PREFACE
TO THE 2020 SUPPLEMENT

In addition to the new material appearing in the annotations, the 2020 Supplement includes three new principal cases—Rucho v. Common Cause, addressing the political question doctrine, Virginia House of Delegates v. Bethune-Hill, addressing standing, and Artis v. District of Columbia, addressing the tolling provision of 28 U.S.C. § 1367(d).

As always, your comments and suggestions are welcome.

DLB

Sacramento, California
July 2020

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TABLE OF CASES

Principal cases are in bold type. Non-principal cases are in roman type. References are to pages.

2020 SUPPLEMENT

CASES AND MATERIALS

FEDERAL COURTS

CHAPTER I

"Judicial Power" over "Cases and Controversies"

Page 17. Add new footnote in the first paragraph under Heading III, ninth line

[The lack of a concrete stake in the outcome was the basis for the U.S. Supreme Court's standing conclusion in Thole v. U.S. Bank, N.A.,590 U.S. ___, 140 S.Ct. 1615, ___ L.Ed.2d ___ (2020). In *Thole*, retired participants in a defined-benefit retirement plan sought to enforce the prudent management of their retirement trust. The Court noted that whether the plaintiffs won or lost the lawsuit, their monthly benefits would remain exactly the same, and thus "[b]ecause the plaintiifs themselves have no concrete stake in the lawsuit, they lack Article III standing."**]**

Page 24. Add new footnote in the ninth line from the bottom, after "These prudential objectives"

[The U.S. Supreme Court again recognized the prudential nature of third-party standing in June Medical Services, L.L.C. v. Russo, 591 U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 2020 WL 3492640 (6/29/20), in which the Court held that Louisiana had waived its standing argument against the plaintiff abortion providers and clinics challenging a Louisiana law.**]**

Page 42. Insert the following after Zivotofsky v. Clinton

Rucho v. Common Cause

Supreme Court of the United States, 2019.
588 U.S. ___, 139 S.Ct. 2484, 204 L.Ed.2d 931 (2019)

• CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Voters and other plaintiffs in North Carolina and Maryland challenged their States' congressional districting maps as unconstitutional partisan gerrymanders. The North Carolina plaintiffs complained that the State's districting plan discriminated against Democrats; the Maryland plaintiffs complained that their State's plan discriminated against Republicans. The plaintiffs alleged that the gerrymandering violated the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Elections Clause, and Article I, § 2, of the Constitution. The District

Courts in both cases ruled in favor of the plaintiffs, and the defendants appealed directly to this Court.

These cases require us to consider once again whether claims of excessive partisanship in districting are "justiciable"—that is, properly suited for resolution by the federal courts. This Court has not previously struck down a districting plan as an unconstitutional partisan gerrymander, and has struggled without success over the past several decades to discern judicially manageable standards for deciding such claims. The districting plans at issue here are highly partisan, by any measure. The question is whether the courts below appropriately exercised judicial power when they found them unconstitutional as well.

I

A

The first case involves a challenge to the congressional redistricting plan enacted by the Republican-controlled North Carolina General Assembly in 2016. Rucho v. Common Cause, No. 18–422. The Republican legislators leading the redistricting effort instructed their mapmaker to use political data to draw a map that would produce a congressional delegation of ten Republicans and three Democrats. 318 F.Supp.3d 777, 807–808 (M.D.N.C.2018). As one of the two Republicans chairing the redistricting committee stated, "I think electing Republicans is better than electing Democrats. So I drew this map to help foster what I think is better for the country." Id., at 809. He further explained that the map was drawn with the aim of electing ten Republicans and three Democrats because he did "not believe it [would be] possible to draw a map with11 Republicans and 2 Democrats." Id., at 808. One Democratic state senator objected that entrenching the 10–3 advantage for Republicans was not "fair, reasonable, [or] balanced" because, as recently as 2012, "Democratic congressional candidates had received more votes on a statewide basis than Republican candidates." Ibid. The General Assembly was not swayed by that objection and approved the 2016 Plan by a party-line vote. Id., at 809.

In November 2016, North Carolina conducted congressional elections using the 2016 Plan, and Republican candidates won 10 of the 13 congressional districts. Id., at 810. In the 2018 elections, Republican candidates won nine congressional districts, while Democratic candidates won three. The Republican candidate narrowly prevailed in the remaining district, but the State Board of Elections called a new election after allegations of fraud.

This litigation began in August 2016, when the North Carolina Democratic Party, Common Cause (a nonprofit organization), and 14 individual North Carolina voters sued the two lawmakers who had led the redistricting effort and other state defendants in Federal District Court. Shortly thereafter, the League of Women Voters of North Carolina and a dozen additional North Carolina voters filed a similar complaint. The two cases were consolidated.

The plaintiffs challenged the 2016 Plan on multiple constitutional grounds. First, they alleged that the Plan violated the Equal Protection Clause of the Fourteenth Amendment by intentionally diluting the electoral strength of Democratic voters. Second, they claimed that the Plan violated their First Amendment rights by retaliating against supporters of Democratic candidates on the basis of their political beliefs. Third, they asserted that the Plan usurped the right of "the People" to elect their preferred candidates for Congress, in violation of the requirement in Article I, § 2, of the Constitution that Members of the House of Representatives be chosen "by the People of the several States." Finally, they alleged that the Plan violated the Elections Clause by exceeding the State's delegated authority to prescribe the "Times, Places and Manner of holding Elections" for Members of Congress.

After a four-day trial, the three-judge District Court unanimously concluded that the 2016 Plan violated the Equal Protection Clause and Article I of the Constitution. The court further held, with Judge Osteen dissenting, that the Plan violated the First Amendment. Common Cause v. Rucho, 279 F.Supp.3d 587 (M.D.N.C.2018). The defendants appealed directly to this Court under 28 U.S.C. § 1253.

While that appeal was pending, we decided Gill v. Whitford, 585 U.S. ___ (2018), a partisan gerrymandering case out of Wisconsin. In that case, we held that a plaintiff asserting a partisan gerrymandering claim based on a theory of vote dilution must establish standing by showing he lives in an allegedly "cracked" or "packed" district. Id., at ___(slip op., at 17). A "cracked" district is one in which a party's supporters are divided among multiple districts, so that they fall short of a majority in each; a "packed" district is one in which a party's supporters are highly concentrated, so they win that district by a large margin, "wasting" many votes that would improve their chances in others. Id., at ___–___ (slip op., at 3–4).

After deciding *Gill*, we remanded the present case for further consideration by the District Court. 585 U.S. ___ (2018). On remand, the District Court again struck down the 2016 Plan. 318 F.Supp.3d 777. It found standing and concluded that the case was appropriate for judicial resolution. On the merits, the court found that "the General Assembly's predominant intent was to discriminate against voters who supported or were likely to support non-Republican candidates," and to "entrench Republican candidates" through widespread cracking and packing of Democratic voters. Id., at 883–884. The court rejected the defendants' arguments that the distribution of Republican and Democratic voters throughout North Carolina and the interest in protecting incumbents neutrally explained the 2016 Plan's discriminatory effects. Id., at 896–899. In the end, the District Court held that 12 of the 13 districts constituted partisan gerrymanders that violated the Equal Protection Clause. Id., at 923.

The court also agreed with the plaintiffs that the 2016 Plan discriminated against them because of their political speech and association, in violation of the First Amendment. Id., at 935. Judge Osteen dissented with respect to that ruling. Id., at 954–955. Finally, the District Court concluded that the 2016 Plan violated the Elections

Clause and Article I, § 2. Id., at 935–941. The District Court enjoined the State from using the 2016 Plan in any election after the November 2018 general election. Id., at 942.

The defendants again appealed to this Court, and we postponed jurisdiction. . . .

B

The second case before us is Lamone v. Benisek, No. 18–726. In 2011, the Maryland Legislature—dominated by Democrats—undertook to redraw the lines of that State's eight congressional districts. The Governor at the time, Democrat Martin O'Malley, led the process. He appointed a redistricting committee to help redraw the map, and asked Congressman Steny Hoyer, who has described himself as a "serial gerrymanderer," to advise the committee. 348 F.Supp.3d 493, 502 (Md.2018). The Governor later testified that his aim was to "use the redistricting process to change the overall composition of Maryland's congressional delegation to 7 Democrats and 1 Republican by flipping" one district. Ibid. "[A] decision was made to go for the Sixth," ibid., which had been held by a Republican for nearly two decades. To achieve the required equal population among districts, only about 10,000 residents needed to be removed from that district. Id., at 498. The 2011 Plan accomplished that by moving roughly 360,000 voters out of the Sixth District and moving 350,000 new voters in. Overall, the Plan reduced the number of registered Republicans in the Sixth District by about 66,000 and increased the number of registered Democrats by about 24,000. Id., at 499–501. The map was adopted by a party-line vote. Id., at 506. It was used in the 2012 election and succeeded in flipping the Sixth District. A Democrat has held the seat ever since.

In November 2013, three Maryland voters filed this lawsuit. They alleged that the 2011 Plan violated the First Amendment, the Elections Clause, and Article I, § 2, of the Constitution. After considerable procedural skirmishing and litigation over preliminary relief, the District Court entered summary judgment for the plaintiffs. 348 F.Supp.3d 493. It concluded that the plaintiffs' claims were justiciable, and that the Plan violated the First Amendment by diminishing their "ability to elect their candidate of choice" because of their party affiliation and voting history, and by burdening their associational rights. Id., at 498. On the latter point, the court relied upon findings that Republicans in the Sixth District "were burdened in fundraising, attracting volunteers, campaigning, and generating interest in voting in an atmosphere of general confusion and apathy." Id., at 524.

The District Court permanently enjoined the State from using the 2011 Plan and ordered it to promptly adopt a new plan for the 2020 election. Id., at 525. The defendants appealed directly to this Court under 28 U.S.C. § 1253. We postponed jurisdiction. . . .

II

A

Article III of the Constitution limits federal courts to deciding "Cases" and "Controversies." We have understood that limitation to mean that federal courts can address only questions "historically viewed as capable of resolution through the judicial process." Flast v. Cohen, 392 U.S. 83, 95 (1968). In these cases we are asked to decide an important question of constitutional law. "But before we do so, we must find that the question is presented in a 'case' or 'controversy' that is, in James Madison's words, 'of a Judiciary Nature.'" DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 (2006) (quoting 2 Records of the Federal Convention of 1787, p.430 (M. Farrand ed.1966)).

Chief Justice Marshall famously wrote that it is "the province and duty of the judicial department to say what the law is." Marbury v. Madison, 1 Cranch 137, 177 (1803). Sometimes, however, "the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights." Vieth v. Jubelirer, 541 U.S. 267, 277 (2004) (plurality opinion). In such a case the claim is said to present a "political question" and to be nonjusticiable—outside the courts' competence and therefore beyond the courts' jurisdiction. Baker v. Carr, 369 U.S. 186, 217 (1962). Among the political question cases the Court has identified are those that lack "judicially discoverable and manageable standards for resolving [them]." Ibid.

Last Term in Gill v. Whitford, we reviewed our partisan gerrymandering cases and concluded that those cases "leave unresolved whether such claims may be brought." 585 U.S., at ___ (slip op., at 13). This Court's authority to act, as we said in *Gill*, is "grounded in and limited by the necessity of resolving, according to legal principles, a plaintiff's particular claim of legal right." Ibid. The question here is whether there is an "appropriate role for the Federal Judiciary" in remedying the problem of partisan gerrymandering—whether such claims are claims of legal right, resolvable according to legal principles, or political questions that must find their resolution elsewhere. Id., at ___ (slip op., at 8).

B

Partisan gerrymandering is nothing new. Nor is frustration with it. The practice was known in the Colonies prior to Independence, and the Framers were familiar with it at the time of the drafting and ratification of the Constitution. See *Vieth*, 541 U.S., at 274 (plurality opinion). During the very first congressional elections, George Washington and his Federalist allies accused Patrick Henry of trying to gerrymander Virginia's districts against their candidates—in particular James Madison, who ultimately prevailed over fellow future President James Monroe. Hunter, The First Gerrymander? 9 Early Am. Studies 792–794, 811 (2011). See 5 Writings of Thomas Jefferson 71 (P. Ford ed.1895) (Letter to W. Short (Feb. 9, 1789)) ("Henry has so modelled the districts for representatives as to tack Orange [County] to counties where he himself has great influence that Madison may not be elected into the lower federal house").

In 1812, Governor of Massachusetts and future Vice President Elbridge Gerry notoriously approved congressional districts that the legislature had drawn to aid the

Democratic-Republican Party. The moniker "gerrymander" was born when an outraged Federalist newspaper observed that one of the misshapen districts resembled a salamander. See *Vieth*, 541 U.S., at 274 (plurality opinion); E. Griffith, The Rise and Development of the Gerrymander 17–19 (1907). "By 1840, the gerrymander was a recognized force in party politics and was generally attempted in all legislation enacted for the formation of election districts. It was generally conceded that each party would attempt to gain power which was not proportionate to its numerical strength." Id., at 123.

The Framers addressed the election of Representatives to Congress in the Elections Clause. Art. I, § 4, cl. 1. That provision assigns to state legislatures the power to prescribe the "Times, Places and Manner of holding Elections" for Members of Congress, while giving Congress the power to "make or alter" any such regulations. Whether to give that supervisory authority to the National Government was debated at the Constitutional Convention. When those opposed to such congressional oversight moved to strike the relevant language, Madison came to its defense:

> "[T]he State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniency or prejudices. . . . Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed." 2 Records of the Federal Convention of 1787, at 240–241.

During the subsequent fight for ratification, the provision remained a subject of debate. Antifederalists predicted that Congress's power under the Elections Clause would allow Congress to make itself "omnipotent," setting the "time" of elections as never or the "place" in difficult to reach corners of the State. Federalists responded that, among other justifications, the revisionary power was necessary to counter state legislatures set on undermining fair representation, including through malapportionment. M. Klarman, The Framers' Coup: The Making of the United States Constitution 340–342 (2016). The Federalists were, for example, concerned that newly developing population centers would be deprived of their proper electoral weight, as some cities had been in Great Britain. See 6 The Documentary History of the Ratification of the Constitution: Massachusetts 1278–1279 (J. Kaminski & G. Saladino eds.2000).

