

Rucho v. Common Cause Dissent

Justice Kagan penned a dissent in which Justices Ginsburg, Breyer, and Sotomayor joined, arguing that the majority failed to acknowledge the weighty constitutional harms at issue: Elections give the people their sovereign power, but partisan gerrymandering can render them meaningless by reducing the weight of some votes in violation of the Equal Protection Clause and First Amendment. A legal standard is ascertainable. Courts could compare how a district was drawn to the way it would have been drawn in the absence of political gerrymandering. Plaintiffs were not asking the Court to determine what share of the vote was fairly theirs. Rather, they sought the elimination of the practice of political gerrymandering. Although some members of Congress have offered proposals for reform, given incumbents' interest in remaining in office, these bills are unlikely to become laws. The Court has abandoned its role in defending one of the foundations of our system of government, free and fair elections.

Prepared by Lynn Dickinson, LWVD member