No. 21-1271

IN THE

Supreme Court of the United States

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.

On Writ of Certiorari to the North Carolina Supreme Court

BRIEF OF *AMICI CURIAE* SENATOR AMY KLOBUCHAR AND NINETEEN UNITED STATES SENATORS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are United States Senators.[2] Because of their constitutional roles and responsibilities, *amici* have both a singular interest in the outcome of this case and a unique ability to assist this Court in understanding how legislators approach and exercise their authority every day. *Amici* recognize that Congress, like the other branches of the federal government, functions only as part of the system of checks, balances, and separated powers that the Constitution prescribes. And *amici* operate on the accepted premise that just as Congress exercises the federal Legislative power only within those structures, state legislatures similarly act only within the analogous constraints of state constitutions.

Amici are led by Senator Amy Klobuchar of Minnesota, who serves as the Chair of the Senate Committee on Rules and Administration ("Rules Committee"), the Senate committee with jurisdiction over federal elections. In that capacity, Senator Klobuchar has seen firsthand how state legislative efforts to restrict voting rights and limit opportunities for people to cast a ballot can pose the risks to individual liberty that the Framers feared. Senator Klobuchar and Nineteen United States Senators

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole; no party's counsel authored, in whole or in part, this brief; and no person or entity other than *amici* and their counsel contributed monetarily to preparing or submitting this brief. Consistent with Rule 37.2, the parties to this action have granted blanket consent to the filing of *amicus curiae* briefs in these cases.

[2] A full list of *amici* can be found in Appendix A.

submit this brief because of the critical importance of the issues this case presents to the work of Congress and the Rules Committee in safeguarding the right to free and fair elections.

SUMMARY OF THE ARGUMENT

The Elections Clause of Article I delegates to the states, "by the Legislature thereof," the authority to "prescribe[]" the "[t]imes, [p]laces, and [m]anner of holding Elections for Senators and Representatives." U.S. CONST. art. I, § 4. As one safeguard against state legislative overreach, the Elections Clause also empowers Congress to intervene to "at any time by Law make or alter such Regulations." U.S. CONST. art. I, § 4.

By granting Congress "plenary and paramount jurisdiction" over the conduct of federal elections, the Elections Clause establishes a careful balance between state and federal power. *Ex Parte Siebold*, 100 U.S. 371, 388 (1879). It allows states in the first instance to provide for the orderly and efficient conduct of both federal and state elections, which in several states take place simultaneously, while permitting Congress, when necessary, to ensure its own preservation by protecting the integrity of federal elections. THE FEDERALIST No. 59 (Alexander Hamilton).

As legislators, *amici* understand that when Congress exercises its authority under the Elections Clause, it is bound to follow the requirements of bicameralism and presentment set forth in Article I. Congress is also subject to the ordinary system of inter-branch checks and balances that are central to our Constitutional structure. Although the Elections Clause, like other provisions in Article I, *see, e.g.*,

U.S. CONST. art. I, § 8, empowers "Congress" to act, those provisions cannot be read to limit the authority of the Executive or the Judiciary to protect the boundaries of Congressional power and to ensure that Congress does not undermine the Constitution's guarantees of individual liberty. *See N.F.I.B. v. Sibelius*, 567 U.S. 519, 538 (2012).

There is no basis to read the term "Legislature" in the same provision as giving state legislatures greater authority than Congress itself. Just as the term "Congress" in the Elections Clause does not permit Congress to bypass ordinary lawmaking processes, the term "Legislature" does not absolve state legislatures of the responsibility to comply with state constitutional constraints on legislative power. *See, e.g.*, *Prout v. Starr*, 188 U.S. 537, 543 (1903) (recognizing that "[t]he Constitution of the United States . . . must be regarded as one instrument."); *see also, e.g.*, *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting) (interpreting the Elections Clause in conjunction with similar language in the Electors Clause of Article II); *New York Cnty. Nat'l Bank v. Massey*, 192 U.S. 138, 146 (1904) (recognizing the need to give "a harmonious construction" to an entire statute).

