SUPREME COURT OF THE UNITED STATES

Nos. 01–1437 and 01–1596

BEATRICE BRANCH, ET AL., APPELLANTS
01–1437 *v.*
JOHN ROBERT SMITH ET AL.

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01–1596 *v.*
BEATRICE BRANCH ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

[March 31, 2003]

JUSTICE SCALIA announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III–A, and an opinion with respect to Parts III–B and IV, in which THE CHIEF JUSTICE, JUSTICE KENNEDY, and JUSTICE GINSBURG join.

In these cases, we decide whether the District Court properly enjoined a Mississippi state court's proposed congressional redistricting plan and whether it properly fashioned its own congressional reapportionment plan rather than order at-large elections.

I

The 2000 census caused Mississippi to lose one congressional seat, reducing its representation in the House of Representatives from five Members to four. The state legislature, however, failed to pass a new redistricting

plan after the decennial census results were published in 2001. In anticipation of the March 1, 2002, state-law deadline for the qualification of candidates, see Miss. Code Ann. §23–15–299 (Lexis 2001), appellant and cross-appellee Beatrice Branch and others (state plaintiffs) filed suit in a Mississippi State Chancery Court in October 2001, asking the state court to issue a redistricting plan for the 2002 congressional elections. In November 2001, appellee and cross-appellant John Smith and others (federal plaintiffs) filed a similar action under Rev. Stat. §1979, 42 U. S. C. §1983, in the United States District Court for the Southern District of Mississippi, claiming that the current districting plan, Miss. Code Ann. §23–15–1037 (Lexis 2001), dividing the State into five, rather than four, congressional districts, was unconstitutional and unenforceable. The federal plaintiffs asked the District Court to enjoin the current redistricting plan, and subsequently asked it to enjoin any plan developed by a state court (which they asserted would violate Article I, §4, of the Constitution, and, in any event, could not be enforced until the state court's assertion of redistricting authority was precleared under §5 of the Voting Rights Act of 1965, 79 Stat. 439, 42 U. S. C. §1973c), and asked that it order at-large elections pursuant to Miss. Code Ann. §23–15–1039 (2001) and 46 Stat. 26, 2 U. S. C. §2a(c)(5), or, alternatively, devise its own redistricting plan.

A three-judge District Court was convened pursuant to 28 U. S. C. §2284. Initially the District Court did not interfere with the State Chancery Court's efforts to develop a redistricting plan. In an order filed on December 5, 2001, *Smith* v. *Clark,* 189 F. Supp. 2d 502 (SD Miss.), the District Court permitted the state plaintiffs to intervene and deferred ruling on the federal plaintiffs' motion for a preliminary injunction. In staying its hand, the District Court recognized that "'the Constitution leaves with the States primary responsibility for apportionment

of their federal congressional . . . districts,'" *id.*, at 503 (quoting *Growe* v. *Emison*, 507 U. S. 25, 34 (1993)), but concluded that "if it is not clear to this court by January 7, 2002 that the State authorities can have a redistricting plan in place by March 1, we will assert our jurisdiction . . . and if necessary, we will draft and implement a plan for reapportioning the state congressional districts," 189 F. Supp. 2d, at 503; see also 189 F. Supp. 2d 503, 505–506 (SD Miss. 2002).

On the eve of the State Chancery Court trial, the Mississippi Supreme Court denied petitions for writs of prohibition and mandamus filed by a state defendant and others challenging the Chancery Court's jurisdiction to engage in congressional redistricting. It held that the Chancery Court had jurisdiction to issue a redistricting plan. *In re Mauldin*, Civ. No. 2001–M–01891 (Dec. 13, 2001), App. to Juris. Statement 110a. Following trial, on December 21, 2001, the State Chancery Court adopted a redistricting plan submitted by the state plaintiffs. On December 26, the state attorney general submitted that plan, along with the Mississippi Supreme Court's *Mauldin* decision (which arguably changed the process for drawing congressional districts by authorizing the Chancery Court to create a redistricting plan), to the Department of Justice (DOJ) for preclearance. On February 14, 2002, DOJ sent a letter to the state attorney general requesting additional information about the *Mauldin* decision, because "the information sent to date regarding this change in voting procedure is insufficient . . . ." App. to Juris. Statement 193a. The letter advised that the "sixty-day review period will begin when we receive the information specified." *Id.,* at 196a. The state attorney general provided additional information on February 19 and 20, 2002.

