No. _____

In The
Supreme Court of the United States

MARGARET DICKSON, *et al.*,

Petitioners,

v.

ROBERT RUCHO, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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Dated: June 30, 2016

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of North Carolina on remand in this consolidated case.

QUESTIONS PRESENTED

The questions presented are:

1. Does Section 2 of the Voting Rights Act require a state to draw a racially proportionate number of majority-black legislative districts at 50% or greater black voting age population?

2. Can a bizarrely shaped majority-black district drawn predominantly on the basis of race satisfy strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment where, despite the presence of racially polarized voting, black voters' candidates of choice have been consistently successful when the district's voting age population previously was less than 50% black?

PARTIES TO THE PROCEEDINGS BELOW

The Petitioners in the *Dickson* civil action are Margaret Dickson; Alicia Chisolm; Ethel Clark; Matthew A. McClean; Melissa Lee Rollizo; C. David Gantt; Valeria Truitt; Alice Graham Underhill; Armin Jancis; Rebecca Judge; Zettie Williams; Tracey Burns-Vann; Lawrence Campbell; Robinson O. Everett, Jr.; Linda Garrou; Hayes McNeill; Jim Shaw; Sidney E. Dunston; Alma Adams; R. Steve Bowden; Jason Edward Coley; Karl Bertrand Fields; Pamlyn Stubbs; Don Vaughan; Bob Etheridge; George Graham, Jr.; Thomas M. Chumley; Aisha Dew; Geneal Gregory; Vilma Leake; Rodney W. Moore; Brenda Martin Stevenson; Jane Whitley; I.T. ("Tim") Valentine; Lois Watkins; Richard Joyner; Melvin C. McLawhorn; Randall S. Jones; Bobby Charles Townsend; Albert Kirby; Terrence Williams; Norman C. Camp; Mary F. Poole; Stephen T. Smith; Philip A. Baddour; and Douglas A. Wilson.

The Petitioners in the *NAACP* civil action are the North Carolina State Conference of Branches of the NAACP; League of Women Voters of North Carolina; Democracy North Carolina; North Carolina A. Philip Randolph Institute; Reva McNair; Matthew Davis; Tressie Stanton; Anne Wilson; Sharon Hightower; Kay Brandon; Goldie Wells; Gray Newman; Yvonne Stafford; Robert Dawkins; Sara Stohler; Hugh Stohler; Octavia Rainey; Charles Hodge; Marshall Hardy; Martha Gardenhight; Ben Taylor; Keith Rivers; Romallus O. Murphy; Carl White; Rosa Brodie; Herman Lewis; Clarence Albert; Evester Bailey; Albert Brown; Benjamin Lanier; Gilbert Vaughn; Avie Lester; Theodore Muchiteni;

William Hobbs; Jimmie Ray Hawkins; Horace P. Bullock; Roberta Waddle; Christina Davis-McCoy; James Oliver Williams; Margaret Speed; Larry Laverne Brooks; Carolyn S. Allen; Walter Rogers, Sr.; Shawn Meachem; Mary Green Bonaparte; Samuel Love; Courtney Patterson; Willie O. Sinclair; Cardes Henry Brown, Jr.; and Jane Stephens.

The Respondents in the Dickson civil action are Robert Rucho, in his official capacity only as the Chairman of the North Carolina Senate Redistricting Committee; David Lewis, in his official capacity only as the Chairman of the North Carolina House of Representatives Redistricting Committee; Nelson Dollar, in his official capacity only as the Co-Chairman of the North Carolina House of Representatives Redistricting Committee; Jerry Dockham, in his official capacity only as the Co-Chairman of the North Carolina House of Representatives Redistricting Committee; Philip E. Berger, in his official capacity only as the President Pro Tempore of the North Carolina Senate; Thom Tillis, in his official capacity only as the Speaker of the North Carolina House of Representatives; The State Board of Elections; and The State of North Carolina.

The Respondents in the NAACP civil action are The State of North Carolina; The North Carolina State Board of Elections; Thom Tillis, in his official capacity as Speaker of the North Carolina House of Representatives; and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, petitioners who are non-governmental non-profit corporations state that no parent or publicly held company owns 10% or more of their stock or interest.

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The Judgment and Memorandum of Decision, Pet. App. 140a, of the three-judge panel of the Superior Court Division of the General Court of Justice for Wake County, North Carolina dated July 8, 2013, is unreported.

JURISDICTION

The opinion of the North Carolina Supreme Court was entered on December 18, 2015. Pet. App. 1a. The mandate issued on January 7, 2016. On February 11, 2016 the court denied petitioners' request for rehearing and corrected an error in its opinion. By order dated April 28, 2016, Chief Justice Roberts extended the time for Petitioners to file this petition until June 30, 2016. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution, which states that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves Sections 2 and 5 of the Voting Rights Act of 1965, 52 U.S.C. §§ 10301 *et seq*. Section 2 states:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title,

> as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52 U.S.C. § 10301.

The provisions of Section 5 of the Voting Rights Act, 52 U.S.C. § 10304 are set out in Petitioners' Appendix at 373a.

INTRODUCTION

These cases present the issues of whether twenty-five of North Carolina's state legislative districts, and two of its congressional districts, all re-drawn in 2011 as majority-black districts to "inoculate" the state from liability under Sections 2 and 5 of the Voting Rights Act, and all drawn at 50% or greater black voting age population (hereinafter "BVAP"), are required by the Voting Rights Act properly interpreted, and are constitutional under the Fourteenth Amendment. This is the second time Petitioners have sought review of the North Carolina Supreme Court's decisions upholding these districts.

On April 20, 2015, this Court granted Petitioners' original petition for writ of certiorari in this case and remanded the matter to the Supreme Court of North Carolina for further consideration in light of *Alabama Leg. Black Caucus v. Alabama*, 575 U.S. ___, 135 S. Ct. 1257, 191 L. Ed. 2d 314 (2015) (hereinafter "*ALBC*"). *See Dickson v. Rucho*, ___ U.S. ___, 135 S. Ct. 1843, 191 L. Ed. 2d 719 (2015). On remand, the North Carolina Supreme Court concluded that this Court's holdings in *ALBC* largely do not apply to North Carolina's redistricting and therefore adhered to its prior opinion upholding the challenged districts. *See* Pet. App. 32a-36a, 69a-72a, & 90a.

