Justice White's plurality opinion suggested that there need be "evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process."[1950] Moreover, continued frustration of the chance to influence the political process cannot be demonstrated by the results of only one election; there must be a history of disproportionate results or a finding that such results will continue. Justice Powell, joined by Justice Stevens, did not formulate a strict test, but suggested that "a heavy burden of proof" should be required, and that courts should look to a variety of factors as they relate to "the fairness of a redistricting plan" in determining whether it contains invalid gerrymandering. Among these factors are the shapes of the districts, adherence to established subdivision lines, statistics relating to vote dilution, the nature of the legislative process by which the plan was formulated, and evidence of intent revealed in legislative history.[1951]

In the following years, however, litigants seeking to apply *Davis* against alleged partisan gerrymandering were generally unsuccessful. Then, when the Supreme Court revisited the issue in 2004, it all but closed the door on such challenges. In *Vieth v. Jubelirer,*[1952] a four-Justice plurality would have overturned *Davis v. Bandemer*'s holding that challenges to political gerrymandering are justiciable, but five Justices disagreed. The plurality argued that partisan considerations are an intrinsic part of establishing districts,[1953] that no judicially discernable or manageable standards exist to evaluate unlawful partisan gerrymandering,[1954] and that the power to address the issue of political gerrymandering resides in Congress.[1955]

Of the five Justices who believed that challenges to political gerrymandering are justiciable, four dissented, but Justice Kennedy concurred with the four-Justice plurality's holding, thereby upholding Pennsylvania's congressional redistricting plan against a political gerrymandering challenge. Justice Kennedy agreed that the lack "of any agreed upon model of fair and effective representation" or "substantive principles of fairness in districting" left the Court with "no basis on which to define clear, manageable, and politically neutral standards for measuring the particular burden a given partisan clas-

---

[1950] 478 U.S. at 133. Joining in this part of the opinion were Justices Brennan, Marshall, and Blackmun.

[1951] 478 U.S. at 173. A similar approach had been proposed in Justice Stevens' concurring opinion in Karcher v. Daggett, 462 U.S. 725, 744 (1983).

[1952] 541 U.S. 267 (2004).

[1953] 541 U.S. at 285–86.

[1954] 541 U.S. at 281–90.

[1955] 541 U.S. at 271 (noting that Article I, § 4 provides that Congress may alter state laws regarding the manner of holding elections for Senators and Representatives).