

No. 21-1271

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In the  
**Supreme Court of the United States**

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TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS  
SPEAKER OF THE NORTH CAROLINA HOUSE OF  
REPRESENTATIVES, ET AL.,

*Petitioners,*

v.

REBECCA HARPER, ET AL.,

*Respondents.*

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On Writ of Certiorari to the  
Supreme Court of North Carolina

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**BRIEF OF AMICI CURIAE SECRETARIES OF  
STATE OF COLORADO, CALIFORNIA,  
CONNECTICUT, MAINE, MASSACHUSETTS,  
MINNESOTA, NEW JERSEY, NEW MEXICO,  
OREGON, PENNSYLVANIA, RHODE ISLAND,  
VERMONT, AND WASHINGTON IN SUPPORT  
OF RESPONDENTS**

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## **INTERESTS OF AMICI CURIAE**

The Secretaries of State amici are the chief election officials of their respective states.<sup>1</sup> As such, they are responsible for administering elections for their states' members of the United States House of Representatives and the United States Senate. This responsibility is extensive, beginning when a candidate for the U.S. House or Senate seeks nomination to a primary ballot; continuing as ballot formats are certified and candidates' names are listed in the manner prescribed by statute or rules; and ending with the counting, canvassing, auditing, recounting, and contesting the elections for seats in Congress. Amici therefore understand the destabilizing impact of Petitioners' theory and would be directly impacted by its adoption.

## **SUMMARY OF THE ARGUMENT**

The Secretaries of State amici are in no position to opine on whether the North Carolina Supreme Court correctly determined that the redistricting maps violated the North Carolina constitution. But they are uniquely positioned to understand that such questions related to elections have always been properly determinable in the states through the ordinary state lawmaking process. All states have relied on this federalism principle in constructing their elec-

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<sup>1</sup> No counsel for either party authored this brief in whole or in part. No person or entity, other than amici curiae or its counsel, contributed to the preparation of submission of this brief. Petitioners and respondents issued blanket consents covering the filing of this brief.

tion systems, as well as on this Court's opinions affirming that state legislatures' election regulations are subject to the checks and balances provided by state law. Dismantling these legal regimes now based on a mistaken legal theory alien to our country's history and this Court's precedent would have far-reaching and unpredictable consequences on our country's elections.

Neither the text of the Elections Clause, its history, nor this Court's long-standing caselaw support Petitioners' theory. The Constitution does not exempt elections issues from the state lawmaking process. To the contrary, the Founders sought to protect against unchecked power by state legislatures. Time and again, this Court has recognized that state courts are key to safeguarding elections. Indeed, both federalism and checks and balances are bedrock principles of American democracy—Petitioners' theory would jettison both.

In light of this history, states have built extensive legal regimes to address all manner of election-related questions. State judicial review of state election laws governing federal elections is ubiquitous. State courts in all fifty states have reviewed some aspect of federal elections, including deadlines, contests, election machinery, ballot access, and congressional redistricting. Many states provide for this review in their constitutions. Others incorporate judicial review by statute. And some state courts have overseen election disputes through writs of mandamus or other equitable powers. Though the mechanisms vary, the practice is uniform: state courts interpret state law, including election laws that govern federal elections.

Petitioners' attempt to upend this long-settled law would create chaos in election administration on a large scale. Every state would effectively have two legal regimes: one for state elections, with disputes heard in state court; and one for federal elections, where disputes could be raised only in federal court. So different rules could apply in the same election, even on the same ballot.

This system would also undermine state election regulations. Many state legislatures delegate to their Secretaries of State the responsibility for promulgating technical rules for certifying voting equipment and other details related to administering elections. If these rules are invalid as to federal elections, federal courts will be left with little guidance to determine the highly technical issues related to elections and may again impose different legal rules for the federal part of the ballot than apply on the state portion.

Finally, given the substantial reliance interest that has built up around state judicial review of elections, Petitioners' theory—that we have all been wrong for the last 230 years—would create a crisis of finality in the states. Settled caselaw would be up in the air. Resolved questions would be reopened for review. And whether prior decisions resolving election disputes for federal candidates continue to apply to either state or federal candidates would be unclear.

The Founders were right, and this Court has been right, that election laws are subject to the checks and balances of state law. The Court should reject Petitioners' attempt to radically upend this critical principle of American democracy.

## ARGUMENT

### **I. This Court has consistently respected state judicial review over election laws.**

The Elections Clause has never allowed state legislatures to disregard the state lawmaking process when enacting laws regulating the “times, places, and manner of holding” federal elections. U.S. CONST. art. I, § 4. Nothing in the text of the clause excludes state courts or any aspect of the state lawmaking process. There is “no suggestion” in the Elections Clause “of an attempt 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 has provided.” *Smiley v. Holm*, 285 U.S. 355, 368 (1932). Nor is there any “intimation, either in the debates in the Federal Convention or in contemporaneous exposition,” that the Elections Clause intended such an effect. *Id.* at 369; *see also* THE FEDERALIST NO. 60, at 366 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (“[A]n uncontrollable power over the elections to the federal government could not, without hazard, be committed to the State legislatures.”).

So while the Elections Clause authorizes the state legislatures to regulate elections, they must follow state law when doing so. Legislatures may not disregard a governor’s veto of a redistricting plan. *See Smiley*, 285 U.S. at 372. Nor may they ignore a public referendum rejecting the legislature’s redistricting plan. *See State of Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569–70 (1916).

Because the Elections Clause creates no exception to states’ general lawmaking powers, state courts have an important role to play. *See generally*

*Marbury v. Madison*, 5 U.S. 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). This Court has unambiguously rejected “the mistaken view that federal judges need defer only to [a state] Legislature and not at all to the State’s courts.” *Grove v. Emison*, 507 U.S. 25, 33–34 (1993). *Grove* is directly on point. There, this Court reversed a three-judge district court’s decision that halted the Minnesota Supreme Court’s redistricting process and implemented the federal court’s own map. Writing for a unanimous Court, Justice Scalia faulted the federal district court for “overlook[ing] this Court’s teaching that state courts have a significant role in redistricting.” *Id.* at 33. Thus, “the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself.” *Id.* (emphasis in original).

This Court has recently reiterated that the Elections Clause does not displace non-legislative state actors from their traditional roles in election law. Both the majority and the dissent in *Arizona State Legislature v. Arizona Independent Redistricting Commission* reaffirmed the central holdings of *Smiley* and *Hildebrandt* and agreed that “the Elections Clause [does] not prevent a State from applying the usual rules of its legislative process . . . to election regulations prescribed by the legislature.” 576 U.S. 787, 841 (2015) (Roberts, C.J., dissenting); *see also id.* at 808 (majority opinion). Again, in *Rucho v. Common Cause*, the Court expressly relied on state courts and state constitutions to deal with partisan gerrymandering. 139 S. Ct. 2484, 2507 (2019) (“Provisions

in state statutes and state constitutions can provide standards and guidance for state courts to apply.”).

Time and again, this Court has reaffirmed the states’ internal separation of powers when regulating elections. Petitioners’ theory, which rejects this separation of powers, would “evince disrespect for a State’s chosen means of diffusing its sovereign powers among various branches and officials.” *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2201 (2022) (quotations omitted). “Respecting the States’ ‘plan[s] for the distribution of governmental powers’ . . . serves important national interests,” including “the separation of government powers[. which] has long been recognized as vital to the preservation of liberty.” *Id.*

## **II. Without exception, state courts across the country interpret state election laws in federal elections.**

Ninety years ago, this Court relied on a “long and continuous interpretation” of the Elections Clause to conclude that election law must comply with “the established practice in the states.” *Smiley*, 285 U.S. at 369. Since then, all states have crafted, without interference from this Court, legal systems for resolving election disputes.

Federal elections are substantially governed by state laws and state constitutions. Like any other laws, disputes invariably arise as to the meaning, applicability, or enforcement of election laws. But petitioners argue that state election laws are not reviewable in state court when applied to federal candidates. *See* Petitioners’ Brief at 22–23 (“[W]hen a state legislature regulates congressional elections, it

is performing a function assigned to it by the federal Constitution . . . so Respondents' reliance on background principles of judicial review for compliance with substantive state law falls apart.") (emphasis omitted). To the contrary, state courts can, and must, resolve these disputes.