It is uncontested that the North Carolina General Assembly imposed two race-based criteria that could not be compromised in its 2011 redistricting plans for the state legislature: A statewide racial proportionality requirement for the number of Voting Rights Act districts, (hereinafter

"VRA districts"), in the plan; and a requirement that each VRA district have a BVAP of 50% or greater. Mechanically applying these criteria, the General Assembly created twenty-three new majority black legislative districts compared to the prior plan. The General Assembly increased the number of majority black senate seats from zero under the 2003 benchmark plan to nine under the enacted plan; and increased the number of majority black house seats from nine under the 2003 benchmark plan to twenty-three under the enacted plan. The legislature also created two majority black congressional districts where none had existed under the 2002 benchmark plan.

The North Carolina Supreme Court ruling on remand conflicts with this Court's holding in *ALBC*. Moreover, the court rejected petitioners' claims that Congressional Districts 1 & 12 are unconstitutional racial gerrymanders, directly contrary to the federal district court's decision in *Harris v. McCrory*, No. 1:13cv949, 2016 U.S. Dist. LEXIS 14581 (Feb. 5, 2016) *prob. juris. noted*, *McCrory v. Harris*, No. 15-1262, 2016 U.S. LEXIS 4112 (June 27, 2016), which held that they are unconstitutional gerrymanders.

The North Carolina Supreme Court's decision also is in conflict with *Page v. Virginia State Bd. of Elections*, No. 3:13cv678, 2015 U.S. Dist. LEXIS 73514 (June 5, 2015) *appeal dismissed sub. nom. Wittman v. Personhuballah*, No. 14-1502, 2016 U.S. LEXIS 3353 (May 23, 2016) (finding that Virginia's 3rd Congressional District was racially gerrymandered and not narrowly tailored).

Certiorari must be granted in this case to resolve the conflict between the state and federal courts on the fundamental question of whether Section 2 of the Voting Rights Act requires a jurisdiction to draw a racially proportionate number of majority-black legislative districts each at greater than 50% BVAP. Resolution of this case on the merits is necessary to prevent the continuation of a legal standard in North Carolina requiring the excessive use of racial considerations in redistricting that could be adopted in many other states in the redistricting process that occurs following the 2020 census.

STATEMENT OF THE CASE

The first step taken by Dr. Thomas A. Hofeller, the chief architect of North Carolina's legislative and congressional maps in 2011, before drawing any districts, was to prepare a statewide racial proportionality table. Calculating that the black voting age population of the state was 21% of the total voting age population, he concluded that to achieve racial proportionality he needed to draw ten majority-black state senate districts and twenty-five majority-black state house districts. All of the election returns for elections in the previous decade showing the extent to which African-Americans were already being elected to state legislative seats were publicly available long before the redistricting data for North Carolina was released by the Census Bureau. Yet neither the legislative leaders, nor Dr. Hofeller, reviewed this information prior to drawing the VRA districts and providing them to the public.

In drawing state legislative districts in 2011, the North Carolina General Assembly was bound by the state constitution's whole county provision as interpreted in two state Supreme Court opinions, *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) and 357 N.C. 301, 582 S.E.2d 247 (2003). For counties that were not large enough to be one or more legislative districts on their own, the only flexibility that legislators could exercise was to use the federal Voting Rights Act, which preempts the state constitution, as a shield to allow them to cross county lines more than otherwise would be permitted under state law. Thus, Dr. Hofeller drew, and the legislature subsequently adopted, "VRA districts" nearly everywhere possible in the state, packing black voters in higher concentrations than ever before.

Implementation of this strategy required the legislature to sacrifice traditional redistricting criteria and risk the integrity of the elections process by dividing an enormous number of election precincts. Because of the dispersion of the state's African America population, artificially packing African American voters in districts produced a large number of oddly-shaped districts constructed using land bridges and various appendages to ensure that districts included a sufficient number of African American voters, and excluded a sufficient number of white voters, to meet the legislature's fifty percent plus one African American voting age population rule. Defendants therefore divided precincts, towns, cities and counties along racial lines. Despite the state constitutional requirement to keep counties whole to the extent possible, twelve house and

senate districts were built entirely from pieces of counties.

1. BACKGROUND TO THE 2011 REDISTRICTING PROCESS IN NORTH CAROLINA

Since this Court's decision in *Thornburg v. Gingles* 478 U.S. 30 (1986), African-Americans in North Carolina increasingly have elected their candidates of choice to the state legislature, often in districts that were not majority-black in voting age population. The General Assembly was aware in 2011 that candidates of choice of African-American voters won election to the General Assembly roughly 90% of the time they ran between 2006 and 2010 in the existing districts for State House and State Senate that were less than 50% black in voting age population. Dickson Trial Tr. vol II, (hereinafter "Tp.") at 405-410.[1]

As the General Assembly pointed out in its Section 5 submissions, "[t]he 2008 General Election represented the high water mark for African-American Senators with a total of nine African-Americans being elected," using a redistricting plan that had no majority-black voting age population

[1] Pursuant to Rule 9(c) of the North Carolina Rules of Appellate Procedure, Petitioners submitted the transcript from the June 5-6, 2013 trial in the lower court as part of the Record on Appeal in the North Carolina Supreme Court. References to that trial transcript in this petition are in the format (Tp ____).

districts. Doc. Ex. 7726[2] (2011 Senate Section 5 Submission 19.) In that year, African-American Senators Tony Foriest, Don Davis and Malcolm Graham were elected in districts that were 75.17%, 65.13% and 59.89% white in voting age population, respectively. Doc. Ex. 6980 (Churchill Dep. Exs. 82 & 83, at 30, 32 & 41.)

"There were twenty-two African-American Representatives serving in the General Assembly following the 2008 General Election." Doc. Ex. 7726 (2011 House Section 5 Submission 21.) This was using a redistricting plan that had only ten house districts where the TBVAP was greater than 50%. As in the senate, there were numerous African-American candidates elected from majority-white voting age population house districts, including, for example, Linda Coleman and Ty Harrell, elected in districts that were 67.68% and 82.85% white in voting age population respectively. Doc. Ex. 6980 (Churchill Dep. Exs. 82 & 83, at 85.)

