1985 WL 670036 (U.S.) (Appellate Brief)
Supreme Court of the United States.

Susan J. DAVIS, et al., Appellants,
v.
Irwin C. BANDEMER, et al., Appellees.

No. 84-1244.
October Term, 1984.
June 17, 1985.

On Appeal from the United States Supreme Court for the Southern District of Indiana

Brief of the American Civil Liberties Union and the Indiana Civil Liberties Union as Amici Curiae

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*1 INTEREST OF AMICI

The American Civil Liberties Union (ACLU) is a national organization comprising more than 250,000 members. The Indiana Civil Liberties Union (Indiana CLU) is the Indiana affiliate of the ACLU with over 2,500 members statewide. The ACLU and its affiliates have been traditionally devoted to the protection and enhancement of fundamental liberties and basic civil rights.

Within a representative democracy, no right is more fundamental than the "equal right to vote." Evans v. Cornman, 398 U.S. 419, 426 (1970). Accordingly, this Court has repeatedly recognized the importance of rights of meaningful electoral participation and political association.

The instant controversy, involving the constitutionality of Indiana's apportionment statute, deeply implicates these important political and associational interests. ***2** Indeed, it is the position of amici that Indiana's attempt, through its apportionment statutes, to favor members of the Republican Party and disadvantage Democratic Party members abridges fundamental rights of political expression and association.

With the consent of the parties indicated in letters being lodged with the Clerk, amici respectfully submit this brief to advance their position to this Court.

*3 INTRODUCTION AND SUMMARY OF ARGUMENT

In Williams v. Rhodes, 393 U.S. 23 (1968), this Court reviewed Ohio's ballot access statutes, which had rendered it extraordinarily difficult for any political party other than the Republican and Democratic parties to appear on the ballot. In defense of its laws, the State of Ohio maintained that its statutory provisions advanced the governmental interest of promoting the two-party system. The Court, however, rejected this defense. It noted that "the Ohio system does not merely favor a 'two-party system'; it favors two particular parties--the Republicans and the Democrats--and in effect tends to give them a complete monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the ***4** core of our electoral process and of First Amendment freedoms." Id. at 32. Thus, the Court concluded that Ohio's attempt to protect the political status quo was impermissible and unjustified.

The Indiana statutes at issue here have been found by the court below to represent a clear and unambiguous effort to freeze the political status quo. In this case, Indiana seeks not merely to advantage the two major parties at the expense of third parties. Rather, as found by the District Court, the Indiana apportionment statutes were enacted for the purpose of advantaging the Republican Party and discriminating against all other parties, including Democrats. As such, the Indiana statutes, like the Ohio scheme in Williams v. Rhodes, conflict with fundamental values respecting the fair competition of ideas that lie at the heart of our system of free expression, in general, and our ***5** electoral system, in particular.

We commonly understand that our system of free expression depends upon a marketplace of ideas, an environment in which policies and programs compete for acceptance by the American people. Fundamental to that understanding is the notion that a fair ideological competition is most successfully assured if we require that, in regulating the political or ideological activities of its citizens, government remain a neutral referee. It cannot favor one speechmaker over another. Nor can it favor one ideological association or political party over others. This command of governmental neutrality represents a prominent constitutional principle under both the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

In a real sense, our electoral system is simply a more formalized and structured ***6** marketplace of expression. It is an organized competition of ideas presented by opposing candidates and political parties. Accordingly, for this electoral competition to operate fairly government must remain neutral. It cannot intentionally structure the rules so as to fix the result or foreordain the outcome. It cannot enact laws designed to petrify the political process or skew the fairness of the electoral competition. That is what Indiana has done here. In its purposeful attempt to advantage Republicans and disadvantage Democrats, the Indiana legislature has violated a fundamental obligation of governmental neutrality--an obligation that has its source in the First and Fourteenth Amendments.

Moreover, the process by which Indiana engaged in apportionment violated fundamental notions of fairness. Indiana employed legislative techniques that permitted the ***7** delegation of the mapmaking function to the Republican Party. The process excluded meaningful participation by anyone other than Republican Party leaders. It involved no serious or deliberative legislative debate. In these respects, Indiana's apportionment procedures violated basic due process principles which are also secured by the First and Fourteenth Amendments in the circumstances presented here.

