

***Arizona State Legislature v. Arizona Independent
Redistricting Commission***

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WHO DRAWS THE LINES?

TYPES OF REDISTRICTING

<ul style="list-style-type: none">• State legislative• Governed by state constitutional standards• Equal protection• Voting Rights Act• Ohio Apportionment Board	<ul style="list-style-type: none">• Congressional• Governed by U.S. constitutional requirements• Equal protection• Voting Rights Act• Ohio General Assembly
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HISTORICAL ARIZONA PROCESS



- Arizona Legislature adopts congressional district maps

PROP 106

- Initiated constitutional amendment
- Arizona Independent Redistricting Commission (AIRC) draws state legislative and congressional district maps
- AIRC adopted congressional district maps in 2012



CASE

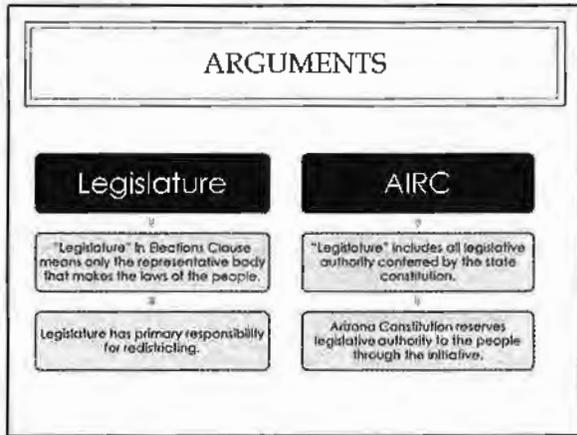
- Arizona State Legislature vs. Arizona Independent Redistricting Commission, 576 U.S. ____ (2015)
-
- Arizona Legislature challenged the AIRC's authority to draw congressional district maps
 - Requested permanent injunction against AIRC map

THE QUESTION

- Does the Elections Clause of the U.S. Constitution mean that state legislatures must establish congressional districts?

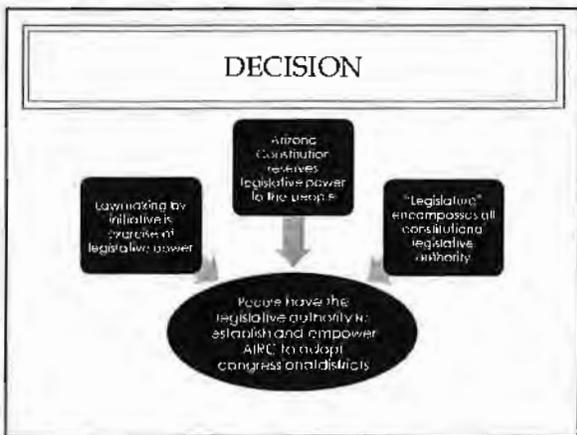
The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof...

-Elections Clause (Article I, Section 4)



ARIZONA CONSTITUTION

- The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature...
- Arizona Constitution, Article I, Section 1



IMPACT ON OHIO

- Issue 1
 - Proposes new commission only for state legislative districts
 - No application to congressional districts
- Ohio Constitution
 - Silent on the topic of congressional redistricting
 - Expressly reserves legislative power to the people
- Initiative or legislative sponsored constitutional amendment could establish an independent commission to adopt congressional districts

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

**ARIZONA STATE LEGISLATURE v. ARIZONA
INDEPENDENT REDISTRICTING COMMISSION ET AL.****APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA**

No. 13–1314. Argued March 2, 2015—Decided June 29, 2015

Under Arizona’s Constitution, the electorate shares lawmaking authority on equal footing with the Arizona Legislature. The voters may adopt laws and constitutional amendments by ballot initiative, and they may approve or disapprove, by referendum, measures passed by the Legislature. *Ariz. Const.*, Art. IV, pt. 1, §1. “Any law which may be enacted by the Legislature . . . may be enacted by the people under the Initiative.” Art. XXII, §14.

In 2000, Arizona voters adopted Proposition 106, an initiative aimed at the problem of gerrymandering. Proposition 106 amended Arizona’s Constitution, removing redistricting authority from the Arizona Legislature and vesting it in an independent commission, the Arizona Independent Redistricting Commission (AIRC). After the 2010 census, as after the 2000 census, the AIRC adopted redistricting maps for congressional as well as state legislative districts. The Arizona Legislature challenged the map the Commission adopted in 2012 for congressional districts, arguing that the AIRC and its map violated the “Elections Clause” of the U. S. Constitution, which 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.” Because “Legislature” means the State’s representative assembly, the Arizona Legislature contended, the Clause precludes resort to an independent commission, created by initiative, to accomplish redistricting. A three-judge District Court held that the Arizona Legislature had standing to sue, but rejected its complaint on the merits.

Held:

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1. The Arizona Legislature has standing to bring this suit. In claiming that Proposition 106 stripped it of its alleged constitutional prerogative to engage in redistricting and that its injury would be remedied by a court order enjoining the proposition's enforcement, the Legislature has shown injury that is 'concrete and particularized' and 'actual or imminent,' *Arizonans for Official English v. Arizona*, 520 U. S. 43, 64, "fairly traceable to the challenged action," and "redressable by a favorable ruling," *Clapper v. Amnesty Int'l USA*, 568 U. S. ___, ___. Specifically, Proposition 106, together with the Arizona Constitution's ban on efforts by the Arizona Legislature to undermine the purposes of an initiative, would "completely nullify" any vote by the Legislature, now or "in the future," purporting to adopt a redistricting plan. *Raines v. Byrd*, 521 U. S. 811, 823–824. Pp. 9–15.

2. The Elections Clause and 2 U. S. C. §2a(c) permit Arizona's use of a commission to adopt congressional districts. Pp. 15–35.

(a) Redistricting is a legislative function to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum, *Ohio ex rel. Davis v. Hildebrant*, 241 U. S. 565, 567, and the Governor's veto, *Smiley v. Holm*, 285 U. S. 355, 369. While exercise of the initiative was not at issue in this Court's prior decisions, there is no constitutional barrier to a State's empowerment of its people by embracing that form of lawmaking. Pp. 15–19.

(b) Title 2 U. S. C. §2a(c)—which provides that, "[u]ntil a State is redistricted in the manner provided by the law thereof after any apportionment," it must follow federally prescribed redistricting procedures—permits redistricting in accord with Arizona's initiative. From 1862 through 1901, apportionment Acts required a State to follow federal procedures unless "the [state] legislature" drew district lines. In 1911, Congress, recognizing that States had supplemented the representative legislature mode of lawmaking with a direct lawmaking role for the people, replaced the reference to redistricting by the state "legislature" with a reference to redistricting of a State "in the manner provided by the laws thereof." §4, 37 Stat. 14. The Act's legislative history "leaves no . . . doubt," *Hildebrant*, 241 U. S., at 568, that 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. "If they include the initiative, it is included." *Id.*, at 3508. Congress used virtually identical language in enacting §2a(c) in 1941. This provision also accords full respect to the redistricting procedures adopted by the States. Thus, so long as a State has "redistricted in the manner provided by the law thereof"—as Arizona did by utilizing the independent commission procedure in its Constitution—the resulting redistricting plan becomes the presumptively governing map.