In 2010, African-American candidates continued to win election in legislative districts that were not majority black in voting age population. For example, African-American Senator Malcolm Graham held on to his seat in the 59.89% white district in Mecklenburg County, winning 58.16% of the vote and African-American Senator Dan Blue

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[2] Pursuant to Rule 9(d) of the North Carolina Rules of Appellate Procedure, evidence properly admitted in the trial court was included in the Record on Appeal in the North Carolina Supreme Court as documentary exhibits submitted by Petitioners. References to those documentary exhibits in this petition are in the format (Doc. Ex. _____).

won in a district that was 51.84% white in voting age population. Doc. Ex. 6980 (Churchill Dep. Exs. 82 & 83, at 22, 35.) African-American Representative Rodney Moore won in a district that was 62.20% white in voting age population. *Id.*

The record developed by the General Assembly in 2011 showed that fifty-six times between 2006 and 2011, black candidates won election contests in state house and senate districts that were not majority-black. Twenty-two times those candidates were running in majority-white districts. Pet. App. 384a–399a. Most of these elections involved candidates of different races in which the black candidate defeated the white candidate. Some of the defeated white candidates were incumbents. *Id.* This was consistent with the North Carolina Supreme Court's observation in 2007 that "past election results demonstrate that a legislative voting district … with a total African-American voting age population of at least 38.37 percent creates an opportunity to elect African American candidates." *Pender County v. Bartlett*, 361 N.C. 491, 494, 517, 649 S.E.2d 364, 367, 380 (2007).[3]

The 2010 Census data showed that the population of North Carolina had grown significantly over the decade, resulting in an increase of the ideal

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[3] While the legislative record did include studies showing that racially polarized voting is still present in parts of North Carolina, no study examined whether the level of racially polarized voting in a particular area is such that the white majority votes sufficiently as a bloc to enable it "usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).

district size for state house and senate districts, but the African-American percentage of the state's voting age population remained roughly the same. Thus, differential rates of population growth do not explain the dramatic increase in the number of majority-black districts in the 2011 redistricting plans.

2. THE RACE-BASED CRITERIA USED TO DRAW LEGISLATIVE DISTRICTS IN NORTH CAROLINA

In 2011, the legislature itself did not adopt redistricting principles and the redistricting committees established in the house and senate did not discuss what criteria should be followed. Instead, the chairmen of the legislature's redistricting committees, Senator Rucho and Representative Lewis, issued joint written public statements on June 17, June 21, and July 12, 2011, describing the factors that had determined the number, location, and shape of the state house and senate "VRA districts" challenged here. Doc. Ex. 540-53, 563-68. These public statements reflect the oral instructions previously given to their consultant, Dr. Hofeller, to apply in drawing the districts. Pet. App. 99a; Doc. Ex. 1921-22, 2306, 3078-79, 3184-85. Those instructions were:

> 1. Draw "VRA Districts" in numbers equal to the African American proportion of the State's population.
>
> 2. Draw each "VRA District" such that African American citizens

> constitute at least a majority of the voting age population in the district.

The Chairmen also made clear in these written public statements that these criteria could not be compromised and that any alternative plan that strayed from strict adherence to these instructions would be rejected.

The racial proportionality and majority BVAP requirements were uniformly implemented across the state without any reference to the extent to which candidates of choice of black voters were elected to house and districts in various parts of the state, and without any examination of the extent of legally significant racially polarized voting throughout the state. Instead, these requirements were adopted in order to "expedite the preclearance of each plan pursuant to Section 5 of the Voting Rights Act", Doc. Ex. 543, and to insulate the State from liability under Section 2 of the Voting Rights Act. Pet. App. 160a.

African-American legislators did not share these views about the state's VRA obligations or potential liability. Numerous African-American legislators spoke out against all plans proposed by the Chairmen. Tp. 114, lines 12-21. Every African-American Senator or Representative voted against the enacted plans. Tpp. 30, 114.

In addition, once the VRA districts were introduced, citizens from around the state and the NAACP, testified at public hearings that the districts went beyond what was required for

compliance with the Voting Rights Act. Doc. Ex. 7726. Well before the final plans were enacted, legislators were specifically informed in written testimony that the VRA districts they were proposing were premised on a fundamental misunderstanding of constitutional and civil rights law. Doc. Ex. 7726.

3. RESULTS OF APPLYING RACE-BASED REDISTRICTING CRITERIA

The General Assembly's majority BVAP and racial proportionality criteria resulted in an unprecedented and dramatic increase in the number of majority African American districts in the house and senate plans, expanding from none to nine in the senate and from nine to twenty-three in the house. In addition, the new plan increased the black voting age population in the challenged districts as shown in the charts below:

Comparison of Black Voting Age Population
Prior vs. Enacted House Districts

House District	Benchmark BVAP	Lewis-Dollar-Dockham 4 (enacted) BVAP
5	48.87%	54.17%
7	60.77%	50.67%
12	46.45%	50.60%
21	46.25%	51.90%
24	50.23%	57.33%
29	39.99%	51.34%
31	47.23%	51.81%
32	35.88%	50.45%
33	51.74%	51.42%
38	27.96%	51.37%
42	47.94%	52.56%
48	45.56%	51.27%
57	29.93%	50.69%
99	41.26%	54.65%
102	42.74%	53.53%
106	28.16%	51.12%
107	47.14%	52.52%

