No. 26-205

IN THE

Supreme Court of the United States

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS, ET AL.,
Appellants,

v.

HOWARD W. LUTNICK, SECRETARY OF COMMERCE, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF OF AMICUS CURIAE CENTER FOR ELECTION CONFIDENCE IN SUPPORT OF APPELLANTS

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INTEREST OF THE AMICUS CURIAE

The Center for Election Confidence, Inc. (CEC), is a nonprofit organization that promotes ethics, integrity, and professionalism in the electoral process.[1] CEC works to ensure that all eligible citizens can vote freely within an election system with reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes. To that end, CEC conducts, funds, and publishes research on current and proposed election methods; serves as a resource for lawyers, journalists, policymakers, and courts; and files amicus briefs in cases where its background and national perspective may illuminate the issues under consideration. *See, e.g.*, Ctr. for Election Confidence Amicus Br., *Bost v. Ill. State Bd. of Elections*, No. 24-568 (U.S. July 29, 2025).

Apportionment is the moment that a census becomes representation, and section 209 is the instrument that Congress built to test the count when the count goes wrong. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 209, 111 Stat. 2440, 2480 (1997) (13 U.S.C. § 141 note); App.126a-133a. Whether that instrument still works is the question this brief addresses.

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[1]No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received timely notice of amicus curiae's intention to file this brief.

SUMMARY OF THE ARGUMENT

The decision below did not merely find that *these* Plaintiffs lost the race to the courthouse; it found that *any* plaintiff would. Three holdings did the work: (1) that the complaint failed to connect the Census Bureau's (the "Bureau") methods to Florida's undercount, App.17a; (2) that relief had become impracticable once elections and redistricting went forward, App.20a-21a; and (3) in the alternative, that a four-year clock had begun in 2021 and expired before suit, App.54a.

When placed in the context of the census calendar, these holdings do not describe a plaintiff who waited too long, but a cause of action that the panel has written out of existence.

The timeline makes the point. The Bureau did not disclose that it had failed to count roughly 760,000 Floridians until May 2022. App.108a. Yet Florida had completed its redistricting the month before. App.105a. Completed redistricting is what the panel treats as foreclosing relief, App.20a-21a, and on the panel's account of causation no complaint filed before the Bureau's May 2022 disclosure could have pleaded the connection between the Bureau's methods and Florida's undercount. App.16a-17a. Suing earlier would not have helped: in June 2021 another three-judge court held that § 209 plaintiffs lacked standing until the Bureau delivered its redistricting data, *Alabama v. U.S. Dep't of Commerce*, 546 F. Supp. 3d 1057, 1071 (M.D. Ala. 2021), closing the window Congress opened before the Bureau published the facts any plaintiff would need to pass through it.

Put differently, suing before the Bureau's report is too early, and suing after the Bureau's report is too late. This is wrong for three reasons.

First, the panel did not identify the day on which suit would have been both timely and redressable, and it disclaimed any bright line. App.24a. In his dissent, Judge Merryday searched for that day. He posited a complaint filed in April 2025, well inside the four years that the majority allowed, and concluded that it too would have been dismissed, because "the plaintiffs' action is lost to impracticability long before expiration of the applicable limitation." App.71a.

Second, the panel's absent-party ground is phrased in terms of delay but rests on a misreading of this Court's precedents that no filing date could cure. Relief here, the panel maintained, depends upon the President, who is not a defendant and cannot be enjoined. App.25a-26a. But that is true of every census case ever brought, because the statutes route every apportionment through the President in mandatory terms. 13 U.S.C. § 141(b); 2 U.S.C. § 2a(a), (b).

Worse still for the decision below, a court need not be able to compel the President in order to assume that he will do what a statute directs. Quoting *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992), the panel observed that the President would "not be directly bound" by such a determination. App.25a. The main clause of that sentence says a court "may assume it is substantially likely" that he will comply all the same. The panel turned that assumption into a burden Plaintiffs had to carry, App.26a-27a, and in doing so parted ways with the only other three-judge court to read the passage. *Common Cause v. Trump*, 506 F. Supp. 3d 39, 54 (D.D.C. 2020).

