RECORD NO. 19-1091(L), Cross Appeal 19-1094

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

COMMON CAUSE, et al.,

Plaintiffs-Appellees-Cross-Appellants,

v.

DAVID R. LEWIS, et al.,

Defendants-Appellants-Cross-Appellees,

and

THE NORTH CAROLINA STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT, et al.,

Defendants.

Appeal from the United States District Court
for the Eastern District of North Carolina

AMICUS BRIEF OF REGINALD REID IN SUPPORT OF DEFENDANTS-APPELLANTS

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Signature: /s/ Jason Torchinsky Date: 02/26/2019

Counsel for: Amicus Curiae Reginald Reid

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AMICUS BRIEF OF REGINALD REID IN SUPPORT OF APPELLANTS

INTEREST OF AMICUS CURIAE[1]

Amicus Curiae, Reginald Reid ("*Amicus Curiae*" or "Mr. Reid"), has significant interests in this case. Mr. Reid is an African American resident of Winston-Salem, North Carolina. Mr. Reid is a regular voter and is politically active. Mr. Reid was the 2012 Republican nominee for State Senate in North Carolina's District 32. Mr. Reid was the 2018 Republican nominee for North Carolina House of Representatives in District 72. Plaintiffs-Appellees claim, and its presence in state court, stands to harm Mr. Reid, not only as a North Carolinian, voter, and former candidate for elected office, but more especially as an African American.

INTRODUCTION

Plaintiffs-Appellees brought this suit in Superior Court of Wake County seeking to invalidate North Carolina's legislative districting plans as unconstitutional partisan gerrymanders under a novel reading of the North Carolina Constitution, enjoin the further use of those plans, and establish new legislative districting plans. Legislative Defendants-Appellants are properly attempting to

[1] Pursuant to Fed. R. App. P. 29(a)(4), no counsel for either party authored this brief in whole or in part. No party or its counsel provided funding for this brief; no person or entity other than *Amicus Curiae* made a monetary contribution to its preparation or submission.

remove this case from state court to federal court pursuant to, *inter alia*, 28 U.S.C. § 1443(2).

Appellants are correct, and this case must be removed to federal court. Specifically, given the long history of North Carolina's Voting Rights Act ("VRA") litigation involving the subject legislative districts, and the judicially blessed balance which currently exists with respect to those districts and racial considerations, any judgment in Plaintiffs-Appellees favor will usurp racial considerations while violating federal law in order to advance novel state law claims. Not only do these circumstances directly fall under the prerogative of 28 U.S.C. § 1443(2), but federal courts are the best and indeed the only proper arbiters to address such questions.

In 2011, following the 2010 Census and the United States Supreme Court decision in *Bartlett v. Strickland*, 556 U.S. 1 (2009), the North Carolina General Assembly passed a redistricting plan (the "2011 Plan") which included the establishment of 28 majority-minority legislative districts with black voting age population, or "BVAP", of at least 50 percent. The 2011 Plan was precleared by the Department of Justice Voting Rights Section under VRA § 5.

In 2015 individuals from the majority-minority districts filed suit in federal court challenging the 2011 Plan as unconstitutional due to the General Assembly's goal of complying with the VRA. *Covington v. North Carolina*, 316 F.R.D. 117

(M.D.N.C. 2016). They alleged, and the U.S. District Court for the Middle District of North Carolina agreed, that the General Assembly's VRA compliance tainted the redistricting process because, in its drawing of the 28 majority-minority districts considerations of race predominated. 316 F.R.D. at 167–69. Further, the *Covington* plaintiffs claimed, and the Middle District of North Carolina agreed, that the general assembly's 50 percent BVAP target was unjustified because crossover voting empowered Black voters in North Carolina to elect their preferred candidates with the aid of some white voters when Black voters made up less than 50 percent of the district. 316 F.R.D. at 167–69. The *Covington* court determined that the legislature thus acted unconstitutionally despite the General Assembly's lack of bad faith. The decision of the Middle District of North Carolina was eventually affirmed by the Supreme Court. *North Carolina v. Covington*, 137 S. Ct. 2211 (2017). *Covington* essentially stands for the proposition that the North Carolina General Assembly must walk a tight rope of "competing hazards of liability" when redistricting because "the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race . . ." *Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018).

