

No. 25A1240

In the Supreme Court of the United States

DON SCOTT,
IN HIS OFFICIAL CAPACITY AS
SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES, ET AL.,

Applicants,

v.

RYAN T. McDOUGLE,
VIRGINIA STATE SENATOR AND LEGISLATIVE COMMISSIONER
FOR THE VIRGINIA REDISTRICTING COMMISSION, ET AL.,

Respondents.

ON EMERGENCY APPLICATION FOR STAY
TO THE SUPREME COURT OF VIRGINIA

**BRIEF OF *AMICUS CURIAE*
STATE OF WEST VIRGINIA
IN SUPPORT OF RESPONDENTS**

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*

This application asks the Court to do something it has long resisted: review a state court's interpretation of its own constitution in a matter implicating purely state law.

The Supreme Court of Virginia recently decided an election issue under the Constitution of the Commonwealth of Virginia. That decision should have been the end of the matter. After all, “the highest court of the state is the final arbiter of what is state law.” *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940). And the Supreme Court of Virginia “alone” can define the Virginia Constitution’s “authoritative meaning.” *United Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U.S. 134, 135 (1962). But Applicants now ask this Court to push aside these fundamental principles and upset this “prima facie final” decision. *Town of E. Hartford v. Hartford Bridge Co.*, 51 U.S. 511, 539 (1850). They seek, in effect, a second appeal—this time in a court that lacks jurisdiction to hear it.

In asking this Court to intervene, Applicants seek more than the Constitution can bear. A passing allusion to federal law cannot be enough to subject a state-court judgment to federal review. *Contra* App.12–17. Nor can vehement disagreement with the lower court’s reasoning furnish jurisdiction, even when the case involves an election. *Contra* App.17–22. If such thin gruel were enough to trigger this Court’s review, then the “states’ dignity and independence”—raised to the level of “constitutional status” in this Court’s federalism cases—would be illusory. Laura S. Fitzgerald, *Suspecting the States: Supreme Court Review of State-Court State-Law Judgments*, 101 MICH. L. REV. 80, 94 (2002).

So West Virginia files this brief to speak up for those States that remain committed to the notion that state courts should decide state issues with finality. And while West Virginia has argued elsewhere that federal courts need to step in when state courts are

improvidently deciding *national* issues, see Br. of Amici Curiae of State of W. Va., et al., at 16-22, *Chevron v. Plaquemines Parish*, 146 S. Ct. 1052 (2026) (No. 24-813), 2025 WL 2662994, no fair reader could think the Supreme Court of Virginia was doing that here. The Supreme Court merely held that, “[u]nder the Constitution of *Virginia*,” “the *Commonwealth*” had not “done [things] the right way” when it “submitted a proposed constitutional amendment to *Virginia* voters” about *Virginia* redistricting without an intervening *Virginia* House of Delegates election. App.29a-30a (emphasis added).

Altogether, this application presents state-law issues and nothing more. The Court should deny it.

SUMMARY OF THE ARGUMENT

Virginia has come a long way from once arguing that this Court has no power of review over its courts at all. See generally *Martin v. Hunter’s Lessee*, 14 U.S. 304 (1816). Applicants now point to “two critical issues of federal law” that they say justify emergency relief here. Appl.12. But this case is state-centered, and the Court cannot properly reach either question.

I. Federal courts can only review state-court decisions that decide federal questions. The state court here did not. At most, it referenced some federal precedents as part of a multi-faceted analysis of what “election” means in the Virginia Constitution. But nothing suggests it squarely decided or relied on federal law in substantial part. And even if the court had relied on federal law, it also relied on adequate and independent state-law grounds that separately sustain the judgment. That choice defeats jurisdiction.

II. Applicants also invoke the Elections Clause, insisting that the Virginia Supreme Court so abandoned its judicial function that it usurped the role of the legislature. Not so. The decision undertook ordinary judicial analysis of the relevant authorities, explaining multiple compelling bases that led it to decide as it did. Although Applicants strongly disagree, that disagreement cannot greenlight federal oversight. Split decisions and sharp words are *de rigueur* in state appellate courts—just as they are in all courts—and nothing is so different about election law that these ordinary events justify federal attention to the state-law issue.

