

to Independence, and the Framers were familiar with it at the time of the drafting and ratification of the Constitution. They addressed the election of Representatives to Congress in the Elections Clause, Art. I, § 4, cl. 1, assigning to state legislatures the power to prescribe the “Times, Places and Manner of holding Elections” for Members of Congress, while giving Congress the power to “make or alter” any such regulations. Congress has regularly exercised its Elections Clause power, including to address partisan gerrymandering. But the Framers did not set aside all electoral issues as questions that only Congress can resolve. In two areas—one-person, one-vote and racial gerrymandering—this Court has held that there is a role for the courts with respect to at least some issues that could arise from a State’s drawing of congressional districts. But the history of partisan gerrymandering is not irrelevant. Aware of electoral districting problems, the Framers chose a characteristic approach, assigning the issue to the state legislatures, expressly checked and balanced by the Federal Congress, with no suggestion that the federal courts had a role to play.

Courts have nonetheless been called upon to resolve a variety of questions surrounding districting. The claim of population inequality among districts in *Baker v. Carr*, for example, could be decided under basic equal protection principles. 369 U.S. at 226, 82 S.Ct. 691. Racial discrimination in districting also raises constitutional issues that can be addressed by the federal courts. See *Gomillion v. Lightfoot*, 364 U.S. 339, 340, 81 S.Ct. 125, 5 L.Ed.2d 110. Partisan gerrymandering claims have proved far more difficult to adjudicate, in part because “a jurisdiction may engage in constitutional political gerrymandering.” *Hunt v. Cromartie*, 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731. To hold that legislators cannot take their partisan interests into account when drawing district lines would essentially countermand the Framers’ decision to entrust districting to political entities. The “central problem” is “determining when political gerrymandering has gone too far.” *Vieth v. Jubelirer*, 541 U.S. 267, 296, 124 S.Ct. 1769, 158 L.Ed.2d 546 (plurality opinion). Despite considerable efforts in *Gaffney v. Cummings*, 412 U.S. 735, 753, 93 S.Ct. 2321, 37 L.Ed.2d 298; *Davis v. Bandemer*, 478 U.S. 109, 116–117, 106 S.Ct. 2797, 92 L.Ed.2d 85; *Vieth*, 541 U.S. at 272–273, 124 S.Ct. 1769; and *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 414, 126 S.Ct. 2594, 165 L.Ed.2d 609 (*LULAC*), this Court’s prior cases have left “unresolved whether ... claims [of legal right] may be brought in cases involving allegations of partisan gerrymandering.” *Gill*, 585 U.S., at —, 138 S.Ct., at 1929. Two “threshold questions” remained: standing, which was addressed in *Gill*, and “whether

[such] claims are justiciable.” *Ibid.* P. 2498.

(b) Any standard for resolving partisan gerrymandering claims must be grounded in a “limited and precise rationale” and be “clear, manageable, and politically neutral.” *Vieth*, 541 U.S. at 306–308, 124 S.Ct. 1769 (Kennedy, J., concurring in judgment). The question is one of degree: How to “provid[e] a standard for deciding how much partisan dominance is too much.” *LULAC*, 548 U.S. at 420, 126 S.Ct. 2594 (opinion of Kennedy, J.). Partisan gerrymandering claims rest on an instinct that groups with a certain level of political support should enjoy a commensurate level of political power and influence. Such claims invariably sound in a desire for proportional representation, but the Constitution does not require proportional representation, and federal courts are neither equipped nor authorized to apportion political power as a matter of fairness. It is not even clear what fairness looks like in this context. It may mean achieving a greater number of competitive districts by undoing packing and cracking so that supporters of the disadvantaged party have a better shot at electing their preferred candidates. But it could mean engaging in cracking and packing to ensure each party its “appropriate” share of “safe” seats. Or perhaps it should be measured by adherence to “traditional” districting criteria. Deciding among those different visions of fairness poses basic questions that are political, not legal. There are no legal standards discernible in the Constitution for making such judgments. And it is only after determining how to define fairness that one can even begin to answer the determinative question: “How much is too much?”

The fact that the Court can adjudicate one-person, one-vote claims does not mean that partisan gerrymandering claims are justiciable. This Court’s one-person, one-vote cases recognize that each person is entitled to an equal say in the election of representatives. It hardly follows from that principle that a person is entitled to have his political party achieve representation commensurate to its share of statewide support. Vote dilution in the one-person, one-vote cases refers to the idea that each vote must carry equal weight. That requirement does not extend to political parties; it does not mean that each party must be influential in proportion to the number of its supporters. The racial gerrymandering cases are also inapposite: They call for the elimination of a racial classification, but a partisan gerrymandering claim cannot ask for the elimination of partisanship. Pp. 2498 – 2502.

