

No. 21-1271

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IN THE  
**Supreme Court of the United States**

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

REBECCA HARPER ET AL. *et al.*  
*Respondents*

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On Grant of Certiorari from the North Carolina  
Supreme Court

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

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David W. T. Carroll, Esq.  
Carroll, Ucker & Hemmer LLC  
PO Box 12045  
Columbus, Ohio 43212  
Direct Telephone: (614) 423-9820  
Counsel of Record for White  
House Watch, a project of United  
States Public Policy Council

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## **INTRODUCTORY STATEMENT:**

This brief<sup>1</sup> supports the Petitioners interpretation of the Elections Clause, Article I, Section 4 of the United States Constitution as written requiring the state legislative authority to establish federal congressional districts. In this case, the North Carolina Superior Court, the trial court, with the imprimatur of the North Carolina Supreme Court rejected the congressional redistricting map created by the state legislature in favor of a redistricting map designed and created by special masters appointed by the court itself. The special masters were not part of the state legislative authority.

## **INTEREST OF AMICI CURIAE**

The White House Watch (WHW) (formerly White House Defense Fund) is a project of the United States Public Policy Council, a nonprofit, public policy organization recognized under Section 501(c)(4) of the IRS code. WHW monitors and provides information and analysis on public policy

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<sup>1</sup> No party's counsel contributed to the authorship of this brief in whole or in part including monetary contributions intended to fund the preparation or submission of the brief. No other person other than the Amicus, its members or counsel made any monetary contribution. Rule 37.6. All parties have given either blanket consent or have specifically consented to the participation of amicus curiae.

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 as an institution. 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 the Constitution states that only the state legislative authorities, subject to congressional oversight, may direct the manner of federal elections conducted within the state, including the establishment of congressional districts.

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 widely and brazenly ignored now with impunity, as recognized in recent

opinions by justices Thomas, Gorsuch and Alito in case number 20-574 dissenting from the denial of certiorari.

The Conservative Christian Center (CCC) is a project of United States Public Policy Council with active 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.

American 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.

As a nonprofit organization qualified under Internal Revenue Code Section 501(c)(4), the organization has many supporters who are vitally interested in the lawfulness and fairness of American federal elections and who wish to take this opportunity, by joining as Amicus in this brief, to express their support for the Petitioners in their efforts to assure that future congressional elections

are conducted in accordance with the United States Constitution. These individuals joining as Amici are listed and further described on exhibit A hereto.

The individuals listed in the Appendix joining White House Watch as Amici 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.

The Pennsylvania residents listed have a particular interest in upholding the constitutional right of the state legislative authority to establish congressional districts, because they view this case as likely precedent in overturning the unfair way the Pennsylvania Supreme Court usurped the authority of the state legislature on the drawing of district lines for their legislators. In one case, the Supreme Court acting without the legislative authority 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 evidently designed to defeat U.S. Congressman Scott Perry, 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. (Case no. 20-574) and



see several issues which overlap from that case.

Virginia residents listed have similar interests in establishing appropriate precedent, because in Virginia a federal panel rewrote congressional district lines to eliminate Congressman Dave Brat, who had defeated then liberal GOP Majority Leader Eric Cantor. “The panel’s move upends the voting boundaries of millions of Virginians” reported The Washington Post. <https://www.washingtonpost.com/blogs/all-opinions-are-local/wp/2016/01/13/dave-brat-may-have-a-harder-time-getting-reelected-than-he-had-getting-elected/>. The Post reported that “Brat got national headlines by tapping anti-Washington, tea party populists, many of whom were concentrated in Hanover County.” That area was removed and district lines more unfavorable to Brat were drawn, not by the state legislature as the Constitution stipulates is the sole authority for such a decision but by a court.

## **SUMMARY OF ARGUMENT**

Amici Curiae (hereafter “Amici”) propose to assist the Court by presenting a different conceptual analysis of the matter presented by the Petitioners about the relationship of Article I, Section 4, of the U.S. Constitution (the Elections Clause) and state action. The Elections Clause delegates certain federal authority to state legislatures, specifically “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 and the Superior Court (the trial level court) exercised legislative power in the establishment of congressional districts for the state of North Carolina.

