



State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

Explainer: Status of Partisan Gerrymandering Claims Across the Country

Harry Isaiah Black, Staff Attorney

Published: March 2024

Last Updated: July 26, 2024

Every 10 years, following the federal census, states are required to redraw their congressional and legislative district maps. In the majority of states, the duty to redistrict rests with the state legislature. Because line-drawing decisions can have significant electoral consequences, the redistricting process is often highly contentious. An especially prominent concern is with partisan gerrymandering—that is, the adoption of maps that unduly advantage one political party over another. This explainer assesses the rise of state court litigation as one important tool for curbing partisan gerrymandering.

Partisan gerrymandering litigation in state courts has proliferated in the wake of the U.S. Supreme Court’s 2019 decision in *Rucho v. Common Cause*,¹ which declared that federal constitutional challenges to partisan gerrymandering present nonjusticiable “political questions,” meaning that federal courts lack the power to resolve them. The *Rucho* Court, however, insisted that it had not “condemn[ed] complaints about districting to echo into a void,” noting the potential for “[p]rovisions in state statutes and state constitutions” to constrain gerrymandering.²

In recent years, a growing number of states have adopted statutory or constitutional provisions that specifically address partisan gerrymandering, including by expressly demanding partisan fairness and by shifting redistricting authority from partisan legislators to more politically insulated actors, such as independent redistricting commissions. Such anti-gerrymandering measures currently exist in 15 states.³ They have been enacted primarily through direct

¹ 139 S. Ct. 2484, 2506 (2019).

² *Id.* at 2507.

³ Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Iowa, Michigan, Missouri, Montana, New York, Ohio, Oregon, and Washington. See Samuel S.-H. Wang et al., *Laboratories of Democracy Reform:*

democracy mechanisms, which are available in only about half of states.⁴ Every state, however, has broadly worded state constitutional protections—such as guarantees of equal protections, free expression, and “free and equal elections”⁵—that litigants may attempt to invoke to challenge partisan gerrymanders.

During the 2020 redistricting cycle, plaintiffs have thus far filed partisan gerrymandering claims in 19 states, challenging congressional maps, state legislative maps, or both.⁶ In some of these cases, the plaintiffs contend that maps violate specific state constitutional gerrymandering limitations, while in others they rely on broader state constitutional provisions and principles. Though some of those cases remain pending, several trends have emerged, especially when the case law from this redistricting cycle is considered with that from previous redistricting cycles.⁷

First, in contrast to the U.S. Supreme Court’s holding in *Rucho* that federal partisan gerrymandering claims are nonjusticiable, a majority of state supreme courts to have considered the issue (currently ten⁸) have held that state-law partisan gerrymandering claims can be adjudicated, whereas four supreme courts have determined that such claims are not justiciable.⁹

State Constitutions and Partisan Gerrymandering, 22 U. Pa. J. Const. L. 203, 237 n.162 (2019), for a list of the provisions. Since that article was published, the Utah legislature repealed its anti-gerrymandering provision in the state code. A challenge to that repeal is pending before a trial court. *League of Women Voters of Utah v. Utah State Legislature*, No. 220901712 (Utah Dist. Ct. filed Mar. 17, 2022). And, since the article was published, Missouri voters amended their constitution in 2020 to limit the effect of a constitutional anti-gerrymandering provision initially passed in 2018 by prioritizing certain line-drawing requirements over partisan fairness. See S.J.R. No. 38, 2020 Mo. Legis. Serv. Sen. Jt. Res. 38 (Vernon’s) (codified at Mo. Const. art. III, §§ 3(b)(5), 7(c)).

⁴ See Allie Boldt, *Direct Democracy in the States: A 50-State Survey of the Journey to the Ballot* 4-5, State Democracy Research Initiative, <https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2023/11/Direct-Democracy-In-the-States-Full-Report.pdf>.

⁵ See, e.g., Pa. Const. art. I, § 5 (“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”).

⁶ Alaska, Arkansas, Florida, Kansas, Kentucky, Maryland, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah, and Wisconsin. See generally, The American Redistricting Project, <https://thearp.org/litigation/> (last visited Feb. 28, 2024); All About Redistricting, <https://redistricting.ils.edu/> (last visited Feb. 28, 2024); Democracy Docket, <https://www.democracydocket.com/> (last visited Feb. 28, 2024).

⁷ For additional analysis of state partisan gerrymandering litigation, see Yuri Rudensky, *Status of Partisan Gerrymandering Litigation in State Courts*, Brennan Center for Justice (Dec. 18, 2023), <https://statecourtreport.org/our-work/analysis-opinion/status-partisan-gerrymandering-litigation-state-courts>.

⁸ The Alaska Supreme Court, Florida Supreme Court, Kentucky Supreme Court, Maryland Supreme Court, New Jersey Supreme Court, New Mexico Supreme Court, New York Court of Appeals, Ohio Supreme Court, Oregon Supreme Court, and the Pennsylvania Supreme Court.

⁹ The Kansas Supreme Court, Missouri Supreme Court, New Hampshire Supreme Court, and the North Carolina Supreme Court. Although the West Virginia Supreme Court, in a pre-*Rucho* case, has held that partisan gerrymandering claims are nonjusticiable, it has not clarified whether this holding applies only to

In one state that falls in the latter group—Missouri—voters have since added a partisan fairness provision for legislative maps to the state constitution,¹⁰ so partisan gerrymandering claims there might become viable going forward, at least as for legislative plans.

Second, the few state courts that have held partisan gerrymandering claims nonjusticiable post-*Rucho* have generally relied upon *Rucho*'s reasoning to make that determination.¹¹ *Rucho*'s holding rested on the premise that the federal Constitution lacked “discernible” standards for adjudicating partisan gerrymandering claims, “let alone limited and precise standards that are clear, manageable, and politically neutral.”¹² Echoing *Rucho*, these courts have also held that their constitutions lack adequate standards to resolve partisan gerrymandering claims.