Consider the election of Alaska Senator Lisa Murkowski, who ran as a write-in candidate. After the initial election results showed her ahead, her opponent moved for injunctive relief in state and federal court. He argued that "any write-in votes that misspell[ed] the candidate's name" were invalid. *Miller v. Treadwell*, 245 P.3d 867, 869 (Alaska 2010) (*Miller II*). The federal district court abstained from addressing the issue so that state courts could determine state law. *Miller v. Campbell*, No. 3:10-cv-0252-RRB, 2010 WL 5071599, at \*2 (D. Alaska Nov. 19, 2010) (*Miller I*). Murkowski intervened in the state lawsuit and counterclaimed that election officials should have counted ballots where the voter wrote her name but did not mark the selection oval. *Miller II*, 245 P.3d at 877.

The Alaska Supreme Court rejected both claims. As to Murkowski's claim, the court held that Alaska law required voters to "mark the oval in some fashion," so ballots with blank ovals did not count. *Id.* at 878. As to her opponent's claim, the court reasoned that the relevant statutes did not require precise spelling. The court therefore held that "abbreviations, misspellings, or other minor variations in the form of the name of a candidate will be disregarded in determining the validity of the ballot, so long as the intention of the voter

can be ascertained.” *Id.* at 869. After the Alaska Supreme Court interpreted and applied the relevant election laws, Senator Murkowski was certified as the winner. *See id.* at 878.

Election disputes like Senator Murkowski’s are commonplace. State election laws govern federal elections,<sup>2</sup> and state election officials, such as secretaries of state, election boards, or lieutenant governors, enforce these laws.<sup>3</sup> When the actions of those officials are disputed, state courts around the country interpret, clarify, and apply state statutes governing federal election administration. *See Miller II*, 245 P.3d at 871 (“[O]f course the Director’s final determinations are subject to judicial review.”).

Accordingly, state courts in all fifty states have exercised judicial review over a wide variety of federal election disputes. *See* Appendix A. For example, state courts have addressed disputes over federal filing deadlines, ballot access, and voting equipment.<sup>4</sup> They

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<sup>2</sup> *See, e.g.*, Ind. Code § 3-12-10-4 (federal election contests); Fla. Stat. §§ 101.5602 to 101.5606 (election machinery); Idaho Code § 34-219 (ballot access); N.H. Rev. Stat. Ann. § 662-A:5 (congressional redistricting); *see generally* Appendix B (detailing state laws codifying judicial review over federal election administration).

<sup>3</sup> *See, e.g.*, Colo. Rev. State. § 1-1-107 (authority to secretary of state); S.D. Codified Laws § 12-1-5 (board of elections); Utah Code Ann. §§ 20A-1-102(23)(a), 20A-1-402 (lieutenant governor).

<sup>4</sup> *See, e.g.*, *Seawright v. Bd. of Elections*, 150 N.E.3d 848, 850 (N.Y. 2020) (congressional candidate filing deadlines); *Wexler v. Lepore*, 878 So. 2d 1276, 1282 (Fla. Dist. Ct. App. 2004) (election machinery); *Griswold v. Warren*, 462 P.3d 1081, 1082 (Colo. 2020) (ballot access).

have also addressed federal election contests and congressional redistricting disputes.<sup>5</sup>

States afford their courts authority to resolve election disputes in three ways. First, several state constitutions require judicial review of election disputes. Six state constitutions expressly require judicial review for at least some election contests.<sup>6</sup> Three require judicial review of congressional redistricting disputes,<sup>7</sup> two others of voter registration appeals.<sup>8</sup> Still others create additional roles for state courts or judges in federal elections.<sup>9</sup>

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<sup>5</sup> See, e.g., *Franken v. Pawlenty*, 762 N.W.2d 558, 560 (Minn. 2009) (Senate election contest); *Rivera v. Schwab*, 512 P.3d 168, 178 (Kan. 2022) (congressional redistricting).

<sup>6</sup> ALASKA CONST. art. V, § 3; ARK. CONST. art. III, §§ 9, 11; HAW. CONST. art. II, § 10; MO. CONST. art. VII, § 5; PA. CONST. art. VII, § 13; WYO. CONST. art. VI, § 14; see also DEL. CONST. Art. V, § 6 (contemplating a “trial of any contested election”); KY. CONST., § 153 (“[T]he General Assembly shall have power to provide by general law for . . . the trial of contested elections.”).

<sup>7</sup> COLO. CONST. art. V, § 44.5(1); N.J. CONST. art. II, § 2, ¶¶ 3, 7; WASH. CONST. art. II, § 43(10).

<sup>8</sup> GA. CONST. art. II, § 2, ¶ I; S.C. CONST. art. II, § 9.

<sup>9</sup> See MINN. CONST. art. VII, § 8 (“The returns of every election for officeholders elected statewide shall be made to the secretary of state who shall call to his assistance two or more of the judges of the supreme court and two disinterested judges of the district courts. They shall constitute a board of canvassers to canvass the returns and declare the result within three days after the canvass.”); N.H. CONST. Pt. 1, art. 11th (“[T]he supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses.”); N.J. CONST. art. II, § 2, ¶ 1 (authorizing the supreme

Second, forty-six states provide for state court review of election disputes by statute. *See* Appendix B. Many state statutes expressly contemplate state court involvement in federal elections. *See, e.g.*, Ariz. Rev. Stat. Ann. § 16-222(B)(3)–(4) (regarding special elections to congress). Others do not distinguish between federal or state elections, so state courts apply the statutes to both. *See, e.g.*, 10 Ill. Comp. Stat. § 5/10-10.1 (“A candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision . . . .”); *King v. Illinois State Bd. of Elections*, 2022 IL App (1st) 220691-U, 2022 WL 2116185, at \*5 (Ill. App. June 13, 2022) (applying § 5/10-10.1 in a federal election contest). And while some states passed statutory schemes to implement specific constitutional provisions, *see, e.g.*, Ark. Code Ann. § 7-5-810 (regarding election contests), others enacted laws without a specific constitutional grant. West Virginia, for example, provides that “[a]ny officer or person upon whom any duty is imposed” by the election code, “may be compelled to perform his or her duty” by action in the state circuit courts. W. Va. Code § 3-1-45.

Third, some state courts review federal election disputes under the courts’ traditional equitable powers. Without express constitutional or statutory authority, courts in North Dakota, Ohio, Texas, and Wyoming have entertained mandamus actions from

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court to select the independent member of the congressional redistricting commission if the partisan members of the commission are unable to come to an agreement).

candidates for federal office who sought inclusion on primary or general election ballots.<sup>10</sup>

The ubiquity of state court review of federal elections is practical and necessary. Election administration is “extraordinarily complicated and difficult.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay application). It includes countless discretionary decisions about the conduct of candidates, voters, and on-the-ground officials. Disputes in these areas arise every election cycle, and someone has to decide them—fairly and impartially. That is the job of the courts.

And state courts are best positioned to interpret state election law. *See Miller I*, 2010 WL 5071599, at \*1 (“The Courts of the State of Alaska are in the best position, at least initially, to apply Alaska law and to determine who won this election.”). Election disputes typically involve statutes that a party claims are ambiguous, and this Court has long written against federal court “forecast[s]” of state law. *See, e.g., R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 499

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<sup>10</sup> *State ex rel. Sundfor v. Thorson*, 6 N.W.2d 89, 90 (N.D. 1942) (rejecting congressional candidate’s mandamus action to force the secretary of state to list him on the general election ballot); *Reichert v. Byrne*, 210 N.W. 640, 641 (N.D. 1926) (same); *State ex rel. Leneghan v. Husted*, 110 N.E.3d 1275, 1278 (Ohio 2018) (rejecting candidate’s mandamus action contesting results of the federal primary); *Cantrell v. Carlson*, 314 S.W.2d 286, 288 (Tex. 1958) (on mandamus review, holding that the executive committee must put petitioner on the republican primary ballot for U.S. House seat); *State ex rel. Johnson v. Crane*, 197 P.2d 864, 866–67, 874 (Wyo. 1948) (rejecting senatorial candidate’s application for mandamus relief to direct the secretary of state to list him on the ballot).

(1941). Thus, when it is unclear whether state election officials followed state law, federal courts should not weigh in. “[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). The Constitution simply does not give federal courts exclusive jurisdiction over interpretation of state law, either in elections or elsewhere. Instead, federal courts should “restrain their authority because of ‘scrupulous regard for the rightful independence of the state governments’ and for the smooth working of the federal judiciary.” 17A VIKRAM DAVID AMAR, FEDERAL PRACTICE AND PROCEDURE (WRIGHT & MILLER) § 4241 (3d ed. 2002) (quoting *Pullman*).

