No. 16-166

IN THE

Supreme Court of the United States

DAVID HARRIS, *et al.*,

Appellants,

—v.—

PATRICK MCCRORY,
Governor of North Carolina, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIEF OF THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

MICHAEL C. LI
Counsel of Record
THOMAS P. WOLF
THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
161 Avenue of the Americas
12th Floor
New York, New York 10013
(646) 292-8310
michael.li@nyu.edu

Counsel for Amicus Curiae The Brennan Center for Justice at NYU School of Law

TABLE OF CONTENTS

Page

TABLE OF CONTENTS—continued

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—continued

Page(s)

Rules

Other Authorities

BRIEF OF THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae the Brennan Center for Justice at New York University School of Law ("the Brennan Center") is a not-for-profit, non-partisan think tank and public interest law institute that seeks to improve systems of democracy and justice. It was founded in 1995 to honor the extraordinary contributions of Justice William J. Brennan, Jr. to American law and society. Through its Democracy Program, the Brennan Center seeks to bring the idea of representative self-government closer to reality, including through work to protect the right to vote and to ensure fair redistricting practices. The Brennan Center conducts empirical, qualitative, historical, and legal research on redistricting and electoral practices and has participated in a number

[1] Counsel for the Brennan Center affirm, pursuant to Supreme Court Rule 37.2(a), that Counsel of Record for both parties received timely notice of, and consented to, the filing of this brief *amicus curiae*. The Brennan Center has filed documents evidencing the parties' consent with the Clerk. Counsel for the Brennan Center also affirm, pursuant to Supreme Court Rule 37.6, that no counsel for any party authored this brief in whole or in part, and that no party, counsel for any party, or any other person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. This brief does not purport to convey the position of New York University School of Law.

of redistricting and voting rights cases before the Court.

The Brennan Center takes an interest in this Appeal because Appellants ask this Court to rule on the constitutionality of certain redistricting practices. The Brennan Center's work includes monitoring the progress of partisan-gerrymandering suits in courts across the country and, through this brief, seeks to provide the Court with a more detailed understanding of this Appeal's place in the current litigation landscape. The Brennan Center hopes that this perspective will help the Court resolve this Appeal in a manner that fully protects the rights both of Appellants and of litigants in the other important cases pending in the federal courts.

INTRODUCTION AND SUMMARY OF ARGUMENT

With a new redistricting cycle rapidly approaching, the question of whether—and, if so, how—courts should police partisan-gerrymandering abuses is one of the most pressing the Court will confront in the next few years.

Since this Court last considered, but did not definitively resolve, the constitutionality of partisan gerrymandering more than a decade ago in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), and *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) ("*LULAC*"), the practice has continued to run rampant. *See, e.g.*, Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 876 (2015) (demonstrating that "the scale and skew of today's

gerrymandering are unprecedented in modern history"); Expert Report of Simon David Jackman at 44, *Whitford v. Nichol*, No. 3:15-cv-421 (W.D. Wis. Jan. 25, 2016), Dkt. 62 (explaining that "districting plans enacted after the 2010 census are systematically more gerrymandered than in previous decades"). In the current redistricting cycle, members of both major political parties—including Democrats in Maryland and Republicans in Wisconsin—have been accused of using the mapmaking process to redraw electoral maps for their own partisan advantage. By many measures, these partisan gerrymanders have become increasingly sophisticated in their techniques, durable in their effects, and damaging to the workings of representative government in our country.

The map that Appellants objected to below—the North Carolina General Assembly's 2016 remedial congressional plan ("the 2016 Plan")—is the most recent plan to be targeted as a partisan gerrymander. It is not, however, the only plan from this cycle that is currently the subject of litigation. Appellants' objections to the 2016 Plan are one of a number of challenges brought by voters, political parties, and non-profit organizations around the country with the goal of reclaiming redistricting from the distorting effects of excessive partisanship. These other pending cases raise legal issues that could potentially overlap with those that Appellants put forward in their Jurisdictional Statement. One case, in fact, challenges the same map. As a result, the Court's disposition of this Appeal might have collateral effects on these other cases and could—

depending on how its decision is framed—stifle the search by litigants and lower federal courts for constitutional standards that can address the worst abuses of partisan gerrymandering. Indeed, an order in this Appeal that could be construed by parties or by lower courts as a ruling that partisan-gerrymandering claims are nonjusticiable could prejudice those cases. Prejudice might similarly arise from an order that appears to rule on the merits of a partisan-gerrymandering claim.