Third, in the states that treat partisan gerrymandering claims as justiciable, most courts have required plaintiffs to prove partisan bias by demonstrating partisan intent, effects, or both,¹³ though at least one court (the Alaska Supreme Court) has centered the inquiry on a map's compliance or noncompliance with nonpartisan districting criteria, such as respecting territorial communities of interest.¹⁴

The remainder of this explainer surveys the case law from the states that have thus far issued rulings on partisan gerrymandering claims regarding congressional and legislative maps. For states in which courts have held that they can adjudicate such claims, the explainer, where possible, describes the standard the court applies to assess the legality of an alleged partisan gerrymander, along with the process for remedying an illegal partisan gerrymander. The explainer

federal constitutional claims or also extends to claims brought under the state constitution. *State ex rel. Cooper v. Tennant*, 730 S.E.2d 368, 388–90 (W. Va. 2012). The Wisconsin Supreme Court initially declined to consider partisan fairness when selecting remedial legislative maps because it “present[ed] a purely political question,” *Johnson v. Wis. Elections Comm'n*, 967 N.W.2d 469, 482 (Wis. 2021), but has since concluded that it should assess partisan fairness when adopting remedial maps, *Clarke v. Wis. Elections Comm'n*, 998 N.W.2d 370, 380 (Wis. 2023).

¹⁰ See Mo. Const. art. III, § 3(b)(5) (requiring state house maps to achieve partisan fairness); *id.* art. III, § 7(c) (applying Art. III, § 3(b)(5)'s anti-gerrymandering provision to state senate maps).

¹¹ The Kansas Supreme Court, New Hampshire Supreme Court, North Carolina Supreme Court, and the Wisconsin Supreme Court. In *Pearson v. Koster*, the Missouri Supreme Court also concluded that partisan gerrymandering claims are nonjusticiable under the state constitution, but that decision was issued prior to *Rucho*. 359 S.W.3d 35, 41–42 (Mo. 2012).

¹² 139 S. Ct. at 2500.

¹³ *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (Fla. 2015); *In the Matter of 2022 Legislative Districting of State*, 282 A.3d 147, 160 (Md. 2022); *Grisham v. Van Soelen*, 539 P.3d 272, 289 (N.M. 2023); *Harkenrider v. Hochul*, 197 N.E.3d 437, 452 (N.Y. 2022); *Adams v. DeWine*, 195 N.E.3d 74, 85 (Ohio 2022); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 192 N.E.3d 379, 410 (Ohio 2022); *Sheehan v. Or. Legislative Assembly*, 499 P.3d 1267, 1270 (Or. 2021); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 801, 816–17 (Pa. 2018).

¹⁴ *In the Matter of 2021 Redistricting Cases*, 528 P.3d 40, 88 (Alaska 2023).

also covers states where the viability of partisan gerrymandering claims is unclear but where there are active or decided cases relevant to the issue.

Partisan Gerrymandering Litigation in State Supreme Courts

Claims Held Non-Justiciable	Claims Held Justiciable	
	Violation(s) Found	No Violation Yet Found
Kansas	Alaska	Kentucky
New Hampshire	Florida	Maryland
North Carolina	New York	New Jersey
Missouri	Ohio	New Mexico
	Pennsylvania	Oregon

* * *

Alaska

The Alaska Constitution grants the state superior court original jurisdiction over challenges to state legislative districts, Alaska Const. art. VI, § 11, which the state supreme court has interpreted to include claims for partisan gerrymandering, see *In the Matter of 2021 Redistricting Cases*, 528 P.3d 40, 92 (Alaska 2023).

According to the Alaska Supreme Court, a claim for partisan gerrymandering is cognizable under the state constitution’s equal protection guarantee. *Id.* at 57 (citing *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987)). To prove the claim, a plaintiff must demonstrate that the Alaska Redistricting Board, which produces new legislative maps for the state each cycle,¹⁵ discriminated against a “community of interest,” which the court defined as “(1) a geographically

¹⁵ Alaska only has one congressional district and so the state does not have any congressional maps.

defined group of people who (2) share similar social, cultural, and economic interests and (3) believe they are part of the same coherent entity.” *Id.* at 88. Though a plaintiff need not show intentional discrimination to prove a partisan gerrymandering claim, *id.* at 58 n.60, the court will consider such evidence, including the process the Board followed to draw maps and the design of the maps themselves, *id.* at 58 (citing *Kenai Peninsula*, 743 P.2d at 1372). Applying this test, the court struck down part of the state senate map for the 2020 redistricting cycle because the Board had improperly combined white, affluent, and politically conservative voters in the Anchorage area with those who are more racially diverse, lower income, and less conservative. *Id.* at 89–94.

Under the Alaska Constitution, Alaska courts must give the Board an opportunity to produce remedial legislative maps. Alaska Const. art. VI, § 11. But if a court strikes down an amended map, then it can “mandate” its own remedial plan. *In the Matter of 2021 Redistricting Cases*, 528 P.3d at 101 (footnote omitted) (citing Alaska Const. art. VI, § 11). This is what happened during the 2020 redistricting cycle. After the Board produced a second unconstitutional state senate map and with the 2022 election cycle rapidly approaching, a trial court ordered the Board to adopt another plan for that cycle that the Board had initially considered but then rejected. *In re 2021 Redistricting Plan*, No. 3AN-21-08869CI, 2022 WL 7076058, at *29 (Alaska Super. Ct. May 16, 2022). That map preserved communities of interest that were at the heart of the constitutional violations in the Board’s first and revised plans. The Alaska Supreme Court affirmed the trial court’s implementation of the interim map and required the Board to produce another map for the remainder of the decade. *In the Matter of 2021 Redistricting Cases*, 528 P.3d at 101. The Board then chose to keep the interim plan in place until the next redistricting cycle. See Alaska Redistricting Board, *2023 May Final Proclamation*, <https://www.akredistrict.org/2023-may-final-proclamation/>.

Arkansas

The viability of partisan gerrymandering claims in Arkansas is unclear. In 2022, a trial court dismissed a partisan gerrymandering challenge to Arkansas’s new congressional map, reasoning that the Arkansas constitution requires the plaintiffs to have filed their complaint in the state supreme court. *Suttlar v. Thurston*, No. 60CV-22-1849 (Ark. Cir. Ct. May 11, 2022). The *Suttlar* plaintiffs did not subsequently file a case in the Arkansas Supreme Court.

