PARTISAN GERRYMANDERING

NORTH CAROLINA - MARYLAND
Partisan Gerrymanders = Rigged Elections

“[O]ur legislators have reached the point of declaring that when it comes to apportionment:

‘We are in the business of rigging elections.’”

Partisan Gerrymandering is a Betrayal of the Promise of Fair Representation

“The doctrine of ‘one person, one vote’ originally was regarded as a means to prevent discriminatory gerrymandering. … Advances in computer technology … have drastically reduced the deterrent value by permitting political cartographers to draw districts of equal population that intentionally discriminate against cognizable groups of voters … [E]xclusive … reliance on ‘one person, one vote’ can betray the constitutional promise of fair and effective representation by enabling a legislature to engage intentionally in clearly discriminatory gerrymandering.”

Partisan Gerrymanders Are Incompatible with Democratic Principles

Members of the Supreme Court on both the left and the right agree that . . .

“Partisan gerrymanders are . . . incompatible with democratic principles”


*We do not disagree that “severe partisan gerrymanders [are incompatible with] democratic principles.”*

Partisan Gerrymander Claims Are Justiciable

A Majority of the Supreme Court Has Not Been Able to Agree on A Constitutional Standard

Prior challenges to partisan gerrymanders have all failed because of the inability of a majority of the Court to agree on a standard for judging the constitutionality of challenges under the *Equal Protection Clause* to state-wide apportionment plans.

*Davis v. Bandemer*, 478 U.S. 109 (1986);
*Vieth v. Jubelirer*, 541 U.S. 267 (2004);
In *Vieth v. Jubelirer*, Justice Kennedy (joined by Justice Stevens) suggested that the plaintiffs had been barking up the wrong constitutional tree in bringing partisan gerrymander cases under the Equal Protection Clause. He said:

“The First Amendment may be the more relevant constitutional provision in future cases that allege unconstitutional partisan gerrymandering . . . [which] involve the First Amendment interest of not burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their . . . political views . . . Under general First Amendment principles those burdens . . . are unconstitutional absent a compelling government interest . . . First Amendment concerns arise where a State enacts a law that has the purpose and effect of subjecting a groups of voters, or their party to disfavored treatment by reason of their views.”

Justice Kennedy in *Veith* continued

“The [First Amendment] inquiry is not whether political classifications were used [by the legislature]. The inquiry is whether political classifications were used to burden a group’s representational rights. If a court were to find that a State did impose burdens and restrictions on groups or persons by reason of their views, there would likely be a First Amendment violation, unless the State shows some compelling interest.”

“... The First Amendment analysis concentrates on whether the legislation burdens the representational rights of the complaining [political] party’s voters for reasons of ideology, beliefs, or political association.” *Vieth v. Jubelirer*, 541 U.S. at 315.
The Democratic Gerrymander of the 6th Congressional District in Maryland

In 2011, the Democratic majority in Maryland gerrymandered the historically Republican 6th congressional district:

- Removed 360,000 people from the 6th district, and distributed them among other districts
- Added 350,000 new people from Montgomery County, a Democratic stronghold
- Added 30,000 new Democratic registered voters to the 6th district
- Removed 65,000 Republican registered voters from the 6th district
- Flipped the 6th district from a 12 point Republican registration advantage to an 11 point Democratic registration advantage; and
- Defeated the 20 year Republican incumbent in the 2012 general election.
The Democratic Gerrymander of the 6th Congressional District in Maryland

6th Congressional District

BEFORE
The Democratic Gerrymander of the 6th Congressional District in Maryland

6th Congressional District

AFTER
The Supreme Court Reversed the Dismissal of a Pro Se Complaint that Challenged the Democratic Gerrymander in Maryland on First Amendment Grounds

“Without expressing any view on the merits of petitioners’ claim… the amended complaint specifically challenges Maryland’s apportionment ‘along the lines suggested by Justice Kennedy in . . . Vieth v. Jubelirer’ . . . Whatever ‘wholly insubstantial,’ ‘obviously frivolous,’ etc. mean [for jurisdictional purposes], at a minimum they cannot include a plea for relief based on a legal theory put forward by a Justice of this Court and uncontradicted by a majority in any of our cases.”