Meanwhile, in January 2002, the District Court, expressing "serious doubts whether the Mississippi Supreme Court's Order and the plan adopted by the Chancery Court

pursuant to that order will be precleared prior to the March 1 candidate qualification deadline," 189 F. Supp. 2d, at 508, had begun to develop its own redistricting plan, *id.*, at 511. On February 4, 2002, it promulgated a redistricting plan to be used absent the timely preclearance of the Chancery Court plan. 189 F. Supp. 2d 512 (SD Miss.). On February 19, it ordered that, if the Chancery Court redistricting plan was not "precleared before the close of business on Monday, February 25, 2002," then the District Court's plan would fix the Mississippi congressional districts for the 2002 elections. 189 F. Supp. 2d 529, 548. February 25th came and went with no action by DOJ. On February 26, the District Court enjoined the State from using the Chancery Court plan and ordered use of the District Court's own plan in the 2002 elections and all succeeding elections until the State produced a constitutional redistricting plan that was precleared. 189 F. Supp. 2d 548, 559. The court said that the basis for its injunction and order was "reflected in our opinion of February 19, that is, the failure of the timely preclearance under §5 of the Voting Rights Act of the Hinds County Chancery Court's plan." *Id.*, at 549. However, "in the event that on appeal it is determined that we erred in our February 19 ruling," the court put forth as its "alternative holding" that Article I, §4, of the United States Constitution prohibited the State Chancery Court from issuing a redistricting plan without express authorization from the state legislature. *Ibid.*

The State did not file a notice of appeal. On April 1, 2002, DOJ informed the State in a letter that "it would be inappropriate for the Attorney General to make a determination concerning [the State's preclearance] submission now" because the District Court's injunction rendered the state-court plan incapable of administration. App. 29.

The state plaintiffs—intervenors in the District Court—filed a timely notice of appeal from the District Court and

a jurisdictional statement. The federal plaintiffs filed a jurisdictional statement on conditional cross-appeal. We noted probable jurisdiction in both appeals and consolidated them. 536 U. S. 903 (2002).

II

At the outset we should observe two critical distinctions between these cases and the one that was before us in *Growe* v. *Emison*, 507 U. S. 25 (1993). In *Growe*, the Federal District Court had refused to abstain or defer to state-court redistricting proceedings. *Id.*, at 30–31. In reversing, we reminded the federal courts of "'what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.'" *Id.,* at 34 (quoting *Chapman* v. *Meier*, 420 U. S. 1, 27 (1975)). We held that "[a]bsent evidence that these state branches will fail *timely* to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." 507 U. S., at 34 (emphasis added). In the present case, unlike in *Growe*, there is no suggestion that the District Court failed to allow the state court adequate opportunity to develop a redistricting plan. The second distinction is that the state-court plan here, unlike that in *Growe*, was subject to §5 of the Voting Rights Act, 42 U. S. C. §1973c. The District Court rested its injunction of the state-court plan on the ground that necessary preclearance had not been obtained. It is that challenged premise that we examine first.

Section 5 of the Voting Rights Act provides that whenever a covered jurisdiction, such as Mississippi, see 30 Fed. Reg. 9897 (1965), "shall enact or seek to administer" a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure," the State must obtain preclearance from the District Court for the

District of Columbia or the Attorney General before the change may be enforced. 42 U. S. C. §1973c. The Act requires preclearance of *all* voting changes, *ibid.;* see *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32, 38–39 (1978), and there is no dispute that this includes voting changes mandated by order of a state court, see, *e.g.*, *In re McMillin*, 642 So. 2d 1336, 1339 (Miss. 1994). Rather, the controversy pertains to the proviso in §1973c to the effect that, where the preclearance submission is made to the Attorney General, the voting change may be enforced if "the Attorney General has not interposed an objection within sixty days after such submission . . . ."

Appellants in No. 01–1437 (originally the state plaintiffs) assert that the District Court erred in believing that the Chancery Court's plan lacked preclearance. It was automatically rendered enforceable, they contend, by DOJ's failure to object within the 60-day period running from the state attorney general's initial submission on December 26, 2001—or, in the alternative, it was subsequently rendered enforceable by DOJ's failure to object within the 60-day period running from the state attorney general's submission of additional information on February 20, 2002. We consider each of these contentions in turn.

A

Under §5, a jurisdiction seeking administrative preclearance must prove that the change is nondiscriminatory in purpose and effect. *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 328 (2000). It bears the burden of providing the Attorney General information sufficient to make that proof, *Georgia* v. *United States*, 411 U. S. 526, 537–539 (1973), and failure to do so will cause the Attorney General to object, see *ibid.;* 28 CFR §51.52(c) (2002). In DOJ's view, however, incomplete state submissions do not start the 60-day clock for review. See §§51.27, 51.37. The

regulations implementing §5 authorize a DOJ request for additional information from a jurisdiction that has initially "omitted information considered necessary for the evaluation of the submission." §51.37(a). If the jurisdiction responds by supplying the additional information (or stating that it is unavailable), the 60-day clock begins to run from the date the response is received. §51.37(c). We have upheld these regulations as being "wholly reasonable and consistent with the Act." *Georgia* v. *United States*, *supra*, at 541; accord, *Morris* v. *Gressette*, 432 U. S. 491, 504, n. 19 (1977).