Congress has regularly exercised its Elections Clause power, including to address partisan gerrymandering. The Apportionment Act of 1842, which required single-member districts for the first time, specified that those districts be "composed of contiguous territory," Act of June 25, 1842, ch. 47, 5 Stat. 491, in "an attempt to forbid the practice of the gerrymander," Griffith, supra, at 12. Later statutes added requirements of compactness and equality of population. Act of Jan. 16, 1901, ch. 93, § 3, 31 Stat.733; Act of Feb. 2, 1872, ch. 11, § 2, 17 Stat. 28. (Only the single member district requirement remains in place today. 2 U.S.C. § 2c.) See *Vieth*, 541 U.S., at 276 (plurality opinion). Congress also used its Elections Clause power in 1870, enacting the first comprehensive federal statute dealing with elections as a way to enforce the Fifteenth Amendment. Force Act of 1870, ch. 114, 16 Stat. 140. Starting in the 1950s, Congress enacted a series of

laws to protect the right to vote through measures such as the suspension of literacy tests and the prohibition of English-only elections. See, e.g., 52 U.S.C. § 10101 et seq.

Appellants suggest that, through the Elections Clause, the Framers set aside electoral issues such as the one before us as questions that only Congress can resolve. See *Baker*, 369 U.S., at 217. We do not agree. In two areas— one-person, one-vote and racial gerrymandering—our cases have held that there is a role for the courts with respect to at least some issues that could arise from a State's drawing of congressional districts. See Wesberry v. Sanders, 376 U.S. 1 (1964); Shaw v. Reno, 509 U.S. 630 (1993) (Shaw I).

But the history is not irrelevant. The Framers were aware of electoral districting problems and considered what to do about them. They settled on a characteristic approach, assigning the issue to the state legislatures, expressly checked and balanced by the Federal Congress. As Alexander Hamilton explained, "it will . . . not be denied that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter, and ultimately in the former." The Federalist No. 59, p.362 (C. Rossiter ed.1961). At no point was there a suggestion that the federal courts had a role to play. Nor was there any indication that the Framers had ever heard of courts doing such a thing.

C

Courts have nevertheless been called upon to resolve a variety of questions surrounding districting. Early on, doubts were raised about the competence of the federal courts to resolve those questions. See Wood v. Broom, 287 U.S. 1 (1932); Colegrove v. Green, 328 U.S. 549 (1946).

In the leading case of Baker v. Carr, voters in Tennessee complained that the State's districting plan for state representatives "debase[d]" their votes, because the plan was predicated on a 60-year-old census that no longer reflected the distribution of population in the State. The plaintiffs argued that votes of people in overpopulated districts held less value than those of people in less-populated districts, and that this inequality violated the Equal Protection Clause of the Fourteenth Amendment. The District Court dismissed the action on the ground that the claim was not justiciable, relying on this Court's precedents, including Colegrove. Baker v. Carr, 179 F.Supp. 824, 825, 826 (M.D.Tenn.1959). This Court reversed. It identified various considerations relevant to determining whether a claim is a nonjusticiable political question, including whether there is "a lack of judicially discoverable and manageable standards for resolving it." 369 U.S., at 217. The Court concluded that the claim of population inequality among districts did not fall into that category, because such a claim could be decided under basic equal protection principles. Id., at 226. In Wesberry v. Sanders, the Court extended its ruling to malapportionment of congressional districts, holding that Article I, § 2, required that "one man's vote in a congressional election is to be worth as much as another's." 376 U.S., at 8.

Another line of challenges to districting plans has focused on race. Laws that explicitly discriminate on the basis of race, as well as those that are race neutral on their face but are unexplainable on grounds other than race, are of course presumptively invalid. The Court applied those principles to electoral boundaries in Gomillion v. Lightfoot, concluding that a challenge to an "uncouth twenty-eight sided" municipal boundary line that excluded black voters from city elections stated a constitutional claim. 364 U.S. 339, 340 (1960). In Wright v. Rockefeller, 376 U.S. 52 (1964), the Court extended the reasoning of *Gomillion* to congressional districting. See *Shaw I*, 509 U.S., at 645.

Partisan gerrymandering claims have proved far more difficult to adjudicate. The basic reason is that, while it is illegal for a jurisdiction to depart from the one-person, one-vote rule, or to engage in racial discrimination in districting, "a jurisdiction may engage in constitutional political gerrymandering." Hunt v. Cromartie, 526 U.S. 541, 551 (1999) (citing Bush v. Vera, 517 U.S. 952, 968 (1996); Shaw v. Hunt, 517 U.S. 899, 905 (1996) (Shaw II); Miller v. Johnson, 515 U.S. 900, 916 (1995); *Shaw I*, 509 U.S., at 646). See also Gaffney v. Cummings, 412 U.S. 735, 753 (1973) (recognizing that "[p]olitics and political considerations are inseparable from districting and apportionment").

To hold that legislators cannot take partisan interests into account when drawing district lines would essentially countermand the Framers' decision to entrust districting to political entities. The "central problem" is not determining whether a jurisdiction has engaged in partisan gerrymandering. It is "determining when political gerrymandering has gone too far." *Vieth*, 541 U.S., at 296 (plurality opinion). See League of United Latin American Citizens v. Perry, 548 U.S. 399, 420 (2006) (LULAC) (opinion of Kennedy, J.) (difficulty is "providing a standard for deciding how much partisan dominance is too much").

We first considered a partisan gerrymandering claim in Gaffney v. Cummings in 1973. There we rejected an equal protection challenge to Connecticut's redistricting plan, which "aimed at a rough scheme of proportional representation of the two major political parties" by "wiggl[ing] and joggl[ing] boundary lines" to create the appropriate number of safe seats for each party. 412 U.S., at 738, 752, n.18 (internal quotation marks omitted). In upholding the State's plan, we reasoned that districting "inevitably has and is intended to have substantial political consequences." Id., at 753.

Thirteen years later, in Davis v. Bandemer, we addressed a claim that Indiana Republicans had cracked and packed Democrats in violation of the Equal Protection Clause. 478 U.S. 109, 116–117 (1986) (plurality opinion). A majority of the Court agreed that the case was justiciable, but the Court splintered over the proper standard to apply. Four Justices would have required proof of "intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." Id., at 127. Two Justices would have focused on "whether the boundaries of the voting districts have been distorted deliberately and arbitrarily to achieve illegitimate ends." Id., at 165 (Powell, J., concurring in part and dissenting in part). Three Justices, meanwhile, would

have held that the Equal Protection Clause simply "does not supply judicially manageable standards for resolving purely political gerrymandering claims." Id., at 147 (O'Connor, J., concurring in judgment). At the end of the day, there was "no 'Court' for a standard that properly should be applied in determining whether a challenged redistricting plan is an unconstitutional partisan political gerrymander." Id., at 185, n.25 (opinion of Powell, J.). In any event, the Court held that the plaintiffs had failed to show that the plan violated the Constitution.

Eighteen years later, in *Vieth*, the plaintiffs complained that Pennsylvania's legislature "ignored all traditional redistricting criteria, including the preservation of local government boundaries," in order to benefit Republican congressional candidates. 541 U.S., at 272–273 (plurality opinion) (brackets omitted). Justice Scalia wrote for a four-Justice plurality. He would have held that the plain-tiffs' claims were nonjusticiable because there was no "judicially discernible and manageable standard" for deciding them. Id., at 306. Justice Kennedy, concurring in the judgment, noted "the lack of comprehensive and neutral principles for drawing electoral boundaries [and] the absence of rules to limit and confine judicial intervention." Id., at 306–307. He nonetheless left open the possibility that "in another case a standard might emerge." Id., at 312. Four Justices dissented.

In LULAC, the plaintiffs challenged a mid-decade redistricting map approved by the Texas Legislature. Once again a majority of the Court could not find a justiciable standard for resolving the plaintiffs' partisan gerrymandering claims. See 548 U.S., at 414 (noting that the "disagreement over what substantive standard to apply" that was evident in *Bandemer* "persists").

As we summed up last Term in *Gill*, our "considerable efforts in *Gaffney*, *Bandemer*, *Vieth*, and *LULAC* leave unresolved whether . . . claims [of legal right] may be brought in cases involving allegations of partisan gerrymandering." 585 U.S., at ___ (slip op., at 13). Two "threshold questions" remained: standing, which we addressed in *Gill*, and "whether [such] claims are justiciable." Ibid.

III

A

In considering whether partisan gerrymandering claims are justiciable, we are mindful of Justice Kennedy's counsel in *Vieth*: Any standard for resolving such claims must be grounded in a "limited and precise rationale" and be "clear, manageable, and politically neutral." 541 U.S., at 306–308 (opinion concurring in judgment). An important reason for those careful constraints is that, as a Justice with extensive experience in state and local politics put it, "[t]he opportunity to control the drawing of electoral boundaries through the legislative process of apportionment is a critical and traditional part of politics in the United States." *Bandemer*, 478 U.S., at 145 (opinion of O'Connor, J.). See Gaffney, 412 U.S., at 749 (observing that districting implicates "fundamental 'choices about the nature of representation'" (quoting Burns v. Richardson, 384 U.S. 73, 92

(1966))). An expansive standard requiring "the correction of all election district lines drawn for partisan reasons would commit federal and state courts to unprecedented intervention in the American political process," *Vieth*, 541 U.S., at 306 (opinion of Kennedy, J.).

As noted, the question is one of degree: How to "provid[e] a standard for deciding how much partisan dominance is too much." *LULAC*, 548 U.S., at 420 (opinion of Kennedy, J.). And it is vital in such circumstances that the Court act only in accord with especially clear standards: "With uncertain limits, intervening courts—even when proceeding with best intentions—would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust." *Vieth*, 541 U.S., at 307 (opinion of Kennedy, J.). If federal courts are to "inject [themselves] into the most heated partisan issues" by adjudicating partisan gerrymandering claims, *Bandemer*, 478 U.S., at 145 (opinion of O'Connor, J.), they must be armed with a standard that can reliably differentiate unconstitutional from "constitutional political gerrymandering." *Cromartie*, 526 U.S., at 551.

B

Partisan gerrymandering claims rest on an instinct that groups with a certain level of political support should enjoy a commensurate level of political power and influence. Explicitly or implicitly, a districting map is alleged to be unconstitutional because it makes it too difficult for one party to translate statewide support into seats in the legislature. But such a claim is based on a "norm that does not exist" in our electoral system—"statewide elections for representatives along party lines." *Bandemer*, 478 U.S., at 159 (opinion of O'Connor, J.).

Partisan gerrymandering claims invariably sound in a desire for proportional representation. As Justice O'Connor put it, such claims are based on "a conviction that the greater the departure from proportionality, the more suspect an apportionment plan becomes." Ibid. "Our cases, however, clearly foreclose any claim that the Constitution requires proportional representation or that legislatures in reapportioning must draw district lines to come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be." Id., at 130 (plurality opinion). See Mobile v. Bolden, 446 U.S. 55, 75–76 (1980) (plurality opinion) ("The Equal Protection Clause of the Fourteenth Amendment does not require proportional representation as an imperative of political organization.").

The Founders certainly did not think proportional representation was required. For more than 50 years after ratification of the Constitution, many States elected their congressional representatives through at-large or "general ticket" elections. Such States typically sent single-party delegations to Congress. See E. Engstrom, Partisan Gerrymandering and the Construction of American Democracy 43–51 (2013). That meant that a party could garner nearly half of the vote statewide and wind up without any seats in the congressional delegation. The Whigs in Alabama suffered that fate in 1840: "their party garnered 43 percent of the statewide vote, yet did not receive a single seat."

Id., at 48. When Congress required single-member districts in the Apportionment Act of 1842, it was not out of a general sense of fairness, but instead a (mis)calculation by the Whigs that such a change would improve their electoral prospects. Id., at 43–44.

Unable to claim that the Constitution requires proportional representation outright, plaintiffs inevitably ask the courts to make their own political judgment about how much representation particular political parties deserve— based on the votes of their supporters—and to rearrange the challenged districts to achieve that end. But federal courts are not equipped to apportion political power as a matter of fairness, nor is there any basis for concluding that they were authorized to do so. As Justice Scalia put it for the plurality in *Vieth*:

> "'Fairness' does not seem to us a judicially manageable standard. . . . Some criterion more solid and more demonstrably met than that seems to us necessary to enable the state legislatures to discern the limits of their districting discretion, to meaningfully constrain the discretion of the courts, and to win public acceptance for the courts' intrusion into a process that is the very foundation of democratic decisionmaking."541 U.S., at 291.

The initial difficulty in settling on a "clear, manageable and politically neutral" test for fairness is that it is not even clear what fairness looks like in this context. There is a large measure of "unfairness" in any winner-take-all system. Fairness may mean a greater number of competitive districts. Such a claim seeks to undo packing and cracking so that supporters of the disadvantaged party have a better shot at electing their preferred candidates. But making as many districts as possible more competitive could be a recipe for disaster for the disadvantaged party. As Justice White has pointed out, "[i]f all or most of the districts are competitive . . . even a narrow statewide preference for either party would produce an overwhelming majority for the winning party in the state legislature." *Bandemer*, 478 U.S., at 130 (plurality opinion).

On the other hand, perhaps the ultimate objective of a "fairer" share of seats in the congressional delegation is most readily achieved by yielding to the gravitational pull of proportionality and engaging in cracking and packing, to ensure each party its "appropriate" share of "safe" seats. See id., at 130–131 ("To draw district lines to maximize the representation of each major party would require creating as many safe seats for each party as the demographic and predicted political characteristics of the State would permit."); *Gaffney*, 412 U.S., at 735–738. Such an approach, however, comes at the expense of competitive districts and of individuals in districts allocated to the opposing party.