Florida

In Florida, partisan gerrymandering claims are justiciable under the state constitution: the Florida Supreme Court has recognized (since before *Rucho*) that it “is charged with the solemn obligation to ensure . . . that the explicit constitutional mandate to outlaw partisan political gerrymandering . . . is effectively enforced.” *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135, 137 (Fla. 2013). That mandate is embodied within two constitutional provisions—one for state legislative districting and one for congressional

districting—that prohibit maps “drawn with the intent to favor or disfavor a political party or an incumbent[.]” Fla. Const. art. III, §§ 20 (legislative), 21 (congressional). The Florida Supreme Court must assess the validity of legislative maps each cycle, *id.* art. III, § 16(c), but only reviews congressional maps in the normal course of an appeal, see *id.* art. V, § 3.

To prove a partisan gerrymandering violation, a plaintiff must demonstrate that the state legislature intended to favor a political party or incumbent, though need not make “a showing of malevolent or evil purpose.” *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (Fla. 2015) (internal quotation marks and citation omitted).

Applying this standard, the Florida Supreme Court upheld a trial court ruling striking down Florida’s congressional map for the 2010 redistricting cycle. According to the court, the following evidence proved impermissible partisan intent: “the Legislature’s destruction of ‘almost all’ e-mails and ‘other documentation relating to redistricting’; early meetings between legislative leaders and staff with political consultants regarding the ‘redistricting process’; and the ‘continued involvement’ of political consultants in the ‘redistricting process.’” *Id.* at 392. In a separate review of the state’s legislative plans for the 2010 redistricting cycle, the court declared the state senate map unconstitutional, reasoning that the plan was “rife with objective indicators of improper intent which, when considered in isolation do not amount to improper [partisan] intent, but when viewed cumulatively demonstrate a clear pattern.” *In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So. 3d 597, 654 (Fla. 2012). According to the court, the following evidence collectively demonstrated such impermissible intent: the map declined to pit incumbents against each other; the new districts contained a large percentage of incumbents’ former districts; the map renumbered districts to allow incumbents to serve longer; and the majority of underpopulated districts in the plan favored Republicans. *Id.* The court also determined that a specific senate district violated the state constitution’s anti-gerrymandering provision because it was drawn “in a less compact manner.” *Id.* at 678.¹⁶

Under the Florida Constitution, Florida courts are authorized to implement court-drawn legislative maps to remedy an illegal partisan gerrymander. Fla. Const. art. III, § 16(f). A trial court implemented a remedial state senate map during the 2010 redistricting cycle. See *League of Women Voters v. Detzner*, No. 2012-CA-2842 (Fla. Cir. Ct., Leon Cnty. Dec. 30, 2015). Before doing so, the court evaluated the legislature’s proposed revised plan in light of four alternatives submitted by the plaintiffs and selected one of the plaintiffs’ maps because it was “the most compact plan proposed by any party, matches the number of split counties in [the legislature’s proposed plan], splits three fewer cities than [the legislature’s plan], and contains significantly

¹⁶ As for any post-2020 redistricting challenges, plaintiffs initially challenged Florida’s congressional map for the 2020 redistricting cycle as a partisan gerrymander but have since dropped that claim. Joint Stipulation to Narrow Issues for Resolution at 1, *Black Voters Matter v. Byrd*, No. 2022-CA-000666 (Fla. Cir. Ct. Aug. 11, 2023).

lower population deviation than [the legislature’s plan], while expanding the number of Hispanic-performic districts.” *Id.* slip op. at 68. Though there is no constitutional provision expressly authorizing courts to implement remedial congressional maps, the Florida Supreme Court approved the trial court’s adoption of such a map for the 2010 redistricting cycle. *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015). The trial court considered several proposed revised maps submitted by the legislature and the plaintiffs, selecting the state house’s proposed configuration for FL-1–FL-19—as the plaintiffs had not challenged them—and one of the plaintiffs’ proposed configuration for FL-20–FL-27 since that plan was most compact and best utilized existing political and geographical boundaries. *Id.* at 269.

Kansas

The Kansas Supreme Court has held that partisan gerrymandering claims present nonjusticiable political questions under the state constitution. Adopting the reasoning of *Rucho* to reach this conclusion, the court observed that “neither the Kansas Constitution, state statutes, nor [the Kansas Supreme Court’s] existing body of caselaw supply judicially discoverable and manageable standards” that can guide a court in resolving partisan gerrymandering claims. *Rivera v. Schwab*, 512 P.3d 168, 184, 187 (Kan. 2022), *cert. denied sub nom. Alonzo v. Schwab*, 143 S. Ct. 1055 (2023). In concluding partisan gerrymandering claims are nonjusticiable, the court contrasted Kansas with other “states having codified a constitutional duty to prohibit partisan gerrymandering.” *Id.* at 186.

Kentucky

The Kentucky Supreme Court has held that partisan gerrymandering claims are justiciable under the state constitution, observing that “partisanship may of course rise to an unconstitutional level.” *Graham v. Sec’y of State Michael Adams*, No. 2022-SC-0522-TG, --- S.W.3d ----, 2023 WL 8640825, at *10 (Ky. Dec. 14, 2023). To determine whether a map contains an illegal partisan gerrymander, the court “asks not whether the partisanship constitutes some slight or technical deviation from constitutional limitations, but rather whether it either involves a clear, flagrant, and unwarranted invasion of the constitutional rights of the people, or is so severe as to threaten our Commonwealth’s democratic form of government.” *Id.* (citation omitted). The court has acknowledged that this amounts to a “substantially deferential standard.” *Id.* Applying that standard, the court ruled that neither the challenged state house map nor congressional map for the 2020 redistricting cycle rose to the level of an unconstitutional partisan gerrymander. *Id.* According to the court, the house map did not deviate substantially from one offered by the plaintiffs, while the congressional map followed naturally from Kentucky’s political geography. *Id.* at *10–11.

No constitutional or statutory provision expressly addresses the process for remedying an illegal partisan gerrymander, and the Kentucky Supreme Court has not had an opportunity to consider a remedy for such a gerrymander since it has yet to find one.

Maryland

The Maryland Constitution grants the state supreme court original jurisdiction over disputes regarding boundaries of state legislative districts, Md. Const. art. III, § 5, which the Maryland Supreme Court has interpreted to include claims for partisan gerrymandering, see *In the Matter of 2022 Legislative Districting of State*, 282 A.3d 147, 175 (Md. 2022). Though the Maryland Supreme Court has yet to address whether partisan gerrymandering challenges to congressional maps are likewise justiciable, a trial court has exercised jurisdiction over such a challenge. See *Szeliga v. Lamone*, No. C-02-CV-21-001816, 2022 Md. Cir. Ct. LEXIS 9, *11 (Md. Cir. Ct. Mar. 25, 2022).