The *Covington* decision necessitated the drawing of new legislative maps in North Carolina, but because "[n]o information regarding *legally sufficient* racially polarized voting was provided to the redistricting committees to justify the use of

race in drawing districts," the General Assembly did not consider race at all. J.A. at ¶ 297 (emphasis added). This resulted in roughly two dozen legislative districts with concentrations of African Americans being drawn at BVAP near or above 40 percent, which was identified as being sufficient to afford African Americans an equal opportunity to elect their preferred candidates. *See* Joint Appendix (hereinafter J.A.)46 at ¶ 22 (identifying these districts). The Middle District of North Carolina adopted a portion of these remedial districts and employed a special master to draw the districts it rejected. *Covington v. North Carolina*, 283 F. Supp. 3d 410, 429-47, 458 (M.D.N.C. 2018). The Supreme Court affirmed in part but held that the district court improperly rejected some unchallenged districts. *North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018). Other than the unchallenged districts, all other remedial districts created by the General Assembly and the special master (the "2017 Plan") remain in place today, only one year later.

It is in this complex and precarious background, after years of federal court litigation, that Plaintiffs seek to impose completely new partisan proportionality requirements on North Carolina under a novel state law theory.

If Plaintiffs-Appellees are successful, they will necessarily upset the delicate balance that currently exists in North Carolina's legislative districts. The General Assembly has successfully navigated the "competing hazards of liability" and crafted a map that both complies with the VRA and the Fourteenth Amendment, by

permitting African Americans to elect representatives of their choice, without diluting their voting power, or having considerations of race predominate in the redistricting process. Plaintiffs-Appellees seek to upend the political geography of North Carolina by changing the partisan composition of legislative districts. Changing the partisan composition of districts will necessarily result in demographic changes to those districts as well. Not only will these changes result in reduction of minority voting strength, but it will upset the delicate balance of competing and sensitive federal interests will be for the purpose of furthering novel state law claims. Given the competing federal and state law interests implicated by Plaintiffs-Appellants' claims, federal court is the only proper arbiter for the case.

ARGUMENT

In order to avoid a potential Sophie's Choice between choosing to follow the directives of a state court or adhere to federal equal rights law, Appellants properly seek to remove this case from state to federal court pursuant to 28 § U.S.C. 1443(2)'s "Refusal" Clause. Section 1443 provides, in relevant part, as follows:

> Any of the following civil actions . . . , commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
> . . .
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S.C. § 1443. Removal is appropriate under Section 1443(2) where there is "a

colorable conflict between state and federal law." *White v. Wellington*, 627 F.2d 582, 587 (2d Cir. 1980) (quotations omitted).

28 U.S.C. § 1443(2)'s elements are satisfied in this case. The General Assembly is a "defendant" as its officers have been sued in their official capacity and they represent the entire body in those capacities. *See, e.g., Adams v. Ferguson*, 884 F.3d 219, 225 (4th Cir. 2018) ("suits against state officers 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'") (citing *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). And the General Assembly, by vigorously defending this suit, not implementing Plaintiffs' novel partisan proportionality theories into new legislative redistricting plans and refusing to enforce any plan a state court may impose under Plaintiffs' theories, is plainly refusing to act.

Appellants discuss their satisfaction of those elements in more depth in their briefs before this Court and before the district court. Amici write separately here to emphasize that the case must be removed to federal court because *any* remedy in Plaintiffs-Appellees' favor will force Defendants-Appellants to choose between complying with a state court's interpretation of state law or choosing to comply with federal equal rights law. Their refusal to accommodate Plaintiffs-Appellees' requested remedy based on this conflict is therefore appropriate.

Plaintiffs' requested remedy will necessarily force the state to choose

whether to violate the previous orders of the *Covington* court and the United States Supreme Court in order to satisfy new and novel claims, never before brought, asserting claims for relief under state law. Further, and more troubling, if Plaintiffs have their way, the state will be forced to violate federal law by either violating the Equal Protection Clause of the Fourteenth Amendment or Section 2 of the VRA. The Plaintiffs' requested remedy, that of redrawing legislative districts, will necessitate that the adopting court weigh the competing interests of Plaintiffs' novel state law partisan gerrymandering claims against the established and sensitive racial vote dilution concerns of the Fourteenth Amendment and VRA. The federal court system here is best equipped to ensure that the rights of minority voters are protected. Plaintiffs have made clear that their interest is in protection of the Democratic Party, which may or may not align with the interests of minority voters.

