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***Rucho v. Common Cause*, No. 18-422**

***Lamone v. Benisek*, No. 18-726**

Today, the Supreme Court, by a vote of 5-4, held in two consolidated cases that challenges to partisan gerrymanders present political questions that are not subject to review in federal court.

**Background:** Both cases involved challenges to extreme partisan gerrymanders. In *Rucho*, Republican legislators in North Carolina drew a state-wide congressional districting plan designed to result in the election of 10 Republican and only 3 Democratic Representatives, even though, on a statewide basis, Democratic candidates for Congress have received more votes than Republican candidates. In *Lamone*, Democratic legislators in Maryland drew a districting plan specifically to flip representation in the State's Sixth Congressional District from Republican to Democratic. Democrats in North Carolina and Republicans in Maryland challenged these gerrymanders as unconstitutional under the First Amendment and the Equal Protection Clause of the Constitution. Three-judge federal district courts in both States agreed, holding that the plaintiffs have standing; that their challenges are justiciable; and that the gerrymanders are unconstitutional.

**Issues:** (1) Whether plaintiffs' partisan gerrymandering claims are justiciable; and (2) whether the North Carolina and Maryland 2016 congressional maps are, in fact, unconstitutional partisan gerrymanders.

**Court's Holding:** In an opinion written by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh, a bitterly divided Supreme Court held that claims of partisan gerrymandering entail political questions that are beyond the ability of federal courts to resolve. Although the Court recognized that the judiciary has a role to play in addressing electoral challenges that involve claims of racial gerrymandering or departure from the principle of one-person/one-vote, it held that there are no legal standards discernible in the Constitution that allow courts to determine when a partisan gerrymander is illegitimate. In particular, the Court held that none of the tests proposed by the plaintiffs meets the need for a limited and precise standard that is judicially discernible and manageable. The Court concluded by noting that Congress through statute, and the States through constitutional amendment or legislation, could limit the use of partisan gerrymanders.

Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, dissented. Sharply criticizing the use of partisan gerrymanders and reading her dissent from the bench, she concluded: "Of all times to abandon the Court's duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government. Part of the Court's role in that system is to defend its foundations. None is more important than free and fair elections. With respect but deep sadness, I dissent."

**Note:** Mayer Brown represented the challengers in *Lamone*.