***8** ARGUMENT

I. INDIANA'S PURPOSEFUL ATTEMPT, THROUGH THE ENACTMENT OF ITS APPORTIONMENT STATUTE, TO ADVANTAGE REPUBLICAN PARTY ADHERENTS AND DISADVANTAGE SUPPORTERS OF THE DEMOCRATIC PARTY VIOLATES CONSTITUTIONAL NEUTRALITY PRINCIPLES WHICH HAVE THEIR SOURCE IN BOTH THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

When a state enacts laws which define the structure and operation of its political institutions it must do so with "the aim of providing a just framework within which diverse political groups in our society may fairly compete...." Hunter v. Erickson, 393 U.S. 385, 393 (1969) (Justice Harlan concurring). This obligation of governmental fairness and neutrality originates, as a matter of judicial precedent, in a line of cases involving state regulation of First Amendment access to public facilities. This ***9** requirement of neutrality extends however, with compelling logic and precedent, whenever, as here, a state is regulating its electoral processes.

A. General Neutrality Principles

Basic to our system of free expression is the proposition that government must remain neutral with respect to the ideological or associational activity of its citizens. This Court has repeatedly insisted that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Department v. Mosley, 408 U.S. 92, 95 (1972).

The First Amendment's prohibition against governmental favoritism regarding the content of speech extends to a prohibition against the state favoring or disfavoring certain citizens because of their political ***10** affiliation or associations. This basic theme has been consistently articulated by the Court. In NAACP v. Button, 371 U.S. 415, 445 (1963), the Court observed:

> "The Constitution protects expression and association without regard to the race, creed or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity or social utility of the ideas and beliefs which are offered."

This theme, commonly described as the "neutrality" principle, has been most frequently invoked where the state has either created a public forum or where a governmental entity is supervising First Amendment access to a public facility. For example, when a municipality regulates speech-making access to the streets, sidewalks or parks it cannot make judgments about who may or may not speak based upon what might be said or the associational affiliation of the speaker. Niemotko v. ***11** Maryland, 340 U.S. 268 (1950); Fowler v. Rhode Island, 345 U.S. 67 (1953). [1]

***12** This proposition was advanced most forcefully in Police Department v. Mosley, supra. Mosley invalidated a Chicago ordinance which selectively granted the right to picket based upon the content of the speech and the labor union affiliation of the speakers. The Court declared (408 U.S. at 96):
"[U]nder the Equal Protection clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an 'equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say."

As the preceding discussion from the Mosley opinion suggests, there may be some ***13** disagreement as to whether the neutrality principle derives its doctrinal source from the First Amendment or the Equal Protection Clause. (See, e.g., Justice Frankfurter's concurring opinion in Fowler v. Rhode Island, 345 U.S. at 70.) But whatever the source, the "neutrality" principle is firmly established within our constitutional jurisprudence.

The constitutional neutrality principle applies in contexts far beyond the mere regulation of access to parks and sidewalks. See, e.g., Elrod v. Burns, 427 U.S. 347 (1976) (the practice of patronage dismissals is unconstitutional under the First and Fourteenth Amendments); Widmar v. Vincent, 454 U.S. 263 (1981) (university violated neutrality principles in refusing to permit a religious group to meet on campus in a ***14** classroom when other groups were granted access to the campus); Epperson v. Arkansas, 393 U.S. 97, 104 (1968) ("The First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion."); Board of Education v. Pico, 457 U.S. 853, 870-71, 907 (at least six justices of this Court agreed that "[i]f a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students.")

To say that, in each of the above-described situations, there existed a constitutionally mandated obligation of neutrality is not to say that the government is, in all instances, disabled from ***15** adopting ideological positions. Clearly there are many situations where government communicates ideas and policy positions. It does so "through the manipulation of symbols and images, ceremonies, written words, laws, speeches, meetings, debates, and in a myriad of other ways." Yudof, When Government Speaks 5 (1983). And clearly there are instances in which the policy statements of government correspond almost precisely with ideological positions adopted by a particular political group or party. Thus the neutrality principle does not apply when government is itself enacting or articulating substantive policy.