And so, this Appeal presents the Court with a two-fold challenge: addressing claims alleging partisan gerrymandering of North Carolina's congressional districts; and avoiding prejudice to, and undue confusion for, pending lawsuits targeting gerrymandering in other jurisdictions.

In the face of this challenge, summary reversal of the opinion below would be the Court's surest route forward. Summary reversal would clarify an ambiguous lower-court opinion that seems to contravene the Court's clear instruction that partisan gerrymander claims are justiciable (*Davis v. Bandemer*, 478 U.S. 109, 124–27 (1986); *LULAC*, 548 U.S. at 413–14). It also would ensure that the 2016 Plan remains open to challenge and leave open important constitutional questions until the Court has a fuller record before it. If, however, the Court believes that the ruling below requires it instead to summarily affirm or dismiss this Appeal, *amicus curiae* asks that the Court avoid potential collateral impacts on other suits by clearly delineating the scope and limits of its opinion.

ARGUMENT

I. NUMEROUS IMPORTANT PARTISAN GERRYMANDERING CHALLENGES ARE CURRENTLY PENDING IN THE FEDERAL COURTS, AND THIS APPEAL SHOULD BE RESOLVED IN A WAY THAT PERMITS THE FULLEST DEVELOPMENT OF THOSE CASES.

The next few years are set to provide the Court with an opportunity to revisit—and perhaps resolve—partisan-gerrymandering issues that have long eluded resolution. Indeed, several cases are currently working their way through the lower federal courts that will give the Court the opportunity to grapple with various theories explaining how partisan gerrymandering violates the Constitution. In deciding how to respond to Appellants' Jurisdictional Statement, it is essential that the Court not only consider this Appeal, but also keep its eyes on the other important partisan-gerrymandering cases—including a parallel case in North Carolina—that could reach the Court as early as the October 2016 term.

A. Claims About an Unconstitutional Partisan Gerrymander of North Carolina's 2016 Map Are Serious and Should Be Fully Adjudicated by a Trier of Fact.

As an initial matter, a fully fleshed out challenge to North Carolina's 2016 Plan should be heard and decided in an appropriate forum. Although this Appeal comes to the Court without a

fully adjudicated evidentiary record, the factual assertions underlying Appellants' objections to the 2016 Plan are disturbing and should raise strong concerns about possible constitutional infirmities.[2]

This is particularly so given that Appellants object to conduct that is part and parcel of a long string of electoral misconduct by North Carolina lawmakers this decade and given that race and partisanship in North Carolina, as in much of the South, are often fused.

In just the last month and a half, federal courts have invalidated twenty-eight of North Carolina's legislative districts on racial-gerrymandering grounds (*Covington v. North Carolina*, --- F.R.D. ----, 2016 WL 4257351, at *1 (M.D.N.C. Aug. 11, 2016)), enjoined the state's omnibus election law because it was enacted with

---

[2] Appellants first raised their partisan-gerrymandering allegations regarding the 2016 Plan through an objection filed during the remedial stage of their underlying racial gerrymandering lawsuit. *See* Pls.' Objections & Mem. of Law Regarding Redistricting Plan at 30–39, *Harris v. McCrory*, No. 1:13-cv-949 (M.D.N.C. Mar. 3, 2016), Dkt. 157; Pls.' Reply in Support of Objections & Mem. of Law Regarding Remedial District Plan at 13–19, *Harris v. McCrory*, No. 1:13-cv-949 (M.D.N.C. Mar. 15, 2016), Dkt. 163. Although the parties offered expedited briefing on the constitutionality of the 2016 Plan and introduced some evidentiary exhibits by way of declarations (*see, e.g.*, *Harris v. McCrory*, No. 1:13-cv-949 (M.D.N.C.), Dkts. 155, 159), the panel did not conduct an evidentiary hearing. Moreover, the panel's opinion does not resolve any disputed issues of fact or attempt to apply any theory of partisan gerrymandering to facts. Instead, the ruling below appears to rest on a conclusion that the claims that Appellants asserted were not justiciable.

racially discriminatory intent (*NAACP v. McCrory*, --- F.3d ----, 2016 WL 4053033, at *2 (4th Cir. July 29, 2016)), and ruled that the General Assembly—following impermissible partisan motives—created malapportioned electoral districts for county-level boards (*Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, --- F.3d ----, 2016 WL 3568147, at *3 (4th Cir. July 1, 2016)). And in the coming term, the Court will hear an appeal of a decision striking down two of the districts in North Carolina's 2011 congressional plan (the "2011 Plan") as racial gerrymanders. *See Harris v. McCrory*, No. 15-1262 (S. Ct.).

