ARIZONA STATE LEGISLATURE v. ARIZONA INDEPENDENT REDISTRICTING COMMISSION et al. .[1]
576 U. S. ____ (2015)

Justice Ginsburg delivered the opinion of the Court.

This case concerns an endeavor by Arizona voters to address the problem of partisan gerrymandering—the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power.[1] "[P]artisan gerrymanders," this Court has recognized, "[are incompatible] with democratic principles." *Vieth* v. *Jubelirer*, 541 U. S. 267, 292 (2004) (plurality opinion); *id.*, at 316 (Kennedy, J., concurring in judgment). Even so, the Court in *Vieth* did not grant relief on the plaintiffs' partisan gerrymander claim. The plurality held the matter nonjusticiable. [...]

In 2000, Arizona voters adopted an initiative, [...] Proposition 106 amended Arizona's Constitution to remove redistricting authority from the Arizona Legislature and vest that authority in an independent commission, the Arizona Independent Redistricting Commission (AIRC or Commission). [T]he Arizona Legislature sued the AIRC in federal court seeking a declaration that the Commission and its map for congressional districts violated the "Elections Clause" of the U. S. Constitution. That Clause, critical to the resolution of this case, provides:

> "The 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 . . . ." Art. I, §4, cl. 1.

The Arizona Legislature's complaint alleged that "[t]he word 'Legislature' in the Elections Clause means [specifically and only] the representative body which makes the laws of the people," App. 21, ¶37[.] [...] The AIRC responded that, for Elections Clause purposes, "the Legislature" is not confined to the elected representatives; rather, the term encompasses all legislative authority conferred by the State Constitution, including initiatives adopted by the people themselves.

[...] We hold, first, that the Arizona Legislature, having lost authority to draw congressional districts, has standing to contest the constitutionality of Proposition 106. Next, we hold that lawmaking power in Arizona includes the initiative process, and that both §2a(c) and the Elections Clause permit use of the AIRC in congressional districting in the same way the Commission is used in districting for Arizona's own Legislature.

I

A

[1] Note: This majority opinion has been edited from the original text by Travis Braidwood for classroom use. The full case text can be found here: < http://www.supremecourt.gov/opinions/14pdf/13-1314_kjfl.pdf >. Also, the footnote numbers in this abridgment are the same as those that appear in the slip opinion.

Direct lawmaking by the people was "virtually unknown when the Constitution of 1787 was drafted." [...]
The two main "agencies of direct legislation" are the initiative and the referendum. Munro, Introductory, in IRR 8. The initiative operates entirely outside the States' representative assemblies; it allows "voters [to] petition to propose statutes or constitutional amendments to be adopted or rejected by the voters at the polls." [T]he referendum serves as a negative check. It allows "voters [to] petition to refer a legislative action to the voters [for approval or disapproval] at the polls." *Ibid.* […]

B […]

C

Proposition 106, vesting redistricting authority in the AIRC, was adopted by citizen initiative in 2000 against a "background of recurring redistricting turmoil" in Arizona. [...]
Aimed at "ending the practice of gerrymandering and improving voter and candidate participation in elections," App. 50, Proposition 106 amended the Arizona Constitution to remove congressional redistricting authority from the state legislature, lodging that authority, instead, in a new entity, the AIRC. Ariz. Const., Art. IV, pt. 2, §1, ¶¶3–23. The AIRC convenes after each census, establishes final district boundaries, and certifies the new districts to the Arizona Secretary of State. ¶¶16–17. The legislature may submit nonbinding recommendations to the AIRC, ¶16, and is required to make necessary appropriations for its operation, ¶18. The highest ranking officer and minority leader of each chamber of the legislature each select one member of the AIRC from a list compiled by Arizona's Commission on Appellate Court Appointments. ¶¶4–7. The four appointed members of the AIRC then choose, from the same list, the fifth member, who chairs the Commission. ¶8. A Commission's tenure is confined to one redistricting cycle; each member's time in office "expire[s] upon the appointment of the first member of the next redistricting commission." ¶23.
Holders of, or candidates for, public office may not serve on the AIRC, except candidates for or members of a school board. ¶3. No more than two members of the Commission may be members of the same political party, *ibid.*, and the presiding fifth member cannot be registered with any party already represented on the Commission, ¶8. Subject to the concurrence of two-thirds of the Arizona Senate, AIRC members may be removed by the Arizona Governor for gross misconduct, substantial neglect of duty, or inability to discharge the duties of office. ¶10.[5] […]

D […]

II [Section II addresses standing, particularly justiciability, and was omitted]

[5] In the current climate of heightened partisanship, the AIRC has encountered interference with its operations. In particular, its dependence on the Arizona Legislature for funding, and the removal provision have proved problematic. In 2011, when the AIRC proposed boundaries the majority party did not like, the Governor of Arizona attempted to remove the Commission's independent chair. Her attempt was stopped by the Arizona Supreme Court

III

On the merits, we instructed the parties to address this question: Do the Elections Clause of the United States Constitution and 2 U. S. C. §2a(c) permit Arizona's use of a commission to adopt congressional districts? The Elections Clause is set out at the start of this opinion, *supra*, at 2. Section 2a(c) provides:

> "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: [setting out five federally prescribed redistricting procedures]."

