Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BRANCH ET AL. *v.* SMITH ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

No. 01–1437. Argued December 10, 2002—Decided March 31, 2003*

After the 2000 census caused Mississippi to lose one congressional seat, the state legislature failed to pass a new redistricting plan. Anticipating a state-law deadline for qualifying candidates, appellants and cross-appellees (state plaintiffs) filed suit in October 2001, asking the State Chancery Court to issue a redistricting plan for the 2002 elections. In a similar action, appellees and cross-appellants (federal plaintiffs) asked the Federal District Court to enjoin the current plan and any state-court plan, and to order at-large elections pursuant to Miss. Code Ann. §23–15–1039 and 2 U. S. C. §2a(c)(5) or, alternatively, to devise its own redistricting plan. The three-judge District Court permitted the state plaintiffs to intervene and concluded that it would assert jurisdiction if it became clear by January 7, 2002, that no state plan would be in place by March 1. On the eve of the state trial, the State Supreme Court ruled that the Chancery Court had jurisdiction to issue a redistricting plan. The Chancery Court adopted such a plan. On December 21, 2001, the state attorney general submitted that plan and the Supreme Court's decision to the Department of Justice (DOJ) for preclearance pursuant to §5 of the Voting Rights Act of 1965. DOJ requested additional information from the State, noting that the 60-day review period would commence once that information was received. The information was provided on February 20, 2002. Meanwhile, the Federal District Court promulgated a plan that would fix the State's congressional districts for the 2002 elections should the state-court plan not be precleared by Feb-

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*Together with No. 01–1596, *Smith et al.* v. *Branch et al.,* also on appeal from the same court.

ruary 25. When that date passed, the District Court enjoined the State from using the state-court plan and ordered that its own plan be used in 2002 and until the State produced a precleared, constitutional plan. The court based the injunction on the failure of the timely preclearance of the state-court plan, but found, in the alternative, that the state-court plan was unconstitutional. The State did not appeal. DOJ declined to make a determination about the preclearance submission because the District Court's injunction rendered the state-court plan incapable of administration.

Held: The judgment is affirmed.

189 F. Supp. 2d 548, affirmed.

JUSTICE SCALIA delivered the opinion of the Court with respect to Parts I, II, and III–A, holding:

1. The District Court properly enjoined enforcement of the state-court plan. Pp. 5–9.

(a) There are two critical distinctions between these cases and *Growe* v. *Emison,* 507 U. S. 25. First, there is no suggestion here that the District Court failed to allow the state court adequate opportunity to develop a redistricting plan. Second, the state-court plan here was subject to §5 of the Voting Rights Act. The controversy over whether the state-court plan was precleared centers on §5's proviso that whenever a covered jurisdiction "shall enact or seek to administer" a voting change, the change may be enforced if the Attorney General does not object within 60 days. Pp. 5–6.

(b) DOJ's failure to object within 60 days of the state attorney general's original submission did not render the state-court plan enforceable on February 25. A jurisdiction seeking preclearance must provide the Attorney General with information sufficient to prove that the change is nondiscriminatory. DOJ regulations—which are "wholly reasonable and consistent with the Act," *Georgia* v. *United States,* 411 U. S. 526, 541—provide that incomplete state submissions do not start the 60-day clock, and that the clock begins to run from the date that requested information is received. DOJ's request here, which was neither frivolous nor unwarranted, postponed the 60-day period. Pp. 6–7.

(c) The state-court plan was also not precleared 60 days after the state attorney general submitted the requested information. The State was "seek[ing] to administer" the changes within §5's meaning when its attorney general made his initial submission to DOJ and when he provided additional information. However, when the State failed to appeal the District Court's injunction, it ceased "seek[ing] to administer" the state-court plan. The 60-day period was no longer running, so the plan was not rendered enforceable by operation of law. Because a private party's actions are not those of a State, the

state plaintiffs' appeal is insufficient to demonstrate that the State still "seek[s] to administer" the plan. Pp. 7–9.

(d) Since this Court affirms the injunction on the ground that the state-court plan was not precleared and could not be precleared in time for the 2002 election, the Court vacates the District Court's alternative holding that such plan was unconstitutional. P. 9.