Congress' role under the Elections Clause is not a substitute for the ordinary system of separation of powers that state constitutions, many of which predate the federal Constitution, establish to check state legislative overreach. Congress has power to "make" laws and regulations at any time that it deems necessary to safeguard the election process. But it also has authority to act as an additional, back-stop layer of protection to safeguard the nation-

al interest in the conduct of federal elections by "alter[ing]" state regulations.

In many circumstances, the state's own systems are sufficient to check legislative overreach and protect the right to free and fair elections. Both the Governor and the state courts can and do fulfill their mandates to protect the boundaries of the state legislator's power. When Congress exercises its power to "alter" state regulations, Congress acts on the premise that the regulations it is reviewing are final and valid ones that comport with the state's own lawmaking requirements. THE FEDERALIST No. 59 (Alexander Hamilton).

Interpreting the Elections Clause to empower state legislatures to act independently of the ordinary limits placed on their power contravenes these well-settled principles.

ARGUMENT

I. The Elections Clause Does Not Override the Ordinary System of Checks and Balances.

This Court has long acknowledged that the federal Constitution reflects the sovereign will of the people of the United States. *Luther v. Borden*, 48 U.S. (7 How.) 1, 21 (1849) (argument of the Attorney General on behalf of Plaintiff) ("A constitution, being the deliberate expression of the sovereign will of the people, takes effect from the time that will is unequivocally expressed, in the manner provided in and by the instrument itself."). In establishing a federal government, the people of the United States, through the Constitution, vested in Congress the "legislative

Powers" of the United States. U.S. CONST. art. I, § 1. As an entity created and empowered by the Constitution, Congress does not exist independently of that charter, nor can it act outside the bounds of its Constitutional mandate.

In the same way, state constitutions reflect the sovereign will of the people of the state, creating and empowering state legislatures to exercise the state's legislative power. *State ex rel. Davis v. Osborne*, 14 Ariz. 185, 190 (1912) (recognizing that the Arizona Constitution "express[es]" "the sovereign will of the people."); *see also City of Norfolk v. Chamberlain*, 89 Va. 196, 204 (1892) (same, with respect to the Virginia Constitution). In defining the scope of state legislative power and establishing limits on that power, state constitutions designate the state "as a sovereign" within our system of federalism. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991); *see also Ariz. State Legislature*, 576 U.S. at 805 (the state's legislative power is defined by its constitution).

Because the state constitution creates the state legislature, the latter cannot supersede the former. The legislature cannot circumvent the authority delegated by the state constitution (and the people) to the state courts to review its enactments to "vindicate the rights guaranteed by [the state] Constitution." *Bauserman v. Unemployment Ins. Agency*, Case No. 160813, 2022 WL 2965921, at *6 (Mich. July 26, 2022); *see also, e.g.*, *Higgin v. Albence*, Case No. 2022-0641-NAC, 2022 WL 4239590, *14 (Del Ch. Sept. 14, 2022), *aff'd in part sub nom. Albence v. Higgin*, 2022 WL 5333790 (Del. Oct. 7, 2022) (The state legislative power "may be curtailed by constitutional restrictions express or necessarily implied."); *McPherson v. Blacker*, 146 U.S. 1, 25 (1892) ("What

is forbidden or required to be done by a state is forbidden or required of the legislative power under state constitutions as they exist."); *cf. Marbury v. Madison*, 5 U.S. 137, 177 (1803) (recognizing that the federal Constitution constrains Congress and that "an act of the legislature, repugnant to the constitution, is void.").

