tured far or attempted the impossible task of extirpating politics from what are the essentially political processes of the sovereign States."[1945]

In 1986, however, in a decision of potentially major import reminiscent of *Baker v. Carr*, the Court in *Davis v. Bandemer*[1946] ruled that partisan gerrymandering in state legislative redistricting is justiciable under the Equal Protection Clause. But, although the vote was 6 to 3 in favor of justiciability, a majority of Justices could not agree on the proper test for determining whether particular gerrymandering is unconstitutional, and the lower court's holding of unconstitutionality was reversed by vote of 7 to 2.[1947] Thus, although courthouse doors were now ajar for claims of partisan gerrymandering, it was unclear what it would take to succeed on the merits.

On the justiciability issue, the Court viewed the "political question" criteria as no more applicable than they had been in *Baker v. Carr*. Because *Reynolds v. Sims* had declared "fair and effective representation for all citizens"[1948] to be "the basic aim of legislative apportionment," and because racial gerrymandering issues had been treated as justiciable, the Court viewed the representational issues raised by partisan gerrymandering as indistinguishable. Agreement as to the existence of "judicially discoverable and manageable standards for resolving" gerrymandering issues, however, did not result in a consensus as to what those standards are.[1949] Although a majority of Justices agreed that discriminatory effect as well as discriminatory intent must be shown, there was significant disagreement as to what constitutes discriminatory effect.

[1945] Gaffney v. Cummings, 412 U.S. 735, 751, 754 (1973).

[1946] 478 U.S. 109 (1986). The vote on justiciability was 6–3, with Justice White's opinion of the Court being joined by Justices Brennan, Marshall, Blackmun, Powell, and Stevens. This represented an apparent change of view by three of the majority Justices, who just two years earlier had denied that "the existence of noncompact or gerrymandered districts is by itself a constitutional violation." Karcher v. Daggett, 466 U.S. 910, 917 (1983) (Justice Brennan, joined by Justices White and Marshall, dissenting from denial of stay in challenge to district court's rejection of a remedial districting plan on the basis that it contained "an intentional gerrymander").

[1947] Only Justices Powell and Stevens thought the Indiana redistricting plan void; Justice White, joined by Justices Brennan, Marshall, and Blackmun, thought the record inadequate to demonstrate continuing discriminatory impact, and Justice O'Connor, joined by Chief Justice Burger and by Justice Rehnquist, would have ruled that partisan gerrymandering is nonjusticiable as constituting a political question not susceptible to manageable judicial standards.

[1948] 377 U.S. 533, 565–66 (1964). This phrase has had a life of its own in the commentary. *See* D. Alfange, Jr., *Gerrymandering and the Constitution: Into the Thorns of the Thicket at Last*, 1986 SUP. CT. REV. 175, and sources cited therein. It is not clear from its original context, however, that the phrase was coined with such broad application in mind.

[1949] The quotation is from the Baker v. Carr measure for existence of a political question, 369 U.S. 186, 217 (1962).