

IS TIME RUNNING OUT ON GERRYMANDERING?

A BRIEF REVIEW FOR THE BEACHES DEMOCRATIC CLUB'S OUTREACH AND EDUCATION TEAM PREPARED BY JAY SOLOMON (Sources noted below)

HISTORY: THE TERM "GERRYMANDER", COINED 1812, WAS FIRST USED BY THE BOSTON GAZETTE DESCRIBING REDRAWING A MASSACHUSETTS STATE SENATE DISTRICT. GOV. ELBRIDGE GERRY (DEMOCRATIC-REPUBLICAN PARTY) SAID THE DISTRICT RESEMBLED A SALAMANDER. GERRY'S NAME WAS LINKED TO LAST PART OF "SALAMANDER" AND THE TERM WAS BORN. HIS PARTY WON THE DISTRICT AND GERRYMANDERS HAVE BEEN PART OF THE POLITICAL PROCESS EVER SINCE.

STATUS: FEDERAL COURTS HAVE AVOIDED INTERFERING WITH DRAWING *POLITICAL* DISTRICT LINES. SEEING GERRYMANDERING AS A "POLITICAL QUESTION" THEY FELT IT BEST ADDRESSED BY LEGISLATURES RATHER THAN COURTS.

EXCEPTION: COURTS *HAVE* FOUND *RACIAL* GERRYMANDERING VIOLATES THE "EQUAL PROTECTION" CLAUSE OF THE CONSTITUTION. HOWEVER, IT IS GETTING HARD TO TELL WHAT'S RACIAL AS OPPOSED TO PARTISAN AS 90% OF BLACK VOTERS VOTE DEMOCRAT. OVER TIME, COURTS CAME TO REQUIRE STATES TO CREATE AS MANY MAJORITY/MINORITY DISTRICTS AS POSSIBLE TO INCREASE MINORITY REPRESENTATION. BUT NOW, COURTS ARE URGING STATES TO REDUCE THE PERCENTAGE OF MINORITY VOTERS IN A DISTRICT TO AVOID PUTTING THE BULK OF THEIR EGGS IN FEWER BASKETS, WHICH CAN WEAKEN THEIR OVERALL STRENGTH.

HERE IN FLORIDA: HOW SOON WE FORGET – STARTING IN THE 70S THERE WAS 40 YEARS OF DEMOCRATIC DOMINANCE. BUT THAT ENDED IN 2010 WHEN REPUBLICANS WON BOTH THE LEGISLATURE AND GOVERNOR'S OFFICE. THEY IMMEDIATELY REDREW LEGISLATIVE DISTRICT LINES. THEN WITH 49 PERCENT OF THE VOTERS, THEY WON 60 OF THE 99 ASSEMBLY SEATS.

THAT SAME YEAR, DEMOCRATS AND VOTING RIGHTS GROUPS HELPED WAGE A BATTLE FOR THE SO-CALLED "FAIR DISTRICTS" CONSTITUTIONAL AMENDMENTS, HOPING TO RESOLVE THE PROBLEM. THE VOTERS APPROVED THE AMMENDMENTS, BUT HERE WE ARE SEVEN YEARS LATER AND NOT MUCH HAS CHANGED: IN LAST YEAR'S ELECTIONS THE GOP WON 16 OF THE 27 CONGRESSIONAL SEATS AND THERE WERE SIMILAR RESULTS IN THE FLORIDA HOUSE AND

SENATE. AND REMEMBER, FLORIDA HAS 265-THOUSAND MORE REGISTERED DEMOCRATS THAN REPUBLICANS.

RESEARCH: THE BRENNAN CENTER FOR JUSTICE AT THE NYU SCHOOL OF LAW LAST YEAR MEASURED RESULTS FOR 2002 2012, 2014 AND 2016 IN THREE DIFFERENT WAYS. THEY LOOKED AT WHETHER A PARTY WON MORE OR FEWER SEATS THAN IT SHOULD BASED ON THE VOTES CAST IN THAT STATE -- COMPARED TO CERTAIN SIMILAR DISTRICTS ACROSS THE COUNTRY. THE RESEARCHERS FOUND WHERE A POLITICAL PARTY DICTATED DISTRICT LINES THERE WAS LESS THAN A 5-PERCENT CHANCE THE STATE'S ELECTION RESULTS COULD HAVE HAPPENED – *IN THE ABSENCE OF GERRYMANDERING*.

IN FLORIDA AND SEVERAL OTHER STATES, THEY REPORTED, THE FINDINGS SUGGEST COURT-MODIFIED PLANS HAVEN'T SUFFICIENTLY CORRECTED THE PARTISAN STANCE OF THE ORIGINAL MAPS.

ALTERNATIVES: MEANWHILE, MAPS DRAWN BY COMMISSIONS AND SPLIT-CONTROL STATE GOVERNMENTS IN OTHER STATES WERE SHOWING LOWER LEVELS OF PARTISAN BIAS. SOME ENCOURAGING NEWS: MEDIA REPORTS INDICATE FLORIDA DEMOCRATS AND VOTING RIGHTS ORGANIZATIONS ARE MOVING IN THAT DIRECTION AND CALLING FOR AN INDEPENDENT REDISTRICTING COMMISSION TO DRAW DISTRICT LINES EVERY 10 YEARS.

THAT'S THE PROLOG – HERE'S WHAT'S HAPPENING NOW – AND COULD BE A BIG DEAL.