The federal judiciary is also ill-equipped to take on the burden of resolving the many (and often time-sensitive) election disputes that arise in the states. Courts may have to decide whether state law requires another ballot box in a particular location. See *Foushee v. Christian*, 25 S.E. 793, 794 (N.C. 1896) (opinion by single justice, Clark, J.) (“In refusing an order for an additional ballot box, there was no error.”) Or whether a congressional candidate can include a nickname on the primary ballot. See Jonathan Edwards, *Congressional candidate loses bid to go by “Let’s Go Brandon” on ballot*, WASH. POST, Apr. 28, 2022 (<https://tinyurl.com/4c27wy7z>). These disputes arise with substantial frequency in election administration and often involve small issues, which federal courts do not have the capacity to resolve without distracting from other, traditional, federal cases.

Finally, election disputes often include questions of whether state laws comply with state constitutions, questions uniquely within the competence and expertise of state courts. *See, e.g.*, VA. CONST. art. II, § 4 (“The General Assembly shall . . . have power to make any other law regulating elections *not inconsistent with this Constitution.*”) (emphasis added). Forty-one state constitutions contain rules on the time, place, or manner of general elections.<sup>11</sup> Some constitutions explicitly regulate the manner of federal elections.

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<sup>11</sup> Twenty-one state constitutions provide for voting by ballot. DEL. CONST. art. V, § 1 (providing for voting by ballot); GA. CONST. art. II, § 1, ¶ I (same); HAW. CONST. art. II, § 4 (providing for vote by secret ballot and for absentee voting); IDAHO CONST. art. VI, § 1 (providing for voting by ballot); IND. CONST. art. II, § 13 (same); IOWA CONST. art. II, § 6 (same); KY. CONST., § 147 (same); LA. CONST. art. XI, § 2 (providing for vote by secret ballot and for absentee voting); MD. CONST. art. I, § 1 (providing for voting by ballot); MI. CONST. art. 2, § 4 (same) MINN. CONST. art. VII, § 5 (same); MONT. CONST. art. IV, § 1 (same); N.M. CONST. art. VII, § 5 (same); N.C. CONST. art. VI, § 5 (same); NEV. CONST. art. II, § 5 (same); N.Y. CONST. art. II, § 7 (same); S.C. CONST. art. II, §§ 1, 10 (providing for vote by secret ballot and for absentee voting); TENN. CONST. art. IV, § 4 (providing for voting by ballot); TEX. CONST. art. VI, § 4 (same); WASH. CONST. art. VI, § 6 (same); W. VA. CONST. art. IV, § 2 (same).

The following state constitutions regulate elections in other ways, including congressional redistricting, apportionment, election boards, and absentee voting. *See* ALA. CONST. art. VIII, § 177 (providing for secret and absentee voting); ARIZ. CONST. art. VII, § 1 (providing for secret voting by a variety of means); ARK. CONST. art. III, § 13 (detailing procedures for elections with one candidate); CAL. CONST. art. II, § 7 (“Voting shall be secret.”); CONN. CONST. art. VI, § 5 (providing for secret voting by a variety of means); FLA. CONST. art. VI, § 1 (providing that for voting “by direct and secret vote” and that the winner is determined by a

West Virginia’s constitution, for example, provides that its congressional representatives must be elected from districts “formed of contiguous counties.” W. VA. CONST. art. I, § 4; *see also* NEV. CONST. art. I, § 13 (“Representation shall be apportioned according to population.”). Other constitutions regulate elections generally, without distinguishing between state and federal office. For example, North Dakota’s constitution requires that the legislature “shall provide by law . . . for absentee voting.” N.D. CONST. art. II, § 1; *accord* MONT. CONST. art. IV, § 3. In addition, twenty-one state constitutions provide for voting by ballot.<sup>12</sup> All these constitutional examples regulate the manner in which voters participate in elections, including federal elections. In the words of the New York Court of Ap-

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plurality); KAN. CONST. art. IV, § 1 (providing for voting by ballot or voting device); MASS. CONST. art. XXXVIII (providing for secret voting by a variety of means); NEB. CONST. art. VI, § 6 (providing for secret voting by a variety of means); N.H. CONST. Pt. 1, art. 11th (describing requirements for polling places); N.J. CONST. art. II, § 2, ¶ 6 (directing the legislature to create a Redistricting Commission); N.D. CONST. art. II, § 1 (providing for secret and absentee voting); ILL. CONST. art. III, § 5 (creating a State Board of Elections to oversee elections); MO. CONST. art. VIII, § 3 (providing for voting by ballot “or by any mechanical method”); OKLA. CONST. art. III, § 2 (creating a State Election Board to oversee elections); OR. CONST. art. II, § 17 (providing for voting locations in congressional elections); PA. CONST. art. VII, § 4 (providing for secret voting by a variety of means); S.D. CONST. art. VII, § 3 (providing for secret voting); VA. CONST. art. II, §§ 3, 6, 6-A, 8 (providing for electoral boards to oversee elections, a redistricting commission, rules for congressional apportionment, and voting by ballot or machine); UTAH CONST. art. IV, § 8 (providing for secret voting by a variety of means).

<sup>12</sup> *See supra* n.10, ¶ 1.

peals, “[i]t is the responsibility of the judiciary to safeguard the rights afforded under our State Constitution.” *People v. LaValle*, 817 N.E.2d 341, 365 (N.Y. 2004).

At bottom, “principles of federalism and comity” justify state-court power in adjudicating federal election disputes. *Grove*, 507 U.S. at 32. But Petitioners’ theory would strip state courts of their traditional, ubiquitous, and necessary role in adjudicating these cases. See Petitioners’ Brief at 40 (“[A] ‘State’s prescriptions for lawmaking’ . . . do not include the adjudication of cases or controversies in the state courts.”) (citation omitted). Petitioners argue that state election laws are only reviewable under federal standards. See Petitioners’ Brief at 22–23 (“[O]nly the federal constitution can limit the federal function of regulating federal elections.”). On top of overruling decades of precedent from state courts and this Court, Petitioners’ theory would have dire consequences across the country.

### **III. Petitioners’ theory would cause unprecedented election administration problems and massive uncertainty.**

The rule requested by Petitioners would produce negative consequences on a scale that may be impossible to fully comprehend. The Elections Clause covers a broad range of conduct. It authorizes states to adopt “a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.” *Smiley*, 285 U.S.

at 366. These are among “the numerous requirements as to procedures and safeguards which experience shows are necessary in order to enforce the fundamental right involved.” *Id.* A ruling that these laws are beyond the scope of state judicial review would have far-reaching and unpredictable consequences.

**1. Petitioners’ theory would create two separate election systems within the states, with unpredictable and unworkable outcomes.**

Under Petitioners’ theory, state election administration would become a mess of confusing and potentially contradicting rules and legal regimes that apply differently to state and federal elections. For example, states establish voter eligibility for both federal and state elections. *See, e.g.*, Fla. Stat. Ann. § 97.105 (“A permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties and municipalities.”). Those laws may violate the state constitution. *See N.H. Dem. Party v. Sec’y of State*, 262 A.3d 366, 369 (N.H. 2021). If a state court rules that the legislature’s registration law violates the state constitution, Petitioners’ theory may allow someone to register to vote for federal offices but not state ones. Such a system may itself violate voters’ Equal Protection rights. *See Orr v. Edgar*, 670 N.E.2d 1243, 1251–52 (Ill. App. Ct. 1996) (holding that Illinois’ “two-tier system of voter registration” for state and federal elections violated both the Equal Protection Clause of the federal constitution and the “free and equal elections” clause of the state constitution).

Aside from potential constitutional infirmities, such a system is also impractical: it would require election officials to establish separate registration databases for state and federal elections and ensure that voters eligible to vote on only half of the ballot do not cast votes on the other half. Or, perhaps this dual election system requires separate ballots. Or even separate polling places. Petitioners' theory forces these issues on election officials, while simultaneously stripping state courts of their traditional authority to address them. *See* Petitioners' Brief at 40 (“[A] ‘State’s prescriptions for lawmaking’ . . . do not include the adjudication of cases or controversies in the state courts.”) (citation omitted).

Or imagine disputes that arise closer to the election itself. State and federal elections usually occur on the same day. *See, e.g.*, Ark. Code Ann. § 7-8-101 (federal and state primary elections “shall be held on the same date and in the same manner”). If wildfires, a hurricane, or some other cause forces polling centers to close early, voters seeking to extend voting hours would have to go to both federal and state court to extend the voting hours for both the federal and state elections. And those courts may reach opposite conclusions. So voting centers may remain open to allow individuals to vote for federal candidates, but not allow individuals to vote for state candidates, or vice versa. *See* FLA. CONST. art. VI, § 5 (“A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law.”).