It is against this troubled backdrop that the 2016 Plan at issue here (as well as in a separate pending challenge discussed *infra*) came to be. After the district court invalidated the 2011 Plan, legislators in North Carolina redrew the map. In doing so, they asserted a near-absolute right to manipulate electoral boundaries to maximize their partisan advantage. Indeed, the committee convened to create the 2016 Plan adopted a formal written criterion requiring the mapmakers to "make reasonable efforts to … maintain the current [10 Republican to 3 Democrat] partisan makeup of North Carolina's congressional delegation." Jur. Statement at 4. The map's architects openly proclaimed their partisan motivations and their goal of maximizing the Republican Party's share of North Carolina's congressional delegation. *Id.* at 17–19. With these partisan motives at the fore, the Committee substantially redrew North Carolina's congressional districts, shaping district lines to lock in a ten-to-three Republican advantage "[d]espite the fact that

North Carolina voters are more evenly split along political lines." *Id.* at 19–21.

Together, these circumstances suggest that the 2016 Plan was the product of partisan considerations that make it, at the very least, constitutionally suspect. *See, e.g.*, *Vieth*, 541 U.S. at 293 (plurality op.) (agreeing with the proposition that "an excessive injection of politics is unlawful" (emphasis omitted)). Appellants should thus have the opportunity to have their challenge to the 2016 Plan fully developed and resolved by a trier of fact.

B. Several Pending Cases Also Present Partisan-Gerrymandering Challenges to Electoral Maps, Including North Carolina's 2016 Plan.

North Carolina was not, however, alone in suffering an apparent gerrymander this cycle; nor are Appellants the only litigants currently seeking judicial recourse for unconstitutional line-drawing.

After the 2010 Census and mid-term elections that left an unprecedented number of state legislatures under single-party control, legislatures throughout the country used an array of aggressive line-drawing tactics to manufacture partisan advantages in their legislative and congressional delegations. With little recourse available through the political process, voters have turned to the courts to obtain relief. At the time of writing, three other substantial cases are pending in the federal courts: *Whitford v. Nichol*, No. 3:15-cv-421 (W.D. Wis.); *Shapiro v. McManus*, No. 1:13-cv-3233 (D. Md.); and

Common Cause v. Rucho, No. 1:16-cv-1026 (M.D.N.C.). One—*Whitford*—is in an advanced state, with a judgment pending; another—*Shapiro*—is heading toward more motion practice and trial.

1. Whitford v. Nichol (Wisconsin)

Whitford challenges the alleged partisan gerrymandering of Wisconsin's state legislative map in 2011. The *Whitford* plaintiffs contend that Wisconsin Republicans used their sole control of the redistricting process to maximize the number of seats that their party will hold and did it so effectively that "there is a nearly 100% likelihood that [Wisconsin's map] will continue to benefit Republicans for the rest of the decade." Pls'. Trial Br. at 3, *Whitford v. Nichol*, No. 3:15-cv-421 (W.D. Wis. May 16, 2016), Dkt. 134. Their Complaint challenges Wisconsin's 2011 map on both First Amendment and Fourteenth Amendment grounds. Drawing on the concept of "partisan symmetry" raised by several Justices of this Court in *LULAC* (*see, e.g.*, 548 U.S. at 420 (opinion of Kennedy, J.)), the *Whitford* plaintiffs contend that the Constitution requires the electoral system to treat similarly situated parties "symmetrically" or equally when it comes to converting their votes into legislative seats (Compl. ¶ 4, *Whitford v. Nichol*, No. 3:15-cv-421 (W.D. Wis. July 8, 2015), Dkt. 1). The 2011 plan, they contend, failed to do so by treating Republicans substantially more favorably than Democrats. *Id.* ¶ 7.

