matters before the Commission involving the discipline, removal, or retirement, of New Mexico judges and appear in cases before the New Mexico Supreme Court. No telephone calls, e-mails, faxes, or walk-ins accepted. See full job description and application instructions at https://humanresources.nmcourts.gov/home/career-opportunities/or on the News page of the Commission's website (www.nmjsc.org).

Contracts Administrator

Presbyterian Healthcare Services is seeking an experienced, self-directed detail-oriented Contracts Administrator to join the Legal Services Contract Team. The ideal candidate will be comfortable working in a fast-paced environment, managing multiple complex projects (often with short deadlines), negotiating and drafting complex contracts, work well independently and as part of a team, and bring passion and creativity to the workplace. Please apply directly at: https://careers-phs.icims.com/jobs/37838/contracts-administrator---legal-services/job?mode=view

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney ($ 70,196.00) to a Senior Trial Attorney ($82,739.00), based upon experience. Must be licensed in the United States. These positions are located in the Lovington, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to nshreve@da.state.nm.us

Court of Appeals Staff Attorney

THE NEW MEXICO COURT OF APPEALS is accepting applications for one or more full-time permanent Associate Staff Attorney or Assistant Staff Attorney positions. The positions may be located in either Santa Fe or Albuquerque, depending on the needs of the Court and available office space. The target pay for the Associate position is $87,813, plus generous fringe benefits. The target pay for the Assistant position is $76,848, plus generous fringe benefits. Eligibility for the Associate position requires three years of practice or judicial experience plus New Mexico Bar admission. Eligibility for the Assistant position requires one year of practice or judicial experience plus New Mexico Bar admission. Either position requires management of a heavy caseload of appeals covering all areas of law considered by the Court. Extensive legal research and writing is required. The work atmosphere is congenial, yet intellectually demanding. Interested applicants should submit a completed New Mexico Judicial Branch Resume Supplemental Form, along with a letter of interest, resume, law school transcript, and writing sample of 5-7 double-spaced pages to Cynthia Hernandez Madrid, Chief Appellate Attorney, c/o AOC Human Resources Division, aochrd-grp@nmcourts.gov, 237 Don Gaspar Ave., Santa Fe, New Mexico 87501. Position to commence immediately and will remain open until filled. More information is available at www.nmcourts.gov/careers. The New Mexico Judicial Branch is an equal-opportunity employer.

Associate Attorney – Civil Litigation

Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. Experience relevant to civil litigation is preferred. Excellent legal writing, research, and verbal communication skills, required. Competitive salary and full benefits package. Visit our website https://sutinfirm.com/ to view our practice areas. Send letter of interest, resume, and writing sample to imb@sutinfirm.com.

Family Law Attorney

Dynamic family law practice in search of family law attorney. Pay starting at $2,000.00 per week negotiable based upon experience. In person hearings in Las Cruces, NM and set office hours required. NM License required in good standing. Searching for compassionate, ethical attorney looking to make a difference in the lives of families. Please send resume and cover letter to familylawoutreach@gmail.com to receive further details. Request for relocation assistance considered. Willing to combine other practice areas.

Assistant Federal Public Defender – Trial Attorneys

The Federal Public Defender for the District of New Mexico is seeking experienced Assistant Federal Public Defender-Trial Attorneys in the Albuquerque office. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender's Office is committed to the pursuit of justice by zealously advocating in federal courts for the constitutional rights and inherent dignity of individuals who are charged with crimes in federal court and cannot afford their own attorney. AFPDs manage varied caseloads, develop litigation strategies, prepare pleadings, appear in court at all stages of litigation, and meet with clients, experts, witnesses, family members and others. To qualify for this position, one must be a licensed attorney. Three (3) years criminal trial experience preferred. Other equally relevant experience will be considered. Applicants must have a commitment to the representation of indigent, disenfranchised and underserved individuals and communities. Incumbents should possess strong oral and written advocacy skills, have the ability to build and maintain meaningful attorney-client relationships, be team oriented but function independently in a large, busy office setting, and communicate effectively with clients, witnesses, colleagues, staff, the court, and other agency personnel. A sense of humor is a plus. Spanish language proficiency is preferred. Travel is required (training, investigation, and other case-related travel). Applicants must be graduates of an accredited law school and admitted to practice in good standing before the highest court of a state. The selected candidate must be licensed to practice in the U.S. District Court, District of New Mexico, the 10th Circuit Court of Appeals, and the U.S. Supreme Court upon entrance on duty or immediately thereafter. Applicants are expected to be or become members of the New Mexico State Bar within one year of entrance on duty. Positions are full-time with comprehensive benefits including: Health, Vision, Dental and Life Insurance, FSA/HSA, Employee Assistance Program, earned PTO/sick leave, 12 weeks of paid parental leave, 11 paid federal holidays, mandatory participation in the Federal Employees' Retirement System, optional participation in the Thrift Savings Plan with up to 5% government matching contribution, public service loan forgiveness if qualified, and prior federal service credit. Positions are full-time with salary ranges from $73,265 to $182,509 determined by experience, qualifications, and budgetary constraints. In one PDF document, please submit a statement of interest, detailed resume of experience, and three references to: Margaret Katze, Federal Public Defender at FDNM-HR@fd.org . Reference in the subject line 2024-01. Closing date is 01/31/2024.