But, when the state is regulating or administering the essential mechanisms of democratic self-government, the principle of governmental neutrality applies in full force. The neutrality principle is the normative doctrine that guarantees democratic ***16** self-government through a marketplace of ideas. This marketplace concept, described by Professor Thomas Emerson, holds that, "[t]hrough the acquisition of new knowledge, the toleration of new ideas, the testing of opinion in open competition, the discipline of rethinking its assumptions, a society will be better able to reach common decisions that will meet the needs and aspirations of its members." [2] So understood, government neutrality is seen as a necessary condition to permit the ideological competition to proceed fairly and without inhibition.

B. The Neutrality Principle In The Regulation Of Electoral Processes.

The neutrality principle acquires a special force in cases involving the regulation of our electoral system. In a very real sense, our electoral system is simply a more formalized and structured ***17** marketplace of expression. It is an organized

competition of ideas presented by opposing candidates and political parties. As such, the obligation of governmental neutrality takes on heightened importance. For unless government remains neutral in fashioning and administering the rules of the contest, the electoral competition cannot operate fairly.

If a state were to rig voting machines so that they could only register the votes cast for Democratic candidates, no one would doubt that the state was not playing fairly, in a clear violation of neutrality principles. Although acts of favoritism by the state will rarely, if ever, be that transparent, courts have carefully scrutinized, and where appropriate invalidated, legislative enactments obviously designed to favor particular political parties or groups.

***18** In Williams v. Rhodes, 393 U.S. 23 (1968), this Court examined Ohio's ballot access statutes, and noted that "the Ohio laws...give the two established parties a decided advantage over any new parties struggling for existence and thus place substantially unequal burdens upon both the right to vote and the right to associate." Id. at 31. Upon finding that the Ohio statutes were designed merely to favor the Republican and Democratic parties, the Court invalidated Ohio's electoral scheme.

In Carrington v. Rash, 380 U.S. 89 (1965), this Court struck down a Texas constitutional provision that prohibited members of the armed forces who moved to Texas during their military duty from voting in that state so long as they remained in the military service. The state argued that the provision was necessary to prevent military personnel from "taking over" civilian ***19** communities near military bases. This Court stated that, "'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." Id. at 94.

In First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) the Court invalidated a statute that prohibited banks and business corporations from engaging in certain campaign expenditures in connection with referendum elections. The Court regarded this attempt to prevent corporations from participating in the campaigns surrounding referendum elections as "an impermissible legislative prohibition of [electoral] speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues...." ***20** Id. at 784. [3]

In Greenberg v. Bolger 497 F. Supp. 756 (E.D.N.Y. 1980), a federal district court struck down the provision of the Postal Service Appropriation Act of 1980 which conferred reduced third-class mailing rates upon the Democratic and Republican parties but excluded other political parties competing for federal office in that presidential election year. According to the ***21** district court: "Congressional debate demonstrates--what is clear from the provision itself--that the 1980 limitation was adopted to reserve the special rate for the two dominant political parties while denying it to others." Id. at 765. The Greenberg Court held such favoritism to be invidiously discriminatory and constitutionally impermissible. Accord, Spencer v. Herdesty, 571 F. Supp. 444 (S.D. Ohio 1983). See also, Shakman v. Democratic Organization, 481 F. Supp. 1315 (N.D. Ill. 1979).

Purposeful invidious discrimination has also been found where districting plans were employed "to minimize or cancel out the voting strength of racial or political elements of the voting population." Fortson v. Dorsey, 379 U.S. 433 (1965). Such purposeful discrimination has been identified in a long-line of vote dilution cases ***22** stretching from Gomillion v. Lightfoot, 364 U.S. 339 (1960) [4] to Rogers v. Lodge, 458 U.S. 613 (1982). See also, White v. Regester, 412 U.S. 755 (1973); Abate v. Mundt, 403 U.S. 182, 184 n. 2 (1971).

These vote dilution and reapportionment cases implicitly recognize that when a state regulates its election machinery and when it defines electoral boundaries, it must do so in a neutral and even-handed way. See, e.g., Reynolds v. Sims, 377 U.S. 533, 565-566 (1964). In this regard, Gaffney v. Cummings, 412 U.S. 735 (1973), is particularly instructive.

