No. 25-1703

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PUBLIC INTEREST LEGAL FOUNDATION, INC.,

Plaintiff-Appellant

v.

STEVE SIMON, in his official capacity as the Secretary of State for the State of Minnesota,

Defendant-Appellee

UNITED STATES OF AMERICA,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT OF JURISDICTION

Appellant's jurisdictional statement is complete and correct.

STATEMENT OF THE ISSUES AND APPOSITE CASES

The Public Interest Legal Foundation (PILF) seeks voter-registration records from Minnesota under the National Voter Registration Act's (NVRA's) public-disclosure provision, 52 U.S.C. 20507(i). However, Minnesota is among six States not subject to the NVRA. Section 4(b)(2) of the Act, 52 U.S.C. 20503(b)(2), exempts States, including Minnesota, that enacted election-day registration at the polling place before the NVRA took effect. PILF asserts that Section 4(b)(2) violates the equal sovereignty of the States and is not a congruent and proportional provision of law. The issues are:

1. Whether PILF lacks prudential standing to assert a State's right to equal sovereignty.

Apposite authority: *Bond v. United States*, 564 U.S. 211 (2011); *Kowalski v. Tesmer*, 543 U.S. 125 (2004); *Hodak v. City of St. Peters*, 535 F.3d 899 (8th Cir. 2008).

2. Whether Section 4(b)(2) of the NVRA comports with constitutional equal-state-sovereignty principles.

Apposite authority: *Shelby County v. Holder*, 570 U.S. 529 (2013); *Ohio v. EPA*, 98 F.4th 288 (D.C. Cir.), *cert. denied*, 145 S. Ct. 994 (2024); *United States v. Metcalf*, 881 F.3d 641, 645 (8th Cir. 2018).

3. Whether Section 4(b)(2) is congruent and proportional legislation authorized by the Fourteenth Amendment or rational legislation authorized by the Fifteenth Amendment.

Apposite authority: *City of Boerne v. Flores*, 521 U.S. 507 (1997); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

STATEMENT OF THE CASE

A. Legal Background

The Constitution's Elections Clause addresses the enactment of regulations governing "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, Cl. 1. It provides initially that these regulations "shall be prescribed in each State by the Legislature thereof," while stating that "Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." *Ibid.*

In May 1993, Congress enacted the NVRA. *See* Pub. L. No. 103-31, 107 Stat. 77 (1993) (52 U.S.C. 20501 *et seq.*). Congress passed the NVRA

to increase eligible citizens' voter registration and participation, protect the integrity of the electoral process, and ensure maintenance of accurate and current voter-registration rolls. 52 U.S.C. 20501(b). The NVRA went into effect for most States on January 1, 1995. *See* NVRA § 13, 107 Stat. 89 (52 U.S.C. 20501 note). Congress primarily relied on its authority under the Elections Clause to pass the NVRA. *See* S. Rep. No. 6, 103d Cong., 1st Sess. 3 (1993) (Senate Report); *see also United States v. Missouri*, 535 F.3d 844, 850 n.2 (8th Cir. 2008) (discussing standards for interpreting Elections Clause statutes in NVRA case).

Section 4(a) of the NVRA lists "general" statutory requirements, ordering States to establish various procedures for voter registration for federal office, 52 U.S.C. 20503(a), which Sections 5 through 7 then flesh out, *see* 52 U.S.C. 20504-20506. Section 8 regulates the maintenance of voter-registration lists. *See* 52 U.S.C. 20507. Section 8(i) requires States to make publicly available "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters," subject to limited exceptions. 52 U.S.C. 20507(i).

In enacting the NVRA, Congress debated whether to require procedures enabling "registration on the day of election," which was "[t]he most controversial method of registration considered." H.R. Rep. No. 9, 103d Cong., 1st Sess. 4 (1993) (House Report). It declined. *Ibid.*

However, in Section 4(b)(2) Congress exempted from the NVRA's voter-registration procedures States in which "all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office." NVRA § 4(b)(2), 107 Stat. 78 (52 U.S.C. 20503(b)(2)). To qualify for this exception, a State must have authorized election-day registration at the polling place (Polling-Place Registration) under a law that (1) has been "in effect continuously [since] August 1, 1994," or (2) "was enacted on or prior to August 1, 1994, and by its terms . . . c[a]me into effect upon the enactment of this chapter, so long as that law remains in effect." *Ibid.* Section 4(b)(2) exempts States that provided for Polling-Place Registration by the time the NVRA went into effect, but those States later can become subject to the NVRA if they eliminate Polling-Place Registration. This exemption covers Minnesota, along with Idaho, New Hampshire, Wisconsin, and Wyoming. *See* U.S.

Dep't of Just., *The National Voter Registration Act of 1993 (NVRA)* (Nov. 1, 2024), https://perma.cc/KHZ5-8WQ9.

Section 4(b)(2)'s final version was a compromise that recognized the existence of Polling-Place Registration while not encouraging its later adoption. The House version of the NVRA made access to Section 4(b) open-ended, but Senate Republicans insisted on adding a deadline. *See* 139 Cong. Rec. 9632 (1993) (statement of Sen. McConnell). They did so to prevent Section 4(b)(2) from providing such a strong incentive to avoid federal regulation that it could become "a backdoor means of forcing States into adopting election day registration," while still "grandfathering in the . . . States that would have qualified for the exemption prior to March 11, 1993," the cutoff date in the original statute. *Ibid.*

B. The *Shelby County* Decision

In *Shelby County v. Holder*, 570 U.S. 529 (2013), the Supreme Court struck down Section 4(b) of the Voting Rights Act (VRA) as invalid. Section 5 of the VRA required certain States and political subdivisions to preclear all changes to voting laws through the Attorney General or a three-judge court in Washington, D.C. 52 U.S.C. 10304(a). Section 4(b)

provided a coverage formula, based on data from 1964, 1968, and 1972, governing which States and political subdivisions would be subject to that preclearance mandate. 52 U.S.C. 10303(b). *Shelby County* relied on two primary rationales to declare that formula unconstitutional.

First, preclearance imposed extraordinary burdens on States by requiring advance permission from the federal government "to implement laws that they would otherwise have the right to enact and execute on their own." *Shelby Cnty.*, 570 U.S. at 544. This was "a drastic departure from basic principles of federalism," *id.* at 535, that conflicted with the Framers' decision to reject a proposed federal "authority to 'negative' state laws" before they take effect, *id.* at 542.

Second, preclearance implicated the "'principle of *equal* sovereignty' among the States." *Shelby Cnty.*, 570 U.S. at 544 (citation omitted). The Court emphasized that Section 5 forced covered States to "wait[] months or years and expend[] funds to implement a validly enacted law" while other States "can typically put the same law into effect immediately." *Ibid.*; *see id.* at 535-536, 550, 552-553 (reiterating equal-sovereignty concerns).

Combined, these two concerns with the preclearance regime created "serious constitutional questions" that required additional scrutiny. *Shelby Cnty.*, 570 U.S. at 550 (citation omitted). The Court determined that the statute's "'current burdens' must be justified by 'current needs,' and any 'disparate geographic coverage' must be 'sufficiently related to the problem that it targets.'" *Id.* at 550-551 (citation omitted). The Court thus held that Congress "must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions." *Id.* at 553. And the Court found Congress's justifications for the existing formula "irrational" under the governing rationality test for Fifteenth Amendment legislation. *Id.* at 550, 556.

C. Procedural History

PILF sued Steve Simon, Secretary of State of Minnesota, in federal district court, demanding disclosure of the State's voter-registration list pursuant to Section 8(i) of the NVRA. *See* App.7-9, 36-38, 59-60; R. Doc. 1, at 1-3, 30-32; R. Doc. 43, at 1-2.[1] PILF's Complaint acknowledged that

[1] "R. Doc. __, at __" refers to the docket and page numbers of documents filed in the district court, No. 24-cv-1561 (D. Minn.). "App.__" refers to the page number of the Joint Appendix. "Br. __" refers to the page number of PILF's opening brief on appeal.

under Section 4(b)(2) of the NVRA, 52 U.S.C. 20503(b)(2), the Act does not apply to Minnesota. *See* App.12; R. Doc. 1, at 6. To obtain its requested relief, PILF sought a declaration that Section 4(b)(2) is unconstitutional as applied to Section 8(i) in Minnesota. *See* App.38; R. Doc. 1, at 32. PILF alleged that Section 4(b)(2) is unconstitutional under the equal-sovereignty principle articulated in *Shelby County*, *supra*, and fails to meet the congruence-and-proportionality requirement for Fourteenth Amendment legislation discussed in *City of Boerne v. Flores*, 521 U.S. 507 (1997). *See* App.20-26; R. Doc. 1, at 14-20.

