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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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VIETH ET AL. *v.* JUBELIRER, PRESIDENT OF THE PENNSYLVANIA SENATE, ET AL.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 02–1580. Argued December 10, 2003—Decided April 28, 2004

After Pennsylvania's General Assembly adopted a congressional redistricting plan, plaintiffs-appellants sued to enjoin the plan's implementation, alleging, *inter alia,* that it constituted a political gerrymander in violation of Article I and the Fourteenth Amendment's Equal Protection Clause. The three-judge District Court dismissed the gerrymandering claim, and the plaintiffs appealed.

Held: The judgment is affirmed.

241 F. Supp. 2d 478, affirmed.

Justice SCALIA, joined by THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE THOMAS, concluded that political gerrymandering claims are nonjusticiable because no judicially discernible and manageable standards for adjudicating such claims exist. They would therefore overrule *Davis* v. *Bandemer,* 478 U. S. 109, in which this Court held that political gerrymandering claims are justiciable, but could not agree upon a standard for assessing political gerrymandering claims. Pp. 4–37.

(a) Political gerrymanders existed in colonial times and continued through the framing. The Framers provided a remedy for the problem: the Constitution gives state legislatures the initial power to draw federal election districts, but authorizes Congress to "make or alter" those districts. U. S. Const., Art. I, §4. In *Bandemer,* the Court held that the Equal Protection Clause also grants judges the power—and duty—to control that practice. Pp. 4–7.

(b) Neither Art. I, §2 or §4, nor the Equal Protection Clause, provides a judicially enforceable limit on the political considerations that the States and Congress may take into account when districting. Pp.

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7–37.

(1) Among the tests for determining the existence of a "nonjusticiable" or "political" question is a lack of judicially discoverable and manageable standards for resolving the question. *Baker* v. *Carr,* 369 U. S. 186, 217. Because the *Bandemer* Court was "not persuaded" that there are no such standards for deciding political gerrymandering cases, 478 U. S., at 123, such cases *were* justiciable. However, the six-Justice majority in *Bandemer* could not discern what the standards might be. For the past 18 years, the lower courts have simply applied the *Bandemer* plurality's standard, almost invariably producing the same result as would have obtained had the question been nonjusticiable: judicial intervention has been refused. Eighteen years of judicial effort with virtually nothing to show for it justifies revisiting whether the standard promised by *Bandemer* exists. Pp. 7–11.

(2) The *Bandemer* plurality's standard—that a political gerrymandering claim can succeed only where the plaintiffs show "both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group," 478 U. S., at 127—has proved unmanageable in application. Because that standard was misguided when proposed, has not been improved in subsequent application, and is not even defended by the appellants in this Court, it should not be affirmed as a constitutional requirement. Pp. 11–14.

(3) Appellants' proposed two-pronged standard based on Art. I, §2, and the Equal Protection Clause is neither discernible nor manageable. Appellants are mistaken when they contend that their intent prong ("predominant intent") is no different from that which this Court has applied in racial gerrymandering cases. In those cases, the predominant intent test is applied to the challenged district in which the plaintiffs voted, see, *e.g., Miller* v. *Johnson,* 515 U. S. 900, whereas here appellants assert that their test is satisfied only when partisan advantage was the predominant motivation *behind the entire statewide plan.* Vague as a predominant-motivation test might be when used to evaluate single districts, it all but evaporates when applied statewide. For this and other reasons, the racial gerrymandering cases provide no comfort. The effects prong of appellants' proposal requires (1) that the plaintiffs show that the rival party's voters are systematically "packed" or "cracked"; and (2) that the court be persuaded from the totality of the circumstances that the map can thwart the plaintiffs' ability to translate a majority of votes into a majority of seats. This standard is not discernible because the Constitution provides no right to proportional representation. Even were the standard discernible, it is not judicially manageable. There is no effective way to ascertain a party's majority status, and, in any event,

majority status in statewide races does not establish majority status for particular district contests. Moreover, even if a majority party could be identified, it would be impossible to assure that it won a majority of seats unless the States' traditional election structures were radically revised. Pp. 14–21.

