No. 21-1271

In the Supreme Court of the United States

TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES, ET AL.,
PETITIONERS

v.

REBECCA HARPER, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Elections Clause of the U.S. Constitution, Art. I, § 4, Cl. 1, generally prohibits state courts from reviewing state legislation governing federal elections for compliance with the state constitution.

2. Whether the Elections Clause permits such state judicial review if it is specifically authorized by the state legislature.

TABLE OF CONTENTS

Page

Table of Contents—Continued: Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitutions and statutes:

Constitutions and statutes—Continued: Page

Constitution and statutes—Continued: Page

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INTEREST OF THE UNITED STATES

This case concerns the scope of state legislatures' authority to make laws governing congressional elections under the Elections Clause, U.S. Const. Art. I, § 4, Cl. 1. That issue has significant implications for the administration of federal elections. In addition, statutes Congress has enacted under the Elections Clause reflect its understanding of state legislatures' authority. The United States thus has a substantial interest in this Court's resolution of the questions presented.

STATEMENT

1. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State

by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. Art. I, § 4, Cl. 1. The Clause "has two functions." *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013). The first half "imposes" upon state legislatures a "duty" to "prescribe the time, place, and manner of electing Representatives and Senators." *Ibid.* The second half gives Congress "the power to alter [state] regulations or supplant them altogether." *Ibid.*

2. In November 2021, the North Carolina General Assembly enacted new congressional and state legislative maps. Pet. App. 18a. Plaintiffs (respondents here) filed suits alleging that those maps were extreme partisan gerrymanders that violated the North Carolina Constitution. *Id.* at 19a-20a.

The General Assembly has established special procedures for "[a]ny action challenging the validity" of state statutes "that apportion[] or redistrict[] State legislative or congressional districts." N.C. Gen. Stat. § 1-267.1(a) (2021). Pursuant to those procedures, respondents' suits were assigned to a three-judge panel in the Superior Court of Wake County. Pet. App. 20a. The three-judge court denied respondents' motions for a preliminary injunction. *Id.* at 19a-20a; see *id.* at 253a-268a. The North Carolina Supreme Court reversed and remanded for an expedited trial. *Id.* at 21a; see *id.* at 247a-252a.

Following a bench trial, the three-judge court found that the November 2021 maps reflected extreme "partisan redistricting." Pet. App. 46a; see *id.* at 43a-46a. The court held, however, that "claims of extreme partisan gerrymandering present purely political questions that are nonjusticiable under the North Carolina Constitution." *Id.* at 48a.

3. The North Carolina Supreme Court reversed.

a. In an order issued on February 4, 2022, the North Carolina Supreme Court held that partisan gerrymandering claims are justiciable under the North Carolina Constitution. Pet. App. 224a, 227a-228a. After upholding the trial court's finding that the November 2021 maps were the result of extreme partisan gerrymandering, the North Carolina Supreme Court held that the congressional and state legislative maps were "unconstitutional beyond a reasonable doubt under the free elections clause, the equal protection clause, the free speech clause, and the freedom of assembly clause of the North Carolina Constitution." *Id.* at 228a. The court enjoined the maps' use in future elections. *Ibid.*

b. In an opinion issued ten days later, the North Carolina Supreme Court further explained its reasoning. Pet. App. 1a-223a. The court grounded its holding in the history of the relevant provisions of the North Carolina Constitution. It explained, for example, that the State's free elections clause was "derived from a clause in the English Bill of Rights of 1689" that had been adopted "in response to the king's efforts to manipulate parliamentary elections by diluting the vote in different areas." *Id.* at 91a. And it emphasized that the state constitution's equal protection, free speech, and free assembly clauses had long been interpreted to provide "greater protections" than their federal counterparts. *Id.* at 99a; see *id.* at 97a-106a.

The North Carolina Supreme Court also rejected petitioners' argument that the Elections Clause forbids state-court review of laws governing congressional elections for compliance with the state constitution. Pet. App. 121a-122a. The court explained that "[t]his argu-

ment, which was not presented at the trial court, is inconsistent with nearly a century of precedent of the [U.S.] Supreme Court" and "is also repugnant to the sovereignty of states, the authority of state constitutions, and the independence of state courts." *Id.* at 121a.

c. Consistent with a North Carolina statute specifying the appropriate remedies following the invalidation of "[s]tate legislative or congressional districts," N.C. Gen. Stat. § 120-2.4(a) (2021), the North Carolina Supreme Court remanded to allow the General Assembly to adopt revised plans. Pet. App. 232a.

4. The three-judge trial court held that the General Assembly's revised state legislative maps complied with the state constitution, but that the revised congressional map did not. Pet. App. 291a-292a. Pursuant to a state statute authorizing courts to adopt "interim districting plan[s]" that "may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court," N.C. Gen. Stat. § 120-2.4(a1) (2021), the three-judge court modified the legislature's enacted map "to bring it into compliance with the Supreme Court's order." Pet. App. 292a. The resulting interim map may be used "in the next general election only." N.C. Gen. Stat. § 120-2.4(a1) (2021).

5. Appeals from the three-judge court's remedial decision are pending before the North Carolina Supreme Court. No. 413PA21 (filed Dec. 6, 2021).

SUMMARY OF ARGUMENT

The Elections Clause requires each State's "Legislature" to "prescribe[]" "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, Cl. 1. Text, practice from the

Founding to today, and a century of this Court's precedent confirm that the Clause takes state legislatures as it finds them—subject to state constitutional constraints and state judicial review. And even if that were not so, nothing in the Clause would prohibit a state legislature from *choosing* to be bound by those constraints, as the North Carolina General Assembly has done here.

I. State legislation regulating federal elections is subject to judicial review by state courts for compliance with the state constitution.

A. The Elections Clause makes clear that when state legislatures prescribe the time, place, and manner of federal elections, they engage in ordinary lawmaking. Nothing in the Clause's text suggests that the Framers intended to unmoor that lawmaking process from state constitutional checks and balances. To the contrary, the Framers chose language that echoed the parallel provision of the Articles of Confederation, under which nearly all state constitutions had regulated the selection of delegates to the Confederation Congress.