This system is simply unworkable.

**2. Petitioners’ theory would undermine the reliance that state legislatures and Congress have placed in the expertise of Secretaries of State and other state election administrators.**

Petitioners’ theory would also undermine state legislatures’ delegation of authority to expert election administrators. *See* Petitioners’ Brief at 18 (arguing that the Elections Clause’s specification of state legislature “necessarily entails that no other state organ is authorized to exercise that power”). “Ballots and elections do not magically materialize. They require planning, preparation, and studious attention to detail if the fairness and integrity of the electoral process is to be observed.” *Perry v. Judd*, 471 Fed. App’x 219, 226 (4th Cir. 2012). To ensure that this required technical expertise materializes, every state legislature in the country has delegated at least some election administration responsibilities to other state or local officials. *See* Appendix C.

For example, many state legislatures have delegated rulemaking and other administrative authority to election administrators with expertise in running elections, often Secretaries of State. *See, e.g.*, Colo. Rev. Stat. § 1-1-107. In Colorado, for example, the Secretary of State has promulgated 149 pages of election rules governing everything from running polling centers, to certifying voting equipment, to establishing recount procedures. 8 Code Colo. Regs. § 1505-1; *see also* S.D. Admin. R. §§ 5:02:01:01 to 5:02:22:02 (available at <https://sdsos.gov/general-information/administrative-rules/search/>) (detailing hundreds of pages of

rules from the State Board of Elections). Petitioners' theory would cast doubt on the validity of those rules as they apply to federal elections. Would the state's rules for certifying voting machines only apply to the state half of the ballot, with federal judges deciding whether the voting equipment complies with state law for the federal half? Ballots cast on a voting machine could then be valid as to the state candidates but invalid as to federal candidates, or vice versa.

**3. Upending the role of state courts in interpreting state election laws would unsettle established caselaw in the states.**

Finally, Petitioners' theory would upend decades of settled caselaw and create uncertainty and confusion in every state as to what rules apply. Because state courts have—with this Court's blessing—considered election lawsuits in both federal and state elections, significant bodies of caselaw have built up interpreting state election laws. These laws often do not distinguish between state and federal candidates. Accordingly, a state court ruling that interprets a state election law for federal candidates can be relied upon by state candidates as well. But this reliability will vanish if Petitioners have their way, replaced by an unknown and unknowable legal regime.

Take a recent Colorado Supreme Court case, *Griswold v. Warren*, 462 P.3d 1081 (Colo. 2020). There, a candidate for U.S. Senate argued that the COVID-19 pandemic should excuse her from collecting signatures to qualify for the ballot, and that she should instead be held to a “substantial compliance” standard that generally applies to the Election Code. *See* Colo. Rev.

Stat. § 1-1-103(3). The Colorado Supreme Court disagreed and held that the signature requirement was subject to a “strict compliance” standard. *Warren*, 462 P.3d at 1084–85. This holding applies to candidates for federal and state office. *See id.* at 1082 (citing Colo. Rev. Stat. § 1-4-801, which details signature requirements for state and federal offices); *see also Barnard v. Stone*, 933 S.W.2d 394, 396 (Ky. 1996) (interpreting the signature requirement for ballot access, applicable to all elections, in a congressional election). But if this Court were to hold that the Colorado Supreme Court lacked jurisdiction to construe the Election Code as it applied to a candidate for the U.S. Senate, the case would no longer apply to federal candidates. And the issue would be open to fresh interpretation by federal courts.

This is one example of the web of interrelated decisions that make up state election law. A ruling for Petitioners would not only create two separate systems of election law in each state but would also create confusion as to what caselaw remains binding as to which candidates. Settled caselaw would be open to new interpretation based on whether the candidates sought state or federal office and whether a state court could interpret the law in the manner it did. Such a system is not only repugnant to state sovereignty, but it would also sow doubt and confusion throughout the country.

## CONCLUSION

The decision of the North Carolina Supreme Court is consistent with the Elections Clause.

Respectfully submitted,

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## APPENDIX A

EXAMPLES OF STATE COURT REVIEW  
IN FEDERAL ELECTIONS

Alabama	<i>Jansen v. State ex rel. Downing</i> , 137 So. 2d 47 (Ala. 1962) (holding that a statute detailing congressional primary procedures and providing for statewide congressional elections in lieu of redistricting complied with the state constitution).
Alaska	<i>State v. Galvin</i> , 491 P.3d 325, 328–29 (Alaska 2021) (denying congressional candidate’s request for injunction against mailing allegedly misleading general election ballot); <i>Miller v. Treadwell</i> , 245 P.3d 867 (Alaska 2010) (reviewing challenge to several vote-counting decisions by the state Division of Elections in U.S. Senate race).

Arizona	<i>McClung v. Bennett</i> , 235 P.3d 1037 (Ariz. 2010) (reviewing a challenge to a nominating petition for House candidate); <i>Harless v. Lockwood</i> , 332 P.2d 887 (Ariz. 1958) (reviewing election contest in congressional primary); <i>Chavez v. Brewer</i> , 214 P.3d 397 (Ariz. Ct. App. 2009) (reviewing challenge to whether voting machines to be used in the general election complied with state law).
Arkansas	<i>Catlett v. Beeson</i> , 401 S.W.2d 202 (Ark. 1966) (holding that a statute creating a congressional district was valid and that the seat was to be filled by a special election called by the governor); <i>Terry v. Harris</i> , 64 S.W.2d 80 (Ark. 1933) (reviewing a congressional primary election contest).

California	<p><i>Legislature v. Padilla</i>, 469 P.3d 405 (Cal. 2020) (extending the congressional redistricting deadlines set by statute and state constitution because the federal government delayed distributing census results); <i>Field v. Bowen</i>, 131 Cal. Rptr. 3d 721 (Cal. Ct. App. 2011) (rejecting state and federal constitutional challenge to California's open-primaries law, which applied to primaries for congressional candidates); <i>Keyes v. Bowen</i>, 117 Cal. Rptr. 3d 207 (Cal. Ct. App. 2010) (holding that neither presidential electors, nor the California secretary of state, had a duty to determine whether a presidential candidate was eligible for office).</p>
Colorado	<p><i>Kuhn v. Williams</i>, 418 P.3d 478 (Colo. 2018) (holding that the congressional candidate failed to obtain the required signatures for placement on the primary ballot); <i>People ex rel. Salazar v. Davidson</i>, 79 P.3d 1221 (Colo. 2003) (invalidating general assembly's congressional redistricting bill under the state constitution).</p>

Connecticut	<i>Reale v. Bysiewicz</i> , 6 A.3d 1138 (Conn. 2010) (opinion by single justice, Eveleigh, J.) (rejecting congressional candidate's petition to be placed on the general election ballot).
Delaware	<i>League of Women Voters of Del., Inc. v. Dep't of Elections</i> , 250 A.3d 922 (Del. Ch. 2020) (upholding Delaware's vote-by-mail statute and ballot-receipt deadline for the general election under the state constitution); <i>Republican State Comm. of Delaware v. Dep't of Elections</i> , 250 A.3d 911 (Del. Ch. 2020) (upholding vote-by-mail statute under state constitution).
Florida	<i>League of Women Voters of Fla. v. Detzner</i> , 172 So. 3d 363 (Fla. 2015) (holding that Florida's congressional redistricting violated the "Fair Districts Amendment" to the Florida constitution); <i>Wexler v. Lepore</i> , 878 So. 2d 1276 (Fla. Dist. Ct. App. 2004) (holding that incumbent congressional candidate was not entitled to injunction against use of touchscreen voting machines in general election).

Georgia	<i>Lowe v. Weltner</i> , 164 S.E.2d 919 (Ga. Ct. App. 1968) (reviewing an election contest arising from congressional primary); <i>Blackburn v. Hall</i> , 154 S.E.2d 392, 397 (Ga. Ct. App. 1967) (“[T]he courts of this State have jurisdiction of a proceeding brought under the provisions of the Code to obtain a recount of all or a portion of the ballots cast in an election for a representative to either House in the Congress.”).
Hawaii	<i>Tataii v. Cronin</i> , 198 P.3d 124 (Haw. 2008) (holding that congressional candidate did not state a claim in his election contest complaint); <i>Tataii v. Yeshina</i> , No. 25599, 2003 WL 21267262 (Haw. May 22, 2003) (unpublished opinion) (reviewing a congressional special-election contest).
Idaho	<i>Hansen v. Jones</i> , 695 P.2d 1237 (Idaho 1984) (holding that congressional candidate was not entitled to a recount).