The structural parallels between the legislative power in state and federal constitutions—and the fact that both function only as part of a broader process—are no accident. State constitutional systems predated the federal Constitution and served as a model for the structure of the national government. Saikrishna B. Prakash & John C. Yoo, *The Origins of Judicial Review*, 70 U. CHI. L. REV. 887, 934–39 (2003). In designing the federal system of checks and balances, the Founders specifically looked to the examples of the several states. *See, e.g.*, THE FEDERALIST No. 39 (James Madison) (explaining how various Constitutional provisions were influenced by and mirror provisions adopted by various states); THE FEDERALIST No. 78 (Alexander Hamilton) ("The benefits of the integrity and moderation of the judiciary have already been felt in more States than one."); *see also League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 802 (Pa. 2018) (noting that the Pennsylvania Constitution served as a model for the federal one); Austin Scott, *Holmes v. Walton: The New Jersey Precedent*, 3 AM. HISTORICAL REV. 456 (1899) (same, with respect to the New Jersey constitution).

The Framers specifically relied on the states' experience to draft a Constitution that constrained the branches of the federal government "to ensure protection of our fundamental liberties." *United States*

v. Lopez, 514 U.S. 549, 552 (1995) (quoting *Gregory*, 501 U.S. at 458); *see also* THE FEDERALIST No. 39 (James Madison); *Buckley v. Valeo*, 424 U.S. 1, 122 (1976) ("The Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.").

In doing so, the Framers established not only a horizontal balance of power between the coordinate branches, but also a vertical balance between the state and national governments to "reduce the risk of tyranny and abuse from either front"; after all, "[i]n the tension between federal and state power lies the promise of liberty." *Gregory*, 501 U.S. at 458–59; *see also Lopez*, 514 U.S. at 552 (same); *Kilbourn v. Thompson*, 103 U.S. 168, 190–91 (1880) ("It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted[*sic*] to the government, whether State or national, are divided into three departments."); *New York v. United States*, 505 U.S. 144, 181 (1992) ("[T]he Constitution divides authority between federal and state governments for the protection of individuals."). And the Framers took care to leave unchanged within each state the division of power among the various branches of the state government, recognizing that the states remained sovereign. *Martin v. Hunter's Lessee*, 14 U.S. 304, 325 (1816); *see also McPherson*, 146 U.S. at 25.

A. The Federal Legislative Power Set Forth in Article I Is Defined and Bounded By Structural Constraints.

By its terms, Article I of the Constitution grants the "legislative Powers" of the United States to "Congress," and "Congress" alone. U.S. CONST. art. I, § 1. But Article I also defines the scope of that power, *see, e.g.*, U.S. CONST. art. I, § 8, and defines how it must be exercised. Article I makes clear that bills must be passed by both the House of Representatives and the Senate in the same form, and must be presented to the President for signature in order to go into effect. U.S. CONST. art. I, § 7. It also subjects all Congressional actions to Presidential veto and sets forth the conditions under which Congress can override that veto. *Id*.

As this Court has made clear, these restrictions on Congressional power are not optional; one or both chambers of Congress cannot alter them by unilateral action and Congress cannot simply ignore them when passing legislation. *I.N.S. v. Chadha*, 462 U.S. 919, 957 (1983); *see also Bands of the State of Wash. v. United States*, 279 U.S. 655, 677–78 (1929) (Congress cannot undercut the President's exercise of veto power through legislation); *Ariz. State Legislature*, 576 U.S. at 846 (Roberts, C.J., dissenting) (The "Constitution also speaks in some places with elegant specificity" about various requirements regarding the legislative power.).

Nor can Congress foreclose judicial review of the constitutionality of its statutes through legislation alone. *Chadha*, 462 U.S. at 942 (Congress and the Executive cannot "decide the constitutionality of a statute; that is a decision for the courts."); *N.F.I.B.*,

567 U.S. at 538 ("Our deference in matters of policy cannot, however, become abdication in matters of law. . . . Our respect for Congress' policy judgments thus can never extend . . . to disavow restraints on federal power.").[3] Any exercise of Congressional authority is necessarily subject to Article III review, ultimately by this Court. *N.F.I.B.*, 567 U.S. at 538 ("[T]here can be no question that it is the responsibility of this Court to enforce the limits on federal power."); *Marbury*, 5 U.S. at 177 (recognizing that the federal Constitution constrains Congress and that "an act of the legislature, repugnant to the constitution, is void.").