According to the Maryland Supreme Court, a claim for partisan gerrymandering is cognizable under the state constitution's compactness requirement for state legislative districts. *In the Matter of 2022 Legislative Districting of State*, 282 A.3d at 160 (citing Md. Const. art. III, § 4). In the context of such districts, the court has held that, to prove partisan gerrymandering, "an affirmative showing is ordinarily required to demonstrate that [] districts were intentionally so drawn to produce an unfair political result, that is, to dilute or enhance the voting strength of discrete groups for partisan political advantage or other impermissible purposes." *Id.* (quoting *In the Matter of Legislative Districting of State*, 475 A.2d 428, 443 (Md. 1982)). "In other words, there must be a showing of 'flagrant partisan abuse of the redistricting process'["]." *Id.* (quoting *Legislative Redistricting Cases*, 629 A.2d 646, 664 (Md. 1993)). Applying this standard, the Maryland Supreme Court concluded that, based on a report produced by a special magistrate judge, the state's legislative maps for the 2020 redistricting cycle did not violate the Maryland Constitution. *Id.* at 191. According to the court, the petitioners failed to prove that the plans "subordinate[d] the [state constitution's compactness requirement] to partisan gerrymandering and other political concerns." *Id.* at 211.

While the state supreme court upheld the state's 2020 legislative maps, a state trial court invalidated the 2020 congressional map. Drawing on statistical outlier analysis, it concluded that the map was "an extreme gerrymander that subordinates constitutional criteria to political considerations." *Szeliga*, 2022 Md. Cir. Ct. LEXIS 9, *116, 124.

The Maryland Constitution directs the state supreme court to "grant appropriate relief, if it finds that [a] [state legislative map] is not consistent with the requirements of either the Constitution of the United States, or the Constitution of Maryland." Md. Const. art. III, § 5. The Maryland Supreme Court has not considered how to apply this remedial provision since it has yet to find an illegal partisan gerrymander.¹⁷ For congressional districts, no constitutional or statutory provision expressly details the process for remedying an unlawful gerrymander. In *Szeliga*, the legislature

¹⁷ The court, however, ordered the implementation of a revised legislative plan after it struck down the initial plan for violating the state constitution's requirement of due regard for natural boundaries and the boundaries of political subdivisions. *In re Legislative Districting of State*, 805 A.2d 292, 329 (Md. 2002).

adopted a new congressional map following the trial court’s ruling, and the state then dismissed its appeal, ending the litigation. 273 A.3d 888 (Md. 2022).

Michigan

The Michigan Constitution has a provision barring partisan gerrymandering, but it remains largely untested in the courts. In 2018, voters amended the Michigan Constitution to bar congressional and legislative maps that “provide a disproportionate advantage to any political party.” Mich. Const. art. IV, § 6(13)(d). Voters also granted the Michigan Supreme Court original jurisdiction to enforce this provision. *Id.* art. IV, § 19. During the 2020 redistricting cycle, the high court had its first opportunity to apply the anti-gerrymandering provision to Michigan’s new state house map, but summarily dismissed the petition, stating that the court was “not persuaded that it should grant the requested relief.” *League of Women Voters of Michigan v. Indep. Citizens Redistricting Comm’n*, 971 N.W.2d 595 (2022) (mem.).

Missouri

The viability of partisan gerrymandering claims in Missouri is unclear, at least for challenges to legislative maps. In a 2012 challenge to the state’s congressional map, the Missouri Supreme Court, relying in part on pre-*Rucho* federal precedent questioning the justiciability of partisan gerrymandering claims, suggested that such claims are not justiciable under the state constitution. See *Pearson v. Koster*, 359 S.W.3d 35, 41–42 (Mo. 2012). However, since that decision, voters amended the Missouri Constitution to require state legislative maps to achieve “partisan fairness,” assuming the plans first satisfy certain other line-drawing requirements. Mo. Const. art. III, § 3(b)(5) (requiring state house maps to achieve partisan fairness); *id.* art. III, § 7(c) (applying Art. III, § 3(b)(5)’s anti-gerrymandering provision to state senate maps). Though the court has yet to adjudicate a partisan gerrymandering claim under the new provision, it has signaled an openness to doing so. *Faatz v. Ashcroft*, No. SC100277, --- S.W.3d ----, 2024 WL 624316, at *10 (Mo. Feb. 14, 2024) (observing that when challenging the constitutionality of a legislative map, “the plaintiff must objectively prove that a constitutional requirement – population equality, compliance with federal law, contiguity, compactness (as much as may be), community preservation (to the extent possible), or partisan fairness and competitiveness (subject to the foregoing factors) – has not been met”).

Nevada

The viability of partisan gerrymandering claims in Nevada is unclear. In 2022, citing *Rucho*, a trial court concluded that partisan gerrymandering claims present nonjusticiable political questions under the state constitution, reasoning that the Nevada Constitution, Nevada statutes, and Nevada case law all lack “clear standard[s] for adjudicating partisan redistricting claims[.]” *Koenig v. Nevada*, No. 210C001661B, slip op. at 5 (Nev. Dist. Ct. Mar. 24, 2022). The plaintiffs did not appeal, leaving the trial court’s non-precedential ruling as the final word for now.

New Hampshire

The New Hampshire Supreme Court has held that partisan gerrymandering claims present nonjusticiable political questions, offering two reasons. First, “the New Hampshire Constitution contains a textually demonstrable commitment to redistrict to the legislature,” which means that New Hampshire courts can only resolve state redistricting claims when the plaintiff alleges that the legislature violated the constitutional provisions underlying that commitment. *Brown v. Sec’y of State*, No. 2022-0629, --- A.3d ----, 2023 WL 8245078, at *4 (N.H. Nov. 29, 2023). Partisan gerrymandering claims, however, do not “implicate” those provisions. *Id.* Second, echoing *Rucho*’s interpretation of the federal constitution, the court concluded that the New Hampshire Constitution does not contain “judicially discernible and manageable standards for adjudicating claims of extreme partisan gerrymandering.” *Id.* In discussing this latter basis for holding partisan gerrymandering claims nonjusticiable, the court contrasted New Hampshire with “other states that have codified limits on partisan gerrymandering or amended their state constitutions to limit or prohibit partisan favoritism in redistricting[.]” *Id.* at *7.