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Though four of §2a(c)'s five default redistricting procedures—operative only when a State is not “redistricted in the manner provided by [state] law”—have become obsolete as a result of this Court’s decisions embracing the one-person, one-vote principle, this infirmity does not bear on the question whether a State has been “redistricted in the manner provided by [state] law.” Pp. 19–23.

(c) The Elections Clause permits the people of Arizona to provide for redistricting by independent commission. The history and purpose of the Clause weigh heavily against precluding the people of Arizona from creating a commission operating independently of the state legislature to establish congressional districts. Such preclusion would also run up against the Constitution’s animating principle that the people themselves are the originating source of all the powers of government. Pp. 24–35.

(1) The dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules, not to restrict the way States enact legislation. See *Inter Tribal Council of Ariz.*, 570 U. S., at ____ . Ratification arguments in support of congressional oversight focused on potential abuses by state politicians, but the legislative processes by which the States could exercise their initiating role in regulating congressional elections occasioned no debate. Pp. 25–27.

(2) There is no suggestion that the Election Clause, by specifying “the Legislature thereof,” required assignment of congressional redistricting authority to the State’s representative body. It is characteristic of the federal system that States retain autonomy to establish their own governmental processes free from incursion by the Federal Government. See, e.g., *Alden v. Maine*, 527 U. S. 706, 752. “Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.” *Gregory v. Ashcroft*, 501 U. S. 452, 460. Arizona engaged in definition of that kind when its people placed both the initiative power and the AIRC’s redistricting authority in the portion of the Arizona Constitution delineating the State’s legislative authority, Ariz. Const., Art. IV. The Elections Clause should not be read to single out federal elections as the one area in which States may not use citizen initiatives as an alternative legislative process. And reading the Clause to permit the use of the initiative to control state and local elections but not federal elections would “deprive several States of the convenience of having the elections for their own governments and for the national government” held at the same times and places, and in the same manner. *The Federalist* No. 61, p. 374 (Hamilton). Pp. 27–30.

(3) The Framers may not have imagined the modern initiative

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process in which the people's legislative power is coextensive with the state legislature's authority, but the invention of the initiative was in full harmony with the Constitution's conception of the people as the font of governmental power. It would thus be perverse to interpret "Legislature" in the Elections Clause to exclude lawmaking by the people, particularly when such lawmaking is intended to advance the prospect that Members of Congress will in fact be "chosen . . . by the People of the several States," Art. I, §2. Pp. 30–33.

(4) Banning lawmaking by initiative to direct a State's method of apportioning congressional districts would not just stymie attempts to curb gerrymandering. It would also cast doubt on numerous other time, place, and manner regulations governing federal elections that States have adopted by the initiative method. As well, it could endanger election provisions in state constitutions adopted by conventions and ratified by voters at the ballot box, without involvement or approval by "the Legislature." Pp. 33–35.

997 F. Supp. 2d 1047, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–1314

**ARIZONA STATE LEGISLATURE, APPELLANT v.
ARIZONA INDEPENDENT REDISTRICTING
COMMISSION ET AL.**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA

[June 29, 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. *Id.*, at 281. JUSTICE KENNEDY found no standard workable in that case, but left open the possibility that a suitable standard might be identified in later litigation. *Id.*, at 317.

¹The term “gerrymander” is a portmanteau of the last name of Elbridge Gerry, the eighth Governor of Massachusetts, and the shape of the electoral map he famously contorted for partisan gain, which included one district shaped like a salamander. See E. Griffith, *The Rise and Development of the Gerrymander* 16–19 (Arno ed. 1974).

In 2000, Arizona voters adopted an initiative, Proposition 106, aimed at “ending the practice of gerrymandering and improving voter and candidate participation in elections.” App. 50. 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). After the 2010 census, as after the 2000 census, the AIRC adopted redistricting maps for congressional as well as state legislative districts.

The Arizona Legislature challenged the map the Commission adopted in January 2012 for congressional districts. Recognizing that the voters could control redistricting for state legislators, Brief for Appellant 42, 47; Tr. of Oral Arg. 3–4, the 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; so read, the Legislature urges, the Clause precludes resort to an independent commission, created by initiative, to accomplish redistricting. 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, includ-

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ing initiatives adopted by the people themselves.

A three-judge District Court held, unanimously, that the Arizona Legislature had standing to sue; dividing two to one, the Court rejected the Legislature's complaint on the merits. We postponed jurisdiction and instructed the parties to address two questions: (1) Does the Arizona Legislature have standing to bring this suit? (2) 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? 573 U. S. ____ (2014).

We now affirm the District Court's judgment. 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

Direct lawmaking by the people was "virtually unknown when the Constitution of 1787 was drafted." Donovan & Bowler, *An Overview of Direct Democracy in the American States*, in *Citizens as Legislators 1* (S. Bowler, T. Donovan, & C. Tolbert eds. 1998). There were obvious precursors or analogues to the direct lawmaking operative today in several States, notably, New England's town hall meetings and the submission of early state constitutions to the people for ratification. See Lowell, *The Referendum in the United States*, in *The Initiative, Referendum and Recall 126, 127* (W. Munro ed. 1912) (hereinafter IRR); W. Dodd, *The Revision and Amendment of State Constitu-*

tions 64–67 (1910).² But it was not until the turn of the 20th century, as part of the Progressive agenda of the era, that direct lawmaking by the electorate gained a foothold, largely in Western States. See generally Persily, *The Peculiar Geography of Direct Democracy: Why the Initiative, Referendum and Recall Developed in the American West*, 2 *Mich. L. & Pol’y Rev.* 11 (1997).

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.” D. Magleby, *Direct Legislation* 1 (1984). While the initiative allows the electorate to adopt positive legislation, the 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.* “The initiative [thus] corrects sins of omission” by representative bodies, while the “referendum corrects sins of commission.” Johnson, *Direct Legislation as an Ally of Representative Government*, in IRR 139, 142.

In 1898, South Dakota took the pathmarking step of affirming in its Constitution the people’s power “directly [to] control the making of all ordinary laws” by initiative and referendum. *Introductory, id.*, at 9. In 1902, Oregon became the first State to adopt the initiative as a means,

²The Massachusetts Constitution of 1780 is illustrative of the understanding that the people’s authority could trump the state legislature’s. Framed by a separate convention, it was submitted to the people for ratification. That occurred after the legislature attempted to promulgate a Constitution it had written, an endeavor that drew opposition from many Massachusetts towns. See J. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 96–101 (1996); G. Wood, *The Creation of the American Republic, 1776–1787*, pp. 339–341 (1969).

