Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RILEY, GOVERNOR OF ALABAMA *v.* KENNEDY ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 07–77. Argued March 24, 2008—Decided May 27, 2008

Section 5 of the Voting Rights Act of 1965 (VRA) requires "covered jurisdictions" to obtain preclearance from the District Court for the District of Columbia or the Department of Justice (DOJ) before "enact[ing] or seek[ing] to administer" any changes in their practices or procedures affecting voting.

Alabama is a covered jurisdiction. As of its November 1, 1964 coverage date, state law provided that midterm vacancies on county commissions were to be filled by gubernatorial appointment. In 1985, the state legislature passed, and the DOJ precleared, a "local law" providing that Mobile County Commission midterm vacancies would be filled by special election rather than gubernatorial appointment. In 1987, the Governor called a special election for the first midterm opening on the Commission postpassage of the 1985 Act. A Mobile County voter, Willie Stokes, filed suit in state court seeking to enjoin the election, but the state trial court denied his request. Although Stokes immediately appealed to the Alabama Supreme Court, the special election went forward and the winner took office. Subsequently, however, the Alabama Supreme Court reversed the trial court's judgment, finding that the 1985 Act violated the State Constitution.

When the next midterm Commission vacancy occurred in 2005, the method of filling the opening again became the subject of litigation. In 2004, the state legislature had passed, and the DOJ had precleared, a law providing for gubernatorial appointment as the means to fill county commission vacancies unless a local law authorized a special election. When the vacancy arose, appellee voters and state legislators (hereinafter Kennedy) filed suit against the Governor in state court, asserting that the 2004 Act had revived the 1985 Act and

cured its infirmity under the Alabama Constitution. Adopting Kennedy's view, the trial court ordered the Governor to call a special election. Before the election took place, however, the Alabama Supreme Court reversed the trial court's order, holding that the 2004 Act did not resurrect the 1985 Act. The Governor therefore filled the vacancy by appointment, naming Commissioner Chastang to the open seat. Kennedy then commenced this suit in Federal District Court. Invoking §5 of the VRA, she sought declaratory relief and an injunction barring the Governor from filling the Commission vacancy by appointment unless and until Alabama gained preclearance of the *Stokes* and *Kennedy* decisions. A three-judge District Court granted the requested declaration in August 2006. It determined that the "baseline" against which any change should be measured was the 1985 Act's provision requiring special elections, a measure both precleared and put into "force or effect" with the special election in 1987. It followed, the District Court reasoned, that the gubernatorial appointment called for by *Stokes* and *Kennedy* ranked as a change from the baseline practice; consequently, those decisions should have been precleared. Deferring affirmative relief, the District Court gave the State 90 days to obtain preclearance. When the DOJ denied the State's request for preclearance, Kennedy returned to the District Court and filed a motion for further relief. On May 1, 2007, the District Court vacated the Governor's appointment of Chastang to the Commission, finding it unlawful under §5 of the VRA. The Governor filed a notice of appeal in the District Court on May 18.

Held:

1. Because the District Court did not render its final judgment until May 1, 2007, the Governor's May 18 notice of appeal was timely. Under §5, "any appeal" from the decision of a three-judge district court "shall lie to the Supreme Court," 42 U. S. C. §1973c(a), but the appeal must be filed within 60 days of a district court's entry of a final judgment, see 28 U. S. C. §2101(b). Kennedy maintains that the District Court's August 2006 order qualified as a final judgment, while the Governor maintains that the District Court's final judgment was the May 1 order vacating Chastang's appointment. A final judgment "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin* v. *United States*, 324 U. S. 229, 233. The August 2006 order declared that preclearance was required for the *Stokes* and *Kennedy* decisions, but left unresolved Kennedy's demand for injunctive relief. An order resolving liability without addressing a plaintiff's requests for relief is not final. See *Liberty Mut. Ins. Co.* v. *Wetzel*, 424 U. S. 737, 742–743. Pp. 9–10.

2. For §5 purposes, the 1985 Act never gained "force or effect."

Therefore, Alabama's reinstatement of its prior practice of gubernatorial appointment did not rank as a "change" requiring preclearance. Pp. 10–20.

(a) In order to determine whether an election practice constitutes a "change" as defined in this Court's §5 precedents, the practice must be compared with the covered jurisdiction's "baseline," *i.e.,* the most recent practice both precleared and "in force or effect"—or, absent any change since the jurisdiction's coverage date, the practice "in force or effect" on that date. See *Young* v. *Fordice*, 520 U. S. 273, 282–283. Pp. 10–12.