(c) None of the proposed “tests” for evaluating partisan gerrymandering claims meets the need for a limited and

precise standard that is judicially discernible and manageable. Pp. 2502 – 2507.

(1) The *Common Cause* District Court concluded that all but one of the districts in North Carolina’s 2016 Plan violated the Equal Protection Clause by intentionally diluting the voting strength of Democrats. It applied a three-part test, examining intent, effects, and causation. The District Court’s “predominant intent” prong is borrowed from the test used in racial gerrymandering cases. However, unlike race-based decisionmaking, which is “inherently suspect,” *Miller v. Johnson*, 515 U.S. 900, 915, 115 S.Ct. 2475, 132 L.Ed.2d 762, districting for some level of partisan advantage is not unconstitutional. Determining that lines were drawn on the basis of partisanship does not indicate that districting was constitutionally impermissible. The *Common Cause* District Court also required the plaintiffs to show that vote dilution is “likely to persist” to such a degree that the elected representatives will feel free to ignore the concerns of the supporters of the minority party. Experience proves that accurately predicting electoral outcomes is not simple, and asking judges to predict how a particular districting map will perform in future elections risks basing constitutional holdings on unstable ground outside judicial expertise. The District Court’s third prong—which gave the defendants an opportunity to show that discriminatory effects were due to a “legitimate redistricting objective”—just restates the question asked at the “predominant intent” prong. P. 2502.

(2) The District Courts also found partisan gerrymandering claims justiciable under the First Amendment, coalescing around a basic three-part test: proof of intent to burden individuals based on their voting history or party affiliation, an actual burden on political speech or associational rights, and a causal link between the invidious intent and actual burden. But their analysis offers no “clear” and “manageable” way of distinguishing permissible from impermissible partisan motivation. Pp. 2503 – 2505.

(3) Using a State’s own districting criteria as a baseline from which to measure how extreme a partisan gerrymander is would be indeterminate and arbitrary. Doing so would still leave open the question of how much political motivation and effect is too much. Pp. 2505 – 2506.

(4) The North Carolina District Court further held that the 2016 Plan violated Article I, § 2, and the Elections Clause, Art. I, § 4, cl. 1. But the *Vieth* plurality concluded—without objection from any other Justice—that neither § 2 nor § 4 “provides a judicially

enforceable limit on the political considerations that the States and Congress may take into account when districting.” 541 U.S. at 305, 124 S.Ct. 1769. Any assertion that partisan gerrymanders violate the core right of voters to choose their representatives is an objection more likely grounded in the Guarantee Clause of Article IV, § 4, which “guarantee[s] to every State in [the] Union a Republican Form of Government.” This Court has several times concluded that the Guarantee Clause does not provide the basis for a justiciable claim. See, e.g., *Pacific States Telephone & Telegraph Co. v. Oregon*, 223 U.S. 118, 32 S.Ct. 224, 56 L.Ed. 377. Pp. 2506 – 2507.

(d) The conclusion that partisan gerrymandering claims are not justiciable neither condones excessive partisan gerrymandering nor condemns complaints about districting to echo into a void. Numerous States are actively addressing the issue through state constitutional amendments and legislation placing power to draw electoral districts in the hands of independent commissions, mandating particular districting criteria for their mapmakers, or prohibiting drawing district lines for partisan advantage. The Framers also gave Congress the power to do something about partisan gerrymandering in the Elections Clause. That avenue for reform established by the Framers, and used by Congress in the past, remains open. Pp. 2506 – 2508.

318 F.Supp.3d 777 and 348 F.Supp.3d 493, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined. KAGAN, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.

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Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

*2491 Voters and other plaintiffs in North Carolina and Maryland challenged their States' congressional districting maps as unconstitutional partisan gerrymanders. The North Carolina plaintiffs complained that the State's districting plan discriminated against Democrats; the Maryland plaintiffs complained that their State's plan discriminated against Republicans. The plaintiffs alleged that the gerrymandering violated the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Elections Clause, and Article I, § 2, of the Constitution. The District Courts in both cases ruled in favor of the plaintiffs, and the defendants appealed directly to this Court.