B. Longstanding practice reinforces that natural reading of the Elections Clause's text. In the decades immediately after the Founding, several state constitutions expressly governed the time, place, and manner of federal elections, and many others set rules for "all" elections, state and federal. That tradition continues today: State constitutions are replete with provisions governing congressional elections—including many proposed by state legislatures themselves. Congress, in exercising its own authority under the Elections Clause, has likewise recognized that state election legislation is subject to ordinary constraints on state lawmaking.

C. More than a century of this Court's precedent is in accord. The Court has repeatedly rejected arguments that state constitutional checks on a state legislature's lawmaking function violate the Elections Clause. And the Court has emphasized that "state constitutions can provide standards and guidance for state courts to apply" in addressing partisan gerrymandering, citing a Florida Supreme Court decision that "struck down that State's congressional districting plan as a violation of" the state constitution. *Rucho* v. *Common Cause*, 139 S. Ct. 2484, 2507 (2019).

D. Petitioners' contrary arguments lack merit. Petitioners emphasize that the Elections Clause directs state "Legislature[s]" to prescribe the time, place, and manner of elections. But no one disputes that. The question is *how* legislatures fulfill that function. And text, history, and precedent supply the answer: In accordance with the checks and balances prescribed by state constitutions. Even petitioners are forced to concede as much, acknowledging (Br. 24) that legislatures are bound by *some* state constitutional constraints, such as a gubernatorial veto.

Petitioners' various attempts to distinguish between permissible and impermissible state constitutional limits are unpersuasive. Nothing in text, history, or precedent supports petitioners' attempt to distinguish "procedural" limits such as a veto from "substantive" limits such as a prohibition on partisan gerrymandering. Petitioners' alternative argument that state legislatures are bound only by state constitutional limits framed in sufficiently specific terms is both unsupported and incapable of principled application. Petitioners' suggestion that there is something particularly objectionable about state courts adopting remedial maps contradicts

this Court's recognition that court-drawn maps are a necessary and appropriate feature of judicial review. And all of petitioners' theories would severely disrupt the administration of elections around the Nation, forcing States to hold state and federal elections under different rules and flooding the federal courts—especially this Court—with new election challenges.

II. This Court should reject petitioners' novel interpretation of the Elections Clause. But the Court could also resolve this case on narrower grounds because the North Carolina General Assembly has enacted statutes authorizing judicial review of congressional districting plans and providing for court-drawn remedial maps. Even if petitioners were correct that the Elections Clause limits the role of state constitutions and state courts when a state legislature is silent, nothing in the Clause forecloses a state legislature from *itself* authorizing state judicial review of election legislation for compliance with the state constitution.

ARGUMENT

I. STATE LEGISLATION REGULATING FEDERAL ELECTIONS IS SUBJECT TO JUDICIAL REVIEW BY STATE COURTS FOR COMPLIANCE WITH THE STATE CONSTITUTION

The Elections Clause directs state legislatures to make laws governing congressional elections. Text, historical context, longstanding practice, and this Court's precedent all establish that the Clause does not thereby authorize legislatures to ignore the state constitutions that created them. Instead, the Elections Clause takes state legislatures as it finds them—subject to state constitutional constraints and state judicial review.

A. The Elections Clause's Text And Historical Context Make Clear That It Does Not Authorize State Legislatures To Ignore State Constitutional Constraints

1. The Elections Clause directs state "Legislature[s]" to "prescribe[]" the "Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, Cl. 1. To "prescribe" is "to set down authoritatively; to order; to direct." 2 Samuel Johnson, *A Dictionary of the English Language* 418 (2d ed. 1755). And making regulations governing elections is a quintessential form of "lawmaking." *Smiley* v. *Holm*, 285 U.S. 355, 366 (1932). The Clause thus assigns state legislatures their traditional function—"that of making laws." *Ibid.*

At the Founding, state legislatures had been created by, and remained subject to, state constitutions. See, *e.g.*, N.C. Const. Arts. I, IV (1776). Those state constitutions included limits on legislatures' lawmaking authority that were enforceable through judicial review. See, *e.g.*, *Bayard* v. *Singleton*, 1 N.C. 5 (1787). That system of checks and balances was well known to the Framers, who "understood the [pre-Founding] state constitutions to allow judicial review." Saikrishna B. Prakash & John C. Yoo, *The Origins of Judicial Review*, 70 U. Chi. L. Rev. 887, 938-939 (2003); see *id.* at 929-939. Indeed, the Framers praised state judges who had set aside unconstitutional laws. *Id.* at 934.

The Elections Clause did not alter state legislatures' fundamental character as creatures of state constitutions or deprive States of their "autonomy to establish their own governmental processes." *Arizona State Legislature* v. *Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 816 (2015) (*AIRC*). The text of the Clause contains "no suggestion" that it "endow[s] the legislature

of the State with power to enact laws in any manner other than that in which the constitution of the State has provided." *Smiley*, 285 U.S. at 368. The Clause directs that state legislatures *shall* enact regulations on a particular subject; it does not say that other state entities *shall not* perform their usual constitutional roles. And the Clause certainly does not impose such a prohibition with the clarity one would expect had the Framers intended to disrupt background principles of state sovereignty and judicial review. A state legislature making laws under the Elections Clause thus "may be required to do so within the ordinary lawmaking process," *AIRC*, 576 U.S. at 841 (Roberts, C.J., dissenting)—including state constitutional constraints and judicial review.

That understanding of the first half of the Elections Clause is buttressed by the second half, which authorizes Congress to engage in legislative action of "the same inherent character." *Smiley*, 285 U.S. at 368. There is no doubt that when Congress enacts legislation under the Elections Clause, it is constrained by the federal Constitution and subject to judicial review by federal courts. And that is true even though the Clause refers to "Congress" alone, without any express mention of constitutional restraints or judicial review. Nothing in the first half of the Clause suggests a different result for state legislatures.

2. The Elections Clause's historical context confirms that straightforward reading of its text. The parallel provision of the Articles of Confederation specified that delegates to the Confederation Congress were to be selected "in such manner as the legislature of each state shall direct." Articles of Confederation of 1781, Art. V. Yet "[m]ost of the state constitutions adopted between Independence and the adoption of the United

States Constitution" included provisions regulating the legislature's exercise of that authority. Hayward H. Smith, *Revisiting the History of the Independent State Legislature Doctrine*, 53 St. Mary's L.J. 445, 479 (2022) (*Revisiting the History*). South Carolina, for example, required lawmakers to choose delegates "by ballot." S.C. Const. Art. XXII (1778). Massachusetts required lawmakers to elect delegates by "joint ballot" in "June." Mass. Const. Ch. IV (1780). And New Hampshire specified when lawmakers "in their separate branches" would elect delegates. N.H. Const. Pt. II (1784); see *Revisiting the History* 477-479 & n.152 (citing examples from six other States). Particularly against that backdrop, the Elections Clause's equivalent language would have been understood to mean that state legislatures would continue to be bound by state constitutions.

