No. 14-839

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

BRIEF OF ELECTION LAW PROFESSORS AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici curiae are 13 nationally recognized election-law professors. Amici have devoted much of their careers to the study of the Voting Rights Act, 42 U.S.C. § 1973 (VRA), redistricting principles, and election law. Among them, they have authored numerous scholarly articles and books on these subjects that have been cited by federal and state courts. Amici's scholarship and experience lead them to conclude that the North Carolina Supreme Court's decision, if not reversed, threatens to turn the clock back on this country's pro-

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici curiae and their counsel made such a monetary contribution. The parties have consented to the filing of this amicus curiae brief. A full list of amici curiae appears in the Appendix to this brief.

gress toward voting-rights equality. For this reason, amici urge the Court to grant the petition for a writ of certiorari and reverse.

SUMMARY OF ARGUMENT

The North Carolina Supreme Court's decision reflects a fundamental and indefensible misunderstanding of this Court's precedents on redistricting. If allowed to stand, the decision would encourage states to eliminate coalition districts—districts in which white voters join in sufficient numbers with minority voters to elect the minority's preferred candidate—and replace them with unjustifiably race-driven districts, all with the purported aim of ensuring compliance with the VRA. This result turns the VRA on its head and runs afoul of the clear dictates of the Equal Protection Clause. It should be reversed.

ARGUMENT

As this Court has made clear in the context of voting rights, "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people." *Rice v. Cayetano*, 528 U.S. 495, 517 (2000) (quotation marks omitted); *see also Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013) (quoting same). Yet the North Carolina General Assembly explicitly embraced those distinctions in dividing North Carolina's citizens into unjustifiably race-driven districts. The North Carolina Supreme Court upheld these unconstitutional actions only by ignoring and misapplying this Court's redistricting precedents and by wrongly affording near-absolute deference to the General Assembly.

I. The North Carolina Supreme Court Set a Dangerous Precedent by Rejecting Strict Scrutiny as the Standard of Review

Strict scrutiny applies to a redistricting plan if "the legislature subordinated traditional race-neutral districting principles * * * to racial considerations." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). This is true even when it is alleged that the "reason for the racial classification is benign or the purpose remedial." *Shaw v. Hunt*, 517 U.S. 899, 904-05 (1996) (*"Shaw II"*).

This Court has explained that a racially gerrymandered districting plan, regardless of motivation,

> bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls * * * By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract.

Shaw v. Reno, 509 U.S. 630, 647-48 (1993) ("*Shaw I*"); *see also Miller*, 515 U.S. at 912 ("Race-based assignments embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution." (internal quotation marks omitted)).

Even when a legislature uses race as part of an effort to ensure compliance with the VRA, its actions are subject to strict scrutiny. *See Bush v. Vera*, 517 U.S. 952, 1002 (1996) (O'Connor, J., concurring) (strict scrutiny applied where "Texas readily admits that it intentionally created majority-minority districts and that

those districts would not have existed but for its affirmative use of racial demographics"); *Shaw II*, 517 U.S. at 906 (strict scrutiny applied where there North Carolina conceded that "the state legislature deliberately created the * * * districts in a way to assure black-voter majorities" (quotation marks omitted)); *Miller*, 515 U.S. at 918 (strict scrutiny applied where Georgia admitted that the challenged district was "the product of a desire by the General Assembly to create a majority black district" (quotation marks omitted)).

In this case, direct evidence demonstrates that the General Assembly was motivated predominantly—if not exclusively—by race. The plaintiffs introduced evidence from the redistricting process more than sufficient to show that the General Assembly pursued two goals: creating a certain number of majority-minority districts and then packing the maximum possible number of black voters into those districts. The General Assembly did not dispute these goals or assert others. As the trial court explained, "the General Assembly acknowledge[d] that it intended to create as many VRA districts as needed to achieve a 'roughly proportionate' number of Senate, House and Congressional districts as compared to the Black population in North Carolina." (Pet. App. 104a). Given this factual record and the absence of any relevant factual disputes, the trial court found strict scrutiny applied because the "shape, location and racial composition of each VRA district was predominantly determined by a racial objective." (Pet. App. 105a).