Secretary Simon filed a Motion to Dismiss PILF's Complaint with prejudice. App.54-55; R. Doc. 10; *see* R. Doc. 12, at 15. The United States intervened to defend the NVRA's constitutionality. App.56-57; R. Doc. 25. The district court granted Secretary Simon's Motion to Dismiss. App.60; R. Doc. 43, at 2. It first held that PILF had Article III standing. App.65; R. Doc. 43, at 7. The court then found that "PILF likely does lack prudential standing" to assert States' equal-sovereignty interests, but ultimately did not decide the issue because PILF's claim failed on the merits. App.65-66; R. Doc. 43, at 7-8.

The court rejected PILF's equal-sovereignty claim after determining that *Shelby County*'s reasoning did not apply to Article I legislation generally, or to the Elections Clause specifically.[2] App.68-70; R. Doc. 43, at 10-12. The court then held that it need not consider whether Section 4(b)(2) satisfied *City of Boerne*'s congruence-and-proportionality test for Fourteenth Amendment legislation because the NVRA already is valid Elections Clause legislation. App.70-71; R. Doc. 43, at 12-13. Regardless, the court found it "hard to see how an *exemption* from a statute's coverage could be disproportionate to the injury Congress intended to prevent or remedy" under *City of Boerne*. App.71; R. Doc. 43, at 13.

[2] Though the VRA also regulates federal elections, *Shelby County* focused on Congress's Fifteenth Amendment power to authorize the VRA's "intrusion into sensitive areas of state and local policymaking." 570 U.S. at 545 (citation omitted); *see id.* at 536, 553; *see also id.* at 542 n.1 (noting that case involved "Fourteenth and Fifteenth Amendments"). Congress's Elections Clause authority did not fall within the question presented, *see* Br. for Petitioner i, *Shelby Cnty.*, 570 U.S. 529 (No. 12-96), and the Court did not consider the Clause as a source of authority for the VRA's application to federal elections.

SUMMARY OF ARGUMENT

This Court should affirm the district court's dismissal of PILF's Complaint. PILF asks this Court to be the first to apply *Shelby County*'s equal-sovereignty principle to *increase* federal mandates and invalidate Elections Clause legislation. This Court should resist that call and uphold the constitutionality of Section 4(b)(2) of the NVRA, for several independent reasons.

1. Even if PILF has Article III standing to contest the denial of public records pursuant to the NVRA's disclosure protocol, it lacks prudential standing to bring its equal-sovereignty claim. As the district court recognized, PILF cannot meet the traditional test for third-party standing. First, because PILF is not a State, it has no equal-sovereignty interests of its own. Second, PILF has not alleged that any federal encroachment on state sovereignty directly restricted PILF's own liberty. Finally, PILF cannot invoke States' equal-sovereignty rights to *expand* federal regulation over Minnesota's opposition.

2. In any event, *Shelby County* does not apply to the NVRA, which PILF acknowledges is valid Elections Clause legislation. No court has ever extended the equal-sovereignty principle beyond *Shelby County*'s

limited Fifteenth Amendment context. Indeed, several other federal courts of appeals rightly have refused to apply equal-sovereignty analysis to the textually and jurisprudentially different world of Article I legislation. Moreover, the equal-sovereignty principle certainly does not reach exercises of Elections Clause authority, as the Elections Clause's text, purpose, ratification history, and longtime application all confirm that Congress may differentiate between States in regulating federal elections. Traditional rational-basis review imposes the only limitation on Congress's Elections Clause authority, and while Polling-Place registration has its valid critics, the NVRA passes muster under that standard.

3. Even if the *Shelby County* standard applied, Section 4(b)(2) would meet the rational-design test if it applied to Elections Clause legislation. Section 4(b)(2) provided all States that register voters with a time-limited choice between detailed statutory procedures for federal elections and Polling-Place Registration. Preventing application of the NVRA to States that adopted Polling-Place Registration before a statutory deadline was at the time of passing rationally related to increasing voter participation. Polling-Place registration processes also

essentially moot the NVRA's voter-registration prescriptions. Finally, *Shelby County*'s "current conditions" requirements do not apply to Section 4(b)(2) because it exempts jurisdictions from, rather than subjects them to, federal oversight based on the structure of the statute.

4. Because Section 4(b)(2) can be sustained under the Elections Clause, this Court need not reach PILF's alternative argument that the statute is not valid Fourteenth Amendment legislation. But that argument fails in any event. *City of Boerne*'s congruence-and-proportionality requirements do not apply to provisions that *exempt* States from federal regulation. Section 4(b)(2) also can be sustained under the Fifteenth Amendment's rationality standard for the same reasons. Congress intended to design a regime to ensure adequate and nondiscriminatory registration systems—a regime to which PILF does not object—while exempting States whose systems already approached this problem in a different way.

STANDARD OF REVIEW

This Court reviews a district court's decision to dismiss a complaint, including underlying constitutional issues, de novo. *See Yang v. Robert*

Half Int'l, Inc., 79 F.4th 949, 961 (8th Cir. 2023); *Mumad v. Garland*, 11 F.4th 834, 837 (8th Cir. 2021).

ARGUMENT

The district court correctly dismissed PILF's Complaint and upheld the constitutionality of Section 4(b)(2) of the NVRA. PILF's challenge to Section 4(b)(2) based on *Shelby County*'s equal-sovereignty principle fails for multiple independent reasons: PILF lacks prudential standing to assert it; the equal-sovereignty principle does not apply to the NVRA; and Section 4(b)(2) raises no equal-sovereignty concerns.

Because the NVRA is valid Elections Clause legislation, this Court need not decide whether it also is valid Fourteenth and Fifteenth Amendment legislation. If this Court reaches those questions, however, it should uphold Section 4(b)(2) on those independent bases.

I. Even though PILF has suffered an Article III injury, it lacks prudential standing to bring an equal-sovereignty challenge to Section 4(b)(2).

PILF alleges an informational injury, which can establish Article III standing. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 441-442 (2021). The United States has not contested PILF's Article III standing here.

The standing inquiry, however, also involves "prudential limitations on its exercise.'" *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004) (citation omitted). In this case, PILF relies on the equal-sovereignty principle for its claim and does not "assert [its] own legal rights and interests." *Id.* at 129 (citation omitted). Instead, PILF "rest[s its] claim to relief on the legal rights or interests of third parties": the equal-sovereignty rights of the States and their subdivisions. *Ibid.* (citation omitted). PILF lacks prudential standing to do so, *see ibid.*; *Glickert v. Loop Trolley Transp. Dev. Dist.*, 792 F.3d 876, 881-882 (8th Cir. 2015), particularly because it seeks to use the equal-sovereignty principle to *increase* federal regulation of Minnesota against its will.

1. Plaintiffs can establish third-party standing only if they satisfy two requirements, neither of which PILF has satisfied here. First, PILF cannot show "a 'close' relationship with the person who possesses the right" being invoked—here, States. *Kowalski*, 543 U.S. at 130 (citation omitted). Indeed, PILF has affirmatively disclaimed that it is "asserting third party standing on behalf of a [S]tate." R. Doc. 35, at 8. Second, PILF cannot show "a 'hindrance' to the possessor's ability to protect his own interests," *Kowalski*, 543 U.S. at 130 (citation omitted)—especially

given that States have previously mounted challenges (albeit losing ones) to the NVRA. *See Hodak v. City of St. Peters*, 535 F.3d 899, 904-905 (8th Cir. 2008); *see also, e.g.*, *Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1412-1416 (9th Cir. 1995); *Association of Cmty. Orgs. for Reform Now (ACORN) v. Edgar*, 56 F.3d 791, 792-796 (7th Cir. 1995) (*Edgar II*); *Association of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833, 836-838 (6th Cir. 1997) (*Miller II*). PILF thus lacks prudential standing to assert the equal-sovereignty rights of a third-party State. *See Kowalski*, 543 U.S. at 129-130.