These cases require us to consider once again whether claims of excessive partisanship in districting are "justiciable"—that is, properly suited for resolution by the federal courts. This Court has not previously struck down a districting plan as an unconstitutional partisan gerrymander, and has struggled without success over the past several decades to discern judicially manageable standards for deciding such claims. The districting plans at issue here are highly partisan, by any measure. The question is whether the courts below appropriately

exercised judicial power when they found them unconstitutional as well.

I

A

The first case involves a challenge to the congressional redistricting plan enacted by the Republican-controlled North Carolina General Assembly in 2016. *Rucho v. Common Cause*. The Republican legislators leading the redistricting effort instructed their mapmaker to use political data to draw a map that would produce a congressional delegation of ten Republicans and three Democrats. 318 F.Supp.3d 777, 807–808 (M.D.N.C. 2018). As one of the two Republicans chairing the redistricting committee stated, "I think electing Republicans is better than electing Democrats. So I drew this map to help foster what I think is better for the country." *Id.*, at 809. He further explained that the map was drawn with the aim of electing ten Republicans and three Democrats because he did "not believe it [would be] possible to draw a map with 11 Republicans and 2 Democrats." *Id.*, at 808. One Democratic state senator objected that entrenching the 10–3 advantage for Republicans was not "fair, reasonable, [or] balanced" because, as recently as 2012, "Democratic congressional candidates had received more votes on a statewide basis than Republican candidates." *Ibid.* The General Assembly was not swayed by that objection and approved the 2016 Plan by a party-line vote. *Id.*, at 809.

In November 2016, North Carolina conducted congressional elections using the 2016 Plan, and Republican candidates won 10 of the 13 congressional districts. *Id.*, at 810. In the 2018 elections, Republican candidates won nine congressional districts, while Democratic candidates won three. *2492 The Republican candidate narrowly prevailed in the remaining district, but the State Board of Elections called a new election after allegations of fraud.

This litigation began in August 2016, when the North Carolina Democratic Party, Common Cause (a nonprofit organization), and 14 individual North Carolina voters sued the two lawmakers who had led the redistricting effort and other state defendants in Federal District Court. Shortly thereafter, the League of Women Voters of North Carolina and a dozen additional North Carolina voters filed a similar complaint. The two cases were

of distinguishing permissible from impermissible partisan motivation. The *Common Cause* court embraced that conclusion, observing that “a judicially manageable framework for evaluating partisan gerrymandering claims need not distinguish an ‘acceptable’ level of partisan gerrymandering from ‘excessive’ partisan gerrymandering” because “the Constitution does not authorize state redistricting bodies to engage in such partisan gerrymandering.” *Id.*, at 851. The decisions below prove the prediction of the *Vieth* plurality that “a First Amendment claim, if it were sustained, would render unlawful *all* consideration of political affiliation in districting,” 541 U.S. at 294, 124 S.Ct. 1769, contrary to our established precedent.

C

The dissent proposes using a State’s own districting criteria as a neutral baseline from which to measure how extreme a partisan gerrymander is. The dissent would have us line up all the possible maps drawn using those criteria according to the partisan distribution they would produce. Distance from the “median” map would indicate whether a particular districting plan harms supporters of one party to an unconstitutional extent. *Post*, at 2517 – 2518, 2521 (opinion of KAGAN, J.).

As an initial matter, it does not make sense to use criteria that will vary from State to State and year to year as the baseline for determining whether a gerrymander violates the Federal Constitution. The degree of partisan advantage that the Constitution tolerates should not turn on criteria offered by the gerrymanderers themselves. It is easy to imagine how different criteria could move the median map toward different partisan distributions. As a result, the same map could be constitutional or not depending solely on what the mapmakers said they set out to do. That possibility illustrates that the dissent’s proposed constitutional test is indeterminate and arbitrary.

Even if we were to accept the dissent’s proposed baseline, it would return us to “the original unanswerable question (How much political motivation and effect is too much?).” *Vieth*, 541 U.S. at 296–297, 124 S.Ct. 1769 (plurality opinion). Would twenty percent away from the median map be okay? Forty percent? Sixty percent? Why or why not? (We appreciate that the dissent finds all the unanswerable questions annoying, see *post*, at 2519 – 2520, but it seems a useful way to make the point.) The dissent’s answer says it all: “This much is too much.” *Post*, at 2521. That is not even trying to articulate a standard or rule.