Administrative Support Coordinator
The State Bar of New Mexico seeks qualified applicants to join our team as a full-time (40 hours/week) Administrative Support Coordinator. The successful applicant will provide administrative and logistical support for the activities, programs and events of State Bar committees, practice sections, and divisions and coordinate implementation of other State Bar/Bar Foundation programs and events. $17-$20/hour, depending on experience and qualifications. Generous benefits package included. This position qualifies for partial telecommuting. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.

Paralegal / Case Specialist
The State Ethics Commission is currently seeking a Case Specialist to provide comprehensive support to our Attorneys in all aspects of the Commission's litigation and administrative complaint process: document management, intake and client meetings, case investigations, drafting legal documents, and guiding cases from start to resolution. Under attorney direction and supervision, prepare legal documents like pleadings, discovery requests, and deposition summaries. The State Ethics Commission is located in Albuquerque. Strong writing skills, organizational abilities, and attention to detail are essential for this position. The midpoint salary range is $76,500 annually. Standard New Mexico State benefits include Public Employees Retirement Association, health, dental, vision, life, and bi-weekly accrued sick and annual leave. For more information or to apply please visit: https://www.spo.state.nm.us/work-for-new-mexico/

Paralegal
Established law firm seeks experienced paralegal. Must have ability to multi-task heavy state and federal court workload including calendaring, drafting pleadings and discovery, and direct client contact and follow-up. Word, WordPerfect, Outlook and Adobe expertise required, as well as excellent proofreading skills. Bachelor's degree a plus. Competitive salary and excellent benefits offered. Resumes should be submitted to csalazar@wwwlaw.us. Qualified applicants only, please.

City of Albuquerque Paralegal
The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is $25.54 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to $26.80 per hour. Competitive benefits provided and available on first day of employment. Please apply at https://www.governmentjobs.com/careers/cabq.

Office Space

No Lease-All Inclusive
Office Suites-NO LEASE-ALL INCLUSIVE-virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead in a professional environment. 2 convenient locations-Journal Center and Riverside Plaza. 505-796-9600/ officealternatives.com.

Miscellaneous

Want to Purchase
Want to Purchase minerals and other oil/gas interests. Send Details to: PO Box 13557, Denver, CO 80201.

Search for Will
Will of George C. Saunders: If you possess or have information about a Will for Dr. George C. Saunders, formerly of Angel Fire and Santa Fe, NM, please contact Daniel E. Brannen Jr., Brannen & Brannen LLC, 3 Caliente Rd, #5, Santa Fe NM 87508, telephone 505-466-3830.

2024 *Bar Bulletin* Publishing and Submission Schedule

The *Bar Bulletin* publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, three weeks prior to publication.**

For more advertising information, contact:
Marcia C. Ulibarri at 505-797-6058 or
email marcia.ulibarri@sbnm.org

The publication schedule can be found at
www.sbnm.org.

A PROUD DAY IN HISTORY FOR SUTIN, THAYER & BROWNE: FIRST HISPANIC WOMAN NAMED CEO

MARIA MONTOYA CHAVEZ

Maria Montoya Chavez has been unanimously elected as the new President and CEO of one of New Mexico's most highly-accredited law firms, Sutin, Thayer & Browne. This election launches an era of diversity and evolvement, as Maria is not only the first female CEO of the Firm, but also the first Hispanic. This change comes after 77 years of Firm history.

Sutin, Thayer & Browne has been a majority women-owned business for several years. "It is long past due that a women-owned law firm be led by a phenomenal woman," says Benjamin Thomas, former President and CEO. "Maria is the heart and soul of this Firm. She will lead this great Firm in her own excellent way."