Before focusing directly on the statute and constitutional prescriptions in point, we summarize this Court's precedent relating to appropriate state decisionmakers for redistricting purposes. Three decisions compose the relevant case law: *Ohio ex rel. Davis* v.*Hildebrant*, 241 U. S. 565 (1916) ; *Hawke* v. *Smith (No. 1)*, 253 U. S. 221 (1920) ; and *Smiley* v. *Holm*, 285 U. S. 355 (1932) .

A

Davis v. *Hildebrant* involved an amendment to the Constitution of Ohio vesting in the people the right, exercisable by referendum[.] State election officials asked the State's Supreme Court to declare the referendum void. That court rejected the request, holding that the referendum authorized by Ohio's Constitution, "was a part of the legislative power of the State[.]" [...]

Hawke v. *Smith* involved the Eighteenth Amendment to the Federal Constitution. Ohio's Legislature had ratified the Amendment, and a referendum on that ratification was at issue. Reversing the Ohio Supreme Court's decision upholding the referendum, we held that "ratification by a State of a constitutional amendment is not an act of legislation within the proper sense of the word." 253 U. S., at 229. Instead, Article V governing ratification had lodged in "the legislatures of three-fourths of the several States" sole authority to assent to a proposed amendment. *Id.,* at 226. [...]

Smiley v. *Holm* raised the question whether legislation purporting to redistrict Minnesota for congressional elections was subject to the Governor's veto. [We held] Minnesota's legislative authority includes not just the two houses of the legislature; it includes, in addition, a make-or-break role for the Governor. [...]

Constantly resisted by The Chief Justice, but well understood in opinions that speak for the Court: "[T]he meaning of the word 'legislature,' used several times in the Federal Constitution, differs according to the connection in which it is employed, depend[ent] upon the character of the function which that body in each instance is called upon to exercise." *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 434 (1932) (citing *Smiley*, 285U. S. 355). Thus "the Legislature" comprises the referendum and the Governor's veto in the context of regulating congressional elections. *Hildebrant*, see *supra,* at 15–16; *Smiley*, see *supra,* at 17–18. In the

context of ratifying constitutional amendments, in contrast, "the Legislature" has a different identity, one that excludes the referendum and the Governor's veto. *Hawke*, see *supra*, at 16.[17] […] But as developed below, we see no constitutional barrier to a State's empowerment of its people by embracing that form of lawmaking.

B

[…] From 1862 through 1901, the decennial congressional apportionment Acts provided that a State would be required to follow federally prescribed procedures for redistricting unless "the legislature" of the State drew district lines. *E.g.*, Act of July 14, 1862, ch. 170, 12Stat. 572; Act of Jan. 16, 1901, ch. 93, §4, 31Stat. 734. In drafting the 1911 Act, Congress focused on the fact that several States had supplemented the representative legislature mode of lawmaking with a direct lawmaking role for the people, through the processes of initiative (positive legislation by the electorate) and referendum (approval or disapproval of legislation by the electorate). 47 Cong. Rec. 3508 (statement of Sen. Burton); see *supra,* at 3–5. To accommodate that development, the 1911 Act eliminated the statutory reference to redistricting by the state "legislature" and instead directed that, if a State's apportionment of Representatives increased, the State should use the Act's default procedures for redistricting "until such State shall be redistricted *in the manner provided by the laws thereof*." Ch. 5, §4, 37Stat. 14 (emphasis added).[19] [...]

As this Court observed in *Hildebrant*, "the legislative history of th[e] [1911 Act] leaves no room for doubt [about why] the prior words were stricken out and the new words inserted." 241 U. S., at 568. The change was made to safeguard to "each State full authority to employ in the creation of congressional districts its own laws and regulations." 47 Cong. Rec. 3437 (statement of Sen. Burton). The 1911 Act, in short, left the question of redistricting "to the laws and methods of the States. If they include initiative, it is included." *Id.,* at 3508. [...]

There can be no dispute that Congress itself may draw a State's congressional-district boundaries. See *Vieth*, 541 U. S., at 275 (plurality opinion) (stating that the Elections Clause

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[17] The list of constitutional provisions in which the word "legislature" appears, appended to The Chief Justice's opinion, *post*, at 28–32, is illustrative of the variety of functions state legislatures can be called upon to exercise. For example, Art. I, §2, cl. 1, superseded by the Seventeenth Amendment, assigned an "electoral" function. See *Smiley*, 285 U. S., at 365. Article I, §3, cl. 2, assigns an "appointive" function. Article I, §8, cl. 17, assigns a "consenting" function, see *Smiley*, 285 U. S., at 366, as does Art. IV, §3, cl. 1. "[R]atifying" functions are assigned in Art. V, Amdt. 18, §3, Amdt. 20, §6, and Amdt. 22, §2. See *Hawke*, 253 U. S., at 229. But Art. I, §4, cl. 1, unquestionably calls for the exercise of lawmaking authority. That authority can be carried out by a representative body, but if a State so chooses, legislative authority can also be lodged in the people themselves. See *infra*, at 24–35.