The drafting and ratification debates reinforce that inference. Had the Elections Clause been intended to depart from background principles of judicial review and upset state systems of checks and balances, the intrusion on state sovereignty would have been controversial. But there is no evidence that anyone even suggested that the Elections Clause would have that effect. The debates over the Clause instead centered on Congress's power under the second half of the Clause. See *AIRC*, 576 U.S. at 814-815. "The dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules," *ibid.*—not to alter the preexisting relationship

among state legislatures, their coordinate branches, and the state constitutions that created them.[1]

B. Longstanding Practice Confirms That The Elections Clause Does Not Authorize State Legislatures To Ignore State Constitutional Constraints

History confirms that the Elections Clause does not unmoor state legislatures from state constitutions. "Long settled and established practice" has "great weight in a proper interpretation of constitutional provisions." *Chiafalo* v. *Washington*, 140 S. Ct. 2316, 2326 (2020) (citation omitted). And historical practice is "especially" illuminating in construing the Elections Clause and other "constitutional provisions governing the exercise of political rights," which are "subject to constant and careful scrutiny." *Smiley*, 285 U.S. at 369. Here, more than two centuries of practice confirms that state legislatures are subject to state constitutional constraints when they exercise their authority under the Elections Clause.

1. After the Constitution's ratification, many States adopted constitutional provisions regulating federal elections. Delaware, for example, required that elections for its representatives in "Congress" be held in the

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[1] Petitioners err in asserting (Br. 18) that the Framers intended Congress to be the sole "check" on state legislation under the Elections Clause. This Court has rejected the suggestion that the Clause gave "Congress 'exclusive authority' " to review state election legislation. *Wesberry* v. *Sanders*, 376 U.S. 1, 6 (1964) (citation omitted). And Congress's authority serves an entirely different function than the preexisting checks in state constitutions: It was "the Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress." *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013).

"same places" and "the same manner" as state legislative elections, which were themselves regulated by the state constitution. Del. Const. Art. VIII, § 2 (1792); see *id.* Art. II, § 2. Maryland specified that elections "for Representatives of this State in the Congress of the United States" shall be "by ballot." Md. Const. Art. XIV (1810). Virginia prescribed the manner of apportioning its representatives in Congress. Va. Const. Art. III, § 6 (1830). And several newly admitted States' constitutions established rules for the election of their first congressional representatives.[2]

By 1830, at least eight state constitutions also regulated congressional elections by requiring that elections be held either by ballot or viva voce.[3] Petitioners assert (Br. 39) that those provisions governed only "*state* elections." But the relevant provisions applied to "all elections," and petitioners provide no evidence that they were understood to mean anything other than what they said. See *Revisiting the History* 489-491 (collecting evidence that States made a "considered choice" to apply these provisions to federal elections). In addition, nine States adopted provisions like the one the North Carolina Supreme Court relied on here requiring that elections be "free" or "equal."[4] Most of those provisions

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[2] See Miss. Const. sched. § 7 (1817); Ind. Const. Art. XII, § 8 (1816); Ill. Const. sched. § 9 (1818); Ala. Const. sched. § 7 (1819); Mo. Const. sched. § 9 (1820).

[3] Ga. Const. Art. IV, § 2 (1789); Pa. Const. Art. III, § 2 (1790); Ky. Const. Art. III, § 2 (1792); Tenn. Const. Art. III, § 3 (1796); Ohio Const. Art. IV, § 2 (1803); La. Const. Art. VI, § 13 (1812); Ind. Const. Art. VI, § 2 (1816); N.Y. Const. Art. II, § 4 (1821).

[4] Del. Const. Art. I, § 3 (1792); Pa. Const. Art. IX, § 5 (1790); N.H. Const. Pt. I, Art. XI (1792); Ky. Const. Art. XII, § 5 (1792); Vt. Const. Ch. I, Art. 8 (1793); Tenn. Const. Art. XI, § 5 (1796); Ind.

likewise expressly applied to "all" elections; the remainder applied generally to "elections."

That early history is far more robust than the historical record this Court has relied on to uphold other state constitutional limitations on state legislatures' power under the Elections Clause. See *Smiley*, 285 U.S. at 368 (identifying two early gubernatorial veto provisions). Yet the necessary implication of petitioners' position is that all of those early state constitutional provisions were invalid in whole or in part.

2. Although the decades immediately after the Founding are the most probative of original understanding, the same practice continued over the centuries that followed. Indeed, "the number and variety of election-related provisions in state constitutions increased." Michael Weingartner, *Liquidating the Independent State Legislature Theory*, 46 Harv. J.L. & Pub. Pol'y (forthcoming 2023) (manuscript at 40) (*Liquidating the ISLT*); see *id.* at 37-40 & nn.286-318 (listing dozens of examples from the 1800s). Today, "[n]early all" state constitutions include provisions governing congressional elections. Nathan Persily et al., *When is a Legislature Not a Legislature? When Voters Regulate Elections by Initiative*, 77 Ohio St. L.J. 689, 720 (2016); see *id.* at 720-722, 731-738.

As particularly relevant here, state constitutional provisions have long regulated districting. In 1846, for example, Iowa specified that "no county shall be divided" in creating a "[c]ongressional" district. Iowa Const. Art. III, § 32. California imposed the same requirement in 1849. Cal. Const. Art. IV, § 30. In 1863, West Virginia required that congressional districts "be formed

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Const. Art. I, § 4 (1816); Ill. Const. Art. VIII, § 5 (1818); Mo. Const. Art. XIII, § 6 (1820).

of contiguous counties, and be compact." W. Va. Const. Art. XI, § 6. And in 1868, Alabama directed that congressional districts be as "equal in the number of inhabitants" as possible. Ala. Const. Art. VIII, § 6.[5]

3. State legislatures themselves have long recognized that the Elections Clause does not free them from state constitutional constraints. Legislatures have, for example, complied with state constitutional veto provisions since the very first federal election. See Hayward H. Smith, *History of the Article II Independent State Legislature Doctrine*, 29 Fla. St. U. L. Rev. 731, 760-761 (2001). Indeed, until the controversy that gave rise to this Court's decision in *Smiley*, the "uniform practice" had been for States "to provide for congressional districts by the enactment of statutes with the participation of the Governor wherever the state constitution provided for such participation as part of the process of making laws." *Smiley*, 285 U.S. at 370; see *id.* at 370 n.6.