ARGUMENT

I. VIRGINIA’S APPLICATION DOES NOT PRESENT ANY COGNIZABLE FEDERAL QUESTION.

This Court’s “jurisdiction over the decisions of the State courts is limited.” *N.Y. Life Ins. Co. v. Hendren*, 92 U.S. 286, 287 (1875). The Court’s “only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.” *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). So where the state court “did not determine a Federal question, nor necessarily decide one adversely to plaintiff in error, controlling in character,” then the Court must decline to review its decision. *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 106 (1909). And “[a] similar result follows where, even assuming that the state court has formally determined a federal question, it does not appear to have been a substantial one.” *Honeyman v. Hanan*, 300 U.S. 14, 23 (1937).

These principles are reflected in a statute, 28 U.S.C. § 1257(a) (referencing appeals from state courts premised on rights and authorities of “the United States”), and this Court’s own rules, see S. CT. R. 10 (requiring “an important federal question” or “important

question of federal law” before review of a state court judgment can be had). But even beyond those sources, “the limitation on the power of [this Court] to review the correctness of state courts’ interpretations of their own state constitutions appears predicated on the federalist principles inherent in the structural provisions of the United States Constitution.” Anthony M. Ciolli, *Territorial Constitutional Law*, 58 IDAHO L. REV. 206, 216 (2022). It is, at bottom, a manifestation of mutual respect between state and federal courts.

This jurisdictional principle produces several benefits. Most obviously, because of their expertise and sovereign power, “[t]he State Courts are the appropriate tribunals, as this court has repeatedly held, for the decision of questions arising under their local law.” *Murdock v. City of Memphis*, 87 U.S. 590, 626, 22 L. Ed. 429 (1874). Ensuring that Virginia courts decide Virginia law means Virginians can truly govern themselves; the state court’s justices are themselves Virginians, and the broader Virginia population indirectly elects them. It also ensures that this Court devotes its precious attention to truly national issues. And it creates finality in state court judgments, while a broader understanding of the right to review would instead invite second and third bites at the apple.

“The classic example of a nonreviewable state court decision arises when the state court relied exclusively upon specific state constitutional provisions to strike down a state [action].” David A. Schlueter, *Judicial Federalism and Supreme Court Review of State Court Decisions: A Sensible Balance Emerges*, 59 NOTRE DAME L. REV. 1079, 1095 (1984). For good reason: “[i]t is fundamental that state courts be left free and unfettered by [this Court] in interpreting their state constitutions.” *Minnesota v. Nat’l Tea Co.*, 309 U.S. 551,

557 (1940). Being too quick to find a federal hook in a state constitutional case risks an undue federalization and homogenization of *all* constitutional protections—a risk that’s already great enough in the era of ever-more aggressive constitutional incorporation. See, *e.g.*, David Landau, et al., *Federalism for the Worst Case*, 105 IOWA L. REV. 1187, 1216 (2020) (describing how federal-court review of essentially all state-court decisions in Mexico “was a key tool of centralization during the authoritarian regime that [formerly] governed Mexico”).

This case fits the “classic example.” The challengers to the Virginia redistricting effort raised no federal claim. The briefs are state-focused all the way down. See App.112a-216a. We see no “specific constitutional language, constitutional citation, appropriate federal precedent, substantive constitutional analogy, argument with no masking state-law character, and the like.” *Nadworny v. Fair*, 872 F.2d 1093, 1101 (1st Cir. 1989). Nor did Applicants assert any federal-law defense to the redistricting claims. So while “[i]t must be clear from the record that a claim under a federal statute or the federal constitution was presented to the state courts,” no such claim can be found here. 20 FED. PRAC. & PROC. DESKBOOK § 114 (2d ed. Apr. 2026 update).