2. Before the district court, PILF asserted (R. Doc. 35, at 8-11) that it nevertheless could plead third-party standing under the Supreme Court's decision in *Bond v. United States*, 564 U.S. 211 (2011). But PILF does not allege harm to its own liberty interest, the predicate to third-party standing under *Bond*. Instead, PILF claims only that Minnesota deprived PILF of information it requested that, absent the NVRA, PILF would not be entitled to demand from a State under federal law. Article III standing aside, such an alleged injury cannot imbue PILF with a personal interest in enforcing States' equal-sovereignty rights.

Bond concerned the government's "enforcement" against an individual litigant of a federal law that constrained her actions. 564 U.S. at 222. There, the defendant contested her indictment for violating a federal criminal statute barring the use of chemical weapons on the ground that it constituted federal overreach that deprived her of her "individual liberty." *Id.* at 214-215, 223-224. The Supreme Court held that Bond had an individual interest in curing government overreach that would "direct or control" her conduct. *Id.* at 222.

PILF's claim is far different. Unlike the criminal prohibition on individuals' use of chemical weapons in *Bond*, the NVRA "imposes no duties or sanctions on" PILF, *MainStreet Org. of Realtors v. Calumet City*, 505 F.3d 742, 746 (7th Cir. 2007), and does not otherwise violate PILF's "own rights," *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020). Indeed, as an explicit statutory exemption from regulation, *see* 52 U.S.C. 20503(b), Section 4(b)(2) imposes no duties or sanctions on *anyone*. But to the extent Section 4(b)(2) can be said to directly regulate anyone, it is the States receiving the exemption, not organizations like PILF. This case is thus at least one, if not two, steps removed from *Bond*, or from the

cases on which *Bond* relies, in which those suing have been direct targets of the challenged law. *See* 564 U.S. at 222-223 (discussing cases).

3. PILF's unusual use of federalism principles (*e.g.*, Br. 14-15) heightens this case's prudential standing concerns.

a. PILF's complaint is that it was injured by Congress's *failure* to impose burdens on *Minnesota*—a State in whose sovereignty PILF has pled no interest. But "the Tenth Amendment" only ensures that an "individual, in a proper case, can assert injury from governmental *action* taken in excess of the authority that federalism defines." *Bond*, 564 U.S. at 220 (emphasis added). In other words, the federal law being challenged must *impose upon* the challenger to permit invocation of federalism or equal-sovereignty principles. *Bond* falls within this rule. PILF's case does not.

PILF's claim also defies the equal-sovereignty principle itself, which the Supreme Court has only ever relied upon to *remove* congressional burdens that restrict some States but not others. *See, e.g.*, *Shelby Cnty. v. Holder*, 570 U.S. 529, 544-545 (2013); *Coyle v. Smith*, 221 U.S. 559, 567, 570, 579-580 (1911); *Pollard v. Hagan*, 44 U.S. 212, 223-224 (1845); *see also Stearns v. Minnesota*, 179 U.S. 223, 245 (1900)

(stating that equal footing doctrine "may forbid any agreement or compact *limiting or qualifying* political rights and obligations" (emphasis added)). PILF's reliance (Br. 39) on *United States v. Texas*, 339 U.S. 707 (1950), is unavailing because that case held that the equal footing doctrine prohibits limiting the federal government's "paramount powers . . . *in favor* of a State," *id.* at 717 (emphasis added). In any event, because PILF is not directly regulated by Section 4(b)(2) and has suffered no restriction on its liberty because of Section 4(b)(2), it is not positioned to invoke equal sovereignty, a constitutional principle that is designed to *protect* the States.[3]

b. Magnifying these prudential standing concerns, "[t]he interests of the affected persons in this case are in many respects antagonistic." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15 (2004). PILF

[3] PILF notes (Br. 59-60) that the D.C. Circuit has found Article III standing for States to bring an equal-sovereignty claim that would lead to increased regulation for another State exempted from the challenged statute, rather than regulatory relief for the plaintiff States. *See Ohio v. EPA*, 98 F.4th 288, 307 (D.C. Cir.), *cert. denied*, 145 S. Ct. 994 (2024). But there, the States properly asserted that the exemption "violate[d] *their* constitutionally protected interest in equal sovereignty." *Ibid.* (emphasis added). The court did not address whether a *non-State* party who is *not* directly regulated could establish *prudential* standing.

challenges Minnesota's exemption from the NVRA's requirements under Section 4(b)(2). But Minnesota, whose equal-sovereignty rights are most directly at issue, opposes PILF's suit (through Secretary Simon) and successfully moved to dismiss it. App.59-60; R. Doc. 43, at 1-2. No State has supported PILF here, and, indeed, States have only ever sought to free themselves from the NVRA's requirements, not to impose those requirements upon others. *See, e.g.*, *Voting Rts. Coal.*, 60 F.3d at 1412-1416; *Edgar II*, 56 F.3d at 792-796; *Miller II*, 129 F.3d at 836-838.

In sum, because PILF seeks to burden Minnesota's sovereignty against its wishes and does not act on behalf of or in the interests of any other State, PILF lacks third-party standing to raise a claim premised on States' right to equal sovereignty. This Court can and should affirm on third-party standing alone.

II. *Shelby County*'s equal-sovereignty principle does not apply to the NVRA.

Even if PILF has prudential standing to press its equal-sovereignty challenge, this Court should reject it on the merits. As PILF acknowledges, the NVRA is proper Elections Clause legislation, passed under Congress's Article I authority. Several other federal courts of appeals have recognized that the equal-sovereignty principle recognized

in *Shelby County v. Holder*, 570 U.S. 529 (2013) applies solely to an "unprecedented" provision of a statute passed to enforce the Fifteenth Amendment, *id.* at 535, and for textual reasons does not extend to legislation enacted to effectuate Article I duties and obligations. It certainly does not apply to the Elections Clause, whose text, purpose, and history all confirm that Congress may treat States differently when regulating federal elections.

A. The NVRA, including Section 4(b)(2), is a valid exercise of Congress's Elections Clause authority.

The NVRA is a valid exercise of Congress's plenary authority under the Elections Clause, U.S. Const. Art. I, § 4, Cl. 1. *See Edgar II*, 56 F.3d 791, 792-796 (7th Cir. 1995); *see also Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 7-9 (2013) (*ITCA*). PILF concedes this. Br. 12, 31, 65.

The Elections Clause grants Congress authority to "make or alter" regulations of "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, Cl. 1; *see ITCA*, 570 U.S. at 8; *see also Edgar II*, 56 F.3d at 793 (noting that Congress has "coextensive" "power over Presidential elections"). The Clause's "comprehensive words embrace authority to provide a complete code for

congressional elections," including on the very topics the NVRA addresses: "registration" and "prevention of fraud and corrupt practices." *Smiley v. Holm*, 285 U.S. 355, 366 (1932); *see, e.g.*, *ITCA*, 570 U.S. at 8-9 (acknowledging that "Times, Places, and Manner" includes "registration"); *Ex parte Siebold*, 100 U.S. 371, 379-380, 383-384 (1880) (upholding statute providing for federal supervision of State's voter-registration process as proper exercise of "[T]imes, [P]laces and [M]anner" authority), *abrogated on other grounds by Jones v. Hendrix*, 599 U.S. 465 (2023).

When Congress exercises its authority to "make" or "alter" state regulations of federal elections, that authority "is paramount, and may be exercised at any time, and to any extent which it deems expedient." *ITCA*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. at 392). Congress's preeminent power under the Elections Clause authorizes Section 4(b)(2). Several federal courts of appeals have held that the NVRA's general procedures governing registration to vote in elections for federal office fall within Congress's Elections Clause authority. *See Edgar II*, 56 F.3d at 792-796; *Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1413-1416 (9th Cir. 1995); *Miller II*, 129 F.3d 833, 836-837 (6th Cir.