Third, Congress anticipated the exact difficulty the panel invokes. Section 209(a)(8) finds that post-enumeration relief would be impracticable, and the panel read that finding as Congress agreeing with its result. App.21a-22a. But a finding describes the problem the statute exists to solve, not the solution. Read in place, § 209(a)(8) describes the world without the rest of § 209: an unlawful count, and no court able to give a State meaningful relief once the counting is done. Congress wrote the remainder of the section to prevent that world. It gave an extraordinarily broad class of plaintiffs a cause of action, three-judge courts, review in this Court, and a command to expedite "to the greatest possible extent." § 209(b), (d), (e); App.128a-131a. Congress answered the difficulty with speed, not with a locked door.

The stakes extend well beyond this lawsuit. The Bureau will use count imputation again in 2030, J.S. 36 & n.12, and the residents and Members to whom § 209(d) provides a cause of action will meet that census facing the same sequence. Whether the count is the "actual Enumeration" the Constitution requires will continue to evade review. U.S. Const. art. I, § 2, cl. 3. Hamilton defended the actual census as the rule that shut out manipulation: "[a]n actual census or enumeration of the people must furnish the rule, a circumstance which effectually shuts the door to partiality or oppression." The Federalist No. 36, at 220 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (discussing apportionment of direct taxes); *see Utah v. Evans*, 536 U.S. 452, 501 (2002) (Thomas, J., concurring in part and dissenting in part) (quoting same). Congress wrote § 209 to keep the statistical door shut by keeping the litigation door open. This Court should note probable jurisdiction or summarily reverse.

ARGUMENT

In § 209 Congress created a cause of action for an extraordinarily broad array of persons and directed the courts to hear it quickly. The decision below renders that cause of action a nullity with no day on which it may be brought, because each of the panel's three holdings requires a plaintiff to have acted at a particular moment—each moment mutually exclusive of the others. The arrangement calls to mind the White Queen's rule respecting jam: "The rule is, jam to-morrow and jam yesterday—but never jam to-day." Lewis Carroll, *Through the Looking-Glass, and What Alice Found There*, ch. 5 (1871).

The White Queen's rule is not that there is no jam, but that the day upon which one may have it is never this one—the proverbial "free beer tomorrow." This is effectively the rule adopted by the panel below for a § 209 plaintiff. Conceptually, there is always a moment at which an aggrieved person could have sued, but that moment never arrives.

I. The Decision Below Leaves a Section 209 Plaintiff No Day on Which to Sue.

Appellants explain why each holding is mistaken on its own terms. J.S. 11-31. If one accepts each of the panel's requirements exactly as the panel stated them, a different question emerges: when could a plaintiff have satisfied all three at once? The answer is simple: Never.

A. The Causation Holding Requires Proof That Arrives Too Late for the Redressability Holding.

Begin with causation, which the panel called dispositive. App.17a. The complaint alleges that the Bureau's use of whole-person imputation cost Florida a seat. App.108a. The panel found that allegation conclusory, relying on (1) the Bureau's own report that imputation had "very little impact on net coverage error estimates" and (2) the Bureau's own tables showing Florida's imputation rate running slightly above the national rate. App.17a. Appellants explain why those inferences are wrong and why drawing them against a complaint on a motion to dismiss was error. J.S. 20-24.

The inference is Appellants' to contest. The standard that the panel applied is what will outlive this case. This Court has already settled the level of generality at which causation is measured in a census case, finding "undoubtedly a 'traceable' connection between the use of sampling in the decennial census and Indiana's expected loss of a Representative," and saying so at summary judgment on a record containing an expert affidavit. *See Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 332 (1999). The panel below asked for considerably more, and asked for it on the pleadings: namely, a demonstration of the mechanism by which a challenged method produced a particular State's undercount, measured against the Bureau's own account of what its methods accomplished.

No plaintiff can satisfy that standard, and the reason is structural rather than evidentiary. The counterfactual it requires—what the count would have shown had the Bureau enumerated rather than imputed—is a figure that only the defendant could generate, and the defendant is under no obligation to generate it.

What the Bureau does publish is not a set of findings. Instead, its state-level figures are confidence ranges in which "no place within that range is any more likely to prove accurate than any other place within the range," and statistics of that sort are "notoriously slippery, opaque, and difficult to understand with precision and clarity." App.65a-66a (Merryday, J., dissenting). They warrant "exploration on a full record, including expert testimony." App.67a.