Or perhaps fairness should be measured by adherence to "traditional" districting criteria, such as maintaining political subdivisions, keeping communities of interest together, and protecting incumbents. See Brief for Bipartisan Group of Current and Former Members of the House of Representatives as Amici Curiae; Brief for Professor Wesley Pegden et al. as Amici Curiae in No. 18–422. But protecting incumbents, for

example, enshrines a particular partisan distribution. And the "natural political geography" of a State—such as the fact that urban electoral districts are often dominated by one political party—can itself lead to inherently packed districts. As Justice Kennedy has explained, traditional criteria such as compact-ness and contiguity "cannot promise political neutrality when used as the basis for relief. Instead, it seems, a decision under these standards would unavoidably have significant political effect, whether intended or not." *Vieth*, 541 U.S., at 308–309 (opinion concurring in judgment). See id., at 298 (plurality opinion) ("[P]acking and cracking, whether intentional or no, are quite consistent with adherence to compactness and respect for political subdivision lines").

Deciding among just these different visions of fairness (you can imagine many others) poses basic questions that are political, not legal. There are no legal standards discernible in the Constitution for making such judgments, let alone limited and precise standards that are clear, manageable, and politically neutral. Any judicial decision on what is "fair" in this context would be an "unmoored determination" of the sort characteristic of a political question beyond the competence of the federal courts. Zivotofsky v. Clinton, 566 U.S. 189, 196 (2012).

And it is only after determining how to define fairness that you can even begin to answer the determinative question: "How much is too much?" At what point does permissible partisanship become unconstitutional? If compliance with traditional districting criteria is the fairness touchstone, for example, how much deviation from those criteria is constitutionally acceptable and how should map drawers prioritize competing criteria? Should a court "reverse gerrymander" other parts of a State to counteract "natural" gerrymandering caused, for example, by the urban concentration of one party? If a districting plan protected half of the incumbents but redistricted the rest into head to head races, would that be constitutional? A court would have to rank the relative importance of those traditional criteria and weigh how much deviation from each to allow.

If a court instead focused on the respective number of seats in the legislature, it would have to decide the ideal number of seats for each party and determine at what point deviation from that balance went too far. If a 5–3 allocation corresponds most closely to statewide vote totals, is a 6–2 allocation permissible, given that legislatures have the authority to engage in a certain degree of partisan gerrymandering? Which seats should be packed and which cracked? Or if the goal is as many competitive districts as possible, how close does the split need to be for the district to be considered competitive? Presumably not all districts could qualify, so how to choose? Even assuming the court knew which version of fairness to be looking for, there are no discernible and manageable standards for deciding whether there has been a violation. The questions are "unguided and ill suited to the development of judicial standards," *Vieth*, 541 U.S., at 296 (plurality opinion), and "results from one gerrymandering case to the next would likely be disparate and inconsistent," id., at 308 (opinion of Kennedy, J.).

Appellees contend that if we can adjudicate one-person, one-vote claims, we can also assess partisan gerrymandering claims. But the one-person, one-vote rule is

relatively easy to administer as a matter of math. The same cannot be said of partisan gerrymandering claims, because the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly. It hardly follows from the principle that each person must have an equal say in the election of representatives that a person is entitled to have his political party achieve representation in some way commensurate to its share of statewide support.

More fundamentally, "vote dilution" in the one-person, one-vote cases refers to the idea that each vote must carry equal weight. In other words, each representative must be accountable to (approximately) the same number of constituents. That requirement does not extend to political parties. It does not mean that each party must be influential in proportion to its number of supporters. As we stated unanimously in *Gill*, "this Court is not responsible for vindicating generalized partisan preferences. The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it." 585 U.S., at ___ (slip op., at 21). See also *Bandemer*, 478 U.S., at 150 (opinion of O'Connor, J.) ("[T]he Court has not accepted the argument that an 'asserted entitlement to group representation' . . . can be traced to the one per-son, one vote principle." (quoting *Bolden*, 446 U.S., at 77)).[1]

Nor do our racial gerrymandering cases provide an appropriate standard for assessing partisan gerrymandering. "[N]othing in our case law compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny. In fact, our country's long and persistent history of racial discrimination in voting—as well as our Fourteenth Amendment jurisprudence, which always has reserved the strictest scrutiny for discrimination on the basis of race—would seem to compel the opposite conclusion." *Shaw I*, 509 U.S., at 650 (citation omitted). Unlike partisan gerrymandering claims, a racial gerrymandering claim does not ask for a fair share of political power and influence, with all the justiciability conundrums that entails. It asks instead for the elimination of a racial classification. A partisan gerrymandering claim cannot ask for the elimination of partisanship.

IV

Appellees and the dissent propose a number of "tests" for evaluating partisan gerrymandering claims, but none meets the need for a limited and precise standard that is judicially discernible and manageable. And none provides a solid grounding for judges to take the extraordinary step of reallocating power and influence between political parties.

A

[1] The dissent's observation that the Framers viewed political parties "with deep suspicion, as fomenters of factionalism and symptoms of disease in the body politic" . . . (opinion of KAGAN, J.) (internal quotation marks and alteration omitted), is exactly right. Its inference from that fact is exactly wrong. The Framers would have been amazed at a constitutional theory that guarantees a certain degree of representation to political parties.

The *Common Cause* District Court concluded that all but one of the districts in North Carolina's 2016 Plan violated the Equal Protection Clause by intentionally diluting the voting strength of Democrats. 318 F.Supp.3d, at 923. In reaching that result the court first required the plaintiffs to prove "that a legislative map drawer's predominant purpose in drawing the lines of a particular district was to 'subordinate adherents of one political party and entrench a rival party in power.'" Id., at 865 (quoting Arizona State Legislature v. Arizona Independent Redistricting Comm'n, 576 U.S. ___, ___ (2015) (slip op., at 1)). The District Court next required a showing "that the dilution of the votes of supporters of a disfavored party in a particular district—by virtue of cracking or packing—is likely to persist in subsequent elections such that an elected representative from the favored party in the district will not feel a need to be responsive to constituents who support the disfavored party." 318 F.Supp.3d, at 867. Finally, after a prima facie showing of partisan vote dilution, the District Court shifted the burden to the defendants to prove that the discriminatory effects are "attributable to a legitimate state interest or other neutral explanation." Id., at 868.

The District Court's "predominant intent" prong is borrowed from the racial gerrymandering context. In racial gerrymandering cases, we rely on a "predominant intent" inquiry to determine whether race was, in fact, the reason particular district boundaries were drawn the way they were. If district lines were drawn for the purpose of separating racial groups, then they are subject to strict scrutiny because "race-based decisionmaking is inherently suspect." *Miller*, 515 U.S., at 915. See *Bush*, 517 U.S., at 959 (principal opinion). But determining that lines were drawn on the basis of partisanship does not indicate that the districting was improper. A permissible intent—securing partisan advantage—does not become constitutionally impermissible, like racial discrimination, when that permissible intent "predominates."

The District Court tried to limit the reach of its test by requiring plaintiffs to show, in addition to predominant partisan intent, that vote dilution "is likely to persist" to such a degree that the elected representative will feel free to ignore the concerns of the supporters of the minority party. 318 F.Supp.3d, at 867. But "[t]o allow district courts to strike down apportionment plans on the basis of their prognostications as to the outcome of future elections . . . invites 'findings' on matters as to which neither judges nor anyone else can have any confidence." *Bandemer*, 478 U.S., at 160 (opinion of O'Connor, J.). See *LULAC*, 548 U.S., at 420 (opinion of Kennedy, J.) ("[W]e are wary of adopting a constitutional standard that invalidates a map based on unfair results that would occur in a hypothetical state of affairs."). And the test adopted by the Common Cause court requires a far more nuanced prediction than simply who would prevail in future political contests. Judges must forecast with unspecified certainty whether a prospective winner will have a margin of victory sufficient to permit him to ignore the supporters of his defeated opponent (whoever that may turn out to be). Judges not only have to pick the winner—they have to beat the point spread.

The appellees assure us that "the persistence of a party's advantage may be shown through sensitivity testing: probing how a plan would perform under other plausible electoral conditions." Brief for Appellees League of Women Voters of North Carolina et

al. in No. 18–422, p.55. See also 318 F.Supp.3d, at 885. Experience proves that accurately predicting electoral outcomes is not so simple, either because the plans are based on flawed assumptions about voter preferences and behavior or because demographics and priorities change over time. In our two leading partisan gerrymandering cases themselves, the predictions of durability proved to be dramatically wrong. In 1981, Republicans controlled both houses of the Indiana Legislature as well as the governorship. Democrats challenged the state legislature districting map enacted by the Republicans. This Court in *Bandemer* rejected that challenge, and just months later the Democrats increased their share of House seats in the 1986 elections. Two years later the House was split 50–50 between Democrats and Republicans, and the Democrats took control of the chamber in 1990. Democrats also challenged the Pennsylvania congressional districting plan at issue in *Vieth*. Two years after that challenge failed, they gained four seats in the delegation, going from a 12–7 minority to an 11–8 majority. At the next election, they flipped another Republican seat.

Even the most sophisticated districting maps cannot reliably account for some of the reasons voters prefer one candidate over another, or why their preferences may change. Voters elect individual candidates in individual districts, and their selections depend on the issues that matter to them, the quality of the candidates, the tone of the candidates' campaigns, the performance of an incumbent, national events or local issues that drive voter turn-out, and other considerations. Many voters split their tickets. Others never register with a political party, and vote for candidates from both major parties at different points during their lifetimes. For all of those reasons, asking judges to predict how a particular districting map will perform in future elections risks basing constitutional holdings on unstable ground outside judicial expertise.

It is hard to see what the District Court's third prong—providing the defendant an opportunity to show that the discriminatory effects were due to a "legitimate redistricting objective"—adds to the inquiry. 318 F.Supp.3d, at 861. The first prong already requires the plaintiff to prove that partisan advantage predominates. Asking whether a legitimate purpose other than partisanship was the motivation for a particular districting map just restates the question.

B

The District Courts also found partisan gerrymandering claims justiciable under the First Amendment, coalescing around a basic three-part test: proof of intent to burden individuals based on their voting history or party affiliation; an actual burden on political speech or associational rights; and a causal link between the invidious intent and actual burden. See *Common Cause*, 318 F.Supp.3d, at 929; *Benisek*, 348 F.Supp.3d, at 522. Both District Courts concluded that the districting plans at issue violated the plaintiffs' First Amendment right to association. The District Court in North Carolina relied on testimony that, after the 2016 Plan was put in place, the plaintiffs faced "difficulty raising money, attracting candidates, and mobilizing voters to support the political causes and issues such Plaintiffs sought to advance." 318 F.Supp.3d, at 932. Similarly, the District Court in Maryland examined testimony that "revealed a lack of enthusiasm, indifference

to voting, a sense of disenfranchisement, a sense of disconnection, and confusion," and concluded that Republicans in the Sixth District "were burdened in fundraising, attracting volunteers, campaigning, and generating interest in voting." 348 F.Supp.3d, at 523–524.

To begin, there are no restrictions on speech, association, or any other First Amendment activities in the districting plans at issue. The plaintiffs are free to engage in those activities no matter what the effect of a plan may be on their district.

The plaintiffs' argument is that partisanship in districting should be regarded as simple discrimination against supporters of the opposing party on the basis of political viewpoint. Under that theory, any level of partisanship in districting would constitute an infringement of their First Amendment rights. But as the Court has explained, "[i]t would be idle . . . to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it." *Gaffney*, 412 U.S., at 752. The First Amendment test simply describes the act of districting for partisan advantage. It provides no standard for determining when partisan activity goes too far.

As for actual burden, the slight anecdotal evidence found sufficient by the District Courts in these cases shows that this too is not a serious standard for separating constitutional from unconstitutional partisan gerrymandering. The District Courts relied on testimony about difficulty drumming up volunteers and enthusiasm. How much of a decline in voter engagement is enough to constitute a First Amendment burden? How many door knocks must go unanswered? How many petitions unsigned? How many calls for volunteers unheeded? The *Common Cause* District Court held that a partisan gerrymander places an unconstitutional burden on speech if it has more than a "de minimis" "chilling effect or adverse impact" on any First Amendment activity. 318 F.Supp.3d, at 930.The court went on to rule that there would be an adverse effect "even if the speech of [the plaintiffs] was not in fact chilled"; it was enough that the districting plan "makes it easier for supporters of Republican candidates to translate their votes into seats," thereby "enhanc[ing] the[ir] relative voice." Id., at 933 (internal quotation marks omitted).

These cases involve blatant examples of partisanship driving districting decisions. But the First Amendment analysis below offers no "clear" and "manageable" way of distinguishing permissible from impermissible partisan motivation. The *Common Cause* court embraced that conclusion, observing that "a judicially manageable framework for evaluating partisan gerrymandering claims need not distinguish an 'acceptable' level of partisan gerrymandering from 'excessive' partisan gerrymandering" because "the Constitution does not authorize state redistricting bodies to engage in such partisan gerrymandering." Id., at 851. The decisions below prove the prediction of the *Vieth* plurality that "a First Amendment claim, if it were sustained, would render unlawful all consideration of political affiliation in districting," 541 U.S., at 294, contrary to our established precedent.

C

The dissent proposes using a State's own districting criteria as a neutral baseline from which to measure how extreme a partisan gerrymander is. The dissent would have us line up all the possible maps drawn using those criteria according to the partisan distribution they would produce. Distance from the "median" map would indicate whether a particular districting plan harms supporters of one party to an unconstitutional extent. . . .

As an initial matter, it does not make sense to use criteria that will vary from State to State and year to year as the baseline for determining whether a gerrymander violates the Federal Constitution. The degree of partisan advantage that the Constitution tolerates should not turn on criteria offered by the gerrymanderers themselves. It is easy to imagine how different criteria could move the median map toward different partisan distributions. As a result, the same map could be constitutional or not depending solely on what the mapmakers said they set out to do. That possibility illustrates that the dissent's proposed constitutional test is indeterminate and arbitrary.