At issue in Gaffney was whether Connecticut violated the Fourteenth Amendment by taking partisan politics into account when ***23** it fashioned its reapportionment plan. Specifically, a redistricting plan, drawn up by a bipartisan commission of four Republicans and four Democrats, "adopted and followed a policy of 'political fairness,' which aimed at a rough scheme of proportional representation of the two major political parties." Id. at 738. Recognizing that there might be some instances where a legislature might invidiously attempt "to minimize or eliminate the political strength of a group or party." (Id. at 754), the Court found no such impermissible purpose at work in Gaffney. On the contrary, the Court found the Connecticut legislature to have been motivated by principles of fairness and neutrality. Accordingly, the statute was ***24** upheld. [5]

More recently in Karcher v. Daggett, 462 U.S. 725, 77 L. Ed. 2d 133 (1983), the Court invalidated New Jersey's congressional districting plan. The Court's opinion rested upon the conclusion that the New Jersey plan was neither mathematically equal nor the product of a good-faith effort to achieve population equality among districts. Again, the Court implicitly found that those engaged in designing the districts had not fulfilled their constitutional obligation to act in a fair and even-handed manner. In a concurring opinion Justice Stevens reached this conclusion explicitly. Justice Stevens ***25** observed:
"The Equal Protection Clause requires every State to govern impartially. When a State adopts rules governing its election machinery or defining electoral boundaries, those rules must serve the interests of the entire community....If they serve no purpose other than to favor one segment--whether racial, ethnic, religious, economic, or political--that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community, they violate the constitutional guarantee of equal protection." Id. 77 L. Ed 2d at 153.

In sum, there is a common thread that runs through this Court's voting rights cases. It holds that government has a general obligation to act in a fair and neutral manner when it regulates the electoral system. To be sure, states will be given wide latitude in their discharge of this obligation. But when a state exercises its regulatory authority over the electoral system for the clear purpose of fencing some voters out of the political process such ***26** purposeful discrimination will be found violative of the First and Fourteenth Amendments.

C. The Impermissible Motive Underlying The Indiana Statute.

In the present case--even more than in Williams, Carrington, and Bellotti, and unlike Gaffney--an impermissible legislative purpose is evident. Here, Indiana legislators clearly and "unashamedly" conceded that the apportionment statute was designed to advantage Republicans over Democrats. Bandemer v. Davis, 603 F. Supp. 1479, 1484 (S.D. Ind. 1984). And the Court below expressly found "that the reapportionment plan was conceived to accomplish political discrimination and operated as a purposeful device to do so." ***27** 603 F. Supp at 1491. [6]

Of course, there will be some cases where the legislative purpose is ambiguous. There will undoubtedly be cases where partisan political considerations will infiltrate legislative judgments that rest predominantly upon other grounds. Indeed, where a legislative enactment rests upon permissible non-partisan grounds and where an unintended consequence of such enactment is to benefit a particular political party, amici advance no claim that such an enactment violates neutrality principles. See generally Mt. Healthy Board of Education v. Doyle, 429 U.S. 274 (1977).

But such is not the case here. This ***28** Court has repeatedly and carefully scrutinized enactments which rest upon impermissible motives. See Gomillion v. Lightfoot supra; Hunter v. Erickson, supra; Washington v. Seattle School District, supra; Wallace v. Jaffree 472 U.S. 38, 53 U.S.L.W. 4665 (June 4, 1985). It has developed the techniques for

conducting such an inquiry. See Village of Arlington Heights v. Metropolitan Housing Corp. 429 U.S. 252 (1977); Mt. Healthy Board of Education v. Doyle, supra; Rogers v. Lodge, 458 U.S. 613 (1982).

In this case a three-judge district court conducted the sort of "sensitive inquiry" demanded by the above-cited cases and concluded that the present enactment was motivated by an expressed desire to advantage Republicans and disadvantage Democrats. The district court quite properly found that this motive was invidious and impermissible. For, ***29** in behaving in this fashion, the political majority sought to use its transitory dominance to enhance its power at the expense of its rivals by rigging the rules of the political game.

***30** II. THE PROCESS BY WHICH INDIANA ENGAGED IN REAPPORTIONMENT VIOLATED FIRST AMENDMENT DUE PROCESS PRINCIPLES.

In Anderson v. Celebrezze, 460 U.S. 780 (1983), this Court held that the right of voters to organize within a political party and to have that party fairly compete for electoral office is an associational right protected by the First Amendment.