When Congress legislates, it does so against the backdrop, and within the confines, of this system of checks and balances. The interaction between the three branches of government informs and sharpens Congress' debates. In many circumstances, lawmaking follow a process of review and refinement, and legislation takes shape as much by Congress' internal deliberative rules as by both judicial review and Presidential veto. These interactions between the three branches of government—between Congress exercising the Legislative Power, the Executive using a veto, and the courts guarding the boundaries of

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[3] This Court generally presumes that Congress acts within the scope of its authority and that it is aware of, and legislates in response to, this Court's precedent. *See United States v. Morrison*, 529 U.S. 598, 607 (2000) (noting that this Court will "invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds."); *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1072 (2020) ("[This Court] normally assume[s] that Congress is aware of relevant judicial precedent when it enacts a new statute . . ." and legislates accordingly.).

that legislative power—define our system of government and further the Framers' goal of protecting individual freedoms. *See Chadha*, 462 U.S. at 963 n.4 (Powell, J., concurring); *see also id.* at 950–51; *Bowsher v. Synar*, 478 U.S. 714, 721–22 (1986).

For example, on several occasions, Congress has responded to this Court's invitation to implement legislation in order to protect liberty. *See, e.g.*, *Examining S. 1843, to Amend Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to Clarify That an Unlawful Practice Occurs Each Time Compensation Is Paid Pursuant to a Discriminatory Compensation Decision or Other Practice*, S. Hr'g 110-825, 110th Cong. (2nd Sess. 2009) at 2 (Statement of Senator Edward M. Kennedy, Chairman of the Senate Committee on Health, Education, Labor, and Pensions); S. Rep. No. 97-417, 97th Cong. (2nd Sess. 1982) at 40–41 (amending Section 2 of the Voting Rights Act in response to the Court's decision regarding the Constitutional standard under the Fifteenth Amendment and recognizing that the legislative enactment would not affect the constitutional standard).

Congress has similarly responded to Executive-branch action when revising and promulgating legislation. *See, e.g.*, The Child Care and Development Block Grant, enacted under the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101–508, 104 Stat. 1388 (1990) (revising and eliminating certain provisions of a contested bill following President Bush's veto threat); Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338 (1999) (removing a provision following President Clinton's veto threat).

Nothing about the Elections Clause exempts Congress from these ordinary restraints. Although

the Elections Clause specifically empowers "Congress" to act, it does so within the larger constitutional structure that defines legislative authority. *Smiley v. Holm*, 285 U.S. 355, 368 (1932) (Congressional action under the Elections Clause is subject to the President's veto); *see also, e.g.*, *Branch v. Smith*, 538 U.S. 254, 280 (2003) (reviewing the constitutionality of a statute passed pursuant to Congress' authority under the Elections Clause). The Elections Clause cannot be, and has never been, read to permit Congress simply to ignore the requirements of bicameralism and presentment in Article I or to evade the checks exercised by the Executive and the Judiciary. Rather, the term "Congress" in the Elections Clause must be read in conjunction with the entirety of Article I, which makes clear that Congress cannot act alone.

B. The Term "Legislature" in the Elections Clause Should Not Be Read More Expansively than the Term "Congress."

Just as the term "Congress" in the Elections Clause does not permit that body to circumvent the ordinary checks placed on its power, the term "Legislature" in the same provision does not allow state legislatures to bypass the same restrictions imposed by state constitutions—the very documents that create and empower them.

Article I speaks almost exclusively of "Congress'" power to act while allocating specific roles and responsibilities to the House of Representatives and the Senate. But this allocation of power is not a signal that Congress, or either of its chambers, can act

without input from the President or review by the courts. Put another way, the fact that Article I specifically vests "Congress" with the federal "legislative Powers" does not immunize Congress from checks on its authority by its coordinate branches or allow one chamber to bypass the other in order to pass legislation. *See, e.g.*, *Chadha*, 462 U.S. at 946–47 ("[The requirements of separation of powers] were considered so imperative that the draftsmen took special pains to assure that these requirements could not be circumvented.").