Legislatures have also complied with—and, indeed, affirmatively proposed—other state constitutional limits on their authority to regulate congressional elections. Since the mid-1800s, state legislatures have referred to voters all manner of election-related constitutional amendments, including those governing voter registration, absentee voting, the use of voting machines, and secret ballots. *Liquidating the ISLT* 45-46. In recent years, state legislatures have successfully referred amendments to voters concerning voter-identification requirements. See, *e.g.*, Mo. House Joint Res. 53 (adopted Nov. 8, 2016) (amended Mo. Const. Art. VIII, § 11); Ark.

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[5] See, *e.g.*, Va. Const. Art. IV, §§ 13-14 (1850); Va. Const. Art. V, §§ 12-13 (1870); Tenn. Const. Art. X, § 5 (1870); Cal. Const. Art. IV, § 27 (1879); Wyo. Const. Art. III, Apportionment, §§ 1, 3 (1889).

House Joint Res. 1016 (approved Nov. 6, 2018) (amended Ark. Const. Art. III, § 1). And the Alabama legislature recently referred an amendment that would prohibit the legislature from changing any election law within six months of a general election. See Alabama Fair Ballot Comm'n, *Statewide Const. Amend. Ballot Statement for Statewide Amend. 4* (2022).

4. Congress likewise has demonstrated its understanding that state election laws are subject to state constitutional limits enforced by state courts. Under 2 U.S.C. 2a(c), certain default election procedures apply "[u]ntil a State is redistricted in the manner provided by the law thereof." The statute's use of the passive voice and the phrase "in the manner provided by the law thereof" reflect Congress's understanding that entities other than the state legislature may play a role in redistricting. See *AIRC*, 576 U.S. at 805. And as Justice Scalia explained for the plurality in *Branch* v. *Smith*, 538 U.S. 254 (2003), the contemplated redistricting "in the manner provided by [state] law" includes remedial maps adopted by state courts, which must "follow the 'policies and preferences of the State, as expressed in statutory *and constitutional* provisions.'" *Id.* at 274 (emphasis added; citation omitted).

Statutory history confirms that understanding. Before 1911, the decennial congressional-apportionment acts provided default procedures unless or until the state "legislature" drew district lines. *E.g.*, Act of Feb. 2, 1872, ch. 11, § 2, 17 Stat. 28. In 1911, Congress eliminated that reference in favor of the phrase "in the manner provided by the laws thereof." Act of Aug. 8, 1911 (1911 Act), ch. 5, § 4, 37 Stat. 14. That change was intended to confirm that States may "establish congressional districts in whatever way they may have provided

by their constitution and by their statutes." *AIRC*, 576 U.S. at 810 (citation omitted). And although the 1911 Act applied only to reapportionment following the 1910 census, "Congress used virtually identical language when it enacted § 2a(c)" in 1941. *Id.* at 811.[6]

Section 2c, meanwhile, provides that whenever a State is entitled to more than one Representative, "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled." 2 U.S.C. 2c. As this Court has recognized, that text likewise "embraces action by state and federal courts." *Branch*, 538 U.S. at 272.

C. For More Than A Century, This Court Has Recognized That The Elections Clause Does Not Authorize State Legislatures To Ignore State Constitutional Constraints

This Court's precedent is consistent with the text and practice. In *Ohio* v. *Hildebrant*, 241 U.S. 565 (1916), the Court held that a redistricting act of the Ohio General Assembly was subject to disapproval through a referendum, as authorized by the State's constitution. See *id.* at 566-570. By contrast, four years later, the Court held that the referendum procedure was inappli-

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[6] Section 2a(c) is not directly applicable here, both because the interim map adopted by the three-judge court pursuant to state law means that North Carolina has been "redistricted in the manner provided by the law thereof," see *Branch*, 538 U.S. at 274 (opinion of Scalia, J.), and because the default provided by Section 2a(c)(2) is "plainly unconstitutional" under the one-person, one-vote standard this Court adopted after the statute's enactment, *AIRC*, 576 U.S. at 811 (citation omitted). But Section 2a(c)'s prefatory language remains instructive "as a legislative recognition of the nature of the authority" granted by the Elections Clause. *Smiley*, 285 U.S. at 372.

cable when Ohio decided whether to ratify the Eighteenth Amendment. *Hawke* v. *Smith*, 253 U.S. 221, 230-231 (1920). The Court explained that Article V gives legislatures only a ratifying function and does not require any "act of legislation." *Id.* at 229. The Court distinguished *Hildebrandt* because the Elections Clause "plainly gives authority to the State to legislate"—a function that is subject to state constitutional limitations. *Id.* at 231.

In *Smiley*, this Court held that the Minnesota legislature's redistricting map was subject to the gubernatorial veto provided in the Minnesota Constitution. See 285 U.S. at 363, 372-373. The Court reiterated that because the Elections Clause grants lawmaking authority to the state legislature, "the exercise of th[at] authority must be in accordance with the method which the State has prescribed for legislative enactments"—including those in the state constitution. *Id.* at 367. The Court analogized to congressional legislation under the second half of the Elections Clause, which is subject to the President's veto; although that "consequence was not expressed," the Court found "no question that it was necessarily implied." *Id.* at 369. The Court discerned "no intimation, either in the debates in the Federal Convention or in contemporaneous exposition, of a purpose to exclude a similar restriction imposed by state constitutions upon state legislatures when exercising the lawmaking power." *Ibid.*

In *AIRC*, this Court held that States may exercise their Elections Clause authority through an independent commission created by a constitutional amendment that was itself the product of a citizen initiative. 576 U.S. at 792-793. The Court explained that "redistricting is a legislative function, to be performed in accordance

with the State's prescriptions for lawmaking." *Id.* at 808. And the Court emphasized that "[n]othing in th[e] Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution." *Id.* at 817-818.