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not only to enact ordinary laws, but also to amend the State's Constitution. J. Dinan, *The American State Constitutional Tradition* 62 (2006). By 1920, the people in 19 States had reserved for themselves the power to initiate ordinary lawmaking, and, in 13 States, the power to initiate amendments to the State's Constitution. *Id.*, at 62, and n. 132, 94, and n. 151. Those numbers increased to 21 and 18, respectively, by the close of the 20th century. *Ibid.*³

B

For the delegates to Arizona's constitutional convention, direct lawmaking was a "principal issu[e]." J. Leshy, *The Arizona State Constitution* 8–9 (2d ed. 2013) (hereinafter Leshy). By a margin of more than three to one, the people of Arizona ratified the State's Constitution, which included, among lawmaking means, initiative and referendum provisions. *Id.*, at 14–16, 22. In the runup to Arizona's admission to the Union in 1912, those provisions generated no controversy. *Id.*, at 22.

In particular, the Arizona Constitution "establishes the electorate [of Arizona] as a coordinate source of legislation" on equal footing with the representative legislative body. *Queen Creek Land & Cattle Corp. v. Yavapai Cty. Bd. of Supervisors*, 108 Ariz. 449, 451, 501 P. 2d 391, 393 (1972); *Cave Creek Unified School Dist. v. Ducey*, 233 Ariz. 1, 4, 308 P. 3d 1152, 1155 (2013) ("The legislature and

³The people's sovereign right to incorporate themselves into a State's lawmaking apparatus, by reserving for themselves the power to adopt laws and to veto measures passed by elected representatives, is one this Court has ranked a nonjusticiable political matter. *Pacific States Telephone & Telegraph Co. v. Oregon*, 223 U. S. 118 (1912) (rejecting challenge to referendum mounted under Article IV, §4's undertaking by the United States to "guarantee to every State in th[e] Union a Republican Form of Government"). But see *New York v. United States*, 505 U. S. 144, 185 (1992) ("[P]erhaps not all claims under the Guarantee Clause present nonjusticiable political questions.").

electorate share lawmaking power under Arizona's system of government." (internal quotation marks omitted). The initiative, housed under the article of the Arizona Constitution concerning the "Legislative Department" and the section defining the State's "legislative authority," reserves for the people "the power to propose laws and amendments to the constitution." Art. IV, pt. 1, §1. The Arizona Constitution further states that "[a]ny law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative." Art. XXII, §14. Accordingly, "[g]eneral references to the power of the 'legislature'" in the Arizona Constitution "include the people's right (specified in Article IV, part 1) to bypass their elected representatives and make laws directly through the initiative." Leshy xxii.

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. Cain, *Redistricting Commissions: A Better Political Buffer?* 121 *Yale L. J.* 1808, 1831 (2012). Redistricting plans adopted by the Arizona Legislature sparked controversy in every redistricting cycle since the 1970's, and several of those plans were rejected by a federal court or refused preclearance by the Department of Justice under the Voting Rights Act of 1965. See *id.*, at 1830–1832.⁴

⁴From Arizona's admission to the Union in 1912 to 1940, no congressional districting occurred because Arizona had only one Member of Congress. K. Martis, *The Historical Atlas of United States Congressional Districts, 1789–1983*, p. 3 (1982) (Table 1). Court-ordered congressional districting plans were in place from 1966 to 1970, and from 1982 through 2000. See *Klahr v. Williams*, 313 F. Supp. 148 (Ariz. 1970); *Goddard v. Babbitt*, 536 F. Supp. 538 (Ariz. 1982); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684 (Ariz. 1992); Norrander & Wendland, *Redistricting in Arizona*, in *Reapportionment and Redistricting in the West* 177, 178–179 (G. Moncrief ed.

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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

2011).

⁵In 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

Several other States, as a means to curtail partisan gerrymandering, have also provided for the participation of commissions in redistricting. Some States, in common with Arizona, have given nonpartisan or bipartisan commissions binding authority over redistricting.⁶ The California Redistricting Commission, established by popular initiative, develops redistricting plans which can be halted by public referendum.⁷ Still other States have given commissions an auxiliary role, advising the legislatures on redistricting,⁸ or serving as a “backup” in the event the State’s representative body fails to complete redistricting.⁹ Studies report that nonpartisan and bipartisan commissions generally draw their maps in a timely fashion and create districts both more competitive and more likely to survive legal challenge. See Miller & Grofman, *Redistricting Commissions in the Western United States*, 3 U. C. Irvine L. Rev. 637, 661, 663–664, 666 (2013).

D

On January 17, 2012, the AIRC approved final congressional and state legislative maps based on the 2010 census. See *Arizona Independent Redistricting, Final Maps*,

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. See Cain, *Redistricting Commissions: A Better Political Buffer?* 121 Yale L. J. 1808, 1835–1836 (2012) (citing *Mathis v. Brewer*, No. CV–11–0313–SA (Ariz. 2011)); *Arizona Independent Redistricting Comm’n v. Brewer*, 229 Ariz. 347, 275 P. 3d 1267 (2012).

⁶See Haw. Const., Art. IV, §2, and Haw. Rev. Stat. §§25–1 to 25–9 (2009 and 2013 Cum. Supp.); Idaho Const., Art. III, §2; Mont. Const., Art. V, §14; N. J. Const., Art. II, §2; Wash Const., Art. II, §43.

⁷See Cal. Const., Art. XXI, §2; Cal. Govt. Code Ann. §§8251–8253.6 (West Supp. 2015).

⁸See Iowa Code §§42.1–42.6 (2013); Ohio Rev. Code Ann. §103.51 (Lexis 2014); Me. Const., Art. IV, pt. 3, §1–A.

⁹See Conn. Const., Art. III, §6; Ind. Code §3–3–2–2 (2014).

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<http://azredistricting.org/Maps/Final-Maps/default.asp> (all Internet materials as visited June 25, 2015, and included in Clerk of Court’s case file). Less than four months later, on June 6, 2012, the Arizona Legislature filed suit in the United States District Court for the District of Arizona, naming as defendants the AIRC, its five members, and the Arizona Secretary of State. The Legislature sought both a declaration that Proposition 106 and congressional maps adopted by the AIRC are unconstitutional, and, as affirmative relief, an injunction against use of AIRC maps for any congressional election after the 2012 general election.

A three-judge District Court, convened pursuant to 28 U. S. C. §2284(a), unanimously denied a motion by the AIRC to dismiss the suit for lack of standing. The Arizona Legislature, the court determined, had “demonstrated that its loss of redistricting power constitute[d] a [sufficiently] concrete injury.” 997 F. Supp. 2d 1047, 1050 (2014). On the merits, dividing two to one, the District Court granted the AIRC’s motion to dismiss the complaint for failure to state a claim. Decisions of this Court, the majority concluded, “demonstrate that the word ‘Legislature’ in the Elections Clause refers to the legislative process used in [a] state, determined by that state’s own constitution and laws.” *Id.*, at 1054. As the “lawmaking power” in Arizona “plainly includes the power to enact laws through initiative,” the District Court held, the “Elections Clause permits [Arizona’s] establishment and use” of the Commission. *Id.*, at 1056. Judge Rosenblatt dissented in part. Proposition 106, in his view, unconstitutionally denied “the Legislature” of Arizona the “ability to have any outcome-defining effect on the congressional redistricting process.” *Id.*, at 1058.

We postponed jurisdiction, and now affirm.