I. PLAINTIFFS' STATE-LAW THEORY IS INCONSISTENT WITH FEDERAL LAW PROVIDING FOR EQUAL RIGHTS

Plaintiffs ask the Superior Court of Wake County to invalidate legislative districting maps that took the legislature, and numerous federal courts including the United States Supreme Court, 7 years to perfect in accordance with the Fourteenth Amendment and the VRA and force the state to adopt an entirely new plan that necessarily is in conflict with both federal court orders and federal law. Colorable conflict between state constitutional redistricting requirements and the

dictates of the VRA and Fourteenth Amendment supports removal under Section 1443(2). *Cavanagh v. Brock*, 577 F. Supp. 176, 180 (E.D.N.C. 1983).

If a court invalidates the 2017 Plan, the legislature must, and should, be given an opportunity to cure any infirmities in the plan if at all practicable. *See* U.S. Const. art. I, § 2; *Upham v. Seamon*, 456 U.S. 37 (1982), *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *Whitcomb v. Chavis*, 403 U.S. 124, 160-61 (1971); *Veasey v. Abbott* 830 F.3d 216, 269-70 (5th Cir. 2016). Even when permitting a state legislature to craft a remedial redistricting plan is unfeasible due to a looming election, courts will devise and impose redistricting plans "pending later legislative action." *Wise*, 437 U.S. at 540.

A. Plaintiffs' Relief Would Force Defendants-Appellants To Violate The Mandates Of Federal Courts Enforcing The Fourteenth Amendment

Any new redistricting plan arising from this action would, by definition, directly contradict the 2017 Plan, violating the mandates of the U.S. District Court of the Middle District of North Carolina and the United States Supreme Court enforcing the Equal Protection Clause of the Fourteenth Amendment. If this action remains in state court and Plaintiffs prevail, Appellants will be forced to choose between the directives of federal courts and that of the state court. Even though Plaintiffs claim not to be directly challenging the districts drawn and redrawn by the *Covington* court and its special master, the remedy they seek will necessarily require the redrawing of some or all of those districts. In order to achieve the

partisan proportionality they claim is required under state law, any district with any high concentration of persons likely to vote for a Democratic candidate must be adjusted.

As the U.S. Supreme Court has recognized, the Democratic party's partisans often live in densely populated areas and are often highly concentrated in particular cities or counties. *Vieth v. Jubelirer*, 541 U.S. 267, 290 (2004); *id*. at 309 (Kennedy, J. concurring); *id*. at 359 (Breyer, J. dissenting); *Gill v. Whitford*, 138 S. Ct. 1916, 1925-26 (2018). This is a political geography problem that Plaintiffs are now turning to the state court with a novel theory to solve. The challenge here, and why this case should remain in federal court, is because the requirements of the Fourteenth Amendment and the VRA must necessarily prevail over any state court right to proportionality of party representation Plaintiffs now claim to find in the state constitution.

At the apex of the *Covington* litigation, the *Covington* court clearly and unequivocally ordered the state to adopt specific legislative maps to the exclusion of any other plans. *See Covington v. North Carolina*, 283 F. Supp. 3d 410, 423 (M.D.N.C. 2018) ("Having carefully reviewed the 2017 Plans; the Special Master's Recommended Plan and Report, and the materials appended thereto; and the parties' evidence, briefing, and oral arguments, we sustain Plaintiffs' objections to the Subject Districts and *approve and adopt* the Special Master's Recommended

Plans for reconfiguring those districts.") (emphasis added); *id*. at 458 ("the Court will *approve and adopt* the remaining remedial districts in the 2017 Plans *for use in future elections in the State*.) (emphasis added) (citing *Shaw v. Hunt*, No. 92-202-CIV-5-BR, slip op. at 8 (E.D.N.C. Sept. 12, 1997); *id*. ("we sustain Plaintiffs' objections to the Subject Districts and *approve and adopt* the State's 2017 Plans, as modified by the Special Master's Recommended Plans, *for use in future North Carolina legislative elections*. . . . *We direct Defendants to* implement the Special Master's Recommended Plans.") (emphasis added). The *Covington* court made it clear as day that it was approving and adopting one plan and ordered that plan used in all future elections, until decennial reapportionment. The state is bound by this order, and absent some additional federal court order, the Defendants here must refuse to enact any changes.

In fact, both the General Assembly and the *Covington* plaintiffs submitted alternative maps to the Special Master and to the *Covington* court, but the Covington court adopted the 2017 Plans to the exclusion of all others. Compare *Common Cause v. Lewis*, No. 5:18-CV-589-FL, 2019 U.S. Dist. LEXIS 2085, at *15 (E.D.N.C. Jan. 7, 2019). North Carolina could not have legally adopted any other plan than what was ordered and approved by the *Covington* court and special master.

