



YESHIVA UNIVERSITY
SCW/YC Academic Advising

2018 LANGFAN FAMILY
UNDERGRADUATE CONSTITUTIONAL ORATORY COMPETITION
MEN'S & WOMEN'S COMPETITIONS

Location: Wilf Campus, Furst Hall, Room 535

Date: Sunday, April 22, 2018

Time: 9:00 AM Reception; 9:30 AM Check in for Participants; Competitions Begin at 10:00AM
Check In and Reception will be in the lobby outside Furst 535

***Prizes: \$800 (First Place); \$600 (Second Place); \$400 (Third Place)**

***Separate prizes will be awarded to participants from each campus.**

Special thanks to the Langfan Family for their continued support.

PARTISAN GERRYMANDERING: Should the Judiciary review the constitutionality of gerrymandering schemes adopted on allegedly political grounds?

ISSUE BACKGROUND

Republican officials in Wisconsin, in control of both the state executive and legislative branches for the first time in forty years, designed a new redistricting plan in 2011. The 2012 elections proved that this plan was a political boon to the party. Democratic voters and supporters sued, alleging that the new legislative map constituted a partisan gerrymander that neutralized the votes of Wisconsin Democrats. A federal court struck down the plan in 2016, concluding that it violated the first and fourteenth amendments to the Constitution. The State argued that, because courts have failed to formulate a standard for distinguishing instances of permissible and unconstitutional partisan gerrymandering, discretion over electoral maps must be left to the legislature. The case, *Gill v. Whitford*, was argued before the U.S. Supreme Court in October, and the Court will hand down its decision this term. The Court recently added a second partisan gerrymandering case to its docket for the current term; in this instance, a Democratic gerrymander erased a Republican-held house seat.

The U.S. Supreme Court has consistently held that, in certain instances, partisan gerrymandering should be deemed unconstitutional. The so-called “Elections Clause” of the U.S. Constitution grants to the legislative branch the constitutional authority to regulate elections. U.S. Const. Art. I, Sect. IV. However, this authority is not limitless, and partisan gerrymandering might be one instance in which the legislative branch exceeds its constitutional authority under the Elections Clause. The Fourteenth Amendment guarantees “the equal protection of the laws” to “any person within its jurisdiction,” and partisan gerrymandering could potentially dilute the votes of some citizens. Similarly, the First Amendment protects freedom of speech and rights to association, and partisan gerrymandering might unfairly penalize citizens for the expression of their political views and association with a political party.

One critical element the courts have struggled with is the justiciability of partisan gerrymandering. Such a standard is necessary in order to provide courts with clear guidelines that they can employ, reducing the likelihood that political preferences motivate a judge’s decision. Without a clear standard for distinguishing constitutionally permissible from constitutionally forbidden partisan gerrymandering, courts should decline to entertain such challenges entirely; the fairness of legislative maps would not be considered a “justiciable” issue and would instead constitute a “political question” whose complexity is best handled by elected officials. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the Court ruled that partisan gerrymandering cases are justiciable. More recent cases, however, beginning with *Vieth v. Jubelirer*, 541 U.S. 267 (2004), have called into question whether courts can identify a standard for determining when gerrymandering deprives citizens of their constitutional rights. The appellants in each of the cases currently before the Supreme Court claim to have identified a standard that courts could use; the question is whether the Court will agree and subject partisan gerrymandering to judicial oversight.

This term’s gerrymandering cases raise the broader question of when and if judges should get involved in political decisions and write opinions that could have a profound impact on our political landscape. The practice of gerrymandering in order to gain a political advantage stretches back to the law enacted by Massachusetts governor Elbridge Gerry in 1812 which included a voting district shaped like a salamander—hence the term “gerrymandering.” However, technology and access to vast amounts of data on voting tendencies have made it easier than ever to gerrymander for political gain. The high stakes bring into sharp relief the question of justiciability: should courts leave to elected officials the responsibility for making determinations about partisan gerrymandering or can the courts identify a standard that would enable them to distinguish constitutional from unconstitutional gerrymandering schemes and avoid charges of judicial legislation?

Resolved: the Judiciary should review the constitutionality of partisan gerrymandering schemes.

