

US Supreme Court Puts Off Decision on Partisan Gerrymandering

This spring the US Supreme Court heard two cases dealing with partisan gerrymandering, a Wisconsin case, *Gill v. Whitford*, and a Maryland case, *Benisek v. Lamone*. A North Carolina case, *Common Cause v. Rucho* was to be heard in the fall. The Court passed up the opportunities to rule on when and whether states violate the Constitution by drawing electoral maps that sharply favor one political party, leaving unresolved the glut of challenges to political maps working their way through federal courts.

In the Maryland case, the Supreme Court unanimously upheld a district court judge's decision not to grant a preliminary injunction blocking the state's 2011 congressional map. The justices said the legal uncertainty around the issue justified the judge declining to grant that unusual order.¹

The high court also said the urgency of the request was undermined by the fact that most of the plaintiffs — Republican voters in Western Maryland who said the state's Democratic-controlled government violated their constitutional rights by rejiggering the state's congressional lines to oust a long-serving GOP congressman — failed to sue for five years after the map was enacted.¹

In the Wisconsin dispute, the justices ruled unanimously that the Democratic voters challenging a state legislative map drawn in 2011 failed to prove they were injured by the drawing of the new boundaries. However, seven justices agreed to give the challengers another shot at making their case in the lower courts.¹

Chief Justice John Roberts' majority opinion noted that none of the individual plaintiffs in the case claimed to be in a district that was intentionally filled with a disproportionate number of Democrats ("packed") or drained of such voters ("cracked") in an attempt to give Republicans a near-guaranteed win. They did not prove that they were individually harmed by the drawing of their district.¹

Justice Elena Kagan's concurrence for the four liberal justices laid out a second, and possibly broader, path for challenging partisan gerrymanders. Unlike vote dilution claims, which are rooted in the Fourteenth Amendment, Kagan wrote that First Amendment claims can be brought on a statewide basis since the harm is "that the gerrymander has burdened the ability of like-minded people across the State to affiliate in a political party and carry out that organization's activities and objects" (i.e., winning elections). In other words, an individual might not be able to bring a statewide claim but political parties are not similarly constrained.²

In the North Carolina Case, *Common Cause v. Rucho*, the US District Court in January 9, 2018 opinion held that North Carolina's 2016 Congressional Redistricting Plan (the "2016 Plan") constitutes an unconstitutional partisan gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment, the First Amendment, and Article I of the Constitution. ...In an order entered on June 25, 2018, the Supreme Court vacated the District Court judgment and remanded the case to the District Court for reconsideration in light of the Court's opinion in *Gill v. Whitford*. *Gill* stated, "that to establish standing to assert a partisan vote dilution claim under the Equal Protection Clause of the Fourteenth Amendment, a plaintiff voter must show that "the particular composition of the voter's own district . . . causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district." ³

The US Supreme Court did not hold the cases before it this term dealing with partisan gerrymandering, were proven. It sent the cases back to lower courts for reconsideration in light of their decisions. It did give guidance on what might constitute partisan gerrymandering. Map challengers must show that the districts where they live were directly affected by the gerrymander or show that the gerrymander has burdened the ability of like-minded people across the State to affiliate in a political party and carry out that organization's activities and objects (winning elections).

The Illinois Redistricting Collaborative has not yet met to decide how it will proceed on redistricting in our state. However, it is likely we will continue to get candidates on record on their position on gerrymandering and redistricting and work toward having the IL Legislature place a Constitutional Amendment on the 2020 ballot.

References

1) Politico – Supreme Court punts on partisan gerrymandering cases, By Josh Gerstein and Steven Shepard, 6/18/2018

2) Brennan Center – Supreme Court's Punt on Gerrymandering Offers Path Forward, The Wisconsin decision ends the notion that all partisan gerrymanders are acceptable. Michael Li, Yurji Rudensky, 6/21/2018

3) US District Court for the Middle District of North Carolina Case 1:16-cv-01026-WO-JEP Document 125 Filed 06/27/18

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