In rejecting the conclusion that strict scrutiny was required, the North Carolina Supreme Court invented factual disputes by speculating that "many other considerations [are] *potentially in play*" when a legislature is engaged in redistricting. (Pet. App. 16a (emphasis added)). *See Shaw II*, 517 U.S. at 908 n.4 ("[A] racial

classification cannot withstand strict scrutiny based upon speculation about what 'may have motivated' the legislature."). A court may not create factual disputes between parties where there are none. When there is "a material dispute" as to whether race predominates in a legislature's redistricting plan, then factfinding will be necessary in assessing the proper level of scrutiny. *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999). But where, as here, "the uncontroverted evidence and the reasonable inferences to be drawn in the nonmoving party's favor [are] not * * * 'significantly probative'," there is no "genuine issue" of fact. *Id.* Even if, as the North Carolina Supreme Court suggested, other factors may conceivably have been considered by the General Assembly, there is no doubt that in this case such factors were subordinated to racial considerations. *See Miller*, 515 U.S. at 916 ("To make this showing [that race was the predominant factor], a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles * * * to racial considerations.").

The trial court held that strict scrutiny was appropriate "even though legislative intent may have been remedial and the districts may have been drawn to conform with federal and state law to provide Black voters in those districts with an opportunity to elect their preferred candidate of choice." (Pet. App. 105a). In concluding otherwise, the North Carolina Supreme Court contravened *Cromartie* and set a dangerous example for future courts confronted with the crucial question of what level of scrutiny must be applied to race-based redistricting.

II. The North Carolina Supreme Court's Strict-Scrutiny Analysis Was Not In Fact Strict

When strict scrutiny applies, a redistricting plan is "presumptively invalid and can be upheld only upon an

extraordinary justification." *Shaw I*, 509 U.S. at 643-44. While determining the proper level of scrutiny is "a most delicate task," *Shaw II*, 517 U.S. at 905 (quoting *Miller*, 515 U.S. at 905), that delicacy "does not mean that a racial gerrymander, once established"—or, as in the North Carolina Supreme Court's decision, assumed *arguendo*—"should receive less scrutiny under the Equal Protection Clause than other state legislation classifying citizens by race," *Shaw I*, 509 U.S. at 646.

This standard does not permit the deferential review that the North Carolina Supreme Court afforded to the General Assembly in this case. The court failed to recognize that under strict scrutiny "it remains at all times the [State's] obligation to demonstrate, and the Judiciary's obligation to determine" that the challenged action is narrowly tailored to a compelling government interest. *Fisher*, 133 S. Ct. at 2420. Instead, under the guise of strict scrutiny, the North Carolina Supreme Court subjected the General Assembly's actions to something closer to rational basis review.

A. The North Carolina Supreme Court Misapplied *Thornburg v. Gingles* and Thus Found a Compelling Government Interest Where None Existed

This Court has suggested that compliance with the VRA can be a compelling state interest, although it has never affirmatively decided the question. *See, e.g.*, *Vera*, 517 U.S. at 977; *Shaw II*, 517 U.S. at 915; *Miller*, 515 U.S. at 921. At a minimum, defendants must show that such compliance was the General Assembly's "actual purpose" and that the General Assembly had "a strong basis in evidence" for believing, *Shaw II*, 517 U.S. at 908-09 n.4 (internal quotation marks omitted), that the challenged districts were "reasonably necessary under a constitutional reading and application of" the VRA, *Miller*, 515 U.S. at 921.

The defendants thus cannot meet their burden of demonstrating a compelling government interest by raising the specter of a meritless—and hypothetical—Section 2 lawsuit. *See Shaw II*, 517 U.S. at 908 n.4. As a threshold matter, reliance on concern about a meritorious Section 2 lawsuit requires a showing that (1) the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group "is politically cohesive"; and (3) "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, 50-51 (1986). The absence of any one of these "necessary preconditions" is fatal to a Section 2 claim. *Id.* at 50.