Plaintiffs' prayer for relief directly attacks the 2017 Plan and demands the

state cease its use. Since the General Assembly must be given an opportunity to draw the remedial maps, or adhere to any court-drawn maps, if the Plaintiffs have their way the legislature will be forced to either violate the *Covington* court's order directing the implementation of the 2017 interpreting the Equal Protection Clause of the Fourteenth Amendment or violate the state court's order interpreting North Carolina law. This circumstance falls directly into the 28 U.S.C. §1443(2)'s purview.

B. Plaintiffs' Claims, If Successful, Will Require Alteration To Minority Crossover Districts Which Will Violate Equal Protection Under The Voting Rights Act, The Fourteenth Amendment, And The Fifteenth Amendment

Plaintiffs' requested remedy will necessarily require obliteration of cross-over districts, which were established to protect African-American North Carolinians under both the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the VRA by not diluting their voting power. The Plaintiffs' claims in this case are essentially that partisan proportionality should prevail over considerations of the Fourteenth Amendment and the VRA. Plaintiffs' underlying theory could not be more wrong.

Section 2 of the VRA prohibits the imposition of any electoral practice or procedure that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color." 52 U.S.C. § 10301(a). A Section 2 violation occurs 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 [protected group] . . . 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." *Id*. § 10301(b).

In *Thornburg v. Gingles*, the United States Supreme Court established that a minority group alleging vote dilution under Section 2 must prove three threshold preconditions: (1) "that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) "that it is politically cohesive"; and (3) "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." 478 U.S. 30, 50-51 (1986). *See also Growe v. Emison*, 507 U.S. 25, 40-41 (1993) (affirming the applicability of the *Gingles* preconditions in the context of Section 2 challenges to single-member districts).

"Racial bloc voting" or "racially polarized voting," a key element in any racial vote dilution examination, refers to the circumstances where "different races . . . vote in blocs for different candidates." *Gingles*, 478 U.S. at 62. *See also id*. at 58 (characterizing "evidence that black and white voters generally prefer different candidates" as evidence of racially polarized voting). Racial bloc voting must not only be statistically significant, but it must be "legally significant" meaning "majority bloc voting at such a level that it enables the majority group usually to

defeat the minority's preferred candidates." *Covington*, 316 F.R.D. at 167 (citing *Gingles*, 478 U.S. at 56.). In order to have "legally significant" racially polarized there must be "'especially severe' racially polarized voting, in which there are few majority-group 'crossover' votes for the minority group's preferred candidate . . ." *Id*. (citing *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 427 (2006)). The key inquiry therefore, is "whether racial bloc voting is operating at such a level that it would actually minimize or cancel minority voters' ability to elect representatives of their choice." *Id*. at 168 (citing *Gingles*, 478 U.S. at 56) (internal quotation marks and alterations omitted).

The *Covington* decision made the question of legal significance of racially polarized voting one of its effect. After *Covington*, the legal significance of statistically significant racially polarized voting depends entirely on the results of elections—whether minority communities are able to elect their candidates of choice. *See Covington*, 316 F.R.D. at 167. This significance can hinge on any variable that affects election results. These variables can include, but are in no way limited to, the percentage of minority and white voters, the partisan makeup, the socioeconomic makeup, the geographic region, and the age of voters in a particular district, as well as the popularity of particular candidates and parties in a year, whether the subject election is a presidential or mid-term election, and even the weather on election day. In sum, based on *Covington*, the same statistically

significant racially polarized voting can be legally significant or not legally significant based on the presence or absence of other variables that may or may not have anything to do with race.

Of course, the legal significance of racially polarized voting also depends on which voters are placed into various districts, and in what combination. Here's a hypothetical. In District Z as drawn, African-American voters in the northwest of County A generally prefer a certain candidate and comprise 40 percent of the district's voters. In District Z they are combined into this district with certain voters in the southwestern portion of County A who would historically not vote for the preferred candidate of the African-American voters, and who constitute 60 percent of voters in that district. In this type of district, Section 2's requirements for a different district configuration might require that more African-American voters are drawn into District Z. In a similarly configured District Y, the African-American voters also comprise 40 percent of voters but are combined with non-African-American voters in the northeastern part of the county. However, among this 60 percent of voters, at least 20 percent of them prefer the same candidate of choice as the African-American voters. This hypothetical district would not demonstrate legally significant racially polarized voting but would involve the same group of African-American voters. So, in a district involving the same voters, the *Covington* court would not find "legally significant" racially polarized voting

in District Y, but would have with respect to District Z. What preferences prevail, and whether there is legally significantly racially polarized voting, will be highly dependent on which other voters in the county are combined with which African-American voters to comprise the voters in a district.