Comparison of Black Voting Age Population
Prior vs. Enacted Senate Districts

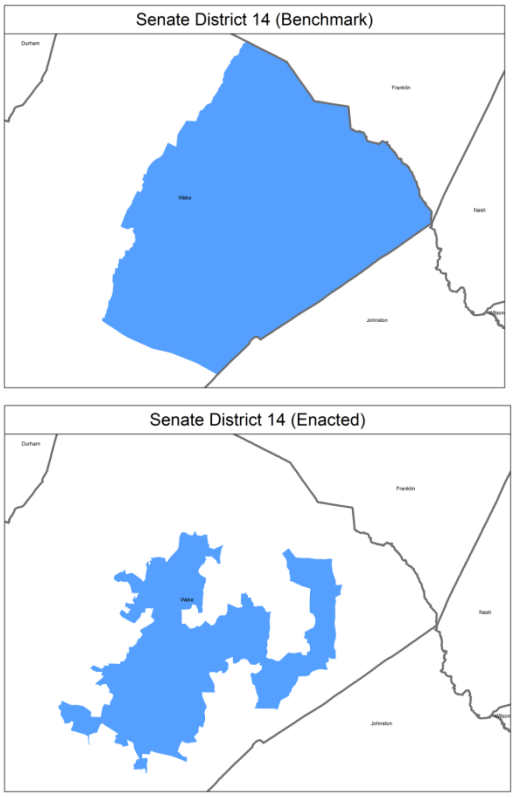
Senate District	Benchmark BVAP	Rucho Senate 2 (enacted) BVAP
4	49.70%	52.75%
5	30.99%	51.97%
14	42.62%	51.28%
20	44.64%	51.04%
21	44.93%	51.53%
28	47.20%	56.49%
38	46.97%	52.51%
40	35.43%	51.84%

To meet the racial proportionality and 50%+1 BVAP criteria, Dr. Hofeller drew oddly shaped districts containing numerous appendages and portions of districts connected by narrow land bridges. Traditional redistricting criteria, including compactness, communities of interest and adherence to county, town and precinct boundaries, were ignored.

For example, Senate District 14, one of the districts challenged in this case, is located in Wake County and includes parts of the City of Raleigh. It was increased from 42.62% BVAP in the benchmark plan to 51.28% BVAP in the enacted plan. Previously, a black candidate received at least 64% of the votes cast in each of the four elections held in this district between 2004 and 2010. To increase the black voting age population to the prescribed level,

twenty-nine precincts and the City of Raleigh had to be divided on racial grounds.

The resulting change in the shape of the district is illustrated below:



This pattern of the legislature's mechanically applied racial criteria having a very noticeable effect on how the district lines were drawn is present in all the districts challenged by the Petitioners in this case. The Petitioners have not challenged all of the majority-black districts in the state's house and senate redistricting plans, only those with highly irregular boundaries where race predominated in the drawing of the district.

4. TRIAL COURT'S OPINION

The trial court entered final judgment on July 8, 2013, and issued a Memorandum of Decision primarily addressing Plaintiffs' claims arising under the Equal Protection Clause of the Fourteenth Amendment. Pet. App. 140a. The trial court first concluded that, for 26 of the 30 legislative and congressional districts challenged, the "the shape, location and racial composition of each VRA district was predominately determined by a racial objective and was the result of a racial classification sufficient to trigger the application of strict scrutiny as a matter of law." Pet. App. 158a.

Applying strict scrutiny, the court observed that the "[Defendants] assert that the VRA Districts in the Enacted Plans were drawn to protect the State from liability under § 2 of the VRA, and to ensure preclearance of the Enacted Plans under § 5 of the VRA." Pet. App. 160a. The court held that it was "required to defer to the General Assembly's 'reasonable fears of, and their reasonable efforts to avoid, § 2 liability.'" Pet. App. 162a.

Believing that the Defendants had a compelling interest in avoiding § 2 liability and in obtaining § 5 preclearance, the trial court then placed the burden on Plaintiffs to prove that the Defendants had not narrowly tailored the challenged districts to meet that interest. The trial court held that Plaintiffs failed to satisfy that burden because, in its view, rough proportionality was endorsed by this Court as a means of ensuring compliance with § 2 of the Voting Rights Act. Pet. App. 174a-77a

(*citing League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 429-30 (2006), *Shaw v. Hunt*, 517 U.S. 899, 916 n. 8 (1996) (*Shaw II*), and *Johnson v. DeGrandy*, 512 U.S. 997, 1000 (1994)).

In addition, the court concluded that the "ultimate holding" of the U.S. Supreme Court in *Bartlett v. Strickland*, 556 U.S. 1 (2009) is that where there is racially polarized voting and the state has a reasonable fear of Section 2 liability, the state "must be afforded the leeway to avail itself of the 'bright line rule' and create majority-minority districts." Pet. App. 184a. Since the state opted for the safe harbor from Section 2 liability, the districts are narrowly tailored. Pet. App. 186a-87a. The trial court's opinion does not address the extensive and undisputed history of black electoral success for state legislative seats in North Carolina.

5. OPINION OF THE NORTH CAROLINA SUPREME COURT ON REMAND

On remand the North Carolina Supreme Court, by a four-three vote, reaffirmed its earlier decision that race did not predominate in the drawing of any of the challenged districts, and moreover, those districts satisfy strict scrutiny. Pet. App. 36a, 46a. On the question of whether race was the predominant factor in drawing the challenged districts, the court reiterated that the three-judge panel erred in concluding that race was predominant. Pet. App. 46a. Applying *ALBC* on this point, the court concluded that first, the trial court conducted the required individualized district by district analysis, and second, "[u]nlike the situation

in *Alabama*, the General Assembly here did not place special emphasis on compliance with federal one-person, one-vote standards; rather, equal population was a 'background' criterion that entered into formulating the challenged … districts …" Pet. App. 34a. Therefore, in the court's view, *ALBC* supported its conclusion that race did not predominate because in contrast to Alabama, "North Carolina's constitutional equal population criteria are a component of and intertwined with the state constitution's Whole County Provision." Pet. App. 33a. The court further held that "the three-judge panel's finding that race was a predominant factor in forming the VRA districts is unaffected." Pet. App. 34a.

Turning to the question of whether the challenged districts, though not a racial gerrymander in the court's view, nonetheless were narrowly tailored to achieve a compelling governmental interest, the court concluded that *ALBC* was essentially inapplicable to North Carolina. "Our conclusion that the VRA districts are constitutional is not dependent on a section 5 analysis. Each of the challenged VRA districts subject to strict scrutiny was created because the State had a compelling interest in compliance with section 2 … therefore, each of the VRA districts is constitutional on the basis of a section 2 analysis alone." Pet. App. 36a. While acknowledging that *ALBC* "made clear that section 5 'does not require a covered jurisdiction to maintain a particular numerical minority percentage' in covered jurisdictions," Pet. App. 69a (citations omitted), the court nonetheless concluded that *ALBC* also "did not

modify" the holding in *Bartlett v. Strickland*, 556 U.S. 1 (2009), which, the court believed, requires the state to create majority-black districts at greater than 50% BVAP. In the court's view "[i]f on the one hand, a TBVAP exceeding fifty percent is required to avoid section 2 liability, we cannot, on the other hand, conclude that this percentage is higher than necessary to avoid retrogression under section 5. In other words, section 5 cannot forbid what section 2 requires." Pet. App. 71a.