The dissenting Justices in *AIRC* rejected the majority's determination that a citizen initiative could transfer responsibility for districting to a commission. 576 U.S. at 824-826 (Roberts, C.J., dissenting). But all Justices agreed that when a State legislates pursuant to the Clause, it "may be required to do so within the ordinary lawmaking process." *Id.* at 841 (Roberts, C.J., dissenting). The Chief Justice's dissent thus emphasized that a State may "*supplement* the legislature's role" so long as it does not "*supplant* the legislature altogether." *Ibid.* North Carolina's process is entirely consistent with that view: The State leaves redistricting to the General Assembly, supplemented by the traditional check of judicial review for compliance with constitutional standards.

Most recently, in *Rucho* v. *Common Cause*, 139 S. Ct. 2484 (2019), the Court held that claims of partisan gerrymandering are nonjusticiable in federal courts. But the Court emphasized that its decision did not "condemn complaints about districting to echo into a void." *Id.* at 2507. The Court specifically pointed to state constitutional limitations and state judicial review as viable solutions. See *id.* at 2507-2508. For example, the Court observed that, "[i]n 2015, the Supreme Court of Florida struck down that State's congressional districting plan as a violation of the Fair Districts Amendment to the

Florida Constitution." *Id.* at 2507. The Court thus emphasized that "state constitutions can provide standards and guidance for state courts to apply." *Ibid.*

D. Petitioners' Contrary Arguments Lack Merit

Petitioners primarily assert (*e.g.*, Br. 17-18, 23) that the Elections Clause assigns state legislatures "exclusive" and "independent" authority to prescribe the times, places, and manner of congressional elections and that "no *other* state organ is authorized to exercise that power." But petitioners ultimately retreat from that position and suggest a series of alternatives. They acknowledge (Br. 24) that legislatures acting under the Elections Clause must comply with state constitutional provisions governing the procedure for lawmaking, but maintain that legislatures can ignore provisions that address the substance of election regulations. At times (*e.g.*, Br. 46), petitioners suggest that substantive provisions might be enforceable, but only if they are sufficiently "specific." And petitioners assert (*e.g.*, Br. 49) that it is particularly problematic for state courts to remedy state constitutional violations by drawing interim district maps. None of those distinctions is grounded in text, history, or precedent. And all of them would yield unworkable results and enmesh the federal judiciary—and especially this Court—in an endless stream of state election disputes.

1. Petitioners' distinction between procedural and substantive state constitutional constraints has no support in text, history, or precedent

a. Petitioners maintain (Br. 13-17) that the text of the Elections Clause resolves this case because it directs state "Legislature[s]," rather than state courts, to

prescribe the times, places, and manner of congressional elections. But no one disputes that. The question is *how* state legislatures are to fulfill that duty—and, in particular, whether the Elections Clause authorizes them to ignore the constraints imposed by the state constitutions that created and defined them.

Petitioners' arguments based on drafting history (Br. 15-17) do not suggest that the Framers intended that intrusion on the States' sovereignty. Petitioners assert that the Framers declined to adopt a proposal by Charles Pinckney that would have assigned authority over congressional elections to the "State[s]" rather than state legislatures. Br. 15 (citation omitted). Even if that were correct, but see Non-State Resps. Br. 35-36, petitioners offer no evidence that the Framers rejected that language to free legislatures from state constitutional constraints. And that inference is implausible given the Framers' decision to repeat language from the Articles of Confederation that was understood to *embrace* state constitutional limits. See pp. 9-11, *supra*.

Petitioners also emphasize (Br. 22) that "regulating elections to federal office is a power governed, defined, and limited by the federal Constitution." But petitioners err in inferring (*ibid.*) that "*only the federal constitution* can limit the federal function of regulating federal elections." The Framers chose to have state legislatures perform that function by enacting state laws, and petitioners themselves concede that state constitutions can require that Elections Clause legislation be approved by the governor or the voters. As petitioners observe (Br. 23), state constitutions cannot impose such checks when the Constitution assigns state legislatures a power distinct from making laws, such as ratifying amendments or, prior to the Seventeenth Amendment,

directly selecting Senators. See *Hawke*, 253 U.S. at 230-231. But where, as in the Elections Clause, the Constitution assigns state legislatures an ordinary legislative task, their actions are subject to ordinary state constitutional checks.

b. Petitioners ultimately abandon their assertion that "the Elections Clause's reference to state legislatures excludes other state entities." Br. 18. Consistent with centuries of practice and this Court's precedents, petitioners acknowledge (Br. 24) that legislation enacted under the Elections Clause can be subject to state constitutional requirements such as a "gubernatorial veto" or referendum. But petitioners maintain (*ibid.*) that "substantive" state constitutional provisions are unenforceable.

Petitioners' line between procedural and substantive limits has no basis in the text of the Elections Clause. Petitioners assert (Br. 24) that procedural limits are permissible because they are part of States' authority to "create *the state legislatures themselves*." But gubernatorial vetoes and referenda are most naturally understood as "restriction[s] imposed by state constitutions *upon state legislatures* when exercising the lawmaking power." *Smiley*, 285 U.S. at 369 (emphasis added). And construing such restraints as defining the "legislature," cf. *AIRC*, 576 U.S. at 808, would make no difference. "Substantive" constraints likewise "define" the contours of state legislatures' power. Just as the gubernatorial veto and referenda do not transgress the Elections Clause even though they involve entities other than the legislature, "substantive" limitations imposed by a state constitution do not transgress the Clause even when they are enforced by state courts.

In addition, petitioners never explain how courts could draw the notoriously fuzzy line between substance and procedure in this context. On their theory, could a state constitution provide that the legislature may engage in partisan gerrymandering only if it acts by a supermajority vote? Or that the legislature may not repeal a voter-identification requirement without securing the approval of the voters in a referendum? What if a governor vetoes a redistricting plan because it violates the state constitution? The Elections Clause provides no principled basis for answering such questions.

c. Petitioners' historical arguments likewise do not support their distinction between procedure and substance. They ignore (or incorrectly dismiss) the many substantive restrictions imposed by state constitutions in the years immediately after the Founding. See pp. 11-13, *supra*. And although petitioners assert (Br. 3) that "no state court appears to have invalidated a state legislature's congressional map on substantive state-constitutional grounds" in the early years of the Republic, that simply suggests that legislatures complied with state constitutional constraints. See Non-State Resps. Br. 33-34.

