When a three-judge panel struck down North Carolina’s 2016 Congressional redistricting plan the case received significant media attention. Supreme Court redistricting cases rarely receive as much fanfare.

The decision garnered so much attention because it is the third three-judge panel in a relatively short period of time to rule a partisan gerrymander is unconstitutional. The Supreme Court has yet to articulate if and exactly when redistricting in favor of a political party is unconstitutional. But such a ruling may be imminent. The Supreme Court has already heard a case from Wisconsin and will hear a case from Maryland this term involving the constitutionality of partisan gerrymandering.

Following the 2016 election, Republicans hold 76.9% of the seats in North Carolina’s thirteen-seat congressional delegation; North Carolina voters cast 53.22% of their votes for Republican candidates. The League of Women Voters and Common Cause sued the Chair of the Senate Redistricting Committee.

According to the panel a redistricting plan violates the Equal Protection Clause if it (1) is intended to place a severe impediment on the effectiveness of the votes of citizens on the basis of their political affiliation, (2) has that effect, and (3) cannot be justified on other, legitimate legislative grounds. The problem, which the panel addresses in its opinion, is “neither the Supreme Court nor the parties agree as to the standard of proof for each of those elements.”

To prove discriminatory purpose or intent the plan challengers must introduce evidence the redistricting body acted with an intent to “subordinate adherents of one political party and entrench a rival party in power,” this panel opinioned. In this case Democrats had no access to the map drawer who was instructed on the criteria he was to follow before the committee had debated and adopted criteria. Also, a mathematician drew an ensemble of 24,518 simulated districting plans from a probability distribution of all possible North Carolina redistricting plans (unreasonable plans were excluded). Using 2012 and 2016 votes, more than 99 percent of the simulated maps produced fewer Republican seats than the 2016 redistricting plan.

According to the panel to meet the discriminatory effects requirement, the Equal Protection Clause requires the challengers to show it “subordinate[s the interests] of one political party and entrench[es] a rival party in power.” The panel found political party entrenchment was significant and likely to last. The 2016 efficiency gap, which measures wasted votes, was 19.4% favoring Republican candidates; the thirteenth highest in all of the United States from 1972 to 2016. In 2016 Republican candidate’s vote share (56.10%) and margin of victory (12.20%) in the least Republican district exceeded the thresholds for a district to be considered “safe” in future elections.

The legislative defendants were unable to prove the 2016 plan’s discriminatory effects were attributable to a legitimate state interest or other neutral explanation. While Democrats cluster in urban areas such clusters were repeatedly divided in the 2016 plan. And the court found protecting incumbents could have been accomplished without “drawing a plan exhibiting the discriminatory effects” of the 2016 plan.
The panel also concluded that the partisan gerrymander in this case violated the First Amendment and two sections of the U.S. Constitution’s Article I stating: the “House of Representatives shall be composed of Members chosen . . . by the People,” and “the Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof.”

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