In this case, the evidence points to only one possible conclusion: any Section 2 lawsuit would have been doomed under the third *Gingles* precondition. Prior to the enactment of the challenged districts, North Carolinians regularly elected African-American candidates of choice by wide margins in districts where African-Americans constituted less than 50% of the population, including districts where whites constituted more than 50% of the population. (Pet. App. 329a-344a); s*ee also Pender Cnty. v. Bartlett*, 649 S.E.2d 364, 367 (N.C. 2007) ("Past election results * * * demonstrate that a legislative voting district with a total African-American population of at least 41.54 percent, or an African-American voting age population of at least 38.47 percent, creates an opportunity to elect African-American candidates."), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009).

The North Carolina Supreme Court gave no effect to this evidence, failing to recognize that the third *Gingles* precondition is satisfied only when it has been shown that the white voting bloc usually defeats the minority's

candidate of choice. Instead, the court deemed the condition satisfied by "racially polarized voting," (Pet. App. 25a), which it defined with reference to metrics of correlation rather than causation and without reference to whether minority-preferred candidates were usually defeated. The evidence of racially polarized voting cited by the court—a sparse summary of recent election results almost exclusively from the 2010 election, (Pet. App. 25a-26a); a pair of studies finding "a consistent relationship between the race of the voter and the way in which that person votes," (Pet. App. 26a-27a); a law review article indicating the same, (Pet. App. 28a-29a); a stipulation in a 2000 lawsuit concerning a single district, (Pet. App. 28a); and the fact that *Gingles*, decided in 1986, arose from litigation in North Carolina, (Pet. App. 27a-28a)—could not satisfy the defendants' burden of showing *legally significant* racially polarized voting.

As this Court has made clear, the third *Gingles* precondition likely will not be satisfied where, as here, there is "substantial crossover voting" by the majority. *Bartlett*, 556 U.S. at 24. The fact that there may be a mere correlation between race and voter preferences in North Carolina elections—even a "statistically significant" one—does not show that, in a specific district that might be subject to a Section 2 challenge, the white voting bloc usually defeats the minority's candidate of choice. *See Gingles,* 478 U.S. at 54-58*; see also LULAC v. Clements*, 999 F.2d 831, 861 (5th Cir. 1993) (en banc), *cert. denied*, 501 U.S. 1071 (1994) (rejecting mere correlation between race and voting patterns as sufficient to show that the *Gingles* preconditions have been satisfied where factors other than race, like partisanship, may explain voting patterns). Neither do stipulations by non-parties or factual findings in long-past litigation.

Nor, moreover, does a single election cycle in which, as the North Carolina Supreme Court's decision emphasized, "two African-American *incumbent* state senators" failed to obtain reelection "in majority white districts." (Pet. App. 26a (emphasis added)). Indeed, the previous elections of these state senators is itself evidence of crossover voting. So is the 2010 election of six other African-American state senators in districts that did not have an African-American majority voting age population, including three in districts that had a white majority voting age population. (Pet. App. 329a-344a). When crossover voting is as consistent as the record reflects it to be in North Carolina it eliminates any basis—much less a "strong basis"—for believing that the districts challenged in this litigation were reasonably necessary to avoid Section 2 liability.

B. The North Carolina Supreme Court's Narrow Tailoring Analysis Afforded the General Assembly Improper Deference and Fails on Its Own Terms

Even when ensuring compliance with the VRA does, due to a state's well-founded fear of Section 2 liability, rise to a compelling government interest, a state's redistricting plan will not be narrowly tailored if it moves beyond what was "reasonably necessary" to avoid liability. *Vera*, 517 U.S. at 977; *Shaw I*, 509 U.S. at 655. States thus have only a "limited degree of leeway" in furthering this interest. *Vera*, 517 U.S. at 977. Such a limit makes sense: even the threat of a meritorious lawsuit under the VRA does not afford legislatures "*carte blanche* to engage in racial gerrymandering." *Shaw I*, 509 U.S. at 655. Efforts to ensure compliance with Section 2 through racial gerrymandering "cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial," and raise the specter of "racial manipu-

lation that exceeds what § 2 could justify." *Vera*, 517 U.S. at 980-81.