Petitioners' reliance on events in Pennsylvania and Massachusetts do not undermine that powerful evidence of contemporaneous understanding. In 1790, Pennsylvania considered a proposed provision setting the proportion and maximum number of representatives allocated to each congressional district. *Revisiting the History* 487-488. But as petitioners observe (Br. 26-27), "the motion was withdrawn the following day without recorded debate." Particularly given that Pennsylvania's constitution elsewhere regulated the conduct of "all elections," see p. 12 n.3, *supra*, there is

no reason to attribute the defeat of this proposal to a perceived constitutional disability.

In 1820, Massachusetts considered and rejected a proposal that would have required representatives and electors to be chosen by district, with reapportionment after every decennial census. *Revisiting the History* 512. "The only three delegates who stated their position for the record on the independent legislature doctrine were Austin (who rejected the doctrine), Justice Story (who embraced it), and Webster (who declined to debate the point)." *Id.* at 516. Story's idiosyncratic view is far too thin a reed to support petitioners' argument—particularly when juxtaposed with the robust history of explicit state constitutional regulation of all aspects of congressional elections dating back to the Founding.[7]

d. Petitioners err in asserting (Br. 39-44) that this Court's precedents distinguish between procedural and substantive constitutional limits. Petitioners first suggest that *Smiley* and *AIRC* show that the Elections Clause "does not allow the state courts, or any other organ of state government, to second-guess the legislature's determinations." Br. 39 (emphasis omitted). But *Smiley* said just the opposite: It allowed the executive to veto the legislature's redistricting bill. 285 U.S. at 368. Likewise, in *AIRC*, every Justice agreed that "the state legislature need not be exclusive in congressional districting," and that "redistricting is a legislative func-

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[7] Even if it were correct, but see Non-State Resps. Br. 39-41, petitioners' discussion (Br. 30-35) of pre-Seventeenth Amendment practice is misplaced: In directly selecting U.S. Senators, state legislatures did not engage in a lawmaking function and thus were not subject to state constitutional constraints on lawmaking. Cf. *Hawke*, 253 U.S. at 230-231.

tion, to be performed in accordance with the State's prescriptions for lawmaking." 576 U.S. at 841-842 (Roberts, C.J., dissenting). Those prescriptions include state constitutional checks and judicial review.

Contrary to petitioners' assertion (Br. 40-42), this Court's decisions addressing the Presidential Electors Clause, U.S. Const. Art. II, § 1, Cl. 2, do not muddy the clear Elections Clause precedent. Petitioners rely on *McPherson* v. *Blacker*, 146 U.S. 1 (1892), which upheld Michigan's determination to elect presidential electors by district. See *id.* at 24-25, 42. But because the case did not involve any state constitutional limitation, the statements petitioners quote were dicta. They provide no reason to question this Court's more recent decisions squarely holding that state legislatures are subject to state constitutional checks when they act under the Elections Clause.

Petitioners next rely (Br. 41-42) on this Court's decision in *Bush* v. *Palm Beach County Canvassing Board*, 531 U.S. 70 (2000) (per curiam). The Court there questioned whether the Florida Supreme Court had relied on the Florida Constitution to "circumscribe the legislative power" under the Presidential Electors Clause. *Id.* at 77 (citation omitted). But the Court did not address the effect of such action. Rather, it simply remanded for the Florida Supreme Court to clarify the basis for its decision. *Id.* at 78.

Finally, petitioners invoke (Br. 42) Chief Justice Rehnquist's concurrence in *Bush* v. *Gore*, 531 U.S. 98 (2000) (per curiam) (*Bush II*). But the case did not present, and neither the Court nor Chief Justice Rehnquist addressed, any question about state constitutional limits. Instead, Chief Justice Rehnquist concluded that the

Florida Supreme Court had infringed on the legislature's authority because its interpretation of state election laws "impermissibly distorted them beyond what a fair reading required." *Id.* at 115. A similar claim might be raised in a future case concerning a state constitutional provision, but petitioners have not attempted to advance such a claim here. See pp. 26-28, *infra*.

2. Petitioners' distinction between specific and general state constitutional provisions is unsupported and unworkable

a. Petitioners at times suggest (*e.g.*, Br. 2-3) that the Elections Clause only prohibits state courts from relying on "abstract," "broad[]," or "vaguely-worded" state constitutional provisions. But petitioners do not begin to explain how federal courts could draw principled lines between those state constitutional provisions that are sufficiently determinate to be enforceable and those that are not.

Even if such a line could be drawn, it would have no basis in text, history, or precedent. All of those sources confirm that the Elections Clause directs state legislatures to engage in ordinary lawmaking, subject to the ordinary constraints—including limitations imposed by the state constitution and enforced by judicial review. And from the earliest state constitutions through those in force today, our Nation's constitutional tradition has pervasively relied on provisions that could be described as abstract, broad, or vaguely worded. A Constitution, after all, cannot "partake of the prolixity of a legal code." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819).

Much of this Court's work has consisted of "translating" the U.S. Constitution's "majestic generalities" into

"concrete restraints" on the government. *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 639 (1943). The entire doctrine of standing, for example, is rooted in Article III's "abstract" language providing that federal courts shall have jurisdiction over "cases" and "controversies." The Court has derived countless legal rules from the "broad" language of the First Amendment. And many pages of the U.S. Reports are devoted to the Due Process Clauses of the Fifth and Fourteenth Amendments, which could certainly be characterized as "vaguely-worded."

This Court's many decisions interpreting and applying those "open-ended" constitutional provisions (Pet. Br. 46) are routine exercises of judicial authority that sit squarely within our Nation's constitutional tradition. Precisely the same is true when state supreme courts interpret and apply analogous provisions of their own constitutions, including the provisions the North Carolina Supreme Court relied upon here. And while the federal courts may determine in rare cases that provisions of the U.S. Constitution are too indefinite to be applied in a manner that comports with the *federal* judicial role, see *Rucho*, 139 S. Ct. at 2498-2502, there is no basis for petitioners' suggestion that federal courts should deny effect to *state* judicial decisions grounded in state constitutional provisions that state courts have determined are justiciable, see *id.* at 2507-2508.

b. Although petitioners principally maintain that the provisions of the North Carolina Constitution at issue here are too open-ended to be applied to federal election regulations at all, they occasionally hint (*e.g.*, Br. 6) at a different argument—that the North Carolina Supreme Court *misinterpreted* the state constitution in construing it to impose judicially enforceable limits on extreme

partisan gerrymandering. But petitioners do not ask this Court to revisit the court's interpretation of the North Carolina Constitution, and with good reason: Absent the most extraordinary circumstances, an interpretation of state law adopted by "the State's highest court" is "binding on the federal courts." *Animal Science Prods., Inc.* v. *Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865, 1874 (2018) (citation omitted).