The North Carolina Supreme Court's opinion on remand holds that in the interest of avoiding liability under Section 2 of the Voting Rights Act, the state is required, by this court's opinions in *Bartlett v. Strickland*, and *Johnson v. DeGrandy*, 512 U.S. 997 (1994) to create a racially proportionate number of majority black districts in the state, each of which is greater than 50% black in voting age population. The undisputed record evidence of the sustained electoral success of black candidates under the 2003 and earlier plans in districts that were less than 50% BVAP was not addressed by the Court.

Turning to whether the challenged districts are narrowly tailored to comply with section 2, the Court asked "whether the TBVAP in each of the challenged districts are higher than reasonably necessary to avoid the risk of vote dilution." Rather than examining this question separately and carefully for each district, the Court globally responded to its rhetorical question with the observation that while "the TBVAP percentage ranges from a low of 50.45% to a high of 57.33% in the twenty-six districts in question … the *average*

TBVAP of the challenged districts is only 52.28%" (emphasis in original). On that reasoning the Court declared "we are satisfied that those districts are sufficiently narrowly tailored." Pet. App. 65a.

In a dissenting opinion, Justice Beasley took the position that the trial court's judgment should be vacated and the case remanded for more complete findings of fact consistent with the guidance provided in *ALBC*. In her view, "[t]he majority reads *ALBC* so narrowly that its implications for the case before this Court are negligible at best." Pet. App. 90a. Instead, "*ALBC* illuminates errors in the trial court's analysis of plaintiffs' racial gerrymandering claims in this case …" Pet. App. 92a.

REASONS FOR GRANTING THE PETITION

The North Carolina Supreme Court has created a precedent of federal constitutional and statutory law, binding on the state's legislature and courts, and available for consideration and potential adoption throughout the United States. That precedent (a) suggests that even the most explicit use of race (at least in redistricting) does not trigger strict scrutiny, (b) holds that even under strict scrutiny a state legislature may constitutionally adopt a redistricting plan with numerical racial goals intended to create as precise a racial balance in legislators as demographically possible, and to do so as a means of avoiding liability under Section 2 of the Voting Rights Act without any consideration of less-rigid uses of race or other non-racial criteria; (c) holds that the courts should defer to the legislature's understanding of those statutory

requirements without asking whether the legislature's understanding is correct or whether its fear of VRA litigation is genuinely reasonable; (d) assumes that Section 2 can properly be construed to make racial proportionality in redistricting a safe harbor; and (e) implicitly holds, in order to avoid the otherwise patent errors in its reasoning, that the general principles governing race and equal protection do not apply in the context of redistricting despite this Court's express statements to the contrary.

This misinterpretation of Section 2 of the Voting Rights Act conflicts with the principles established in *ALBC*, and followed in *Page v. Virginia State Bd. of Elections*, No. 3:13cv678, 2015 U.S. Dist. LEXIS 73514 (June 5, 2015) *appeal dismissed sub. nom. Wittman v. Personhuballah*, No. 14-1502, 2016 U.S. LEXIS 3353 (May 23, 2016). The decision is also in direct conflict with *Harris v. McCrory*, No. 1:13cv949, 2016 U.S. Dist. LEXIS 14581 (Feb. 5, 2016) *prob. juris. noted*, *McCrory v. Harris*, No. 15-1262, 2016 U.S. LEXIS 4112 (June 27, 2016).

This decision interpreting federal law, notwithstanding *ALBC*, is binding on the North Carolina General Assembly. If it is allowed to stand it will create confusion for states around the country with significant racial minority populations about the statutory and constitutional principles governing the application of Section 2 of the Voting Rights Act to redistricting and a lack of clarity about the government's ability to use racial classifications more generally.

The North Carolina legislature's use of racial targets to ensure preclearance under Section 5 of the Voting Rights Act, as upheld by the Court below, Pet. App. 36a, is similar to the mechanical use of racial targets by the Alabama legislature and criticized by this Court in *ALBC*. Even more importantly, many of the districts challenged in this case are not in areas of the state that previously were covered by Section 5 of the Voting Rights Act. This case raises the different and more significant question of whether Section 2 of the Voting Rights Act as interpreted in *DeGrandy* and *Bartlett* requires the safe harbor proportionality and 50%+1 BVAP criteria that were employed by the legislature here.

This Petition should be granted because the legislative districts challenged here were drawn at the same time as the congressional districts at issue in the case already accepted for review, *Harris v. McCrory*; and the very same congressional districts are at issue as well. Moreover this Court should hear this case on the merits and not simply hold it until after ruling in *Harris*. The opinion below raises the additional significant question of whether *Johnson v. DeGrandy*, interpreting Section 2 of the Voting Rights Act, requires racial proportionality as a safe harbor from liability, which is the central tenant of the General Assembly's defense of its actions. Pet. App. 73a-74a. Thus, the decision in *Harris* will not resolve one of the key issues in this case and will leave in place a rule previously rejected by this court "because of a tendency to promote and perpetuate efforts to devise majority-minority districts even in circumstances where they may not be necessary," *DeGrandy*, 512 U.S. at 1019, and a

rule this court has already said "could pose constitutional concerns." *Bartlett v. Strickland*, 551 U.S. at 24.

1. THE NORTH CAROLINA SUPREME COURT'S RULING CREATES A SPLIT IN THE INTERPRETATION OF FEDERAL STATUTORY AND CONSTITUTIONAL LAW IN NORTH CAROLINA AND IN OTHER STATES

On February 5, 2016, a three-judge federal district court invalidated two of North Carolina's congressional districts. *Harris v. McCrory*, No. 13-cv-949, 2016 U.S. Dist. LEXIS 14581 (M.D.N.C. Feb. 5, 2016). That case has been accepted for review and is currently pending before this Court. *See McCrory v. Harris*, No. 15-1262, 2016 U.S. LEXIS 4112 (June 27, 2016). The trial court in *Harris* found that Congressional Districts 1 and 12 were unconstitutional racial gerrymanders created "in blatant disregard for fundamental redistricting principles" in a manner that "stands the VRA on its head." *Harris*, No. 13-cv-949, slip op. at 57.