1997). Section 4(b)(2) simply allowed States to avoid the specific mandates of the NVRA by adopting and maintaining Polling-Place Registration. *See* 52 U.S.C. 20503(b)(2). Thus, in passing Section 4(b)(2), Congress exercised its Elections Clause authority to "supersede" state regulations to the "extent which it deem[ed] expedient." *ITCA*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. at 392).

B. *Shelby County*'s equal-sovereignty principle does not apply to Article I legislation.

The Supreme Court in *Shelby County* articulated an equal-sovereignty principle that limits Congress's authority to enforce the Fifteenth Amendment through the VRA's preclearance provisions. The Court did not "pronounce on how or whether this standard might apply to different exercises of legislative authority under the Fourteenth and Fifteenth Amendments, much less announce a test applicable to" other constitutional provisions. *United States v. Diggins*, 36 F.4th 302, 315-316 (1st Cir. 2022). Text, context, and federalism principles underscore that *Shelby County* does not affect Article I legislation.

1. The *Shelby County* Court found the VRA's preclearance coverage formula unconstitutional in part because the equal-sovereignty principle limits Congress's Fifteenth Amendment authority to restrict state

election procedures. 570 U.S. at 555-557. Congress, using its Fifteenth Amendment power to enforce the Amendment's guarantee of the right to vote "by appropriate legislation," had enacted VRA preclearance provisions that required a small subset of States and sub-jurisdictions to obtain federal permission before changing voting laws. *Id.* at 536-537. This resulted in some States having to wait "months or years and expend[ing] funds to implement a validly enacted law," while other States could implement the same law immediately upon passage. *Id.* at 544-545.

The Supreme Court repeatedly noted that the VRA was "extraordinary legislation otherwise unfamiliar to our federal system." *Shelby Cnty.*, 570 U.S. at 545 (citation omitted); *see id.* at 546, 549, 552, 555. Its preclearance requirements intruded "into [a] sensitive area[] of state and local policymaking"—the regulation of state and local elections—that traditionally had been the States' exclusive province. *Id.* at 545. Congress also expanded Section 5's standards in 2006, "exacerbat[ing] the substantial federalism costs" of preclearance. *Id.* at 549 (citation omitted); *contra* Br. 46 (asserting VRA's intrusiveness did not increase over time). In this unprecedented context, the Court found

a "principle of equal sovereignty" relevant in assessing "subsequent disparate treatment of States." *Shelby Cnty.*, 570 U.S. at 544. Ultimately, the Court held that the VRA's preclearance coverage formula was unconstitutional because its "current burdens" were not justified by "current needs" and its "disparate geographic coverage" was not "sufficiently related to the problem that it target[ed]." *Id.* at 550-551 (citation omitted).

Given *Shelby County*'s narrow scope and unique context, it is unsurprising that courts have expressly declined to expand the principle to new areas. This Court already has refused to extend *Shelby County* to Thirteenth Amendment legislation and upend that amendment's existing standard of review, recognizing that *Shelby County* did not "address[] Congress's power to legislate under the Thirteenth Amendment." *United States v. Metcalf*, 881 F.3d 641, 645 (8th Cir. 2018). Other circuits uniformly have held the same. *See United States v. Hougen*, 76 F.4th 805, 815 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1121 (2024); *Diggins*, 36 F.4th at 315-316; *United States v. Roof*, 10 F.4th 314, 394-395 (4th Cir. 2021); *United States v. Cannon*, 750 F.3d 492, 505 (5th Cir. 2014). Courts also have declined to use *Shelby County* to abrogate or alter Fourteenth

Amendment equal-protection precedents. *See Herron v. Governor of Pa.*, 564 F. App'x 647, 649 (3d Cir. 2014); *Black Farmers & Agriculturalists Ass'n v. Vilsack*, No. 13-5304, 2014 WL 1378168, at *1 (D.C. Cir. Mar. 25, 2014).

2. Congress's Article I powers fall even further afield from *Shelby County*'s reasoning. As the D.C. Circuit recently remarked, "neither the Supreme Court nor any other court has ever applied th[e] [equal-sovereignty] principle as a limit on . . . Article I powers." *Ohio v. EPA*, 98 F.4th 288, 308 (D.C. Cir.), *cert. denied*, 145 S. Ct. 994 (2024). To the contrary, the federal courts of appeals have uniformly rejected attempts to extend *Shelby County* to Article I.

The Third Circuit first declined to apply the equal-sovereignty principle to a single-State exception to an anti-gambling statute passed under Congress's Commerce Clause power. *NCAA v. Governor of N.J.*, 730 F.3d 208, 238-239 (3d Cir. 2013), *abrogated on other grounds by Murphy v. NCAA*, 584 U.S. 453 (2018). Next, the First Circuit refused to apply *Shelby County* to the maintenance-of-effort provision of the Affordable Care Act, passed under Congress's Spending Clause powers. *Mayhew v. Burwell*, 772 F.3d 80, 93-97 (1st Cir. 2014). The Second

Circuit then deemed the equal-sovereignty principle inapplicable to a tax-deduction cap enacted under Congress's Taxing Clause power. *New York v. Yellen*, 15 F.4th 569, 584 (2d Cir. 2021). And most recently, the D.C. Circuit rejected the equal-sovereignty principle's application to a grandfather clause in the Clean Air Act—another Commerce Clause statute—that exempted only California from federal tailpipe-emissions standards. *Ohio*, 98 F.4th at 308-314. The Supreme Court has denied certiorari in each of these cases, with only Justice Thomas indicating his desire to hear one of them. *See Ohio*, 145 S. Ct. 994.

As these cases recognize, three aspects of the *Shelby County* decision do not map onto most Article I legislation. First and foremost, the textual basis for the *Shelby County* ruling does not apply to Article I. "[T]he central debate in *Shelby County* was the scope of Congress's power to enforce the Fifteenth Amendment 'by appropriate legislation,'" and "[t]he Court used equal sovereignty as a background principle in applying that phrase." *Ohio*, 98 F.4th at 309 (citation omitted).

Article I does not use that phrase. The Constitution instead gives Congress "plenary" authority to enact laws under its enumerated "Article I powers." *Loving v. United States*, 517 U.S. 748, 767 (1996). Article I

then grants Congress additional authority to pass legislation "necessary and proper" to executing those enumerated powers. U.S. Const. Art. I, § 8, Cl. 18. Laws fall within that authority whenever they "constitute[] a means that is rationally related to the implementation of a constitutionally enumerated power." *United States v. Comstock*, 560 U.S. 126, 134 (2010).

Second, context confirms that most Article I powers, including the Elections Clause, do not incorporate an equal-sovereignty principle because the Founders opted against explicitly including this concept in most Article I clauses. "[T]he Constitution does impose certain equality-based limitations on [some] Article I powers." *Ohio*, 98 F.4th at 312. The Constitution requires "uniform" laws related to particular subjects: "Duties, Imposts, and Excises," U.S. Const. Art. I, § 8, Cl. 1, "Bankruptcies," *id.* Art. I, § 8, Cl. 4, and "Naturalization," *ibid.* The Constitution also forbids Congress from giving any "Preference" in "any Regulation of Commerce or Revenue to the Ports of one State over those of another." *Id.* Art. I, § 9, Cl. 6.

This language shows that "the Founders plainly knew how to include equality-based protections for states in Article I when they

wished to." *Ohio*, 98 F.4th at 312. "The fact that some constitutional clauses explicitly contain an equality-based guarantee therefore supports a negative inference" that other clauses, including the Elections Clause, do not contain a "broad equal sovereignty principle." *Ibid.* The Supreme Court itself has recognized as much. In *Secretary of Agriculture v. Central Roig Refining Co.*, 338 U.S. 604 (1950), for instance, the Court compared the Commerce Clause with the Bankruptcy and Naturalization Clauses in noting that the former does not "impose requirements of geographic uniformity." *Id.* at 616.