The panel supplied none of that. It resolved a contested statistical question on the pleadings, against the complaint, on the strength of the Bureau's own account of its own methods. An agency's characterization of its own methods thus defeats the cause of action that Congress wrote to test them. And the calendar makes matters worse rather than better. The only public source for a State's coverage error is the Bureau's own post-enumeration survey, and the Bureau did not publish Florida's figure until May 2022. App.108a. The Bureau report that the panel relied on to discount causation, the one stating that whole-person imputation had "very little impact on net coverage error estimates," App.17a, did not issue until 2023. J.S. 32 & n.10. Before those dates a plaintiff could not describe what the Bureau had done to her State, which is the showing the panel demands.

Two three-judge courts had already marked the early boundary. In November 2020, a court dismissed as prudentially unripe a challenge to the 2020 apportionment base that invoked § 209 among other grounds, holding that "the existence of an express cause of action does not itself establish prudential ripeness" and that the expedition clause does not change the analysis. *Common Cause*, 506 F. Supp. 3d at 55-56. In June 2021, two months after the apportionment counts were released, the second panel held that individual § 209 plaintiffs lacked standing because their State had not yet received its redistricting data, "meaning that the Individual Plaintiffs have no basis for believing they were, or will be, undercounted." *Alabama*, 546 F. Supp. 3d at 1071. Their fears were "riddled with contingencies and speculation that impede judicial review." *Id.* (quoting *Trump v. New York*, 592 U.S. 125, 131 (2020)). The court invited them back "once the final redistricting data are actually delivered to the states." *Id.* at 1071-72.

The redistricting data arrived on August 12, 2021. App.10a. That delivery cured the defect *Alabama* identified. It did nothing for the defect the panel below identified, because the redistricting file reports counts and says nothing about coverage error, which is the fact the panel says this complaint failed to supply. App.16a-17a.

And if ripeness does not prevent a claim on one end, impracticability will doom it on the other. The panel held relief impracticable because 44 States have redrawn their congressional districts, all 50 have redrawn state and local districts, and two federal elections have been held. App.20a-21a. Florida's contribution to that history is pleaded in the complaint. App.105a.

Set the dates side by side. Florida received its redistricting data in August 2021, began drawing lines in January 2022, and finished in April 2022. App.10a, 105a. The Bureau disclosed Florida's undercount on May 19, 2022. App.108a. Before May

19, no plaintiff could plead the undercount the panel requires. After May 19, Florida's lines were already drawn, the first of the events the panel counts against relief. App.20a-21a. Not even Odysseus himself could sail between the lower court's Scylla and Charybdis.

B. The Panel Identified No Day on Which Suit Could Have Been Timely and Redressable.

It would be one thing if the panel had drawn a line and a plaintiff had fallen on the wrong side of it. But the panel drew no line and said so: "Although we do not hold that relief is always impracticable after a first election conducted using a new census's apportionment, this is yet another distinction from *Evans*." App.24a. Elsewhere the opinion refers only to "this late date in the decennial cycle." App.30a. The rule extinguishes redressability somewhere between the completion of the count and the fifth year afterward, but never says where.

The dissent went looking for the place. Assuming the four-year period applied, it posited a complaint filed April 20, 2025, and asked whether the majority would have let that case go forward:

> Apparently not. What of "redressability"? What of practicability? What of the certification? What of the convening and organization of a new Congress? What of laws passed, signed, and enforced in the interim by a misaligned Congress or state legislature? Under the majority's reasoning, the plaintiffs' action is lost to impracticability long before expiration of the applicable limitation.

App.71a (Merryday, J., dissenting).

The difficulty extends beyond this panel. The decision below leaves no window. Discount its causation holding, and two other three-judge courts have already closed the early end. *Common Cause* deferred review of a challenge to the apportionment base until "after the Secretary and the President have fixed" it. 506 F. Supp. 3d at 54-55. *Alabama* held that individual plaintiffs lacked standing until the redistricting data reached the States. 546 F. Supp. 3d at 1071-72. The panel below held that redressability lapses once the States put that data to use. App.20a-21a. Each court closed a different stretch of the cycle, none disagrees with the others, and together they cover the decade. What none supplies, and what this Court must answer, is when a § 209 plaintiff can bring suit.