GETTING STARTED

This competition is open to all Yeshiva University undergraduate students on all campuses, regardless of major. It is a public speaking competition aimed at promoting student awareness and understanding of important Constitutional issues and developing the skill set necessary to research, discuss and debate such topics.

You may argue for or against the above resolution. An essential component of your presentation is the depth of your knowledge, gained through research. You, as a participant, should be familiar with the legal issues at stake in the debate from the perspective of an informed and concerned citizen. We recognize that you are an undergraduate student, not a lawyer.

Begin by reading sections of the U.S. Constitution enumerated below. Then try searching for newspaper articles and blogs online. Once you have a good sense of the basic issues, the cases and articles listed below will help you formulate your argument.

PRIMARY SOURCES

U.S. Const. Amend. XIV, sect. 1

U.S. Const. Amend. I.

U.S. Const. Art. I, sect. 4

Vieth v. Jubelirer, 541 U.S. 267 (2004)

Davis v. Bandemer, 478 U.S. 109 (1986)

Baker v. Carr, 369 U.S. 186 (1962)

League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006)

SECONDARY SOURCES

Beverly R. Gill, et al. v. William Whitford, et al. No. 16-1161, Oral Argument Transcript, October 3, 2017. https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/16-1161_bpm1.pdf

Amy Howe, *The justices tackle partisan gerrymandering again: In Plain English*, Supreme Court of the United States Blog, August 7, 2017. <http://www.scotusblog.com/2017/08/justices-tackle-partisan-gerrymandering-plain-english/>

Amy Howe, *Argument Preview: The justices tackle partisan gerrymandering again*, Supreme Court of the United States Blog, September 26, 2017. <http://www.scotusblog.com/2017/09/argument-preview-justices-tackle-partisan-gerrymandering>

Beverly R. Gill, et al. v. William Whitford, et al. No. 16-1161, Reply Brief for Appellants <http://www.scotusblog.com/wp-content/uploads/2017/09/16-1161-rb-merits.pdf>

Adam Liptak, *Justices to Hear Major Challenge to Partisan Gerrymandering*, New York Times, June 19, 2017. <https://www.nytimes.com/2017/06/19/us/politics/justices-to-hear-major-challenge-to-partisan-gerrymandering.html>

Anthony J. McGann, Charles Anthony Smith, Michael Latner, and Alex Keena, We Have a Standard for Judging Partisan Gerrymandering. The Supreme Court Should Use It. The Washington Post, February 2, 2017.

https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/02/we-have-a-standard-for-judging-partisan-gerrymandering-the-supreme-court-should-use-it/?utm_term=.0fd086f174c5

Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, Stanford Law Review, Vol. 68, Issue 6, Page 1263—.

<https://www.stanfordlawreview.org/print/article/three-tests-for-practical-evaluation-of-partisan-gerrymandering/>

Richard L. Hasen, *Looking for Standards (in All the Wrong Places): Partisan Gerrymandering Claims after Vieth*, Election Law Journal, Vol. 3, Issue 4, 2004.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=561243

Robert Colton, *Back to the Drawing Board: Revisiting the Supreme Court's Stance on Partisan Gerrymandering*, Fordham Law Review, Vol. 86, Issue 3, Art. 11.

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5462&context=flr>

These sources may be found via LexisNexis Law Directory online, which may be accessed from any of YU's University libraries. Another online database available from the University library is HeinOnline. You can also use Google Scholar. These materials, databases and search engines are only suggestions, and should not limit your research.

***** JUDGING CRITERIA *****

Competitors will be judged based on the following:

- The clarity of the argument/thesis
- Cohesiveness and use of research material to support the argument – you must cite sources in the speech
- Effective rebuttal or anticipated counter-arguments – competitors must consider and rebut the opposing side's arguments
- Overall style and effectiveness of delivery

YOU WILL HAVE NO MORE THAN FIVE MINUTES TO PRESENT YOUR ARGUMENT BEFORE A PANEL OF JUDGES. There will be no time allotted for a rebuttal. Timing will be strictly enforced, so please prepare your remarks accordingly.

If you plan to participate, please email Debbie Beaudreau (beaudrea@yu.edu) no later than **WEDNESDAY, APRIL 18, 2018.**

If you have any questions or need help with research, please email Professor Joseph Luders at luders@yu.edu.