We recall Justice Amy Coney Barrett in her United States Senate 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 express 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

analyzed 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 (unreported), this Court declined to take up the full case but denied the application to vacate a stay 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 consistent. 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 state legislative authority under 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 usurped legislative authority when it designed and adopted congressional districts. However, the North Carolina courts do not have and cannot properly exercise legislative authority which the United States Constitution delegated to the state legislatures.

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 Elections Clause 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 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. That binary role is the standard function of the judicial branch: deciding who wins and who loses a particular case along with an explanation for the reasons for the decision.

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.**

If the state legislative authority has acted unlawfully or has unconstitutionally established congressional districts, the state legislative authority has the right to correct its own errors, if the state judiciary finds the state legislative authorities' actions unlawful or unconstitutional.

### **B. Congressional Oversight.**

The Elections Clause specifies that the state legislative oversight of federal congressional elections is subject to oversight by the 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.”

*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 creating congressional districts thereby causing the state courts to perform a legislative function. The function of the judiciary is to interpret laws, not create them.

## **III. CONCLUSION**

*Amici* respectfully urge this Court to grant the relief requested by the Petitioners, clarifying that the North Carolina Supreme Court and Superior Court wrongfully usurped federal power when they created a congressional districting map and imposed it on North Carolina in disregard of the



exclusive constitutional duty of the state legislative authority.

Respectfully submitted,  
BY COUNSEL

S/ DAVID W. T. CARROLL  
**DAVID W. T. CARROLL, ESQ.**  
(Ohio #10406)  
(SUP. Ct. 1980)  
Carroll, Ucker & Hemmer LLC  
PO Box 12045  
Columbus, Ohio 43212  
Telephone: (614) 423-9820  
Email: dcarroll@cuhlaw.com  
*Counsel of Record for Amici*

### **CERTIFICATE OF COMPLIANCE**

I certify that this amicus curiae brief is formatted and printed in typeface Century Schoolbook, 12 point font size, and contains 1447 words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

/s David W. T. Carroll  
**DAVID W. T. CARROLL, ESQ.**

### **Appendix A**

## **Individuals Joining as Amici in Support of Petitioners.**

Amici who are supporting Petitioners:

- Daniel A. Brubaker, PhD, President, Think and Tell, LLC, and author of “By The People? The 2020 U.S. Presidential Election And Theft Of Americans’ Right To Self-Rule.” Think and Tell Publishing (2022);
- Richard Buck, National Project Director, Uniformed Services League;
- Timothy W. Carr;
- 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;
- Ron Cohen, Former Lancaster County Recorder of Deeds, York Chairman Emeritus, York County Conservative Christian Center/Action;
- Emy Delgaudio, Chairman of White House Watch and Conservative Christian Center;
- Ross Cleveland, South Central PA Coordinator, Conservative Christian Center;
- Robert Cosgrove, a director of York County Conservative Christian Center;
- Dr. Ronald F. Docksai, Former National Chairman, Young Americans for Freedom and former top aide to the late U.S. Senator Orrin Hatch;
- Martin David Fisher, Past GOP State Convention Delegate;
- Gerald R. Geddes;

- Reagan George, President, Virginia Voters Alliance;
- Lt. Col. Dennis Gillem, USA (Ret.), a Vietnam War Veteran;
- Gary Giordano, Former State Representative from Arizona and Executive Director of White House Watch;
- Sant Gupta Former Master of Ceremonies, Freedom Leadership Conference;
- Owen Jones, National Spokesman, American Conservative Agenda;
- Joan Kehlhof, National Director, Freedom Center Foundation;
- James Logue;
- Laszlo Pasztor;
- Daryl M. Brooks;
- Professor Kevin Peterson (Major, USAF, Ret.), National Project Director, Conservative Christian Center;
- Robert C. Rafferty;
- Reagan George, President, Virginia Voters Alliance;
- Dr. Robert E. A. P. Ritholz;
- Jay Sexton, CPA, PFS, CF;
- Brian Shelley;
- Sharon L. Shelley;
- Jocelyn Tchakounte, National Spokesman, Stop DC and Puerto Rico Statehood;
- Milagros Thomas, Kalayaan USA Cultural Ensemble Choreographer, Board Member York County Philippine American Heritage Council;
- Andrea Thornock;
- Major General Paul E. Vallely, USA (Ret.);

- Nelson Velez, National Spokesman, American Conservative Agenda;
- William C. Walsh;
- Ronald Wilcox, a 2020 GOP National Convention Delegate, Secure America Alliance Executive Director.