



How the Supreme Court handed politicians our elections



United States Supreme Court Building at dusk.

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Global freedom has declined for the past two decades, according to Freedom House, and the United States is no exception. Freedom House’s 2026 report lowered the United States’ freedom score from 84 to 81, citing concerns about executive dominance, civil liberties and the functioning of democratic institutions. As the country approaches midterm elections, a structural crisis in American democracy is reaching a tipping point. Autocratic regimes around the world have demonstrated how easily democracy can be dismantled from within by co-opting institutions, rewriting long-standing rules and maintaining the appearance of voting while depriving the people of true political power.

Judicial passivity

can contribute to this domestic democratic decline. In 2019, the Supreme Court issued a decision that significantly changed the legal landscape surrounding partisan gerrymandering. In *Rucho v. Common Cause*, a 5-4 conservative majority ruled that federal courts have no business reviewing partisan gerrymandering, declaring such claims a “nonjusticiable ‘political question.’” At the time, the decision may have appeared to be a narrow question about the limits of judicial authority. Its broader effect, however, was to remove federal courts from reviewing claims of partisan gerrymandering, leaving these disputes largely in the hands of state courts and political institutions.

The Brennan Center defines gerrymandering as “the process of manipulating election maps in ways that favor particular outcomes.”

This is not a new concept in American politics. Recent events have shown how aggressive partisan redistricting can lead to retaliation between states. At the request of President Donald Trump, the Texas legislature took the highly unusual step of redrawing its congressional districts in 2025, abandoning the standard national census schedule. Texas Republicans explicitly created a new map designed to increase their party’s congressional advantage ahead of 2026 midterm elections.

In response, California Gov. Gavin Newsom pushed for Proposition 50 — which Californians voted for and eventually approved — allowing the state to adopt a new congressional map that would provide Democrats with a matching five-seat advantage.

This retaliatory escalation reveals the danger of leaving partisan

mapmaking largely unchecked. When one party uses its political power to create safer seats, opposing states may feel pressure to respond with similar measures. Over time, this can turn redistricting into a competition for partisan advantage. Whether maps are drawn by state legislatures or through ballot initiatives, the result can undermine the core principle of representative democracy. Voters choose politicians, but right now, politicians choose their voters.

The Court’s redistricting jurisprudence further complicates this problem. In *Louisiana v. Callais*, the Court considered a challenge to Louisiana’s creation of a second majority-Black congressional district under Section 2 of the Voting Rights Act. The case highlights a difficult tension in redistricting law. Courts must distinguish between the permissible consider-

ation of race to protect voting rights and the unconstitutional use of race as the predominant factor in drawing district boundaries. This becomes especially complicated because race and partisan affiliation are often closely connected in modern voting patterns. As a result, states may use partisan motives to defend maps with discriminatory racial outcomes, making it harder to challenge biased maps.

When federal courts refuse to review partisan manipulation, important aspects of the electoral process remain in the hands of political actors who may benefit from the maps they create. Failing to create meaningful safeguards means politicians can potentially exploit the relationship between race, voting behavior and partisan advantage to strengthen their electoral position. Because of this, judicial restraint can become part of the broader set of institutional pressures affecting American democracy.

One potential solution is to shift redistricting away from politicians and toward independent commissions, limiting the power-hungry politicians from drawing their own districts. However, independence alone does not guarantee proper representation; the Supreme Court should provide a second layer of protection by reviewing the methodology used by these commissions to ensure that their selection processes, criteria and maps themselves comply with constitutional and statutory protections. Rather than determining which political party should benefit, judicial review could make sure that independent commissions operate transparently and neutrally, preserving the funda-

mental principle that voters — not politicians — should ultimately determine their representatives.

Furthermore, the *Rucho* majority argued that federal courts lacked a “judicially manageable standard” for deciding exactly when gerrymandering became unconstitutional. However, as Justice Elena Kagan noted in her dissent, lower courts have already demonstrated that manageable statistical metrics can accurately identify and evaluate partisan bias. The same principle can apply to independent commissions: courts can review whether commissions follow objectives with transparency and to constitutionally permissible standards. If the judiciary is able to establish and enforce these limitations, judicial restraint should not become an excuse for abandoning its role as a constitutional check on the institutions responsible for determining political representation.

If America is to withstand the global erosion of democratic institutions, its legal frameworks must evolve to protect the value of the American ballot. Federal judicial review exists, in part, to protect citizens’ rights from majoritarian overreach and abuse of political power. Until the Supreme Court establishes clear constitutional limits on partisan gerrymandering and meaningful oversight of the institutions responsible for redistricting, representative democracy will remain vulnerable to a system in which politicians have too much influence over the electoral process.

The fundamental principle at stake is simple: in a representative democracy, voters should choose their representatives — not the other way around.