Whitford is the first partisan-gerrymandering suit in decades to survive both a motion to dismiss and a motion for summary judgment. *See Whitford v.*

Nichol, --- F. Supp. 3d ----, 2016 WL 1390040 (W.D. Wis. Apr. 7, 2016) (denying defendants' motion for summary judgment); *Whitford v. Nichol*, 151 F. Supp. 3d 918 (W.D. Wis. 2015) (denying motion to dismiss). The case proceeded to a four-day trial this past May. *See* Trs. of Jury Trial, *Whitford v. Nichol*, No. 3:15-cv-421 (W.D. Wis.), Dkts. 147–50. The parties completed their post-trial briefing in late June (*see* Br. in Reply by Pls., *Whitford v. Nichol*, No. 3:15-cv-421 (W.D. Wis. June 30, 2016), Dkt. 162), and now await a ruling from the three-judge panel.

2. Shapiro v. McManus (Maryland)

Shapiro challenges the 2011 congressional redistricting plan enacted by Democratic legislators in Maryland's General Assembly. In contrast to *Whitford*—which challenges the redistricting of an entire state—*Shapiro* focuses on a single district. The *Shapiro* plaintiffs allege that the General Assembly relied on detailed voting histories to redraw Maryland's Sixth District in a deliberate, surgical, and successful effort to flip it from a Republican stronghold into a safe Democratic seat. *See, e.g.*, 2d Amd. Compl. ¶¶ 1, 7, *Shapiro v. McManus*, No. 1:13-cv-3233 (D. Md. Mar. 3, 2016), Dkt. 44. The General Assembly's gerrymander gave Democrats—who had long controlled both houses of the General Assembly—a 7-1 advantage in Maryland's congressional delegation after a Democratic candidate routed a ten-term Republican incumbent. *See id.* ¶¶ 40, 62–63.

The *Shapiro* plaintiffs challenge the flipping of the Sixth District on both First Amendment and

Article I grounds. As the Court knows from its earlier consideration of the *Shapiro* case (*see Shapiro v. McManus*, 136 S. Ct. 450 (2015)), the plaintiffs' First Amendment claim draws on Justice Kennedy's concurring opinion in *Vieth*, explaining that "[a] successful partisan gerrymander of congressional districts … violates the First Amendment when it burdens the supporters of a political party by reason of their protected First Amendment conduct—that is, by reason of the expression of their political views, the casting of their votes, and their affiliations with political parties of their choice" (2d Amd. Compl. ¶¶ 31–32 (quoting 541 U.S. at 314 (Kennedy, J., concurring))). The *Shapiro* plaintiffs present a theory of a constitutionally significant burden that invokes the Court's First Amendment retaliation and Article III standing cases. *See, e.g.*, Pls.' Opp'n to Mot. to Dismiss at 14–34, *Shapiro v. McManus*, No. 1:13-cv-3233 (D. Md. May 20, 2016), Dkt. 68.

On August 24, 2016, a three-judge panel denied the defendants' motion to dismiss. *Shapiro v. McManus*, --- F. Supp. 3d ----, 2016 WL 4445320, at *1 (D. Md. 2016). The parties are now set to move forward with discovery.

3. Common Cause v. Rucho (North Carolina)

Common Cause asserts a statewide and district-by-district challenge to the same 2016 Plan at issue in this Appeal. *See* Compl. ¶ 1, *Common Cause v. Rucho*, No. 1:16-cv-1026 (M.D.N.C. Aug. 5, 2016), Dkt. 1. In a complaint filed on August 5, the *Common Cause* plaintiffs claim that the Plan is an

unconstitutional partisan gerrymander under the First Amendment, Fourteenth Amendment, and Article I. *Id.* Highlighting similar conduct that Appellants have (*see id.* ¶¶ 19–24), the *Common Cause* plaintiffs contend that the 2016 Plan violates the First Amendment by, *inter alia*, "favoring some voters (e.g., Republican supporters of the party in power) and by burdening or penalizing other voters (e.g., Democratic voters) based on the content of the voters' political expression or beliefs, their political party memberships or affiliations, or their voting histories in favor of a political party or its candidates" (*id.* ¶ 29 (citing, *inter alia*, *Vieth*, 541 U.S. at 314–16 (Kennedy, J., concurring))). Moreover, the 2016 Plan violates the Fourteenth Amendment, the plaintiffs allege, because it "draw[s] congressional districts that discriminate in favor of the Republican Party and Republican voters and against the [North Carolina Democratic Party] and Democratic voters to elect a candidate of their choice in ten of North Carolina's thirteen Congressional districts." *Id.* ¶ 44. The plaintiffs pair these First and Fourteenth Amendment claims with claims arising under Sections 2 and 4 of Article I.