On August 24, 2016, Maryland’s motion to dismiss for failure to state a claim under the First Amendment was denied by a three-judge district court.

“The practice of purposefully diluting the weight of certain citizen’s votes to make it more difficult for them to achieve electoral success because of the political views they have expressed through their voting histories and party affiliations … infringes [their First Amendment] representational right[s].”

As you well know, the decennial process of redistricting is underway in most states across the country. Some states have already concluded their redistricting processes and others have yet to begin. The RSLC continues to play an important role in gaining and keeping Republican majorities around the country and we are pleased that we now control 56 legislative chambers. We know the ongoing redistricting process will impact the legislative lines that we will have to defend in 2012 and beyond. Therefore, we have taken the initiative to retain a team of seasoned redistricting experts that we will make available to you at no cost to your caucus for assistance. We urge you to use them as a key resource for technical advice as you undergo this process.

Sincerely,

Chris Jankowski
President & Chief Executive Officer
Dear Legislative Leaders:

As you well know, the decennial process of redistricting is underway in most states across the country. Some states have already concluded their redistricting processes and others have yet to begin. The RSLC continues to play an important role in gaining and keeping Republican majorities around the country and we are pleased that we now control 56 legislative chambers. We know the ongoing redistricting process will impact the legislative lines that we will have to defend in 2012 and beyond. Therefore, we have taken the initiative to retain a team of seasoned redistricting experts that we will make available to you at no cost to your caucus for assistance. We urge you to

Already, we are engaged in a number of states and believe we are playing a meaningful role in helping draw fair and legal lines that will allow us to run competitive elections in 2012 and in future cycles. Our team would be happy to assist in drawing proposed maps, interpreting data, or providing advice. Their practical solutions have been used through many decades of redistricting and their best practices help ensure that lines drawn take Voting Rights Act issues and statutory mandates into consideration. Our team can also provide strategic advice in cases of litigation as well.

Sincerely,

Chris Jankowski
President & Chief Executive Officer
Our redistricting team is led by Tom Hofeller. You can contact him at tom@rncnhq.com or at _____.

The entirety of this effort will be paid for using non-federal dollars through our 501c4 organization, the State Government Leadership Foundation (SGLF). For more information about this effort, you can contact me at (571) 480-4860 or contact Tom directly. None of these resources will take away from our ability to help fund future state elections through the RSLC.

We appreciate the complexities of redistricting and hope that you will consider using our veteran team when crafting new legislative and Congressional boundaries during this critical time.

Sincerely,

Chris Jankowski
President & Chief Executive Officer
NORTH CAROLINA HAS BEEN A HOTBED OF EXTREME PARTISAN AND RACIAL GERRYMANDERING

Racial Gerrymander of 1st and 12th Congressional districts in 2011
*Harris v. McCrory*, 159 F. Supp.3d. 600 (M.D.N.C. Feb. 5, 2016), appeal pending.

Racial Gerrymander of State House and Senate Districts

Partisan Gerrymander by State Legislature of County Commission and County School Board Districts
*Raleigh Wake County Citizens Ass’n v. Wake County Bd. of Elections*, 827 F.3d 333 (4th Cir. July 1, 2016).

Photo ID and Other Voter Suppression Legislation

Partisan Gerrymander of Congressional Districts to Perpetuate a 10-3 Republican Majority
*Common Cause v. Rucho*, No. 1:16-CV-1026 (M.D.N.C. filed August 5, 2016);
Prior to 2011, a majority of the voters could elect a majority of the NC Congressional delegation.