This Court has also repeatedly recognized that the process by which government seeks to regulate areas infused with First Amendment values can be critical in protecting fragile First Amendment freedoms. Thus, modern First Amendment jurisprudence frequently relies upon a number of process-based rules such as the doctrine of prior restraint, Organization for a Better Austin v. Keefe, 402 U.S. 419 (1971); New York Times v. U.S., 403 U.S. 714 (1971); ***31** First Amendment overbreadth principles Gooding v. Wilson, 405 U.S. 518 (1972); Grayned v. City of Rockford, 408 U.S. 114 (1972) and the procedural requirements established in Freedman v. Maryland, 380 U.S. 51 (1965), all of which serve as prophylactic measures to guard against arbitrary and even inadvertent encroachments upon First Amendment freedoms.

The problem of political gerrymandering posed by the present case may be precisely the sort of issue that can best be resolved by a process-based approach. This is so because, as Justice White, pointed out in Gaffney v. Cummings, supra, when legislators are asked to fulfill any function, including redistricting, some degree of political bargaining is inevitable. Indeed, partisan political judgments of one sort or another seem inescapable. Id., 412 U.S. at 753. At the same time, and as Justice White also ***32** suggested in Gaffney, at a certain point partisan judgments can become invidious when they are motivated by a desire to completely cancel out the political opportunities of particular racial, ethnic or political groups. 412 U.S. at 754. The line between acceptable and unacceptable political gerrymandering may be difficult to define after the fact.

In light of this state of affairs, it may very well be that the constitutional wrong in a case such as this is best understood as a failure of process. And the constitutional remedy lies in the development of fair and even-handed procedures for reapportionment. Focusing upon process advances two salutary goals: First, it minimizes the danger that First Amendment neutrality principles will be violated during the reapportionment enterprise; second, it minimizes the need for difficult judicial ***33** inquiries into impermissible motive.

In the present case the process employed to enact the reapportionment laws failed utterly to satisfy rudimentary notions of fairness. Both the Senate and the Assembly reapportionment bills were enacted initially without describing any legislative districts. As the District Court observed: "In practical terms, the bills were blank, the amendments insignificant, and the sole purpose for this contrived legislative process was to refer both bills to a conference committee." 603 F. Supp. at 1483. The District Court further concluded that "[t]he political structure of the conference committee introduce[d] a crucial element into the legislative scheme chosen by the Republican majority in both houses of the General Assembly. All conferees were Republicans....All were members of their legislative body's respective elections and apportionment ***34** committees. The lone Democrats with any input in the conference process were four persons appointed as 'advisors' . . . .

The Democratic advisors had no committee vote and no access to the mapmaking process that ensued." 603 F. Supp. at 1483.

In this regard, the legislature abandoned its responsibility to develop a fair reapportionment plan, and, instead delegated that responsibility to a self-interested political party. It delegated lawmaking authority to an entity that was responsive to only one segment of the political community. See Industrial Union v. American Petroleum Institute, 448 U.S. 607, 686 (1980) (Justice Rehnquist concurring); See also Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L. Ed 2d 317 (1983); Larkin v. Grendel's Den, 459 U.S. 116 (1983).

Moreover, the mapmaking procedure ***35** apparently entailed no serious deliberative debate. For example, a leading Republican Senator candidly warned the Democrats that their role during the reapportionment would be entirely devoid of substance. "You will have the privilege to offer a minority map," the Republican was quoted as telling the Democrats, "[b]ut I will advise you in advance that it will not be accepted." Id. at 1484. The warning proved accurate. The Democrats did offer a map. But "[a]fter a limited floor debate, the conference committee report was introduced for vote in both houses of the General Assembly." Id. Both houses adopted the reapportionment legislation along strictly party lines. In sum, the process by wh ch the reapportionment statutes were enacted cannot fairly be characterized as a serious deliberative process in which the political community meaningfully participated. See Karcher v. ***36** Daggett, supra, 77 L. Ed 2d at 160 (Justice Stevens concurring). It was dominated not by neutral principles of legislative cartography but by pure partisanship.

