

No.

In the Supreme Court of the United States

LEE CHATFIELD, ET AL., APPELLANTS,

v.

LEAGUE OF WOMEN VOTERS OF MICHIGAN, ET AL.,
APPELLEES.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN*

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

This appeal arises from a partisan gerrymandering challenge to Michigan’s districting plan for the State Senate, State House of Representatives, and the Congressional seats apportioned to Michigan. In April 2019, a three-judge District Court held that plaintiffs’ partisan gerrymandering claims were justiciable and proceeded to invalidate large portions of Michigan’s state legislative and Congressional districting plans. In so doing, the District Court relied heavily on the decisions in *Common Cause v. Rucho*, 318 F. Supp. 3d 777 (M.D.N.C. 2018), and *Benisek v. Lamone*, 266 F. Supp. 3d 799 (D. Md. 2017), both of which were then pending on appeal before this Court.

On June 27, 2019, this Court decided the appeals in *Rucho* and *Lamone*, holding that partisan gerrymandering claims present non-justiciable “political questions beyond the reach of the federal courts.” 139 S. Ct. 2484, 2506–07 (2019). Accordingly, the Court vacated the underlying judgments and remanded the cases to their respective district courts “with instructions to dismiss for lack of jurisdiction.” *Id.* at 2508.

The question presented is whether, in light of this Court’s ruling in *Rucho* and *Lamone*, the Court should summarily vacate the judgment below and remand this case to the District Court with instructions to dismiss for lack of jurisdiction.

PARTIES TO THE PROCEEDING

The following were parties in the court below:

Plaintiffs:

League of Women Voters of Michigan; Roger J. Brdak; Frederick C. Durhal, Jr.; Jack E. Ellis; Donna E. Farris; William “Bill” J. Grasha; Rosa L. Holliday; Diana L. Ketola; Jon “Jack” G. LaSalle; Richard “Dick” W. Long; Lorenzo Rivera; Rashida H. Tlaib

Defendants:

Jocelyn Benson, in her official capacity as Secretary of State

Intervening Defendants:

Representative Lee Chatfield, in His Official Capacity as Speaker Pro Tempore of the Michigan House of Representatives; Representative Aaron Miller, in his official capacity as a Member of the Michigan House of Representatives; Congressmen Jack Bergman, Bill Huizenga, John Moolenaar, Fred Upton, Tim Walberg, and Paul Mitchell; the Michigan Senate; and Michigan Senators Jim Stamas, Kenneth B. Horn, and Lana Theis

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT	1
A. Factual Background.....	2
B. Proceedings Below	3
REASONS FOR SUMMARILY VACATING THE JUDGMENT AND REMANDING WITH INSTRUCTIONS TO DISMISS.....	7
A. This Court’s Decision in <i>Rucho</i> and <i>Lamone</i> Makes Clear that Plaintiffs’ Partisan Gerryman- dering Claims Are Non-Justiciable.....	7
CONCLUSION	8
APPENDIX	1a
Opinion and Order of the United States District Court for the Eastern District of Michigan, <i>League of</i> <i>Women Voters v. Benson</i> , No. 2:17-cv-14148 (April 25, 2019).....	1a
Congressional and State House Intervenors’ Notice of Appeal, United States District Court for the Eastern District of Michigan, <i>League of Women</i> <i>Voters v. Benson</i> , No. 2:17-cv-14148 (April 30, 2019).....	171a
Michigan Senate and Michigan Senators’ Notice of Appeal, United States District Court for the Eastern District of Michigan, <i>League of Women Voters v.</i> <i>Benson</i> , No. 2:17-cv-14148 (April 30, 2019).....	173a
U.S. Const. Art. I	175a
U.S. Const. Amend. I.....	176a
U.S. Const. Amend. XIV.....	177a

TABLE OF AUTHORITIES

Cases:

<i>Benisek v. Lamone</i> , 266 F. Supp. 3d 799 (D. Md. 2017).....	passim
<i>Common Cause v. Rucho</i> , 318 F. Supp. 3d 777 (M.D.N.C. 2018)	passim
<i>League of Women Voters of Mich. v. Johnson</i> , 902 F.3d 572 (6th Cir. 2018)	3
<i>Davis v. Bandemer</i> , 478 U.S. 109 (1986).....	5
<i>Rucho v. Common Cause</i> , 139 S. Ct. 2484 (2019).....	passim