C. Because This Appeal and the Other Partisan-Gerrymandering Cases Potentially Intersect Legally and Factually, the Court's Order Here Could Influence Other Ongoing Litigation.

Each of the pending cases has potential legal overlaps with this Appeal, and one arises out of similar facts. Each pending case assumes that

partisan-gerrymandering claims are, as a threshold matter, justiciable; indeed, the courts in Wisconsin and Maryland have expressly ruled that the standards presented in those cases *are* justiciable. *Whitford*, 151 F. Supp. 3d at 924; *Shapiro*, 2016 WL 4445320, at *12. The pending cases also raise constitutional issues that could potentially intersect with the merits issues presented by Appellants in this Appeal. Moreover, *Common Cause* challenges the same map that Appellants do.

Under these circumstances, the way in which the Court disposes of this Appeal might affect pending cases and could shape the future opportunities the Court has to consider its jurisprudence of partisan gerrymandering. A ruling from this Court that could be interpreted as a determination that partisan-gerrymandering claims are nonjusticiable would complicate and potentially terminate these cases. Likewise, broad rulings on matters of constitutional law could reinforce or undercut the theories being advanced in these cases and alter the complexion of future gerrymandering litigation.

II. A CAREFULLY TAILORED SUMMARY ORDER CAN SERVE THE ENDS OF JUSTICE.

The Court can use its summary procedures to ensure that the claims of Appellants and other litigants have an opportunity to be fully adjudicated while also protecting the consistency of its partisan-gerrymandering precedents. As a matter of precedent and practice, summary reversal of the

panel's decision would provide a sound way to achieve those ends. Should, however, the Court ultimately decide that the ruling below requires it to affirm or dismiss, *amicus curiae* requests that the Court expressly limit its order to prevent collateral harm to other cases where theories about the constitutionality of partisan gerrymandering are being asserted and developed.

A. Summary Reversal of the Panel's Opinion is the Best Option for Resolving this Appeal.

As Appellants note in their request for relief, the panel's opinion is suitable for summary reversal. *See* Jur. Statement at 32 (requesting "that [the] Court summarily reverse the opinion below"). Typically, the Court summarily reverses when it is "sufficiently clear" that the lower court's rulings "conflict" with the Court's own holdings. *Blakley v. Florida*, 444 U.S. 904, 905 (1979) (White, dissenting, J.). Such a conflict exists here.

Although the panel's decision to deny Appellants' objections is arguably somewhat ambiguous, it appears to rest on two grounds. First, the panel concluded that its "hands [were] … tied" (Jur. Statement at 5a) in responding to the objections because "'political gerrymandering claims are nonjusticiable'" (*id.* (quoting *Vieth*, 541 U.S. at 281)). Second, the panel determined that Appellants "ha[d] not provided [the panel] with a 'suitable standard' … to evaluate [their] partisan gerrymander claim" under either the First Amendment or the Fourteenth Amendment, and thus it could not "resolve [their

objections] … based on the record before it" (*id.* at 6a). However, the panel's opinion did not describe that record in any detail—let alone find any facts from it—or describe any constitutional theory or theories raised by Appellants. *But see* Jur. Statement 4a–5a (stating only that panel was "troubled" by two "representations" in the exhibits to Appellants' objections). The opinion's silence on these fronts seems at least partially attributable to the panel's primary determination that the gerrymandering issue was nonjusticiable.

The panel's conclusion that partisan-gerrymandering claims are nonjusticiable contradicts the Court's clear ruling in *Bandemer*. *See, e.g.,* 478 U.S. at 124–27. It is thus a clear candidate for summary reversal.