DOJ's February 14 request for additional information was within the Attorney General's discretion under 28 CFR §51.37, thereby postponing the 60-day time period for objections until the requested information was received. The request was neither frivolous nor unwarranted. See *Georgia* v. *United States*, *supra*, at 541, n. 13. DOJ believed that the Mississippi Supreme Court's *Mauldin* order, holding that the Chancery Court had jurisdiction to engage in redistricting, was a change in voting procedures, and it sought additional information demonstrating that this change would not have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required under §5. The fact that the District Court identified the same issue as posing a hurdle to preclearance further suggests that DOJ's request was not frivolous. 189 F. Supp. 2d, at 508–509. The request for more information was not frivolous or unwarranted at the time it was made, regardless of whether it ultimately develops that *Mauldin* and the Chancery Court's assertion of jurisdiction to redistrict are not voting changes that required preclearance.

B

Appellants contend that even if the State Chancery

Court's plan was not precleared by operation of law on February 25, 2002, it was precleared on April 22, 60 days after the state attorney general submitted the additional information requested. We think not.

Section 5 provides that "[w]henever a [covered jurisdiction] shall *enact or seek to administer*" a voting change, such a change may be enforced if it is submitted to the Attorney General and there is no objection by the Attorney General within 60 days. 42 U. S. C. §1973(c) (emphasis added). Clearly the State Chancery Court's redistricting plan was not "enacted" by the State of Mississippi. An "enactment" is the product of legislation, not adjudication. See Webster's New International Dictionary 841 (2d ed. 1949) (defining "enact" as "[t]o make into an act or law; esp., to perform the legislative act with reference to (a bill) which gives it the validity of law"); Black's Law Dictionary 910 (7th ed. 1999) (defining "legislate" as "[t]o make or enact laws"). The web of state and federal litigation before us is the consequence of the Mississippi Legislature's *failure* to enact a plan. The Chancery Court's redistricting plan, then, could be eligible for preclearance only if the State was "seek[ing] to administer" it.

There is no doubt that the State was "seek[ing] to administer" the changes for which preclearance was sought when the Mississippi attorney general made his initial submission to DOJ on December 26, 2001, and when he provided additional information regarding the state-court plan on February 20, 2002. On February 26, 2002, however, the District Court "enjoined [the State] from implementing the congressional redistricting plan adopted by the [state court]," 189 F. Supp. 2d, at 559, and the State *never appealed* that injunction. Uncontrovertibly, the State was no longer "seek[ing] to administer" the state-court plan, and thus the 60-day time period for DOJ review was no longer running. The passing of 60 days from the date of the State's February 20, 2002, submission of

the additional requested information had no legal significance, and the state-court plan was not rendered enforceable by operation of law.

Appellants' argument—that their appeal, as *intervenors*, is sufficient to demonstrate that the State still "seek[s] to administer" the state-court plan—is invalid on its face. The actions of a private party are not the actions of a State and cannot satisfy the prerequisite to §5 preclearance.

C

Since we affirm the injunction on the basis of the District Court's principal stated ground that the state-court plan had not been precleared and had no prospect of being precleared in time for the 2002 election, we have no occasion to address the District Court's alternative holding that the State Chancery Court's redistricting plan was unconstitutional—a holding that the District Court specified was set forth to cover the eventuality of the principal stated ground's being rejected on appeal—and therefore we vacate it as a basis for the injunction. The District Court's alternative holding is not to be regarded as supporting the injunction we have affirmed on the principal ground, or as binding upon state and federal officials should Mississippi seek in the future to administer a redistricting plan adopted by the Chancery Court.

III

Having determined that the District Court properly enjoined enforcement of the state-court redistricting plan, we turn to the propriety of the redistricting plan that the District Court itself adopted. Cross-appellees in No. 01–1596 (originally the state plaintiffs) and the United States, as *amicus curiae*, argue that the District Court was required to draw (as it did) single-member congressional districts; cross-appellants in No. 01–1596 (originally the federal plaintiffs) contend that it was required to order at-

large elections for the congressional seats. We must decide whether, as cross-appellees contend, the District Court was governed by the provisions of 2 U. S. C. §2c; or, as cross-appellants contend, by the provisions of 2 U. S. C. §2a(c)(5).

A

Article I, §4, cl. 1, of the Constitution provides that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ." It reserves to Congress, however, the power "at any time by Law [to] make or alter such Regulations, except as to the Places of chusing Senators." *Ibid*. Pursuant to this authority, Congress in 1929 enacted the current statutory scheme governing apportionment of the House of Representatives. 2 U. S. C. §§2a(a), (b). In 1941, Congress added to those provisions a subsection addressing what is to be done pending redistricting:

> "Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the dis-

> tricts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large." §2a(c).

In 1967, 26 years after §2a(c) was enacted, Congress adopted §2c, which provides, as relevant here:

> "In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative . . . ."

The tension between these two provisions is apparent: Section 2c requires States entitled to more than one Representative to elect their Representatives from single-member districts, rather than from multimember districts or the State at large. Section 2a(c), however, requires multimember districts or at-large elections in certain situations; and with particular relevance to the present cases, in which Mississippi, by reason of the 2000 census, lost a congressional seat, §2a(c)(5) requires at-large elections. Cross-appellants would reconcile the two provisions by interpreting the introductory phrase of §2a(c) ("Until a State is redistricted in the manner provided by the law

thereof after any apportionment") and the phrase "established by law" in §2c to refer exclusively to *legislative* redistricting—so that §2c tells the legislatures what to do (single-member districting) and §2a(c) provides what will happen *absent* legislative action—in the present cases, the mandating of at-large elections.