C. The Clock that the Panel Started Was Running Before the Claim Existed.

The panel held in the alternative that a four-year period began with the Bureau's releases of data on April 26 and August 12, 2021, and had run before this suit was filed. App.54a. Appellants demonstrate that the six-year period in 28 U.S.C. § 2401(a) governs, and they prevail on that ground whatever one concludes about accrual. J.S. 27-31. This Court need not decide when the claim accrued to see the difficulty. The accrual date that the panel selected cannot be squared with this Court's standard rule, and that mismatch supplies a ground narrower than either question presented.

The rule is familiar. A limitations period "commences when the plaintiff has a complete and present cause of action," and a cause of action is not complete "until the plaintiff can file suit and obtain relief." *Green v. Brennan*, 578 U.S. 547, 554 (2016) (quoting *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)). Section 209 gives its cause of action to a "person aggrieved," and for a resident that phrase means one "whose congressional representation or district could be changed as a result of the use of a statistical method challenged in the civil action." § 209(b), (d)(1); App.128a-130a. Aggrievement is thus an element of the claim, not a label attached to it afterward. A resident who cannot say whether a challenged method could have changed her State's representation because the Bureau has not released the relevant data does not yet have a complete cause of action. She has a suspicion.[2] The White Queen kept her calendar on the same principle. Of the King's Messenger she said, "He's in prison now, being punished: and the trial doesn't even begin till next Wednesday: and of course the crime comes last of all." Carroll, *supra*, ch. 5. The panel's accrual date puts the limitations period first and the claim last.

What makes the panel's date hard to defend is that the panel itself keyed accrual to publication of the data. App.8a, 10a, 54a. Having done so, it declined to apply that trigger to the publications that disclosed the aggrievement. Both ran on a schedule that the Bureau alone controlled. Congress required the

[2] The statute's own structure confirms the point. Section 209(d)(1) reaches a resident "whose congressional representation or district could be changed" by the challenged method, App.129a, a condition tied to facts the Bureau publishes on its own schedule. Section 209(d)(2) reaches "any Representative or Senator in Congress," App.130a, with no comparable condition. Congress conditioned the resident's aggrievement on data, and only the resident's.

apportionment tabulation within nine months of the census date, 13 U.S.C. § 141(b), meaning December 31, 2020. However, the report did not arrive until April 26, 2021. App.8a. The coverage estimates followed thirteen months later. Whatever the right accrual rule, a defendant controlling both the calendar and the data should not be able to exhaust a limitations period before the plaintiff can plead.

II. The Panel's Absent-Party Rule Would Defeat Every Census Case, Whenever Filed.

The panel's impracticability rationale depends on how much time has passed. Its second rationale borrows the vocabulary of delay, App.26a, 27a, 30a, but does not depend on it. The panel held that redress here "requires action by absent third parties," App.25a, principally the President, and that Plaintiffs failed to allege that he would act, App.26a. Nothing in that logic turns on the calendar. A plaintiff who filed in the first week after the count would face the same officer, the same statutes, and the same demand for an allegation that he will comply.

A. Because Every Apportionment Runs Through the President, the Rule Always Defeats Redress.

The statutes leave a plaintiff no other route to redress, and they command each step of the only route. The Secretary "shall" complete the tabulation of total population and report it to the President. 13 U.S.C. § 141(b). The President "shall transmit to the Congress a statement showing the whole number of persons in each State" together with the number of Representatives to which each State would be entitled. 2 U.S.C. § 2a(a). The Clerk of the House then has a "duty" to send each State its certificate. *Id.* § 2a(b); *see* App.19a n.7. No apportionment reaches a State except through the President. Yet the panel held that a district court is "generally powerless 'to enjoin the President in the performance of his official duties.'" App.26a.

A plaintiff challenging a census method would therefore always seek relief that passes through an official who cannot be made a defendant. The panel "acknowledge[d]" that "Section 209 does not bar postcensus lawsuits," App.19a, but then adopted a rule under which no postcensus lawsuit can be redressed. Congress does not enact causes of action that nobody can use, and a reading that produces an absurd result yields to an alternative "consistent with the legislative purpose." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). A government of laws "will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). This Court has said as much of § 209, observing that the statute gives no reason why Congress "would have wished to deprive of its day in court a State that did not learn about a counting method's representational consequences until after the census is complete." *Utah v. Evans*, 536 U.S. 452, 463 (2002).