The opinion tracks Applicants’ original non-federal framing. The opinion’s lone engagement with federal authority is a passing reference to federal sources in explaining the ordinary meaning of the word “election.” App.19a–20a. No court has ever held that kind of background observation is sufficient to create federal jurisdiction. The opinion otherwise reads exactly as one would expect a state constitutional decision to read: by discussing the text, purpose, structure, history, and common understanding of the key

constitutional provisions, relying on state precedents, historical sources, dictionaries, and contemporaneous commentary. It also addresses contrary arguments, including the dissent’s unusual suggestion that the majority’s reading would conflict with federal law governing federal elections—elections not at issue in that aspect of the case. App.27a-28a, see also App.39a.n.8 (Powell, C.J., dissenting) (acknowledging that “the specific election at issue in this case was the general election of members of the House of Delegates”). In sum, the decision has next to nothing definitive to say about federal law—and thus nothing “substantial” for this Court to review. Certainly nothing hints that the Virginia court “believed that federal law required it to” decide as it did. *Glossip v. Oklahoma*, 604 U.S. 226, 243 (2025).

In response, Applicants can only suggest that, in defining “election” in the Virginia Constitution, the lower court was “influenced” by and decided issues “interwoven with” federal law. See Appl.12 (citing *Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng’g, P.C.*, 467 U.S. 138, 152 (1984), and *Michigan v. Long*, 463 U.S. 1032, 1040 (1983)). But no decision of this Court has held that a state court’s mere citation to federal authority, as one persuasive authority among many, transforms a state-law decision into a federal one. *Long* itself confirms that state courts can freely cite federal precedent without eliciting federal review; they need only make clear that “the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.” *Long*, 463 U.S. at 1041. Virginia’s high court did just that, as it the federal authorities as a single confirmatory data point that it recognized wasn’t binding. Indeed, the court noted a *lack* of “binding[] federal law” on the particular definition of “election.”

App.28a. That approach—considering federal authority while recognizing its non-binding nature—is consistent with longstanding Virginia practice. See, e.g., *Toghill v. Commonwealth*, 768 S.E.2d 674, 677 (Va. 2015) (“While this Court considers Fourth Circuit decisions as persuasive authority, such decisions are not binding precedent for decisions of this Court.”).

Even if some federal thread could be found in the opinion below, this Court still lacks jurisdiction. At the very least, the decision contains “adequate and independent state grounds” to support the judgment, precluding review. *Pitcairn*, 324 U.S. at 125. In such a situation, “resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (noting this requirement is jurisdictional). The decision below is “independent” of federal law in the relevant sense: it does not “depend on a federal constitutional [or statutory] ruling on the merits.” *Stewart v. Smith*, 536 U.S. 856, 860 (2002). It instead turned on the Court’s assessment of history, structure, purpose, text, and other authority pertaining *specifically* to the Virginia Constitution. And this mode of constitutional analysis—grounded in text, history, structure, and purpose—is the kind of clearly established and consistently followed approach that constitutes an “adequate” ground. *Lee v. Kemna*, 534 U.S. 362, 380-88 (2002); *Ford v. Georgia*, 498 U.S. 411, 423-25 (1991).

Applicants do not—because they cannot—argue that the judgment below would fail absent any federal-law component. Remember that the state constitutional provision at issue long predates the federal election statutes Applicants invoke. Why then would modern federal election laws govern the issue? The state-law grounds independently

sustain the Supreme Court of Virginia’s decision, and that conclusion marks the end of this Court’s jurisdictional work.

Accepting jurisdiction here would require this Court to treat any state constitutional decision that glances at federal authority as a federal case. Yet such a rule would swallow the independence this Court has always respected as to state courts. Because the Virginia Supreme Court decided Virginia law, there’s nothing more for this Court to review, let alone grant emergency relief on.

II. THE SUPREME COURT OF VIRGINIA DID NOT TRANSGRESS THE ORDINARY BOUNDS OF JUDICIAL REVIEW.

Applicants also say this case presents a rare instance in which a state court has “transgress[ed] the ordinary bounds of judicial review” such that the court has “arrogate[d] to [itself] the power vested in state legislatures to regulate federal elections.” *Moore v. Harper*, 600 U.S. 1, 36 (2023). The Court has invoked this standard (and similar ones) when state courts “read state law in such a manner as to circumvent federal constitutional provisions.” *Id.* at 35; see also *Lyle v. Artuz*, No. 03-CV-5155, 2006 WL 1517750, at *10 (E.D.N.Y. May 31, 2006) (suggesting this principle is designed to prevent “obvious subterfuge to evade consideration of a federal issue”). This high standard should thus not be met “[a]s long as state judges ... are engaged in the same kinds of judicial processes and doing the same kinds of interpretive things they have done historically under state law in resolving state election contests.” Vikram David Amar & Akhil Reed Amar, *Eradicating Bush-League Arguments Root and Branch: The Article II Independent-State-Legislature Notion and Related Rubbish*, 2021 SUP. CT. REV. 1, 48 (2021); see also, e.g., *Ward v. Bd. of Cnty. Comm’rs of Love Cnty.*, 253 U.S. 17, 22-23 (1920) (allowing federal courts to evaluate