The dissent argues that there are other instances in law where matters of degree are left to the courts. See *post*, at 2522. True enough. But those instances typically involve constitutional or statutory provisions or common law confining and guiding the exercise of judicial discretion. For example, the dissent cites the need to determine “substantial anticompetitive effect[s]” in antitrust law. *Post*, at 2522 (citing *Ohio v. American Express Co.*, 585 U.S. —, 138 S.Ct. 2274, 201 L.Ed.2d 678 (2018)). That language, however, grew out of the Sherman Act, understood from the beginning to have its “origin in the common law” and to be “familiar in the law of this country prior to and at the time of the *2506 adoption of the [A]ct.” *Standard Oil Co. of N. J. v. United States*, 221 U.S. 1, 51, 31 S.Ct. 502, 55 L.Ed. 619 (1911). Judges began with a significant body of law about what constituted a legal violation. In other cases, the pertinent statutory terms draw meaning from related provisions or statutory context. Here, on the other hand, the Constitution provides no basis whatever to guide the exercise of judicial discretion. Common experience gives content to terms such as “substantial risk” or “substantial harm,” but the same cannot be said of substantial deviation from a median map. There is no way to tell whether the prohibited deviation from that map should kick in at 25 percent or 75 percent or some other point. The only provision in the Constitution that specifically addresses the matter assigns it to the political branches. See Art. I, § 4, cl. 1.

D

The North Carolina District Court further concluded that the 2016 Plan violated the Elections Clause and Article I, § 2. We are unconvinced by that novel approach.

Article I, § 2, provides that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States.” The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” Art. I, § 4, cl. 1.

The District Court concluded that the 2016 Plan exceeded the North Carolina General Assembly’s Elections Clause authority because, among other reasons, “the Elections Clause did not empower State legislatures to disfavor the interests of supporters of a particular candidate or party in

country, including those below, have coalesced around manageable judicial standards to resolve partisan gerrymandering claims. Those standards satisfy the majority's own benchmarks. They do not require—indeed, they do not permit—courts to rely on their own ideas of electoral fairness, whether proportional representation or any other. And they limit courts to correcting only egregious gerrymanders, so judges do not become omnipresent players in the political process. But yes, the standards used here do allow—as well they should—judicial intervention in the worst-of-the-worst cases of democratic subversion, causing blatant constitutional harms. In other words, they allow courts to undo partisan gerrymanders of the kind we face today from North Carolina and Maryland. In giving such gerrymanders a pass from judicial review, the majority goes tragically wrong.

I

Maybe the majority errs in these cases because it pays so little attention to the constitutional harms at their core. After dutifully reciting each case's facts, the majority leaves them forever behind, instead immersing itself in everything that could conceivably go amiss if courts became involved. So it is necessary to fill in the gaps. To recount exactly what politicians in North Carolina and Maryland did to entrench their parties in political office, whatever the electorate might think. And to elaborate on the constitutional injury those politicians wreaked, to our democratic system and to individuals' rights. All that will help in considering whether courts confronting partisan gerrymandering claims are really so hamstrung—so unable to carry out their constitutional duties—as the majority thinks.

A

The plaintiffs here challenge two congressional districting plans—one adopted by Republicans in North Carolina and the other by Democrats in Maryland—as unconstitutional partisan gerrymanders. As I relate what happened in those two States, ask yourself: Is this how American democracy is supposed to work?

Start with North Carolina. After the 2010 census, the North Carolina General Assembly, with Republican majorities in both its House and its Senate, enacted a new congressional districting plan. That plan governed the two next national elections. In 2012, Republican candidates won 9 of the State's 13 seats in the U.S. House *2510 of Representatives, although they received only 49% of the statewide vote. In 2014, Republican candidates increased their total to 10 of the 13 seats, this time based on 55% of the vote. Soon afterward, a District Court struck down two districts in the plan as unconstitutional racial gerrymanders. See *Harris v. McCrory*, 159 F.Supp.3d 600 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 581 U.S. —, 137 S.Ct. 1455, 197 L.Ed.2d 837 (2017). The General Assembly, with both chambers still controlled by Republicans, went back to the drawing board to craft the needed remedial state map. And here is how the process unfolded:

- The Republican co-chairs of the Assembly's redistricting committee, Rep. David Lewis and Sen. Robert Rucho, instructed Dr. Thomas Hofeller, a Republican districting specialist, to create a new map that would maintain the 10–3 composition of the State's congressional delegation come what might. Using sophisticated technological tools and precinct-level election results selected to predict voting behavior, Hofeller drew district lines to minimize Democrats' voting strength and ensure the election of 10 Republican Congressmen. See *Common Cause v. Rucho*, 318 F.Supp.3d 777, 805–806 (M.D.N.C. 2018).
- Lewis then presented for the redistricting committee's (retroactive) approval a list of the criteria Hofeller had employed—including one labeled "Partisan Advantage." That criterion, endorsed by a party-line vote, stated that the committee would make all "reasonable efforts to construct districts" to "maintain the current [10–3] partisan makeup" of the State's congressional delegation. *Id.*, at 807.
- Lewis explained the Partisan Advantage criterion to legislators as follows: We are "draw[ing] the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [I] d[o] not believe it[']s possible to draw a map with 11 Republicans and 2 Democrats." *Id.*, at 808 (internal quotation marks omitted).
- The committee and the General Assembly later enacted, again on a party-line vote, the map Hofeller had drawn. See *id.*, at 809.

There, in four congressional elections, Democrats tallied between 39% and 47% of the statewide vote, but never won more than 4 of 16 House seats. See *Ohio A. Philip Randolph Inst. v. Householder*, 373 F.Supp.3d 978, 1074 (S.D. Ohio. 2019). (Nor is there any reason to think that the results in those States stemmed from political geography or non-partisan districting criteria, rather than from partisan manipulation. See *infra*, at 2515 – 2516, 2524 – 2525.) And gerrymanders will only get worse (or depending on your perspective, better) as time goes on—as data becomes ever more fine-grained and data analysis techniques continue to improve. What was possible with paper and pen—or even with Windows 95—doesn’t hold a candle (or an LED bulb?) to what will become possible with developments like machine learning. And someplace along this road, “we the people” become sovereign no longer.

C

Partisan gerrymandering of the kind before us not only subverts democracy (as if that weren’t bad enough). It violates individuals’ constitutional rights as well. That statement is not the lonesome cry of a dissenting Justice. This Court has recognized extreme partisan gerrymandering as such a violation for many years.

Partisan gerrymandering operates through vote dilution—the devaluation of one citizen’s vote as compared to others. A mapmaker draws district lines to “pack” and “crack” voters likely to support the disfavored party. See generally *Gill v. Whitford*, 585 U.S. —, — – —, 138 S.Ct. 1916, 1929–1931, 201 L.Ed.2d 313 (2018). He packs supermajorities of those voters into a relatively few districts, in numbers far greater than needed for their *2514 preferred candidates to prevail. Then he cracks the rest across many more districts, spreading them so thin that their candidates will not be able to win. Whether the person is packed or cracked, his vote carries less weight—has less consequence—than it would under a neutrally drawn (non-partisan) map. See *id.*, at —, 138 S.Ct., at 1924 (KAGAN, J., concurring). In short, the mapmaker has made some votes count for less, because they are likely to go for the other party.

That practice implicates the Fourteenth Amendment’s Equal Protection Clause. The Fourteenth Amendment, we long ago recognized, “guarantees the opportunity for equal participation by all voters in the election” of

legislators. *Reynolds v. Sims*, 377 U.S. 533, 566, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). And that opportunity “can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Id.*, at 555, 84 S.Ct. 1362. Based on that principle, this Court in its one-person-one-vote decisions prohibited creating districts with significantly different populations. A State could not, we explained, thus “dilut[e] the weight of votes because of place of residence.” *Id.*, at 566, 84 S.Ct. 1362. The constitutional injury in a partisan gerrymandering case is much the same, except that the dilution is based on party affiliation. In such a case, too, the districters have set out to reduce the weight of certain citizens’ votes, and thereby deprive them of their capacity to “full[y] and effective[ly] participat[e] in the political process[.]” *Id.*, at 565, 84 S.Ct. 1362. As Justice Kennedy (in a controlling opinion) once hypothesized: If districters declared that they were drawing a map “so as most to burden [the votes of] Party X’s” supporters, it would violate the Equal Protection Clause. *Vieth*, 541 U.S. at 312, 124 S.Ct. 1769. For (in the language of the one-person-one-vote decisions) it would infringe those voters’ rights to “equal [electoral] participation.” *Reynolds*, 377 U.S. at 566, 84 S.Ct. 1362; see *Gray v. Sanders*, 372 U.S. 368, 379–380, 83 S.Ct. 801, 9 L.Ed.2d 821 (1963) (“The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications”).