(4) For many of the same reasons, Justice Powell's *Bandemer* standard—a totality-of-the-circumstances analysis that evaluates districts with an eye to ascertaining whether the particular gerrymander is not "fair"—must also be rejected. "Fairness" is not a judicially manageable standard. Some criterion more solid and more demonstrably met than that is necessary to enable state legislatures to discern the limits of their districting discretion, to meaningfully constrain the courts' discretion, and to win public acceptance for the courts' intrusion into a process that is the very foundation of democratic decisionmaking. Pp. 21–22.

(c) Writing separately in dissent, JUSTICES STEVENS, SOUTER, and BREYER each propose a different standard for adjudicating political gerrymandering claims. These proposed standards each have their own deficiencies, but additionally fail for reasons identified with respect to the standards proposed by appellants and those proposed in *Bandemer*. JUSTICE KENNEDY concurs in the judgment, recognizing that there are no existing manageable standards for measuring whether a political gerrymander burdens the representational rights of a party's voters. Pp. 22–37.

(d) *Stare decisis* does not require that *Bandemer* be allowed to stand. *Stare decisis* claims are at their weakest with respect to a decision interpreting the Constitution, particularly where there has been no reliance on that decision. P. 37.

JUSTICE KENNEDY, while agreeing that appellants' complaint must be dismissed, concluded that all possibility of judicial relief should not be foreclosed in cases such as this because a limited and precise rationale may yet be found to correct an established constitutional violation. Courts confront two obstacles when presented with a claim of injury from partisan gerrymandering. First is the lack of comprehensive and neutral principles for drawing electoral boundaries. No substantive definition of fairness in districting commands general assent. Second is the absence of rules to limit and confine judicial intervention. That courts can grant relief in districting cases involving race does not answer the need for fairness principles, since those cases involve sorting permissible districting classifications from impermissible ones. Politics is a different matter. *Gaffney* v. *Cummings*, 412 U. S. 735. A determination that a gerrymander violates the law must rest on something more than the conclusion that political classifications were applied. It must rest instead on a conclusion

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that the classifications, though generally permissible, were applied in an invidious manner or in a way unrelated to any legitimate legislative objective. The object of districting is to establish "fair and effective representation for all citizens." *Reynolds* v. *Sims*, 377 U. S. 533. It might seem that courts could determine, by the exercise of their judgment, whether political classifications are related to this object or instead burden representational rights. The lack, however, of any agreed upon model of fair and effective representation makes the analysis difficult. With no agreed upon substantive principles of fair districting, there is no basis on which to define clear, manageable, and politically neutral standards for measuring the burden a given partisan classification imposes on representational rights. Suitable standards for measuring this burden are critical to our intervention. In this case, the plurality convincingly demonstrates that the standards proposed in *Davis* v. *Bandemer,* 478 U. S. 109, by the parties here, and by the dissents are either unmanageable or inconsistent with precedent, or both. There are, then, weighty arguments for holding cases like these to be nonjusticiable. However, they are not so compelling that they require the Court now to bar all future partisan gerrymandering claims. *Baker* v. *Carr*, 369 U. S. 186, makes clear that the more abstract standards that guide analysis of all Fourteenth Amendment claims suffice to assure justiciability of claims like these. That a workable standard for measuring a gerrymander's burden on representational rights has not yet emerged does not mean that none will emerge in the future. The Court should adjudicate only what is in the case before it. In this case, absent a standard by which to measure the burden appellants claim has been imposed on their representational rights, appellants' evidence at best demonstrates only that the legislature adopted political classifications. That describes no constitutional flaw under the governing Fourteenth Amendment standard. *Gaffney*, 412 U. S., at 752. While the equal protection standard continues to govern such cases, the First Amendment may prove to offer a sounder and more prudential basis for judicial intervention in political gerrymandering cases. First Amendment analysis does not dwell on whether a generally permissible classification has been used for an impermissible purpose, but concentrates on whether the legislation burdens the representational rights of the complaining party's voters for reasons of ideology, beliefs, or political association. That analysis allows a pragmatic or functional assessment that accords some latitude to the States. See, *e.g., Eu* v. *San Francisco County Democratic Central Comm.,* 489 U. S. 214. Pp. 1–13.

SCALIA, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C. J., and O'CONNOR and THOMAS,

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JJ., joined. KENNEDY, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion. SOUTER, J., filed a dissenting opinion, in which GINSBURG, J., joined. BREYER, J., filed a dissenting opinion.