II

We turn first to the threshold question: Does the Ari-

zona Legislature have standing to bring this suit? Trained on “whether the plaintiff is [a] proper party to bring [a particular lawsuit,]” standing is “[o]ne element” of the Constitution’s case-or-controversy limitation on federal judicial authority, expressed in Article III of the Constitution. *Raines v. Byrd*, 521 U. S. 811, 818 (1997). “To qualify as a party with standing to litigate,” the Arizona Legislature “must show, first and foremost,” injury in the form of “‘invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent.’” *Arizonaans for Official English v. Arizona*, 520 U. S. 43, 64 (1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992)). The Legislature’s injury also must be “fairly traceable to the challenged action” and “redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 568 U. S. ___, ___ (2013) (slip op., at 10) (internal quotation marks omitted).

The Arizona Legislature maintains that the Elections Clause vests in it “primary responsibility” for redistricting. Brief for Appellant 51, 53. To exercise that responsibility, the Legislature urges, it must have at least the opportunity to engage (or decline to engage) in redistricting before the State may involve other actors in the redistricting process. See *id.*, at 51–53. Proposition 106, which gives the AIRC binding authority over redistricting, regardless of the Legislature’s action or inaction, strips the Legislature of its alleged prerogative to initiate redistricting. That asserted deprivation would be remedied by a court order enjoining the enforcement of Proposition 106. Although we conclude that the Arizona Legislature does not have the exclusive, constitutionally guarded role it asserts, see *infra*, at 24–35, one must not “confus[e] weakness on the merits with absence of Article III standing.” *Davis v. United States*, 564 U. S. ___, ___, n. 10 (2011) (slip op., at 19, n. 10); see *Warth v. Seldin*, 422 U. S. 490, 500 (1975) (standing “often turns on the nature and source of the

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claim asserted,” but it “in no way depends on the merits” of the claim).

The AIRC argues that the Legislature’s alleged injury is insufficiently concrete to meet the standing requirement absent some “specific legislative act that would have taken effect but for Proposition 106.” Brief for Appellees 20. The United States, as *amicus curiae*, urges that even more is needed: the Legislature’s injury will remain speculative, the United States contends, unless and until the Arizona Secretary of State refuses to implement a competing redistricting plan passed by the Legislature. Brief for United States 14–17. In our view, the Arizona Legislature’s suit is not premature, nor is its alleged injury too “conjectural” or “hypothetical” to establish standing. *Defenders of Wildlife*, 504 U. S., at 560 (internal quotation marks omitted).

Two prescriptions of Arizona’s Constitution would render the Legislature’s passage of a competing plan and submission of that plan to the Secretary of State unavailing. Indeed, those actions would directly and immediately conflict with the regime Arizona’s Constitution establishes. Cf. *Sporhase v. Nebraska ex rel. Douglas*, 458 U. S. 941, 944, n. 2 (1982) (failure to apply for permit which “would not have been granted” under existing law did not deprive plaintiffs of standing to challenge permitting regime). First, the Arizona Constitution instructs that the Legislature “shall not have the power to adopt any measure that supersedes [an initiative], in whole or in part, . . . unless the superseding measure furthers the purposes” of the initiative. Art. IV, pt. 1, §1(14). Any redistricting map passed by the Legislature in an effort to supersede the AIRC’s map surely would not “furthe[r] the purposes” of Proposition 106. Second, once the AIRC certifies its redistricting plan to the Secretary of State, Arizona’s Constitution requires the Secretary to implement that plan and no other. See Art. IV, pt. 2, §1(17); *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redis-*

tricting Comm'n, 211 Ariz. 337, 351, 121 P. 3d 843, 857 (App. 2005) (*per curiam*) (“Once the Commission certifies [its] maps, the secretary of state must use them in conducting the next election.”). To establish standing, the Legislature need not violate the Arizona Constitution and show that the Secretary of State would similarly disregard the State’s fundamental instrument of government.

Raines v. Byrd, 521 U.S. 811 (1997), does not aid AIRC’s argument that there is no standing here. In *Raines*, this Court held that six *individual Members* of Congress lacked standing to challenge the Line Item Veto Act. *Id.*, at 813–814, 829–830 (holding specifically and only that “individual members of Congress [lack] Article III standing”). The Act, which gave the President authority to cancel certain spending and tax benefit measures after signing them into law, allegedly diluted the efficacy of the Congressmembers’ votes. *Id.*, at 815–817. The “institutional injury” at issue, we reasoned, scarcely zeroed in on any individual Member. *Id.*, at 821. “[W]idely dispersed,” the alleged injury “necessarily [impacted] all Members of Congress and both Houses . . . equally.” *Id.*, at 829, 821. None of the plaintiffs, therefore, could tenably claim a “personal stake” in the suit. *Id.*, at 830.

In concluding that the individual Members lacked standing, the Court “attach[ed] some importance to the fact that [the *Raines* plaintiffs had] not been authorized to represent their respective Houses of Congress.” *Id.*, at 829. “[I]ndeed,” the Court observed, “both houses actively oppose[d] their suit.” *Ibid.* Having failed to prevail in their own Houses, the suitors could not repair to the Judiciary to complain. The Arizona Legislature, in contrast, is an institutional plaintiff asserting an institutional injury, and it commenced this action after authorizing votes in both of its chambers, App. 26–27, 46. That “different . . . circumstanc[e],” 521 U.S., at 830, was not *sub judice* in

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Raines.¹⁰

Closer to the mark is this Court's decision in *Coleman v. Miller*, 307 U. S. 433 (1939). There, plaintiffs were 20 (of 40) Kansas State Senators, whose votes "would have been sufficient to defeat [a] resolution ratifying [a] proposed [federal] constitutional amendment." *Id.*, at 446.¹¹ We held they had standing to challenge, as impermissible under Article V of the Federal Constitution, the State Lieutenant Governor's tie-breaking vote for the amend-

¹⁰*Massachusetts v. Mellon*, 262 U. S. 447 (1923), featured in JUSTICE SCALIA's dissent, *post*, at 4, bears little resemblance to this case. There, the Court unanimously found that Massachusetts lacked standing to sue the Secretary of the Treasury on a claim that a federal grant program exceeded Congress' Article I powers and thus violated the Tenth Amendment. *Id.*, at 480. If suing on its own behalf, the Court reasoned, Massachusetts' claim involved no "quasi-sovereign rights actually invaded or threatened." *Id.*, at 485. As *parens patriae*, the Court stated: "[I]t is no part of [Massachusetts'] duty or power to enforce [its citizens'] rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*." *Id.*, at 485–486. As astutely observed, moreover: "The cases on the standing of states to sue the federal government seem to depend on the kind of claim that the state advances. The decisions . . . are hard to reconcile." R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, *Hart and Wechsler's The Federal Courts and the Federal System* 263–266 (6th ed. 2009) (comparing *Mellon* with *South Carolina v. Katzenbach*, 383 U. S. 301, 308 (1966) (rejecting on the merits the claim that the Voting Rights Act of 1965 invaded reserved powers of the States to determine voter qualifications and regulate elections), *Nebraska v. Wyoming*, 515 U. S. 1, 20 (1995) (recognizing that Wyoming could bring suit to vindicate the State's "quasi-sovereign" interests in the physical environment within its domain (emphasis deleted; internal quotation marks omitted)), and *Massachusetts v. EPA*, 549 U. S. 497, 520 (2007) (maintaining that Massachusetts "is entitled to special solicitude in our standing analysis")).