And partisan gerrymandering implicates the First Amendment too. That Amendment gives its greatest protection to political beliefs, speech, and association. Yet partisan gerrymanders subject certain voters to “disfavored treatment”—again, counting their votes for less—precisely because of “their voting history [and] their expression of political views.” *Vieth*, 541 U.S. at 314, 124 S.Ct. 1769 (opinion of Kennedy, J.). And added to that strictly personal harm is an associational one. Representative democracy is “unimaginable without the ability of citizens to band together in [support of] candidates who espouse their political views.” *California Democratic Party v. Jones*, 530 U.S. 567, 574, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000). By diluting the votes of certain citizens, the State frustrates their efforts to translate those affiliations into political effectiveness. See *Gill*, 585 U.S., at —, 138 S.Ct., at 1938 (KAGAN, J., concurring) (“Members of the disfavored party[,] deprived of their natural political strength[,] may face difficulties fundraising, registering voters, [and] eventually accomplishing their policy objectives”). In both those ways, partisan gerrymanders of the kind we confront here undermine the protections of “democracy embodied in the First Amendment.” *Elrod v. Burns*, 427

plaintiffs had done so. See *ante*, at 2502 – 2503. But that evidence—particularly from North Carolina—is the key to understanding both the problem these cases present and the solution to it they offer. The evidence reveals just how bad the two gerrymanders were (in case you had any doubts). And it shows how the same technologies and data that today facilitate extreme partisan gerrymanders also enable courts to discover them, by exposing just how much they dilute votes. See *Vieth*, 541 U.S. at 312–313, 124 S.Ct. 1769 (opinion of Kennedy, J.) (predicting that development).

Consider the sort of evidence used in North Carolina first. There, the plaintiffs demonstrated the districting plan's effects *2518 mostly by relying on what might be called the “extreme outlier approach.” (Here's a spoiler: the State's plan was one.) The approach—which also has recently been used in Michigan and Ohio litigation—begins by using advanced computing technology to randomly generate a large collection of districting plans that incorporate the State's physical and political geography and meet its declared districting criteria, *except for* partisan gain. For each of those maps, the method then uses actual precinct-level votes from past elections to determine a partisan outcome (*i.e.*, the number of Democratic and Republican seats that map produces). Suppose we now have 1,000 maps, each with a partisan outcome attached to it. We can line up those maps on a continuum—the most favorable to Republicans on one end, the most favorable to Democrats on the other.³ We can then find the median outcome—that is, the outcome smack dab in the center—in a world with no partisan manipulation. And we can see where the State's actual plan falls on the spectrum—at or near the median or way out on one of the tails? The further out on the tail, the more extreme the partisan distortion and the more significant the vote dilution. See generally Brief for Eric S. Lander as *Amicus Curiae* 7–22.

Using that approach, the North Carolina plaintiffs offered a boatload of alternative districting plans—all showing that the State's map was an out-out-out-outlier. One expert produced 3,000 maps, adhering in the way described above to the districting criteria that the North Carolina redistricting committee had used, other than partisan advantage. To calculate the partisan outcome of those maps, the expert also used the same election data (a composite of seven elections) that Hofeller had employed when devising the North Carolina plan in the first instance. The results were, shall we say, striking. Every single one of the 3,000 maps would have produced at least one more Democratic House Member than the State's actual map, and 77% would have elected three or four more. See *Rucho*, 318 F.Supp.3d at 875–876, 894;

App. 276. A second expert obtained essentially the same results with maps conforming to more generic districting criteria (*e.g.*, compactness and contiguity of districts). Over 99% of that expert's 24,518 simulations would have led to the election of at least one more Democrat, and over 70% would have led to two or three more. See *Rucho*, 318 F.Supp.3d at 893–894. Based on those and other findings, the District Court determined that the North Carolina plan substantially dilutes the plaintiffs' votes.⁴

Because the Maryland gerrymander involved just one district, the evidence in that case was far simpler—but no less powerful for that. You've heard some of the numbers before. See *supra*, at 2511. *2519 The 2010 census required only a minimal change in the Sixth District's population—the subtraction of about 10,000 residents from more than 700,000. But instead of making a correspondingly minimal adjustment, Democratic officials reconfigured the entire district. They moved 360,000 residents out and another 350,000 in, while splitting some counties for the first time in almost two centuries. The upshot was a district with 66,000 fewer Republican voters and 24,000 more Democratic ones. In the old Sixth, 47% of registered voters were Republicans and only 36% Democrats. But in the new Sixth, 44% of registered voters were Democrats and only 33% Republicans. That reversal of the district's partisan composition translated into four consecutive Democratic victories, including in a wave election year for Republicans (2014). In what was once a party stronghold, Republicans now have little or no chance to elect their preferred candidate. The District Court thus found that the gerrymandered Maryland map substantially dilutes Republicans' votes. See *Lamone*, 348 F.Supp.3d at 519–520.