Given these circumstances, the Court could summarily reverse the panel's nonjusticiability determination, vacate the remainder of the opinion below, and remand for further proceedings. On remand, the panel could, *inter alia*: invite further factual development regarding the 2016 Plan's creation, field proposed constitutional standards, hear and weigh evidence supporting liability under those standards, make factual findings, and issue a ruling on the basis of those facts; or, if the panel deems it appropriate, direct Appellants to file an amended complaint.[3]

---

[3] *Amicus curiae* takes no position at this time regarding the correct mechanism for pursuing objections to a remedial districting plan that—like Appellants' objections below—raise constitutional questions not at issue in their original complaint.

A summary reversal along these lines would lay the groundwork for the Court—if it so chooses—to revisit the constitutional questions posed in this Appeal on a fuller record at a later time. It also would allow Appellants to pursue their constitutional objections to the 2016 Plan in the lower courts in some form or another and leave the remaining body of pending partisan-gerrymandering litigation—including other litigation challenging the 2016 Plan—undisturbed.

B. In the Event the Court Orders a Summary Affirmance or Dismissal, an Order with Clearly Articulated Limits Would Be Desirable.

If the Court instead construes the ambiguities in the opinion below in a way that requires it to summarily affirm or dismiss, *amicus curiae* requests that the Court include a short statement in its order that limits its scope so as to avoid unduly foreclosing pending or future partisan-gerrymandering litigation. Caution is generally warranted with these species of summary disposition because they carry some precedential value—"prevent[ing] lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions" (*Mandel v. Bradley*, 432 U.S. 173, 176 (1997))—while not presenting the extended

---

Nonetheless, ambiguities in the panel's opinion suggest that concerns about posture might have partially motivated its decision. *See, e.g.*, Jur. Statement at 6a ("it does not seem, *at this stage*, that the Court can resolve this question [of the constitutionality of partisan gerrymandering] *based on the record before it*" (emphasis added)).

reasoning associated with full opinions from the Court. *See generally* STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE 308–12 (10th ed. 2013).

Caution is especially warranted here, given the unique characteristics of this Appeal and the broader state of partisan-gerrymandering litigation. The Court has explained that summary affirmances and dismissals "represent[] … a view that the judgment appealed from was correct as to those federal questions raised and necessary to the decision." *Washington v. Confederated Bands and Tribes of Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979). But this guidance might be difficult for courts and litigants to apply predictably and uniformly to a bare affirmance or dismissal in this case. Indeed, this Appeal challenges an ambiguous panel decision that appears to rule both on the justiciability of partisan gerrymandering and on the merits of Appellants' arguments for the unconstitutionality of partisan gerrymandering. That decision neither describes the theories it is adjudicating, nor the relevant facts in the record. Given these limitations in the panel's opinion, Defendants in other partisan-gerrymandering suits might attempt to bring a summary disposition in this Appeal to bear on their cases, potentially creating unnecessary confusion in what is already a hotly contested area of constitutional law.

Thus, in order to limit potential confusion and avoid prejudice, *amicus curiae* asks that any summary affirmance or dismissal in this Appeal include a short statement making it clear that:

> *Bandemer* is still good law on the issue of the justiciability of partisan-gerrymandering claims;
>
> the Court's conclusions are limited to the particular issues raised by Appellants in light of the particular record in, and posture of, the underlying case; and,
>
> the Court's decision is without prejudice to subsequent challenges—by Appellants or other plaintiffs—to the constitutionality of the 2016 remedial map, under theories either advanced or not advanced thus far in the case underlying this Appeal.

This additional language would ensure that the Court's opinion reaches no further than this Appeal, while allowing other pending cases to proceed without undue confusion or delay. It would also ensure that the North Carolina General Assembly's highly suspect redistricting practices would not be insulated forever from judicial review as a partisan gerrymander.

CONCLUSION

For the foregoing reasons, *amicus curiae* recommends that the Court summarily reverse the three-judge panel's ruling on the justiciability of Appellants' objections, vacate the remainder of the panel's order, and remand for further proceedings.

Respectfully submitted,

MICHAEL C. LI
Counsel of Record
THOMAS P. WOLF
The Brennan Center for Justice at NYU School of Law
161 Avenue of the Americas
12th Floor
New York, NY 10013
(646) 292-8310
michael.li@nyu.edu

Counsel for *Amicus Curiae*
The Brennan Center for Justice at NYU School of Law

September 6, 2016