

17-333 BENISEK V. LAMONE

DECISION BELOW: 203 F. Supp.3d 579

LOWER COURT CASE NUMBER: 1:13-cv-03233-JKB

QUESTION PRESENTED:

This case is a First Amendment challenge to the partisan gerrymander of a single federal congressional district. Plaintiffs allege that state officials responsible for Maryland's 2011 congressional redistricting plan targeted them for vote dilution because of their past support for Republican candidates for public office, violating the First Amendment retaliation doctrine.

In earlier proceedings in this case, this Court held that plaintiffs' retaliation claim is a substantial one, required to be heard by a three-judge district court. On remand, the three-judge court held that plaintiffs' retaliation claim is justiciable. The district court, in a divided opinion, thereafter denied plaintiffs' motion for a preliminary injunction, from which this appeal is taken.

This appeal presents the following questions:

1. Did the majority err in holding that, to establish an actual, concrete injury in a First Amendment retaliation challenge to a partisan gerrymander, a plaintiff must prove that the gerrymander has dictated and will continue to dictate the outcome of every election held in the district under the gerrymandered map?
2. Did the majority err in holding that the *Mt. Healthy* burden-shifting framework is inapplicable to First Amendment retaliation challenges to partisan gerrymanders?
3. Regardless of the applicable legal standards, did the majority err in holding that the present record does not permit a finding that the 2011 gerrymander was a but-for cause of the Democratic victories in the district in 2012, 2014, or 2016?

JURISDICTION POSTPONED 12/8/2017