Constitutional Provisions:

U.S. Const. Art. III	1, 8
U.S. Const. Amend. I	passim
U.S. Const. Amend. XIV	3, 5
Mich. Const. Article II, § 4.....	2
Mich. Const. Article IV, § 2.....	6

Statutes:

28 U.S.C. § 1253	1, 8
Mich. Comp. Law § 3.51a	2
Mich. Comp. Law § 4.2001a	2
Mich. Comp. Law § 4.2002a	2
Mich. Comp. Laws Ann. § 3.62	2
Mich. Comp. Laws Ann. § 4.261	2
Mich. House Res. 17 (2019).....	3

Other Authorities:

S. Ct. R. 18.2.....	7
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OPINION BELOW

The opinion and order of the District Court is reported at 373 F. Supp. 3d 867 (E.D. Mich. Apr. 25, 2019) and is reproduced at App. 1a–170a.¹

JURISDICTION

The District Court entered final judgment on April 25, 2019. The Senate, House, and Congressional Intervenors timely filed notices of appeal on April 30, 2019. App. 171a–173a. This Court has statutory jurisdiction over this appeal under 28 U.S.C. § 1253. But, as this Court recently held in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), this Court and all other federal courts lack Article III jurisdiction to entertain partisan gerrymandering claims.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment, the Fourteenth Amendment, and Sections 2 and 4 of Article I of the United States Constitution are reproduced at App. 175a–78a.

STATEMENT

This appeal arises from a partisan gerrymandering challenge to Michigan’s districting plan for the State Senate, the State House of Representatives, and the Congressional seats apportioned to Michigan. Relying heavily on *Common Cause v. Rucho*, 318 F. Supp. 3d 777 (M.D.N.C. 2018), and *Benisek v. Lamone*, 266 F. Supp. 3d 799 (D. Md. 2017), the District Court below held that partisan gerrymandering claims are justiciable. The court then invalidated large portions of Michigan’s districting plan, ordered Michigan lawmakers to draw new maps by

¹ Citations to the Appendix are in the form “App. ___”. Citations to pleadings below are in the form “ECF No. ___, PageID. ___.”

August 1, 2019, and ordered a special Senate election in 2020 that would effectively curtail many senators' four-year terms to two. On May 24, 2019, this Court stayed that order pending the disposition of this appeal.

The District Court's ruling cannot stand after this Court's recent decision in *Rucho* and *Lamone*, which vacated the lower court judgments on the grounds that partisan gerrymandering claims are *not* justiciable. 139 S. Ct. 2484 (2019). Consistent with that ruling, the Court should summarily vacate the judgment below and remand with instructions to dismiss for lack of jurisdiction. Plaintiffs-Appellees have informed Intervenors-Appellants that they consent to this form of relief.

A. Factual Background

The Michigan Constitution vests in the Legislature the power to “regulate the time, place and manner of all nominations and elections.” Mich. Const. Art. II, § 4(2). Pursuant to that power, Michigan law directs the Legislature to enact a new redistricting plan every 10 years for the State Senate, the State House of Representatives, and the Congressional districts apportioned to Michigan. Mich. Comp. Laws Ann. §§ 3.62, 4.261.

In 2011, following the decennial census, the Michigan Legislature enacted, and the Governor signed, the redistricting plan at issue here. The plan codifies the boundaries for Michigan's 38 State Senate, 110 State House, and 14 Congressional districts. Mich. Comp. Law §§ 3.51a, 4.2001a, 4.2002a.

B. Proceedings Below

In December 2017—more than six years and three election cycles after enactment of the current redistricting plan—various plaintiffs filed suit before a three-judge panel in the United States District Court for the Eastern District of Michigan. ECF No. 1. Plaintiffs alleged that Michigan’s current redistricting plan was an unconstitutional partisan gerrymander. ECF No. 1, PageID.1–4. Specifically, they claimed that the plan (1) discriminated against them as Democratic voters in violation of the Equal Protection Clause of the Fourteenth Amendment, and (2) burdened their First Amendment rights of free speech and association. ECF No. 1, PageID.29–32. Although plaintiffs initially sought to invalidate the entire plan, they later narrowed their challenge to 34 Senate, House, and Congressional districts. App. 3a.