The evidence in *Harris* for Congressional Districts 1 and 12 is nearly identical to the evidence in this case (both for those districts and the other challenged districts that were not at issue in *Harris*). The same legislators—Senator Rucho and Representative Lewis—were responsible for development of the Congressional map. They hired the same consultant to draw the congressional and legislative maps. They issued the same directives to him—all oral, but delineated in the public

statements issued as part of the redistricting process. The same race-based criteria governed the drawing of the districts.

However, with regard to legislative districts, Senator Rucho and Representative Lewis gave Dr. Hofeller one race-based criterion for drawing legislative districts that was not given for the congressional districts. Dr. Hofeller was directed to draw the legislative districts with a roughly proportional number of majority-black districts to the percentage of the state's black voting age population.

The State also defended the districts on the same ground in both cases: that the Voting Rights Act and *Strickland* provided it a safe harbor to draw districts based on race in order to insulate the state from Section 2 liability and obtain preclearance under Section 5.[4] The *Harris* court looked beyond the State's proffered defense and reached the reverse conclusion of the *Dickson* court. It held that race predominated in the drawing of both congressional districts, and those districts were not narrowly tailored to serve a compelling governmental interest.

With regard to racial predominance, the court in *Harris* described the direct and circumstantial evidence for CD 1 that is nearly identical to the evidence for the legislative "VRA" districts and concluded that CD 1 is a "textbook example of racial

[4] The State did defend Congressional District 12 on the basis it was not a racial gerrymander and strict scrutiny should not be triggered. The *Dickson* court ruled in favor of the State, while the *Harris* court ruled in favor of plaintiffs on this issue.

predominance." *Harris*, No. 13-cv-949, slip. op. at 22. The court in *Dickson* ignored the extensive direct and circumstantial evidence that race predominated by guessing that "many other considerations [were] potentially in play." Pet. App. 45a.

Moreover, the court in *Harris* recognized that the legislature's 50%+1 BVAP floor was a racial quota that "could not be compromised." *Harris*, No. 13-cv-949, slip. op. at 19 (quoting *Shaw II*, 517 U.S. at 907). Yet the *Dickson* court held that the BVAP floor was merely a "baseline number that allowed for flexibility within each district." Pet. App. 67a. These legal determinations about the inflexible criterion imposed by the legislature cannot be squared with one another.

With regard to the implication of the *Strickland* decision, in a footnote, the *Harris* court recognized that "defendants' reliance on *Strickland* is misplaced." *Harris*, No. 13-cv-949, slip. op. at 61, n.10. The *Strickland* plurality held that Section 2 did not require states to draw crossover districts. In fact, as the *Harris* court observed, "the case stands for the opposite proposition [than Defendants' position and the North Carolina Supreme Court's interpretation]: 'Majority-minority districts are only required if all three *Gingles* factors are met and if § 2 applies based on a totality of the circumstances.'" *Id.*, (quoting *Strickland*, 556 U.S. at 24).

The *Dickson* interpretation of *Strickland* cannot be squared with the *Harris* interpretation. The court in *Dickson* held that majority-minority districts are required, regardless of whether the

third prong of *Gingles* could be met. Thus, the *Dickson* court's holding does precisely what *Strickland* warns against: it entrenches majority-minority districts by command. A legislature drawing districts in North Carolina—or any other jurisdiction—now has conflicting instructions with regard to whether 50%+1 districts are required or permissible. If *Harris* is right, then such districts are only required where all three *Gingles* factors are met. But if *Dickson* is right, then these districts are now required as a defense to potential—or even remote—§ 2 liability, even if minority voters were previously able to elect their candidates of choice in districts that were not majority in black voting age population.

While *Dickson* says the mere existence of racially polarized voting is enough, *Harris* makes clear that a "necessary premise" was absent: "that the white majority was actually voting as a bloc to defeat the minority's preferred candidates." *Harris*, No. 13-cv-949, slip. op. at 55. Thus, a future legislature has no guidance as to whether a generalized expert report of racially polarized voting is sufficient or whether the legislature must actually look at past election returns to determine if a majority-black district is required.

These conflicts between state and federal courts in North Carolina need resolution. This Court has recognized the "uncertainty and injustice which result from 'the discordant element of a substantial right and which is protected in one set of courts and denied in the other.'" *Edward Hines Yellow Pine Trustees v. Martin*, 268 U.S. 458, 464

(1925) (quoting *Brine v. Insurance Company*, 96 U.S. 627, 635 (1877)). *See also Hathorn v. Lovorn*, 457 U.S. 255, 271 (1982) (J. Rehnquist, dissenting) (warning about the potential to breed conflicts between the state courts and federal district courts sitting within the States).

In fact, the State of North Carolina agrees that the conflict between *Dickson* and *Harris* should be resolved by this Court. It is one of the questions presented in the Jurisdictional Statement and argued again in their briefs where the *Harris* Appellants ask this Court to note probable jurisdiction to "resolve this split between the district court and the North Carolina Supreme Court." *McCrory v. Harris*, No. 15-1262, Juris. Stmt. at ii–iii, (April 8, 2016); Appellants Br. in Opp. to Appellee's Mot. to Affirm, at 3-4, (May 24, 2016). The *Harris* Appellants even agree that the evidence in the two cases "was essentially identical." *Id.*, Br. in Opp. at 4. This Petition should be granted to properly resolve the conflicts in these two cases.

The North Carolina Supreme Court decision also is in conflict with *Page v. Virginia State Bd. of Elections*, No. 3:13cv678, 2015 U.S. Dist. LEXIS 73514 (June 5, 2015) *appeal dismissed sub. nom. Wittman v. Personhuballah*, No. 14-1502, 2016 U.S. LEXIS 3353 (May 23, 2016). In *Page*, a three-judge federal panel in Virginia found that direct and circumstantial evidence proved that race predominated in the drawing of Virginia's Congressional District 3. 2015 U.S. Dist. LEXIS 73514, at *22-41. Specifically, it found that because legislative leaders required districts that elected

African Americans to be drawn to 55% BVAP floor, regardless of past success of black voters in electing their candidates of choice, *Id.* at *27, this was both strong evidence of racial predominance and lack of narrow tailoring. *Id.* at *52-55.

