

DRAFT
Attorney-client privilege

No. 20-574

IN THE
Supreme Court of the United States

REPRESENTATIVE TIMOTHY MOORE., *et al.*
Petitioners
v.

REBECCA HARPER ET AL. *et al.*
Respondents

On Petition for Certiorari from the North
Carolina Supreme Court

***Amicus Curiae* Brief of **White House Watch**
project of United States Public Policy
Council *et al.*, for Petitioners**

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¹ *Amici* reviewed every precedent in the Federal Judiciary system mentioning “Elections Clause.” The choice of precedents relied upon is driven by limited, relevant cases.

INTRODUCTORY STATEMENT:

This brief supports the Petition for a Writ of Certiorari and the substantive requests for relief of **THE** Petitioners and proposed intervenor, Donald J. Trump for President, Inc. (the principal, official, election campaign committee for the re-election of President Donald J. Trump and Vice President Mike Pence), of candidate for re-election President Donald J. Trump, of Pennsylvania voter (termed an “elector” in Pennsylvania law) Lawrence Roberts, and of Pennsylvania voter David John Henry.

CONSENT OF PARTIES

All parties have given either blanket consent or have specifically consented to the participation of amicus curiae.

INTEREST OF AMICI CURIAE

White House Watch (WHW) (formerly White House Defense Fund) is a project of the United States Public Policy Council, a non-profit, public policy organization recognized under Section 501(c)(4) of the IRS code. **WHW** monitors and provides information and analysis on public policy proposals or changes by the White House.

WHW is associated with the Freedom Center Foundation, recognized under Section 501(c)3 of the IRS Tax Code and which has helped pay for expenses associated with the filing of this brief.

Much of the programmatic work of **WHW**

involved defense against attacks on the **White House of President Donald Trump**. **WHW** has over 300,000 active, recent supporters from every state in the union and all Congressional Districts.

WHW delivered a quarter of a million petitions in a presentation at the House of Representatives on September 23, 2020 concerning Speaker of the House Nancy Pelosi's and House Intelligence Committee Chairman Adam Schiff's dishonesty and malfeasance in the impeachment of the President.

WHW is especially interested to see that the Constitution is followed in federal elections, especially where it states that only the Congress determines the date of voting, and only the state legislatures determine the details of that voting, such as what time polls close and when late ballots are not to be counted.

In its past work defending the White House against dishonest partisan attacks, **WHW's** supporters were alarmed and concerned that no future election in our nation will be trusted if governing laws can be so massively and readily ignored now.

The Conservative Christian Center (CCC) is a project of United States Public Policy Council with **local** clubs in York County and Cumberland County. Its central mission is to increase the number of voters from the church-going, faith communities and to increase their interest and influence on public policy questions. They have for eight years published a twice annual Value Voters

Guide, in general elections and for primary elections, showing the candidate's response to ten public policy questions, to enable faith voters to cast an informed vote based upon the issues of interest to them and the position that candidates take on those issues.

Americans Conservative Agenda (ACA) (formerly Americans for the Trump Agenda), also a project of United States Public Policy Council, has been supportive during the four years of the Trump Administration of the programs and policies proposed or enacted by President Donald Trump and wishes to have its views represented to the Court through this brief.

The following individuals are interested in defending the Constitution of the United States and in several instances have sworn an oath to defend and protect it while wearing our nation's uniform in military service*.

In two instances Amici were born abroad and are here to defend the Constitution as one of the reasons America is free.**

In the case of the Pennsylvania residents listed,*** they wish noted by the Court their particular interest in revisiting the unfair way in which their elected officials were treated in violation of the Constitution in a past case where the state supreme court usurped the authority of the state legislature on the drawing of district lines for their legislators. In one case, they removed conservative Republican precincts in southern York County, PA and replaced them with liberal

Democrat precincts from Harrisburg, PA in a bold and blatant power grab designed to defeat U.S. Congressman Scott Perry, the object of their hatred because he is an outstanding defender of the Constitution and freedom.