Even if we were to accept the dissent's proposed baseline, it would return us to "the original unanswerable question (How much political motivation and effect is too much?)." *Vieth*, 541 U.S., at 296–297 (plurality opinion). Would twenty percent away from the median map be okay? Forty percent? Sixty percent? Why or why not? (We appreciate that the dissent finds all the unanswerable questions annoying, . . . , but it seems a useful way to make the point.) The dissent's answer says it all: "This much is too much." . . . That is not even trying to articulate a standard or rule.

The dissent argues that there are other instances in law where matters of degree are left to the courts. . . . True enough. But those instances typically involve constitutional or statutory provisions or common law confining and guiding the exercise of judicial discretion. For example, the dissent cites the need to determine "substantial anticompetitive effect[s]" in antitrust law. . . . (citing Ohio v. American Express Co., 585 U.S. ___ (2018)). That language, however, grew out of the Sherman Act, understood from the beginning to have its "origin in the common law" and to be "familiar in the law of this country prior to and at the time of the adoption of the[A]ct." Standard Oil Co. of N. J. v. United States, 221 U.S. 1, 51 (1911). Judges began with a significant body of law about what constituted a legal violation. In other cases, the pertinent statutory terms draw meaning from related provisions or statutory context. Here, on the other hand, the Constitution provides no basis whatever to guide the exercise of judicial discretion. Common experience gives content to terms such as "substantial risk" or "substantial harm," but the same cannot be said of substantial deviation from a median map. There is no way to tell whether the prohibited deviation from that map should kick in at 25 percent or 75 percent or some other point. The only provision in the Constitution that specifically addresses the matter assigns it to the political branches. See Art. I, § 4, cl. 1.

D

The North Carolina District Court further concluded that the 2016 Plan violated the Elections Clause and Article I, § 2. We are unconvinced by that novel approach.

Article I, § 2, provides that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States." 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." Art. I, § 4, cl. 1.

The District Court concluded that the 2016 Plan exceeded the North Carolina General Assembly's Elections Clause authority because, among other reasons, "the Elections Clause did not empower State legislatures to disfavor the interests of supporters of a particular candidate or party in drawing congressional districts." 318 F.Supp.3d, at 937. The court further held that partisan gerrymandering infringes the right of "the People" to select their representatives. Id., at 938–940. Before the District Court's decision, no court had reached a similar conclusion. In fact, the plurality in *Vieth* concluded—without objection from any other Justice—that neither § 2 nor § 4 of Article I "provides a judicially enforceable limit on the political considerations that the States and Congress may take into account when districting." 541 U.S., at 305.

The District Court nevertheless asserted that partisan gerrymanders violate "the core principle of [our] republican government" preserved in Art. I, § 2, "namely, that the voters should choose their representatives, not the other way around." 318 F.Supp.3d, at 940 (quoting Arizona State Legislature, 576 U.S., at ___ (slip op., at 35); internal quotation marks omitted; alteration in original). That seems like an objection more properly grounded in the Guarantee Clause of Article IV, § 4, which "guarantee[s] to every State in [the] Union a Republican Form of Government." This Court has several times concluded, however, that the Guarantee Clause does not provide the basis for a justiciable claim. See, e.g., Pacific States Telephone & Telegraph Co. v. Oregon, 223 U.S. 118 (1912).

V

Excessive partisanship in districting leads to results that reasonably seem unjust. But the fact that such gerrymandering is "incompatible with democratic principles," *Arizona State Legislature*, 576 U.S., at ___ (slip op., at 1), does not mean that the solution lies with the federal judiciary. We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions. "[J]udicial action must be governed by standard, by rule," and must be "principled, rational, and based upon reasoned distinctions" found in the Constitution or laws. *Vieth*, 541 U.S., at 278, 279 (plurality opinion). Judicial review of partisan gerrymandering does not meet those basic requirements.

Today the dissent essentially embraces the argument that the Court unanimously rejected in *Gill*: "this Court can address the problem of partisan gerrymandering because

it must." 585 U.S., at ___ (slip op., at 12). That is not the test of our authority under the Constitution; that document instead "confines the federal courts to a properly judicial role." Town of Chester v. Laroe Estates, Inc., 581 U.S. ___, ___ (2017) (slip op., at 4).

What the appellees and dissent seek is an unprecedented expansion of judicial power. We have never struck down a partisan gerrymander as unconstitutional—despite various requests over the past 45 years. The expansion of judicial authority would not be into just any area of controversy, but into one of the most intensely partisan aspects of American political life. That intervention would be unlimited in scope and duration—it would recur over and over again around the country with each new round of districting, for state as well as federal representatives. Consideration of the impact of today's ruling on democratic principles cannot ignore the effect of the unelected and politically unaccountable branch of the Federal Government assuming such an extraordinary and unprecedented role. . . .

Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void. The States, for example, are actively addressing the issue on a number of fronts. In 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. League of Women Voters of Florida v. Detzner, 172 So.3d 363 (2015). The dissent wonders why we can't do the same. . . . The answer is that there is no "Fair Districts Amendment" to the Federal Constitution. Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply. (We do not understand how the dissent can maintain that a provision saying that no districting plan "shall be drawn with the intent to favor or disfavor a political party" provides little guidance on the question. . . .) Indeed, numerous other States are restricting partisan considerations in districting through legislation. One way they are doing so is by placing power to draw electoral districts in the hands of independent commissions. For example, in November 2018, voters in Colorado and Michigan approved constitutional amendments creating multimember commissions that will be responsible in whole or in part for creating and approving district maps for congressional and state legislative districts. See Colo. Const., Art. V, §§ 44, 46; Mich. Const., Art. IV, § 6. Missouri is trying a different tack. Voters there overwhelmingly approved the creation of a new position—state demographer—to draw state legislative district lines. Mo. Const., Art. III, § 3.

Other States have mandated at least some of the traditional districting criteria for their mapmakers. Some have outright prohibited partisan favoritism in redistricting. See Fla. Const., Art. III, § 20(a) ("No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent."); Mo. Const., Art. III, § 3 ("Districts shall be designed in a manner that achieves both partisan fairness and, secondarily, competitiveness. 'Partisan fairness' means that parties shall be able to translate their popular support into legislative representation with approximately equal efficiency."); Iowa Code § 42.4(5) (2016) ("No district shall be drawn for the purpose of favoring a political party, incumbent legislator or member of Congress, or other person or group."); Del. Code Ann., Tit. xxix, § 804 (2017) (providing that in determining district

boundaries for the state legislature, no district shall "be created so as to unduly favor any person or political party").

As noted, the Framers gave Congress the power to do something about partisan gerrymandering in the Elections Clause. The first bill introduced in the 116th Congress would require States to create 15-member independent commissions to draw congressional districts and would establish certain redistricting criteria, including protection for communities of interest, and ban partisan gerrymandering. H.R. 1, 116th Cong., 1st Sess., §§ 2401, 2411 (2019).

Dozens of other bills have been introduced to limit reliance on political considerations in redistricting. In 2010, H.R. 6250 would have required States to follow standards of compactness, contiguity, and respect for political subdivisions in redistricting. It also would have prohibited the establishment of congressional districts "with the major purpose of diluting the voting strength of any person, or group, including any political party," except when necessary to comply with the Voting Rights Act of 1965. H.R. 6250, 111th Cong., 2d Sess., § 2 (referred to committee).

Another example is the Fairness and Independence in Redistricting Act, which was introduced in 2005 and has been reintroduced in every Congress since. That bill would require every State to establish an independent commission to adopt redistricting plans. The bill also set forth criteria for the independent commissions to use, such as compactness, contiguity, and population equality. It would prohibit consideration of voting history, political party affiliation, or incumbent Representative's residence. H.R. 2642, 109th Cong., 1st Sess., § 4 (referred to subcommittee).

We express no view on any of these pending proposals. We simply note that the avenue for reform established by the Framers, and used by Congress in the past, remains open.

* * *

No one can accuse this Court of having a crabbed view of the reach of its competence. But we have no commission to allocate political power and influence in the absence of a constitutional directive or legal standards to guide us in the exercise of such authority. "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 1 Cranch, at 177. In this rare circumstance, that means our duty is to say "this is not law." The judgments of the United States District Court for the Middle District of North Carolina and the United States District Court for the District of Maryland are vacated, and the cases are remanded with instructions to dismiss for lack of jurisdiction.

It is so ordered.

JUSTICE KAGAN, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, dissenting.

For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities.

And not just any constitutional violation. The partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives. In so doing, the partisan gerrymanders here debased and dishonored our democracy, turning upside-down the core American idea that all governmental power derives from the people. These gerrymanders enabled politicians to entrench themselves in office as against voters' preferences. They promoted partisanship above respect for the popular will. They encouraged a politics of polarization and dysfunction. If left unchecked, gerrymanders like the ones here may irreparably damage our system of government.

And checking them is *not* beyond the courts. The majority's abdication comes just when courts across the country, including those below, have coalesced around manageable judicial standards to resolve partisan gerrymandering claims. Those standards satisfy the majority's own benchmarks. They do not require—indeed, they do not permit—courts to rely on their own ideas of electoral fairness, whether proportional representation or any other. And they limit courts to correcting only egregious gerrymanders, so judges do not become omnipresent players in the political process. But yes, the standards used here do allow—as well they should—judicial intervention in the worst-of-the-worst cases of democratic subversion, causing blatant constitutional harms. In other words, they allow courts to undo partisan gerrymanders of the kind we face today from North Carolina and Maryland. In giving such gerrymanders a pass from judicial review, the majority goes tragically wrong.

* * *

B

Now back to the question I asked before: Is that how American democracy is supposed to work? I have yet to meet the person who thinks so.

"Governments," the Declaration of Independence states, "deriv[e] their just Powers from the Consent of the Governed." The Constitution begins: "We the People of the United States." The Gettysburg Address (almost) ends: "[G]overnment of the people, by the people, for the people." If there is a single idea that made our Nation (and that our Nation commended to the world), it is this one: The people are sovereign. The "power," James Madison wrote, "is in the people over the Government, and not in the Government over the people." 4 Annals of Cong. 934 (1794).

Free and fair and periodic elections are the key to that vision. The people get to choose their representatives. And then they get to decide, at regular intervals, whether to keep them. Madison again: "[R]epublican liberty" demands "not only, that all power should be derived from the people; but that those entrusted with it should be kept in

dependence on the people." 2 The Federalist No. 37, p.4 (J. & A. McLean eds.1788). Members of the House of Representatives, in particular, are supposed to "recollect[][that] dependence" every day. Id., No. 57, at 155. To retain an "intimate sympathy with the people," they must be "compelled to anticipate the moment" when their "exercise of [power] is to be reviewed." Id., Nos. 52, 57, at 124, 155. Election day—next year, and two years later, and two years after that—is what links the people to their representatives, and gives the people their sovereign power. That day is the foundation of democratic governance.

And partisan gerrymandering can make it meaningless. At its most extreme—as in North Carolina and Maryland—the practice amounts to "rigging elections." Vieth v. Jubelirer, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring in judgment) (internal quotation marks omitted). By drawing districts to maximize the power of some voters and minimize the power of others, a party in office at the right time can entrench itself there for a decade or more, no matter what the voters would prefer. Just ask the people of North Carolina and Maryland. The "core principle of republican government," this Court has recognized, is "that the voters should choose their representatives, not the other way around." Arizona State Legislature v. Arizona Independent Redistricting Comm'n, 576 U.S. ___, ___ (2015) (slip op., at 35) (internal quotation marks omitted). Partisan gerrymandering turns it the other way around. By that mechanism, politicians can cherry-pick voters to ensure their reelection. And the power becomes, as Madison put it, "in the Government over the people." 4 Annals of Cong. 934.

The majority disputes none of this. I think it important to underscore that fact: The majority disputes none of what I have said (or will say) about how gerrymanders undermine democracy. Indeed, the majority concedes (really, how could it not?) that gerrymandering is "incompatible with democratic principles." . . . And therefore what? That recognition would seem to demand a response. The majority offers two ideas that might qualify as such. One is that the political process can deal with the problem—a proposition so dubious on its face that I feel secure in delaying my answer for some time. . . . The other is that political gerrymanders have always been with us. . . . To its credit, the majority does not frame that point as an originalist constitutional argument. After all (as the majority rightly notes), racial and residential gerrymanders were also once with us, but the Court has done something about that fact[2]. . . . The majority's idea instead seems to be that if we have lived with partisan gerrymanders so long, we will survive.

That complacency has no cause. Yes, partisan gerrymandering goes back to the Republic's earliest days. (As does vociferous opposition to it.) But big data and modern technology—of just the kind that the mapmakers in North Carolina and Maryland used—make today's gerrymandering altogether different from the crude line drawing of the past. Old-time efforts, based on little more than guesses, sometimes led to so-called

[2] And even putting that aside, any originalist argument would have to deal with an inconvenient fact. The Framers originally viewed political parties themselves (let alone their most partisan actions) with deep suspicion, as fomenters of factionalism and "symptom[s] of disease in the body politic." G. Wood, Empire of Liberty: A History of the Early Republic, 1789–1815, p.140 (2009).

dummymanders—gerrymanders that went spectacularly wrong. Not likely in today's world. Mapmakers now have access to more granular data about party preference and voting behavior than ever before. County-level voting data has given way to precinct-level or city-block-level data; and increasingly, mapmakers avail themselves of data sets providing wide-ranging information about even individual voters. See Brief for Political Science Professors as Amici Curiae 20–22. Just as important, advancements in computing technology have enabled mapmakers to put that information to use with unprecedented efficiency and precision. See id., at 22–25. While bygone mapmakers may have drafted three or four alternative districting plans, today's map-makers can generate thousands of possibilities at the touch of a key—and then choose the one giving their party maximum advantage (usually while still meeting traditional districting requirements). The effect is to make gerrymanders far more effective and durable than before, insulating politicians against all but the most titanic shifts in the political tides. These are not your grandfather's—let alone the Framers'—gerrymanders.