The same holds true for the term "Legislature" in the Elections Clause. It must be read in parallel with the use of the term "Congress" in the same provision. That reference allocates primary responsibility to the legislature without altering the background principles of separation of powers according to which that body ordinarily operates.[4]

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[4] The term "Legislature" also appears in the Electors Clause of Article II and is interpreted in parallel with the Elections Clause. *See* U.S. CONST. art. II, § 2; *See Ariz. State Legislature v. Ariz. Indep. Redistricting Com'n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting). Reading the term "Legislature" as allocating responsibility to the legislative body, without undermining traditional separation of powers principles, is entirely consistent with the structure of Article II, which vests the President with the "Executive Power" but does not allow the President to ignore or circumvent the meaningful checks on his power exercised by the other co-equal branches of government. *See, e.g.*, *Bowen v. Michigan Acad. of Family Physicians*, 476 U.S. 667, 670, 673 (1986) (recognizing a presumption that actions taken by executive agencies are reviewable, unless *Congress* forecloses review by statute); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587–88 (1952) (recognizing that the President may not override legislation by executive order).

A contrary reading conflicts with the historical record. The Founders were particularly skeptical of state legislatures and took pains to guard against state legislative overreach, including by empowering Congress to oversee federal elections. *See* THE FEDERALIST No. 59 (Alexander Hamilton); *see also, e.g.*, THE FEDERALIST No. 73 (Alexander Hamilton) ("The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments" makes separation of powers essential). In light of this skepticism, it would be anomalous to read the Elections Clause as absolving state legislatures of the obligation to comply with the state constitution to which they owe their existence, especially when Congress itself is subject to checks by its coordinate branches of government. *Smiley*, 285 U.S. at 368 (recognizing that a check on legislative authority in a state constitution "cannot be regarded as repugnant to the grant" of that authority); *Ariz. State Legislature*, 576 U.S. at 805; *see also, e.g.*, *League of Women Voters of Pa.*, 178 A.3d at 803 ("Although plenary, the General Assembly's police power is not absolute, as legislative power is subject to restrictions enumerated in the Constitution and to limitations inherent in the form of government chosen by the people of this Commonwealth.").

Thus, in the absence of any express statement to the contrary, the Elections Clause cannot be read to empower state legislatures to supersede the structures by which state constitutions define and constrain the legislative power. *Cf. Chadha*, 462 U.S. at 957–58 (recognizing that where Article I intends to bypass the ordinary processes of bicameralism and presentment, it does so explicitly and clearly).

Allowing state legislatures to act independently of these ordinary checks and balances would not only undermine the structure of the Elections Clause and Article I as a whole, it would also run contrary to the Constitution's guarantee of a "republican form of government." U.S. CONST. art. IV, § 4. Though the federal Constitution does not require state governments to adopt a particular structure, the Framers were clear that one of the fundamental characteristics of a "Republican form of government" was the separation of the legislative, executive, and judicial powers. *See Olney v. Arnold*, 3 U.S. 308, 314 (1796) ("[I]n the policy of all well regulated, particularly of all republican, governments, which prohibits an heterogeneous union of the legislative and judicial departments.") (Argument of the Attorney General); THE FEDERALIST No. 47 (James Madison) ("The accumulation of all powers . . . in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny" (relying, in part, on Montesquieu, SPIRIT OF THE LAWS, Vol. 1 Book 11, Ch. 6)). Permitting legislatures to operate unchecked in the core area of elections would not honor this guarantee.

II. Reading "Legislature" to Encompass the Entire Lawmaking Process Comports with Established Understandings of Respective Roles Under the Election Clause.