Third, the federalism implications of Congress's actions are lessened in the Article I context. In *Shelby County*, "[t]he Court repeatedly emphasized" that the VRA's preclearance mandate imposed an extreme veto power over state laws and "intruded into a realm (regulation of state and local elections) that has traditionally been the exclusive province of the states." *Mayhew*, 772 F.3d at 95; *accord Ohio*, 98 F.4th at 309; *Governor of N.J.*, 730 F.3d at 238. Typical exercises of Article I powers do not intrude on state power in this way. *See Ohio*, 98 F.4th at 310; *Governor of N.J.*, 730 F.3d at 238; *Mayhew*, 772 F.3d at 95. The NVRA certainly does not, as it places no limitations on the

registration processes or reporting requirements States may impose, or fail to impose, on purely state or local elections. *See, e.g.*, *ITCA*, 570 U.S. at 12; *Young v. Fordice*, 520 U.S. 273, 290 (1997). Exercises of Congress's power to regulate elections for federal offices that the Constitution itself created simply do not fall under *Shelby County*'s purview. *See* Part II.C, *infra*.

PILF ignores these textual and doctrinal distinctions, as well as the many decisions by other circuits refusing to extend *Shelby County* beyond its holding. Throughout its opening brief, PILF interprets the equal-sovereignty principle in an expansive way that bears little resemblance to *Shelby County*'s unique ruling. PILF asserts (Br. 14) that equal sovereignty "is a bedrock principle" that courts must presume applies to all exercises of congressional power. But the Supreme Court itself has only applied this principle in two discrete contexts: the admission of new States to the Union and the VRA's preclearance regime. *See Shelby Cnty.*, 570 U.S. at 544-545.

This Court has never extended equal-sovereignty analysis beyond those contexts, much less suggested that it overrides prior case law setting out standards for reviewing Article I legislation. *See, e.g.*, *Metcalf*,

881 F.3d at 645. *Shelby County* "does not disclaim or qualify" that prior Article I case law, "and this court may not read between the lines in an attempt to do so." *Fond du Lac Band of Lake Superior Chippewa v. Frans*, 649 F.3d 849, 853 (8th Cir. 2011). The many distinctions between the unique circumstances of *Shelby County* and this Article I case counsel against the unprecedented, boundless extension of the equal-sovereignty principle that PILF advocates.

C. *Shelby County*'s equal-sovereignty principle does not reach Elections Clause legislation like the NVRA.

Although *Shelby County* does not extend to Article I legislation at all, this Court need not reach that broader question here. Of all powers to which the equal-sovereignty principle should *not* apply, it is Congress's Elections Clause authority. The Clause's text, the uniquely federal nature of its subject, its ratification history, and subsequent practice all make clear that Congress may distinguish between the States when regulating federal elections. The only limitation on that authority is the same limit applicable to all Elections Clause legislation: traditional rational-basis review. And application of that standard confirms the NVRA's legitimacy.

1. Text

The Elections Clause's text contemplates that States may regulate federal elections, and that Congress may override or draft anew any State's law on the subject. Just as the States themselves may legislate differently, so too may Congress legislate differently among the States.

a. The Elections Clause provides that "[t]he 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, except as to the Places of chusing Senators." U.S. Const. Art. I, § 4, Cl. 1. The Clause initially "'imposes' on state legislatures the 'duty' to prescribe rules governing federal elections." *Moore v. Harper*, 600 U.S. 1, 10 (2023) (quoting *ITCA*, 570 U.S. at 8). That duty is placed separately and individually upon "each State," acting through "the Legislature thereof." U.S. Const. Art. I, § 4, Cl. 1. Because each State must regulate federal elections, but may do so as it wishes, the text contemplates geographic divergence in fulfilling its mandate.

The Elections Clause then authorizes Congress to "make or alter such Regulations." U.S. Const. Art. I, § 4, Cl. 1. Two aspects of this

language affirm Congress's power to differentiate between States. First, the verbs: "make or alter." *Ibid.* The Supreme Court discussed this "plain meaning" of that phrase in *Ex parte Siebold*, 100 U.S. at 383. The "necessary implication" of those words, the Court explained, is that Congress may "interfere . . . either wholly or partially" with a State's regulations of federal elections. *Ibid.* The Court posited a hypothetical: What if a state constitution gave the first sitting legislature the power to create election regulations while future legislatures could "make or alter" them? *Id.* at 384. The later legislature "could alter or modify, add or subtract, in its discretion." *Ibid.* Congress thus has a similar level of discretion in deciding how it may modify or replace States' laws.

Second, the Clause grants Congress power to make or alter "such Regulations." U.S. Const. Art. I, § 4, Cl. 1. "The word 'such' usually refers to something that has already been 'described' or that is 'implied or intelligible from the context or circumstances.'" *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 766 (2023) (citations omitted); *see United States v. Gooding*, 25 U.S. 460, 477 (1827) (stating that "the word 'such'" refers back to a thing "previously spoken of"). The phrase "such Regulations,"

then, refers back to the regulations "prescribed in each State by the Legislature thereof." U.S. Const. Art. I, § 4, Cl. 1.

Putting the whole text together, the Elections Clause requires States to regulate federal elections, but "upon Congress it confers the power to alter those regulations or supplant them altogether." *ITCA*, 570 U.S. at 8. Congress may alter the individual time, place, and manner laws of "each State," or it may make new laws for a State that does not have them. U.S. Const. Art. I, § 4, Cl. 1. The constitutional text treats Congress's authority as precisely parallel to that of the States, and in fact contemplates that Congress will step into the shoes of the various state legislatures. For instance, "[i]f Congress determines that the voting requirements established by a state do not sufficiently protect the right to vote, it may force the state to alter its regulations." *Miller II*, 129 F.3d at 837. In short, the Elections Clause "gave Congress plenary authority over federal elections." *Harkless v. Brunner*, 545 F.3d 445, 454 (6th Cir. 2008).

b. Compare Congress's Elections Clause authority to how the Framers treated presidential elections under the Electors Clause. The latter provides that "Congress may determine the Time of chusing the

Electors, and the Day on which they shall give their Votes; *which Day shall be the same throughout the United States*." U.S. Const. Art. II, § 1, Cl. 4 (emphasis added). Thus, while Congress could allow States to select presidential electors on different dates, *see, e.g.*, Act of Mar. 1, 1792, ch. 8, § 1, 1 Stat. 239 (setting 34-day window for States to choose electors), the Electors Clause requires Congress to name the same date in every State for those electors to cast their votes.

Congress included this same-date requirement "for the sake of regularity and uniformity." 4 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 105 (Jonathan Elliot ed., 2d ed. 1836) (statement of Mr. Spaight). But just as the Elections Clause lacks the uniformity requirements found in various other Article I provisions, *see* Part II.B, *supra*, so too does it lack any uniformity requirement like the one the Framers included in the parallel provision regulating presidential elections. Based on text alone, *Shelby County* does not extend to Elections Clause legislation.

2. Source of authority

The equal-sovereignty principle also does not fit with the Elections Clause. Equal sovereignty has been justified as "an inherent structural

principle of the federalist system set out in the American Constitution," in which "the states retain genuine sovereignty" that cannot be unequally reduced. Thomas B. Colby, *In Defense of the Equal Sovereignty Principle*, 65 Duke L.J. 1087, 1138 (2016); *see* Anthony J. Bellia Jr. & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 937-938 (2020); *Shelby Cnty.*, 570 U.S. at 544. But unlike other congressional powers, the power to regulate elections of federal offices never could intrude on States' established sovereignty, because the power to regulate federal elections was wholly new. There was "no original prerogative of state power to appoint a representative, a senator, or president for the union," as these positions did not previously exist. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 803-804 (1995) (citation omitted). In contrast, state and local elections predated the Constitution and "the Framers of the Constitution intended the States to keep" the power over such elections "for themselves." *Shelby Cnty.*, 570 U.S. at 543 (citation omitted).

PILF wrongly suggests (Br. 15, 41, 43-44) that the States had preexisting "sovereignty" in this area, only some of which was "surrendered" to Congress. Instead, "any state authority to regulate

election to [federal] offices could not precede their very creation by the Constitution." *Cook v. Gralike*, 531 U.S. 510, 522 (2001). Thus, it was "the Framers' understanding that powers over the election of federal officers had to be *delegated to*, rather than reserved by, the States." *U.S. Term Limits*, 514 U.S. at 804 (emphasis added); *see Cook*, 531 U.S. at 522. And because the Framers feared that the States might abuse this delegated authority, *see* Part II.C.3, *infra*, they granted Congress a coterminous power to override any or all state regulation of federal elections. Accordingly, Elections Clause legislation simply does not pose the same "federalism concerns" as other exercises of federal authority. *ITCA*, 570 U.S. at 14-15.