The Court has made exceptions to that fundamental principle only when a truly aberrant interpretation of state law undermines a significant federal interest. The Court has, for example, refused to allow state courts to deny effect to federal rights based on a state-law ground lacking "any fair or substantial support." *Ward* v. *Love County Board of County Comm'rs*, 253 U.S. 17, 22-23 (1920); see, *e.g.*, *Walker* v. *Martin*, 562 U.S. 307, 320 (2011). Chief Justice Rehnquist invoked analogous precedents in *Bush II*, suggesting that the Florida Supreme Court had invaded the legislature's authority under the Electors Clause because it adopted an interpretation that had "no basis" in the relevant statutes. 531 U.S. at 120 (Rehnquist, C.J., concurring); see *id.* at 114-116 & n.1.

Litigants in future cases could advance a similar argument in the context of state constitutional provisions. They might contend, for example, that a state court had intruded on the legislature's authority under the Elections Clause by adopting an interpretation of state constitutional provisions that had no "fair or substantial support" in state law, *Ward*, 253 U.S. at 22. But the Court should adhere to its established practice of treating state courts as the authoritative expositors of state law except in truly extraordinary circumstances. A high bar for such claims is essential to respect the authority

of state courts in our federal system. And it is necessary to avoid turning every state-court interpretation of a state election law into a federal case presented to this Court.

Here, petitioners disagree with the North Carolina Supreme Court's reading of the relevant constitutional provisions, but they cannot plausibly maintain that the decision was so unreasonable or unsupported as to justify the extraordinary step of denying effect to a state supreme court's construction of its own state constitution. Other courts construing parallel provisions have likewise found partisan gerrymandering claims to be justiciable. See, *e.g.*, *League of Women Voters* v. *Commonwealth*, 645 Pa. 1, 8 (2018). Four Justices of this Court would have adopted a similar interpretation of the less-specific provisions of the federal Constitution. See *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting). And although the Court disagreed, it emphasized that its decision did not prevent state courts from adopting a different approach under their own constitutions, as the North Carolina Supreme Court did here. *Id.* at 2508.

3. Petitioners' focus on state courts' remedial authority is misplaced

At times, petitioners suggest (*e.g.*, Br. 2, 49) that there is something uniquely problematic about state courts remedying state constitutional violations by adopting interim districting plans. To the extent that suggestion constitutes an independent argument that the Elections Clause forecloses remedial maps even if it allows judicial review for compliance with the state constitution, that argument is misplaced.

As a threshold matter, any challenge to the trial court's remedial plan is not properly before this Court. The Court's jurisdiction is limited to "[f]inal judgments"

of state high courts. 28 U.S.C. 1257(a). But petitioners' challenge to the remedial map remains pending before the North Carolina Supreme Court. See No. 413PA21 (filed Dec. 6, 2021); Non-State Resps. Br. 70.

In any event, petitioners' argument is unpersuasive. Petitioners' objection to court-drawn maps appears to be that only the legislature may "prescribe" election laws. But when state courts review state election laws for compliance with state constitutions, they do not "prescribe" laws at all. Rather, they determine whether state laws comport with the state constitution. That task is "of the very essence of judicial duty." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 178 (1803). And that remains true even though the necessary result of such an invalidation is a legal regime that differs from the one the legislature adopted—at least until the legislature acts again.

When a court finds a redistricting plan unconstitutional, the usual course is to allow the legislature to draw a revised map that complies with the constitution—as the North Carolina Supreme Court did here. But if the legislature cannot or will not cure the constitutional violation before the next election, the court must devise a remedy. Federal and state courts have long exercised that authority by drawing remedial maps. Such actions do not usurp legislatures' authority to prescribe the times, places, and manner of congressional elections. Here, for example, the trial court started with the legislature's map and made only those changes necessary to cure the constitutional defect. Pet. App. 292a. The authority to take such steps to remedy a constitutional violation is a necessary incident of judicial review.

This Court's decisions thus specifically recognize state courts' ability to enforce state constitutional limitations in redistricting by adopting remedial maps. In *Growe* v. *Emison*, 507 U.S. 25 (1993), the Court held, in a unanimous opinion by Justice Scalia, that a district court should have deferred to a state court considering federal and state constitutional challenges to Minnesota's congressional and legislative districts. *Id.* at 27, 29. The Court emphasized "that the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts" and criticized the district court for "ignoring the possibility and legitimacy of state *judicial* redistricting." *Id.* at 34. The Court explained that the state court's redistricting plan "was precisely the sort of state judicial supervision of redistricting [that this Court] ha[s] encouraged." *Ibid.* In *Branch*, the Court likewise recognized that under 2 U.S.C. 2c, both federal and state courts have authority to draw districting maps to "remedy[] a state legislature's failure to redistrict constitutionally." 538 U.S. at 273 (opinion of Scalia, J., describing the holding of the Court); see *id.* at 272 (majority opinion).

4. Petitioners' theories would severely disrupt the sound administration of our Nation's elections

The extraordinarily disruptive consequences of petitioners' novel arguments provide further reason to reject them. Petitioners' principal arguments would mean that constitutional provisions in nearly every State—many of them dating to the Founding—were either wholly invalid or could be applied only to state elections. See pp. 9-15, *supra*. The immediate consequence would be to compel States to administer elections under diver-

gent rules, depriving them of "'the convenience of having the elections for their own governments and the national government' held at the same times and places, and in the same manner." *AIRC*, 576 U.S. at 819 (quoting *The Federalist No. 61*, at 374 (Alexander Hamilton) (Clinton Rossiter ed., 1961)). As the State Respondents emphasize (Br. 56-57), that alone would substantially complicate election administration.