New Jersey

The New Jersey Constitution grants the state supreme court exclusive jurisdiction over challenges to congressional maps, N.J. Const. art. II, § 2, ¶ 7, which the New Jersey Supreme Court has interpreted to include partisan gerrymandering claims, see *Matter of Cong. Districts by N.J. Redistricting Comm’n*, 268 A.3d 299, 304 (N.J. 2022). The state supreme court has yet to determine whether New Jersey courts also have jurisdiction over partisan gerrymandering challenges to state legislative maps.

To prove a claim for partisan gerrymandering, a plaintiff must show that “the plan is unlawful, or reflects invidious discrimination,” *id.* at 307 (citing N.J. Const. art. II, § 2, ¶¶ 7, 9; *Davenport v. Apportionment Comm’n*, 319 A.2d 718, 723 (N.J. 1974)). The court has characterized this as a “stringent standard,” *id.* at 303, but it has not yet had occasion to flesh out the contours of the inquiry.

No constitutional or statutory provision expressly outlines the process for remedying an illegal partisan gerrymander, and the New Jersey Supreme Court has not had an opportunity to consider a remedy for such a gerrymander since it has yet to find one.

New Mexico

The New Mexico Supreme Court has held “that a partisan gerrymander claim is justiciable” under the state constitution. *Grisham v. Van Soelen*, 539 P.3d 272, 289 (N.M. 2023).

According to the court, a claim for partisan gerrymandering is cognizable under the state constitution’s Equal Protection Clause. *Id.* (citing N.M. Const. art. II, § 18). To prove the claim, a plaintiff (1) must show “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,” and (2) “must

establish that the lines drawn in fact have the intended effect by substantially diluting their votes.” *Id.* (quoting *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting)). “[I]f the plaintiff[] make[s] those showings, the State must come up with a legitimate, nonpartisan justification to save its map.” *Id.* (quoting *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting)).¹⁸ The court will only strike down “egregious” partisan gerrymanders. *Id.* at 285.

Applying this standard, a trial court upheld New Mexico’s congressional map for the 2020 redistricting cycle. According to the court, the map disparately treated Republican voters but did not “rise to the level of an egregious gerrymander” because the one election held under the map thus far produced a close result. *Republican Party of New Mexico v. Oliver*, No. D-506-CV-202200041, slip op. at 12–13 (N.M. Dist. Ct. Oct. 6, 2023), *aff’d mem.*, No. S-1-SC-40146, 2023 WL 8182964 (N.M. Nov. 27, 2023).

No constitutional or statutory provision expressly outlines the process for remedying an illegal partisan gerrymander, and the New Mexico Supreme Court has not had an opportunity to consider a remedy for such a gerrymander since it has yet to find one.

New York

The New York Constitution grants the state supreme court, which is the state’s trial-level court rather than its high court, original jurisdiction over challenges to congressional and legislative maps. See N.Y. Const. art. III, § 5; N.Y. Unconsol. Law § 4221. The New York Court of Appeals—the state’s highest court—has interpreted this grant to include partisan gerrymandering claims. See *Harkenrider v. Hochul*, 197 N.E.3d 437, 445 (N.Y. 2022).

In 2014, New Yorkers approved a ballot measure that amended the state constitution to include an express anti-gerrymandering provision, which bars maps from “discourag[ing] competition or . . . purpose[ly] . . . favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5). A plaintiff “b[ears] the burden of proving beyond a reasonable doubt that the congressional [or legislative] districts were drawn” in violation of this provision “with a particular impermissible intent or motive[.]” *Harkenrider*, 197 N.E.3d at 452. Applying this standard, the Court of Appeals upheld lower court rulings striking down New York’s congressional map for the 2020 redistricting cycle. According to the court, “invidious intent could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results (i.e., lines that impactfully and unduly favor or disfavor a political party or reduce competition).” *Id.* The court

¹⁸ The New Mexico Supreme Court is the first state supreme court to adopt Justice Elena Kagan’s framework for proving a partisan gerrymandering claim. See Yuriy Rudensky, *Status of Partisan Gerrymandering Litigation in State Courts*, Brennan Center for Justice (Dec. 18, 2023), <https://statecourtreport.org/our-work/analysis-opinion/status-partisan-gerrymandering-litigation-state-courts>.

credited the lower courts' reliance on such evidence when striking down the congressional map, including statistical outlier analysis, the fact that one party dominated the process for fashioning the map, and a comparison of the plan at issue with that from the previous redistricting cycle. *Id.* at 453.

The New York Constitution explicitly contemplates the implementation of a court-ordered map to remedy an illegal partisan gerrymander. See N.Y. Const. art. III, § 4(e) ("The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law."). Under this provision, the Court of Appeals ordered the trial court, with the assistance of a special master and "submissions from the parties, the legislature, and any interested stakeholders who wish to be heard," to adopt remedial congressional and state senate maps for the 2022 election cycle. *Harkenrider*, 197 N.E.3d at 455–56. The trial court in turn instructed the special master "to fully adhere to all the provisions of the New York State Constitution, such as the strict equal population requirement for Congress and the block-on-the-border rule and town-on-the border rule for the state senate." *Harkenrider v. Hochul*, No. E2022-0116CV, 2022 WL 1951609 (N.Y. Sup. Ct. May 20, 2022), at *5 (Report of the Special Master) (footnote omitted), *amended by* 2022 WL 20527506 (N.Y. Sup. Ct. June 02, 2022). The court also directed the special master "to draw proposed maps in a fashion that was blind to the location of incumbents." *Id.* The trial court ultimately adopted the plans produced by the special master with slight revisions. *Id.* at *4.

Though *Harkenrider* settled the issue of which maps would be used for the 2022 election cycle, it left open the question of whether those maps would be used for the remainder of the decade. In *Matter of Anthony S. Hoffmann*, No. 90, 2023 WL 8590407 (N.Y. Dec. 12, 2023), the Court of Appeals required New York State's Independent Redistricting Commission to prepare a revised congressional map for the remainder of the decade and submit it to the legislature by February 28, 2024. Petitioners initially sought similar relief for the state senate map, but then dropped that claim from their petition. *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, No. CV-22-2265, slip op. at 4 n.3 (N.Y. App. Div. Aug. 18, 2023). Unless there is another court challenge, the interim, court-drawn senate map will remain in place for the remainder of the decade. In *Nichols v. Hochul*, 181 N.Y.S.3d 559 (N.Y. App. Div. 2023), an intermediate appeals court ordered the Commission to prepare a revised state assembly map and submit it to the legislature. The legislature approved that map, and the governor signed it into law, which means it will be in use until the next redistricting cycle. Zach Williams, *New York state Assembly district lines approved – signed into law by Hochul*, N.Y. POST (Apr. 24, 2023), <https://nypost.com/2023/04/24/new-york-state-assembly-district-lines-approved-signed-into-law-by-hochul/>.