Plaintiffs named Secretary of State Ruth Johnson, a Republican, as the defendant in the action. ECF No. 1, PageID.9. In addition, the Michigan Republican Congressional Delegation (“Congressional Intervenors”) moved to intervene to defend the plan. ECF No. 21. Similarly, Lee Chatfield, the Republican Speaker Pro Tempore (now Speaker) of the Michigan House of Representatives, and Aaron Miller, the Republican Chairman of the House Elections and Ethics Committee (collectively, “House Intervenors”) moved to intervene. ECF No. 70. By resolution, the Michigan House of Representatives authorized the Speaker to act on its behalf in this litigation. *See* Mich. House Res. 17 (2019). Although the District Court denied both intervention motions, the Sixth Circuit reversed in each instance and ordered the District Court to allow the Congressional and House Intervenors to intervene in the litigation. 902 F.3d 572 (6th Cir. 2018); ECF No. 166.

In November 2018, while the case was pending, Democratic Party candidate Jocelyn Benson was elected as the new Secretary of State and, upon taking office, was substituted as the defendant in this action. ECF No. 194. Soon thereafter, Secretary Benson began settlement negotiations with plaintiffs, resulting in the filing of a joint motion to approve a consent decree that would have invalidated several districts. ECF No. 211. Secretary Benson also informed the District Court that, aside from opposing special elections for the Michigan Senate, she did “not intend to defend the current apportionment plans at issue in this case.” ECF No. 216, PageID.8122 n.1.

Following Secretary Benson’s election, the Michigan Senate and three Michigan Senators (collectively, “Senate Intervenors”) moved to intervene. ECF Nos. 206, 208. The District Court granted those intervention motions and denied the pending motion to approve the consent decree. ECF Nos. 235, 237.

In January 2019, this Court announced that it would hear argument in March 2019 on the gerrymandering claims presented in *Rucho*, No. 18-422, and *Lamone*, No. 18-726. In light of that announcement, the House, Senate, and Congressional Intervenors all moved to stay the proceedings in this action. ECF Nos. 183, 220. The District Court denied the motions, and the case proceeded to a bench trial in February 2019. ECF 238.²

² The Congressional and House Intervenors also filed in this Court an application for a stay pending filing and disposition of a mandamus petition and an accompanying mandamus petition seeking to stay the trial. This Court denied the application and the related petition. Order, *In re Chatfield*, No. 18A769 (Feb. 4, 2019); Order, *In re Chatfield*, No. 18-973 (Mar. 25, 2019).

On April 25, 2019, the District Court issued a written opinion, finding that each of the challenged districts was an unconstitutional partisan gerrymander. App. 1a–170a. The court grounded its decision in its belief that “[j]udges—and justices—must act in accordance with their obligation to vindicate the constitutional rights of those harmed by partisan gerrymandering.” App. 6a.

With respect to the threshold issue of justiciability, the District Court reasoned that this Court already held in *Davis v. Bandemer*, 478 U.S. 109 (1986), that “partisan gerrymandering claims are justiciable.” App. 66a. The District Court emphasized that “[i]n recent years, several three-judge panels,” including *Rucho* and *Lamone*, had also reached that conclusion. App. 67a.

Next, the District Court adopted “the standard articulated by the *Rucho* panel” for assessing partisan gerrymandering under the Equal Protection Clause. App. 68a. With respect to the First Amendment, the District Court adopted a “similar three-part test” derived from *Rucho* and other district court decisions. App. 69a.

Turning to standing, the District Court held that plaintiffs had standing to assert that nearly all of the challenged districts violated the Equal Protection Clause by diluting Democratic votes. App. 72a–113a. The court further held that plaintiffs had standing to assert First Amendment claims with respect to every challenged district because the redistricting plan purportedly made Democratic voters less enthusiastic. App. 113a–120a.