In addition to allocating to each state legislature the responsibility to set the time, place, and manner of federal elections consistent with ordinary procedures established by the state constitution, the Elec-

tions Clause empowers Congress to act as a check on state legislative power "at any time" by "displac[ing] some element of a pre-existing *legal regime* erected by the States." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013) (emphasis added). This power to "alter" state regulations does not envision Congressional review of state legislative efforts before the state's entire lawmaking apparatus has had an opportunity to act[5]. By its terms, that component of the Elections Clause contemplates that Congress will oversee and legislate in response to state "Regulations" and not in response to individual bills that are introduced in—but not necessarily passed by—the state legislature. Nor does Congress' authority to "alter" state election rules contemplate that Congress will simply bypass the state's ordinary lawmaking processes to intervene, for example, before state bills have been submitted to and signed by the Governor. U.S. CONST. art. I, § 4; *Smiley*, 285 U.S. at 367–68 (exercise of the state's legislative power "must be in accordance with the method which the state has prescribed for legislative enactments" in the state constitution).

The Elections Clause contemplates that Congress will serve as only one check on state legislatures, but it would defy the structure, historical understanding, and longstanding historical practice for the Constitution to have mandated that Congress serve as the *only* check. Under the design of the Elections

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[5] The Elections Clause separately empowers Congress to "make" its own "Regulations" concerning elections in the first instance, whether or not states have previously acted, and regardless of the state's constitutional process for enacting rules for federal elections.

Clause, the ordinary checks provided by state constitutions, including review by the state courts, play a key role in preventing state legislative overreach. *See, e.g.*, *Holmes v. Moore*, No. 18-CV-15292 (N.C. Super. Ct. Sept. 17, 2021); *NAACP v. Walker*, No. 11-CV-5492 (Wis. Cir. Ct. Jul. 17, 2012).

When "Regulations" emerge from the state's full legislative processes that threaten the integrity of federal elections or undermine individual liberty, Congress has the authority to step in at any time in order to preempt state law and check state overreach by "alter[ing]" such regulations. THE FEDERALIST No. 59 (Alexander Hamilton). As members of Congress, *amici* understand that this aspect of their role is not to supplant the checks on legislative power imposed by the state constitution or to short-circuit the state's system of checks and balances before that system has the opportunity to produce sound legislation.

Numerous recent examples demonstrate the importance, and the healthy operation, of the states' internal mechanisms to check unconstitutional efforts to interfere with the right to vote in federal elections. State governors from both parties, for example, have routinely exercised their veto power in order to prevent legislative overreach and safeguard the right to vote in federal elections. In Arizona, Governor Douglas Ducey vetoed a bill that would require counties to cancel the voter registration of a voter if the county recorder received information challenging that the voter's eligibility, stating that the bill lacked necessary safeguards to prevent counties from disenfranchising voters. ARIZ. OFFICE OF THE GOVERNOR, VETO MESSAGE FOR H.R. 2617 (May 27, 2022). In Wisconsin, Governor Tony Evers vetoed a number of bills that sought to restrict ballot

access, noting that the right to vote "should not be subject to the whims of politicians." WIS. OFFICE OF THE GOVERNOR, VETO MESSAGES FOR S. 935, 937, 938, 939, 940, 941, 942, 943, 945 (Apr. 8, 2022). And in Pennsylvania, Governor Tom Wolf blocked a redistricting plan and proposed voter identification legislation that bore a striking similarity to statutes that had previously been found unconstitutional by the state courts. PENN. OFFICE OF THE GOVERNOR, VETO MESSAGE FOR H.R. 2146 (Jan. 26, 2022); PENN. OFFICE OF THE GOVERNOR, VETO MESSAGE FOR H.R. 1300 (June 30, 2022).

State courts similarly have played an essential role in protecting the boundaries of state legislative power, especially in the context of election administration. In Montana, for example, the state Supreme Court preliminarily enjoined bills that would have restricted the kinds of identification accepted at the polls and eliminated same-day voter registration, concluding that these bills violated the state constitution. *Mont. Democratic Party, et al. v. Jacobsen, et al.*, Case No. DA 22-0172 (Mont. Sept. 21, 2022). In Florida, the state Supreme Court struck down a congressional districting plan under the state Constitution. *League of Women Voters of Fla. v. Detzner*, 172 So.3d 363 (Fla. 2015).