Maria has spent the majority of her life in New Mexico, being raised in Santa Fe, and received her B.S. at the University of New Mexico. Immediately following the completion of her Juris Doctorate from St. Mary's University in San Antonio, Texas, Maria returned home in 2000, and joined Sutin, Thayer & Browne.

Although she didn't intend to practice Family Law upon entering the field, she soon came to find it was her calling. "I was the first attorney to convince Firm administration to have a Family Law attorney aboard and assisted with building the Family Law division," Maria explains.

This paid off, as Maria currently practices exclusively in Family Law: divorce, child custody, child support, alimony, and the division of complex assets, etc. She is a collaborative law attorney and enjoys serving as a mediator and settlement facilitator.

Over her many years at the Firm, Maria has led in numerous different arenas, including four years on our Board of Directors, as well as serving as Vice President for two years. She was also on the Board of the New Mexico Collaborative Practice Group and was the Vice President for Del Norte Rotary Club of Albuquerque. Maria is continuously awarded as Albuquerque Lawyer of the Year in Family Law Mediation by Best Lawyers in America, and Readers of the Albuquerque Journal voted her a Top Divorce Attorney in the Readers' Choice Awards for three years.

Maria is recognized and endorsed by both her clients and her peers. "Maria has always been an amazing leader, inside and outside of the Firm," says Vice President Mariposa Padilla Sivage. "I'm excited for her vision for the future and her commitment to diversity in the practice of law. She will bring incredible wisdom, humor, strength, and tenacity to the leadership of this Firm."

Jay Rosenblum, forty-year Sutin attorney and former CEO, is enthusiastic about how the change will encourage the Firm's attorneys. "People who hire our Firm expect the best, and she will inspire us to do our best work and to achieve excellence in our representation of our clients," Rosenblum said. "We are very excited that Maria is taking the helm at this point in our long history."

"I believe we have the right people in place, which will assist in delivering quality legal services to our clients. I've served in the trenches by the sides of many while at the Firm and I am honored to now lead the charge."

– Maria Montoya Chavez

ALBUQUERQUE

SUTIN THAYER & BROWNE
LAWYERS

SANTA FE

New Mexico's Business Lawyers ®

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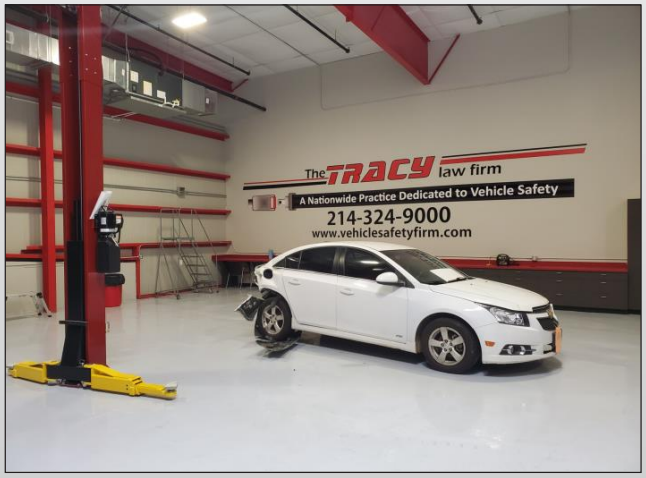
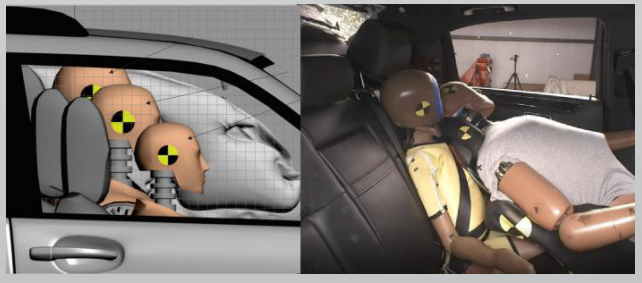
IS YOUR CASE AT A RECOVERY DEAD-END?

Maybe not because you may have a CRASHWORTHINESS case.



Crashworthiness

focuses on how the vehicle's safety systems performed, not who caused the accident. At my firm's Crash Lab, we continually study vehicle safety through engineering, biomechanics, physics, testing and innovation.



If you have any questions about a potential case, please call Todd Tracy. Vehicle safety system defects may have caused your client's injury or death.

The TRACY law firm

A Nationwide Practice Dedicated to Vehicle Safety

4701 Bengal Street, Dallas, Texas 75235

214-324-9000

www.vehiclesafetyfirm.com