Relying heavily on this Court's guidance in *ALBC*, that district court noted that "the legislature [in Virginia]--by increasing the BVAP of a safe majority-minority district and using a BVAP threshold--relied heavily on a mechanically numerical view as to what counts as forbidden retrogression without a "strong basis in evidence for doing so," and per *ALBC*, duly deemed that district to be an unconstitutional racial gerrymander. *Id.* at *53. In this case, the North Carolina Supreme Court reached the opposite conclusion on very similar facts, such that now a dramatically different constitutional rule applies in neighboring states.

2. THE NORTH CAROLINA SUPREME COURT FAILED TO APPLY *ALBC* ON REMAND AS DIRECTED

This Court considered four topics in *ALBC*: the district-specific nature of racial gerrymander claims; the standing required to pursue those claims; the proper calculation of the preponderance of race; and the need, for legislative bodies and courts, to ask the right questions in resolving compelling interest/narrow tailoring questions. The second two holdings are central to the correct resolution of this case, but neither was properly applied by the North Carolina Supreme Court in its decision on remand despite this Court's April 20, 2015 order.

The failure to meaningfully apply this Court's ruling in *ALBC* to the remarkably similar facts at hand represents an evasion of the state court's duty to comply with Supreme Court's interpretation of federal law. *See*, *e.g.*, *James v. City of Boise*, 577 U.S. ____, 136 S. Ct. 685, 694-95 (Jan. 25, 2016) ("[O]nce the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law. And for good reason … if state courts were permitted to disregard this Court's rulings on federal law, the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states.) (internal citations omitted); *see also*, *Am. Tradition P'ship v. Bullock*, 567 U.S. ___, 132 S. Ct. 2490, 2491 (2012) ("The question presented in this case is whether the holding of *Citizens United* applies to the Montana state law. There can be no serious doubt that it does. Montana's arguments in support of the judgment below either were already rejected in *Citizens United*, or fail to meaningfully distinguish that case.") (citations omitted); *Cooper v. Aaron*, 358 U.S. 1, 16-17 (1958) (per curiam) (in a school desegregation case, holding "[i]t follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States" and that "no state legislator or executive or judicial officer" may evade the Court's authority).

Specifically, the court below flatly ignored this Court's guidance in *ALBC* as to what constitutes

racial predominance in redistricting, and the role that direct evidence plays in concluding that race did predominate. First and foremost, just one year ago, this Court unequivocally stated "[t]hat Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State." Thus, there can be no real dispute that where legislative leaders responsible for redistricting publicly set racial quotas for redistricting, and announce that no plans that deviate from those racial quotas will even be considered, race is the predominant factor in redistricting.

The record in this case contains undisputed and direct evidence that race predominated in the drawing of each district challenged here. The North Carolina legislature did not have one fixed, race-based goal, as the state did in *ALBC*, it had dual race-based goals. The North Carolina legislature did not seek simply to maintain existing racial percentages in the challenged districts; it sought to increase the racial percentages in the challenged districts above a fixed, fifty percent floor. The North Carolina legislature did not seek simply to maintain the number of existing majority-minority districts; it significantly increased the number of majority districts to make in order to approximate so that the number of those districts would approximate the State's black voting age population percentage.

These race-based goals had a profound impact on the shape of the challenged districts and in fact

determined the path of the boundaries of those districts. As graphically demonstrated by the racial density maps that are part of the record in this case, *see*, *e.g.*, Pet. App. 382a-83a, race obviously explains the shapes of the challenged districts and the twist and turns in their boundaries. The uncompromising pursuit of these dual, race-based goals required disproportionate numbers of black citizens to be assigned to the challenged districts and disproportionate numbers of white citizens to be excluded from those districts. Unprecedented numbers of precincts were split on racial lines despite a state law expressly requiring that precincts be kept whole and the boundaries of counties crossed despite a state court decision forbidding the legislature from crossing county lines in forming districts except to the extent required to comply with federal law.

There was no mention, much less any examination or discussion, of this undisputed evidence by the North Carolina Supreme Court on remand. Instead, choosing to ignore this Court's remand directive, and again elevating state legislative discretion over the protection of the federal constitutional rights of citizens, the court nakedly reaffirmed its view that the state trial court had made a legal error in finding that "the shape, location and racial composition of each VRA districts was predominately determined by a racial objective."

The *ALBC* opinion also outlined a clear path for the proper resolution of whether the districts challenged here are narrowly tailored to serve the state's presumed compelling interest in compliance

with the Voting Rights Act properly understood. The principal question the North Carolina legislature asked was "how can we insulate the state from liability under Section 2 and guarantee preclearance under Section 5." The legislature's answer, affirmed by the North Carolina Supreme Court, was "by seeking the safe harbor created (a) by drawing districts using a fifty percent plus one black voting age population floor and (b) by drawing those majority black districts in numbers proportional to the state's black voting age population." This resulted in districts that violated the equal protection rights of North Carolina citizens.

The question that should have been asked by the legislature in drawing the challenged districts, and by the court in evaluating the validity of those districts, was laid out in plain terms in *ALBC*: "[t]o what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?" The failure to ask that question led the North Carolina legislature to manipulate the boundaries of districts to include far more black citizens, and exclude far more white citizens, than necessary to provide black citizens a reasonable opportunity to elect their candidates of choice, and it led the court to excuse the violation of the constitutional rights of North Carolinians in the name of legislative deference.

Allowing this ruling to stand would send the very real message to other states, and to the thousands of local jurisdictions that draw redistricting plans, that so long as they are seeking

to inoculate their plans from legal challenge, they are free to draw a racially-proportionate number of majority-minority districts even where candidates of choice of minority voters have been consistently successful in elections in districts that are not majority-minority in voting age population. The practice condoned as constitutional in this case may easily be followed by other jurisdictions unless this Court grants this Petition.