<table>
<thead>
<tr>
<th>Year</th>
<th>Democratic Votes</th>
<th>Democratic Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>45%</td>
<td>46% (6 of 13)</td>
</tr>
<tr>
<td>2004</td>
<td>49%</td>
<td>46% (6 of 13)</td>
</tr>
<tr>
<td>2006</td>
<td>53%</td>
<td>54% (7 of 13)</td>
</tr>
<tr>
<td>2008</td>
<td>54%</td>
<td>62% (8 of 13)</td>
</tr>
<tr>
<td>2010</td>
<td>45%</td>
<td>54% (7 of 13)</td>
</tr>
</tbody>
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The 2011 Republican Congressional Redistricting Plan

Gave the Republicans a HUGE 10-3 partisan advantage.

<table>
<thead>
<tr>
<th>Year</th>
<th>Democratic Votes</th>
<th>Democratic Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>51%</td>
<td>31% (4 of 13)</td>
</tr>
<tr>
<td>2014</td>
<td>44%</td>
<td>23% (3 of 13)</td>
</tr>
<tr>
<td>2016</td>
<td>46%</td>
<td>23% (3 of 13)</td>
</tr>
</tbody>
</table>
The 2011 Plan Required That Two Districts Contain at Minority Populations of 50.1%

In February of 2016, the 2011 Plan was struck down held to be an unconstitutional racial gerrymandered gerrymander. Harris v. McCrory, 2016 WL 3129213 (M.D.N.C. 2016). An appeal from the decision will be argued in the Supreme Court on December 5th.
The Republican Legislature Responded by Adopting Written Criteria for a 2016 Congressional Plan That Would Preserve Their 10-3 Partisan Advantage
The Republican Legislature Responded by Adopting Written Criteria for a 2016 Congressional Plan That Would Preserve Their 10-3 Partisan Advantage
The Admissions of the Republican Co-Chair of the Republican-Dominated Joint Committee that Drafted the 2016 Plan

“the map drawers [were] instructed to create a map …likely to elect ten Republicans and three Democrats.”

“That this would be a political gerrymander [which] … is not against the law.

“Propose that we draw the maps to give partisan advantage of ten Republicans and three Democrats because I do not believe it’s possible to draw a map with 11 Republicans and two Democrats.”

“We … are going to use political data in drawing this map... to gain partisan advantage … I want that criteria to be clearly stated and understood.”

Representative David Lewis, Transcript of Joint Committee Hearing (February 16, 2016)
The Joint Committee Used the Voting Histories of Republican and Democratic Voters to Maximize the Effectiveness of Republican Voters and to Minimize the Effectiveness of Democratic Voters

**Packing** Democratic voters into 3 districts with Democratic supermajorities where their votes in excess of a safe majority were wasted.

**Cracking** the remaining Democratic voters in North Carolina among 10 districts with safe Republican majorities, where the effectiveness of their votes would be diluted or nullified.

**Maximizing** the effectiveness of Republican voters by parsing them to create 10 districts with safe (but not too safe) Republican majorities.
The Partisan Effects of the 2016 Plan Can Be Objectively Demonstrated in Multiple Ways

Partisan Symmetry

- Republican candidates received 53% of the statewide vote, but captured 10 (76.9%) of the seats.
- If Democratic candidates had received 53% of the statewide vote, Democrats would have captured only 1 additional seat—or 30% of the total number of seats.
The Partisan Effects of the 2016 Plan Can Be Objectively Demonstrated in Multiple Ways

Neutral Maps

If 5,000 neutral maps were drawn by computer, the statistical possibilities of a:

- 10-3 Republican majority would be ZERO
- 9-4 Republican majority would also be ZERO
- 8-5 Republican majority would be less than .2%
- 7-6 Republican majority would be less than 7%
The Partisan Effects of the 2016 Plan Can Be Objectively Demonstrated in Multiple Ways

**Efficiency Gap**

Would have been **30.4%** -- compared to a historical norm of (which included gerrymandered districts) of **7%**.
Count One - First Amendment
Count Two - Equal Protection Clause of the Fourteenth Amendment
Count Three - Article I, § 2 of the Constitution
Count Four - Article I, § 4 of the Constitution

The defendants’ motion to dismiss has been fully briefed and is awaiting decision.