B. The Panel's Authorities Involved Strangers to the Judgment, Not Officers Under Statutory Command.

The panel took its absent-party rule from *Lewis*, *Jacobson*, and *Brackeen*. App.18a, 30a. Each involved a third party who owed nothing by reason of the judgment, which is what makes them a poor fit for a statutory chain of mandatory duties.

In *Lewis*, minimum-wage employees sued Alabama's Attorney General over a state statute voiding local wage ordinances, and redress depended on private Birmingham employers deciding on their own to raise wages. *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1304-05 (11th Cir. 2019). A private employer owes nothing to a judgment against the Attorney General, and no statute directs it to do anything once that judgment issues.

Brackeen turned on the same gap between the defendant sued and the actor who would have to move. Petitioners challenged the Indian Child Welfare Act, but the placements that they objected to are ordered by state courts in individual custody proceedings. This Court held that "state officials are nonparties who would not be bound by the judgment," so petitioners "can hope for nothing more than an opinion." *Haaland v. Brackeen*, 599 U.S. 255, 293-94 (2023). A state judge deciding a custody case owes nothing to a judgment against the Secretary of the Interior.

Jacobson is worse still because *Jacobson* named the cure. Voters there challenged Florida's ballot-order statute and sued the Secretary of State. The Eleventh Circuit held that "any injury would be neither traceable to the Secretary nor redressable by relief against her," and would instead be "traceable only to 67 Supervisors of Elections and redressable only by relief against them." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253 (11th Cir. 2020). The court then explained what the plaintiffs ought to have done: "To satisfy traceability and redressability, the voters and organizations should have sued the Supervisors of Elections instead of the Secretary of State." *Id.* at

1258. Appellants here sued the officials whom the statute charges with taking and reporting the census, 13 U.S.C. § 141(a), (b), and there is no other defendant to sue. *Jacobson* faulted plaintiffs for suing an officer who could not deliver relief. The panel faults Appellants for suing the only officers who can.

The panel attempted to reinforce its rule with this Court's warnings against redressability theories that turn on "unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict," App.18a (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)), and against reliance upon a "speculative chain of possibilities," App.27a. Each formulation describes discretion, and the discretion § 2a(a) leaves the President does not reach the act at issue. The statute says he "shall transmit" a statement showing each State's whole number of persons and its number of Representatives, computed by the method Congress fixed. 2 U.S.C. § 2a(a). This Court has called that calculation "admittedly ministerial." *Franklin*, 505 U.S. at 799. What *Franklin* reserved to the President is different: authority to direct the Secretary "in making policy judgments that result in 'the decennial census.'" *Id.* Those judgments are the very thing a § 209 suit tests. Once a court holds a method unlawful and orders a corrected report, the choice the panel worried about has been made, but by law rather than by the President, and what remains is the "purely mechanical" step this Court described in *Evans*. 536 U.S. at 463.

C. This Court Supplies the Presumption that the Panel Demanded Plaintiffs Plead.

In its absent-party analysis, the panel wrote: "The Supreme Court has already noted that '[t]he President and other executive and congressional officials . . . would not be directly bound by . . . a determination' ordering mandatory relief." App.25a (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (plurality opinion)). But here is the sentence the panel was quoting:

> And, as the Solicitor General has not contended to the contrary, we may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the District Court, even though they would not be directly bound by such a determination.

Franklin, 505 U.S. at 803.

The clause the panel quoted is the concession; the main clause is the holding. The panel knew the main clause, quoted it elsewhere, App.20a, 27a, and treated it as a burden Plaintiffs had failed to carry "so late in the decennial process." App.26a. But the assumption is no longer supported by only a plurality. This Court adopted it in *Evans*, holding that a corrected certificate "would bring about the ultimate relief" sought because it was "substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision." 536 U.S. at 463-64 (quoting *Franklin*, 505 U.S. at 803). *Evans* prefaced that conclusion with "[u]nder these circumstances," *id.* at 463, and the panel reads those words as confining the presumption to suits filed before the first election. App.27a. The circumstances *Evans* named were two: the apportionment steps "would be purely mechanical," and "several months would remain prior to the first post-2000 census congressional election." 536 U.S. at 463. The second speaks to whether relief can be delivered before an election, which is the panel's impracticability rationale, not to whether the President will obey a judgment. Nothing in *Evans* suggests that the presumption of official compliance weakens with the calendar.