Assertions of equal sovereignty are unpersuasive in this context. The equal-sovereignty principle rests upon the States' "competen[ce] to exert that residuum of sovereignty *not delegated to the United States by the Constitution itself*." *Coyle v. Smith*, 221 U.S. 559, 567 (1911) (emphasis added); *see* Bellia & Clark, 120 Colum. L. Rev. at 937-938. But "any state power" over the time, place, and manner of federal elections "must derive not from the reserved powers of state sovereignty, but rather from the delegated powers of national sovereignty." *U.S. Term*

Limits, 514 U.S. at 805; *see Cook*, 531 U.S. at 522-523. And as the *Shelby County* Court recognized, the Elections Clause *does* delegate to the federal government "significant control over federal elections." 570 U.S. at 543. Because the NVRA is a valid exercise of Congress's plenary authority under the Elections Clause, "*Shelby County* does not cast doubt on the NVRA's constitutionality." *Kobach v. EAC*, 772 F.3d 1183, 1198 (10th Cir. 2014).

3. Ratification history

The Elections Clause's ratification history confirms that the equal-sovereignty principle has no place in this field.

The delegates at the Constitutional Convention defeated a motion to remove the portion of the Elections Clause that authorizes Congress to alter state regulations of federal elections. 2 *The Records of the Federal Convention of 1787*, at 240-241 (Max Farrand ed., 1911). Speakers against the motion cited the need for congressional authority to override abuses by recalcitrant States. James Madison, for instance, posited that "[w]henever 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." *Ibid.* And Gouverneur Morris fretted that,

absent congressional control, "States might make false returns and then make no provisions for new elections." *Id.* at 241.

The Convention not only rejected the motion to eliminate congressional Elections Clause authority; it then voted to *expand* that authority by granting Congress power to "make" as well as alter States' laws for federal elections. 2 Farrand 242. This change "was meant to give the Natl. Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether." *Ibid.* Congress, then, would have power to craft laws for, or alter the regulations of, wayward States without having to override all other States' election laws.

In the ratifying conventions, Federalists defended Congress's Elections Clause power on two principal bases: first, as a means of preventing States from refusing to send representatives to Congress; and second, as a way of preventing any State from manipulating election laws in ways that deny voters equal rights. *See, e.g.*, 2 Elliot 24-27, 35, 49-51, 326, 440-441, 510; 3 *id.* at 10-11, 366-367; 4 *id.* at 53-54, 59-60, 65-67, 303; Pauline Maier, *Ratification* 174, 178, 210, 281, 413, 448 (2010). Both arguments contemplated that Congress would exercise its Elections

Clause authority to override or direct actions by *some* States, rather than solely to pass uniform standards for *all* States.

Anti-Federalists consistently raised the prospect that Congress would use its authority to force all voters in a particular State to vote in an inconvenient place, to prevent disfavored voters in that State from participating. *E.g.*, 2 Elliot 22, 32, 136; 3 *id.* at 60, 403-404; 4 *id.* at 211; *see Rucho v. Common Cause*, 588 U.S. 684, 698 (2019). Federalists did not deny that Congress would have the power to specify particular, and thus different, places of election in different States—even for unjustifiable purposes. Rather, Federalists asserted that members of Congress would not abuse their power in this manner, and that voters would not tolerate them doing so. *E.g.*, 2 Elliot 29, 32-34, 441; 3 *id.* at 9-10, 408; 4 *id.* at 66-67, 69, 71; *The Federalist No. 60*, at 366-367 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

The Founding generation, both Federalists and Anti-Federalists alike, thus understood the Elections Clause's text to ensure that, whatever regulations a given State might (or might not) adopt, "Congress may supplement these state regulations or may substitute its own." *Smiley*, 285 U.S. at 366-367. Because threats or abuses might come only

from certain States, Congress had to have power to "make or alter" the regulations of fewer than all the States. U.S. Const. Art. I, § 4, Cl. 1. In fact, Framer James Wilson envisioned this as the Clause's primary purpose, telling the Pennsylvania ratifying convention that "when the power of regulating the time, place, or manner of holding elections, is exercised by the Congress, it will be to correct the improper regulations of a particular state." 2 Elliot 510.

4. Historical practice

Historical practice, which is "particularly pertinent when it comes to [interpretation of] the Elections and Electors Clauses," *Moore*, 600 U.S. at 32, confirms that the Elections Clause does not require geographic uniformity. Instead, that practice provides that Congress may treat States differently under the Elections Clause.

The evidence starts with the debates of the First Congress, whose practices provide "strong evidence of the original meaning of the Constitution." *Financial Oversight & Mgmt. Bd. v. Aurelius Inv., LLC*, 590 U.S. 448, 462 (2020). Similar to the ratification debates, one representative proposed an amendment restricting Congress's Elections Clause powers to circumstances in which "any State shall refuse or

neglect, or be unable, by invasion or rebellion, to make such election." 1 Annals of Cong. 768 (1789) (Joseph Gales ed., 1834). This proposal recognized that Congress already had authority to differentiate between States by making or altering one State's laws, and it sought to *limit* Congress to a small portion of that authority. Federalists supported Congress's original, broader Elections Clause powers for the same reasons as in the Constitutional Convention and state ratifying conventions, and Congress rejected the amendment. *See* 1 Annals of Cong. at 768-773.

Likewise, in 1823, the House rejected a constitutional amendment that would have required all House members to be elected in single-member districts. *See* 41 Annals of Cong. 850-851, 865-866 (1823). The committee proposing the amendment warned that Congress otherwise could pass legislation providing for at-large elections in States "favorable" to the political faction running Congress while splitting politically unfriendly States into gerrymandered House districts. *Id.* at 853. But the House sent the proposed amendment to die in committee, *id.* at 866, leaving intact Congress's recognized power to impose non-uniform election regulations without special justification.

As with the NVRA, Congress has often exercised its Elections Clause powers by giving States the choice between following a federal standard or a state-law alternative spelled out in the statute. In 1899, for instance, Congress provided that "[a]ll votes for Representatives in Congress must be by written or printed ballot, or voting machine the use of which has been duly authorized by the State law." Act of Feb. 14, 1899, ch. 54, 30 Stat. 836 (2 U.S.C. 9). Then, as part of the 1911 apportionment statute, Congress provided that "[c]andidates for Representative or Representatives to be elected at large in any State shall be nominated in the same manner as candidates for governor, unless otherwise provided by the laws of such State." Act of Aug. 8, 1911, ch. 5, § 5, 37 Stat. 14 (2 U.S.C. 5). In both instances, Congress set a federal default rule with the option for States to pick an alternative—thereby dividing the States into two regulatory regimes based on their own choices. More recent statutes have followed this well-worn path. *See, e.g.*, 52 U.S.C. 20103, 20303(g).

* * *

The NVRA, then, follows a two-century-long consensus: When wielding its Elections Clause authority, Congress may regulate some States differently from others as it chooses. *Shelby County*'s legislative-

updating requirement and more particularized standards for justifying geographic disparities, *see* 570 U.S. at 542, simply do not apply.

Contrary to PILF's arguments (Br. 12-13, 42-43), this fact does not grant Congress "unchecked power" to "reward allies and scald foes" or to distinguish between States "*without justification*." Like other Article I legislation, Elections Clause legislation still "is subject to traditional rational basis review" regardless of whether equal-sovereignty principles apply. *Ohio*, 98 F.4th at 308. Under such review, "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). "When the legislature has to engage in line drawing," moreover, "the precise coordinates of the resulting legislative judgment [are] virtually unreviewable." *Danker v. City of Council Bluffs*, 53 F.4th 420, 423 (8th Cir. 2022) (alteration in original; citation omitted).

Applying rational-basis review to Section 4(b)(2) confirms its legitimacy. There is no allegation here that Section 4(b)(2) is based on "a bare . . . desire to harm a politically unpopular group [that] cannot constitute a *legitimate* governmental interest." *Romer v. Evans*, 517 U.S.