whether federal rights were “denied in substance and effect, as by putting forward nonfederal grounds of decision that were without *any* fair or substantial support” (emphasis added)); *Bush v. Gore*, 531 U.S. 98, 120 (2000) (Rehnquist, C.J., concurring) (finding “no basis” for a state decision and its reliance on an “entirely irrelevant” provision).

The Elections Clause does not write a blank check for Federal review. Even in the elections context, mere disagreement with the state court’s reading of state election-related law should not be enough for this Court to second guess it. *Eberle v. People of State of Michigan*, 232 U.S. 700, 705 (1914). “When potential conflicts between federal and state courts come down to little more than how best to read statutory [or constitutional] texts—particularly those replete with seeming gaps and ambiguities—the difference in interpretation will frequently amount to [merely] a philosophical difference over how courts should generally go about interpreting statutes” or constitutional provisions. Richard H. Pildes, *Judging “New Law” in Election Disputes*, 29 FLA. ST. U. L. REV. 691, 720 (2001). And constitutional provisions *invite* ambiguity, as they cannot “partake of the prolixity of a legal code.” *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). Ultimately, only an appropriately deferential standard will ensure that “[t]he Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review.”¹ *Moore*, 600 U.S. at 22.

¹ All this analysis assumes that *Moore* was rightly decided. But see *Moore*, 600 U.S. at 55 (Thomas, J., dissenting) (explaining the problems with *Moore*’s Election Clause analysis). If the Court is having second thoughts about applying this concededly ambiguous standard, then it should construe the application as a petition for certiorari and earnestly revisit *Moore* head on. The Court shouldn’t warp the present standard of review to upset a state court decision that bespeaks proper, reasoned decisionmaking in any sense of the term.

Applicants never squarely presented this Election Clause argument below, so it seems an unlikely winner on any eventual petition for writ of certiorari. See *Webb v. Webb*, 451 U.S. 493, 495 (1981). But in any event, it fails on the merits.

One need only spend a few minutes with the Supreme Court of Virginia’s opinion to see why Applicants’ argument under *Moore* can’t succeed. There, the court canvassed the “detailed process” behind constitutional amendments in Virginia, including the history and purposes behind this process. See App9a-13a. It explained how Applicants’ reading of the “intervening election” requirement would undermine the “clear purpose” behind that process, effectively barring more than a million Virginians who had voted *before* the amendment was submitted from weighing in on it. App13a. Applicants’ conception of an election as a flashpoint in time was also inconsistent with longstanding Virginia constitutional requirements calling for a long period of notice and deliberations, the Court said. App.14a. Ordinary understandings of “election”—shown in sources such as dictionaries of the time—would not support Applicants’ view, either. App.15a-16a. And the court concluded that related but distinct constitutional terms, such as “election,” “election day,” and “shall be elected,” should carry different constitutional meaning and weight given the context in which the Constitution uses them. App.17a-21a. Lastly, the opinion directly engaged with—but found unpersuasive—the dissent’s arguments about how “election” might be viewed in other contexts, such as state statutes, separate constitutional provisions governing military services and qualifications for state legislators, and understandings of “election” when it comes to federal elections. App.23a-26a. While the dissent preferred an approach of rigid consistency, the majority recognized that context is king.