The problem with this reconciliation of the provisions is that the limited role it assigns to §2c (governing legislative apportionment but not judicial apportionment) is contradicted both by the historical context of §2c's enactment and by the consistent understanding of all courts in the almost 40 years since that enactment. When Congress adopted §2c in 1967, the immediate issue was precisely the involvement of the courts in fashioning electoral plans. The Voting Rights Act of 1965 had recently been enacted, assigning to the federal courts jurisdiction to involve themselves in elections. See 79 Stat. 439 (as amended and codified at 42 U. S. C. §1973 *et seq*.). Even more significant, our decisions in *Baker* v. *Carr*, 369 U. S. 186 (1962), *Wesberry* v. *Sanders*, 376 U. S. 1 (1964), and *Reynolds* v. *Sims*, 377 U. S. 533 (1964), had ushered in a new era in which federal courts were overseeing efforts by badly malapportioned States to conform their congressional electoral districts to the constitutionally required one-person, one-vote standards. In a world in which the role of federal courts in redistricting disputes had been transformed from spectating, see *Colegrove* v. *Green*, 328 U. S. 549 (1946) (opinion of Frankfurter, J.), to directing, the risk arose that judges forced to fashion remedies would simply order at-large elections.

At the time Congress enacted §2c, at least six District Courts, two of them specifically invoking 2 U. S. C. §2a(c)(5), had suggested that if the state legislature was unable to redistrict to correct malapportioned congressional districts, they would order the State's entire congressional delegation to be elected at large. On March 26,

1964, a three-judge District Court ordered that, pending enactment of a constitutional redistricting plan by the Michigan Legislature, all Michigan Representatives would be elected at large. *Calkins* v. *Hare*, 228 F. Supp. 824, 830 (ED Mich. 1964). On October 19, 1964, a three-judge District Court entered a similar order for the State of Texas. See *Bush* v. *Martin*, 251 F. Supp. 484, 489, and n. 11, 490, and n. 17 (SD Tex. 1966). On February 3, 1965, a three-judge District Court in Arkansas, whose House delegation had decreased from six to four Members after the 1960 census, stated that under §2a(c)(5), "if the Legislature . . . had taken no action [after the 1960 apportionment] the congressmen would have been required to run at large," and that the same reasoning would compel the court to require at-large elections if the legislature adopted malapportioned congressional districts. *Park* v. *Faubus*, 238 F. Supp. 62, 66 (ED Ark. 1965). On August 5, 1966, a three-judge District Court in Missouri, whose House delegation had decreased from 11 to 10 Members after the 1960 census, informed the State that if it was unable to redistrict in accordance with the Constitution, then pursuant to the "command of Section 2(a)(c) *[sic]*," "the congressional elections for Missouri will be ordered conducted at large until new and constitutional districts are created." *Preisler* v. *Secretary of State of Missouri*, 257 F. Supp. 953, 981, 982 (WD Mo. 1966), aff'd, 385 U. S. 450 (1967) *(per curiam)*. In *Meeks* v. *Anderson*, 229 F. Supp. 271, 273–274 (Kan. 1964), and *Baker* v. *Clement*, 247 F. Supp. 886, 897–898 (MD Tenn. 1965), three-judge District Courts stayed their hands but held forth the possibility of requiring at-large elections. With all this threat of judicially imposed at-large elections, and (as far as we are aware) no threat of a legislatively imposed change to at-large elections, it is most unlikely that §2c was directed solely at legislative reapportionment.

Nor have the courts ever thought so. To the contrary,

every court that has addressed the issue has held that §2c requires courts, when they are remedying a failure to redistrict constitutionally, to draw single-member districts whenever possible. The first court to examine §2c, just two weeks after the statute was enacted, was the three-judge District Court in Missouri that had previously threatened to order at-large elections in accordance with §2a(c)(5). In its decision on December 29, 1967, that court observed that the enactment of §2c had "relieved [it] of the prior existing Congressional command to order that the 1968 and succeeding congressional elections in Missouri be held at large," *Preisler* v. *Secretary of State of Missouri*, 279 F. Supp. 952, 969 (WD Mo. 1967), aff'd, 394 U. S. 526 (1969), and accordingly reversed its prior position and stated that it would fashion a districting plan if the State failed to fulfill its duty. Four years later, the Supreme Court of Virginia denied a writ of mandamus directing at-large elections to replace an allegedly unconstitutional Redistricting Act, on the ground that by reason of §2c "we cannot legally issue the writ." *Simpson* v. *Mahan*, 212 Va. 416, 417, 185 S. E. 2d 47, 48 (1971). The next year the Supreme Court of California reached the same conclusion that §2c required it to establish single-member districts, see *Legislature* v. *Reinecke*, 6 Cal. 3d 595, 602–603, 492 P. 2d 385, 390 (1972), a conclusion that it reaffirmed in 1982, see *Assembly of State of Cal.* v. *Deukmejian*, 30 Cal. 3d 638, 664, 639 P. 2d 939, 955 (1982). In *Shayer* v. *Kirkpatrick*, 541 F. Supp. 922, 926 (WD Mo.), aff'd *sub nom. Schatzle* v. *Kirkpatrick,* 456 U. S. 966 (1982), the District Court concluded that "nothing in section 2c suggests any limitation on its applicability," and declined to order at-large elections pursuant to §2a(c)(5) because §2c "appears to prohibit at-large elections." And in *Carstens* v. *Lamm*, 543 F. Supp. 68 (Colo. 1982), the District Court reached a substantially identical result, although contemplating that §2a(c) provided a "stop-gap measure" in the "event that no

