

No. 19-110

IN THE
Supreme Court of the United States



STEVE CHABOT, ET AL.,

Appellants,

—v.—

OHIO A. PHILIP RANDOLPH INSTITUTE, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

MOTION TO DISMISS

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QUESTION PRESENTED

Whether the district court erred in entertaining this partisan-gerrymandering claim, notwithstanding that “partisan gerrymandering claims present political questions beyond the reach of the federal courts.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07 (2019).

CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, respondents make the following disclosures:

1) Respondent Ohio A. Philip Randolph Institute has no parent company, and no publicly traded company owns 10% or more of its stock.

2) League of Women Voters of Ohio Respondent Ohio A. Philip Randolph Institute has no parent company, and no publicly traded company owns 10% or more of its stock.

3) Respondent the Ohio State University College Democrats has no parent company, and no publicly traded company owns 10% or more of its stock.

4) Respondent the Northeast Ohio Young Black Democrats has no parent company, and no publicly traded company owns 10% or more of its stock.

5) Respondent the Hamilton County Young Democrats has no parent company, and no publicly traded company owns 10% or more of its stock.

6) No publicly held company owns ten percent or more of the stock of any respondent.

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INTRODUCTION

At the end of the past term, this Court held, for the first time, that partisan gerrymandering claims present a non-justiciable political question. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07 (2019). Steve Chabot *et al.* (“Intervenors”), who were intervenors at the trial stage, have submitted a jurisdictional statement asking that this Court order that the case be remanded with an order to dismiss pursuant to *Rucho*. Given the Court’s clear holding in *Rucho*, the Ohio A. Philip Randolph Institute *et al.* (“Plaintiffs”) agree that this case should be remanded to the three-judge panel (“Panel”) with instructions to dismiss.

STATEMENT OF THE CASE

The three-judge trial panel (“Panel”) found that Ohio’s legislature intentionally diluted the votes of individual voters by packing and cracking them into districts designed to minimize Democratic influence and maximize Republican advantage, regardless of the electorate’s preferences.

1. Procedural History

Plaintiffs filed their complaint in May 2018. R.1. During the summer of 2018, expedited motions to dismiss were decided. The parties engaged in expedited discovery throughout the rest of 2018. The Defendants and Intervenors, moved for summary judgment on January 8, 2019. R.136–40. On February 15, 2019, the Panel denied the motions for summary judgment. R. 222. Commencing March 4, 2019, the Panel held an eight-day trial with 23 live witnesses. The Panel also received testimony from additional witnesses through designated deposition

testimony. On May 3, 2019, the Panel issued its opinion, which constituted its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a)(1). R.262. The Panel found that Ohio’s congressional map was an unconstitutional gerrymander, violating the First and Fourteenth Amendments to the U.S. Constitution and exceeding the State’s powers under Article I. *See generally* App. at 1–408.

2. Findings of Fact

After reviewing voluminous evidence, the Panel found that Ohio’s map was the result of an explicit campaign to crack and pack Democratic voters in order to dilute their influence. The Panel considered and rejected the Intervenor’s contention that the map was a result of a bipartisan compromise and legitimate redistricting criteria.¹ *See, e.g.*, App. at 231 n.737, 324–57.

The Panel found that the cracking and packing of Democrats in Ohio was driven by Republican operatives, including national Republican congressional staff in Washington, who had final sign off the design of Ohio’s congressional map. App. at 4–5, 16–20. The map drawers amassed a large collection of partisan data on Ohio’s voters, which was used to surgically crack and pack Democratic voters. *Id.* at. 19–20.

¹ Intervenor’s continue to insist, even after the Panel’s contrary factual finding, that the map was the result of a bipartisan compromise and legitimate redistricting criteria. Br. at 15–16; *see* App. at 336–340. Intervenor’s cannot demonstrate that the Panel’s factual finding was clearly erroneous. *See Hernandez v. New York*, 500 U.S. 352, 364–65 (1991). The Panel conclusions were based on over 60 witnesses’ testimony (both live and by designation) and hundreds of exhibits.

The intent of the map drawers was made manifest by contemporaneous statements and trial testimony by the map drawers. Statements considered by the Panel as probative included the map drawers' characterization of the "downtown" Democratic area in Columbus as "dog meat" voting territory and newly packed Democratic district in Franklin County as "the [] sinkhole." App. at 26, 256, 282. The map makers stated that their map was crafted to guarantee that 12 Republican seats remained within the "safety zone." *Id.* at 222, 286. After a 12-4 partisan advantage had been secured by the Republican map-drawers, all other changes to the map were de minimis. *Id.* at 381-82. The Panel noted that the Speaker of the Ohio House "testified that while some negotiations occurred, there was never a chance that the Republicans in the majority would permit a map that altered the [12-4] partisan balance[.]" *Id.* at 338; *see also id.* at 35. That some Democratic legislators voted for the map in exchange for small, parochial concessions to their individual district lines did not negate the fact that the process was dictated by the Republican Party, which controlled both houses of Ohio's legislature and the governorship. *Id.* at 379-82.

Further, after careful assessment of the evidence at trial, the Panel determined that no legitimate redistricting criteria or state interest justified the map's congressional district lines. App. at 324-57, 377-86. Examining each district in turn, the Panel concluded that many more rational districts, respecting traditional districting principles, could have been drawn. *Id.* at 270-324. The Panel considered and rejected the assertion that the goal of protecting incumbents explained the district lines

based on the trial evidence. *Id.* at 325–36. The Panel also found that Voting Rights Act (VRA) compliance did not explain or justify the district lines. *Id.* at 340–52, 382–83. The Panel also determined that “Ohio’s natural political geography in no way accounts for the extreme Republican advantage observed in the 2012 map.” *Id.* at 352–53. The Panel concluded that Ohio’s map had successfully cracked and packed Democratic voters for the purpose of entrenching the Republican Party’s advantage.

ARGUMENT

I. THE CASE SHOULD BE REMANDED WITH AN INSTRUCTION TO DISMISS FOR LACK OF JURISDICTION

Less than two months ago, this Court held, for the first time, that “partisan gerrymandering claims present political questions beyond the reach of the federal courts.” *Rucho*, 139 S. Ct. at 2506–07. As this Court has now held that these claims are not justiciable in the federal courts, the only “function remaining” for the Court is to announce that the matter is non-justiciable and dismiss. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868)). Given *Rucho*, the proper course at this point is to “remand[] with instructions to dismiss for lack of jurisdiction.” *Rucho*, 139 S. Ct. at 2508.

CONCLUSION

Given this Court’s holding in *Rucho*, 139 S. Ct. at 2506–07, finding that partisan gerrymandering

cases present political questions beyond the reach of the federal courts, the decision of the lower court should be remanded with an order to dismiss the case.

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