620, 634 (1996) (alteration in original; citation omitted). Indeed, PILF acknowledges that the NVRA is valid Elections Clause legislation (Br. 12, 31, 65) and does not assert that Section 4(b)(2) would fail traditional rational-basis scrutiny under the Elections Clause. Accordingly, the district court rightly dismissed PILF's Complaint.

III. Section 4(b)(2) of the NVRA raises no equal-sovereignty concerns.

Even if *Shelby County*'s equal-sovereignty principle applied to Elections Clause legislation, Section 4(b)(2) would easily pass *Shelby County*'s legal test. The NVRA recognized States' choice in establishing voter registration processes, including enacting Polling-Place Registration. The statute's nonapplicability to States that adopted Polling-Place Registration was reasonably related to Congress's stated desire to increase voter registration. The statute did not coerce States into adopting a registration method that was still controversial at that time and remains so, but gave them an opportunity to amend their procedures before final passage of the act. These are the goals that matter for equal-sovereignty purposes.

A. The NVRA affords equal treatment to all States.

Unlike the VRA's preclearance provisions, the NVRA does not "target[] only some parts of the country." *Shelby Cnty. v. Holder*, 570 U.S. 529, 537 (2013). Rather, the NVRA allowed States that register voters to either follow prescribed procedures for registration to vote in federal elections or authorize Polling-Place Registration during a limited window. *See* 52 U.S.C. 20503(b); pp. 4-5, *supra*. States were able to follow the debate in Congress and adopt Polling-Place Registration before the NVRA's deadline. Wyoming, for instance, adopted Polling-Place Registration mere days before the original NVRA deadline, and expressly tied its adoption of Polling-Place Registration to the NVRA's enactment. *See* Act of Mar. 5, 1993, ch. 172, 1993 Wyo. Sess. Laws 396-397. Thus, each State retained equal sovereignty, subject to a uniform preemptive framework. *See, e.g.*, *Mayhew v. Burwell*, 772 F.3d 80, 94 (1st Cir. 2014) (holding that the statute does not "result[] in 'disparate treatment' of states" under *Shelby County* because it "applies the same" choice "to each state").

The contrast between the NVRA and the VRA is stark. The VRA's preclearance formula had been "reverse-engineered" to cover identified

jurisdictions based on historical criteria. *Shelby Cnty.*, 570 U.S. at 551. This resulted in intentional distinctions between the States and the potential to "bring within its sweep governmental units not guilty of any unlawful discriminatory voting practices." *Briscoe v. Bell*, 432 U.S. 404, 411 (1977). The NVRA did not pick and choose in the same manner; each *State* ultimately chose its regulatory regime.

B. Section 4(b)(2) sufficiently relates to the problems the NVRA targets.

Section 4(b)(2) meets the targeting requirements for legislation subject to *Shelby County*, which demands that a statute's "disparate geographic coverage is sufficiently related to the problem that it targets." 570 U.S. at 542 (citation omitted). This test merely requires a rational connection between triggering conditions and targeted ills. *See id.* at 544; *see also South Carolina v. Katzenbach*, 383 U.S. 301, 330 (1966) (upholding the original coverage formula as "rational in both practice and theory"). And here, Congress engaged in reasoned lawmaking by limiting the NVRA's applicability in States that adopted Polling-Place Registration prior to the statute's implementation.

1. Section 4(b)(2) is rationally related to the NVRA's goal of enhancing voter registration.

Congress rationally chose to apply the NVRA only to those States that had not already adopted Polling-Place Registration. *See* 52 U.S.C. 20503(b)(2). Congress determined that federal intervention to ease voter-registration procedures was unwarranted where States already authorized Polling-Place Registration statewide, because that form of registration already liberalized the registration process "beyond the requirements of the" NVRA. House Report 6; Senate Report 23. Indeed, it so liberalized the process that some Senators expressed concerns about its effect on election security. *See* Senate Report 52 (Minority Views of Sen. Stevens et al.). Section 4(b)(2) thus tightly relates to the NVRA's desire to increase voter registration and participation. *See Edgar II*, 56 F.3d 791, 792 (7th Cir. 1995); 52 U.S.C. 20501(a) and (b)(1)-(2), 20503(a), 20504-20506, 20507(a)(1)-(3), (a)(6), (b), and (c)(2)(A), 20508, 20511(1).

Reasonable minds may debate the wisdom of this decision, because proper registration-list-maintenance ensures that States "remov[e] ineligible persons from the States' voter registration rolls." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018). Yet that does not make Congress's decision irrational. *See FCC v. Beach Commc'ns, Inc.*, 508

U.S. 307, 313 (1993). Contrary to PILF's contention (Br. 29), Congress was not obligated to "limit" Section 4(b)(2)'s nonapplicability rule "to 'motor voter' requirements." "Judicial deference to" Congress's choice of means is, after all, "but a corollary to the grant to Congress of any Article I power." *Eldred v. Ashcroft*, 537 U.S. 186, 218 (2003) (citation omitted).

2. Section 4(b)(2) is not a "Transparency Exemption."

Unable to attack Section 4(b)(2) as it exists, PILF argues that the NVRA functions chiefly as a transparency statute and Section 4(b) is a "Transparency Exemption." *See* Br. 15-16, 33-35, 51-57.

But the NVRA's structure demonstrates that Section 4(b)(2) is not a "Transparency Exemption." *Contra, e.g.*, Br. 7, 15, 51. Rather, for States that chose to adopt and maintain Polling-Place Registration, Section 4(b)(2) renders inapplicable a complete regulatory regime that focuses on voter-registration and registration-list-maintenance procedures. *See* 52 U.S.C. 20503(b)(2). The NVRA's disclosure provision, 52 U.S.C. 20507(i), exists to allow evaluation of compliance with that regulatory regime, working hand-in-hand with the express cause of action Congress granted to private parties to challenge NVRA violations, 52 U.S.C. 20510(b). *See Public Int. Legal Found., Inc. v. Bellows*, 92 F.4th

36, 52 (1st Cir. 2024). In States whose registration procedures Congress rationally determined already fulfilled one of the statute's purposes, the disclosure provision lacks its animating purpose. *Cf. id.* at 54 (holding state-law disclosure restrictions preempted by Section 8(i) because they interfered with efforts to "evaluate and enforce compliance with the NVRA" or to "exercis[e] the[] private right of action under the NVRA").

PILF's argument is a policy one: that increased disclosure will aid in monitoring state voter-list maintenance. *See* Br. 51-57. Calls for greater transparency are reasonable. *See* Senate Report 52 (Minority Views of Sen. Stevens et al.) (noting Department of Justice's view in 1991 letter that Polling-Place Registration could "preclude meaningful verification of voter eligibility" before voting (citation omitted)). And PILF's view may one day convince Congress. But it does not control the constitutional question before this Court. Courts cannot scrutinize whether Section 4(b)(2)'s application to disclosure alone is reasonably justified without considering Section 4(b)(2)'s overall function and Congress's rationale for it. Congress's decision about where the NVRA's regulations would not apply is thus tethered to the problems that the NVRA targets. *See Shelby Cnty.*, 570 U.S. at 550-551.

PILF's policy argument, moreover, fails to consider the various avenues for transparency beyond the NVRA itself. For instance, the Civil Rights Act of 1960 independently requires election officials in all States to "retain and preserve" "all records and papers" related to "act[s] requisite to voting in [an] election" "for a period of twenty-two months from the date of any" federal election—only two months less than under the NVRA. 52 U.S.C. 20701. The Attorney General then may demand such records from state election officials. 52 U.S.C. 20703. And Minnesota itself requires county auditors to make voting lists "available for inspection" by the public. Minn. Stat. § 201.091 subdiv. 4(a) (2024). While PILF is not entitled to *copies* of those lists as an out-of-state entity, it could recruit any registered Minnesota voter to request such copies "in electronic or other media" at "the cost of reproduction." *Id.* § 201.091 subdiv. 5; *see id.* § 201.091 subdiv. 4(e)(2) (noting that an individual "may distribute the information to [an] organization's . . . volunteers or employees for purposes related to elections").