The proof is in the 2010 pudding. That redistricting cycle produced some of the most extreme partisan gerrymanders in this country's history. . . . [T]he voters in [North Carolina and Maryland] were not the only ones to fall prey to such districting perversions. Take Pennsylvania. In the three congressional elections occurring under the State's original districting plan (before the State Supreme Court struck it down), Democrats received between 45% and 51% of the statewide vote, but won only 5 of 18 House seats. See League of Women Voters v. Pennsylvania, ___ Pa. ___, ___, 178 A.3d 737, 764 (2018). Or go next door to Ohio. There, in four congressional elections, Democrats tallied between 39% and 47% of the statewide vote, but never won more than 4 of 16 House seats. See Ohio A. Philip Randolph Inst. v. Householder, 373 F.Supp.3d 978, 1074 (SD Ohio 2019). (Nor is there any reason to think that the results in those States stemmed from political geography or non-partisan districting criteria, rather than from partisan manipulation. . . .) And gerrymanders will only get worse (or depending on your perspective, better) as time goes on—as data becomes ever more fine-grained and data analysis techniques continue to improve. What was possible with paper and pen—or even with Windows 95—doesn't hold a candle (or an LED bulb?) to what will become possible with developments like machine learning. And someplace along this road, "we the people" become sovereign no longer.

C

Partisan gerrymandering of the kind before us not only subverts democracy (as if that weren't bad enough). It violates individuals' constitutional rights as well. That statement is not the lonesome cry of a dissenting Justice. This Court has recognized extreme partisan gerrymandering as such a violation for many years.

Partisan gerrymandering operates through vote dilution—the devaluation of one citizen's vote as compared to others. A mapmaker draws district lines to "pack" and "crack" voters likely to support the disfavored party. See generally Gill v. Whitford, 585 U.S. ___, ___–___ (2018) (slip op., at 14–16). He packs supermajorities of those voters into a relatively few districts, in numbers far greater than needed for their preferred

candidates to prevail. Then he cracks the rest across many more districts, spreading them so thin that their candidates will not be able to win. Whether the person is packed or cracked, his vote carries less weight—has less consequence—than it would under a neutrally drawn (non-partisan) map. See id., at ___ (Kagan, J., concurring) (slip op., at 4). In short, the mapmaker has made some votes count for less, because they are likely to go for the other party.

That practice implicates the Fourteenth Amendment's Equal Protection Clause. The Fourteenth Amendment, we long ago recognized, "guarantees the opportunity for equal participation by all voters in the election" of legislators. Reynolds v. Sims, 377 U.S. 533, 566 (1964). And that opportunity "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Id., at 555. Based on that principle, this Court in its one-person-one-vote decisions prohibited creating districts with significantly different populations. A State could not, we explained, thus "dilut[e] the weight of votes because of place of residence." Id., at 566. The constitutional injury in a partisan gerrymandering case is much the same, except that the dilution is based on party affiliation. In such a case, too, the districters have set out to reduce the weight of certain citizens' votes, and thereby deprive them of their capacity to "full[y] and effective[ly] participat[e] in the political process[]." Id., at 565. As Justice Kennedy (in a controlling opinion) once hypothesized: If districters declared that they were drawing a map "so as most to burden [the votes of] Party X's" supporters, it would violate the Equal Protection Clause. *Vieth*, 541 U.S., at 312. For (in the language of the one-person-one-vote decisions) it would infringe those voters' rights to "equal [electoral] participation." *Reynolds*, 377 U.S., at 566; see Gray v. Sanders, 372 U.S. 368, 379–380 (1963) ("The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications").

And partisan gerrymandering implicates the First Amendment too. That Amendment gives its greatest protection to political beliefs, speech, and association. Yet partisan gerrymanders subject certain voters to "disfavored treatment"—again, counting their votes for less—precisely because of "their voting history [and] their ex-pression of political views." *Vieth*, 541 U.S., at 314 (opinion of Kennedy, J.). And added to that strictly personal harm is an associational one. Representative democracy is "unimaginable without the ability of citizens to band together in [support of] candidates who espouse their political views." California Democratic Party v. Jones, 530 U.S. 567, 574 (2000). By diluting the votes of certain citizens, the State frustrates their efforts to translate those affiliations into political effectiveness. See *Gill*, 585 U.S., at ___ (Kagan, J., concurring) (slip op., at 9) ("Members of the disfavored party[,] deprived of their natural political strength[,] may face difficulties fundraising, registering voters, [and] eventually accomplishing their policy objectives"). In both those ways, partisan gerrymanders of the kind we confront here undermine the protections of "democracy embodied in the First Amendment." Elrod v. Burns, 427 U.S. 347, 357 (1976) (internal quotation marks omitted).

Though different Justices have described the constitutional harm in diverse ways, nearly all have agreed on this much: Extreme partisan gerrymandering (as happened in North Carolina and Maryland) violates the Constitution. See, e.g., *Vieth*, 541 U.S., at 293 (plurality opinion) ("[A]n excessive injection of politics [in districting] is unlawful" (emphasis deleted)); id., at 316 (opinion of Kennedy, J.) ("[P]artisan gerrymandering that disfavors one party is [im]permissible"); id., at 362 (Breyer, J., dissenting) (Gerrymandering causing political "entrenchment" is a "violat[ion of] the Constitution's Equal Protection Clause"); Davis v. Bandemer, 478 U.S. 109, 132 (1986) (plurality opinion) ("[U]nconstitutional discrimination" occurs "when the electoral system is arranged in a manner that will consistently degrade [a voter's] influence on the political process"); id., at 165 (Powell, J., concurring) ("Unconstitutional gerrymandering" occurs when "the boundaries of the voting districts have been distorted deliberately" to deprive voters of "an equal opportunity to participate in the State's legislative processes"). Once again, the majority never disagrees; it appears to accept the "principle that each person must have an equal say in the election of representatives." . . . And indeed, without this settled and shared understanding that cases like these inflict constitutional injury, the question of whether there are judicially manageable standards for resolving them would never come up.

II

So the only way to understand the majority's opinion is as follows: In the face of grievous harm to democratic governance and flagrant infringements on individuals' rights—in the face of escalating partisan manipulation whose compatibility with this Nation's values and law no one defends—the majority declines to provide any remedy. For the first time in this Nation's history, the majority declares that it can do nothing about an acknowledged constitutional violation because it has searched high and low and cannot find a workable legal standard to apply.

The majority gives two reasons for thinking that the adjudication of partisan gerrymandering claims is beyond judicial capabilities. First and foremost, the majority says, it cannot find a neutral baseline—one not based on contestable notions of political fairness—from which to measure injury. . . . According to the majority, "[p]artisan gerrymandering claims invariably sound in a desire for proportional representation." . . . But the Constitution does not mandate proportional representation. So, the majority contends, resolving those claims "inevitably" would require courts to decide what is "fair" in the context of districting. . . . They would have "to make their own political judgment about how much representation particular political parties deserve" and "to rearrange the challenged districts to achieve that end." Ibid. (emphasis in original). And second, the majority argues that even after establishing a baseline, a court would have no way to answer "the determinative question: 'How much is too much?'" . . . No "discernible and manageable" standard is available, the majority claims—and so courts could willy-nilly become embroiled in fixing every districting plan. . . .

I'll give the majority this one—and important—thing: It identifies some dangers everyone should want to avoid. Judges should not be apportioning political power based

on their own vision of electoral fairness, whether proportional representation or any other. And judges should not be striking down maps left, right, and center, on the view that every smidgen of politics is a smidgen too much. Respect for state legislative processes—and restraint in the exercise of judicial authority—counsels intervention in only egregious cases.

But in throwing up its hands, the majority misses something under its nose: What it says can't be done has been done. Over the past several years, federal courts across the country—including, but not exclusively, in the decisions below—have largely converged on a standard for adjudicating partisan gerrymandering claims (striking down both Democratic and Republican districting plans in the process). See also Ohio A. Philip Randolph Inst., 373 F.Supp.3d 978; League of Women Voters of Michigan v. Benson, 373 F. Supp. 3d 867 (E.D.Mich.2019). And that standard does what the majority says is impossible. The standard does not use any judge-made conception of electoral fairness—either proportional representation or any other; instead, it takes as its baseline a State's own criteria of fairness, apart from partisan gain. And by requiring plaintiffs to make difficult showings relating to both purpose and effects, the standard invalidates the most extreme, but only the most extreme, partisan gerrymanders.

* * *

III

This Court has long understood that it has a special responsibility to remedy violations of constitutional rights resulting from politicians' districting decisions. Over 50 years ago, we committed to providing judicial review in that sphere, recognizing as we established the one-person-one-vote rule that "our oath and our office require no less." Reynolds, 377 U.S., at 566. Of course, our oath and our office require us to vindicate all constitutional rights. But the need for judicial review is at its most urgent in cases like these. "For here, politicians' incentives conflict with voters' interests, leaving citizens without any political remedy for their constitutional harms." *Gill*, 585 U.S., at ___ (Kagan, J., concurring) (slip op., at 14). Those harms arise because politicians want to stay in office. No one can look to them for effective relief.

The majority disagrees, concluding its opinion with a paean to congressional bills limiting partisan gerrymanders. "Dozens of [those] bills have been introduced," the majority says. . . . One was "introduced in 2005 and has been reintroduced in every Congress since." Ibid. And might be reintroduced until the end of time. Because what all these bills have in common is that they are not laws. The politicians who benefit from partisan gerrymandering are unlikely to change partisan gerrymandering. And because those politicians maintain themselves in office through partisan gerrymandering, the chances for legislative reform are slight.

No worries, the majority says; it has another idea. The majority notes that voters themselves have recently approved ballot initiatives to put power over districting in the hands of independent commissions or other non-partisan actors. . . . Some Members of

the majority, of course, once thought such initiatives unconstitutional. See *Arizona State Legislature*, 576 U.S., at ___ (Roberts, C.J., dissenting) (slip op., at 1). But put that aside. Fewer than half the States offer voters an opportunity to put initiatives to direct vote; in all the rest (including North Carolina and Maryland), voters are dependent on legislators to make electoral changes (which for all the reasons already given, they are unlikely to do). And even when voters have a mechanism they can work themselves, legislators often fight their efforts tooth and nail. Look at Missouri. There, the majority touts a voter-approved proposal to turn districting over to a state demographer. . . . But before the demographer had drawn a single line, Members of the state legislature had introduced a bill to start undoing the change. See Mo. H. J. Res. 48, 100th Gen. Assembly, 1st Reg. Sess. (2019). I'd put better odds on that bill's passage than on all the congressional proposals the majority cites.

The majority's most perplexing "solution" is to look to state courts. . . . "[O]ur conclusion," the majority states, does not "condemn complaints about districting to echo into a void": Just a few years back, "the Supreme Court of Florida struck down that State's congressional districting plan as a violation" of the State Constitution. . . .; see League of Women Voters of Florida v. Detzner, 172 So.3d 363 (2015). And indeed, the majority might have added, the Supreme Court of Pennsylvania last year did the same thing. See League of Women Voters, ___ Pa., at ___, 178 A.3d, at 818. But what do those courts know that this Court does not? If they can develop and apply neutral and manageable standards to identify unconstitutional gerrymanders, why couldn't we?[3]

We could have, and we should have. The gerrymanders here—and they are typical of many—violated the constitutional rights of many hundreds of thousands of American citizens. Those voters (Republicans in the one case, Democrats in the other) did not have an equal opportunity to participate in the political process. Their votes counted for far less than they should have because of their partisan affiliation. When faced with such constitutional wrongs, courts must intervene: "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 1 Cranch 137, 177 (1803). That is what the courts below did. Their decisions are worth a read. They (and others that have recently remedied similar violations) are detailed, thorough, painstaking. They evaluated with immense care the factual evidence and legal arguments the parties presented. They used neutral and manageable and strict

[3] Contrary to the majority's suggestion, state courts do not typically have more specific "standards and guidance" to apply than federal courts have. . . . The Pennsylvania Supreme Court based its gerrymandering decision on a constitutional clause providing only that "elections shall be free and equal" and no one shall "interfere to prevent the free exercise of the right of suffrage." League of Women Voters, ___ Pa., at ___–___, 178 A.3d, at 803–804 (quoting Pa. Const., Art. I, §5). And even the Florida "Free Districts Amendment," which the majority touts, says nothing more than that no districting plan "shall be drawn with the intent to favor or disfavor a political party." Fla. Const., Art. III, § 20(a). If the majority wants the kind of guidance that will keep courts from intervening too far in the political sphere, . . . that Amendment does not provide it: The standard is in fact a good deal less exacting than the one the District Courts below applied. In any event, only a few States have a constitutional provision like Florida's, so the majority's state-court solution does not go far.

standards. They had not a shred of politics about them. Contra the majority, . . ., this was law.

That is not to deny, of course, that these cases have great political consequence. They do. Among the amicus briefs here is one from a bipartisan group of current and former Members of the House of Representatives. They describe all the ways partisan gerrymandering harms our political system—what they call "a cascade of negative results." Brief as Amicus Curiae 5. These artificially drawn districts shift influence from swing voters to party-base voters who participate in primaries; make bipartisanship and pragmatic compromise politically difficult or impossible; and drive voters away from an ever more dysfunctional political process. See id., at 5–6. Last year, we heard much the same from current and former state legislators. In their view, partisan gerrymandering has "sounded the death-knell of bipartisanship," creating a legislative environment that is "toxic" and "tribal." Brief as Amicus Curiae in Gill v. Whitford, O. T. 2016, No. 16–1161, pp.6, 25. Gerrymandering, in short, helps create the polarized political system so many Americans loathe.