Illinois	<i>Druck v. Ill. State Bd. of Elections</i> , 899 N.E.2d 437 (Ill. App. Ct. 2008) (affirming decision to remove congressional candidate from the general election ballot); <i>Orr v. Edgar</i> , 670 N.E.2d 1243 (Ill. App. Ct. 1996) (holding that Illinois' "two-tier system of voter registration" for state and federal elections violated both equal protection and the "free and equal elections" clause under the state constitution).
Indiana	<i>League of Women Voters of Ind., Inc. v. Rokita</i> , 929 N.E.2d 758 (Ind. 2010) (holding that Indiana's voter ID law did not violate state constitution); <i>Ankeny v. Governor</i> , 916 N.E.2d 678 (Ind. Ct. App. 2009) (rejecting citizens' argument challenging Indiana's presidential electors).
Iowa	<i>Richman v. Letts</i> , 210 N.W. 93, 94 (Iowa 1926) (holding that congressional candidate's election contest was moot).

Kansas	<i>Rivera v. Schwab</i> , 512 P.3d 168 (Kan. 2022) (reviewing Kansas's congressional redistricting plan under state and federal constitutions).
Kentucky	<i>Barnard v. Stone</i> , 933 S.W.2d 394 (Ky. 1996) (reviewing congressional candidate's challenge to validity of signatures on nominating petition).
Louisiana	<i>Eames v. Cutno</i> , 199 So. 3d 1170 (La. Ct. App. 2016) (denying objection to candidacy of a congressional candidate); <i>Eugene v. Davenport</i> , 150 So. 3d 56 (La. Ct. App. 2014) (rejecting petition to disqualify congressional candidate from general election).
Maine	<i>All. for Retired Ams. v. Sec'y of State</i> , 240 A.3d 45 (Me. 2020) (upholding state law deadline for receipt of absentee ballots in general election); <i>Opinion of the Justices</i> , 142 A.2d 532 (Me. 1956) (advisory opinion on the roles of the governor and secretary of state in federal election contests).

Maryland	<i>Lamone v. Capozzi</i> , 912 A.2d 674 (Md. 2006) (holding that early voting statute violated state constitution and reasoning that “[a] determination that a state statute does not conflict with an existing federal law does not insulate that state’s statute from state constitutionality analysis”).
Massachusetts	<i>Libertarian Ass’n of Mass. v. Sec’y of Commonwealth</i> , 969 N.E.2d 1095 (Mass. 2012) (rejecting third party’s attempt to change its presidential nominee on the general election ballot); <i>Delahunt v. Johnston</i> , 671 N.E.2d 1241 (Mass. 1996) (upholding trial court’s adjudication of a congressional primary election contest); <i>Johnson v. State Ballot Law Comm’n</i> , 287 N.E.2d 597 (Mass. 1972) (rejecting congressional candidate’s action seeking placement on the primary ballot).

Michigan	<i>LeRoux v. Sec'y of State</i> , 640 N.W.2d 849 (Mich. 2002) (holding that technical fixes to congressional redistricting plan did not violate the state constitution); <i>Davis v. Wayne Cnty. Election Comm'n</i> , No. 354315, 2021 WL 4228538, at *1 (Mich. Ct. App. Sept. 16, 2021) (unpublished) (dismissing petitioner's mandamus action to remove a congressional candidate from the primary ballot).
Minnesota	<i>Franken v. Pawlenty</i> , 762 N.W.2d 558 (Minn. 2009) (holding that statute precluding issuance of election certificate until state courts had decided an election contest applied to elections for United States Senate).
Mississippi	<i>McDaniel v. Cochran</i> , 158 So. 3d 992 (Miss. 2014) (rejecting a Senate candidate's election contest because it was untimely under state law).

Missouri	<i>Pearson v. Koster</i> , 359 S.W.3d 35 (Mo. 2012) (reviewing congressional redistricting plan under the Missouri constitution); <i>State ex rel. Frank v. Becker</i> , 9 S.W.2d 153 (Mo. 1928) (rejecting Senate primary candidate's application for writ of mandamus).
Montana	<i>Mont. Democratic Party v. Jacobsen</i> , --- P.3d ---, 2022 MT 184, 2022 WL 4362513 (Mont. 2022) (enjoining the secretary of state from enforcing part of the state's voter ID and voter registration laws under the state constitution).
Nebraska	<i>State ex rel. Beeson v. Marsh</i> , 34 N.W.2d 279 (Neb. 1948) (rejecting mandamus action by presidential electors to be included on the ballot).

Nevada	<i>Nev. State Democratic Party v. Nev. Republican Party</i> , 256 P.3d 1 (Nev. 2011) (holding that state law requires the political parties to select a single candidate for a special congressional election); <i>Fasano v. Ashjian</i> , No. 56040, 2010 WL 4340813 (Nev. Oct. 28, 2010) (unpublished) (dismissing senate candidate's appeal to have opponent removed from the general election ballot as moot).
New Hampshire	<i>Norelli v. Sec'y of State</i> , --- A.3d ---, 2022 WL 1498345 (N.H. May 12, 2022) (rejecting congressional redistricting plan for violating federal constitution); <i>Libertarian Party New Hampshire v. State</i> , 910 A.2d 1276 (N.H. 2006) (rejecting minor party's challenges to process for nominating candidates).

New Jersey	<i>N.J. Democratic Party, Inc. v. Samson</i> , 814 A.2d 1028 (N.J. 2002) (determining process for filling candidate vacancy for Senate race); <i>Singh v. Murphy</i> , No. A-0323-20T4, 2020 WL 6154223 (N.J. Super. Ct. App. Div. Oct. 21, 2020) (unpublished) (rejecting challenge to mail-in voting procedures for congressional primaries and general elections).
New Mexico	<i>State of N.M. ex rel. League of Woman Voters v. Herrera</i> , 203 P.3d 94 (N.M. 2009) (granting writ of mandamus requiring secretary of state to count handwritten ballots in the general election); <i>Cobb v. State Canvassing Bd.</i> , 140 P.3d 498 (N.M. 2006) (reviewing state law requiring presidential candidates to make a deposit covering the full cost of an election contest for violations of the state constitution).

New York	<p><i>Seawright v. Bd. of Elec.</i>, 150 N.E.3d 848 (N.Y. 2020) (holding that congressional candidate's failure to timely file nominating papers was a fatal defect); <i>Tenney v. Oswego Cnty. Bd. of Elections</i>, 142 N.Y.S.3d 288 (N.Y. Sup. Ct. 2021) (addressing the validity of absentee and affidavit ballots in congressional election); <i>Application of Ferguson</i>, 294 N.Y.S.2d 174 (N.Y. Sup. Ct. 1968) (ordering the secretary of state to place Senate candidate on the general election ballot).</p>
North Carolina	<p><i>Britt v. Bd. of Canvassers of Buncombe Cnty.</i>, 90 S.E. 1005 (N.C. 1916) (rejecting candidate's application for writ of mandamus to compel the election board to certify the results of the congressional election).</p>

North Dakota	<i>State ex rel. Kusler v. Sinner</i> , 491 N.W.2d 382 (N.D. 1992) (determining process for setting special elections to fill Senate vacancy); <i>State ex rel. Sundfor v. Thorson</i> , 6 N.W.2d 89 (N.D. 1942) (rejecting congressional candidate's request to keep opponent off of the general election ballot); <i>Reichert v. Byrne</i> , 210 N.W. 640 (N.D. 1926) (rejecting congressional candidate's request to be placed on the general election ballot).
Ohio	<i>Adams v. DeWine</i> , 195 N.E.3d 74 (Ohio 2022) (rejecting congressional redistricting map because it violated the Ohio Constitution); <i>State ex rel. Leneghan v. Husted</i> , 110 N.E.3d 1275 (Ohio 2018) (rejecting congressional candidate's mandamus action contesting primary results).