3. THE NORTH CAROLINA SUPREME COURT'S DECISION IS A DANGEROUS DIGRESSION FROM STRICT SCRUTINY REVIEW

It is well established that racial balancing and race-based governmental classifications are unconstitutional unless narrowly tailored to meet a compelling governmental interest, *see*, *e.g.*, *Miller v. Johnson*, 515 U.S. 900, 920 (1995), but the decision by the North Carolina Supreme Court seriously undermines that principle, and sets a dangerous precedent for the interpretation of equal protection law across the country. Absent intervention by this Court, North Carolina has established a rule that districts drawn to meet a racial proportionality floor are narrowly tailored because they permissibly have a total black voting age population that exceeds 50% and therefore are simply a safe harbor. Pet. App. 30a-37a. This invites courts around the country to abandon any careful evaluation of whether the use of race in redistricting is limited to the extent necessary to comply with Section 2 of the Voting Rights Act. That rule also opens the door to courts to relax their review under strict scrutiny in any

context so long as a jurisdiction is claiming to use race to avoid potential liability under any civil rights provisions. *But see Ricci v. DeStefano*, 557 U.S. 557, 592 (2009) ("fear of litigation alone cannot justify an employer's reliance on race").

"Strict scrutiny must not be strict in theory but feeble in fact," *Fisher v. Univ. of Texas*, 133 S. Ct. 2411, 2421 (2013), and this is particularly true in election-related cases. "Racial classifications with respect to voting carry particular dangers," which is why strict scrutiny in racial gerrymandering cases is quite strict: "[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters." *Shaw v. Reno*, 509 U.S. 630, 657 (1993). Thus, this Court has taken great care to not dilute the strength of its inquiry into race-based lawmaking when it comes to the drawing of political districts, and this is seen consistently in its racially gerrymandering precedents. "[C]ompliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws." *Miller v. Johnson*, 515 U.S. 900, 921 (1995). When specifically addressing narrow tailoring, this Court instructed that "[a] reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression." *Shaw*, 509 U.S. at 655. Thus, the strict scrutiny analysis unfailingly applied by this Court in its review of the

excessive use of race in redistricting confirms the need, and clearly articulates how, to carefully scrutinize the use of race in redistricting, and to reject it where unnecessary.

However, instead of carefully applying strict scrutiny, as this Court does at every turn in its narrow-tailoring analysis, the North Carolina Supreme Court relieved Respondents of their burden to demonstrate that it used only as much "force" as was necessary to comply with the Voting Rights Act. Just as required of the university in *Fisher I*, here the state "must prove that the means chosen by [the state] to attain [the compelling governmental interest] are narrowly tailored to that goal. On this point, the university receives no deference." *Fisher*, 133 S. Ct. at 2420. Moreover, there is a "continuing obligation to satisfy the burden of strict scrutiny in light of changing circumstances." *Fisher v. Univ. of Texas*, 579 U.S. ___, 2016 U.S. LEXIS 4059, *10 (June 23, 2016) *accord Shelby County v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (2013). When lower courts miss this point, racial classifications in law will consistently be upheld, which is why this Court corrected the lower court's undue deference to the University in applying strict scrutiny in *Fisher I*, *id.* at 2419-2420. It is just as vital to do so here, where the North Carolina Supreme Court has abandoned wholesale the correct standard for evaluating, under strict scrutiny, whether a governmental use of race is narrowly tailored.

The North Carolina Supreme Court's ruling essentially authorizes North Carolina, and all the jurisdictions in the state, to use racial

proportionality as a safe harbor in the redistricting process. Citing *Johnson v. DeGrandy*, 512 U.S. 997 (1994) and *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006), the lower court held that the General Assembly had a strong basis in evidence for concluding that 'rough proportionality' was reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA," Pet. App. 22a, and that the "General Assembly considered rough proportionality in a manner similar to its precautionary consideration of the *Gingles* preconditions, as a means of protecting the redistricting plans from potential legal challenges under section 2's totality of the circumstances test." What the court describes is a safe harbor. Beyond being flatly inconsistent with the Supreme Court's directions in *DeGrandy*, such a rule also circumvents the narrow tailoring requirement on states that use race in redistricting in a predominant fashion. The seriousness of this legal error, compounded by the potential for it to affect so many jurisdictions, requires the Court to take this case to correct that error.

With the 2011 redistricting plans, Respondents turned Section 2 of the Voting Rights Act on its head and used it to subvert the equal protection rights of North Carolinians under the United States Constitution. They used a law designed to protect the voting rights of the country's most vulnerable citizens to in fact segregate those voters by race. The drastic use of racial classifications in constructing these districts was not

justified by current political conditions on the ground or required by law.

4. THIS PETITION SHOULD BE GRANTED IN ORDER TO CONSIDER THIS CASE ALONG WITH RELATED CASES PENDING IN THIS COURT

In addition to the *Harris* case dealing with the same state and the same 2011 redistricting process, this Court has also noted probable jurisdiction to review the decision of the three-judge panel in *Bethune-Hill v. Virginia State Bd. of Elections*, 141 F. Supp. 3d 505 (E.D. Va. 2015), *prob. juris. noted*, No. 15-680, 2016 U.S. LEXIS 3653 (U.S., June 6, 2016). *Bethune-Hill* involves a racial gerrymandering challenge to several of Virginia's state legislative districts which raises issues similar to this case. A federal court challenge to numerous North Carolina state legislative districts on racial gerrymandering grounds is also currently pending before a three-judge court involving many of the same issues as in this case. *See Covington v. State of North Carolina*, No. 15-cv-399 (M.D. N.C. filed May 19, 2015). Trial in the *Covington* case was concluded on April 15, 2016 and the case is now ripe for decision by the trial court. It is likely that a direct appeal to this Court will follow whatever decision is rendered by the trial court.

Unlike *Harris* and *Bethune-Hill*, this case directly involves the issue of whether a racial proportionality criterion can be employed by a legislature to inoculate its redistricting plan from any possible liability under Section 2 of the Voting

Rights Act. Thus, to resolve that question and to bring uniformity to the important issue of when and how a legislature may consider race in redistricting, this case should be heard along with the related redistricting cases already before the Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

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