And gerrymandering is, as so many Justices have emphasized before, anti-democratic in the most profound sense. . . . In our government, "all political power flows from the people." *Arizona State Legislature*, 576 U.S., at ___ (slip op., at 35). And that means, as Alexander Hamilton once said, "that the people should choose whom they please to govern them." 2 Debates on the Constitution 257 (J. Elliot ed.1891). But in Maryland and North Carolina they cannot do so. In Maryland, election in and election out, there are 7 Democrats and 1 Republican in the congressional delegation. In North Carolina, however the political winds blow, there are 10 dissenting Republicans and 3 Democrats. Is it conceivable that someday voters will be able to break out of that prefabricated box? Sure. But everything possible has been done to make that hard. To create a world in which power does not flow from the people because they do not choose their governors.

Of all times to abandon the Court's duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government. Part of the Court's role in that system is to defend its foundations. None is more important than free and fair elections. With respect but deep sadness, I dissent.

Page 82. Insert the following after Spokeo, Inc. v. Robins

Virginia House of Delegates v. Bethune-Hill

Supreme Court of the United States, 2019.
587 U.S. ___, 139 S.Ct. 1945, 204 L.Ed.2d 305

• JUSTICE GINSBURG delivered the opinion of the Court.

The Court resolves in this opinion a question of standing to appeal. In 2011, after the 2010 census, Virginia redrew legislative districts for the State's Senate and House of Delegates. Voters in 12 of the impacted House districts sued two Virginia state agencies and four election officials (collectively, State Defendants) charging that the redrawn districts were racially gerrymandered in violation of the Fourteenth Amendment's Equal Protection Clause. The Virginia House of Delegates and its Speaker (collectively, the House) intervened as defendants and carried the laboring oar in urging the constitutionality of the challenged districts at a bench trial, see Bethune-Hill v. Virginia State Bd. of Elections, 141 F.Supp.3d 505 (E.D.Va. 2015), on appeal to this Court, see Bethune-Hill v. Virginia State Bd. of Elections, 580 U.S. ___, 137 S.Ct. 788, 197 L.Ed.2d 85 (2017), and at a second bench trial. In June 2018, after the second bench trial, a three-judge District Court in the Eastern District of Virginia, dividing 2 to 1, held that in 11 of the districts "the [S]tate ha[d] [unconstitutionally] sorted voters . . . based on the color of their skin." Bethune-Hill v. Virginia State Bd. of Elections, 326 F.Supp.3d 128, 180 (2018). The court therefore enjoined Virginia "from conducting any elections . . . for the office of Delegate . . . in the Challenged Districts until a new redistricting plan is adopted." Id.., at 227. Recognizing the General Assembly's "primary jurisdiction" over redistricting, the District Court gave the General Assembly approximately four months to "adop[t] a new redistricting plan that eliminate[d] the constitutional infirmity." Ibid.

A few weeks after the three-judge District Court's ruling, Virginia's Attorney General announced, both publicly and in a filing with the District Court, that the State would not pursue an appeal to this Court. Continuing the litigation, the Attorney General concluded, "would not be in the best interest of the Commonwealth or its citizens." . . . The House, however, filed an appeal to this Court, . . . which the State Defendants moved to dismiss for want of standing. We postponed probable jurisdiction, 586 U.S. ___, 139 S.Ct. 481, 202 L.Ed.2d 374 (2018), and now grant the State Defendants' motion. The House, we hold, lacks authority to displace Virginia's Attorney General as representative of the State. We further hold that the House, as a single chamber of a bicameral legislature, has no standing to appeal the invalidation of the redistricting plan separately from the State of which it is a part.

I

To reach the merits of a case, an Article III court must have jurisdiction. "One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so." Hollingsworth v. Perry, 570 U.S. 693 (2013).

The three elements of standing, this Court has reiterated, are (1) a concrete and particularized injury, that (2) is fairly traceable to the challenged conduct, and (3) is likely to be redressed by a favorable decision. Ibid. (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992)). Although rulings on standing often turn on a plaintiff's stake in initially filing suit, "Article III demands that an 'actual controversy' persist throughout all stages of litigation." *Hollingsworth*, 570 U.S. at 705 (quoting Already, LLC v. Nike, Inc., 568 U.S. 85, 90–91 (2013)). The standing requirement therefore "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997). As a jurisdictional requirement, standing to litigate cannot be waived or forfeited. And when standing is questioned by a court or an opposing party, the litigant invoking the court's jurisdiction must do more than simply allege a nonobvious harm. See Wittman v. Personhuballah, 578 U.S. ___, ___, 136 S.Ct. 1732, 1736–1737 (2016). To cross the standing threshold, the litigant must explain how the elements essential to standing are met.

Before the District Court, the House participated in both bench trials as an intervenor in support of the State Defendants. And in the prior appeal to this Court, the House participated as an appellee. Because neither role entailed invoking a court's jurisdiction, it was not previously incumbent on the House to demonstrate its standing. That situation changed when the House alone endeavored to appeal from the District Court's order holding 11 districts unconstitutional, thereby seeking to invoke this Court's jurisdiction. As the Court has repeatedly recognized, to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing. *Wittman*, 578 U.S. ___, 136 S.Ct. 1732; Diamond v. Charles, 476 U.S. 54 (1986). We find unconvincing the House's arguments that it has standing, either to represent the State's interests or in its own right.

II

A

The House urges first that it has standing to represent the State's interests. Of course, "a State has standing to defend the constitutionality of its statute." Id., at 62. No doubt, then, the State itself could press this appeal. And, as this Court has held, "a State must be able to designate agents to represent it in federal court." *Hollingsworth*, 570 U.S. at 710. So if the State had designated the House to represent its interests, and if the House had in fact carried out that mission, we would agree that the House could stand in for the State. Neither precondition, however, is met here.

To begin with, the House has not identified any legal basis for its claimed authority to litigate on the State's behalf. Authority and responsibility for representing the State's interests in civil litigation, Virginia law prescribes, rest exclusively with the State's Attorney General:

> "All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge . . . shall be rendered and performed by the Attorney General, except as provided in this chapter and except for [certain judicial misconduct proceedings]." Va. Code Ann. § 2.2–507(A) (2017).

Virginia has thus chosen to speak as a sovereign entity with a single voice. In this regard, the State has adopted an approach resembling that of the Federal Government, which "centraliz[es]" the decision whether to seek certiorari by "reserving litigation in this Court to the Attorney General and the Solicitor General." United States v. Providence Journal Co., 485 U.S. 693, 706 (1988) (dismissing a writ of certiorari sought by a special prosecutor without authorization from the Solicitor General); see 28 U.S.C. § 518(a); 28 C.F.R. § 0.20(a) (2018). Virginia, had it so chosen, could have authorized the House to litigate on the State's behalf, either generally or in a defined class of cases. *Hollingsworth*, 570 U.S. at 710. Some States have done just that. Indiana, for example, empowers "[t]he House of Representatives and Senate of the Indiana General Assembly . . . to employ attorneys other than the Attorney General to defend any law enacted creating legislative or congressional districts for the State of Indiana." Ind. Code § 2–3–8–1 (2011). But the choice belongs to Virginia, and the House's argument that it has authority to represent the State's interests is foreclosed by the State's contrary decision.

The House observes that Virginia state courts have permitted it to intervene to defend legislation. But the sole case the House cites on this point—Vesilind v. Virginia State Bd. of Elections, 813 S.E.2d 739 (2018)—does not bear the weight the House would place upon it. In *Vesilind*, the House intervened in support of *defendants* in the trial court, and continued to *defend* the trial court's favorable judgment on appeal. Id., at 742. The House's participation in *Vesilind* thus occurred in the same defensive posture as did the House's participation in earlier phases of this case, when the House did not need to establish standing. Moreover, the House has pointed to nothing in the Virginia courts' decisions in the *Vesilind* litigation suggesting that the courts understood the House to be representing the interests of the State itself.

Nonetheless, the House insists, this Court's decision in Karcher v. May, 484 U.S. 72 (1987), dictates that we treat *Vesilind* as establishing conclusively the House's authority to litigate on the State's behalf. True, in *Karcher*, the Court noted a record, similar to that in *Vesilind*, of litigation by state legislative bodies in state court, and concluded without extensive explanation that "the New Jersey Legislature had authority under state law to represent the State's interests. . . ." 484 U.S., at 82. Of crucial significance, however, the Court in *Karcher* noted no New Jersey statutory provision akin to Virginia's law vesting the Attorney General with exclusive authority to speak for the Commonwealth in civil litigation. *Karcher* therefore scarcely impels the conclusion that, despite Virginia's clear enactment making the Attorney General the State's sole representative in civil litigation, Virginia has designated the House as its agent to assert the State's interests in this Court.

Moreover, even if, contrary to the governing statute, we indulged the assumption that Virginia had authorized the House to represent the State's interests, as a factual matter the House never indicated in the District Court that it was appearing in that capacity. Throughout this litigation, the House has purported to represent its own interests. Thus, in its motion to intervene, the House observed that it was "the legislative body that actually drew the redistricting plan at issue," and argued that the existing parties—including the State Defendants—could not adequately protect its interests. . . . Nowhere in its motion did the House suggest it was intervening as agent of the State. That silence undermines the House's attempt to proceed before us on behalf of the State. As another portion of the Court's *Karcher* decision clarifies, a party may not wear on appeal a hat different from the one it wore at trial. 484 U.S., at 78 (parties may not appeal in particular capacities "unless the record shows that they participated in those capacities below").

B

The House also maintains that, even if it lacks standing to pursue this appeal as the State's agent, it has standing in its own right. To support standing, an injury must be "legally and judicially cognizable." Raines v. Byrd, 521 U.S. 811, 819 (1997). This Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage. The Court's precedent thus lends no support for the notion that one House of a bicameral legislature, resting solely on its role in the legislative process, may appeal on its own behalf a judgment invalidating a state enactment.

Seeking to demonstrate its asserted injury, the House emphasizes its role in enacting redistricting legislation in particular. The House observes that, under Virginia law, "members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly." Va. Const., Art. 2, § 6. The House has standing, it contends, because it is "the legislative body that actually drew the redistricting plan," and because, the House asserts, any remedial order will transfer redistricting authority from it to the District Court. . . . But the Virginia constitutional provision the House cites allocates redistricting authority to the "General Assembly," of which the House constitutes only a part.

That fact distinguishes this case from Arizona State Legislature v. Arizona Independent Redistricting Comm'n, 576 U.S. ___, 135 S.Ct. 2652 (2015), in which the Court recognized the standing of the Arizona House and Senate—*acting together*—to challenge a referendum that gave redistricting authority exclusively to an independent commission, thereby allegedly usurping the legislature's authority under the Federal Constitution over congressional redistricting. In contrast to this case, in *Arizona State Legislature* there was no mismatch between the body seeking to litigate and the body to which the relevant constitutional provision allegedly assigned exclusive redistricting authority. See 576 U.S., at ___, 135 S.Ct., at 2663–2664. Just as individual members lack standing to assert the institutional interests of a legislature, see *Raines*, 521 U.S., at 829, a

single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole.

Moreover, in *Arizona State Legislature*, the challenged referendum was assailed on the ground that it *permanently* deprived the legislative plaintiffs of their role in the redistricting process. Here, by contrast, the challenged order does not alter the General Assembly's dominant initiating and ongoing role in redistricting. Compare Arizona State Legislature, 576 U.S., at ___, 135 S.Ct., at 2665 (allegation of nullification of "any vote by the Legislature, now or in the future, purporting to adopt a redistricting plan" (internal quotation marks omitted)), with 326 F.Supp.3d at 227 (recognizing the General Assembly's "primary jurisdiction" over redistricting and giving the General Assembly first crack at enacting a revised redistricting plan).

Nor does Coleman v. Miller, 307 U.S. 433 (1939), aid the House. There, the Court recognized the standing of 20 state legislators who voted against a resolution ratifying the proposed Child Labor Amendment to the Federal Constitution. Id., at 446. The resolution passed, the opposing legislators stated, only because the Lieutenant Governor cast a tie-breaking vote—a procedure the legislators argued was impermissible under Article V of the Federal Constitution. See *Arizona State Legislature*, 576 U.S., at ___, 135 S.Ct., at 2664–2666 (citing *Coleman*, 307 U.S., at 446). As the Court has since observed, *Coleman* stands "at most" "for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." *Raines*, 521 U.S., at 823. Nothing of that sort happened here. Unlike *Coleman*, this case does not concern the results of a legislative chamber's poll or the validity of any counted or uncounted vote. At issue here, instead, is the constitutionality of a concededly enacted redistricting plan. As we have already explained, a single House of a bicameral legislature generally lacks standing to appeal in cases of this order.

Aside from its role in enacting the invalidated redistricting plan, the House, echoed by the dissent, . . . asserts that the House has standing because altered district boundaries may affect its composition. For support, the House and the dissent rely on Sixty-seventh Minnesota State Senate v. Beens, 406 U.S. 187 (1972) (per curiam), in which this Court allowed the Minnesota Senate to challenge a District Court malapportionment litigation order that reduced the Senate's size from 67 to 35 members. The Court said in *Beens*: "[C]ertainly the [Minnesota Senate] is directly affected by the District Court's orders," rendering the Senate "an appropriate legal entity for purpose of intervention and, as a consequence, of an appeal in a case of this kind." Id., at 194.

Beens predated this Court's decisions in Diamond v. Charles and other cases holding that intervenor status alone is insufficient to establish standing to appeal. Whether *Beens* established law on the question of standing, as distinct from intervention, is thus less than pellucid. But even assuming, *arguendo*, that *Beens* was, and remains, binding precedent on standing, the order there at issue injured the Minnesota Senate in a way the order challenged here does not injure the Virginia House. Cutting the size of a

legislative chamber in half would necessarily alter its day-to-day operations. Among other things, leadership selection, committee structures, and voting rules would likely require alteration. By contrast, although redrawing district lines indeed may affect the membership of the chamber, the House as an institution has no cognizable interest in the identity of its members. Although the House urges that changes to district lines will "profoundly disrupt its day-to-day operations," . . . it is scarcely obvious how or why that is so. As the party invoking this Court's jurisdiction, the House bears the burden of doing more than "simply alleg[ing] a nonobvious harm." *Wittman*, 578 U.S., at ___, 136 S.Ct., at 1737.

