

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC. et)
al.)

COMMON CAUSE,)

v.)

REPRESENTATIVE DESTIN HALL,)
in his official capacity as Chair of the)
House Standing Committee on)
Redistricting, et al.)

From Wake County

REBECCA HARPER, et al.)

v.)

REPRESENTATIVE DESTIN HALL,)
in his official capacity as Chair of the)
House Standing Committee on)
Redistricting, et al.)

PLAINTIFF-APPELLANT COMMON CAUSE’S NOTICE
REGARDING GRANT OF CERTIORARI BY THE UNITED
STATES SUPREME COURT IN *MOORE V. HARPER*

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiff-Appellant Common Cause hereby provides notice to the Court of its position regarding the grant of certiorari on 30 June 2022 by the U.S. Supreme Court in *Moore v. Harper*, see Order, No. 21-1271, 2022 U.S. LEXIS 3264, at *1 (June 30, 2022), and the impact of that decision on the timetable for the appeal in this matter.

The U.S. Supreme Court has granted a writ of certiorari to determine whether the U.S. Constitution's Elections Clause forbids state courts from resolving state constitutional challenges to state laws regulating federal elections. See Petition for Writ of Certiorari at i, *Moore v. Harper*, No 21-1271 (Mar. 17, 2022). Specifically, the U.S. Supreme Court granted certiorari to resolve:

Whether a State's judicial branch may nullify the regulations governing the "Manner of holding Elections for Senators and Representatives . . . prescribed . . . by the Legislature thereof," U.S. CONST. art. I, § 4, cl. 1, and replace them with regulations of the state courts' own devising, based on vague state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a "fair" or "free" election."

Id. ("Question Presented").

The U.S. Supreme Court's decision to resolve this question supports and warrants an expeditious disposition of Legislative Defendants' appeal to this Court concerning the remedial congressional plan. See R p 5143–46 (Legislative Defendants' Notice of Appeal). The interpretation of state constitutional provisions and the scope of this Court's inherent authority in remedying state constitutional violations is central to the issues before the U.S. Supreme Court in *Moore*. And Legislative Defendants already have previewed that they intend to present arguments to this

Court on these very same issues. *See, e.g.*, Legislative Defendants’ Mot. for Stay Pending Appeal (23 February 2022) at 6 (“The trial court lost sight of this manifestation of the separation of powers concerning judicial review; its role was not to substitute its view of the best way to redistrict or the best map, but to ensure compliance with legal principles.”). Accordingly, this Court’s final decision on state constitutional requirements in redistricting and a full view of how this Court will exercise its inherent authority to interpret and ensure compliance with the state constitution is necessary to fully inform, and thereby assist, the U.S. Supreme Court’s decision in *Moore*. This is likely only possible if the Motion to Expedite is granted. A failure to expedite this appeal presents the real and substantial risk that the U.S. Supreme Court could decide issues in *Moore* with an incomplete or inaccurate understanding of state law and the scope of this Court’s exercise of remedial power in this matter.

Additionally, the public interest and judicial economy also warrant expedited consideration of Legislative Defendants’ appeal. The Interim Congressional Map ordered by the trial court will only be used in the upcoming 2022 general election, R p 4887–88 (Remedial Order ¶ 11), thus requiring a new congressional map for 2024. The General Assembly has already forecast that it will attempt to enact a new Senate map. *See* S.L 2022-2 § 1(a) (“For the purpose of nominating and electing members of the Senate in 2022”).¹ As noted in the Motion to Expedite, expedited

¹ Available at <https://www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S744v4.pdf>. Plaintiff-Appellants do not concede that such an effort would be constitutional absent court-ordered modification of the current remedial Senate map.

consideration of this matter will ensure that any additional redistricting this cycle will be completed in an orderly fashion and with clarity on the requirements of the state Constitution that will be provided by the disposition of this appeal. The appeals in this matter should be heard at the earliest opportunity so that any further actions by the General Assembly to redistrict are done with final resolution and clarity as to state constitutional requirements, with sufficient time for public input and court review, if necessary.


Furthermore, there is no risk of voter confusion arising from expedited consideration of this matter. As this appeal does not concern time, place, or voting requirements that impact where, when, or what voters need to go to the polls, the mere fact that this Court may be hearing oral argument before the elections will not impact voter turnout. And as noted in the Motion to Expedite, the current briefing schedule is such that oral argument is possible prior to October (by a special session) or during the October oral argument calendar, with a likely decision in December when the Court has a scheduled opinion release date, thus eliminating the possibility of voter confusion as to the maps they are voting under in November 2022.

Finally, it is important to emphasize that the U.S. Supreme Court's ultimate decision in *Moore* can pertain only to laws regulating *federal* elections and thus has no possible relevance to the appeals taken by Plaintiff-Appellants in this matter relating to the remedial *state legislative* maps. See R p 5147–59 (Plaintiffs' Notices of Appeal). Accordingly, for the reasons set forth in the Motion to Expedite, both the

public interest and judicial economy necessitate hearing all appeals in this matter at the earliest possible time.

Respectfully submitted, this the 8th day of July, 2022.

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CERTIFICATE OF SERVICE

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