Oklahoma	<i>Alexander v. Taylor</i> , 51 P.3d 1204 (Okla. 2002) (holding that Oklahoma courts have jurisdiction to hear federal redistricting disputes); <i>Wickersham v. State Election Bd.</i> , 357 P.2d 421 (Okla. 1960) (rejecting congressional candidate's mandamus action contesting election results for failure to follow the statutory contest procedures).
Oregon	<i>Masters v. Sec'y of State</i> , 744 P.2d 1309 (Or. Ct. App. 1987) (upholding secretary of state's decision to include information about congressional candidate in the voter information pamphlet).
Pennsylvania	<i>McLinko v. Dep't of State</i> , 279 A.3d 539 (Pa. 2022) (upholding mail-in voting under the state constitution); <i>Mellow v. Mitchell</i> , 607 A.2d 204 (Pa. 1992) (reviewing Pennsylvania's congressional redistricting map).

Rhode Island	<i>Ball v. Bd. of Elections</i> , 229 A.2d 617 (R.I. 1967) (affirming the board of elections' decision to void certain absentee ballots in the general election); <i>In re Special Election for Members of Cong.</i> , 9 A. 224 (R.I. 1887) (advisory opinion concluding that the state legislature has the power to call a special congressional election).
South Carolina	<i>Gardner v. Blackwell</i> , 166 S.E. 338 (S.C. 1932) (reviewing challenge by federal candidates to printing and formatting of ballots).
South Dakota	<i>Thorsness v. Daschle</i> , 279 N.W.2d 166, 168 (S.D. 1979) ("The questions 'of who won' [the congressional election] and the propriety of the election procedure are purely matters of state law.").
Tennessee	<i>Alexandria-Williams v. Goins</i> , No. W2018-01024-COA-R10-CV, 2018 WL 3198799 (Tenn. Ct. App. June 26, 2018) (unpublished) (vacating injunction ordering a party's executive committee to place a candidate on the congressional primary ballot).

Texas	<i>Andrade v. NAACP of Austin</i> , 345 S.W.3d 1 (Tex. 2011) (rejecting voters' claims that the secretary of state violated Texas law and the state constitution by adopting new voting technology for use in general elections); <i>Cantrell v. Carlson</i> , 314 S.W.2d 286 (Tex. 1958) (granting mandamus relief against a party's executive committee to put petitioner on the congressional primary ballot).
Utah	<i>Utah State Democratic Comm. v. Monson</i> , 652 P.2d 890 (Utah 1982) (rejecting congressional candidate's petition to be placed on the general election ballot).
Vermont	<i>Paige v. State</i> , 88 A.3d 1182 (Vt. 2013) (dismissing complaint challenging eligibility for presidential candidate to appear on ballot).

Virginia	<i>Howell v. McAuliffe</i> , 788 S.E.2d 706 (Va. 2016) (vacating executive order enfranchising felons because it violated the state constitution); <i>Brown v. Saunders</i> , 166 S.E. 105 (Va. 1932) (upholding a challenge to a redistricting plan brought by congressional candidate).
Washington	<i>Order Re: Wash. State Redistricting Comm'n's Letter to Sup. Ct.</i> , 504 P.3d 795 (Wash. 2021) (ordering the Washington State Redistricting Commission to finalize its congressional redistricting plan); <i>Matter of Guerra</i> , 441 P.3d 807 (Wash. 2019), <i>aff'd Chialfo v. Wash.</i> , 140 S. Ct. 2316 (2020) (holding that the state may fine presidential electors for failing to uphold their pledge as required by state law).
West Virginia	<i>State ex rel. Cravotta v. Hechler</i> , 421 S.E.2d 698 (W. Va. 1992) (holding that the State Election Commission must permit political party to fill congressional candidate vacancy when the prior candidate timely withdrew in accordance with statutory procedures).

Wisconsin	<i>Johnson v. Wis. Elections Comm'n</i> , 967 N.W.2d 469 (Wis. 2021) (addressing state legislative and congressional redistricting dispute).
Wyoming	<i>State ex rel. Johnson v. Crane</i> , 197 P.2d 864 (Wyo. 1948) (rejecting Senate candidate's application for mandamus relief to direct the secretary of state to list him on the general election ballot and remove his opponent).

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## APPENDIX B

STATE CODIFICATION OF JUDICIAL REVIEW  
IN FEDERAL ELECTIONS

Alabama	No relevant provisions.
Alaska	ALASKA CONST. art. VI, § 11 (“Any qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting . . . .”); <i>see also</i> ALASKA CONST. art. V, § 3; Alaska Stat. §§ 15.10.100, 15.20.510, 15.20.550.
Arizona	Ariz. Rev. Stat. Ann. § 16-222(B)(3)–(4) (regarding special congressional elections, “[a]ny court action challenging the nomination of a candidate shall be filed” within five days of the nominating petition, and the “superior court shall hear and render a decision”).
Arkansas	ARK. CONST. art. III, §§ 9, 11 (regarding election contests); <i>see also</i> Ark. Code Ann. §§ 7-4-120(j), 7-5-810, 7-8-101.

California	Cal. Elec. Code § 14032 (“Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14207 and 14208 is alleged may file an action pursuant to those sections in the superior court . . . .”); <i>see also</i> Cal. Elec. Code §§ 15640, 16500–16540.
Colorado	COLO. CONST., art. V, § 44.5 (“The supreme court shall review the submitted [congressional redistricting] plans and determine whether the plans comply with the criteria listed in section 44.3 of this article V.”); <i>see also</i> Colo. Rev. Stat. §§ 1-1-113(1), 1-4-911, 1-9-101(2), 1-10.5-109, 1-11-204.

Connecticut	Conn. Gen. Stat. § 9-3(b) (“During any . . . federal election, primary or recanvass, or any audit conducted . . . the Secretary of the State may issue an order . . . to any registrar of voters or moderator to correct any irregularity or impropriety . . . . The Superior Court, on application of the Secretary or the Attorney General, may enforce by appropriate decree or process any such order issued pursuant to this subsection.”); <i>see also</i> Conn. Gen. Stat. § 9-323.
Delaware	DEL. CONST. art. V, § 6 (contemplating election contests); <i>see also</i> Del. Code Ann. tit. 15, §§ 5941, 5945.
Florida	Fla. Stat. §§ 99.061, 99.097(5) (providing for review of congressional candidate nominating petitions in the circuit court).

Georgia	GA. CONST. art. II, § 2, ¶ I (“The General Assembly shall provide by law for a method of appeal from the decision to allow or refuse to allow any person to register or vote . . . .”); <i>see also</i> Ga. Code Ann. §§ 21-2-5(e), 21-2-171(c).
Hawaii	HAW. CONST. art. II, § 10 (“Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law.”); <i>see also</i> Haw. Rev. Stat. §§ 11-99, 11-172, 11-174.5(a), 11-175.
Idaho	Idaho Code § 34-219(1) (“A person excluded from the ballot pursuant to this subsection may challenge such exclusion in the district court . . . .”); <i>see also</i> Idaho Code § 34-219[34-220].
Illinois	10 Ill. Comp. Stat. § 5/10-10.1 (“[A] candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court . . . .”); <i>see also</i> 10 Ill. Comp. Stat. § 5/7-63.

Indiana	Ind. Code §§ 3-12-10-4, 3-12-10-18, 3-12-11-1 (detailing the procedures, including judicial review, of recounts and election contests in federal races).
Iowa	Iowa Code § 60.1 (“The court for the trial of contested elections for presidential electors or for the office of senator or representative in Congress shall consist of the chief justice of the supreme court, who shall be presiding judge of the court, and four judges of the district court . . .”); <i>see also</i> Iowa Code §§ 57.1, 39.28.
Kansas	Kan. Stat. § 25-1437 (authorizing judicial review of several kinds of election contests, including those involving presidential electors).
Kentucky	KY. CONST., § 153 (“[T]he General Assembly shall have power to provide by general law for . . . the trial of contested elections.”); <i>see also</i> Ky. Rev. Stat. Ann. §§ 118.176(2), 120.185(2).

Louisiana	La. Stat. Ann. § 18:567.6 (“The final decision of the board [of elections] or the final resolution of the administrative law judge may be judicially reviewed . . . .”); <i>see also</i> La. Stat. Ann. §§ 18:441(B)(7), 18:1403.
Maine	Me. Stat. tit. 21-A, § 1206(2) (authorizing the Supreme Judicial Court to reapportion congressional districts if the state legislature fails to act)
Maryland	Md. Code Ann., Elec. Law §§ 12-202 to 12-203 (detailing election contest procedures where registered voters may seek judicial relief); <i>see also</i> Md. Code Ann., Elec. Law §§ 6-209 to 6-210.
Massachusetts	Mass. Gen. Laws ch. 56, § 59 (“The supreme judicial court shall also have jurisdiction of any civil action relative to the division of the commonwealth into congressional, councillor, senatorial, and representative districts in chapter fifty-seven . . . .”); <i>see also</i> Mass. Gen. Laws ch. 55B, § 4.