The late Professor Robert Dixon, Jr., attorney for the State of Connecticut in Gaffney, and a leading expert on reapportionment, has proposed the bipartisan commission as the best solution to the problem of discriminatory districting. Comparing the role of such a commission to that of the Federal Trade Commission in limiting unfair competition, Dixon has written that "The most important injunction is that in its necessary consideration of data on electoral behavior the redistricting body should do so to test and discard unfair plans and not for the purpose of manufacturing artificial majorities . . . . The rule should be sameness or fairness of treatment to all parties, that is, neutrality ***37** in this special sense . . . . I submit that it should be unthinkable to pick as the final redistricting plan, from among the many 'equally equal' plans available in population terms, the plan that predictably favors one party over another at the instant of enactment." Dixon, "Fair Criteria and Procedures for Establishing Legislative Districts," in Representation and Redistricting Issues 7, 11 (B. Grofman, A. Lijphart, R. McKay and H. Scarrow, eds. 1982) (originally presented as testimony on S. 596, "A Bill to Provide a Fair Procedure for Establishing Congressional Districts," before the Committee on governmental Affairs, U.S. Senate, June 20, 1979.)

Clearly Professor Dixon's proposal is not the only way that reapportionment can be accomplished in a procedurally fair manner. But however procedural fairness is defined, the process used to develop Indiana's ***38** apportionment laws must be found wanting. In the present case Indiana failed to fulfill rudimentary notions of procedural fairness. In so doing Indiana has violated First Amendment due process principles which can and should be found applicable to the question of political gerrymandering.

*39 CONCLUSION

For the foregoing reasons, the judgment of the United States District Court for the Southern District of Indiana should be affirmed.
Respectfully submitted,

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*Counsel wish to thank John Low-Beer, a 1985 graduate of the Yale Law School, and Janette Sadik-Khan, a student at Columbia University School of Law, for their assistance in the preparation of this brief.

Footnotes

1 In Fowler, supra at 69, Justice Douglas wrote: "On oral argument before the Court the Assistant Attorney General further conceded that the ordinance as construed and applied, did not prohibit [all] church services in the park. Catholics could mass in Slater Park and Protestants could conduct their church services there without violating the ordinance....That broad concession made in oral argument, is fatal to Rhode Island's case. For it plainly shows that a religious service of Jehovah's Witnesses is treated differently than a religious service of other sects. That amounts to the state preferring some religious groups over this one. In Niemotko v. Maryland [citations omitted], we had a case on all fours with this one. There a public park, open to all religious groups, was denied to Jehovah's Witnesses because of the dislike which the local officials had of these people and their views. That was a discrimination which we held to be barred by the First and Fourteenth Amendments."

2 Emerson, Toward a General Theory of the First Amendment (Vintage, 1967) at 8.

3 See also Hunter v. Erickson, 393 U.S. 385, 393 (1969) (Harlan, J., concurring) (invalidating charter provision subjecting fair housing ordinances to unique referendum procedure as an unconstitutional attempt to rig the political process in such a way as to unfairly hinder "one group in its struggle with its political opponents"); Washington v. Seattle School District, 458 U.S. 457, 462 (1982) (embracing the neutrality and procedural fairness issues articulated by Justice Harlan in Hunter, and invalidating a Washington statute as designed to "place special burdens on the ability of minority groups to achieve beneficial legislation.")

4 Although the Court in Gomillion based its decision explicitly upon the Fifteenth Amendment, "the Court has subsequently treated Gomillion as though it had been decided upon equal protection grounds." Karcher v. Daggett, 462 U.S. 725, 77 L.Ed. 2d 133, 153 (Justice Stevens concurring).

5 This Court correctly found a similar absence of invidiously discriminatory intent in United Jewish Organizations v. Carey, 430 U.S. 144 (1977). In the Court's view, the New York plan at issue there sought "to alleviate the consequences of racial voting at the polls and to achieve a fair allocation of power between white and nonwhite voters in Kings County." Id. at 167.

6 In this regard, the district court findings of fact on the matter of invidious purpose, including inferences drawn from the lower court's underlying fact-finding may be overturned only if clearly erroneous. Rogers v. Lodge, supra; Bessemer v. Anderson, 470 U.S. 564, 53 U.S.L.W. 4314 (March 19, 1985).

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