Turning to the merits, the District Court found that most challenged districts violated the Equal Protection Clause under the *Rucho* panel’s test and that every challenged district violated the First Amendment under the

test that the *Rucho* panel and other district courts had employed. App. 121a–158a.

Regarding the remedy, the District Court enjoined use of the challenged districts in any future election and ordered the Michigan Legislature to pass, and the Governor to sign, a new redistricting plan by August 1, 2019. App. 167a. The court further ordered the Michigan Legislature to provide volumes of information relating to any new plan—including a log of all persons “formally or informally consulted” by the legislature and a list of all “formal or informal” districting criteria. App. 167a–69a.

Lastly, the District Court ordered a special State Senate election in 2020 for the challenged districts and any district affected by a remedial map. App. 158a–166a. The court acknowledged that holding a special election in 2020 would “truncate” senators’ four-year terms, which were set to run through 2022. App. 164a; *see* Mich. Const. Art. IV, § 2 (senators serve “four-year terms”). But the court concluded that “[w]hile senators may be disappointed that their four-year terms will be reduced to two years,” that “sentiment” did not outweigh the need to remedy partisan gerrymandering. App. 164a–165a.

On April 30, 2019, the Senate, House, and Congressional Intervenors filed notices of appeal to this Court. App. 171a–173a. Shortly thereafter, they moved the District Court to stay the judgment pending appeal, in light of this Court’s then-pending decisions in *Rucho* and *Lamone*. ECF Nos. 274, 275. The District Court denied the motions. ECF No. 277.

On May 10, 2019, the Senate, House, and Congressional Intervenors filed emergency stay applications with this Court. This Court granted the applications and

stayed the judgment pending appeal. Order, 18A1170 (May 24, 2019); Order, 18A1171 (May 24, 2019).³

**REASONS FOR SUMMARILY VACATING
THE JUDGMENT AND REMANDING
WITH INSTRUCTIONS TO DISMISS**

**A. This Court’s Decision in *Rucho* and *Lamone* Makes
Clear that Plaintiffs’ Partisan Gerrymandering
Claims Are Non-Justiciable**

This case presents the exact same threshold question presented in *Rucho* and *Lamone*—namely, whether partisan gerrymandering claims are justiciable under the Constitution. In those cases, this Court answered the question in the negative, holding that partisan gerrymandering claims present non-justiciable “political questions beyond the reach of the federal courts.” 139 S. Ct. at 2506–07. This Court accordingly vacated the underlying judgments and remanded the cases to their respective district courts with instructions to dismiss for lack of jurisdiction. *Id.* at 2508.

The same relief is warranted here. Citing the now-vacated decisions in *Rucho* and *Lamone*, the District Court below concluded that “partisan gerrymandering claims are justiciable.” App. 67a. It then proceeded to analyze plaintiffs’ Equal Protection and First Amendment claims under the tripartite tests set forth by the district courts in *Rucho* and *Lamone*. App. 67a–71a. This Court, however, subsequently rejected those very tests in concluding that partisan gerrymandering claims are *not* justiciable. 139

³ Although the House and Congressional Intervenors and the Senate Intervenors filed separate notices of appeal in the District Court, all intervenors join in this common jurisdictional statement. *See* S. Ct. R. 18.2 (jointly interested parties “may join in an appeal”).

S. Ct. at 2502–05. This Court’s decision in *Rucho* and *Lamone* is, therefore, controlling and dictates the conclusion that plaintiffs’ claims are “beyond the reach of the federal courts.” 139 S. Ct. at 2506–07.

This Court has statutory jurisdiction over this appeal under 28 U.S.C. § 1253, but its decision in *Rucho* and *Lamone* leaves no doubt that federal courts, including this one, lack Article III jurisdiction over partisan-gerrymandering claims. The Court should thus summarily vacate the judgment below and remand the case to the District Court with instructions to dismiss for lack of jurisdiction. Plaintiffs-Appellees have informed Intervenor-Appellants that they consent to this relief.

CONCLUSION

The Court should summarily vacate the judgment and remand the case to the District Court with instructions to dismiss for lack of jurisdiction.

Respectfully submitted,

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