A three-judge court read these same materials in 2020 and stated the consequence without hesitation. Having observed that this Court "later treated the redressability analysis of the *Franklin* plurality as a binding holding," it concluded that "[g]iven this precedent, we cannot assume that the President would refuse to revise the apportionment calculation in response to an authoritative judicial decision." *Common Cause*, 506 F. Supp. 3d at 54. Yet the panel below required Plaintiffs to allege that he would. App.26a. Both propositions cannot be right, and the disagreement between them has nothing to do with the facts of either case. It is a disagreement about what *Franklin* and *Evans* held.

None of this requires an injunction against the President, which is the point of the presumption. A court corrects the Secretary's report, the President transmits the statement that the corrected report yields, and the Clerk, whose role is "purely ministerial," certifies it. *Franklin*, 505 U.S. at 824 (Scalia, J., concurring in part and concurring in the judgment). The panel took a presumption that the plaintiff receives and converted it into a burden a plaintiff carries. This is reversible error.

D. A Three-Judge Court Held That the Passage of Time Does Not Defeat This Remedy.

The panel treated the 2021 and 2022 rounds of redistricting as the fact that separates this case from *Evans*. App.20a-21a. In November 2020, a three-judge court weighed a related objection, that delayed review would leave the States unable to redistrict in time, and answered it by canvassing this Court's census docket:

> [A]pportionment challenges often are adjudicated after the apportionment is complete, see *Wisconsin*, 517 U.S. at 4; *Utah v. Evans*, 536 U.S. at 458-59; *Dep't of Commerce v. Montana*, 503 U.S. 442, 445-46 (1992); *Franklin*, 505 U.S. at 790-91, and we are aware of no instance in which this has prevented the affected states from finishing their redistricting in time for the next election cycle.

Common Cause, 506 F. Supp. 3d at 54.

The panel here reached the opposite conclusion, and it did so without mentioning two of the four decisions that court relied upon. Wisconsin was decided in 1996 on a challenge to the Secretary's refusal to adjust the 1990 count. *Wisconsin v. City of New York*, 517 U.S. 1, 4, 10-11, 24 (1996). The remedy was still live six years later.

The panel's disruption premise fares no better in its own footnotes. One observes that many States are "undergoing current and ongoing redistricting efforts" following this Court's decision in *Louisiana v.*

Callais, 608 U.S. 85 (2026). App.21a n.8. The panel offered that wave of new maps as proof that correction would disrupt. It proves nearly the opposite, that legislatures redraw congressional districts on short notice, mid-decade, whenever the law requires it or a State decides to do it. The complaint pleads another instance: the mid-decade special session on congressional redistricting that Florida's Governor called for April 2026. App.106a. The districts drawn from the 2020 count are not, and never were, carved in stone.

Nor is a completed election the obstacle that the panel makes it out to be. Courts order congressional maps redrawn in the middle of a decade as a matter of ordinary remedial practice, and they do so after elections have been conducted under the map being replaced. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285 (2017). Alabama's 2021 plan was preliminarily enjoined in January 2022, the 2022 election proceeded under it after this Court stayed the injunction, and the plan was redrawn once this Court affirmed. *Allen v. Milligan*, 599 U.S. 1 (2023). *Evans*' observation that "several months would remain" before the next election, 536 U.S. at 463, concerned how easily relief could be implemented, *see* Part II.C, *supra*, not whether an election places a map beyond correction. Elections conducted under a map have never been understood to place that map beyond remedy, and the panel identifies no principle for deciding when one election becomes too many.

III. Section 209(a)(8) Explains Why Congress Demanded Speed, Not Why the Courthouse Should Close.

The panel found support for its result in the statute's own findings. Congress declared that "it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted." § 209(a)(8); App.128a. The panel read that as Congress' agreement, and as a signal "that any challenge to the Bureau's statistical methods for any decennial census should be made either before or soon after the census is complete." App.21a-23a.

The finding does not describe the cutoff the panel drew. It speaks of relief "after such enumeration has been conducted," App.128a, and the Act defines "census" as "a decennial enumeration of the population," § 209(h)(2); App.132a. The panel's holding, by contrast, rests on redistricting and elections that followed the enumeration by months and years. App.20a-21a. Applied as written, the finding would close the door when the counting stopped, before any State had drawn a line. The panel did not go that far, App.22a-24a, and *Evans* forecloses it. 536 U.S. at 463.