In sum, *Shelby County* addressed only whether "disparate geographic coverage is sufficiently related to the problem that it targets." 570 U.S. at 542 (citation omitted). Congress identified the need to

improve voter participation and list maintenance; Section 4(b)(2) is appropriately targeted to solving those problems. *Shelby County* does not require Congress to address an additional "need for transparency" that Congress did not view as an independent legislative problem. Br. 51.

C. *Shelby County*'s "current conditions" requirements do not apply to Section 4(b)(2).

In *Shelby County*, the Supreme Court stated that the VRA imposed "current burdens" that had to be "justified by 'current needs.'" 570 U.S. at 550 (citation omitted). In rejecting the VRA's preclearance formula, the Court concluded that preclearance "authorizes federal intrusion into sensitive areas of state and local policymaking, and represents an extraordinary departure from the traditional course of relations between the States and the Federal Government." *Id.* at 545 (internal citations and quotation marks omitted).

Section 4(b)(2), however, reflects federal restraint, not federal intrusion. The NVRA establishes nationwide procedures for federal elections, from which Section 4(b)(2) exempts only a handful of States. Yet PILF argues (Br. 54) that "current needs" compel federal courts—not Congress—to subject more States (not fewer) to federal regulation. Nothing in *Shelby County* suggests, however, that Congress must meet a

current-conditions requirement to justify an *exemption* from federal regulation. Congress thus rationally limited Section 4(b)(2) to States that adopted Polling-Place Registration by a statutory deadline.[4]

IV. Though this Court need not consider it here, Congress's authority to enforce the Reconstruction Amendments provides independent authority for enacting Section 4(b)(2).

PILF also challenges Section 4(b)(2) as an invalid exercise of Congress's constitutional authority to enforce the Fourteenth Amendment. *See* Br. 64-67. But Congress requires only one source of constitutional authority to enact legislation, *see, e.g.*, *Crawford v. Davis*, 109 F.3d 1281, 1283 (8th Cir. 1997)—in this case, the Elections Clause. Because the Fourteenth Amendment's congruence-and-proportionality standard "does not hold sway for judicial review of legislation

[4] PILF now argues (Br. 57-59) that its claim requires factual development following the motion-to-dismiss stage. But PILF raised this argument in only conclusory fashion below (R. Doc. 16, at 20), and the district court did not address it (*see* App.66-71; R. Doc. 43, at 8-13). So, PILF has waived this argument on appeal. *See ASARCO, LLC v. Union Pac. R.R.*, 762 F.3d 744, 753 (8th Cir. 2014). Regardless, the United States has demonstrated that Section 4(b)(2) is constitutional on legal grounds, and "'it is not necessary to wait for further factual development' in order to conduct a rational basis review on a motion to dismiss." *Gilmore v. County of Douglas*, 406 F.3d 935, 937 (8th Cir. 2005) (citation omitted).

enacted . . . pursuant to Article I authorization," *Eldred v. Ashcroft*, 537 U.S. 186, 218 (2003), this Court need not address whether the Fourteenth Amendment provides further authority for Congress to enact the NVRA, *see Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1413-1416 (9th Cir. 1995) (upholding NVRA without addressing Reconstruction Amendments); *Edgar II*, 56 F.3d 791, 793-796 (7th Cir. 1995) (same); *Miller II*, 129 F.3d 833, 836 (6th Cir. 1997) (same).

Nevertheless, the NVRA also is a proper exercise of Congress's authority to enforce the Fourteenth Amendment's general prohibition on discrimination, as well as the Fifteenth Amendment's prohibition on discriminatory denial or abridgment of the franchise.[5] *See Association of Cmty. Orgs. for Reform Now (ACORN) v. Edgar*, 880 F. Supp. 1215, 1221-1222 (N.D. Ill.) (*Edgar I*), *aff'd as modified*, 56 F.3d 791; *Association of Cmty. Orgs. for Reform Now v. Miller*, 912 F. Supp. 976, 984 (W.D. Mich. 1995), *aff'd*, 129 F.3d 833; *Condon v. Reno*, 913 F. Supp. 946, 967 (D.S.C. 1995); Senate Report 3-4; House Report 2-3. Section 4(b)(2), in

[5] Although PILF acknowledges that the NVRA was also enacted under the Fifteenth Amendment (Br. 65), it does not contend that the statute is invalid Fifteenth Amendment legislation (Br. 64-67).

particular, passes muster both under the test articulated in *City of Boerne v. Flores*, 521 U.S. 507 (1997), for Fourteenth Amendment legislation, and the more lenient rationality test applicable to Fifteenth Amendment legislation, *see South Carolina v. Katzenbach*, 383 U.S. 301, 330 (1966); *see also Allen v. Milligan*, 599 U.S. 1, 41 (2023) (upholding Section 2 of the VRA as "appropriate" Fifteenth Amendment legislation relying on cases applying rationality standard).

First, regarding the Fourteenth Amendment, the history of abusive registration practices highlighted in the House Report confirms that the NVRA is congruent and proportional to Congress's objectives. *See* 52 U.S.C. 20501(a)(1)-(2). If the NVRA's burdens would be congruent and proportional if applied to every State, as PILF appears to concede (Br. 66-67), then it is hard to see how the imposition of a *lower* burden on some States possibly could remove the "congruence and proportionality" otherwise observed "between the injury to be prevented or remedied and the means adopted," *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997).

Even if *City of Boerne* could be violated via an *exemption* from regulation, Section 4(b)(2) falls within Congress's "wide latitude" to determine how to balance the NVRA's goals of encouraging voter

registration and ensuring election integrity with due regard for States' sovereignty. *City of Boerne*, 521 U.S. at 520. Section 4(b)(2) exempts States that adopted Polling-Place Registration prior to a statutory deadline. Such a scheme *enhances* the NVRA's congruence and proportionality by refraining from regulating States that had adopted an acceptable alternative means of meeting the NVRA's goals. *See Edgar I*, 880 F. Supp. at 1222 (describing Section 4(b) as a "rational classification" under the Fourteenth and Fifteenth Amendments).

Second, regarding the Fifteenth Amendment, the NVRA fits comfortably within Congress's power to "outlaw voting practices that are discriminatory in effect." *Milligan*, 599 U.S. at 41 (citation omitted). The Act's text explains that "discriminatory and unfair registration laws and procedures" had "disproportionately harm[ed] voter participation by various groups, including racial minorities." 52 U.S.C. 20501(a)(3). And the Act's legislative history includes ample evidence to support that finding.

As the House Report on the NVRA emphasized, "[r]estrictive registration laws and administrative procedures were introduced in the United States in the late nineteenth and early twentieth centuries to

keep certain groups of [minority] citizens from voting." House Report 2. Although "the Voting Rights Act of 1965 eliminated the more obvious impediments to registration," it left "a complicated maze of local laws and procedures, in some cases as restrictive as the outlawed practices." *Id.* at 3. The Fourteenth and Fifteenth Amendments empower Congress to adopt uniform federal voter-registration procedures to address those racial disparities. *See, e.g.*, *Oregon v. Mitchell*, 400 U.S. 112, 118 (1970) (opinion of Black, J.) (upholding ban on literacy tests); *Vote.Org v. Callanen*, 89 F.4th 459, 486-487 (5th Cir. 2023).[6]

[6] PILF's arguments (Br. 59-63) about the appropriate remedy are premature. This case arises from a grant of a motion to dismiss (App.60; R. Doc. 43, at 2); as PILF itself acknowledges (Br. 57-59, 68), reversal would only reinstate PILF's complaint, not granting it judgment. Remedial questions are best left to determine at the summary judgment or trial stage, after briefing from the parties to the district court, if PILF ultimately prevails on the merits.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 10,835 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365. And this brief complies with Eighth Circuit Rule 28A(h)(2) because the ECF submission has been scanned for viruses with the most recent version of Windows Defender (Version 7.5.17706.0) and is virus-free according to that program.

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CERTIFICATE OF SERVICE

On July 2, 2025, I filed this brief with the Clerk of the Court by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

I further certify that, within five days of receipt of the notice that the brief has been filed by this Court, the foregoing brief will be sent by Federal Express, next-day mail, to the Clerk of the Court (10 copies) and to the following counsel of record (one copy) pursuant to Local Rule 28A(d):

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