Analogizing to "group[s] other than a legislative body," the dissent insists that the House has suffered an "obvious" injury. . . . But groups like the string quartet and basketball team posited by the dissent select their own members. Similarly, the political parties involved in the cases the dissent cites . . . [New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 202 (2008), and Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214, 229–230 (1989)], select their own leadership and candidates. In stark contrast, the House does not select its own members. Instead, it is a representative body composed of members chosen by the people. Changes to its membership brought about by the voting public thus inflict no cognizable injury on the House.

The House additionally asserts injury from the creation of what it calls "divided constituencies," suggesting that a court order causing legislators to seek reelection in districts different from those they currently represent affects the House's representational nature. But legislative districts change frequently—indeed, after every decennial census—and the Virginia Constitution resolves any confusion over which district is being represented. It provides that delegates continue to represent the districts that elected them, even if their reelection campaigns will be waged in different districts. Va. Const., Art. 2, § 6 ("A member in office at the time that a decennial redistricting law is enacted shall complete his term of office and shall continue to represent the district from which he was elected for the duration of such term of office . . . ."). We see little reason why the same would not hold true after redistricting changes caused by judicial decisions, and we thus foresee no representational confusion. And if harms centered on costlier or more difficult election campaigns are cognizable—a question that, as in *Wittman*, 578 U.S., at ___, 136 S.Ct., at 1736–1737, we need not decide today—those harms would be suffered by individual legislators or candidates, not by the House as a body.

In short, Virginia would rather stop than fight on. One House of its bicameral legislature cannot alone continue the litigation against the will of its partners in the legislative process.

* * *

For the reasons stated, we dismiss the House's appeal for lack of jurisdiction.

It is so ordered.

[The dissenting opinion of Justice Alito, who was joined by Chief Justice Roberts and Justices Breyer and Kavanaugh, is omitted.]

Page 92. Add after fourth paragraph in Footnote 19

For an interesting discussion of the relevance of money damages to a mootness determination, compare the majority and dissenting opinions in Mission Prod. Holdings, Inc. v. Tempnology, LLC, 587 U.S. ___, 139 S.Ct. 1652, 1660, 203 L.Ed.2d 876 (2019) ("For better or worse, nothing so shows a continuing stake in a dispute's outcome as a demand for dollars and cents. . . . If there is any chance of money changing hands, Mission's suit remains live.") (majority opn.) with id., at 1667 ("A damages claim 'suffices to avoid mootness only if viable,' which means damages must at least be 'legally available for [the alleged] wrong.' . . . [P]etitioning a court normally isn't an actionable wrong that can give rise to a claim for damages.") (dissenting opn.).

CHAPTER V

Supplemental Jurisdiction

Page 336. Substitute the following for Jinks v. Richland County, South Carolina

Artis v. District of Columbia

Supreme Court of the United States, 2018.
583 U.S. ___, 138 S.Ct. 594, 199 L.Ed.2d 473

• JUSTICE GINSBURG delivered the opinion of the Court.

The Supplemental Jurisdiction statute, 28 U.S.C. § 1367, enables federal district courts to entertain claims not otherwise within their adjudicatory authority when those claims "are so related to claims . . . within [federal-court competence] that they form part of the same case or controversy." § 1367(a). Included within this supplemental jurisdiction are state claims brought along with federal claims arising from the same episode. When district courts dismiss all claims independently qualifying for the exercise of federal jurisdiction, they ordinarily dismiss as well all related state claims. See § 1367(c)(3). A district court may also dismiss the related state claims if there is a good reason to decline jurisdiction. See § 1367(c)(1), (2), and (4). This case concerns the time within which state claims so dismissed may be refiled in state court.

Section 1367(d), addressing that issue, provides:

> "The period of limitations for any [state] claim [joined with a claim within federal-court competence] shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

The question presented: Does the word "tolled," as used in § 1367(d), mean the state limitations period is suspended during the pendency of the federal suit; or does "tolled" mean that, although the state limitations period continues to run, a plaintiff is accorded a grace period of 30 days to refile in state court post dismissal of the federal case? Petitioner urges the first, or stop-the-clock, reading. Respondent urges, and the District of Columbia Court of Appeals adopted, the second, or grace-period, reading.

In the case before us, plaintiff-petitioner Stephanie C. Artis refiled her state-law claims in state court 59 days after dismissal of her federal suit. Reading § 1367(d) as a grace-period prescription, her complaint would be time barred. Reading § 1367(d) as stopping the limitations clock during the pendency of the federal-court suit, her complaint would be timely. We hold that § 1367(d)'s instruction to "toll" a state limitations period means to hold it in abeyance, i.e., to stop the clock. Because the D.C. Court of Appeals

held that § 1367(d) did not stop the D.C. Code's limitations clock, but merely provided a 30-day grace period for refiling in D.C. Superior Court, we reverse the D.C. Court of Appeals' judgment.

I

A

Section 1367, which Congress added to Title 28 as part of the Judicial Improvements Act of 1990, 104 Stat. 5089, codifies the court-developed pendent and ancillary jurisdiction doctrines under the label "supplemental jurisdiction." See Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 552–558 (2005) (describing the development of pendent and ancillary jurisdiction doctrines and subsequent enactment of § 1367); id. at 579–584 (GINSBURG, J., dissenting) (same). The House Report accompanying the Act explains that Congress sought to clarify the scope of federal courts' authority to hear claims within their supplemental jurisdiction, appreciating that "[s]upplemental jurisdiction has enabled federal courts and litigants to . . . deal economically—in single rather than multiple litigation—with related matters." H.R. Rep. No. 101–734, p. 28 (1990) (H.R. Rep.). Section 1367(a) provides, in relevant part, that a district court with original jurisdiction over a claim "shall have supplemental jurisdiction over all other claims . . . form[ing] part of the same case or controversy."

"[N]ot every claim within the same 'case or controversy' as the claim within the federal courts' original jurisdiction will be decided by the federal court." Jinks v. Richland County, 538 U.S. 456, 459 (2003). Section 1367(c) states:

> "The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
> "(1) the claim raises a novel or complex issue of State law,
> "(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> "(3) the district court has dismissed all claims over which it has original jurisdiction, or
> "(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction."

If a district court declines to exercise jurisdiction over a claim asserted under § 1367(a) and the plaintiff wishes to continue pursuing it, she must refile the claim in state court. If the state court would hold the claim time barred, however, then, absent a curative provision, the district court's dismissal of the state-law claim without prejudice would be tantamount to a dismissal with prejudice. See, e.g., Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 352 (1988) (under the doctrine of pendent jurisdiction, if the statute of limitations on state-law claims expires before the federal court "relinquish[es] jurisdiction[,] . . . a dismissal will foreclose the plaintiff from litigating his claims"). To prevent that result, § 1367(d) supplies "a tolling rule that must be applied by state courts." *Jinks*, 538 U.S., at 459. Section 1367(d) provides:

> "The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

This case requires us to determine how § 1367(d)'s tolling rule operates.

B

Petitioner Artis worked as a health inspector for respondent, the District of Columbia (the "District"). In November 2010, Artis was told she would lose her job. Thirteen months later, Artis sued the District in the United States District Court for the District of Columbia, alleging that she had suffered employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended. 42 U.S.C. § 2000e et seq. She also asserted three allied claims under D.C. law: retaliation in violation of the District of Columbia Whistleblower Act, D.C. Code § 1–615.54 (2001); termination in violation of the District of Columbia False Claims Act, § 2–381.04; and wrongful termination against public policy, a common-law claim. Artis alleged that she had been subjected to gender discrimination by her supervisor, and thereafter encountered retaliation for reporting the supervisor's unlawful activities. See Artis v. District of Columbia, 51 F.Supp.3d 135, 137 (2014).

On June 27, 2014, the District Court granted the District's motion for summary judgment on the Title VII claim. Having dismissed Artis' sole federal claim, the District Court, pursuant to § 1367(c)(3), declined to exercise supplemental jurisdiction over her remaining state-law claims. "Artis will not be prejudiced," the court noted, "because 28 U.S.C. § 1367(d) provides for a tolling of the statute of limitations during the period the case was here and for at least 30 days thereafter." Id., at 142.

Fifty-nine days after the dismissal of her federal action, Artis refiled her state-law claims in the D.C. Superior Court, the appropriate local court. The Superior Court granted the District's motion to dismiss, holding that Artis' claims were time barred, because they were filed 29 days too late. See App. to Pet. for Cert. 14a. When Artis first asserted her state-law claims in the District Court, nearly two years remained on the applicable three-year statute of limitations. But two and a half years passed before the federal court relinquished jurisdiction. Unless § 1367(d) paused the limitations clock during that time, Artis would have had only 30 days to refile. The Superior Court rejected Artis' stop-the-clock reading of § 1367(d), reasoning that Artis could have protected her state-law claims by "pursuing [them] in a state court while the federal court proceeding [was] pending." Ibid. In tension with that explanation, the court noted that duplicative filings in federal and state court are "generally disfavored . . . as 'wasteful' and . . . 'against [the interests of] judicial efficiency.'" Id., at 14a, n.1 (quoting Stevens v. ARCO Management of Wash. D.C., Inc., 751 A.2d 995, 1002 (D.C.2000); alteration in original).

The D.C. Court of Appeals affirmed. That court began by observing that two "competing approaches [to § 1367(d)] have evolved nationally": the stop-the-clock reading and the grace-period reading. 135 A.3d 334, 337 (2016). Without further comment on § 1367(d)'s text, the D.C. Court of Appeals turned to the legislative history. Section 1367(d)'s purpose, the court noted, was "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." Id., at 338 (quoting H.R. Rep., at 30; internal quotation marks omitted). Following the lead of the California Supreme Court, the D.C. Court of Appeals determined that Congress had intended to implement a 1969 recommendation by the American Law Institute (ALI) to allow refiling in state court "within 30 days after dismissal." 135 A.3d, at 338 (quoting Los Angeles v. County of Kern, 59 Cal.4th 618, 629 (2014)).

The D.C. Court of Appeals also concluded that the grace-period approach "better accommodates federalism concerns," by trenching significantly less on state statutes of limitations than the stop-the-clock approach. 135 A.3d, at 338–339. Construing § 1367(d) as affording only a 30–day grace period, the court commented, was "consistent with [its] presumption favoring narrow interpretations of federal preemption of state law." Id., at 339.

To resolve the division of opinion among State Supreme Courts on the proper construction of § 1367(d), see supra, at 600, n.3, we granted certiorari. . . .

II

A

As just indicated, statutes that shelter from time bars claims earlier commenced in another forum generally employ one of two means.

First, the period (or statute) of limitations may be "tolled" while the claim is pending elsewhere. Ordinarily, "tolled," in the context of a time prescription like § 1367(d), means that the limitations period is suspended (stops running) while the claim is *sub judice* elsewhere, then starts running again when the tolling period ends, picking up where it left off. See Black's Law Dictionary 1488 (6th ed. 1990) ("toll," when paired with the grammatical object "statute of limitations," means "to suspend or stop temporarily"). This dictionary definition captures the rule generally applied in federal courts. See, e.g., Chardon v. Fumero Soto, 462 U.S. 650, 652, n.1 (1983) (Court's opinion "use[d] the word 'tolling' to mean that, during the relevant period, the statute of limitations ceases to run"). Our decisions employ the terms "toll" and "suspend" interchangeably. For example, in American Pipe & Constr. Co. v. Utah, 414 U.S. 538 (1974), we characterized as a "tolling" prescription a rule "suspend[ing] the applicable statute of limitations," id., at 554; accordingly, we applied the rule to stop the limitations clock, id., at 560–561. We have similarly comprehended what tolling means in decision on equitable tolling. See, e.g., CTS Corp. v. Waldburger, 573 U.S. ___, ___, 134 S.Ct. 2175, 2183 (2014) (describing equitable tolling as "a doctrine that pauses the running of,

or 'tolls' a statute of limitations" (some internal quotation marks omitted); United States v. Ibarra, 502 U.S. 1, 4, n.2 (1991) (per curiam) ("Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped.").

In lieu of "tolling" or "suspending" a limitations period by pausing its progression, a legislature might elect simply to provide a grace period. When that mode is adopted, the statute of limitations continues to run while the claim is pending in another forum. But the risk of a time bar is averted by according the plaintiff a fixed period in which to refile. A federal statute of that genre is 28 U.S.C. § 2415. That provision prescribes a six-year limitations period for suits seeking money damages from the United States for breach of contract. § 2415(a). The statute further provides: "In the event that any action . . . is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section." § 2415(e). Many States have enacted similar grace-period provisions. See App. to Brief for National Conference of State Legislatures et al. as Amicus Curiae 1a–25a. For example, Georgia law provides:

> "When any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later. . . ." Ga. Code Ann. § 9–2–61(a) (2007).

Tellingly, the District has not identified any federal statute in which a grace-period meaning has been ascribed to the word "tolled" or any word similarly rooted. Nor has the dissent, for all its mighty strivings, identified even one federal statute that fits its bill, i.e., a federal statute that says "tolled" but means something other than "suspended," or "paused," or "stopped." . . .

Turning from statutory texts to judicial decisions, only once did an opinion of this Court employ tolling language to describe a grace period: Harlan v. Straub, 490 U.S. 536 (1989). In *Hardin*, we held that, in 42 U.S.C. § 1983 suits, federal courts should give effect to state statutes sheltering claims from time bars during periods of a plaintiff's legal disability. We there characterized a state statute providing a one-year grace period as "tolling" or "suspend[ing]" the limitations period "until one year after the disability has been removed." 490 U.S., at 537. This atypical use of "tolling" or "suspending" to mean something other than stopping the clock on a limitations period is a feather on the scale against the weight of decisions in which "tolling" a statute of limitations signals stopping the clock.