The problem would be exacerbated when, as is inevitable, courts are presented with requests for emergency relief while an election is imminent or underway. Court orders relying on a state constitution to resolve disputes about voting hours, voter eligibility, or absentee voting would govern state races, but not the federal contests being decided on the very same ballots. That result risks magnifying confusion and uncertainty for both voters and election officials at a time when "the rules of the road must be clear and settled." *Merrill* v. *Milligan*, 142 S. Ct. 879, 880-881 (2022) (Kavanaugh, J., concurring in grant of applications for stays).

Petitioners' theories also would increase the burdens of election litigation on the federal courts—and, ultimately, on this Court. If state-law remedies could not extend to federal elections, many disputes that might otherwise have been resolved in state court would instead become federal cases. And even under petitioners' narrower arguments, this Court would see a flood of new claims that state courts had transgressed the difficult-to-discern limits of petitioners' theories—which would often be presented in applications for emergency relief in the midst of hotly contested elections.

Depriving state courts of the authority to adopt remedial maps would likewise be highly disruptive. Recent experience in Ohio provides a vivid illustration: A

2015 constitutional amendment created a redistricting commission, charged it with drawing state legislative districts, and provided that if state courts find those maps invalid, they may only vacate the commission maps—they cannot impose remedial maps. See *Gonidakis* v. *LaRose*, No. 22-cv-773, 2022 WL 1175617, at *4-*5 (S.D. Ohio Apr. 20, 2022) (per curiam). Earlier this year, that remedial limitation produced an impasse featuring "four Commission-enacted maps" and "four Ohio Supreme Court decisions" holding those maps invalid. *Id.* at *5; see *id.* at *5-*8. The stalemate was broken only when a federal district court was forced to step in and choose a map to ensure that the election would occur at all. *Gonidakis* v. *LaRose*, No. 22-cv-773, 2022 WL 1709146, at *1 (S.D. Ohio May 27, 2022) (per curiam). Barring state courts from adopting remedial districting plans would risk imposing similar impasses on States across the Nation.

II. AT A MINIMUM, NOTHING IN THE ELECTIONS CLAUSE PROHIBITED THE NORTH CAROLINA GENERAL ASSEMBLY FROM AUTHORIZING JUDICIAL REVIEW OF ITS CONGRESSIONAL DISTRICTING MAPS

Although petitioners' broader Elections Clause arguments fail, the Court could resolve this case without deciding whether, as a general matter, state courts may review Elections Clause regulations for compliance with state constitutions. At a minimum, nothing in the Clause *precludes* a state legislature from electing to be bound by state constitutional provisions enforced through state judicial review. And North Carolina's General Assembly has done just that.

Three North Carolina statutes are particularly relevant here. First, the General Assembly has provided

that "[a]ny action challenging the validity" of a state statute "that apportions or redistricts State legislative or congressional districts shall be filed" in a particular venue and "shall be heard and determined" by a three-judge panel with a specific composition. N.C. Gen. Stat. § 1-267.1(a) (2021); see *id.* § 1-81.1. Second, the General Assembly has recognized that courts may hold its plans "unconstitutional or otherwise invalid, in whole or in part," but has required that those courts provide detailed findings of fact and conclusions of law. *Id.* § 120-2.3. Third, the General Assembly has specifically provided for court-drawn remedial maps. It has permitted a reviewing court to "impose its own substitute plan" if "the court first gives the General Assembly a [defined] period of time to remedy any defects identified by the court in its findings of fact and conclusions of law," and the General Assembly fails to enact a constitutional plan. *Id.* § 120-2.4(a) and (a1). Even then, the court's interim plan is valid only for the next general election and "may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court." *Id.* § 120-2.4(a1).

As the North Carolina Supreme Court has explained, those statutes "allow the General Assembly to exercise its proper responsibilities," "decrease the risk that the courts will encroach upon the responsibilities of the legislative branch," and "set out a workable framework for judicial review." *Stephenson* v. *Bartlett*, 595 S.E.2d 112, 120 (2004); see *id.* at 117-120.

Congressional elections in North Carolina are thus proceeding in precisely the "Manner" that was "prescribed * * * by the Legislature," U.S. Const. Art. I, § 4, Cl. 1, once *all* relevant enactments are considered.

After the General Assembly adopted the November 2021 map, it was reviewed for compliance with the state constitution by the court specifically vested by the General Assembly with authority to make that determination. And after the North Carolina Supreme Court concluded that the map is unlawful, the trial court followed the General Assembly's remedial instructions, which specifically authorized the interim court-drawn map the trial court adopted here. See pp. 2-4, *supra*.

Petitioners provide no sound basis for declining to give effect to these legislative enactments. Petitioners first assert (Br. 44-45) that "the Elections Clause surely does not allow a state legislature to delegate away the authority assigned to it by the federal Constitution." But petitioners make little attempt to ground such a nondelegation rule in the original understanding of the Elections Clause. See Mark S. Krass, *Debunking the Nondelegation Doctrine for State Regulation of Federal Elections*, 108 U. Va. L. Rev. 1091, 1100 (2022) (finding that "expansive and politically significant delegations to local officials were a pervasive feature of early American elections"). And in any event, the North Carolina statutes at issue here do not delegate lawmaking power. They simply authorize judicial review—a quintessential exercise of judicial power.

Petitioners next suggest (Br. 46) that even if state legislatures could authorize judicial enforcement of certain constitutional limitations—such as those mandating "contiguousness [or] compactness"—they may not authorize review of partisan gerrymandering claims because no "judicially discernible standards" exist to adjudicate those claims. Petitioners thus contend that the federal Constitution renders partisan gerrymandering claims nonjusticiable in state courts, even when state

constitutions or statutes expressly disagree. That argument contravenes our federalist system and *Rucho*'s express recognition of state constitutional limitations on partisan gerrymandering. 139 S. Ct. at 2507-2508.

Finally, petitioners claim that the North Carolina statutes "are best read as merely laying out the procedures that govern * * * a federal constitutional challenge brought in state court." Br. 48 (emphasis omitted). But that contradicts both the plain text of the statutes and the authoritative interpretation of the North Carolina Supreme Court. The General Assembly recognized that a state court may invalidate a redistricting plan if it is "unconstitutional or otherwise invalid, in whole or in part and for any reason." N.C. Gen. Stat. § 120-2.3 (2021). The North Carolina Supreme Court did exactly that when it invalidated the congressional and state legislative redistricting plans under the North Carolina Constitution. Nothing in the federal Constitution precludes the North Carolina General Assembly from authorizing that check on its own power.

CONCLUSION

The judgment of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted.

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