Michigan	Mich. Comp. Laws § 168.552(12) (“A person who filed a nominating petition with the secretary of state and who feels aggrieved by a determination made by the board of state canvassers may have the determination reviewed by mandamus, certiorari, or other appropriate process in the supreme court.”).
Minnesota	Minn. Stat. § 204B.44(b) (“The petition shall be filed with any judge of the supreme court in the case of an election for state or federal office . . . .”); <i>see also</i> Minn. Stat. § 209.065.
Mississippi	Miss. Code Ann. § 23-15-961(4) (“Any party aggrieved by the action or inaction of the appropriate executive committee [regarding a candidate’s qualifications or nominating papers] may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits.”).

Missouri	MO. CONST. art. VIII, § 3 (“[I]n cases of contested elections, grand jury investigations and in the trial of all civil or criminal cases in which the violation of any law relating to elections, including nominating elections, is under investigation or at issue, such officers may be required to testify and the ballots cast may be opened, examined, counted, and received as evidence.”); <i>see also</i> MO. CONST. art. VII, § 5; Mo. Rev. Stat. §§ 115.529, 115.557, 116.200.
Montana	Mont. Code Ann. § 13-36-102(1) (“Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination the person intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had.”); <i>see also</i> Mont. Code Ann. § 13-36-101.

Nebraska	Neb. Rev. Stat. § 32-624 (providing for judicial review of congressional candidacies); <i>see also</i> Neb. Rev. Stat. § 32-1110.
Nevada	No relevant provisions.
New Hampshire	N.H. CONST. Pt. 1, art. 11th (“[T]he supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses.”); <i>see also</i> N.H. Rev. Stat. Ann. § 665:8(II).
New Jersey	N.J. CONST. art. II, § 2, ¶ 3 (“If the [independent redistricting] commission is unable to certify the establishment of districts . . . the two district plans receiving the greatest number of votes, but not fewer than five votes, shall be submitted to the Supreme Court, which shall select and certify whichever of the two plans so submitted conforms most closely to the requirements of the Constitution and laws of the United States.”); <i>see also</i> N.J. CONST. art. II, § 2, ¶¶ 1, 7; N.J. Stat. Ann. § 19:29-2.

New Mexico	N.M. Stat. Ann. § 1-8-35(A) (detailing judicial review of candidate nominating petitions).
New York	New York Elec. Law § 16-102(1) (“The nomination or designation of any candidate for any public office . . . may be contested in a proceeding instituted in the supreme court by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections, as provided in this chapter . . .”).
North Carolina	N.C. Gen. Stat. § 163-22( <i>l</i> ) (authorizing “judicial review of any decision of the State Board of Elections”); N.C. Gen. Stat §§ 1-81.1, 1-267.1, 120-2.3, 120-2.4 (detailing the judicial review procedures for congressional redistricting).
North Dakota	N.D. Cent. Code § 16.1-16-06 (“Election contest actions must be tried as civil actions to the court without a jury.”); <i>see also</i> N.D. Cent. Code § 16.1-16-09.
Ohio	No relevant provisions.

Oklahoma	Okla. Stat. tit. 26, § 8-119 (“If such petition is filed in the manner herein provided, the district judge of the county in which the alleged [election] fraud occurred, or such other judge as may be assigned by the Supreme Court, shall hear and determine said issue without delay or continuance of more than one (1) day.”); <i>see also</i> 26 Okla. Stat. tit. 26, § 8-109.
Oregon	Or. Rev. Stat. § 258.036(1) (“[A]ny person authorized to contest a result of the election may file a petition of contest. The petition shall be filed with: (a) The Circuit Court for Marion County if the petition involves . . . a candidate for election to the office of elector of President and Vice President of the United States or a candidate for nomination or election to the office of United States Senator, United States Representative in Congress . . . .”); <i>see also</i> Or. Rev. Stat. § 246.910.

Pennsylvania	PA. CONST. art. VII, § 13 (“The trial and determination of contested elections of electors of President and Vice-President, members of the General Assembly, and of all public officers . . . shall be by the courts of law, or by one or more of the law judges thereof.”); <i>see also</i> 25 Pa. Cons. Stat. §§ 3291, 3351, 3401.
Rhode Island	<i>See</i> 17 R.I. Gen. Laws § 17-19-39.1(a) (“The voted ballots shall remain stored in the appropriate containers unless ordered to be opened by the state board or a court of law.”).
South Carolina	S.C. Const. art. I, § 9 (“Any person denied [voter] registration shall have the right to appeal to the court of common pleas, or any judge thereof, and thence to the Supreme Court . . . .”); <i>see also</i> S.C. Code Ann. § 7-17-270.
South Dakota	S.D. Codified Laws §§ 12-21-47, 12-21-48 (detailing judicial review of election recounts).
Tennessee	Tenn. Code Ann. § 2-17-101(a) (affording judicial review of election contests).

Texas	No relevant provisions.
Utah	Utah Code Ann. § 20A-1-403(2) (“If an error or omission has occurred in the publication of the names or description of the candidates nominated for office . . . in the printing of official ballots, a candidate or the candidate’s agent may file . . . a petition for ballot correction with the district court.”); <i>see also</i> Utah Code Ann. §§ 20A-1-404, 20A-1-803, 20A-4-403.
Vermont	Vt. Stat. Ann. tit. 17, § 2617 (“In all cases for which no other provision has been made, the Superior Court shall have general jurisdiction to hear and determine matters relating to elections and to fashion appropriate relief.”); <i>see also</i> Vt. Stat. Ann. tit. 17, § 2603(1).

Virginia	Va. Code Ann. § 24.2-806 (“In a primary for the United States House of Representatives . . . the proceeding to contest shall be in the circuit court . . . .”); <i>see also</i> VA. CONST. ART. II, § 4 (“The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, <i>and shall have power to make any other law regulating elections not inconsistent with this Constitution.</i> ”) (emphasis added); Va. Code Ann. §§ 24.2-104.1(A), 24.2-805.
Washington	WASH. CONST. art. II, § 43(10) (“The supreme court has original jurisdiction to hear and decide all cases involving congressional and legislative redistricting.”); <i>see also</i> Wash. Rev. Code §§ 29A.04.550(3), 29A.24.111, 29A.68.011, 29a.68.013.

West Virginia	W. Va. Code § 3-1-45 (“Any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction . . .”).
Wisconsin	Wis. Stat. § 5.06(8) (“Any election official or complainant who is aggrieved by an order issued under sub. (6) may appeal the decision of the commission to circuit court . . .”); <i>see also</i> Wis. Stat. § 5.07.
Wyoming	WYO. CONST. art. VI, § 14 (“The legislature shall, by general law, designate the courts by which the several classes of election contests not otherwise provided for, shall be tried, and regulate the manner of trial and all matters incident thereto . . .”); <i>see also</i> Wyo. Stat. Ann. §§ 22-17-101 to -103, 22-26-121.

## APPENDIX C

STATE LEGISLATURES DELEGATING AUTHORITY  
TO ADMINISTER ELECTIONS

Alabama	Ala. Code §§ 17-6-2, 17-6-4, 17-6-6 (authorizing county officials to draw precincts and determine polling locations).
Alaska	Alaska Stat. § 15.10.105 (creating the Division of Elections); Alaska Stat. § 15.20.045 (authorizing the Director of Elections to draft regulations regarding absentee voting); Alaska Stat. §§ 15.10.020, 15.10.050, 15.20.064 (authorizing the Director of Elections to adopt regulations concerning precinct boundaries and designate locations for early voting).
Arizona	Ariz. Rev. Stat. Ann. § 16-452 (authorizing the secretary of state to promulgate election administration rules); Ariz. Rev. Stat. Ann. § 16-411 (authorizing county officials to draw precincts).

Arkansas	Ark. Code Ann. § 7-1-113(f) (giving the secretary of state rule-making authority regarding polling places); Ark. Code Ann. §§ 7-4-109(2)(D), 7-4-120, 7-5-606, 7-7-201, (giving the State Board of Election Commissioners rulemaking authority); Ark. Code Ann. §§ 7-1-113(a)(1), 7-5-101 (authorizing county officials to establish polling places and election precincts).
California	Cal. Gov. Code § 12172.5(d) (authorizing the secretary of state to adopt election regulations); Cal. Elec. Code §§ 12220, 12280 (authorizing local officials to draw precincts and designate polling places).