In these states and many others, the system of checks and balances operated as intended to ensure that election administration measures reflected the sovereign will of the state.

When those checks fail, the "alter" power in the Elections Clause authorizes Congress to step in. Georgia, for example, placed several restrictions on voter registration and ballot access, including by restricting the placement of drop boxes for absentee

ballots and shortening the period of time in which voters can register or apply to vote absentee. *See* Election Integrity Act of 2021, 2021 Ga. Laws, Act 9. The statute became law after it was rushed though the state legislature, with little debate and "total disregard to public comment and input from experts." *Protecting the Freedom to Vote: Recent Changes to Georgia Voting Laws and the Need for Basic Federal Standards to Make Sure All Americans Can Vote in the Way That Works Best for Them*, S. Hr'g 117-47, 117th Cong. (1st Sess. 2021) at 10–11 (Statement of Senator Sally Harrell, Georgia State Senator).

In response, *amici* exercised their authority under the Elections Clause to conduct oversight and consider legislative solutions necessary to ensure strong voter protections. The Rules Committee, chaired by Senator Klobuchar, has held hearings to investigate the impact of recent legislation on the right to vote, including a field hearing in Georgia. *See, e.g.*, *Protecting the Freedom to Vote: Recent Changes to Georgia Voting Laws and the Need for Basic Federal Standards to Make Sure All Americans Can Vote in the Way That Works Best for Them*, S. Hr'g 117–47 at 1–4 (Statement by Senator Amy Klobuchar, Chairwoman of the Committee on Rules and Administration) (explaining that the Rules Committee intended to "listen to people in Georgia about the changes to the state's voting laws and . . . discuss why it is so critical for Congress to enact basic federal standards to ensure that all Americans can cast their ballots."). Senator Klobuchar and others have also introduced legislation intended to safeguard ballot access in federal elections by, among other things, setting uniform national standards for free and fair access to the freedom to vote. *See* The

Freedom to Vote Act, S. 2747, 117th Cong. (1st Sess. 2021) at § 3 (finding, *inter alia*, that Congress has the authority under the Elections Clause to "vindicate the people's right to equality of representation in the House," and that federal legislation was necessary to remedy significant restrictions on voting).

As United States Senators, *amici* are mindful of the power they hold under the Elections Clause to exercise "paramount jurisdiction" over the time, place, and manner of federal elections in order to check state legislative authority. *Ex parte Siebold*, 100 U.S. at 388. State constitutions, as interpreted and applied by state courts, provide a critical check in the process of election administration and have done so since the Founding. Respect for the sovereign status of the states requires that they act in this critical area only through the structures and processes their constitutions prescribe, subject to Congress' ultimate oversight.

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CONCLUSION

For the reasons set forth above, the judgment of the court below should be affirmed.

Respectfully submitted,

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October 26, 2022

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Senator Angus King (I-Maine);

Senator Jeff Merkley (D-Oregon);

Senator Tammy Baldwin (D-Wisconsin);

Senator Richard Blumenthal (D-Connecticut);

Senator Cory A. Booker (D-New Jersey);

Senator Sherrod Brown (D-Ohio);

Senator Robert P. Casey, Jr. (D-Pennsylvania);

Senator Christopher A. Coons (D-Delaware);

Senator Mazie Hirono (D-Hawaii);

Senator Ben Ray Luján (D-New Mexico);

Senator Edward J. Markey (D-Massachusetts);

Senator Patty Murray (D-Washington);

Senator Bernard Sanders (I-Vermont);

Senator Jeanne Shaheen (D-New Hampshire);

Senator Tina Smith (D-Minnesota);

Senator Chris Van Hollen (D-Maryland);

Senator Elizabeth Warren (D-Massachusetts);

Senator Ron Wyden (D-Oregon).