B

In determining the meaning of a statutory provision, "we look first to its language, giving the words used their ordinary meaning." Moskal v. United States, 498 U.S. 103, 108 (1990) (citation and internal quotation marks omitted). Section 1367(d) is phrased as a tolling provision. It suspends the statute of limitations for two adjacent time periods: while the claim is pending in federal court and for 30 days postdismissal. Artis urges that the phrase "shall be tolled" in § 1367(d) has the same meaning it does in the statutes cited supra. That is, the limitations clock stops the day the claim is filed in federal court and, 30 days postdismissal, restarts from the point at which it had stopped.

The District reads "tolled" for § 1367(d)'s purposes differently. To "toll," the District urges, means to "remove or take away an effect." Brief for Respondent 12–13. To "toll" a limitations period, then, would mean to "remov[e] the bar that ordinarily would accompany its expiration." Id., at 14. "[T]here is nothing special," the District maintains, "about tolling limitations periods versus tolling any other fact, right, or consequence." Id., at 13. But the District offers no reason why, in interpreting "tolled" as used in § 1367(d), we should home in only on the word itself, ignoring the information about the verb's ordinary meaning gained from its grammatical object. Just as when the object of "tolled" is "bell" or "highway traveler," the object "period of limitations" sheds light on what it means to be "tolled."

The District's reading, largely embraced by the dissent, is problematic for other reasons as well. First, it tenders a strained interpretation of the phrase "period of limitations." In the District's view, "period of limitations" means "the effect of the period of limitations as a time bar." See id., at 18 ("Section 1367(d) . . . provides that 'the period of limitations'—here its effect as a time bar—'shall be [removed or taken away] while the claim is pending [in federal court] and for a period of 30 days after it is dismissed.'" (alterations in original). Second, the first portion of the tolling period, the duration of the claim's pendency in federal court, becomes superfluous under the District's construction. The "effect" of the limitations period as a time bar, on the District's reading, becomes operative only after the case has been dismissed. That being so, what need would there be to remove anything while the claim is pending in federal court?

Furthermore, the District's reading could yield an absurdity: It could permit a plaintiff to refile in state court even if the limitations period on her claim had expired before she filed in federal court. To avoid that result, the District's proposed construction of "tolled" as "removed" could not mean simply "removed." Instead, "removed" would require qualification to express "removed, unless the period of limitations expired before the claim was filed in federal court." In sum, the District's interpretation maps poorly onto the language of § 1367(d), while Artis' interpretation is a natural fit.

C

The D.C. Court of Appeals adopted the District's grace-period construction primarily because it was convinced that in drafting § 1367(d), Congress embraced an ALI

recommendation. 135 A.3d, at 338. Two decades before the enactment of § 1367(d), the ALI, in its 1969 Study of the Division of Jurisdiction Between State and Federal Courts, did recommend a 30–day grace period for refiling certain claims. The ALI proposed the following statutory language:

> "If any claim in an action timely commenced in a federal court is dismissed for lack of jurisdiction over the subject matter of the claim, a new action on the same claim brought in another court shall not be barred by a statute of limitations that would not have barred the original action had it been commenced in that court, if such new action is brought in a proper court, federal or State, within thirty days after dismissal of the original claim has become final or within such longer period as may be available under applicable State law." ALI, Study of the Division of Jurisdiction Between State and Federal Courts § 1386(b), p.65 (1969) (ALI Study).

Congress, however, did not adopt the ALI's grace-period formulation. Instead, it ordered tolling of the state limitations period "while the claim is pending" in federal court. Although the provision the ALI proposed, like § 1367(d), established a 30–day federal floor on the time allowed for refiling, it did not provide for tolling the period of limitations while a claim is pending. True, the House Report contained a citation to the ALI Study, but only in reference to a different provision, 28 U.S.C. § 1391 (the general venue statute). There, Congress noted that its approach was "taken from the ALI Study." H.R. Rep., at 23. Had Congress similarly embraced the ALI's grace-period formulation in § 1367(d), one might expect the House Report to have said as much.

D

The District asks us to zero in on § 1367(d)'s "express inclusion" of the "period of 30 days after the claim is dismissed" within the tolling period. Brief for Respondent 20 (internal quotation marks omitted). Under Artis' stop-the-clock interpretation, the District contends, "the inclusion of 30 days within the tolling period would be relegated to insignificance in the mine-run of cases." Id., at 21 (citation and internal quotation marks omitted). In § 1367(d), Congress did provide for tolling not only while the claim is pending in federal court, but also for 30 days thereafter. Including the 30 days within § 1367(d)'s tolling period accounts for cases in which a federal action is commenced close to the expiration date of the relevant state statute of limitations. In such a case, the added days give the plaintiff breathing space to refile in state court.

Adding a brief span of days to the tolling period is not unusual in stop-the-clock statutes. In this respect, § 1367(d) closely resembles 46 U.S.C. § 53911, which provides, in a subsection titled "Tolling of limitations period," that if a plaintiff submits a claim for war-related vessel damage to the Secretary of Transportation, "the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter." § 53911(d). Numerous other statutes similarly append a fixed number of days to an initial tolling period. See, e.g., 22 U.S.C. § 1631k(c)

("Statutes of limitations on assessments . . . shall be suspended with respect to any vested property . . . while vested and for six months thereafter. . . ."); 26 U.S.C. § 6213(f)(1) ("In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter."); § 6503(a)(1) ("The running of the period of limitations provided in section 6501 or 6502 . . . shall . . . be suspended for the period during which the Secretary is prohibited from making the assessment . . . and for 60 days thereafter."); 50 U.S.C. § 4000(c) ("The running of a statute of limitations against the collection of tax deferred under this section . . . shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter."). Thus, the "30 days" provision casts no large shadow on Artis' interpretation.

Section 1367(d)'s proviso, "unless State law provides for a longer tolling period," could similarly aid a plaintiff who filed in federal court just short of the expiration of the state limitations period. She would have the benefit of § 1367(d)'s 30-days-to-refile prescription, or such longer time as state law prescribes. It may be that, in most cases, the state-law tolling period will not be longer than § 1367(d)'s. But in some cases it undoubtedly will. For example, Indiana permits a plaintiff to refile within three years of dismissal. See Ind. Code § 34–11–8–1 (2017). And Louisiana provides that after dismissal the limitations period "runs anew." La. Civ. Code Ann., Arts. 3462, 3466 (West 2007).

III

Satisfied that Artis' text-based arguments overwhelm the District's, we turn to the District's contention that the stop-the-clock interpretation of § 1367(d) raises a significant constitutional question: Does the statute exceed Congress' authority under the Necessary and Proper Clause, Art. I, § 8, cl. 18, because its connection to Congress' enumerated powers is too attenuated or because it is too great an incursion on the States' domain? Brief for Respondent 46–49. To avoid constitutional doubt, the District urges, we should adopt its reading. "[W]here an alternative interpretation of [a] statute is fairly possible," the District reminds, we have construed legislation in a manner that "avoid[s] [serious constitutional] problems" raised by "an otherwise acceptable construction." INS v. St. Cyr, 533 U.S. 289, 299–300 (2001) (internal quotation marks omitted). But even if we regarded the District's reading of § 1367(d) as "fairly possible," our precedent would undermine the proposition that § 1367(d) presents a serious constitutional problem. See *Jinks*, 538 U.S., at 461–465.

In *Jinks*, we unanimously rejected an argument that § 1367(d) impermissibly exceeds Congress' enumerated powers. Section 1367(d), we held, "is necessary and proper for carrying into execution Congress's power '[t]o constitute Tribunals inferior to the supreme Court,' . . . and to assure that those tribunals may fairly and efficiently exercise '[t]he judicial Power of the United States.'" Id., at 462 (quoting U.S. Const., Art. I, § 8, cl. 9, and Art. III, § 1).

In two principal ways, we explained, § 1367(d) is "conducive to the due administration of justice in federal court." 538 U.S., at 462 (internal quotation marks omitted). First, "it provides an alternative to the unsatisfactory options that federal judges faced when they decided whether to retain jurisdiction over supplemental state-law claims that might be time barred in state court." Ibid. Section 1367(d) thus "unquestionably promotes fair and efficient operation of the federal courts." Id., at 463. Second, § 1367(d) "eliminates a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal and state law claims" arising from the same episode. Ibid. With tolling available, a plaintiff disinclined to litigate simultaneously in two forums is no longer impelled to choose between forgoing either her federal claims or her state claims.

Moreover, we were persuaded that § 1367(d) was "plainly adapted" to Congress' exercise of its enumerated power: there was no cause to suspect that Congress had enacted § 1367(d) as a "'pretext' for 'the accomplishment of objects not entrusted to [it],'"; nor was there reason to believe that the connection between § 1367(d) and Congress' authority over the federal court was too attenuated. Id., at 464 (quoting McCulloch v. Maryland, 4 Wheat. 316, 423 (1819)).

Our decision in *Jinks* also rejected the argument that § 1367(d) was not "proper" because it violates principles of state sovereignty by prescribing a procedural rule for state courts' adjudication of purely state-law claims. 538 U.S., at 464–465. "Assuming [without deciding] that a principled dichotomy can be drawn, for purposes of determining whether an Act of Congress is 'proper,' between federal laws that regulate state-court 'procedure' and laws that change the 'substance' of state-law rights of action," we concluded that the tolling of state limitations periods "falls on the [permissible] 'substantive' side of the line." Ibid.

The District's contention that a stop-the-clock prescription serves "no federal purpose" that could not be served by a grace-period prescription is unavailing. Brief for Respondent 49. Both devices are standard, off-the-shelf means of accounting for the fact that a claim was timely pressed in another forum. Requiring Congress to choose one over the other would impose a tighter constraint on Congress' discretion than we have ever countenanced.

The concern that a stop-the-clock prescription entails a greater imposition on the States than a grace-period prescription, moreover, may be more theoretical than real. Consider the alternative suggested by the D.C. Superior Court. Plaintiffs situated as Artis was could simply file two actions and ask the state court to hold the suit filed there in abeyance pending disposition of the federal suit. Were the dissent's position to prevail, cautious plaintiffs would surely take up the D.C. Superior Court's suggestion. How it genuinely advances federalism concerns to drive plaintiffs to resort to wasteful, inefficient duplication to preserve their state-law claims is far from apparent. See, e.g., Stevens, 751 A.2d, at 1002 (it "work[s] against judicial efficiency . . . to compel prudent

federal litigants who present state claims to file duplicative and wasteful protective suits in state court").

We do not gainsay that statutes of limitations are "fundamental to a well-ordered judicial system." Board of Regents of Univ. of State of N.Y. v. Tomanio, 446 U.S. 478, 487 (1980). We note in this regard, however, that a stop-the-clock rule is suited to the primary purposes of limitations statutes: "preventing surprises" to defendants and "barring a plaintiff who has slept on his rights." American Pipe & Constr. Co. v. Utah, 414 U.S. 538, 554 (1974) (internal quotation marks omitted). Whenever § 1367(d) applies, the defendant will have notice of the plaintiff's claims within the state-prescribed limitations period. Likewise, the plaintiff will not have slept on her rights. She will have timely asserted those rights, endeavoring to pursue them in one litigation.

* * *

For the reasons stated, we resist unsettling the usual understanding of the word "tolled" as it appears in legislative time prescriptions and court decisions thereon. The judgment of the D.C. Court of Appeals is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

[The dissenting opinion of Justice Gorsuch, who was joined by Justices Kennedy, Thomas, and Alito, is omitted.]

CHAPTER VI

Removal Law

Page 401. Add new footnote at the end of § 1453(b)

[In Home Depot, U.S.A., Inc. v. Jackson, 587 U.S. ___, 139 S.Ct. 1743, 204 L.Ed.2d 34 (2018), the U.S. Supreme Court addressed whether a third-party counterclaim defendant could remove to federal court a counterclaim filed against it in state court pursuant to either § 1441(a) or § 1453(b). The Court held that "[b]ecause in the context of these removal provisions the term 'defendant' refers only to the party sued by the original plaintiff, we conclude that neither provision allows such a third party to remove."**]**

CHAPTER IX

Conflicts Between State and National Judicial Systems

Section 10. Habeas Corpus

Page 714. Add to Footnote 43

In Wilson v. Sellers, 584 U.S. ___, 138 S.Ct. 1188, 200 L.Ed.2d 530 (2018), the U.S. Supreme Court addressed "how a federal habeas court is to find the state court's reasons [for rejecting a state prisoner's federal claims] when the relevant state-court decision on the merits [has not explained its decision] . . . . We hold that [in such circumstances] the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning. But the State may rebut the presumption by showing that the unexplained affirmance relied or most likely did rely on different grounds than the lower state court's decision, such as alternative grounds for affirmance that were briefed or argued to the state supreme court or obvious in the record it reviewed."

Section 11. Effect of a Prior State Judgment

Page 785. Add to Footnote 5, at the end of the first paragraph

So far, it appears that claim preclusion does not apply to defenses. In Lucky Brand Dungarees v. Marcel Fashions, 590 U.S. ___, 140 S.Ct. 1589, ___ L.Ed.2d ___ (2020), Marcel argued "defense preclusion" against Lucky, thereby attempting to preclude Lucky from offering a defense that Lucky had not litigated in a prior lawsuit between the parties. The Court rejected Marcel's argument, finding neither issue nor claim preclusion applied, and noting the Court "has never explicitly recognized 'defense preclusion' as a standalone category of res judicata, unmoored from the two guideposts of issue preclusion and claim preclusion. Instead, our case law indicates that any such preclusion of defenses must, at a minimum, satisfy the strictures of issue preclusion or claim preclusion." Although not reaching the issue of defense preclusion more broadly, the Court observed, in Footnote 2, that "[t]here may be good reasons to question any application of claim preclusion to defenses."