THIS MONTH (JANUARY 9), A PANEL OF FEDERAL JUDGES STRUCK DOWN NORTH CAROLINA'S CONGRESSIONAL MAP AS UNCONSTITUTIONAL. THE REASON – REPUBLICANS HAD DRAWN THE MAP IN A WAY TO ACHIEVE *POLITICAL* BALANCE.

AS STATED ABOVE: THE COURTS HAVE BEEN WILLING TO ENGAGE ON RACIAL GERRYMANDERING UNDER THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION – BUT AVOIDING CONSIDERING *POLITICAL* MOTIVATION IN DRAWING DISTRICT LINES, LEAVING THAT TO THE STATES.

THE GAME-CHANGER: THIS NEW, UNANIMOUS NORTH CAROLINA RULING IS THE **FIRST TIME** A FEDERAL COURT HAS BLOCKED A CONGRESSIONAL MAP BECAUSE OF A **PARTISAN** GERRYMANDER. ANALYSTS SAY THAT INSTANTLY ENDANGERED REPUBLICAN SEATS IN COMING ELECTIONS.

INSIDE THE OPINION: FEDERAL APPEALS COURT JUDGE JAMES WYNN, WHO WROTE THE OPINION, SAID THE STATE LEGISLATURE WAS “MOTIVATED BY INVIDIOUS PARTISAN INTENT”

WHEN IT CAME UP WITH A PLAN GIVING 10 OF 13 CONGRESSIONAL DISTRICTS TO REPUBLICANS – DESPITE THE FACT THERE ARE SOME 600 THOUSAND MORE DEMOCRATS IN NORTH CAROLINA THAN REPUBLICANS WHO ONLY HAVE ABOUT 30% OF THE REGISTERED VOTERS. THE RESULT, WYNN WROTE, *VIOLATED THE 14TH AMENDMENT'S GUARANTEE OF EQUAL PROTECTION.*

THE RULING ALSO COMMANDED THE REPUBLICAN-DOMINATED LEGISLATURE TO RE-DO THE CONGRESSIONAL DISTRICTS **BY JANUARY 24**. HOWEVER, THE U.S. SUPREME COURT PUT THE LOWER COURT RULING ON HOLD BASED ON AN EMERGENCY APPEAL **JANUARY 18TH** FROM NORTH CAROLINA'S GOP LEADERS. LEGAL SCHOLARS SAY THIS APPEAL WILL PUT THE CASE ON HOLD UNTIL THE JUSTICES RULE IN AT LEAST ONE OF TWO PARTISAN GERRYMANDERING CASES CURRENTLY BEFORE THEM (LIKELY MEANING THE CASE WILL NOT BE HEARD BEFORE THE NOVEMBER ELECTIONS).

CONTEXT: STILL, THE ACTUAL GERRYMANDERING DECISION STANDS. NEW YORK TIMES REPORTING SUGGESTS THAT IN ITSELF WILL GET THINGS MOVING ON THE TWO OTHER GERRYMANDERING CHALLENGES.

IN ONE OF THOSE CASES, LAST OCTOBER, THE COURT HEARD THAT REPUBLICANS HAD UNCONSTITUTIONALLY GERRYMANDERED WISCONSIN'S STATE ASSEMBLY IN AN ATTEMPT TO RELEGATE DEMOCRATS TO A PERMANENT MINORITY. IN THE OTHER CASE, THE JUSTICES WILL HEAR ARGUMENTS BY MARYLAND REPUBLICANS THAT THE *DEMOCRAT*-CONTROLLED LEGISLATURE REDREW HOUSE DISTRICTS TO FLIP A *REPUBLICAN*-HELD SEAT TO DEMOCRATIC CONTROL. (WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE GANDER.)

ASSESSMENT: OBSERVERS SAY, FOR YEARS THE SUPREME COURT HAS BEEN LOOKING FOR A STANDARD TO DETERMINE WHEN A *PARTISAN* GERRYMANDER HAS CROSSED THE CONSTITUTIONAL LINE. GIVEN THE GROWING IDEOLOGICAL DIVIDE IN THE LAST DECADE – AND THE ADVENT OF POWERFUL MAP-DRAWING SOFTWARE TO FACILITATE THE COMPLICATED PROCESS – THE QUESTION RETURNS TO THE COURT WITH NEW URGENCY.

ONE LEGAL EXPERT ON GERRYMANDERING SAID—"CLEARLY THE COURTS HAVE REALIZED THAT THEY *DO* NEED TO STEP IN AND POLICE EXTREME PARTISAN GERRYMANDERS, AND THE

COURT RECOGNIZED THAT NORTH CAROLINA'S GERRYMANDER WAS ONE OF THE MOST EXTREME IN HISTORY."

IT IS BELIEVED THAT A SUPREME COURT RULING OUTLAWING AT LEAST SOME SUCH GERRYMANDERS COULD RESHAPE THE POLITICAL LANDSCAPE. BUT – GIVEN WHAT MAY BE FLOOD OF APPEALS AND INJUNCTIONS AS CAN BE EXPECTED IN NORTH CAROLINA, IT WILL LIKELY BE A WHILE UNTIL WE KNOW IF THE SUN WILL TRULY SET ON THE GERRYMANDER.

STAY TUNED.

(INFORMATION FOR THIS SUMMATION CAME FROM ARTICLES IN: The New York Times, The News & Observer [Charlotte], The Jacksonville Business Journal, and Florida Politics)

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