The North Carolina Supreme Court paid no heed to the limits of this standard. Instead, it wrongly deferred to the General Assembly's unsupported reconstruction of events without explanation or analysis, ignoring that the defendants bore "the ultimate burden of demonstrating" that the challenged districts were narrowly tailored. *See Fisher*, 133 S. Ct. at 2420. Such deference to the North Carolina legislature amounts to abandonment of the judiciary's "independent obligation * * * to ensure that the State's actions are narrowly tailored to achieve a compelling interest" and a "surrendering" to the legislature of the courts' "role in enforcing the constitutional limits on race-based official action." *See Miller*, 515 U.S. at 922 (rejecting proposed deference to the Department of Justice).

Simple logic requires rejection of the North Carolina Supreme Court's conclusions on tailoring. The court found the state's action narrowly tailored because "a host of other factors were considered in addition to race, such as the Whole County Provision of the Constitution of North Carolina, protection of incumbents, one-person, one-vote requirements and partisan considerations." (Pet. App. 36a). The court's factual assertions here are the same as those it introduced in rejecting strict scrutiny, and they contravene both the undisputed evidence and the trial court's findings for the same reasons. Even if these unsupported factual assertions were true, moreover, the court's legal conclusion would not follow from them. What a legislature considered in devising its redistricting plan does not address the relevant test: whether the plan "classif[ied] individuals based upon race to an extent greater than reasonably necessary to comply with the VRA." (Pet. App. 36a).

Of greater relevance under this Court's precedents, the North Carolina Supreme Court also asserted that the General Assembly moved minority voters "out of crossover districts only to the extent necessary" to ensure that the new districts contained a voting age population more than 50 percent African-American. This assertion, even if true, lends no support to the court's conclusion that the General Assembly's actions were narrowly tailored. To the contrary, it illustrates why the new districts were *not* narrowly tailored: a 50 percent threshold was not reasonably necessary to avoid Section 2 liability given that African-Americans' preferred candidates had regularly been elected in districts where African-Americans constituted less than 50 percent of the voting age population. Moving African-American voters wholesale out of such crossover districts and instead packing them into majority-minority districts thus constituted just the sort of racial manipulation this Court has forbidden.

The North Carolina Supreme Court's basis for rejecting this conclusion—advanced before it by petitioners—is meritless. The court reasoned that, because the *Gingles* preconditions will be met only when a minority group is large enough to constitute a majority in a potential district, the General Assembly was entitled to provide itself a "safe harbor" by creating districts with a voting age population greater than 50 percent African-American. (Pet. App. 38a). The state's safe-harbor theory assumes that satisfaction of a single part of the *Gingles* prima facie test would be both necessary and sufficient to create a meritorious Section 2 suit. But the law and the facts show the fallacy of that logic. There are three parts to *Gingles*' test, meaning that failure to satisfy any one of the preconditions is sufficient to defeat a vote dilution claim. And the facts in this case, showing enough white crossover voting to

defeat any plaintiff's effort to satisfy the third prong of *Gingles*, mean that the state cannot justify its extraordinary effort to draw majority-minority districts as necessary to avoid a legitimate Section 2 claim.

The North Carolina Supreme Court also rejected unchallenged evidence that it acknowledged would, if accepted, render the state's actions contrary to the Equal Protection Clause. As the trial court found, the "undisputed evidence" in this case "establishes that the General Assembly * * * endeavored to create VRA districts in roughly the same proportion as the ratio of Black population to total population in North Carolina," using "rough proportionality" as a "benchmark" for the number of districts it drew with voting age populations higher than 50 percent African-American. (Pet. App. 121a). The North Carolina Supreme Court rejected this finding, asserting that "[p]roportionality was not a dispositive factor, but merely one consideration among many." (Pet. App. 42a). The fact that the General Assembly may have considered things other than proportionality does not, however, mean it did not plainly endeavor "to guarantee proportional representation," an action the North Carolina Supreme Court correctly acknowledged would violate the Constitution. (Pet. App. 42a); *see also Johnson v. De Grandy*, 512 U.S. 997, 1029 (1994) (Kennedy, J., concurring in part and concurring in the judgment) ("[T]he explicit goal of creating a proportional number of majority-minority districts in an effort to avoid § 2 litigation * * * * entrench[es] the very practices and stereotypes the Equal Protection Clause is set against.").