2. The District Court properly fashioned its own congressional reapportionment plan under 2 U. S. C. §2c. The tension between §§2a(c)(5) and 2c is apparent: Pending redistricting, §2a(c)(5) requires at-large elections if a State loses a congressional seat, while §2(c), which was enacted 26 years later, requires States with more than one Representative to use single-member districts. Contrary to the federal plaintiffs' contention, §2(c) is not limited to legislative action, but also applies to action by state and federal courts when the prescribed legislative action has not been forthcoming. When §2c was adopted in 1967, the issue was precisely the courts' involvement in fashioning electoral plans. The Voting Rights Act had recently been enacted, and this Court's decisions in, *e.g., Baker* v. *Carr,* 369 U. S. 186, had ushered in a new era in which federal courts were overseeing efforts by badly malapportioned States to conform their congressional districts to one-person, one-vote standards. Given the risk that judges would simply order at-large elections, it is most unlikely that §2(c) was directed solely at legislative apportionment. Nor has any court found §2(c) to be so limited. In addition, §2c's language is most susceptible of this interpretation. Pp. 9–16.

JUSTICE SCALIA, joined by THE CHIEF JUSTICE, JUSTICE KENNEDY, and JUSTICE GINSBURG, concluded in Part III–B, that §2a(c)—where what it prescribes is constitutional (as it is in paragraph (5))—applies when a state legislature and the state and federal courts have all failed to redistrict pursuant to §2(c). This interpretation allows both §§2a(c) and 2c to be given effect. Section 2a(c) governs the manner of any election held "[u]ntil a State is redistricted in the manner provided by [state] law after any apportionment." When a court redistricts pursuant to §2c, it necessarily does so in such a manner because it must follow the State's "policies and preferences" for districting. *White* v. *Weiser*, 412 U. S. 783, 795. A court may invoke §2a(c)'s stopgap provision only when an election is so imminent that redistricting pursuant to state law (including §2c's mandate) cannot be completed without disrupting the election process. Mississippi's at-large provision should be deemed operative when §§2a(c)(2) and (5) would be: The state provision envisions both legislatively and judicially prescribed change and does not come into play as long as it is feasible for a state or federal court to complete redistricting. Pp. 17–20.

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JUSTICE STEVENS, joined by JUSTICE SOUTER and JUSTICE BREYER, while agreeing that the District Court properly enjoined the state-court plan's enforcement and promulgated its own plan under 2 U. S. C. §2c, concluded that §2c impliedly repealed §2a(c) and that the 1967 federal Act pre-empted Mississippi's statutory authorization for at-large congressional elections. The presumption against implied repeals, like that against pre-emption, is overcome if there is an irreconcilable conflict between the two provisions or if the later Act was clearly intended to "cove[r] the whole subject of the earlier one." *Posadas* v. *National City Bank,* 296 U. S. 497, 503. By prohibiting States with more than one Representative from electing Representatives at-large, the 1967 Act unambiguously forbids elections that §2a(c)(5) would otherwise authorize. Thus, under either of *Posadas*' standards, the 1967 Act repealed the earlier §2a(c)(5) and pre-empted Mississippi's law. Any fair reading of the history leading to the 1967 Act's passage shows that the parties believed that the changes they were debating would completely replace §2a(c). The statute was the final gasp in a protracted legislative process. Four versions of the original bill expressly repealed §2a(c), and there was no disagreement about that provision. When that bill did not pass, its less controversial parts, including what is now §2c, were attached to a private bill. The absence of any discussion, debate, or reference to the repeal provision in the legislative process prevents its omission from the final private bill as being seen as a deliberate choice by Congress. Pp. 1–7.

SCALIA, J., announced the judgment of the Court and delivered the opinion for a unanimous Court with respect to Parts I and II, the opinion of the Court with respect to Part III–A, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined, and an opinion with respect to Parts III–B and IV, in which REHNQUIST, C. J., and KENNEDY and GINSBURG, JJ., joined. KENNEDY, J., filed a concurring opinion, in Part II of which STEVENS, SOUTER, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which SOUTER and BREYER, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and dissenting in part, in which THOMAS, J., joined.