The majority claims all these findings are mere “prognostications” about the future, in which no one “can have any confidence.” *Ante*, at 2503 (internal quotation marks omitted). But the courts below did not gaze into crystal balls, as the majority tries to suggest. Their findings about these gerrymanders' effects on voters—both in the past and predictably in the future—were evidence-based, data-based, statistics-based. Knowledge-based, one might say. The courts did what anyone would want a decisionmaker to do when so much hangs in the balance. They looked hard at the facts, and they went where the facts led them. They availed themselves of all the information that mapmakers (like Hofeller and Hawkins) and politicians (like Lewis and O'Malley) work so hard to amass and then use to make every districting decision. They refused to content themselves with unsupported and out-of-date musings

really come from its idea that ideal visions set the baseline. But that is double-counting—and, as already shown, wrong to boot.) As this Court recently noted, “the law is full of instances” where a judge’s decision rests on “estimating rightly ... some matter of degree”—including the “substantial[ity]” of risk or harm. *Johnson v. United States*, 576 U.S. —, —, 135 S.Ct. 2551, 2561, 192 L.Ed.2d 569 (2015) (internal quotation marks omitted); see, e.g., *Ohio v. American Express Co.*, 585 U.S. —, —, 138 S.Ct. 2274, 201 L.Ed.2d 678 (2018) (determining “substantial anticompetitive effect[s]” when applying the Sherman Act); *United States v. Davis*, ante, at 2494 – 2496 (KAVANAUGH, J., dissenting) (cataloging countless statutes requiring a “substantial” risk of harm). The majority is wrong to think that these laws typically (let alone uniformly) further “confine[] and guide[]” judicial decisionmaking. *Ante*, at 2505 – 2506. They do not, either in themselves or through “statutory context.” *Ibid.* To the extent additional guidance has developed over the years (as under the Sherman Act), courts themselves have been its author—as they could be in this context too. And contrary to the majority’s suggestion, see *ibid.*, courts all the time make judgments about the substantiality of harm without reducing them to particular percentages. If courts are no longer competent to do so, they will have to relinquish, well, substantial portions of their docket.

And the combined inquiry used in these cases set the bar high, so that courts could intervene in the worst partisan gerrymanders, but no others. Or to say the same thing, so that courts could intervene in the kind of extreme gerrymanders that nearly every Justice for decades has thought to violate the Constitution. See *supra*, at 2514 – 2515. Illicit purpose was simple to show here only because politicians and mapmakers thought their actions could not be attacked in court. See *Rucho*, 318 F.Supp.3d at 808 (quoting Lewis’s statements to that effect). They therefore felt free to openly proclaim their intent to *2523 entrench their party in office. See *supra*, at 2510 – 2511. But if the Court today had declared that behavior justiciable, such smoking guns would all but disappear. Even assuming some officials continued to try implementing extreme partisan gerrymanders,⁵ they would not brag about their efforts. So plaintiffs would have to prove the intent to entrench through circumstantial evidence—essentially showing that no other explanation (no geographic feature or non-partisan districting objective) could explain the districting plan’s vote dilutive effects. And that would be impossible unless those effects were even more than substantial—unless mapmakers had packed and cracked with abandon in unprecedented ways. As again, they did here. That the two courts below found constitutional violations does not

mean their tests were unrigorous; it means that the conduct they confronted was constitutionally appalling—by even the strictest measure, inordinately partisan.

The majority, in the end, fails to understand both the plaintiffs’ claims and the decisions below. Everything in today’s opinion assumes that these cases grew out of a “desire for proportional representation” or, more generally phrased, a “fair share of political power.” *Ante*, at 2499, 2502. And everything in it assumes that the courts below had to (and did) decide what that fair share would be. But that is not so. The plaintiffs objected to one specific practice—the extreme manipulation of district lines for partisan gain. Elimination of that practice could have led to proportional representation. Or it could have led to nothing close. What was left after the practice’s removal could have been fair, or could have been unfair, by any number of measures. That was not the crux of this suit. The plaintiffs asked only that the courts bar politicians from entrenching themselves in power by diluting the votes of their rivals’ supporters. And the courts, using neutral and manageable—and eminently legal—standards, provided that (and only that) relief. This Court should have cheered, not overturned, that restoration of the people’s power to vote.