III. The North Carolina Supreme Court's Decision Would Afford States a Constitutional Safe Harbor from which to Undermine the VRA

This Court has recognized that the intersection of the VRA and the Equal Protection Clause is a "most

delicate" area of the law. *Miller*, 515 U.S. at 905. The delicacy of this area flows from a familiar tension: at times it is essential to consider race in order to avoid racial oppression, but at other times consideration of race may tend to legitimize and perpetuate such oppression. This Court's redistricting precedents thus strike a balance: legislatures may sometimes take account of race when they seek to comply with the VRA, but in doing so they must not run afoul of the Equal Protection Clause.

At the core of these precedents is a recognition that crossover voting and coalition districts are to be encouraged, not discouraged or ignored. A Section 2 violation will arise when a minority is disenfranchised by racial bloc voting, and the appropriate remedy for such a violation often will be to create a majority-minority district. But even if

> society's racial and ethnic cleavages sometimes necessitate majority-minority districts to ensure equal political and electoral opportunity, that should not obscure the fact that there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice.

De Grandy, 512 U.S. at 1020. Thus, Section 2 cannot justify the preemptive creation of majority-minority districts unless, at a minimum, (1) the threat of Section 2 liability is sufficiently high that avoiding it qualifies as a compelling government interest, and (2) majority-minority districts, rather than some less drastic reform, are necessary to avoid such liability.

Absent these constitutional limits, purported efforts to comply with Section 2 could be used, as in North Carolina, to immunize race-based redistricting plans that eliminate coalition districts in favor of unjustifi-

ably race-driven districts. The *De Grandy* Court explicitly rejected the argument that a state will have a "safe harbor" from Section 2 liability whenever the percentage of majority-minority districts in the state mirrors the percentage of minority voters in the state population. 512 U.S. at 1019. Such a rule would foster "a tendency to promote and perpetuate efforts to devise majority-minority districts even in circumstances where they may not be necessary to achieve equal political and electoral opportunity" given the presence of crossover voting and coalition districts. *Id.* at 1019-20. The North Carolina Supreme Court's decision promotes the same tendency—and protects affirmative efforts to destroy coalition districts—by setting out proportional representation via majority-minority districts as a "safe" way to ensure Section 2 compliance without running afoul of the Equal Protection Clause. As this Court stated in *De Grandy*, "[t]he safety would be in derogation of the statutory text and its considered purpose * * * and of the ideal that the [VRA] attempts to foster." 512 U.S. at 1018.

The North Carolina court constructed this *ultra vires* safe harbor in three steps, each of which runs counter to this Court's redistricting precedents. First, it ignored that, where there is "substantial crossover voting," the third *Gingles* precondition will rarely be established. *Bartlett*, 556 U.S. at 24. Rather than ask, as this Court's precedents require, whether the state had shown that the white majority usually defeated African-Americans' preferred candidates, the North Carolina Supreme Court asked merely whether the state had shown a correlation between race and voting patterns. As a result, the court found a compelling government interest in avoiding Section 2 liability where there was no basis in evidence for such liability, much less the "strong basis in evidence" required to

satisfy strict scrutiny. This result, if allowed to stand, will suggest to states that they have much broader constitutional leeway to use racial gerrymandering in the name of Section 2 compliance than is consistent with this Court's precedents.