Colorado	Colo. Rev. Stat. §§ 1-1-107(2)(a), 1-1-109(3) (giving the secretary of state rulemaking authority for administering elections); Colo. Rev. Stat. § 1-7.5-106 (authorizing secretary of state to establish mail ballot election procedures); Colo. Rev. Stat. §§ 1-1-110, 1-7.5-105 (requiring coordination between local election officials and the secretary of state to administer elections).
Connecticut	Conn. Gen. Stat. §§ 9-3, 9-4 (authorizing the secretary of state to issue election “regulations, declaratory rulings, instructions and opinions”); Conn. Gen. Stat. § 9-168 (authorizing local officials to establish polling places).
Delaware	Del. Code Ann. tit. 15, §§ 3127, 4512(a), 4513 (authorizing the Department of Elections to designate polling places); Del. Code Ann. tit. 15, §§ 4102–05 (authorizing the Department of Elections to draw the boundaries of election districts).

Florida	Fla. Stat. § 97.012(1) (giving the secretary of state rulemaking authority for election administration); Fla. Stat. § 101.001 (authorizing county officials to draw election precincts).
Georgia	Ga. Code Ann. § 21-2-31 (giving the State Election Board rulemaking authority for election administration); Ga. Code Ann. § 21-2-265(a) (authorizing local officials to select polling places).
Hawaii	Haw. Rev. Stat. § 11-2(e) (giving the secretary of state rulemaking authority for election administration).
Idaho	Idaho Code §§ 34-301, 34-302, 34-1006 (authorizing county officials to establish election precincts and polling places).
Illinois	10 Ill. Comp. Stat. § 5/1A-8(9) (giving rulemaking authority to the State Board of Elections); 10 Ill. Comp. Stat. 5/11-1 to -3 (authorizing county officials to establish election precincts).

Indiana	Ind. Code § 3-6-4.1-14(a)(2) (giving rulemaking authority to the Indiana Election Commission); Ind. Code § 3-11-1.5-3 (authorizing county officials to establish election precincts).
Iowa	Iowa Code § 47.1 (giving rulemaking authority to the secretary of state); Iowa Code §§ 49.3, 49.4, 49.7 (authorizing county officials to establish election precincts).
Kansas	Kan. Stat. Ann. § 25-26a02 (authorizing county officials to establish election precinct); Kan. Stat. Ann. §§ 25-2701, 25-2703 (authorizing county officials to establish voting places).
Kentucky	Ky. Rev. Stat. Ann. § 117.015(1) (authorizing the State Board of Elections to “promulgate administrative regulations” to administer elections); Ky. Rev. Stat. Ann. §§ 117.055, 117.065 (authorizing county officials to establish election precincts and voting places).

Louisiana	La. Stat. Ann. §§ 18:532 to 18:534 (authorizing local officials to establish election precincts and polling places).
Maine	Me. Stat. tit. 21-A, §§ 631, 631-A (authorizing local officials to establish voting districts and voting places).
Maryland	Md. Code Ann., Elec. Law § 2-102(b)(4) (authorizing state board of elections to issue regulations); Md. Code Ann., Elec. Law § 2-303 (authorizing local officials to establish election precincts and polling places).
Massachusetts	Mass. Gen. Laws ch. 54, § 24 (authorizing local officials to designate polling places).
Michigan	Mich. Comp. Laws § 168.31(1) (giving the secretary of state rulemaking authority over elections).
Minnesota	Minn. Stat. § 204B.14, 204B.16 (authorizing local officials to establish election precincts and polling places).

Mississippi	Miss. Code Ann. § 23-15-557 (authorizing local officials to establish election precincts and polling places).
Missouri	Mo. Rev. Stat. §§ 115.113, 115.115 (authorizing “the election authority” to establish election precincts and polling places).
Montana	Mont. Code Ann. § 13-1-202(1) (authorizing the secretary of state to issue “written directives and instructions” regarding election administration); Mont. Code Ann. § 13-3-101 to -105 (authorizing county officials to designate election precincts and polling places).
Nebraska	Neb. Rev. Stat. § 32-203(3) (giving the secretary of state rule-making authority over elections); Neb. Rev. Stat. § 32-903 (authorizing the election commissioner or county officials to designate election precincts).

Nevada	Nev. Rev. Stat. §§ 293.124(2), 293.247 (authorizing the secretary of state to issue election-related regulations); Nev. Rev. Stat. §§ 293.205, 293.2731 (authorizing county officials to establish election precincts and polling places).
New Hampshire	N.H. Rev. Stat. Ann. §§ 658:9 to 658:10 (authorizing local officials to establish polling places).
New Jersey	N.J. Stat. Ann. §§ 19:4-14, 19:8-2 (authorizing county officials to change election districts and to establish polling places).
New Mexico	N.M. Stat. Ann. § 1-2-1(B) (giving the secretary of state rulemaking authority for election administration); N.M. Stat. Ann. § 1-3-4 (authorizing county officials to combine precincts into “voter convenience centers”).
New York	N.Y. Elec. Law § 3-102(1) (giving the State Board of Elections rulemaking authority); N.Y. Elec. Law § 4-100 (authorizing the State Board of Elections to create election districts).

North Carolina	N.C. Gen. Stat. § 163-22(a) (giving the State Board of Elections rulemaking authority); N.C. Gen. Stat. § 163-33 (giving county officials rulemaking authority and the power to define election precincts); <i>see generally</i> N.C. Gen. Stat. §§ 163-1 to -335 (containing numerous other delegations of authority for election administration).
North Dakota	N.D. Cent. Code § 16.1-04-01 to -02 (authorizing county officials to establish election precincts and polling places).
Ohio	Ohio Rev. Code Ann. § 3501.05 (giving the secretary of state rulemaking authority for election administration).
Oklahoma	Okla. Stat. tit. 26, § 2-107 (giving the secretary of state rulemaking authority for election administration); Okla. Stat. tit 26, § 3-115 (authorizing county officials to establish election precincts).

Oregon	Or. Rev. Stat. § 246.150 (giving the secretary of state rulemaking authority for election administration); Or. Rev. Stat § 246.410 (authorizing county officials to establish election precincts based on directives from the secretary of state).
Pennsylvania	25 Pa. Cons. Stat. § 2726 (authorizing county officials to determine polling places).
Rhode Island	17 R.I. Gen. Laws § 17-7-5(c) (giving the State Board of Elections rulemaking authority); 17 R.I. Gen. Laws § 17-11-1 (authorizing local officials to establish voting districts and polling places).
South Carolina	S.C. Code Ann. § 7-3-10(f) (authorizing the State Elections Commission to issue regulations).
South Dakota	S.D. Codified Laws § 12-14-1 (authorizing county officials to establish election precincts and polling places).

Tennessee	Tenn. Code Ann. § 2-11-201(c) (authorizing the coordinator of elections to work with the secretary of state to issue rules and regulations); Tenn. Code §§ 2-3-101 to -102 (authorizing county officials to change the boundaries of existing election precincts and to establish polling places).
Texas	Tex. Elec. Code §§ 42.001, 43.002 (authorizing a “commissioners court” to establish voting precincts and polling places).
Utah	Utah Code Ann. § 20A-5-301 (allowing local officials to combine voting precincts).
Vermont	Vt. Stat. Ann. tit. 17, §§ 2501, 2502 (authorizing local officials to establish polling places).
Virginia	Va. Code Ann. § 24.2-103(A) (giving the State Board of Elections rulemaking authority); Va. Code Ann. § 24.2-307 (authorizing local officials to establish voting precincts).

Washington	Wash. Rev. Code § 29A.04.611 (giving the secretary of state rulemaking authority regarding elections); Wash. Rev. Code § 29A.16.040 (authorizing county officials to establish election precincts).
West Virginia	W. Va. Code § 3-1A-6(a) (giving the secretary of state rulemaking authority in conjunction with the State Election Commission); W. Va. Code § 3-1-5 (authorizing county officials to establish election precincts).
Wisconsin	Wis. Stat. § 5.05(1)(f) (giving the elections commission rulemaking authority); Wis. Stat. § 5.25 (authorizing either the board of election commissioners or local authorities to establish polling places).
Wyoming	Wyo. Stat. Ann. § 22-2-121(b) (giving the secretary of state rulemaking authority for election administration); Wyo. Stat. Ann. § 22-12-101 (authorizing county officials to establish polling places).