constitutional redistricting plan exists on the eve of a congressional election, and there is not enough time for either the Legislature or the courts to develop an acceptable plan," *id.*, at 77, and n. 23.

It bears noting that this Court affirmed two of the District Court decisions described above, see *Preisler,* 279 F. Supp 952*,* and *Shayer*, *supra*, one without discussing §2c, and one summarily. And in 1971 we observed in dictum that "[i]n 1967, Congress reinstated the single-member district requirement" that had existed before the enactment of §2a(c). *Whitcomb* v. *Chavis*, 403 U. S. 124, 159, n. 39 (1971).

Of course the implausibility (given the circumstances of its enactment) that §2c was meant to apply only to legislative reapportionment, and the unbroken unanimity of state and federal courts in opposition to that interpretation, would be of no consequence if the text of §2c (and of §2a(c)) unmistakably demanded that interpretation. But it does not. Indeed, it is more readily susceptible of the opposite interpretation.

The clause "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled" could, to be sure, be so interpreted that the phrase "by law" refers only to legislative action. Its more common meaning, however, encompasses judicial decisions as well. See, *e.g.*, *Hope* v. *Pelzer*, 536 U. S. 730, 741 (2002) (referring to judicial decisions as "established law" in qualified immunity context); *Swidler & Berlin* v. *United States*, 524 U. S. 399, 407 (1998) (referring to judicial decisions as "established law" in the attorney-client privilege context); *United States* v. *Frady*, 456 U. S. 152, 166 (1982) (referring to the judicially established standard of review for a 28 U. S. C. §2255 motion as "long-established law"); see also §2254(d)(1) ("clearly established Federal law, as determined by the Supreme Court of the United States"); *Marbury* v. *Madison*, 1

Cranch 137, 177 (1803) (it is "the province and duty of the judicial department to say what the law is").

We think, therefore, that while §2c assuredly envisions legislative action, it also embraces action by state and federal courts when the prescribed legislative action has not been forthcoming. We might note that giving "by law" its less common meaning would cause the immediately following clause of §2c ("and Representatives shall be elected only from districts *so established*" (emphasis added)) to exclude *all* courts from redistricting, including even state courts acting pursuant to state legislative authorization in the event of legislative default. It is hard to see what plausible congressional purpose this would serve. When, as here, the situation (a decrease in the number of Representatives, all of whom were formerly elected from single-member districts) enables courts to prescribe at-large elections under paragraph (5) of §2a(c) (assuming that section subsists, see *infra*, at 17), it can be said that there is a constitutional fallback. But what would occur if the situation called for application of paragraphs (1) to (4) of §2a(c), none of which is constitutionally enforceable when (as is usual) the decennial census has shown a proscribed degree of disparity in the voting population of the established districts? The absolute prohibition of §2c ("Representatives shall be elected only from [single-member] districts [legislatively] established") would be subject to no exception, and courts would (despite *Baker* v. *Carr*) be congressionally forbidden to act when the state legislature has not redistricted. Only when it is utterly unavoidable should we interpret a statute to require an unconstitutional result—and that is far from the situation here.

In sum, §2c is as readily enforced by courts as it is by state legislatures, and is just as binding on courts—federal or state—as it is on legislatures.

B

Having determined that in enacting 2 U. S. C. §2c, Congress mandated that States are to provide for the election of their Representatives from single-member districts, and that this mandate applies equally to courts remedying a state legislature's failure to redistrict constitutionally, we confront the remaining question: what to make of §2a(c)? As observed earlier, the texts of §2c and §2a(c)(5) are in tension. Representatives cannot be "elected only from districts," §2c, while being elected "at large," §2a(c). Some of the courts confronted with this conflict have concluded that §2c repeals §2a(c) by implication. See *Shayer* v. *Kirkpatrick*, 541 F. Supp., at 927; *Assembly of State of Cal.* v. *Deukmejian*, 30 Cal. 3d, at 663–664, 639 P. 2d, at 954. There is something to be said for that position—especially since paragraphs (1) through (4) of §2a(c) have become (because of postenactment decisions of this Court) in virtually all situations plainly unconstitutional. (The unlikely exception is the situation in which the decennial census makes no districting change constitutionally necessary.) Eighty percent of the section being a dead letter, why would Congress adhere to the flotsam of paragraph (5)?

