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When Redistricting Goes Unchecked

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For decades, North Carolina has played a central role in defining law around the intersection of race and elections. On Monday, the Supreme Court will hear arguments in a potentially pivotal case from the Tar Heel State: *McCrorry v. Harris*. It centers on whether Republican lawmakers unconstitutionally packed African-Americans into two congressional districts when redrawing North Carolina's map in 2011, severely limiting African-American voters' influence in selecting the state's congressional delegation.

At the crux of this case is the breakdown of normal political checks and balances that prevent the worst kinds of redistricting abuses. That context is the key to understanding why the court must step in here, and in other cases with evidence of biased district drawing, to ensure voters across the country have a full and fair opportunity to elect representatives that truly represent them.

North Carolina's current governor, Pat McCrory, has defended the map, arguing that the Voting Rights Act required lawmakers to pack African-Americans into one of the districts and that, in the case of the other district, Republicans simply drew district boundaries to ensure their party a political advantage. The lower court rejected this defense, ruling that the districts had been drawn predominately on the basis of race.

Deciding whether race or other motivations drove redistricting choices is a question that courts, including the U.S. Supreme Court, have long found challenging. But the justices, like the lower court, should be skeptical of North Carolina's map. That's particularly clear looking at the state's political environment at the time the legislature redrew the state's districts.

North Carolina's political dynamics were ripe for foul play. Unlike in other parts of the South, power in North Carolina passed back and forth between the major political parties frequently, often on razor-thin margins. In 2008, Barack Obama won a narrow victory in the presidential election, and Democrat Beverly Perdue took the governorship. In 2010, however, the Republican Party claimed majorities in both houses of the state's general assembly for the first time since Reconstruction. This shift in power changed the structure of redistricting in North Carolina. With a single party controlling the legislature, normal political checks on redistricting abuses were nowhere to be found.

African-American voters' strong identification with Democrats, combined with their decisive role in swinging elections in North Carolina, made them targets for Republican map-drawers who could use race as a proxy for identifying reliable Democrats. And that's exactly what the map-drawers did, packing African-American voters into two congressional districts and locking in a 10-to-3 congressional advantage for Republicans. When they were finally allowed to see draft maps late in the process, African-American lawmakers and their allies voiced objections, but their concerns were ignored.

Other contemporaneous events should also raise red flags that race was improperly driving the political process. The same legislature that passed the challenged congressional plan also passed maps for state legislative seats that were struck down as racial gerrymanders. And the early years of this decade saw a slew of racially discriminatory laws from the North Carolina General Assembly, the most infamous being the state's 2013 "omnibus" voting law, which a federal appeals court recently struck down in substantial part for "target[ing] African Americans with almost surgical precision." In short, with single-party control and political power at stake, the normal political checks eroded, clearing the way for a torrent of abuses as legislators attempted to advance their partisan goals.

The courts have long had faith in the so-called pull, haul and trade of politics to provide balance and prevent excess. But, as North Carolina's experience suggests, electoral politics aren't a cure-all – particularly when political power itself is at stake. The state's problem, in other words, isn't just its race relations. It is a breakdown of what courts have assumed is the normal give and take of healthy politics, one that in this case had a severe racial impact.

North Carolina isn't the only place where checks and balances have collapsed at the expense of fair districting. Sometimes, racial discrimination rears its head. Other times – like the map for Wisconsin's state assembly districts, or the map North Carolina's General Assembly drew in

2016 to replace its racially gerrymandered map – discrimination on partisan lines occurs. In each of these cases, politicians who aren't subject to the normal checks abuse the redistricting process to create unfair maps that suppress opposing and minority viewpoints. That ultimately results in legislatures that are less representative of, and less accountable to, the people they are supposed to represent.

Courts can rightly play an important role when political breakdowns occur, stepping in to restore checks on legislative overreach that the political process should provide but isn't. With a steady stream of gerrymandering cases from states across the country set to pass through the Supreme Court in upcoming years, and a new redistricting cycle just a few years away, this is a lesson that can't be internalized soon enough.

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