The larger trouble with that reading is that a finding itself is not a remedy but the identification of an issue the legislation is meant to address, and Congress did not stop at the finding. Having found post-enumeration relief difficult, Congress did not withhold it; Congress accelerated it. Section 209 sends every action to a three-judge court; consolidates related actions within a circuit; routes appeals directly to this Court on a ten-day notice and a thirty-day jurisdictional statement; forbids a single Justice to stay the district court's order; and commands the courts "to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter." § 209(e)(1), (2); App.130a-131a. The panel catalogued each of these provisions itself. App.43a. Each one answers the impracticability the finding describes, and not one surrenders to it. The description of who may sue points in the same direction because Congress opened the action to any resident whose representation "could be changed," to any Representative or Senator, and to either House. § 209(d); App.129a-130a. A legislature regarding post-census relief as a lost cause would not have gone to that trouble.[3]

This Court, moreover, has already construed the provision. Section 209 "does not say that it bars postcensus lawsuits," and where a suit is "brought soon enough after completion of the census and heard quickly enough," relief is not "necessarily 'impracticable.'" *Evans*, 536 U.S. at 463. North Carolina had cited § 209(a)(8) for the panel's reading, *id.* at 462-63, and the Court's answer was the "day in court" passage quoted above. *Id.* at 463. A Court that read the finding as the panel does could not have made that observation. The panel quoted that passage,

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[3] If Congress wished to withhold relief entirely after a certain point, it could have done so and it is presumed to know how. *See, e.g., Whitfield v. United States*, 543 U.S. 209, 216 (2005) (Congress "knows how to impose such a requirement when it wishes to do so"). Congress also created a Census Monitoring Board with "access to any data, files, information, or other matters maintained by the Bureau," then let it expire in 2001 while leaving aggrieved persons a cause of action for "any later decennial census." Pub. L. No. 105-119, §§ 209(b), 210(e)(3)(A), (j), 111 Stat. 2440, 2481-87. The remedy outlived the only body equipped to look sooner.

App.20a, acknowledged the point, App.19a, and then read § 209(a)(8) as a timing rule that *Evans* had declined to find in it. App.21a-23a.

Congress used the word *impracticable* to explain why these cases must move quickly. The panel used it to explain why this one could not be heard at all. Read that way, § 209 "has become perhaps the most strictly construed remedial statute in the history of remedial statutes." App.73a (Merryday, J., dissenting).

None of this is confined to the 2020 count. Section 209 governs the 2030 census as well, and the Bureau has said it will use count imputation again. J.S. 36 & n.12.

When applied to the forthcoming 2030 count, the panel's reasoning shows the problem. The 2030 Census Operational Plan was published in July 2025. App.72a n.21. Congress deemed the corresponding document for the 2000 census to be final agency action, "sufficiently concrete and final to now be reviewable in a judicial proceeding." § 209(c)(2); App.129a. That provision opened the courthouse early. It did not start a clock. On the panel's logic, though, a claim accrues when the Bureau publishes, App.54a, and publication of the 2025 plan would start one: a four-year period for challenging the methods of the 2030 census would expire in July 2029, before the census is even taken. If instead the clock begins with the data releases, it will start in late 2030 or early to mid 2031 and run through precisely the months in which *Common Cause* and *Alabama* would bar suit. And it will still be running when the States finish redistricting and the window that the panel describes has shut.

The dissent put these questions to the majority and received no answer. "Did a cause of action accrue at that time? Did a challenger have standing? Did the limitation begin at that time? Under the majority's holding, no litigant has standing and this congressional determination is a nullity." App.72a n.21 (Merryday, J., dissenting). A decade hence the same brief will be filed about the same statute unless this Court says now what a § 209 plaintiff must do to be heard.

CONCLUSION

Congress wrote § 209 to keep shut the door Hamilton described. The decision below shuts a different one. Under it, a plaintiff's proof arrives after her remedy expires, the official who completes her relief is beyond reach, and the finding Congress made to justify speed becomes a reason for silence. This Court should note probable jurisdiction or summarily reverse.

Respectfully submitted,

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