We have repeatedly stated, however, that absent "a clearly expressed congressional intention," *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974), "repeals by implication are not favored," *Universal Interpretive Shuttle Corp.* v. *Washington Metropolitan Area Transit Comm'n*, 393 U. S. 186, 193 (1968). An implied repeal will only be found where provisions in two statutes are in "irreconcilable conflict," or where the latter act covers the whole subject of the earlier one and "is clearly intended as a substitute." *Posadas* v. *National City Bank*, 296 U. S. 497, 503 (1936). So while there is a strong argument that §2c was a substitute for §2a(c), we think the better answer is that §2a(c)—where what it prescribes is constitutional (as it is with

regard to paragraph (5))—continues to apply.

Section 2a(c) is, of course, only *provisionally* applicable. It governs the manner of election for Representatives in any election held "[u]ntil a State is redistricted in the manner provided by the law thereof after any apportionment." That language clashes with §2c only if it is interpreted to forbid judicial redistricting unless the state legislature has first acted. On that interpretation, whereas §2c categorically instructs courts to redistrict, §2a(c)(5) forbids them to do anything but order at-large elections unless the state legislature has acted. But there is of course no need for such an interpretation. "Until a State is redistricted" can certainly refer to redistricting by courts as well as by legislatures. Indeed, that interpretation would seem the preferable one even if it were not a necessary means of reconciling the two sections. Under prior versions of §2a(c), its default or stopgap provisions were to be invoked for a State "until the *legislature* of such State . . . [had] redistrict[ed] such State." Act of Jan. 16, 1901, ch. 93, §4, 31 Stat. 734 (emphasis added); see Act of Feb. 7, 1891, ch. 116, §4, 26 Stat. 736 ("until such State be redistricted as herein prescribed by the *legislature* of said State" (emphasis added)); Act of Feb. 25, 1882, ch. 20, §3, 22 Stat. 6 ("shall be elected at large, unless the *Legislatures* of said States have provided or shall otherwise provide" (emphasis added)). These provisions are in stark contrast to the text of the current §2a(c): "[u]ntil a State is redistricted in the manner provided by the law thereof."

If the more expansive (and more natural) interpretation of §2a(c) is adopted, its condition can be met—and its demand for at-large elections suspended—by the very court that follows the command of §2c. For when a court, state or federal, redistricts pursuant to §2c, it necessarily does so "in the manner provided by [state] law." It must follow the "policies and preferences of the State, as expressed in statutory and constitutional provisions or in the

reapportionment plans proposed by the state legislature," except, of course, when "adherence to state policy . . . detract[s] from the requirements of the Federal Constitution." *White* v. *Weiser*, 412 U. S. 783, 795 (1973). Federal constitutional prescriptions, and federal statutory commands such as that of §2c, are appropriately regarded, for purposes of §2a(c), as a part of the state election law.

Thus, §2a(c) is inapplicable *unless* the state legislature, and state and federal courts, have all failed to redistrict pursuant to §2c. How long is a court to await that redistricting before determining that §2a(c) governs a forthcoming election? Until, we think, the election is so imminent that no entity competent to complete redistricting pursuant to state law (including the mandate of §2c) is able to do so without disrupting the election process. Only then may §2a(c)'s stopgap provisions be invoked. Thus, §2a(c) cannot be properly applied—neither by a legislature nor a court—as long as it is feasible for federal courts to effect the redistricting mandated by §2c. So interpreted, §2a(c) continues to function as it always has, as a last-resort remedy to be applied when, on the eve of a congressional election, no constitutional redistricting plan exists and there is no time for either the State's legislature or the courts to develop one. Cf. *Carstens* v. *Lamm*, 543 F. Supp., at 77–78.

There remains to be considered Mississippi's at-large election provision, which reads as follows:

> "Should an election of representatives in Congress occur after the number of representatives to which the state is entitled shall be changed, in consequence of a new apportionment being made by Congress, and before the districts shall have been changed to conform to the new apportionment, representatives shall be chosen as follows: In case the number of representatives to which the state is entitled be increased, then

> one (1) member shall be chosen in each district as organized, and the additional member or members shall be chosen by the electors of the state at large; and if the number of representatives shall be diminished, then the whole number shall be chosen by the electors of the state at large." Miss. Code Ann. §23–15–1039 (Lexis 2001).

There has been no interpretation of this provision by the Mississippi courts. We believe it was designed to track 2 U. S. C. §§2a(c)(2) and (5), and should be deemed operative when those provisions would be. That is to say, (1) the phrase "and before the districts shall have been changed to conform to the new apportionment" envisions both legislatively and judicially prescribed change, and (2) the statute does not come into play as long as it remains feasible for a state or federal court to complete redistricting. In these cases, the District Court properly completed the redistricting of Mississippi pursuant to 2 U. S. C. §2c and thus neither Mississippi Code §23–15–1039 nor 2 U. S. C. §2a(c) was applicable.