None of this work is so unusual that it suggests the court abdicated its judicial role; to the contrary, it shows the court was coloring well within the lines. Applicants derisively characterize the court's choice to define "election" differently in different parts of the Constitution or statutes as unjustifiable. Appl.21. Yet this Court, too, has recognized that the same words can mean different things, even in the same act. See *Barber v. Thomas*, 560 U.S. 474, 484 (2010); see also *Lamar v. United States*, 240 U.S. 60, 65 (1916) ("The same words may have different meanings in different parts of the same act, and of course words may be used in a statute in a different sense from that in which they are used in the Constitution."). Even more so when "[n]othing in the text of either Clause, the Constitution's structure, or its history suggests a link between the Clauses." *Noel Canning v. NLRB*, 705 F.3d 490, 504 (D.C. Cir. 2013). "There is, then, no 'effectively irrebuttable' presumption that the same defined term in different provisions of the same statute"—or Constitution—must 'be interpreted identically.' Context counts." *Env't Def. v. Duke Energy Corp.*, 549 U.S. 561, 575-76 (2007) (cleaned up); see also *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433-34 (1932) (explaining that the same words in the Constitution often have different meanings depending on their context). And sure enough, the Virginia court's concern for context is nothing new, as about every court applies "the cardinal rule to construe [constitutional] provisions in context." *United States v. Balsys*, 524 U.S. 666, 673 (1998). So the Virginia court was merely applying well understood principles of constitutional construction.

All that's left, then, is rhetoric and rewarmed arguments that the state court considered but found unconvincing. For instance, Applicants repeatedly decry the opinion

as one driven solely by policy and purpose. Even if that were true—it’s not—it would be no reason to invoke this Court’s review. See Leah M. Litman & Katherine Shaw, *The “Bounds” of Moore: Pluralism and State Judicial Review*, YALE L. J. REV. FORUM, Mar. 29, 2024, at 881, 900 (requiring state courts to focus solely on hyperliteral constructions of constitutional text would “conflict with *Moore*’s understanding that the constitutional system incorporates state approaches to judicial review and legal interpretation that existed at the Founding”). *This* Court has considered such things in construing the U.S. Constitution, for example. See *United States v. Classic*, 313 U.S. 299, 316 (1941) (“[W]e cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the Constitutional purpose.”).

And if this case were to become a contest over who showed the most concern for text alone, then one tell in Applicants’ argument gives the game away: while attacking the Virginia court’s analysis as beyond the “bounds,” Applicants never engage directly with the text of Article XII, Section 1, the constitutional provision that actually governs here. A party claiming that a state court has distorted its own constitution ought to grapple with the constitutional text, not merely with the court’s reasoning about it.

In short, the Virginia state court did not go so far afield that it produced a federal constitutional problem. Quite the opposite: the state court employed sound judicial reasoning to conclude that an election can start when people start voting. The Court need not take a closer look at that.²

² To warrant denying the application, it’s enough to say that Applicants have failed to present even a colorable basis for this Court’s review. But if the Court were to go further and look at the equities, Appl.22-24, then those would favor Respondents, too. Applicants

CONCLUSION

The Court should deny the emergency application for a stay.³

Respectfully submitted.

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again offer plenty of rhetoric about creating confusion in elections and overthrowing the will of the people. *Id.* But it's Applicants who want to create confusion shortly before the midterms; Respondents are asking for the upcoming election to be run like the last one. A stay would only further compound the confusion, inviting a whiplash situation in which elections are held under new maps for just one election, only to revert to the old maps for the next, all at the behest of this Court. "It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring); see also *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). As for overturning a vote, Applicants asked the state court to wait for the vote before deciding. App.7a-8a. They can hardly then use that vote to blockade judicial review. What's more, the intervening election requirement is meant to ensure that *all* voters have a voice; Applicants prefer to disenfranchise more than a million Virginians while priming the rest with misleading ballot language. And in the end, "[a] judge does no damage to democratic accountability by issuing a decree that prohibits violation of a constitutional right" because "[w]hether to obey the Constitution is not a policy choice in the first place." ROSS SANDLER & DAVID SCHOENBROD, *DEMOCRACY BY DECREE: WHAT HAPPENS WHEN COURTS RUN GOVERNMENT* 204 (2003).

³ Applicants characterize their application as a request for a stay of the Supreme Court of Virginia's decision. Appl.24. But the state circuit court entered an injunction that would continue to operate even if this Court stays the Virginia Supreme Court's decision. See App.52a. So the application is more accurately a request to stay the *trial* court's decision.