(b) While not controlling here, three precedents addressing §5's term of art "in force or effect" provide the starting point for the Court's inquiry. In *Perkins* v. *Matthews*, 400 U. S. 379, the question was what practice had been "in force or effect" in Canton, Mississippi, on that State's 1964 coverage date. A 1962 state law required at-large elections for city aldermen, but Canton had elected aldermen by wards in 1961 and again in 1965. This Court held that the city's 1969 attempt to move to at-large elections was a change requiring preclearance because election by ward was "the procedure *in fact* 'in force or effect' in Canton" on the coverage date. *Id.*, at 395. Similarly, in *City of Lockhart* v. *United States*, 460 U. S. 125, the question was what practice had been "in force or effect" in Lockhart, Texas, on the relevant coverage date. The city had used a "numbered-post" system to elect its city council for more than 50 years. Though the numbered-post system's validity under state law was "not entirely clear," *id.*, at 132, "[t]he proper comparison [wa]s between the new system and the system actually in effect on" the coverage date, "regardless of what state law might have required," *ibid.* Finally, in *Young* v. *Fordice*, the question was whether a provisional voter registration plan precleared and implemented by Mississippi election officials, who believed that the state legislature was about to amend the relevant law, had been "in force or effect." See 520 U. S., at 279. As it turned out, the state legislature failed to pass the amendment, and voters who had registered under the provisional plan were required to reregister. This Court held that the provisional plan was a "temporary misapplication of state law" that, for §5 purposes, was "never 'in force or effect.' " *Id.*, at 282. *Young* thus qualified the general rule of *Perkins* and *Lockhart:* A practice best characterized as nothing more than a "temporary misapplication of state law," is *not* in "force or effect," even if actually implemented by state election officials, 520 U. S., at 282. Pp. 12–15.

(c) If the only relevant factors were the length of time a practice was in use and the degree to which it was implemented, this would be a close case under *Perkins, Lockhart,* and *Young.* But an extraor-

dinary circumstance not present in any past case is operative here, impelling the conclusion that the 1985 Act was never "in force or effect": The Act was challenged in state court at first opportunity, the lone election was held in the shadow of that legal challenge, and the Act was ultimately invalidated by the Alabama Supreme Court. These characteristics plainly distinguish this case from *Perkins* and *Lockhart,* where the state judiciary had no involvement. The prompt legal challenge and the State Supreme Court's decision also provide strong cause to conclude that, in the §5 context, the 1985 Act was never "in force or effect." A State's highest court is unquestionably "the ultimate exposito[r] of state law." *Mullaney* v. *Wilbur*, 421 U. S. 684, 691. And because the State Supreme Court's prerogative to say what Alabama law is merits respect in federal forums, a law challenged at first opportunity and invalidated by Alabama's highest court is properly regarded as null and void *ab initio*, incapable of effecting any change in Alabama law or establishing a voting practice under §5. There is no good reason to hold otherwise simply because Alabama's highest court did not render its decision until after an election was held. To the contrary, practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges. Cf. *Purcell* v. *Gonzalez*, 549 U. S. 1, 5–6 *(per curiam).* Ruling otherwise would have the anomalous effect of binding Alabama to an unconstitutional practice because of the state trial court's error. The trial court misconstrued the State's law and, due to that court's error, an election took place. That sequence of events, the District Court held, made the 1985 Act part of Alabama's §5 baseline. In essence, the District Court's decision gave controlling effect to the erroneous trial court ruling and rendered the Alabama Supreme Court's corrections inoperative. That sort of interference with a state supreme court's ability to determine the content of state law is more than a hypothetical concern. The realities of election litigation are such that lower state courts often allow elections to proceed based on erroneous interpretations of state law later corrected on appeal. The Court declines to adopt a rigid interpretation of "in force or effect" that would deny state supreme courts the opportunity to correct similar errors in the future. Pp. 15–19.

(d) Although this Court's reasoning and the facts of this case should make the narrow scope of the holding apparent, some cautionary observations are in order. First, the presence of a judgment by Alabama's highest court invalidating the 1985 Act under the State Constitution is critical here. The outcome might be different were a potentially unlawful practice simply abandoned by state officials after initial use in an election. Cf. *Perkins,* 400 U. S., at 395. Second, the 1985 Act was challenged the first time it was invoked and struck

down shortly thereafter. The same result would not necessarily follow if a practice were invalidated only after enforcement without challenge in several previous elections. Cf. *Young*, 520 U. S., at 283. Finally, the consequence of the Alabama Supreme Court's *Stokes* decision was to reinstate a practice—gubernatorial appointment—identical to the State's §5 baseline. Preclearance might well have been required had the court instead ordered the State to adopt a novel practice. Pp. 19–20.

Reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, J., joined.