[19] The 1911 Act also required States to comply with certain federally prescribed districting rules—namely, that Representatives be elected "by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants," and that the districts "be equal to the number of Representatives to which [the] State may be entitled in Congress, no district electing more than one Representative." Act of Aug. 8, 1911, ch. 5, §§3–4, 37Stat. 14. When a State's apportionment of Representatives remained constant, the Act directed the State to continue using its pre-existing districts "until [the] State shall be redistricted as herein prescribed." See §4, *ibid.* The 1911 Act did not address redistricting in the event a State's apportionment of Representatives decreased, likely because no State faced a decrease following the 1910 census.

"permit[s] Congress to 'make or alter' " the "districts for federal elections"). The Arizona Legislature urges that the first part of the Elections Clause, vesting power to regulate congressional elections in State "Legislature[s]," precludes Congress from allowing a State to redistrict without the involvement of its representative body, even if Congress independently could enact the same redistricting plan under its plenary authority to "make or alter" the State's plan. See Brief for Appellant 56–57; Reply Brief 17. In other words, the Arizona Legislature regards §2a(c) as a futile exercise. The Congresses that passed §2a(c) and its forerunner, the 1911 Act, did not share that wooden interpretation of the Clause, nor do we. Any uncertainty about the import of §2a(c), however, is resolved by our holding that the Elections Clause permits regulation of congressional elections by initiative, see *infra*, at 24–35, leaving no arguable conflict between §2a(c) and the first part of the Clause.

C

In accord with the District Court, see *supra,* at 9, we hold that the Elections Clause permits the people of Arizona to provide for redistricting by independent commission. [...]

As to the "power that makes laws" in Arizona, initiatives adopted by the voters legislate for the State just as measures passed by the representative body do. See Ariz. Const., Art. IV, pt. 1, §1 [...] As well in Arizona, the people may delegate their legislative authority over redistricting to an independent commission just as the representative body may choose to do. See Tr. of Oral Arg. 15–16 […].

1

[...] As this Court explained in *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U. S. 1 (2013) , the Clause "was the Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress." *Id.*, at ___ (slip op., at 5) (citing The Federalist No. 59, pp. 362–363 (C. Rossiter ed. 1961) (A. Hamilton)).

The Clause was also intended to act as a safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate. [...]

The Elections Clause, however, is not reasonably read to disarm States from adopting modes of legislation that place the lead rein in the people's hands.

2

[…] This Court has "long recognized the role of the States as laboratories for devising solutions to difficult legal problems." *Oregon* v. *Ice*, 555 U. S. 160, 171 (2009) ; see *United States* v. *Lopez*, 514 U. S. 549, 581 (1995) [...]

We resist reading the Elections Clause to single out federal elections as the one area in which States may not use citizen initiatives as an alternative legislative process. Nothing in that Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution. See *Shiel*, H. R. Misc. Doc. No. 57, at 349–352 […].

3 […]

4

[…] The people, in several States, functioning as the lawmaking body for the purpose at hand, have used the initiative to install a host of regulations governing the "Times, Places and Manner" of holding federal elections. Art. I, §4. For example, the people of California provided for permanent voter registration, specifying that "no amendment by the Legislature shall provide for a general biennial or other periodic reregistration of voters." Cal. Elec. Code Ann. §2123 (West 2003). The people of Ohio banned ballots providing for straight-ticket voting along party lines. Ohio Const., Art. V, §2a. The people of Oregon shortened the deadline for voter registration to 20 days prior to an election. Ore. Const., Art. II, §2. None of those measures permit the state legislatures to override the people's prescriptions. The Arizona Legislature's theory—that the lead role in regulating federal elections cannot be wrested from "the Legislature," and vested in commissions initiated by the people—would endanger all of them.

The list of endangered state elections laws, were we to sustain the position of the Arizona Legislature, would not stop with popular initiatives. Almost all state constitutions were adopted by conventions and ratified by voters at the ballot box, without involvement or approval by "the Legislature." [...]

* * *

[…] The people of Arizona turned to the initiative to curb the practice of gerrymandering and, thereby, to ensure that Members of Congress would have "an habitual recollection of their dependence on the people." The Federalist No. 57, at 350 (J. Madison). In so acting, Arizona voters sought to restore "the core principle of republican government," namely, "that the voters should choose their representatives, not the other way around." Berman, Managing Gerrymandering, 83 Texas L. Rev. 781 (2005). The Elections Clause does not hinder that endeavor.

For the reasons stated, the judgment of the United States District Court for the District of Arizona is

Affirmed.