Amendment XXVIII: Stop Partisan Gerrymandering

Partisan gerrymandering polarizes our politics, makes our elected officials less responsive, and is fundamentally unfair. I therefore propose the following amendment:

*State legislatures shall draw federal political districts that are contiguous, compact, and circumscribe recognized communities of interest. Boundaries drawn to increase or maintain the political power of the party in control are not permissible.*

Elections in a gerrymandered district are not contested between parties, but between factions within a party, which exacerbates the turbocharged politics of our modern era[[1]](#endnote-1). Elections become not about governance, but about who can best distinguish themselves from their rivals by staking extreme positions. Of course, extreme positions are not necessarily wrong positions, civil rights and women’s suffrage being notable examples, but, as Martin Luther King Jr. once asked, “will we be extremists for hate or for love?”[[2]](#endnote-2). Many of today’s extremists are for the former. This is especially true among conservatives, but liberals are not excluded. We saw this hate when the progressive wing of the Democratic party abandoned Elizabeth Warren for embracing a phased rollout of Medicare For All, a policy position far to the left of the average voter’s healthcare position, but marginally to the right of her rival Bernie Sanders[[3]](#endnote-3). However, turbocharged politics do not just lead to interparty skirmishes: it also numbs a government’s sensitivity to the will of its citizens. Politicians can afford to ignore, or even harm, people whose votes don’t matter. It is why Trump was able to freeze Global Entry enrollment in New York state[[4]](#endnote-4) and threaten to withhold federal fire-fighting aid from California[[5]](#endnote-5) without suffering political consequences. The structure of the electoral college means Trump does not have to compete for votes from liberal states and is free to abuse them for personal or political gain. Gerrymandering repeats this process in miniature, allowing congressional and state representatives to ignore large swaths of the people they are meant to represent.

This political nature of gerrymandering is why the Supreme court was reluctant to accept cases challenging the practice until the 1960s, believing they ought to stay out of the “political thicket”. This changed after 1962 when, in Baker v. Carr, the court established a principle of “one [person] one vote”, based on their reading of the 14th amendment’s Equal Protection clause. This is anathema to partisan gerrymandering, which gives one party’s vote more weight than another’s by “packing and cracking” political districts, a process that either concentrates many likeminded voters in the same district or divides them over many districts, reducing the marginal efficiency of a gerrymandered vote. This reduced efficiency is the basis of the constitutional challenge to partisan gerrymandering. Two votes are not equal if one has a greater chance of influencing an election. We can calculate this inefficiency with the Efficiency Gap, a measure of vote waste developed by the plaintiffs in Gil v. Whitford (2018), a case that challenged Wisconsin’s 2011 redistricting lines. In the Wisconsin case, the metric showed that nearly 750,000 more Democrats than Republicans wasted their votes in Wisconsin’s 2012 election[[6]](#endnote-6). In other words, Wisconsin failed to give its democrats the equal protection of the law.

If the Supreme Court entered the political thicket with their ruling on Baker v. Carr in 1962, they inexplicably left with their ruling on Rucho v. Common Cause in 2019 when they concluded that congressional redistricting was a nonjusticiable matter and should be decided by the legislature. If the Supreme Court won’t end partisan gerrymandering, Congress should, by passing the 28th amendment. Doing so would unify our respective political parties, help bridge the partisan divide, and better adhere to the spirit of the 14th amendment.

1. Naomi Zack, *Reviving the Social Compact.* London: Rowman & Littlefield. pg. 12.

   I borrow heavily from Zack’s concept of “turbocharged politics” in my argument for Amendment XXIX. [↑](#endnote-ref-1)
2. Martin Luther King*. Letter from the Birmingham Jail*. San Francisco: Harper San Francisco, 1994. Accessed 04/20/20. <https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html>. [↑](#endnote-ref-2)
3. Nate Silver (Jul 25, 2019). *Medicare For All Isn’t That Popular — Even Among Democrats*, FiveThirtyEight. Accessed 4/20/20. <https://fivethirtyeight.com/features/medicare-for-all-isnt-that-popular-even-among-democrats/>. [↑](#endnote-ref-3)
4. [Zolan Kanno-Youngs](https://www.nytimes.com/by/zolan-kanno-youngs) and [Jesse McKinley](https://www.nytimes.com/by/jesse-mckinley) (Feb 6, 2020). *Trump Administration Freezes Global Entry Enrollment in New York Over Immigration Law.* The New York Times. Accessed 04/20/20. <https://www.nytimes.com/2020/02/06/us/politics/dhs-new-york-global-entry.html>. [↑](#endnote-ref-4)
5. Carla Marinucci (Nov 03, 2019). *Trump threatens to end federal aid to California in tweets slamming Gov. Gavin Newsom*. Politico. Accessed 04/20/20. <https://www.politico.com/news/2019/11/03/trump-federal-aid-california-newsom-065045> [↑](#endnote-ref-5)
6. Robin Mordfin, *Proving Partisan Gerrymandering with the Efficiency Gap* (Sept 25, 2017). The University of Chicago Law School News. Accessed 04/20/20.<https://www.law.uchicago.edu/news/proving-partisan-gerrymandering-efficiency-gap>. [↑](#endnote-ref-6)