Defendants in *Covington* introduced substantial data demonstrating statistically significant racially polarized voting in at least half of all North Carolina's counties. *Id*. at 169. This data is no less convincing today as it was when it was introduced two years ago. Racially polarized voting exists in North Carolina. *See, e.g., id*.; *Dickson v. Rucho*, 368 N.C. 481, 514-18, 781 S.E.2d 404, 428-431 (N.C. 2015); *Strickland*, 556 U.S. at 9; *Cromartie v. Hunt*, 133 F. Supp. 2d 407, 422-23 (E.D. N.C. 2000); *Shaw v. Hunt*, 861 F. Supp. 408, 465 (E.D.N.C. 1994) *rev'd*, 517 U.S. 899 (1996); *Gingles v. Edminsten*, 590 F. Supp. 345, 363, 367-372 (E.D.N.C. 1984) *aff'd in part and rev'd in part on other grounds sub nom., Gingles*, 478 U.S. 30; *Johnson v. Halifax Cty.*, 594 F. Supp. 161, 165-66, 170 (E.D.N.C. 1984).

Despite the clear data and numerous prior courts' findings supporting racially polarized voting in North Carolina,[2] the *Covington* court did not find the evidence presented to demonstrate legally significant racially polarized voting

[2] Most of these prior findings of racially polarized voting in North Carolina were found to be legally significant. *See supra passim*.

because crossover voting, *i.e.* non-African-American voters preferring African-American preferred candidates, could permit African-Americans to elect their candidates of choice even in districts with less than 50 percent BVAP. For the districts that are the subject of this case, the *Covington* court and the special master eventually settled on creating districts that, rather than being majority-minority, are roughly 40 percent BVAP, because at this level African-Americans may elect the candidates of their choice while not diluting their voting power across districts. And, following the hypothetical above, these districts are highly dependent on which voters are combined with African-American voters in order to continue to elect candidates of choice of the minority communities.

If these districts are pulled apart for the purpose of partisan proportionality, and reconstructed to be more politically "competitive," it will be become much more difficult for minority voters to maintain their ability to elect candidates of their choice general elections. Many of the districts Plaintiffs challenge as "packed" districts—*i.e.* having high concentrations of Democratic Party voters—are indeed crossover districts, where BVAP is roughly 40 percent. These districts include House Districts 8, 25, 32, 33, 38, 42, 43, 47, 58, 60, 71, 72, 88, 99, 101, 102, 107 and Senate Districts 14, 28, 32, 38, and 40. *See* Defendants-Appellant's Notice of Removal at 7-8, *Common Cause v. Lewis*, No. 5:18cv589. It makes sense that African-American crossover districts would be perceived to have high concentrations of Democratic voters given the fact that there is a strong correlation

between racial and political identity in North Carolina.

According to Pew Research Center, 38 percent of all people who identify as Democrats or leaning Democratic in North Carolina as of 2014 were black, while only 5 percent of identified Republicans were black. Pew Research Center, *Religious Landscape Study, Racial and ethnic composition among adults in North Carolina by political party* (accessed Feb. 23, 2019), http://www.pewforum.org/religious-landscape-study/compare/racial-and-ethnic-composition/by/party-affiliation/among/state/north-carolina/. Further, Pew Research Center found that a whopping 79 percent of Black North Carolinians identify as Democrats or leaning Democratic, as of 2014, while only 10 percent identify as Republican. Pew Research Center, *Party affiliation among adults in North Carolina by race/ethnicity*, Religious Landscape Study, http://www.pewforum.org/religious-landscape-study/compare/party-affiliation/by/racial-and-ethnic-composition/among/state/north-carolina/. This correlation has been recognized by courts for decades. *See, e.g., Hunt v. Cromartie*, 526 U.S. 541, 549-50 (1999); *Easley v. Cromartie*, 532 U.S. 234, 239, 245-246 (2001); *Harris v. McCrory*, 159 F. Supp. 3d 600, 634-36 (M.D.N.C. 2016); *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 225-26 (4th Cir. 2016); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 804 (M.D.N.C. 2018).