¹¹*Coleman* concerned the proposed Child Labor Amendment, which provided that "Congress shall have power to limit, regulate, and prohibit the lahor of persons under eighteen years of age." 307 U. S., at 435, n. 1 (internal quotation marks omitted).

ment. *Ibid.* *Coleman*, as we later explained in *Raines*, stood “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.” 521 U. S., at 823.¹² Our conclusion that the Arizona Legislature has standing fits that bill. Proposition 106, together with the Arizona Constitution’s ban on efforts to undermine the purposes of an initiative, see *supra*, at 11, would “completely nullif[y]” any vote by the Legislature, now or “in the future,” purporting to adopt a redistricting plan. *Raines*, 521 U. S., at 823–824.¹³

This dispute, in short, “will be resolved . . . in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 472 (1982).¹⁴ Accordingly, we

¹²The case before us does not touch or concern the question whether Congress has standing to bring a suit against the President. There is no federal analogue to Arizona’s initiative power, and a suit between Congress and the President would raise separation-of-powers concerns absent here. The Court’s standing analysis, we have noted, has been “especially rigorous when reaching the merits of the dispute would force [the Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.” *Raines v. Byrd*, 521 U. S. 811, 819–820 (1997).

¹³In an endeavor to wish away *Coleman*, JUSTICE SCALIA, in dissent, suggests the case may have been “a 4-to-4 standoff.” *Post*, at 5. He overlooks that Chief Justice Hughes’ opinion, announced by Justice Stone, was styled “Opinion of the Court.” 307 U. S., at 435. Describing *Coleman*, the Court wrote in *Raines*: “By a vote of 5–4, we held that [the 20 Kansas Senators who voted against ratification of a proposed federal constitutional amendment] had standing.” 521 U. S., at 822. For opinions recognizing the precedential weight of *Coleman*, see *Baker v. Carr*, 369 U. S. 186, 208 (1962); *United States v. Windsor*, 570 U. S. ___, ___ (2013) (ALITO, J., dissenting) (slip op., at 4–5).

¹⁴Curiously, JUSTICE SCALIA, dissenting on standing, berates the Court for “treading upon the powers of state legislatures.” *Post*, at 6.

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proceed to the merits.¹⁵

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, to approve or disapprove by popular vote any law enacted by the State's legislature. A 1915 Act redistricting the State for the purpose of congressional

He forgets that the party invoking federal-court jurisdiction in this case, and inviting our review, is the Arizona State Legislature.

¹⁵JUSTICE THOMAS, on the way to deciding that the Arizona Legislature lacks standing, first addresses the merits. In so doing, he overlooks that, in the cases he features, it was entirely immaterial whether the law involved was adopted by a representative body or by the people, through exercise of the initiative.

elections had been submitted to a popular vote, resulting in disapproval of the legislature's measure. 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," and "nothing in [federal statutory law] or in [the Elections Clause] operated to the contrary." 241 U. S., at 567. This Court affirmed the Ohio Supreme Court's judgment. In upholding the state court's decision, we recognized that the referendum was "part of the legislative power" in Ohio, *ibid.*, legitimately exercised by the people to disapprove the legislation creating congressional districts. For redistricting purposes, *Hildebrant* thus established, "the Legislature" did not mean the representative body alone. Rather, the word encompassed a veto power lodged in the people. See *id.*, at 569 (Elections Clause does not bar "treating the referendum as part of the legislative power for the purpose of apportionment, where so ordained by the state constitutions and laws").

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. The Court contrasted the ratifying function, exercisable exclusively by a State's legislature, with "the ordinary business of legislation." *Id.*, at 229. *Davis v. Hildebrant*, the Court explained, involved the enactment of legislation, *i.e.*, a redistricting plan, and properly held that "the referendum [was] part of the legislative author-

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ity of the State for [that] purpose.” 253 U. S., at 230.

Smiley v. Holm raised the question whether legislation purporting to redistrict Minnesota for congressional elections was subject to the Governor’s veto. The Minnesota Supreme Court had held that the Elections Clause placed redistricting authority exclusively in the hands of the State’s legislature, leaving no role for the Governor. We reversed that determination and held, for the purpose at hand, 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. In holding that the Governor’s veto counted, we distinguished instances in which the Constitution calls upon state legislatures to exercise a function other than lawmaking. State legislatures, we pointed out, performed an “electoral” function “in the choice of United States Senators under Article I, section 3, prior to the adoption of the Seventeenth Amendment,”¹⁶ a “ratifying” function for “proposed amendments to the Constitution under Article V,” as explained in *Hawke v. Smith*, and a “consenting” function “in relation to the acquisition of lands by the United States under Article I, section 8, paragraph 17.” 285 U. S., at 365–366.

In contrast to those other functions, we observed, redistricting “involves lawmaking in its essential features and most important aspect.” *Id.*, at 366. Lawmaking, we further noted, ordinarily “must be in accordance with the method which the State has prescribed for legislative enactments.” *Id.*, at 367. In Minnesota, the State’s Constitution had made the Governor “part of the legislative process.” *Id.*, at 369. And the Elections Clause, we explained, respected the State’s choice to include the Governor in that process, although the Governor could play no part when the Constitution assigned to “the Legislature” a

¹⁶The Seventeenth Amendment provided for election of Senators “by the people” of each State.

ratifying, electoral, or consenting function. Nothing in the Elections Clause, we said, “attempt[ed] to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State ha[d] provided that laws shall be enacted.” *Id.*, at 368.

THE CHIEF JUSTICE, in dissent, features, indeed trumpets repeatedly, the pre-Seventeenth Amendment regime in which Senators were “chosen [in each State] by the Legislature thereof.” Art. I, §3; see *post*, at 1, 8–9, 19. If we are right, he asks, why did popular election proponents resort to the amending process instead of simply interpreting “the Legislature” to mean “the people”? *Post*, at 1. *Smiley*, as just indicated, answers that question. Article I, §3, gave state legislatures “a function different from that of lawgiver,” 285 U. S., at 365; it made each of them “an electoral body” charged to perform that function to the exclusion of other participants, *ibid.* So too, of the ratifying function. As we explained in *Hawke*, “the power to legislate in the enactment of the laws of a State is derived from the people of the State.” 253 U. S., at 230. Ratification, however, “has its source in the Federal Constitution” and is not “an act of legislation within the proper sense of the word.” *Id.*, at 229–230.

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*, 285 U. 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

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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

In sum, our precedent teaches that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which may include the referendum and the Governor’s veto. The exercise of the initiative, we acknowledge, was not at issue in our prior decisions. But as developed below, we see no constitutional barrier to a State’s empowerment of its people by embracing that form of lawmaking.

