

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

No. 1:15-cv-00399-TDS-JEP

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF
THE NC NAACP FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFFS' OBJECTIONS TO THE
ENACTED REMEDIAL REDISTRICTING PLANS**

The North Carolina State Conference of the National Association for the Advancement of Colored People (“NC NAACP”) has a special interest in this litigation and can offer their unique perspective to the Court as it considers the remedial maps filed by Legislative Defendants on September 7, 2017. Specifically, the NC NAACP offers the Court its perspective on the General Assembly’s improper treatment of race in the redistricting process, resulting in maps that do not fully remedy the constitutional violation. The NC NAACP thus respectfully requests leave to file the accompanying proposed amicus curiae brief in support of Plaintiffs’ Objections to the Legislative Defendants’ Proposed Redistricting Plans.

ARGUMENT

District courts have discretion whether to grant leave to file an amicus brief. *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *see also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (noting that non-parties have the option to file amicus briefs in district court proceedings and that such amici “often make useful contributions to litigation”). There is no Federal Rule of Civil Procedure that applies to motions for leave to appear as amicus curiae in district court, so district courts exercising this discretion often look for guidance to Federal Rule of Appellate Procedure 29, which applies to amicus briefs in federal appellate cases. *See, e.g., Am. Humanist Ass’n v. Md.-Nat’l Capital Park & Planning Comm’n*, 147 F. Supp. 3d 373, 389 (D. Md. 2015). Rule 29 provides that prospective amici must file along with the proposed brief, a motion that states “the movant’s interest” and “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. Proc. 29(a)(3). Likewise, the Middle District of North Carolina’s local rules instruct that a motion for leave to file an amicus brief “shall concisely state the nature of the movant’s interest, identify the party or parties supported, and set forth the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” M.D.N.C. Local Rule 7.5(b) (2017).

I. INTEREST OF THE NC NAACP

Proposed Amicus Curiae NC NAACP is a grassroots-based, non-profit, civil rights organization with the mission of ensuring the rights of all persons to political,

educational, social, and economic equality, and eliminating racial discrimination. The NC NAACP dedicates significant organizational resources to protecting and advancing equal voting rights and promoting voter and civic participation of African Americans, people of color, and other groups of people historically denied that right in North Carolina. For decades, the NC NAACP has led the work of engaging a multi-racial coalition, or “fusion” electorate, in North Carolina that reaches across racial lines and is based not on the color of voters’ skin, but on the voters’ common interests in the important issues of the day and on a shared commitment to racial justice.

The NC NAACP, among other supporting organizations, immediately identified the racially unjust implications of the 2011 Rucho-Lewis maps when they were introduced, and has been an outspoken opponent of the maps since they were enacted. The NC NAACP is also a plaintiff in the consolidated state court case, *Dickson v. Rucho* (11 CVS 16896) and *NC NAACP v. State* (11 CVS 16940), which raise parallel claims, both federal and state, challenging various districts under the 2011 maps as unconstitutionally based on race. *See Dickson v. Rucho*, 766 S.E.2d 238 (N.C. 2014), *vacated*, 135 S. Ct. 1843 (2015) (mem.), *remanded to* 781 S.E.2d 404 (N.C. 2015); *vacated and remanded*, 198 L. Ed. 2d 252 (U.S. 2017) (mem.). The North Carolina Supreme Court’s 2015 decision in *Dickson* was vacated by the United States Supreme Court on May 30, 2017, and remanded for further consideration in light of *Cooper v. Harris*, 137 S. Ct. 1455 (2017). *Dickson v. Rucho*, 198 L. Ed. 2d 252 (U.S. 2017) (mem.). On August 28, 2017, the North Carolina Supreme Court heard oral argument in

Dickson, and has not yet issued a decision on the matter.

II. THE MATTERS ASSERTED IN THE AMICUS BRIEF ARE USEFUL AND RELEVANT TO THE COURT'S REVIEW OF LEGISLATIVE DEFENDANTS' REMEDIAL PLANS

As a grassroots-based civil rights organization that is the oldest and largest in the state,¹ the NC NAACP seeks leave to provide the Court with an important perspective on the deficient criteria, specifically the criterion prohibiting any consideration of race, which were adopted by the General Assembly in creating its submitted remedial maps. As explained in the proposed amicus brief, this critical omission tainted the map-drawing process and the resultant remedial maps with race discrimination, and justifies this Court's rejection of the submitted plans.

The NC NAACP represents thousands of black voters across the state, many of whom have borne the brunt of the harm caused by this General Assembly's egregious gerrymander and who will continue to be harmed if these maps, which are still infected with race discrimination, are implemented.

Courts often grant leave to file an amicus brief for nonprofit organizations like the NC NAACP that "represent large constituencies of individuals which have a vested interest" in the resolution of the case. *Bryant v. Better Bus. Bureau*, 923 F. Supp. 720, 728 (D. Md. 1996); *see also Perry-Bey v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 357 (E.D. Va. 2009) (explaining that NAACP branch was granted leave to file an amicus

¹ The NC NAACP was established in 1938 and today has over 20,000 members, the largest number of members of any NAACP state conference in the South, and the second largest in the country. The NC NAACP has more than 90 active branches in urban centers and rural communities throughout the state of North Carolina

brief and invited to participate in oral argument in the case). The NC NAACP and its expansive membership have a vested interest in this case and would be deeply impacted by the remedies that the Court may order.

CONCLUSION

For the foregoing reasons, the NC NAACP respectfully ask that this Court grant the Motion for Leave to File Amicus Curiae Brief.

Dated: September 15, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this day, I filed the foregoing **Memorandum of Law in Support of the Motion for Leave to File Amicus Curiae Brief** with the clerk's office via the CM/ECF system, which will send notification of filing to the following counsel of record:

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This the 15th day of September, 2017.

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