In several instances, Amici were listed also in the Amicus Curiae Brief of White House Watch and Conservative Christian Center, in the case of Joseph B. Scarnati, III, et. al. (no. 20-574) and see several issues which overlap from that case.****

From Pennsylvania:

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Robert Cosgrove, a director of York County Conservative Christian Center***

Laszlo Pasztor***

Jay Sexton, CPA, PFS, CFB***

United States (outside of PA)

Dr. Roger B. Canfield, former Principal Consultant on Reapportionment for the California State Senate, 1980-1983, is the Executive Vice President of United States Intelligence Council*, ****

Emy Delgaudio, Chairman of White House Watch**

Dr. Ronald F. Docksai*

Lt. Col. Dennis Gillem, USA (Ret.), a Vietnam War Veteran and Chairman of the Veterans Advisory Board of Uniformed Services League*

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SUMMARY OF ARGUMENT

Amici Curiae (hereafter “Amici”) propose to assist the Court by presenting a different and deeper conceptual analysis of the matter presented by the Petitioners of the relationship of Article I, Section 4, of the U.S. Constitution (the Elections Clause) and state action. Article I, Section 4 of the U.S. Constitution delegates to state legislatures “the Times, Places and Manner of holding Elections for Senators and Representatives” subject to the right of Congress to make or alter such regulations by law except as to the places of choosing Senators.

In this case, the Supreme Court of North Carolina authorized the Superior Court (the trial

level court) to exercise legislative power legislature in the establishment of congressional districts for the state of North Carolina.

We recall Justice Amy Coney Barrett in her confirmation hearing saying that she rejected the courts substituting their own ideas for those of the legislature and saying that as a Justice she cannot impose “the law of Amy.” Establishment of congressional districts by the judiciary contravenes the expression Constitutional requirement that the state legislative authority establishes the time, places and manner of holding elections.

ARGUMENT

I. THE US CONSTITUTION DELEGATED CERTAIN FEDERAL POWER TO STATE LEGISLATIVE AUTHORITIES

A. The Election for Members of the United States House of Representatives is a Delegated Federal Function.

As authorized by the Elections Clause of the United States Constitution, the North Carolina legislature adopted a congressional redistricting plan. The Respondents in this case challenged the legislative plan in the state courts. Both the trial court and the North Carolina Supreme Court analyze the congressional redistricting plan under the principles set forth in the North Carolina Constitution.

Subject to oversight by Congress, the United States Constitution delegated **federal** authority to each state legislature to direct the “Times, Places and Manner of holding elections for Senators and Representatives....” This court has recognized that the Elections Clause governs congressional redistricting. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015). (Establishment of Redistricting Commission by Initiative petition was an exercise of state legislative authority within the meaning of Art. I, §4 of the U.S. Constitution.)

This Court should make clear once and forever that the establishment of congressional districts within each state is exclusively and unalterably a **federal** function arising exclusively from the United States Constitution and is delegated exclusively to the state legislative authorities. The state judiciary is in no sense a state legislative authority.

As a delegated federal function, congressional redistricting is no different from the selection of federal electors for President. As this court acknowledged in *Ray v. Blair*, 343 U.S. 214, 224-225, 72 S.Ct. 654, 96 L.Ed. 894 (1952), “The presidential electors exercise a **federal function** in balloting for president and vice president They act by authority of the state that in turn receives its authority from the federal constitution.”

In *Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70 (2000) this Court made it unmistakably clear in the selection of presidential electors under

Article II, § 1 that the state is exercising a delegated federal function

But in the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the selection of presidential electors, the legislature is not acting solely under the authority given it by the people of the state, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution.

The same rationale applies to the state legislative function of congressional districting under the Elections Clause.

**B. The Plain Text of the Elections Clause
Delegates Federal Authority to the
State Legislative Authority and to No
Other State Body or Official**

1. Exclusive Federal Authority Delegation

In *Democratic Nat'l Comm. v. Wis. State Legislature*, 20A66, this Court declined to take up the full case but denied the application to vacate a stay that had issued by the Court of Appeals of a District Court's change to Wisconsin's election rules. In his concurring opinion in footnote 1, Justice Kavanaugh addressed the analogous situation under the Elector Clause:

[U]nder the U. S. Constitution, the state courts do not have a blank check to rewrite

state election laws for federal elections. Article II expressly provides that the rules for Presidential elections are established by the States "in such Manner as the Legislature thereof may direct." §1, cl. 2 (emphasis added). The text of Article II means that "the clearly expressed intent of the legislature must prevail" and that a state court may not depart from the state election code enacted by the legislature. *Bush v. Gore*, 531 U. S. 98, 120 (2000) (Rehnquist, C. J., concurring) ...