B

We take up next the statute the Court asked the parties to address, 2 U. S. C. §2a(c), a measure modeled on the Reapportionment Act Congress passed in 1911, Act of Aug. 8 (1911 Act), ch. 5, §4, 37 Stat. 14. Section 2a(c), we hold, permits use of a commission to adopt Arizona’s congressional districts. See *supra*, at 15.¹⁸

From 1862 through 1901, the decennial congressional apportionment Acts provided that a State would be re-

¹⁷The 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.

¹⁸The AIRC referenced §2a(c) in briefing below, see Motion to Dismiss 8–9, and Response to Plaintiff’s Motion for Preliminary Injunction 12–14, in No. 12–1211 (D Ariz.), and in its motion to dismiss or affirm in this Court, see Motion to Dismiss or Affirm 28–31.

quired 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, 12 Stat. 572; Act of Jan. 16, 1901, ch. 93, §4, 31 Stat. 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, 37 Stat. 14 (emphasis added).¹⁹

Some Members of Congress questioned whether the language change was needed. In their view, existing apportionment legislation (referring to redistricting by a State’s “legislature”) “suffic[ed] to allow, whatever the law of the State may be, the people of that State to control [redistricting].” 47 Cong. Rec. 3507 (statement of Sen.

¹⁹The 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, 37 Stat. 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.

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Shively); cf. *Shiel v. Thayer*, Bartlett Contested Election Cases, H. R. Misc. Doc. No. 57, 38th Cong., 2d Sess., 351 (1861) (view of House Committee of Elections Member Dawes that Art. I, §4's reference to "the Legislature" meant simply the "constituted authorities, through whom [the State] choose[s] to speak," prime among them, the State's Constitution, "which rises above . . . all legislative action"). Others anticipated that retaining the reference to "the legislature" would "condem[n] . . . any [redistricting] legislation by referendum or by initiative." 47 Cong. Rec. 3436 (statement of Sen. Burton). In any event, proponents of the change maintained, "[i]n view of the very serious evils arising from gerrymanders," Congress should not "take any chances in [the] matter." *Id.*, at 3508 (same). "[D]ue respect to the rights, to the established methods, and to the laws of the respective States," they urged, required Congress "to allow them to establish congressional districts in whatever way they may have provided by their constitution and by their statutes." *Id.*, at 3436; see *id.*, at 3508 (statement of Sen. Works).

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.

While the 1911 Act applied only to reapportionment following the 1910 census, see *Wood v. Broom*, 287 U. S. 1, 6–7 (1932), Congress used virtually identical language when it enacted §2a(c) in 1941. See Act of Nov. 15, 1941, ch. 470, 55 Stat. 761–762. Section 2a(c) sets forth congressional-redistricting procedures operative only if the

State, “after any apportionment,” had not redistricted “in the manner provided by the law thereof.” The 1941 provision, like the 1911 Act, thus accorded full respect to the redistricting procedures adopted by the States. So long as a State has “redistricted in the manner provided by the law thereof”—as Arizona did by utilizing the independent commission procedure called for by its Constitution—the resulting redistricting plan becomes the presumptively governing map.²⁰

The Arizona Legislature characterizes §2a(c) as an “obscure provision, narrowed by subsequent developments to the brink of irrelevance.” Brief for Appellant 56. True, four of the five default redistricting procedures—operative only when a State is *not* “redistricted in the manner provided by [state] law”—had “become (because of postenactment decisions of this Court) in virtually all situations plainly unconstitutional.” *Branch v. Smith*, 538 U. S. 254, 273–274 (2003) (plurality opinion). Concretely, the default procedures specified in §2a(c)(1)–(4) contemplate that a State would continue to use pre-existing districts following a new census. The one-person, one-vote principle announced in *Wesberry v. Sanders*, 376 U. S. 1 (1964), however, would bar those procedures, except in the “unlikely” event that “the decennial census makes no districting change constitutionally necessary,” *Branch*, 538 U. S., at 273 (plurality opinion).

Constitutional infirmity in §2a(c)(1)–(4)’s default procedures, however, does not bear on the question whether a State has been “redistricted in the manner provided by [state] law.”²¹ As just observed, Congress expressly di-

²⁰Because a State is required to comply with the Federal Constitution, the Voting Rights Act, and other federal laws when it draws and implements its district map, nothing in §2a(c) affects a challenge to a state district map on the ground that it violates one or more of those federal requirements.

²¹The plurality in *Branch v. Smith*, 538 U. S. 254, 273 (2003), consid-

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rected that when a State has been “redistricted in the manner provided by [state] law”—whether by the legislature, court decree (see *id.*, at 274), or a commission established by the people’s exercise of the initiative—the resulting districts are the ones that presumptively will be used to elect Representatives.²²

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 “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.

ered the question whether §2a(c) had been repealed by implication and stated, “where what it prescribes is constitutional,” the provision “continues to apply.”

²²THE CHIEF JUSTICE, in dissent, insists that §2a(c) and its precursor, the 1911 Act, have nothing to do with this case. *Post*, at 20–21, 23. Undeniably, however, it was the very purpose of the measures to recognize the legislative authority each State has to determine its own redistricting regime.

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. To restate the key question in this case, the issue centrally debated by the parties: Absent congressional authorization, does the Elections Clause preclude the people of Arizona from creating a commission operating independently of the state legislature to establish congressional districts? The history and purpose of the Clause weigh heavily against such preclusion, as does the animating principle of our Constitution that the people themselves are the originating source of all the powers of government.

We note, preliminarily, that dictionaries, even those in circulation during the founding era, capaciously define the word “legislature.” Samuel Johnson defined “legislature” simply as “[t]he power that makes laws.” 2 A Dictionary of the English Language (1st ed. 1755); *ibid.* (6th ed. 1785); *ibid.* (10th ed. 1792); *ibid.* (12th ed. 1802). Thomas Sheridan’s dictionary defined “legislature” exactly as Dr. Johnson did: “The power that makes laws.” 2 A Complete Dictionary of the English Language (4th ed. 1797). Noah Webster defined the term precisely that way as well. Compendious Dictionary of the English Language 174 (1806). And Nathan Bailey similarly defined “legislature” as “the Authority of making Laws, or Power which makes them.” An Universal Etymological English Dictionary (20th ed. 1763).²³

²³Illustrative of an embrave comprehension of the word “legislature,” Charles Pinckney explained at South Carolina’s ratifying convention that America is “[a] republic, where the people at large, either collectively or by representation, form the legislature.” 4 Debates on the Federal Constitution 328 (J. Elliot 2d ed. 1863). Participants in the debates over the Elections Clause used the word “legislature” interchangeably with “state” and “state government.” See Brief for Brennan

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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 (“The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature.”). See also *Eastlake v. Forest City Enterprises, Inc.*, 426 U. S. 668, 672 (1976) (“In establishing legislative bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature.”). 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 (answering the Court’s question, may the Arizona Legislature itself establish a commission to attend to redistricting, counsel for appellant responded yes, state legislatures may delegate their authority to a commission, subject to their prerogative to reclaim the authority for themselves).