North Carolina

The North Carolina Supreme Court initially ruled partisan gerrymandering claims are justiciable under the state constitution, *Harper v. Hall*, 868 S.E.2d 499, 551 (N.C. 2022) ("*Harper I*"), only to reverse itself after a judicial election changed the court's composition, *Harper v. Hall*, 886 S.E.2d 393, 416 (N.C. 2023) ("*Harper II*"). In that latter decision, the court concluded that partisan gerrymandering claims present nonjusticiable political questions, offering three reasons. First, "[u]nder the North Carolina Constitution, redistricting is explicitly and exclusively committed to the [state legislature] by the text of the constitution." *Harper II*, S.E.2d at 416. This means that North Carolina courts can only adjudicate state redistricting claims when the plaintiff alleges that the legislature violated the constitutional provisions underlying that commitment. *Id.* at 422. Those provisions, however, do not restrict the legislature's power to "consider partisan advantage" when drawing maps. *Id.* at 420 (citation omitted). Second, echoing *Rucho*'s interpretation of the federal constitution, the North Carolina Constitution does not contain "judicially discoverable and manageable standard[s]" for adjudicating partisan gerrymandering claims. *Id.* at 422. Third, and along similar lines, adjudicating partisan gerrymandering claims would require the court to make "a host of 'policy determination[s] of a kind clearly for nonjudicial discretion.'" *Id.* at 428 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

Ohio

The Ohio Constitution grants the state supreme court exclusive jurisdiction over lawsuits challenging congressional and state legislative maps, Ohio Const. art. XIX, § 3(A) (congressional); Ohio Const. art. XI, § 9(A) (legislative), which the state supreme court has interpreted to include partisan gerrymandering claims, see *Adams v. DeWine*, 195 N.E.3d 74, 79 (Ohio 2022) (congressional); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 192 N.E.3d 379, 403–07 (Ohio 2022) (legislative) ("*League I*").

In 2015, Ohioans approved a ballot measure that amended the state constitution to include two express anti-gerrymandering provisions for legislative maps: The first prohibits them from "primarily . . . favor[ing] or disfavor[ing] a political party," Ohio Const. art. XI, § 6(A), while the second requires "[t]he statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio," *id.* art. XI, § 6(B). Three years later, voters approved another ballot measure that amended the state constitution to include an anti-gerrymandering provision for congressional maps that is similarly worded to

Art. XI, § 6(A); it bars such maps from “unduly favor[ing] or disfavor[ing] a political party or its incumbents.” *Id.* art. XIX, § 1(C)(3)(a).¹⁹

To prove a claim for partisan gerrymandering against a congressional map, a plaintiff must show beyond a reasonable doubt that the “plan [] favors or disfavors a political party or its incumbents to a degree that is in excess of, or unwarranted by, the application of . . . specific line-drawing requirements to Ohio’s natural political geography.” *Adams*, 195 N.E.3d at 82, 85 (citing Ohio Const. art. XIX, §§ 1(C)(3)(a), 1(C)(3)(c), 2)). Applying this standard, the Ohio Supreme Court struck down the state’s initial congressional map for the 2020 redistricting cycle, *Adams*, 195 N.E.3d at 100, along with a remedial plan, *Neiman v. LaRose*, 207 N.E.3d 607, 623 (Ohio 2023). The court relied upon various types of statistical evidence in support of these rulings, including outlier analysis, efficiency gap, mean-median gap, declination, and partisan symmetry. *Adams*, 195 N.E.3d at 85–92; *Neiman*, 207 N.E.3d at 615–21.

To prove a claim for partisan gerrymandering against a legislative map, a plaintiff must demonstrate beyond a reasonable doubt either that the plan intentionally “favor[s] or disfavor[s] a political party,” *League I*, 192 N.E.3d at 400, 410 (quoting Ohio Const. art. XI, § 6(A)), or that the legislative map’s proportion of districts favoring a party does not “correspond to the statewide preferences of Ohio voters” expressed over the previous decade, *id.* at 407 (citing Ohio Const. art. XI, § 6(B)). The court will only strike down legislative maps for violating the Ohio Constitution’s partisan-fairness provisions for such maps if alternative plans can otherwise satisfy separate line-drawing requirements outlined in Art. XI, §§ 2, 3, 4, 5, and 7. See *id.* at 402. Applying these standards, the Ohio Supreme Court struck down the state’s initial legislative maps for the 2020 redistricting cycle, *League I*, 192 N.E.3d at 415, along with three remedial plans, *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 195 N.E.3d 974, 993 (Ohio 2022) (“*League II*”); *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 198 N.E.3d 812, 825–26 (Ohio 2022) (“*League III*”); *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 199 N.E.3d 485, 507 (“*League IV*”). As for demonstrating violations of Art. XI, § 6(A), the Ohio Supreme Court has recognized that “direct or circumstantial evidence may establish that a districting plan was drawn primarily to favor one political party over another.” *League I*, 192 N.E.3d at 410 (citing cases). According to the court, the following evidence collectively demonstrated a violation of Art. XI, § 6(A): domination of the map-drawing process by one party, statistical partisan symmetry analysis, and comparisons to neutral maps, including those that show the adopted plan is a statistical outlier among other possible plans. *Id.* at 410–12; *League II*, 195 N.E.3d at 985–89; *League III*, 198 N.E.3d at 820–23; *League IV*, 199 N.E.3d at 497–502. The court concluded the same types of statistical analysis prove violations of Art. XI, § 6(B). See *League I*, 192 N.E.3d at 407–09; *League II*, 195 N.E.3d at 990–93; *League III*, 198 N.E.3d at 824–25; *League IV*, 199

¹⁹ This latter ballot measure also provided the jurisdictional grant for challenges to congressional maps. 2018 Ohio Laws Statewide Issue 2018 Statewide Issue No. 1 (May election) (Sub. S.J.R. 5) (codified at Ohio Const. art. XIX, § 3).