Second, the North Carolina Supreme Court wrongly assumed that majority-minority districts are a "safe harbor" against liability under both Section 2 and the Equal Protection Clause. This assumption rests on a misreading of this Court's precedents as well as the North Carolina Supreme Court's own precedents. It is true that both this Court and the North Carolina Supreme Court have held that the *Gingles* preconditions will be satisfied only if the minority population could make up more than 50 percent of a potential election district. *See Bartlett*, 556 U.S. at 20; *Pender Cnty.*, 649 S.E.2d at 373. But neither *Bartlett* nor *Pender County* held that states may blindly adopt a majority-minority district—solely to immunize themselves from a perceived future Section 2 lawsuit concerning that district—without due regard to the Equal Protection Clause. In the absence of crossover voting, a majority-minority district may be the only possible means of avoiding Section 2 liability and thus may pass constitutional muster. But where, as here, there is substantial crossover voting, such that white voters do not usually defeat the minority's preferred candidates, the creation of majority-minority districts will not be reasonably necessary and will fail to withstand strict scrutiny.

Third, the North Carolina Supreme Court effectively exempted the General Assembly's efforts to ensure rough proportionality from constitutional scrutiny. As the trial court found, the "undisputed evidence" in this case establishes that the General Assembly employed "rough proportionality" as a "benchmark" for its redistricting plan. (Pet. App. 121a). Yet the North Carolina

Supreme Court rewrote the record in order to avoid finding a clear constitutional violation under *De Grandy*, reasoning that the General Assembly's benchmark was acceptable because rough racial proportionality was not the *only* concern the General Assembly considered. It also conducted no analysis as to whether the proportionality of the new districts comported with narrow tailoring requirements. The court's decision, if allowed to stand, will therefore foster the misimpression that efforts to ensure Section 2 compliance through racially proportional representation are per se constitutional, so long as the legislature at least purports to consider factors other than the subordinating factor of race.

In concert, these elements of the North Carolina Supreme Court's decision will suggest to states that they may avoid Section 2 liability—and withstand constitutional scrutiny—by adopting redistricting plans that ensure racially proportional representation via majority-minority districts, even in the face of demonstrated crossover voting and even if the effect is to pack minority voters into relatively few districts and thereby minimize their electoral influence. *See Bartlett*, 556 U.S. at 24 ("[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments."); *De Grandy*, 512 U.S. at 1007 ("[M]anipulation of district lines can dilute the voting strength of politically cohesive minority group members * * * by packing them into one or a small number of districts to minimize their influence in the districts next door."). This apparent—but erroneous—safe harbor would encourage states to destroy the benefits of crossover voting by trading coalition districts for dis-

tricts into which citizens have been unjustifiably divided based on race.

The states have already proven receptive to the unconstitutional approach adopted by the North Carolina Supreme Court. In several ill-considered opinions, courts have upheld state redistricting plans with demographic targets similar to the one adopted by the North Carolina General Assembly. *See Ala. Legis. Black Caucus v. Alabama*, 989 F. Supp. 2d 1227 (M.D. Ala. 2013), *prob. juris. noted*, 134 S. Ct. 2697 (2014), 134 S. Ct. 2695 (2014) (argued Nov. 12, 2014); *Jeffers v. Beebe*, 895 F. Supp. 2d 920 (E.D. Ark. 2012); *Egolf v. Duran*, No. D-101-cv-2011-02942 (N.M. 1st Judicial Dist. Ct., County of Santa Fe, Feb. 27, 2012); *see also* Affidavit of the Honorable Mia Butler Garrick ¶¶ 2-10, *Backus v. South Carolina*, No. 3:11-cv-03120 (D. S.C. Feb. 22, 2012) (Docket No. 147) (identifying the same approach in South Carolina's redistricting plan). Like North Carolina, these states—and the courts reviewing their plans—have failed to conduct the exacting inquiry required by the Equal Protection Clause to ensure that such targets were necessary under the VRA.

This trend, lent apparent but erroneous weight by the North Carolina Supreme Court's decision, does not merely contravene this Court's precedents. It threatens to transform a statute meant to combat an "insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution," *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966), *abrogated by Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013), into a statute employed to further the very evil it was designed to thwart.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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