1

The dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules, not to restrict the way States enact legislation. 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. As Madison urged, without the Elections Clause, “[w]henver 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 241 (M. Farrand rev. 1966). Madison spoke in response to a motion by South Carolina’s delegates to strike out the federal power. Those delegates so moved because South Carolina’s coastal elite had malapportioned their legislature, and wanted to retain the ability to do so. See J. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 223–224 (1996). The problem Madison identified has hardly lessened over time. Conflict of interest is inherent when “legislators dra[w] district lines that they ultimately have to run in.” Cain, 121 Yale L. J., at 1817.

Arguments in support of congressional control under the Elections Clause were reiterated in the public debate over ratification. Theophilus Parsons, a delegate at the Massachusetts ratifying convention, warned that “when faction and party spirit run high,” a legislature might take actions like “mak[ing] an unequal and partial division of the states into districts for the election of representatives.” Debate in Massachusetts Ratifying Convention (16–17, 21 Jan. 1788), in 2 *The Founders’ Constitution* 256 (P. Kurland & R. Lerner eds. 1987). Timothy Pickering of Massachusetts similarly urged that the Clause was necessary because “the State governments *may* abuse their power, and regulate . . . elections in such manner as would be highly inconvenient to the people.” Letter to Charles Tillinghast (24 Dec. 1787), in *id.*, at 253. He described the Clause as a way to “ensure to the *people* their rights of election.” *Ibid.*

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While attention focused on potential abuses by state-level politicians, and the consequent need for congressional oversight, the legislative processes by which the States could exercise their initiating role in regulating congressional elections occasioned no debate. That is hardly surprising. Recall that when the Constitution was composed in Philadelphia and later ratified, the people's legislative prerogatives—the initiative and the referendum—were not yet in our democracy's arsenal. See *supra*, at 3–5. 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.²⁴

2

The Arizona Legislature maintains that, by specifying “the Legislature thereof,” the Elections Clause renders the State's representative body the sole “component of state government authorized to prescribe . . . regulations . . . for congressional redistricting.” Brief for Appellant 30. THE CHIEF JUSTICE, in dissent, agrees. But it is characteristic of our federal system that States retain autonomy to establish their own governmental processes. See *Alden v. Maine*, 527 U. S. 706, 752 (1999) (“A State is entitled to order the processes of its own governance.”); The Federalist No. 43, at 272 (J. Madison) (“Whenever the States may choose to substitute other republican forms, they have a

²⁴THE CHIEF JUSTICE, in dissent, cites *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779 (1995), as an important precedent we overlook. *Post*, at 24–25. There, we held that state-imposed term limits on candidates for the House and Senate violated the Clauses of the Constitution setting forth qualifications for membership in Congress, Art. I, §2, cl. 2, and Art. I, §3, cl. 3. We did so for a reason entirely harmonious with today's decision. Adding state-imposed limits to the qualifications set forth in the Constitution, the Court wrote, would be “contrary to the ‘fundamental principle of our representative democracy,’ . . . that ‘the people should choose whom they please to govern them.’” 514 U. S., at 783 (quoting *Powell v. McCormack*, 395 U. S. 486, 547 (1969)).

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right to do so.”). “Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.” *Gregory v. Ashcroft*, 501 U. S. 452, 460 (1991). Arizona engaged in definition of that kind when its people placed both the initiative power and the AIRC’s redistricting authority in the portion of the Arizona Constitution delineating the State’s legislative authority. See Ariz. Const., Art. IV; *supra*, at 5–6.

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) (KENNEDY, J., concurring) (“[T]he States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear.”); *New State Ice Co. v. Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”). Deference to state lawmaking “allows local policies ‘more sensitive to the diverse needs of a heterogeneous society,’ permits ‘innovation and experimentation,’ enables greater citizen ‘involvement in democratic processes,’ and makes government ‘more responsive by putting the States in competition for a mobile citizenry.’” *Bond v. United States*, 564 U. S. ___, ___ (2011) (slip op., at 9) (quoting *Gregory*, 501 U. S., at 458).

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

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Shiel, H. R. Misc. Doc. No. 57, at 349–352 (concluding that Oregon’s Constitution prevailed over any conflicting legislative measure setting the date for a congressional election).

THE CHIEF JUSTICE, in dissent, maintains that, under the Elections Clause, the state legislature can trump any initiative-introduced constitutional provision regulating federal elections. He extracts support for this position from *Baldwin v. Trowbridge*, 2 Bartlett Contested Election Cases, H. R. Misc. Doc. No. 152, 41st Cong., 2d Sess., 46–47 (1866). See *post*, at 15–16. There, Michigan voters had amended the State Constitution to require votes to be cast within a resident’s township or ward. The Michigan Legislature, however, passed a law permitting soldiers to vote in other locations. One candidate would win if the State Constitution’s requirement controlled; his opponent would prevail under the Michigan Legislature’s prescription. The House Elections Committee, in a divided vote, ruled that, under the Elections Clause, the Michigan Legislature had the paramount power.

As the minority report in *Baldwin* pointed out, however, the Supreme Court of Michigan had reached the opposite conclusion, holding, as courts generally do, that state legislation in direct conflict with the State’s constitution is void. *Baldwin*, H. R. Misc. Doc. No. 152, at 50. The *Baldwin* majority’s ruling, furthermore, appears in tension with the Election Committee’s unanimous decision in *Shiel* just five years earlier. (The Committee, we repeat, “ha[d] no doubt that the constitution of the State ha[d] fixed, beyond the control of the legislature, the time for holding [a congressional] election.” *Shiel*, H. R. Misc. Doc. No. 57, at 351.) Finally, it was perhaps not entirely accidental that the candidate the Committee declared winner in *Baldwin* belonged to the same political party as all but one member of the House Committee majority responsible for the decision. See U. S. House of Representatives Con-

gress Profiles: 39th Congress (1865–1867), <http://history.house.gov/Congressional-Overview/Profiles/39th/>; Biographical Directory of the United States Congress: Trowbridge, Rowland Ebenezer (1821–1881). Cf. Cain, 121 Yale L. J., at 1817 (identifying legislative conflict of interest as the problem independent redistricting commissions aimed to check). In short, *Baldwin* is not a disposition that should attract this Court's reliance.

We add, furthermore, that the Arizona Legislature does not question, nor could it, employment of the initiative to control state and local elections. In considering whether Article I, §4, really says “No” to similar control of federal elections, we have looked to, and borrow from, Alexander Hamilton's counsel: “[I]t would have been hardly advisable . . . to establish, as a fundamental point, what would deprive several States of the convenience of having the elections for their own governments and for the national government” held at the same times and places, and in the same manner. The Federalist No. 61, at 374. The Elections Clause is not sensibly read to subject States to that deprivation.²⁵

3

The Framers may not have imagined the modern initiative process in which the people of a State exercise legislative power coextensive with the authority of an institutional legislature. But the invention of the initiative was in full harmony with the Constitution's conception of the people as the font of governmental power. As Madison put it: “The genius of republican liberty seems to demand . . . not only that all power should be derived from the people,

²⁵A State may choose to regulate state and national elections differently, which is its prerogative under the Clause. *E.g.*, Ind. Code §3-3-2-2 (creating backup commission for congressional but not state legislative districts).