III

This Court has long understood that it has a special responsibility to remedy violations of constitutional rights resulting from politicians’ districting decisions. Over 50 years ago, we committed to providing judicial review in that sphere, recognizing as we established the one-person-one-vote rule that “our oath and our office require no less.” *Reynolds*, 377 U.S. at 566, 84 S.Ct. 1362. Of course, our oath and our office require us to vindicate all constitutional rights. But the need for judicial review is at its most urgent in cases like these. “For here, politicians’ incentives conflict with voters’ interests, leaving citizens without any political remedy for their constitutional harms.” *Gill*, 585 U.S., at —, 138 S.Ct., at 1941 (KAGAN, J., concurring). Those harms arise because politicians want to stay in office. No one can look to them for effective relief.

The majority disagrees, concluding its opinion with a paean to congressional bills limiting partisan gerrymanders. “Dozens of [those] bills have been

which power does not flow from the people because they do not choose their governors.

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.

All Citations

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Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.
- ¹ The dissent’s observation that the Framers viewed political parties “with deep suspicion, as fomenters of factionalism and symptoms of disease in the body politic” *post*, at 2512, n. 1 (opinion of KAGAN, J.) (internal quotation marks and alteration omitted), is exactly right. Its inference from that fact is exactly wrong. The Framers would have been amazed at a constitutional theory that guarantees a certain degree of representation to political parties.
- ¹ And even putting that aside, any originalist argument would have to deal with an inconvenient fact. The Framers originally viewed political parties themselves (let alone their most partisan actions) with deep suspicion, as fomenters of factionalism and “symptom[s] of disease in the body politic.” G. Wood, *Empire of Liberty: A History of the Early Republic, 1789–1815*, p. 140 (2009).
- ² Neither North Carolina nor Maryland offered much of an alternative explanation for the evidence that the plaintiffs put forward. Presumably, both States had trouble coming up with something. Like the majority, see *ante*, at 2503 – 2504, I therefore pass quickly over this part of the test.
- ³ As I’ll discuss later, this distribution of outcomes provides what the majority says does not exist—a neutral comparator for the State’s own plan. See *ante*, at 2499 – 2501; *supra*, at 2515; *infra*, at 2519 – 2521. It essentially answers the question: In a State with these geographic features and this distribution of voters and this set of districting criteria—but without partisan manipulation—what would happen?
- ⁴ The District Court also relied on actual election results (under both the new plan and the similar one preceding it) and on mathematical measurements of the new plan’s “partisan asymmetry.” See *Rucho*, 318 F.Supp.3d at 884–895. Those calculations assess whether supporters of the two parties can translate their votes into representation with equal ease. See Stephanopoulos & McGhee, *The Measure of a Metric*, 70 *Stan. L. Rev.* 1503, 1505–1507 (2018). The court found that the new North Carolina plan led to extreme asymmetry, compared both to plans used in the rest of the country and to plans previously used in the State. See *Rucho*, 318 F.Supp.3d at 886–887, 892–893.

- ⁵ A decision of this Court invalidating the North Carolina and Maryland gerrymanders would of course have curbed much of that behavior. In districting cases no less than others, officials respond to what this Court determines the law to sanction. See, *e.g.*, Charles & Fuentes-Rohwer, *Judicial Intervention as Judicial Restraint*, 132 Harv. L. Rev. 236, 269 (2018) (discussing how the Court’s prohibition of racial gerrymanders affected districting).
- ⁶ Contrary to the majority’s suggestion, state courts do not typically have more specific “standards and guidance” to apply than federal courts have. *Ante*, at 2507. The Pennsylvania Supreme Court based its gerrymandering decision on a constitutional clause providing only that “elections shall be free and equal” and no one shall “interfere to prevent the free exercise of the right of suffrage.” *League of Women Voters*, 645 Pa. at 38, 178 A. 3d, at 803–804 (quoting Pa. Const., Art. I, § 5). And even the Florida “Free Districts Amendment,” which the majority touts, says nothing more than that no districting plan “shall be drawn with the intent to favor or disfavor a political party.” Fla. Const., Art. III, § 20(a). If the majority wants the kind of guidance that will keep courts from intervening too far in the political sphere, see *ante*, at 2498 – 2499, that Amendment does not provide it: The standard is in fact a good deal less exacting than the one the District Courts below applied. In any event, only a few States have a constitutional provision like Florida’s, so the majority’s state-court solution does not go far.