Given the strong correlation between African-American identity and

Democratic identity in North Carolina, the "unpacking" of these districts—meaning they are made less Democratic and more Republican—will necessarily reduce the BVAP percentage of those districts. The reduction of BVAP percentage in these districts will make it much more difficult for African-Americans to elect their candidates of choice. This will intern obliterate all, or nearly all, of the crossover districts in North Carolina. The effect of this will be to make what is already statistically significant racial bloc voting in North Carolina, legally significant racial bloc voting under Section 2.

The destruction of African American crossover districts in North Carolina will also violate the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) ("a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts . . ., would raise serious questions under both the Fourteenth and Fifteenth Amendments.) (citing *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 481-482 (1997)). The reduction or removal of black crossover districts would lead to dilution of African-American votes and violations of the Fourteenth and Fifteenth Amendments. Further, assuming arguendo that lines could be drawn to maintain minority control of some districts, which is doubtful could be accomplished at all, those lines would have to be drawn so carefully and with such close attention to race, that considerations of race will predominate the redistricting process, leading to yet another Fourteenth Amendment violation. *See Covington*,

316 F.R.D. at 117.

Simply put, *any* remedy in Plaintiffs' favor would necessarily require obliteration of racial crossover districts inevitably harming African-American North Carolinians. The effect of this would be to subordinate closely held constitutional rights, set in stone by the constitution and federal courts, to novel state law claims asking for partisan proportionality. *See Bartlett*, 556 U.S. at 1 ("It is common ground that state election-law requirements . . . may be superseded by federal law . . ."). It is therefore sound that Defendants-Appellants refuse to enact Plaintiffs' requested remedy, since it would be violative of federal equal rights law. *See* 28 U.S.C. § 1443(2); *Cavanagh v. Brock*, 577 F. Supp. 176, 180 (E.D.N.C. 1983) (colorable conflict between the dictates of federal law and state redistricting requirements supports removal under Section 1443(2)); *White v. Wellington*, 627 F.2d 582, 586 (2d Cir. 1980); *Rachel v. Georgia*, 342 F.2d 336, 340 (5th Cir. 1965), *aff'd*, 384 U.S. 780 (1966). The case should accordingly be removed to federal court.

II. FEDERAL COURTS ARE THE TRADITIONAL VENUE FOR VRA QUESTIONS

This case will inevitably involve the weighing of traditional VRA, Equal Protection, and other constitutional interests against the novel partisan interests, never before advanced under the state constitution, proffered by Plaintiffs. *See supra passim*. As a matter of public policy, these considerations should be

adjudicated by the federal courts. This is because "basic rule of law expectations are undercut when national constitutional law is permitted to depend on . . . the court in which a . . . case is filed." Wayne A. Logan, *A House Divided: When State and Lower Federal Courts Disagree On Federal Constitutional Rights*, 90 NOTRE DAME L. REV. 235, 239 (2014). Specifically, "[a]llowing the content of national constitutional law to depend on . . . whether a case is filed in state or federal court is at odds with the core expectation of horizontal consistency in the law's content and application." *Id.* at 258. For the purposes of uniform application of federal law, and for proper balancing of federal laws against potentially conflicting state law theories, federal courts are best suited in this particular situation to maintain jurisdiction over the Plaintiffs' claims. *See also Strickland*, 556 U.S. at 31.

CONCLUSION

In conclusion, this case will pit novel theories of state-law against established federal equal rights law. This is exactly the situation that 28 U.S.C. §1443(2) envisions and requires to be adjudicated in federal court. Accordingly, for the aforementioned reasons, *Amicus Curiae* respectfully requests this court reverse the decision of the district court and grant Appellants' motion for removal.

Respectfully submitted,

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1. This brief complies with the type volume limitation of Fed. R. App. P. 28.1 (e)(2) or 3 2(a)(7)(b) because this brief contains 4,680 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii} (i.e., the corporate disclosure statement; table of contents; table of citations; statement with respect to oral argument; any addendum containing statutes, rules, or regulations; and any certificates of counsel).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced 14 point serif typeface, Times New Roman, using Microsoft Word 2010.

/s/ Jason B. Torchinsky

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Certificate of Service

In accordance with Local Rules 31 (c) and (d), I hereby certify that on the 26th day of February, 2019, a copy of the foregoing Amicus Brief was hand delivered to the Clerk of the United States Court of Appeals for the Fourth Circuit, and further certify that this brief was electronically filed using the Court's CM/ECF system, which will send notice of such filing to counsel for all parties.

/s/ Jason B. Torchinsky

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