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but that those intrusted with it should be kept in dependence on the people.” *Id.*, No. 37, at 223.

The people’s ultimate sovereignty had been expressed by John Locke in 1690, a near century before the Constitution’s formation:

“[T]he Legislative being only a Fiduciary Power to act for certain ends, there remains still in the People a Supreme Power to remove or alter the Legislative, when they find the Legislative act contrary to the trust reposed in them. For all Power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the Power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.” *Two Treatises of Government* §149, p. 385 (P. Laslett ed. 1964).

Our Declaration of Independence, ¶2, drew from Locke in stating: “Governments are instituted among Men, deriving their just powers from the consent of the governed.” And our fundamental instrument of government derives its authority from “We the People.” U. S. Const., Preamble. As this Court stated, quoting Hamilton: “[T]he true principle of a republic is, that the people should choose whom they please to govern them.” *Powell v. McCormack*, 395 U. S. 486, 540–541 (1969) (quoting 2 Debates on the Federal Constitution 257 (J. Elliot ed. 1876)). In this light, it would be perverse to interpret the term “Legislature” in the Elections Clause so as to exclude lawmaking by the people, particularly where such lawmaking is intended to check legislators’ ability to choose the district lines they run in, thereby advancing the prospect that Members of Congress will in fact be “chosen . . . by the People of the several States,” Art. I, §2. See Cain, 121 Yale L. J., at 1817.

THE CHIEF JUSTICE, in dissent, suggests that independent commissions established by initiative are a high-minded experiment that has failed. *Post*, at 26–27. For this assessment, THE CHIEF JUSTICE cites a three-judge Federal District Court opinion, *Harris v. Arizona Independent Redistricting Comm'n*, 993 F. Supp. 2d 1042 (Ariz. 2014). That opinion, he asserts, “detail[s] the partisanship that has affected the Commission.” *Post*, at 26. No careful reader could so conclude.

The report of the decision in *Harris* comprises a *per curiam* opinion, an opinion concurring in the judgment by Judge Silver, and a dissenting opinion by Judge Wake. The *per curiam* opinion found “in favor of the Commission.” 993 F. Supp. 2d, at 1080. Deviations from the one-person, one-vote principle, the *per curiam* opinion explained at length, were “small” and, in the main, could not be attributed to partisanship. *Ibid.* While partisanship “may have played some role,” the *per curiam* opinion stated, deviations were “predominantly a result of the Commission’s good-faith efforts to achieve preclearance under the Voting Rights Act.” *Id.*, at 1060. Judge Silver, although she joined the *per curiam* opinion, made clear at the very outset of that opinion her finding that “partisanship did not play a role.” *Id.*, at 1046, n. 1. In her concurring opinion, she repeated her finding that the evidence did not show partisanship at work, *id.*, at 1087; instead, she found, the evidence “[was] overwhelming [that] the final map was a product of the commissioners’s consideration of appropriate redistricting criteria.” *Id.*, at 1088. To describe *Harris* as a decision criticizing the Commission for pervasive partisanship, *post*, at 26, THE CHIEF JUSTICE could rely only upon the dissenting opinion, which expressed views the majority roundly rejected.

Independent redistricting commissions, it is true, “have not eliminated the inevitable partisan suspicions associated with political line-drawing.” Cain, 121 Yale L. J., at

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1808. But “they have succeeded to a great degree [in limiting the conflict of interest implicit in legislative control over redistricting].” *Ibid.* They thus impede legislators from choosing their voters instead of facilitating the voters’ choice of their representatives.

4

Banning lawmaking by initiative to direct a State’s method of apportioning congressional districts would do more than stymie attempts to curb partisan gerrymandering, by which the majority in the legislature draws district lines to their party’s advantage. It would also cast doubt on numerous other election laws adopted by the initiative method of legislating.

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.”²⁶ Core aspects of the electoral process regulated by state constitutions include voting by “ballot” or “secret ballot,”²⁷ voter registration,²⁸ absentee voting,²⁹ vote counting,³⁰ and victory thresholds.³¹ Again, the States’ legislatures had no hand in making these laws and may not alter or amend them.

The importance of direct democracy as a means to control election regulations extends beyond the particular statutes and constitutional provisions installed by the people rather than the States’ legislatures. The very prospect of lawmaking by the people may influence the legislature when it considers (or fails to consider) election-related measures. See Persily & Anderson, *Regulating Democracy Through Democracy: The Use of Direct Legis-*

²⁶ See App. to Brief for Appellees 11a–29a (collecting state constitutional provisions governing elections). States’ constitutional conventions are not simply past history predating the first election of state legislatures. Louisiana, for example, held the most recent of its 12 constitutional conventions in 1992. J. Dinan, *The American State Constitutional Tradition* 8–9 (2006) (Table 1–1). The State’s provision for voting by “secret ballot” may be traced to the constitutional convention held by the State in 1812, see La. Const., Art. VI, §13, but was most recently reenacted at the State’s 1974 constitutional convention, see Art. XI, §2.

²⁷ Madison called the decision “[w]hether the electors should vote by ballot or vivâ voce” a quintessential subject of regulation under the Elections Clause. 2 *Records of the Federal Convention* 240–241 (M. Farrand rev. 1966).

²⁸ Miss. Const., Art. XII, §249; N. C. Const., Art. VI, §3; Va. Const., Art. II, §2; W. Va. Const., Art. IV, §12; Wash. Const., Art. VI, §7.

²⁹ *E.g.*, Haw. Const., Art. II, §4; La. Const., Art. XI, §2; N. D. Const., Art. II, §1; Pa. Const., Art. VII, §14.

³⁰ *E.g.*, Ark. Const., Art. III, §11 (ballots unlawfully not counted in the first instance must be counted after election); La. Const., Art. XI, §2 (all ballots must be counted publicly).

³¹ *E.g.*, Ariz. Const., Art. VII, §7 (setting plurality of votes as the standard for victory in all elections, excluding runoffs); Mont. Const., Art. IV, §5 (same); Ore. Const., Art. II, §16 (same).

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lation in Election Law Reform, 78 S. Cal. L. Rev. 997, 1006–1008 (2005) (describing cases in which “indirect pressure of the initiative process . . . was sufficient to spur [state] legislature[s] to action”). Turning the coin, the legislature’s responsiveness to the people its members represent is hardly heightened when the representative body can be confident that what it does will not be overturned or modified by the voters themselves.

* * *

Invoking the Elections Clause, the Arizona Legislature instituted this lawsuit to disempower the State’s voters from serving as the legislative power for redistricting purposes. But the Clause surely was not adopted to diminish a State’s authority to determine its own lawmaking processes. Article I, §4, stems from a different view. Both parts of the Elections Clause are in line with the fundamental premise that all political power flows from the people. *McCulloch v. Maryland*, 4 Wheat. 316, 404–405 (1819). So comprehended, the Clause doubly empowers the people. They may control the State’s lawmaking processes in the first instance, as Arizona voters have done, and they may seek Congress’ correction of regulations prescribed by state legislatures.

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.

***Arizona State Legislature v. Arizona Independent
Redistricting Commission***

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