N.E.3d at 502–03. For the 2020 redistricting cycle, the court concluded that the legislative maps failed to comply with Art. XI, § 6(B) in large part because they disparately allocated competitive districts to one party. *League I*, 192 N.E.3d at 408; *League II*, 195 N.E.3d at 990–93; *League III*, 198 N.E.3d at 824–25; *League IV*, 199 N.E.3d at 502–03.

The Ohio Supreme Court, however, has held that the state constitution prohibits it from implementing or enforcing any particular remedial state legislative map. *League IV*, 199 N.E.3d at 503 (citing Ohio Const. art. XI, § 9(D)(1)–(2)). The court has yet to rule on whether a similar limitation applies to congressional maps. Of note, although the Ohio Constitution states that the legislature and then (if necessary) the Ohio Redistricting Commission should have an opportunity to produce a revised congressional map, the constitution does not specifically forbid the court from implementing or enforcing particular congressional maps, as the constitution does for legislative plans. Ohio Const. art. XIX, § 3(B)(1)–(2).

After the Ohio Supreme Court struck down the Commission’s revised congressional map for the 2020 redistricting cycle, which the Commission adopted once the legislature failed to enact a remedial plan, *Neiman*, 207 N.E.3d at 623, the U.S. Supreme Court, in light of its decision in *Moore v. Harper*, 600 U.S. 1 (2023), vacated the *Neiman* ruling, *Huffman v. Neiman*, 143 S. Ct. 2687 (2023). The petitioners then dismissed their case, leaving the revised congressional plan in place for the remainder of the decade. Entry, *Neiman v. LaRose*, No. 2022-0298 (Ohio Sept. 7, 2023).

Following the Ohio Supreme Court’s decision in *League IV*, which rejected the Ohio Redistricting Commission’s third set of remedial legislative maps for the 2020 redistricting cycle, the Commission readopted the plans the court struck down in *League III*, prompting the court to reject them for a second time. *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 200 N.E.3d 197, 200 (Ohio 2022) (“*League V*”). After the Commission refused to produce a fourth set of revised maps, a federal court implemented the plans the Ohio Supreme Court found unconstitutional in *League III* for the 2022 election cycle only. *Gonidakis v. LaRose*, No. 2:22-CV-0773, 2022 WL 1709146, at *1 (S.D. Ohio May 27, 2022). In September 2023, the Commission produced another set of remedial maps that will be in use for the remainder of the decade. *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, No. 2021-1193, --- N.E.3d ----, 2023 WL 8183694, at *4 (Ohio Nov. 27, 2023) (“*League VI*”).

Oregon

The Oregon Constitution grants the state supreme court original jurisdiction over lawsuits challenging state legislative maps, Or. Const. art. IV, § 6(2), which the state supreme court has interpreted to include partisan gerrymandering claims, see *Sheehan v. Or. Legislative Assembly*, 499 P.3d 1267, 1270–72 (Or. 2021). As for congressional maps, a special judicial panel has original jurisdiction over challenges to them with a right of appeal to the Oregon Supreme Court. Or. Rev. Stat. Ann. § 188.125(7), (9)(b), (10)(b), (11)(a). While the Oregon Supreme Court has yet to

determine whether this grant of jurisdiction covers claims for partisan gerrymandering, a special judicial panel has concluded that it does. See *Clarno v. Fagan*, No. 21CV40180, 2021 WL 5632371, at *1 (Or. Cir. Ct. Nov. 24, 2021).

In 1979, the Oregon legislature enacted a provision that requires congressional and state legislative maps comply with certain line-drawing requirements, such as contiguity, maintenance of communities of interest, and the requirement that “[n]o district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.” Or. Rev. Stat. Ann. § 188.010. To establish unlawful partisan gerrymandering, a plaintiff must show that “[the legislature] either did not consider [the anti-gerrymandering provision set out in Or. Rev. Stat. Ann. § 188.010] or, having considered [it], made a choice or choices that no reasonable [reapportioning body] would have made.” *Sheehan*, 499 P.3d at 1270 (internal quotation marks and citation omitted).

Applying this standard, the Oregon Supreme Court rejected a challenge to the Oregon legislature’s legislative maps for the 2020 redistricting cycle, finding the following evidence insufficient to prove the petitioners’ partisan gerrymandering claim: (1) the plans’ reliance on previous district boundaries, (2) the legislature’s “focus on ‘partisan’ maps,” (3) the legislature’s failure to accept oral testimony about certain maps, and (3) the distribution of Republican and Democratic voters in several adjacent districts. *Id.* at 1271–72.

No constitutional or statutory provision expressly outlines the process for remedying an unlawful congressional partisan gerrymander, but for state legislative maps, the Oregon Constitution directs the secretary of state to produce a remedial map, subject to the Oregon Supreme Court’s review. Or. Const. art. IV, § 6(2).

Pennsylvania

The Pennsylvania Supreme Court has held that partisan gerrymandering claims are justiciable. *1991 Penn. Legislative Reapportionment Comm’n*, 609 A.2d 132, 142 (Pa. 1992), *abrogated in part on other grounds by Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711 (Pa. 2012); see also Pa. Const. art. II, § 17(d) (granting the Pennsylvania Supreme Court original jurisdiction over challenges to state legislative maps).

According to the court, partisan gerrymandering claims are cognizable under the state constitution’s Free and Equal Elections Clause. *League of Women Voters v. Commonwealth*, 178 A.3d 737, 814 (Pa. 2018) (“*League I*”) (citing Pa. Const. art. I, § 5). To prove a claim for partisan gerrymandering, a plaintiff must demonstrate that the map subordinates traditional redistricting criteria, which include “compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among [] districts,” to “gerrymandering for

unfair partisan political advantage[.]” *Id.* at 816–17.²⁰ Though this test does not require a showing of intent, the plaintiff must prove that the partisan gerrymander “clearly, palpably, and plainly violates the [state] [c]onstitution.” *Id.* at 801 (citation omitted). Applying this standard and relying on an evidentiary record developed by a trial court, the Pennsylvania Supreme Court struck down the state’s congressional map for the 2010 redistricting cycle. According to the court, arguably “the most compelling evidence” of partisan bias was statistical outlier analysis demonstrating that the plan at issue was less compliant with traditional redistricting criteria than any other simulated map. *Id.* at 818. The court also considered other types of statistical evidence, including mean–median gap and efficiency gap, along with its own assessment of the map, to conclude that the plan was an unconstitutional partisan gerrymander. *Id.* at 819–20. The court later applied its anti-gerrymandering standard when selecting a congressional map for the 2020 redistricting cycle after the state legislature and the governor failed to agree on a new plan. *Carter v. Chapman*, 270 A.3d 444, 461 (Pa 2022.), *cert. denied sub nom. Costello v. Carter*, 143 S. Ct. 102 (2022) (applying this standard when selecting a new congressional map for the 2020 redistricting cycle).