In like manner, the Elections Clause establishes that congressional districting is a legislative function for the states, except to the extent that the United States Congress may establish regulations as specifically authorized by the Elections Clause.

Arizona State Legislature v. Arizona Independent Redistricting Commission, 576 U.S. 787 (2015). is not to the contrary. In the Arizona case, this Court approved of the Arizona citizens exercising **legislative authority** under the Arizona Constitution through citizen initiative, stating that the initiative process qualified as part of the authority **of the legislature the Elections Clause.**

Each state has three branches of government: legislative, executive, and judicial. In the Arizona case, the Arizona Constitution authorized legislative authority to be exercised by initiative petition. In the present case, the North Carolina judicial branch does not have and cannot properly

exercise legislative authority the United States Constitution delegated to the North Carolina legislative authority.

2. No State Court may Redesign Congressional Election Districts.

The plain text of the United States Constitution's Elections Clause delegates federal authority to the state legislative authority alone the duty to determine the manner of choosing Congressional representatives. The text of the Elector Clause implicitly and necessarily excludes any role for any other State government officials, including the state courts.

The state legislative authorities act exclusively under delegated federal authority and do not act simply as creatures of their respective states when **they direct the manner** of selecting electors under the Elections Clause.

3. The State Court role is Limited To Making Judicial Decisions on the Legality or Constitutionality of Congressional Districts Designed by the State Legislative Authority.

The North Carolina Supreme Court and Superior Court had no authority to redesign congressional districts established by the state legislature. Designing congressional districts is uniquely legislative. It is not a judicial power.

State courts may certainly have a role when the state legislature designs congressional districts in an unconstitutional or unlawful manner. However, that role is essentially binary. The congressional districts designed by the state legislature are either lawful and constitutional or they are not.

In summary, the North Carolina Supreme Court and Superior Court usurped from the state legislative authority the federal power delegated to the state legislative authority.

II. OTHER REMEDIES AVAILABLE

By authorizing the establishment of congressional districts by special masters appointed by the Superior Court, the North Carolina Supreme Court and the Superior Court behaved as if there was no other lawful solution to the problem of congressional districts found to violate the North Carolina Constitution in this case. That is simply wrong.

A. State Legislative Do-Over.

Furthermore, if the state legislative authority as unlawfully or unconstitutionally established congressional districts, the state legislative authority has the right to correct its own errors.

Amici are not saying that these are the only remedies possible or the best remedies, but only that there are at least two other remedies available, rather than special masters performing a legislative function for the state courts.

B. Congressional Oversight.

The Elections Clause specifies that the state legislative oversight of federal congressional elections is subject to oversight by United States Congress. The Elections Clause specifically gives Congress the right “to make or alter such regulations by law except as to the places of choosing Senators.”

III. CONCLUSION

Amici respectfully urge this Court to grant Certiorari to clarify that the North Carolina Supreme Court and Superior Court wrongfully usurped federal power when it adopted congressional districts designed by the courts and not the state legislative authority.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I certify that this amicus curiae brief is formatted and printed in typeface Century Schoolbook, 12 point font size, and contains _____ words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

/s David W. T. Carroll

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CERTIFICATE OF SERVICE

Amici, by counsel, certifies that a copy of the foregoing Amicus Brief was served, upon the attorney of record in this Court for the Appellant by first class U.S. mail, postage prepaid, on August 29 2022:

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Also, in compliance with Rule 29 of the Rules of
the Supreme Court, an electronic copy of this Brief
was also sent by electronic mail (email) on the

same date in electronic / computer PDF format to
all attorneys for the principal parties.

s/ David W. T. Carroll
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