IV

JUSTICE O'CONNOR's opinion concurring in part and dissenting in part (hereinafter "the dissent") agrees that the District Court properly acted to remedy a constitutional violation, see *post*, at 9–10, but contends that it should have looked to §2a(c) rather than §2c in selecting an appropriate remedy. We think not. We have explained why it *makes sense* for §2c to apply until there is no longer any reasonable prospect for redistricting according to state law—whereupon §2a(c) applies. If, like the dissent, we were to forgo such analysis and simply ask, in the abstract, which of the two provisions has primacy, we would probably *still* select §2c—the only one cast in absolute, rather than conditional, terms. The dissent gives not the hint of a reason why *it* believes §2a(c) has primacy. It says

that "[t]he text of §2a(c) directs federal courts to order at-large elections '[u]ntil a State is redistricted in the manner provided by the law thereof.'" *Post*, at 10. But it is *equally* true that §2c directs federal courts to redistrict *absolutely and without qualification*.

The dissent does contemplate a role for federal courts in redrawing congressional districts, but only "*after* a State has been redistricted" in the first instance. *Post*, at 9. It is not entirely clear which entities the dissent considers competent to do this initial redistricting—certainly the legislature, and perhaps also state courts, but only if such "courts are part of the 'manner provided by the law thereof.'" *Post*, at 10, n. 1. But the dissent also says that "a court should enforce §2a(c) *before* a 'State is redistricted in the manner provided by the law thereof,' and a court should enforce §2c *after* a State" has been initially redistricted, *post*, at 9—which (if one takes the words at face value) leaves no room for any court to do the initial redistricting. We assume the dissent does not mean precisely what it has said.

The dissent implicitly differentiates between federal and state courts—effectively holding that *state* courts may undertake the initial redistricting that would satisfy §2a(c)'s prerequisite, but *federal* courts may not. It presumably rests this distinction upon the belief that state courts are capable of redistricting "in the manner provided by the law thereof," whereas federal courts are not. See *post*, at 10, n. 1. To read that phrase as potentially including state—but not federal—courts, the dissent takes the word "manner" to refer to *process* or *procedures*, rather than *substantive requirements*. See *ibid*. (If the State's *process* for redistricting includes courts, then and only then may courts redistrict, rendering §2a(c) inapplicable) But such a reading renders the phrase "in the manner provided by the law thereof" redundant of the requirement that the state be "redistricted." *Of course* the State has

not been redistricted if districts have been drawn by someone without authority to redistrict. Should an ambitious county clerk or individual legislator sit down and draw up a districting map, no one would think that the State has, within the meaning of the statute, been "redistricted." In our view, the word "manner" refers to the State's substantive "policies and preferences" for redistricting, *White* v. *Weiser*, 412 U. S., at 795, as expressed in a State's statutes, constitution, proposed reapportionment plans, see *ibid*., or a State's "traditional districting principles," *Abrams* v. *Johnson*, 521 U. S. 74, 86 (1997); see also *Upham* v. *Seamon*, 456 U. S. 37, 42–43 (1982) *(per curiam).* Thus, when a federal court redistricts a State in a manner that complies with that State's substantive districting principles, it does so "in the manner provided by the law thereof." See *supra*, at 18–19.* While it certainly remains preferable for the State's legislature to complete its constitutionally required redistricting pursuant to the requirements of §2c, see *Abrams*, *supra*, at 101, or for the state courts to do so if they can, see *Growe*, 507 U. S., at 34, we have long since crossed the Rubicon that seems to impede the dissent, see, *e.g.*, *Baker* v. *Carr*, 369 U. S. 186 (1962). When the State, through its legislature or other authorized body, cannot produce the needed decision, then federal courts are "left to embark on [the] delicate task" of redistricting, *Abrams*, *supra*, at 101.

The dissent claims that we have read the statutory

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* Contrary to the dissent's assertion, *post*, at 9–10, n. 1, our reading creates no conflict with *Pennhurst State School and Hospital* v. *Halderman,* 465 U. S. 89 (1984). Here a federal court granted relief on the basis of *federal* law—specifically, the Federal Constitution. The District Court did not "instruc[t] state officials on how to conform their conduct to state law," *Pennhurst*, *supra*, at 106; rather, it deferred to the State's "policies and preferences" for redistricting, *White* v. *Weiser*, 412 U. S. 783, 795 (1973). Far from intruding on state sovereignty, such deference respects it.

phrase "[u]ntil a State is redistricted" to mean "[u]ntil . . . the election is so imminent that no entity competent to complete redistricting pursuant to the mandate of §2c is able to do so without disrupting the election process." *Post*, at 7. From that premise, it proceeds to mount a vigorous (and, in the principles it espouses, highly edifying) "plain meaning" attack upon our holding. Unfortunately, the premise is patently false. We, no less than the dissent, acknowledge that "the text tells us 'how long' §2a(c) should govern: '*until* a State is redistricted in the manner provided by the law thereof,'" *post*, at 8. The issue is not how long §2a(c) governs, but how long a court (under the continuing mandate of §2a(c)) should wait before ordering an at-large election. The dissent treats §2a(c) as though it prescribes (in its application to the facts of the present case) the immediate establishment of statewide districts (*i.e.*, an at-large election) for all Representatives. It prescribes no such thing. All it says is that "[u]ntil [the] State is redistricted in the manner provided by the law thereof," Representatives "shall be elected from the State at large." The only point at which §2a(c) issues a command—the only point at which it bites—is at *election time*. Only if, *at election time*, redistricting "in the manner provided by [state] law" has not occurred, does §2a(c) become operative.