No constitutional or statutory provision expressly outlines the process for remedying an illegal congressional partisan gerrymander. However, the Pennsylvania Supreme Court has ruled that the court can implement a remedial congressional map after providing the legislature with an initial opportunity to do so. *League I*, 178 A.3d at 824. After the court struck down Pennsylvania’s congressional plan for the 2010 redistricting cycle and the legislature declined to adopt a revised one, the court implemented a map of its own. *League of Women Voters of Penn. v. Commonwealth*, 181 A.3d 1083, 1084 (Pa. 2018) (“*League II*”). With the assistance of a court-appointed advisor, the court produced a map that “dr[ew] heavily upon the submissions provided by the parties, intervenors, and *amicus*” and that conformed with traditional redistricting criteria. *Id.* at 1085, 1087. As for state legislative maps, the Pennsylvania Constitution requires the state supreme court to remand maps found “contrary to law” back to Pennsylvania’s Legislative Reapportionment Commission, which draws the state’s legislative plans each redistricting cycle. Pa. Const. art. II, § 17(d). If the Commission fails to produce a revised map, the Pennsylvania Supreme Court must prepare its own map. *Id.* art. II, § 17(h). The Pennsylvania Supreme Court has not considered how to apply this remedial provision to a legislative map containing an illegal partisan gerrymander since it has yet to find one.²¹

²⁰ The Pennsylvania Supreme Court has left open the possibility that there might be other means of proving Free and Fair Elections Clause violations. *Id.* at 817.

²¹ The court has ordered the implementation of a revised legislative plan after it struck down the initial plan for failing to abide by traditional redistricting criteria. *Holt*, 38 A.3d at 718.

Tennessee

The viability of partisan gerrymandering claims in Tennessee is unclear. In 2022, the Tennessee Supreme Court reversed a preliminary three-judge trial court's ruling that Tennessee's new state senate map violated the state constitution's line-drawing requirements for partisan advantage. *Moore v. Lee*, 644 S.W.3d 59, 67 (Tenn. 2022). The high court acted on procedural grounds, however, concluding that the lower court had invalidated the map too close to the upcoming 2022 election cycle. *Id.* At trial, the three-judge panel once again struck down the senate map for violating state constitutional line-drawing requirements. *Wygant v. Lee*, No. 22-0287-IV, slip op. at 9-17 (Tenn. Ch. Ct. Nov. 22, 2023). The state supreme court has stayed that decision pending appeal. Order, *Wygant v. Lee*, No. M2023-01686-SC-R3-CV (Tenn. Dec. 8, 2023).

Utah

The viability of partisan gerrymandering claims in Utah is unclear. In 2022, a trial court declined to dismiss claims that Utah's new congressional map is a partisan gerrymander under the state constitution. *League of Women Voters of Utah v. Utah State Legislature*, No. 220901712 (Utah Dist. Ct. Oct. 24, 2022). On appeal, the Utah Supreme Court stayed those claims to allow a lower court to first rule on remand whether the Utah legislature properly repealed a statutory ban on partisan gerrymandering that the state's citizens had enacted by ballot measure in 2018. *League of Women Voters of Utah v. Utah State Legislature*, No. 20220991-SC, --- P.3d ----, 2024 WL 3367145, at *3 n.5 (Utah July 11, 2024). According to the court, a lower-court order favoring plaintiffs on this issue could moot their partisan gerrymandering claims by invalidating the congressional map that is the basis of those claims. *Id.* at *44.

West Virginia

Though the West Virginia Supreme Court has held that partisan gerrymandering claims are nonjusticiable, it has not clarified whether this holding applies only to federal constitutional claims or also extends to claims brought under the state constitution. *State ex rel. Cooper v. Tennant*, 730 S.E.2d 368, 388-90 (W. Va. 2012). Echoing what would later become the holding in *Rucho*, the court noted the absence of any "authoritative standard" under which to resolve partisan gerrymandering claims. *Id.* at 390.

Wisconsin

The viability of partisan gerrymandering claims in Wisconsin is unclear. In the wake of the state legislature and governor's inability to enact legislative maps for the 2020 redistricting cycle, the Wisconsin Supreme Court declined to consider partisan fairness when assessing which remedial legislative plan to adopt. *Johnson v. Wis. Elections Comm'n*, 967 N.W.2d 469, 482 (Wis. 2021). Echoing *Rucho's* interpretation of the federal constitution, the court stated that assessing partisan fairness presented a nonjusticiable political question under the state constitution. *Id.* at 482-85. It also concluded that the Wisconsin Constitution lacks a right "to a particular partisan configuration." *Id.* at 482, 485-88. However, after a judicial election changed the court's

composition, the court disavowed its prior ruling and held that it should seek to assure partisan neutrality when choosing a map to remedy the violation of other constitutional provisions. *Clarke v. Wis. Elections Comm'n*, 998 N.W.2d 370, 399–400 (Wis. 2023).²² Though the court has yet to adjudicate a partisan gerrymandering claim, it has signaled an openness to doing so. See *id.* at 380 (noting that a claim for partisan gerrymandering “present[s] an important and unresolved legal question” and declining to review the petitioners’ partisan gerrymandering claim in the first instance because it would require “extensive fact-finding” better suited for a trial court).

²² The court articulated four other principles in addition to maintaining partisan fairness that will guide it in adopting remedial plans, including the maps’ compliance with (1) population equality requirements; (2) the Wisconsin Constitution’s redistricting criteria (Art. IV, §§ 2, 4–5); (3) federal law; and (4) traditional redistricting criteria not specifically outlined in the Wisconsin Constitution or United States Constitution but still commonly considered by courts required to draw maps. *Id.* at 398–99.