So despite the dissent's ardent protestations to the contrary, see *ibid.*, the dissent, no less than we, must confront the question "[h]ow long is a court to await that redistricting before determining that §2a(c) governs a forthcoming election?" Surely the dissent cannot possibly believe that, since "the text tells us 'how long' §2a(c) should govern," *ibid.*, a court can declare, immediately after congressional reapportionment, and before the state legislature has even had a chance to act, that the State's next elections for Representatives will be at large. We say that the state legislature (and the state and federal courts)

should be given the full time available—right up until the time when further delay will disrupt the election process—to reapportion according to state law. Since the dissent disagrees with that, we wonder what its own time line might be. But to claim that there is no time line—simply to assert that "[§]2a(c) contains *no* imminence requirement," *ibid.*—is absurd.

The dissent suggests that our reading of §2c runs afoul of the Court's anticommandeering jurisprudence, see *post*, at 10–11, but in doing so the dissent fails to recognize that the state legislature's obligation to prescribe the "Times, Places and Manner" of holding congressional elections is grounded in Article I, §4, cl. 1, of the Constitution itself and not any mere statutory requirement. Here, as acknowledged by the dissent, the federal plaintiffs "alleged a constitutional violation"—failure to provide for the election of the proper number of representatives in accordance with Article I, §2, cl. 1—"and the federal court drew a plan to remedy that violation," *post*, at 10. In crafting its remedy, the District Court appropriately followed the "Regulations" Congress prescribed in §2c—"Regulations" that Article I, §4, cl. 1, of the Constitution expressly permits Congress to make, see *supra*, at 10. To be sure §2c "envisions legislative action," *supra*, at 16, but in the context of Article I, §4, cl. 1, such "Regulations" are *expressly* allowed. In enacting §2c (and §2a(c), for that matter), Congress was not placing a statutory obligation on the state legislatures as it was in *New York* v. *United States*, 505 U. S. 144 (1992); rather, it was regulating (as the Constitution specifically permits) the manner in which a State is to fulfill its pre-existing constitutional obligations under Article I, §§2 and 4. Our interpretation of §2c no more permits a commandeering of the machinery of state government than does the dissent's understanding of §2a(c). Under our view, if the State fails to redistrict, then federal courts may do so. Under the dissent's view, if the State fails to redistrict (and loses con-

gressional seats), then the federal courts *must* order at-large elections pursuant to §2a(c)(5). See, *e.g.*, *post*, at 9. If our reading of §2c runs afoul of any anticommandeering principles, then the dissent commits the same sin.

Another straw man erected by the dissent is to be found in its insistence—as though in response to an argument of ours—that "[s]ince §2a(c) was enacted decades before the *Baker* line of cases, this subsequent development cannot change the interpretation of §2a(c)." *Post*, at 16. But we have never said that those cases changed the meaning of §2a(c); we have said that they help to explain the meaning of §2c, which *was* enacted after they were decided. And it is, of course, the most rudimentary rule of statutory construction (which one would have thought familiar to dissenters so prone to preachment on that subject, see, *e.g.*, *post*, at 7, 14, 16) that courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes:

> "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them . . . . If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute . . . ; and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." *United States* v. *Freeman*, 3 How. 556, 564–565 (1845).

That is to say, the meaning of §2c (illuminated by the *Baker* v. *Carr* line of cases) sheds light upon the meaning of §2a(c).

Finally, the dissent gives the statutory phrase "redistricted in the manner provided by the law thereof" a

meaning that is highly unusual. It means, according to the dissent, "redistricted as state law requires," *even when state law is unconstitutional*—so that even an unconstitutional redistricting satisfies the "until" clause of §2a(c), and enables §2c to be applied. We know of no other instance in which a federal statute acknowledges to be "state law" a provision that violates the Supremacy Clause and is therefore a legal nullity. It is particularly peculiar for the dissent to allow an unconstitutional redistricting to satisfy the "until" clause when it will *not allow* a nonpreclearred redistricting to satisfy the "until" clause (in those States subject to §5 of the Voting Rights Act, 42 U. S. C. §1973c). See *post*, at 20–21. That is to say, in the dissent's view a redistricted State is not "redistricted" within the meaning of §2a(c) if the districts have not been precleared, but it is "redistricted" even if the districts are patently unconstitutional (so long as they have been precleared, or the State is not subject to the preclearance requirement). Section 2a(c), of course, has no "preclearance exception." If redistricting "in the manner provided by [state] law" is ineffective when a federal statute (§5 preclearance) has been disregarded, surely it is also ineffective when the Federal Constitution has been disregarded. It is not we but the dissent that reads into the text of §2a(c) ("redistricted in the manner provided by [state] law") distinctions that have no basis in reality.

* * *

The judgment of the District Court is

Affirmed.